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Attorneys for Plaintiff EBONY BYRD,  
on behalf of herself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

EBONY BYRD, on behalf of herself and current  
and former aggrieved employees,

Plaintiff,

vs.

M.A.C. COSMETICS INC.; and DOES 1 to 100,  
inclusive,

Defendants.

Case No.: **23STCV21790**

**PAGA ACTION**

**PLAINTIFF EBONY BYRD'S  
COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT  
TO THE PRIVATE ATTORNEYS  
GENERAL ACT OF 2004  
("PAGA"), LABOR CODE  
SECTIONS 2698, ET SEQ.**

**COMES NOW** Plaintiff EBONY BYRD ("Plaintiff"), who alleges and complains against  
Defendants M.A.C. COSMETICS INC.; and DOES 1 to 100, inclusive (collectively  
"Defendants") as follows:

**I. INTRODUCTION**

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*  
("PAGA") representative action brought by Plaintiff on behalf of the State of California, herself  
and other current and former aggrieved employees of Defendants who worked as hourly non-  
exempt employees in California during the relevant time period seeking civil penalties associated

1 with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all  
2 hours worked at minimum wage and all overtime hours worked at the overtime rate of pay; failure  
3 to authorize or permit all legally required and/or compliant meal periods or pay meal period  
4 premium wages; indemnification for all necessary expenditures or losses incurred by employees in  
5 direct consequence of discharging their duties; statutory penalties for failure to provide accurate  
6 wage statements; statutory waiting time penalties in the form of continuation wages for failure to  
7 timely pay employees all wages due upon separation of employment. Plaintiff seeks on a  
8 representative basis, following notice to the Labor and Workforce Development Agency, civil  
9 penalties, reasonable attorneys' fees pursuant to Labor Code section 2699(g)(1) and costs brought  
10 on behalf of Plaintiff, the State of California, and others aggrieved.

## 11 **II. JURISDICTION AND VENUE**

12 2. This Court has jurisdiction over the claims of Plaintiff and all other current and  
13 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks  
14 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly  
15 non-exempt employees, and the State of California in excess of twenty-five thousand dollars  
16 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-  
17 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former  
18 aggrieved California-based hourly non-exempt employees occurred in locations throughout  
19 California, including but not limited to Los Angeles County at 750 West Seventh Street, Los  
20 Angeles, California 90017.

21 In response to the COVID-19 pandemic, the Judicial Council of California enacted  
22 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any  
23 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are  
24 tolled from April 6, 2020, until October 1, 2020.

## 25 **III. PARTIES**

26 3. Plaintiff brings this action as a representative of the Labor and Workforce  
27 Development Agency on behalf of herself and other current and former employees subject to  
28 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is

1 filed include current, former and/or future employees of Defendants who work, worked, or will  
2 work for Defendants as direct employees as well as temporary employees employed through temp  
3 agencies as hourly non-exempt employees in California. At all times mentioned herein, the  
4 currently named Plaintiff is and was domiciled and a resident and citizen of California and was  
5 employed by Defendants in an hourly position at Defendants' location in Los Angeles from  
6 approximately April 2022, until on or about November 3, 2022.

7 4. Plaintiff is informed and believes and thereon alleges that Defendant M.A.C.  
8 COSMETICS INC. is authorized to do business within the State of California and is doing  
9 business in the State of California and/or that Defendants DOES 1-50 are, and at all times relevant  
10 hereto were persons acting on behalf of Defendant M.A.C. COSMETICS INC. in the  
11 establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.  
12 Defendant M.A.C. COSMETICS INC. operates in Los Angeles County and employed Plaintiff  
13 and aggrieved employees in Los Angeles County, including but not limited to, at 750 West  
14 Seventh Street, Los Angeles, California 90017.

15 5. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1  
16 through 50 are corporations, or are other business entities or organizations of a nature unknown to  
17 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted  
18 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and  
19 working conditions of employment of Plaintiff and aggrieved employees.

