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Attorneys for Plaintiff IGNACIO MACIEL and all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

IGNACIO MACIEL, on behalf of himself and
all other aggrieved employees,

Plaintiff,

v.

M.A.C. COSMETICS INC.; and DOES 1–50,
inclusive,

Defendants.

CASE NO.: **22CV014282**

**COMPLAINT FOR PENALTIES FOR
VIOLATION OF LABOR CODE § 2698 *et*
seq. (PRIVATE ATTORNEYS GENERAL
ACT OF 2004)**

INTRODUCTION

1. Plaintiff IGNACIO MACIEL (“Plaintiff” or “MACIEL”) hereby submits his Complaint against Defendants M.A.C. COSMETICS INC. (“MAC”), and DOES 1–50, inclusive (collectively referred to as “MAC” or “Defendants”), on behalf of himself and other current and former aggrieved employees of Defendants for penalties as follows:

2. This is not a class action. This representative action brought individually and on behalf of all other current and former aggrieved employees pursuant to Labor Code § 2698 *et seq.* (the Private Attorneys General Act of 2004 (“PAGA”) for Defendants’ violations of Labor Code §§ 2800, *et seq.*

3. This putative representative action is brought by Plaintiff, against Defendants, and each of them for the recovery of civil penalties under PAGA on behalf of Plaintiff, IGNACIO MACIEL and all other aggrieved employees based on Defendants’ wrongful actions: (1) Failure to Reimburse Business Expenses and Losses.

4. Plaintiff petitions this Court to allow him to represent and prosecute claims against Defendants in a representative action proceeding on behalf of himself and all non-exempt current and former aggrieved employees, who worked in the state of California (hereinafter referred to as “aggrieved employees”).

THE PARTIES

5. At all material times, MACIEL was/is a resident of the County of Los Angeles, in the State of California. From approximately 2015 to July 2021, MAC employed MACIEL. MACIEL worked at MAC in San Francisco, California and his final MAC location was in Los Angeles, California. Plaintiff brings this action on behalf of himself and all others similarly situated aggrieved employees. Plaintiff reserves the right to name additional representatives.

6. MAC is a Delaware corporation with its primary place of business in New York and at all material times, MAC conducted business in Alameda County, Los Angeles County and throughout the State of California.

7. The true names and capacities, whether individual, corporate, partnership, associate, or otherwise of defendants DOES 1–50, inclusive, are unknown to Plaintiff who sues these defendants by PAGA Action Complaint or file a DOE statement to allege the true names and

1 capacities of DOES 1–50, inclusive, when the same are ascertained. Plaintiff is informed and
2 believes and thereon alleges that each of Defendants designated as a DOE was responsible in some
3 way for the matters alleged herein and proximately caused Plaintiff and other aggrieved employees
4 to be subject to the illegal employment practices, wrongs and injuries complained of herein. The
5 DOE defendants together and M.A.C. COSMETICS INC. are collectively referred to herein as
6 “Defendants” or “MAC.”

7 8. Plaintiff is informed and believes, and thereon alleges that Defendants are
8 responsible in some manner for one or more of the events and happenings that proximately caused
9 the injuries and damages hereinafter alleged.

10 9. Plaintiff is informed and believes, and thereon alleges, that each of Defendants
11 knowingly and willfully acted in concert, conspired together, and agreed among themselves to enter
12 into a combination and systemized campaign of activity to cause the injuries and damages
13 hereinafter alleged, and to otherwise consciously and or recklessly act in derogation of Plaintiff’s
14 rights, and the trust reposed by Plaintiff in each of said Defendants, said acts being negligently and
15 or intentionally inflicted. Said conspiracy, and Defendants’ concerted actions, were such that, to
16 Plaintiff’s information and belief, and to all appearances, Defendants represented a unified body so
17 that the actions of one defendant was accomplished in concert with, and with knowledge,
18 ratification, authorization, and approval of each and every other defendant.

19 10. Plaintiff is informed and believes, and thereon alleges, that each defendant in this
20 complaint, is, and at all times mentioned was, the agent, servant, alter ego, and or joint employer
21 along with each of the other defendants, and each defendant acted within the course or scope of his,
22 her, or its authority as the agent, servant, and or employee of each other defendant. Consequently,
23 each and every defendant is jointly and severally liable to Plaintiff and aggrieved employees for the
24 damages incurred as a proximate result of each defendant’s conduct.

25 11. At all times herein mentioned, Defendants, and each of them, were agents, partners,
26 joint venturers, representatives, servants, employees, successors-in-interest, co-conspirators and
27 assigns, each of the other, and at all times relevant hereto were acting within the course and scope
28 of their authority as such agents, partners, joint venturers, representatives, servants, employees,
successors, co-conspirators and assigns, and that all acts or omissions alleged herein were duly

1 committed with ratification, knowledge, permission, encouragement, authorization and consent of
2 each Defendant designated herein.