20 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51  
21 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued  
22 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,  
23 supervisor, independent contractor and/or employee of each defendant who violated or caused to  
24 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of  
25 the Industrial Welfare Commission's wage orders regulating hours and days of work.

26 7. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff  
27 sues said defendants by said fictitious names, and will amend this complaint when the true names  
28 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as

1 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously  
2 named defendants is in some manner responsible for the events and allegations set forth in this  
3 complaint.

4 8. Plaintiff makes the allegations in this complaint without any admission that, as to  
5 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and  
6 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

7 **FIRST CAUSE OF ACTION**

8 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**  
9 **2004, LABOR CODE SECTIONS 2698, ET SEQ.**

10 **(Against all Defendants by Plaintiff)**

11 9. Plaintiff incorporates all paragraphs above as though fully set forth herein.

12 10. During Plaintiff's employment and continuing through the present, Plaintiff alleges  
13 Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197,  
14 2802, and the applicable Wage Orders.

15 11. Specifically, Defendants have committed the following violations of California  
16 Labor Code:

17 12. **Failure to pay wages for all hours worked at the legal minimum wage:**  
18 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt  
19 employees. In California, an employer is required to pay hourly employees for all "hours worked,"  
20 which includes all time that an employee is under control of the employer and all time the  
21 employee is suffered and permitted to work. This includes the time an employee spends, either  
22 directly or indirectly, performing services which inure to the benefit of the employer.

23 13. Labor Code sections 1194 and 1197 require an employer to compensate employees  
24 for all "hours worked" at least at a minimum wage rate of pay as established by the IWC and the  
25 Wage Orders.

26 14. In this case, Plaintiff and other current and former aggrieved California-based  
27 hourly non-exempt employees worked more minutes per shift than Defendants credited them with  
28 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former

1 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum  
2 wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but  
3 not limited to:

4 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly  
5 non-exempt employees to participate in off-the-clock- trainings and complete quizzes;

6 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly  
7 non-exempt employees to undergo bag checks after clocking out for the end of their shift;

8 (c) Requiring Plaintiff and other current and former aggrieved California-based hourly  
9 non-exempt employees to clean the work area, clean make-up brushes, and take out the trash after  
10 clocking out for the end of their shift; and

11 (d) Requiring Plaintiff and other current and former aggrieved California-based hourly  
12 non-exempt employees to complete daily "summary sheets" after clocking out for the end of their  
13 shift.

14 15. Therefore, Defendants suffered, permitted, and required Plaintiff and other current  
15 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'  
16 control without paying wages for that time. This resulted in Plaintiff and other current and former  
17 aggrieved California-based hourly non-exempt employees working time for which they were not  
18 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable  
19 Wage Order.

20 16. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**  
21 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt  
22 employees. In California, an employer is required to pay hourly employees for all "hours worked,"  
23 which includes all time that an employee is under control of the employer and all time the  
24 employee is suffered and permitted to work. This includes the time an employee spends, either  
25 directly or indirectly, performing services that inure to the benefit of the employer.'

26 17. Labor Code sections 510 and 1194 require an employer to compensate employees a  
27 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty  
28 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

Any work in excess of eight (8) hours in one workday, any work in excess of forty (40) hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of work in any one (1) workweek, shall be compensated at the rate of no less than one-and-one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Labor Code section 510.

18. In this case, Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

(a) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to participate in off-the-clock- trainings and complete quizzes;

(b) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to undergo bag checks after clocking out for the end of their shift;

(c) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to clean the work area, clean make-up brushes, and take out the trash after clocking out for the end of their shift; and

(d) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to complete daily "summary sheets" after clocking out for the end of their shift.

19. Overtime is based upon an employee's regular rate of pay. "The regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf, of the employee." See Division of Labor Standards Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1.2.

20. In this case, Plaintiff alleges that when she and other current and former aggrieved California-based hourly non-exempt employees earned overtime wages, Defendants failed to pay them overtime wages at the proper overtime rate of pay due to Defendants' failure to include all remuneration when calculating the overtime rate of pay. Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration such as "Sales Commissions," for example, when calculating Plaintiff's and other current and former aggrieved

1 California-based hourly non-exempt employees regular rate of pay for the purpose of paying  
2 overtime.

3 21. The foregoing policies, practices, and/or procedures resulted in time during each  
4 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt  
5 employees were under the control of Defendants but were not compensated. To the extent that the  
6 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved  
7 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,  
8 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed  
9 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code  
10 sections 510 and 1194 and the applicable Wage Order.

11 22. **Failure to pay wages to hourly non-exempt employees for workdays that**  
12 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other  
13 current and former aggrieved California-based hourly non-exempt employees regularly worked  
14 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

15 23. California law requires an employer to authorize or permit an employee an  
16 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of  
17 all duties and the employer relinquishes control over the employee's activities prior to the  
18 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 7 at §11; *Brinker*  
19 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an  
20 employee for a work period of more than ten (10) hours per day without providing the employee  
21 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh  
22 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period  
23 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal  
24 period is only permitted when: (1) the nature of the work prevents an employee from being  
25 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

26 24. If an employer fails to provide an employee a meal period in accordance with the  
27 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay  
28 for each workday that a legally required and compliant meal period was not provided. Labor Code

1 section 226.7; Wage Order 7 at §11.

2 25. In this case, Defendants failed to authorize or permit legally required and compliant  
3 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-  
4 exempt employees due to Defendants' policies, practices, and/or procedures.

5 26. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or  
6 procedure of failing to compensate Plaintiff and other current and former aggrieved California-  
7 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each  
8 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt  
9 employees did not receive legally required and compliant meal periods, in violation of Labor Code  
10 section 226.7.

11 27. On occasions when Defendants paid Plaintiff and other current and former  
12 aggrieved California-based hourly non-exempt employees a "premium" wage for late, missed,  
13 short, on-premise, on-duty, and/or interrupted meal periods, Defendants failed to pay the one (1)  
14 additional hour of pay at Plaintiff's and other current and former aggrieved California-based  
15 hourly non-exempt employees' regular rate of compensation. Specifically, Defendants maintained  
16 a policy, practice, and/or procedure of failing to include all remuneration such as "sales  
17 commissions," for example, when calculating Plaintiff's and other current and former aggrieved  
18 California-based hourly non-exempt employees' regular rate of pay for the purpose of paying meal  
19 period premium wages.

20 28. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff  
21 and other current and former aggrieved California-based hourly non-exempt employees not  
22 receiving wages to compensate them for workdays during which Defendants did not provide them  
23 with meal periods in compliance with California law.

24 29. **Failure to Indemnify for Losses and Expenditures Incurred as Part of**  
25 **Employment:** California law requires that every employer must indemnify its employees for all  
26 necessary expenditures or losses incurred by the employee in discharge of his or her duties or at  
27 the obedience of the directions of the employer. Moreover, an employer is prohibited from passing  
28 the ordinary business expenses and losses of the employer onto the employee. (Lab. Code, §

2802.)

30. Defendants have violated Labor Code Section 2802 by failing to indemnify Plaintiff and other current and former aggrieved California-based non-exempt hourly employees' necessary expenditures they incurred in the discharge of their duties. Specifically, Defendants employed a policy, practice, and procedure, requiring Plaintiff and other current and former aggrieved California-based non-exempt hourly employees to use or purchase their own tools and/or resources in order to work for Defendants, including but not limited to their personal cell phones for looking up products, checking prices, clocking in/out, and doing summary sheet at the end of the day and assist with "summary sheets;" for work-related purposes - without reimbursing Plaintiff and other current and former aggrieved California-based non-exempt hourly employees for such use.