3 12. As such, and based upon all the facts and circumstances incident to Defendants'
4 business in California, Defendants are subject to PAGA and Labor Code §§ 2699, 2699.5, and
5 2800, *et seq.*

6 **JURISDICTION AND VENUE**

7 13. This Court has jurisdiction over this action under the California Constitution,
8 Article VI, section 10, which grants the Superior Court, "Original Jurisdiction in all causes except
9 those given by statute to other courts." The statutes under which Plaintiff brings this action do not
10 specify any other basis for jurisdiction.

11 14. This Court has jurisdiction over all defendants because upon information and belief,
12 each is either a citizen of California, has sufficient minimum contacts in California, or otherwise
13 intentionally avails itself to the California market so as to render the exercise of jurisdiction over it
14 by the California courts consistent with traditional notions of fair play and substantial justice.

15 15. Venue as to each defendant is proper in this judicial district under California Code
16 of Civil Procedure sections 395(a) and 395.5. Defendants own, maintain offices, transact business,
17 have an agent or agents within the County of Alameda or Defendants have transacted business
18 within the County.

19 **INTRODUCTION**

20 16. MAC is a Canadian cosmetics manufacturer founded in Toronto in 1984 by
21 Frank Toskan and Frank Angelo. In 1996, MAC became a subsidiary of the Estée Lauder
22 Companies and is now headquartered in New York¹. MAC is an acronym for "Makeup Art
23 Cosmetics," whose product line was originally intended for makeup artists only but is now sold
24 to consumers around the world. Professional makeup artists operate MAC stores.

25 17. MAC Cosmetics is one of the top three global makeup brands, with an annual
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28 ¹ [*"Estee Lauder Buys Remaining MAC Equity"*](#). *Los Angeles Times*. 1998-02-28. [ISSN 0458-3035](#). Retrieved 2019-05-23.

1 turnover of over \$1 billion, and 500 stores.²

2 18. On its own website³, MAC represents:

3 a) “M•A•C is the world’s leading professional makeup authority because of our
4 unrivaled expertise in the makeup ARTISTRY;”

5 b) “M•A•C is a proud COMMUNITY of professional makeup artists working
6 together to bring our vision to life;” and

7 c) “M•A•C is at the forefront of fashion TRENDSETTING, collaborating with
8 leading talents from fashion, art, and pop culture. Our Artists create trends backstage at
9 fashion weeks around the world.”

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11 **FACTUAL ALLEGATIONS**

12 19. In or about 2015, MAC hired MACIEL as a non-exempt, part-time employee in
13 Salinas, California. Over the course of the next several years, MACIEL was promoted until he was
14 hired as a full-time manager at the MAC store located in Glendale, California.

15 20. At all material times, MAC requires its employees to implement a fashion forward
16 “image” to represent the MAC brand to consumers and the general public. From the time a
17 prospective employee of MAC engages in the onboarding process through the time of separation
18 (whether through resignation or termination), MAC employees are informed and consistently
19 reminded by corporate management and regional/district managers to abide by the MAC “image”
20 standards or be subject to reprimand/termination.

21 21. More specifically, MAC employees are instructed and required to adhere to the
22 required MAC “dress code” or “image”, which means (1) wearing specific clothing of distinct
23 design and color to both match MAC’s fashion forward “image” and to represent the MAC brand,
24 and (2) wearing makeup of distinctive design and color that also matches the MAC brand and is
25 specific to MAC’s promotional events.

26 22. The clothing MAC requires its employees to wear is of distinctive design and color

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28 ² <https://www.forbes.com/companies/mac-cosmetics/?sh=1b2ae6747806>

³ <https://www.maccosmetics.com/our-story>

1 and that is not usual or common within the employees' occupation.

2 23. MAC also requires its employees to wear makeup that meets the MAC "image,"
3 which is also required at MAC promotional events. MAC promotional events can occur, on
4 average, every 2-4 to weeks, serving to generally promote a new product or product line of new
5 makeup products. Each of these different make-up products or product lines have a specific look
6 and color combination that would promote the MAC brand. In order to adhere to MAC's
7 appearance policies and expectations MAC employees must purchase some of the promotional
8 products with their own money or use their own makeup products (from their personal collection)
9 to match MAC's appearance expectations and to be consistent in image with MAC's promotional
10 campaign expectations.

11 24. MAC requires its employees to abide by the MAC image for its employees to wear
12 clothing and makeup, described above, necessary to meet MAC's expectations and the demands of
13 MAC representations and warranties to its consumers and the general public as the world's leading
14 professional makeup authority and frontrunner of fashion trendsetting.