31. Moreover, Defendants employed policies and procedures which ensured Plaintiff and aggrieved employees would not receive indemnification for their employment related expenses. This practice resulted in Plaintiff and aggrieved employees not receiving such indemnification in compliance with California law.

32. Therefore, Defendants are liable to Plaintiff and aggrieved employees for their employment related expenses, including but not limited to costs related to use of their personal cell phones and costs associated with their uniforms pursuant to Labor Code section 2802.

33. **Failure to timely pay earned wages during employment:** In California, wages must be paid at least twice during each calendar month on days designated in advance by the employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th and the 26th day of that month and wages earned between the 16th and the last day, inclusive, of any calendar month must be paid between the 1st and 10th day of the following month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within seven (7) calendar days following the close of the payroll period in which wages were earned. Labor Code section 204(d).

34. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed

1 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-  
2 exempt employees' earned wages (including minimum wages, overtime wages, and/or meal period  
3 premium wages), in violation of Labor Code section 204. Defendants' aforementioned policies,  
4 practices, and/or procedures resulted in their failure to pay Plaintiff's and other current and former  
5 aggrieved California-based hourly non-exempt employees' their earned wages within the  
6 applicable time frames outlined in Labor Code section 204.

7       **35. Failure to provide complete and accurate wage statements:** Labor Code section  
8 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an  
9 employee his or her wages, the employer must "furnish each of his or her employees ... an  
10 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the  
11 employee, except for any employee whose compensation is solely based on a salary and who is  
12 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of  
13 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable  
14 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all  
15 deductions made on written orders of the employee may be aggregated and shown as one item, (5)  
16 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the  
17 name of the employee and his or her social security number, (8) the name and address of the legal  
18 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and  
19 the corresponding number of hours worked at each hourly rate by the employee."

20       **36.** As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff  
21 and other current and former aggrieved California-based hourly non-exempt employees all wages  
22 earned (including minimum wages, overtime wages, and/or meal period premium wages) rendered  
23 Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees'  
24 wage statements inaccurate, in violation of Labor Code section 226.

25       **37. Failure to pay employees all wages due at time of termination/resignation:** An  
26 employer is required to pay all unpaid wages timely after an employee's employment ends. The  
27 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)  
28 hours of resignation (Labor Code section 202).

1           38. As a derivative of Plaintiff's allegations above, because Defendants failed to pay  
2 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees  
3 all their earned wages (including minimum wages, overtime wages, and/or meal period premium  
4 wages), Defendants failed to pay those employees timely after each employee's termination and/or  
5 resignation, in violation of Labor Code sections 201, 202, and 203.

6           39. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved  
7 employee, on behalf of himself or herself and other current or former employees, to bring a civil  
8 action to recover civil penalties against all Defendants pursuant to the procedures specified in  
9 Labor Code section 2699.3.

10          40. Plaintiff has complied with the procedures for bringing suit specified in Labor  
11 Code section 2699.3. On July 11, 2023, Plaintiff filed a PAGA Claim Notice with the LWDA and  
12 provided notice to Defendants by certified mail which provided notice of the specific provisions of  
13 the Labor Code alleged to have been violated, including the facts and theories to support the  
14 violations alleged.

15          41. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by  
16 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code  
17 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the  
18 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends  
19 to investigate Plaintiff's claims.

20          42. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil  
21 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 226.7, 510,  
22 512, 1194, 1197, 2802, During Plaintiff's employment and continuing through the present,  
23 preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in the  
24 following amounts:

25               a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 512, and  
26 2802; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial  
27 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each  
28 subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].



1 Dated: September 11, 2023

Respectfully submitted,  
**LAVI & EBRAHIMIAN, LLP**

2  
3 By:   
4 Joseph Lavi, Esq.  
5 Vincent C. Granberry, Esq.  
6 Courtney M. Miller, Esq.  
7 Attorneys for Plaintiff  
8 EBONY BYRD, on behalf of herself and  
9 current and former aggrieved employees  
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