15 25. MAC has a policy and practice of not reimbursing its employees for expenses
16 incurred as a result of being forced to purchase the clothing and makeup items, described above,
17 necessary to meet MAC's appearance expectations. MAC employees would be subject to reprimand
18 and/or termination for not conforming to the MAC image expectations.

19 26. Though Plaintiff has incurred necessary business expenses in purchasing clothing
20 and makeup to meet MAC's expectations and at the direction of MAC and to benefit MAC's
21 business, MAC has never reimbursed Plaintiff or any other similarly situated employees, in any
22 way for these necessary business expenses.

23 27. MAC, at all material times, has had, and continues to have, a policy and practice of
24 not reimbursing current and former employees, including Plaintiff, and those similarly situated, for
25 clothing and makeup reasonable and necessary to conforming to MAC image demands and
26 expectations.

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CAUSE OF ACTION
VIOLATION OF PAGA
(By Plaintiff Against Defendants)

28. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, all preceding paragraphs of this Complaint.

29. Plaintiff is seeking to represent all aggrieved non-exempt employees of Defendants in the state of California, at any time from March 30, 2021 to the present date. This cause of action under the Private Attorneys General Act (“PAGA”) is a representative action and not a class action.

30. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

31. On March 30, 2022, Plaintiff provided written notice to the LWDA and Defendants of the specific provisions of the Labor Codes he contends were violated, and the theories supporting his contentions. Plaintiff believes that on or about, June 3, 2022, the sixty-five (65) day notice period expired and the LWDA did not take any action to investigate or prosecute this matter. Therefore, Plaintiff has exhausted the statutory time period to bring this action.

32. Plaintiff and the other non-exempt employees of Defendants in the state of California are “aggrieved employees” as defined by California Labor Code § 2699(c) in that they are all current or former non-exempt employees of Defendants, and one or more of the alleged violations was committed against them.

Failure to Reimburse Expenses

33. Under California Labor Code section 2802, Defendants must reimburse and indemnify Plaintiff and other aggrieved employees for all necessary expenditures Plaintiff and all other aggrieved employees incurred. At all times relevant herein, Defendants were required to reimburse its employees for any and all necessary expenditures or losses incurred by the employees in direct consequences of the discharge or his or her duties pursuant to the mandate of California Labor Code sections 2800, *et seq.* As a pattern and practice, Defendants failed to pay Plaintiff and

1 other aggrieved employees all business expenses incurred and owing them within the required time
2 period for necessary expenditures and/or losses as a direct result of his/her duties as employees of
3 Defendants. Plaintiff and aggrieved employees incurred necessary business expenses in order to
4 meet the image requirements imposed by Defendants. Defendants mandated that Plaintiff and
5 aggrieved employees satisfy Defendants' image requirements by purchasing clothing (and other
6 items) at the aggrieved employees' own expense.

7 34. Defendants violated Labor Code Section 2800, *et seq.* by failing to reimburse
8 Plaintiff and aggrieved employees for expenses incurred on behalf of Defendants while performing
9 work on behalf of Defendants. Defendants failed to reimburse Plaintiff MACIEL and all aggrieved
10 employees for any of the expenses they incurred per Defendants' image requirements, while
11 working on behalf of Defendants.

12 **Penalties**

13 35. Pursuant to California Labor Code § 2699, Plaintiff, individually, and on behalf of
14 other current and former aggrieved employees, requests and is entitled to recover from Defendants,
15 and each of them, civil penalties, interest, attorneys' fees and costs pursuant, as well as all statutory
16 penalties against Defendants, and each of them, including but not limited to:

17 36. Penalties under California Labor Code § 2699 in the amount of a hundred dollars
18 (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars
19 (\$200) for each aggrieved employee per pay period for each subsequent violation;

20 37. Penalties under California Labor Code § 1197.1 in the amount of a hundred dollars
21 (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred and
22 fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

23 38. Any and all additional penalties as provided by the Labor Code and/or other
24 statutes; and Attorneys' fees and costs pursuant to Labor Code §§ 2802 and 2699, and any other
25 applicable statute.

26 **PRAYER FOR RELIEF**

27 Plaintiff prays for relief and judgment against Defendants, jointly and severally as follows:

28 1. Upon the Cause of Action, for civil penalties pursuant to statute as set forth in

1 Labor Code § 2698 et seq., for Defendants’ violations of Labor Code §§ 2800, *et seq.*

2 2. Upon the Cause of Action, for costs and attorneys’ fees pursuant to Labor Code §§
3 2802 and 2699, and any other applicable statute; and

4 3. For such other and further relief the court may deem just and proper

5 Dated: July 14, 2022

NATHAN & ASSOCIATES, APC

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By: /s/ Reuben D. Nathan
Attorney for Plaintiff
IGNACIO MACIEL

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