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Attorneys for Vanessa LaBoy, on behalf of herself and all others similarly situated

FILED
ALAMEDA COUNTY

AUG 21 2012

CLERK OF THE SUPERIOR COURT
By Cheryl Clark Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

VANESSA LABOY, on behalf of herself and all others similarly situated,

Plaintiff,

vs.

BARE ESCENTUALS, INC., BARE ESCENTUALS BEAUTY, INC. and Does 1 through 50, inclusive,

Defendants.

No. RG12638047

AMENDED COMPLAINT

BY FAX

Plaintiff Vanessa LaBoy ("Plaintiff") by her attorneys, brings this action on behalf of herself, aggrieved employees, all other persons similarly situated and the general public, and hereby alleges as follows:

1. Defendants Bare Escentuals, Inc. and Bare Escentuals Beauty, Inc. ("Defendants") are corporations doing business in the state of California.

2. The names and capacities of Defendants sued herein under California Code of Civil Procedure section 474 as Does 1 through 50, inclusive, are presently not known to Plaintiff, who therefore sues these Defendants by such fictitious names. Plaintiff will seek to amend this

1 Complaint and include these Doe Defendants' names and capacities when they are ascertained.
2 Each of the fictitiously named Defendants are responsible in some manner for the conduct alleged
3 herein and for the injuries suffered by Plaintiff, class members, aggrieved employees, and the
4 general public.

5 3. Plaintiff is informed and believes that the damages, back wages, expense
6 reimbursements, restitution, value of injunctive relief sought, penalties, interest and attorneys' fees
7 do not exceed an aggregate of \$4,999,999.99 and that the pro-rata value of Plaintiff's individual
8 claims, including damages, back wages, expense reimbursements, restitution, injunctive relief,
9 interest, attorneys' fees, and penalties, does not exceed \$74,999.99.

10 4. At all times mentioned in the causes of action alleged herein, each and every
11 Defendant was an agent and/or employee of each and every other Defendant. In doing the things
12 alleged in the causes of action stated herein, each and every Defendant was acting within the
13 course and scope of this agency or employment and was acting with the consent, permission and
14 authorization of each of the remaining Defendants. All actions of each Defendant as alleged in the
15 causes of action stated herein were ratified and approved by every other Defendant or their
16 officers or managing agents.

17 5. This action alleges that Defendants failed to pay their California hourly employees
18 wages for time worked in violation of California Labor Code sections 201, 202, 203, 204, 510, and
19 1194, failed to reimburse California hourly employees for the costs to purchase and/or maintain
20 required uniforms in violation of California Labor Code section 2802 and the applicable Industrial
21 Welfare Commission Wage Orders, and unlawfully required employees to purchase merchandise
22 in violation of California Labor Code section 450, and further allege that said actions violate
23 California Business and Professions Code section 17200, et seq. Plaintiff further alleges
24 Defendants failed to provide their California hourly employees wage statements as required by
25 California Labor Code section 226.

26 6. This action seeks relief for unremedied violations of California law, including, inter
27 alia; damages, and/or restitution, as appropriate, to class members, and to victims of the practices
28 at issue, who have not received compensation for time worked, who have not received

1 reimbursement for costs of purchasing and/or maintaining required uniforms, who have not
2 received payment for the cost of merchandise purchased as required by Defendants in violation of
3 California Labor Code section 450, and who have failed to receive accurate wage statements.

4 7. Plaintiff is an adequate and proper class representative. Plaintiff brings this action
5 in her individual capacity, on behalf of all others similarly situated, on behalf of aggrieved
6 employees, and, pursuant to California Business & Professions Code section 17204, on behalf of
7 the general public. Plaintiff was employed by Defendants in California within the past four years
8 and paid on an hourly basis. Defendants failed to provide Plaintiff, and all other similarly situated
9 California employees, wages for time worked, and failed to provide Plaintiff and all others
10 similarly situated California employees with an accurate statement of wages. Further, Defendants
11 required Plaintiff to purchase and maintain required clothing and makeup to be worn during the
12 performance of her work duties.

13 8. Defendants are, and at all relevant times were, employers under applicable
14 California Industrial Welfare Commission Orders.

15 9. This action seeks relief on behalf of a class of persons in the employ of Defendants
16 in California paid on an hourly basis within four years preceding the filing of the action to the
17 present ("the Class").

18 10. The Class is sufficiently numerous and geographically dispersed throughout
19 California such that the joinder of whom in one action is impracticable, and the disposition of
20 whose claims in a class action will provide substantial benefits to both the parties and the Court.

21 11. There is a well-defined community of interest in the questions of law and fact
22 involved affecting the parties to be represented. The questions of law and fact common to the
23 Class predominate over questions that may affect individual class members, including but not
24 limited to the following:

25 (a) whether Defendants implemented and engaged in a systematic practice
26 whereby they unlawfully failed to pay overtime wages at the regular rate of
27 pay;

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- 1 (b) whether Defendants implemented and engaged in a systematic practice
2 whereby they unlawfully failed to pay wages for time worked;
- 3 (c) whether Defendants implemented and engaged in a systematic practice
4 whereby they failed to reimburse employees for the cost and/or maintenance
5 of required uniforms;
- 6 (e) whether Defendants implemented and engaged in a systematic practice
7 whereby they unlawfully required employees to purchase merchandise;
- 8 (d) whether Defendants implemented and engaged in a systematic practice
9 whereby they failed to provide accurate wage statements to California
10 hourly employees;
- 11 (f) whether the systematic policies, acts and practices of Defendants as alleged
12 herein violated, inter alia, applicable provisions of the California Labor
13 Code, including but not limited to, sections 201, 202, 203, 204, 226, 450,
14 510, 1174, 1194, 2698, and 2802, applicable Industrial Welfare
15 Commission Orders, and California Business & Professions Code section
16 17200, et seq.

17 12. Because Plaintiff worked on a daily and weekly basis, purchased and maintained
18 required uniforms and purchased merchandise for which Plaintiff failed to receive payment by
19 Defendants, was not paid overtime wages at the lawful rate, failed to be paid for time worked, and
20 failed to receive timely and accurate wage statements, Plaintiff asserts claims that are typical of
21 the claims of the Class.

22 13. Plaintiff will fairly and adequately represent and protect the interests of the Class in
23 that she has no disabling conflict of interest that would be antagonistic to those of the other
24 members of the Class. Plaintiff retained counsel who are competent and experienced in the
25 prosecution of class action wage and hour violations.

26 14. Because Plaintiff and the members of the Class have all similarly suffered
27 irreparable harm and damages as a result of Defendants' unlawful and continuously wrongful
28 conduct, including but not limited to Defendants' systematic failure to pay overtime wages at the

1 lawful rate, failure to pay wages for time worked and systematic failure to reimburse and pay for
2 required uniforms and merchandise purchases by employees, class treatment is especially
3 appropriate. Because the hours worked and employment circumstances borne by Defendants'
4 employees and class members follow common patterns, and arise from common policies,
5 practices, and procedures, all of which are reflected in the records possessed by Defendants, this
6 action will provide substantial benefits to both. Absent this action, Defendants' unlawful conduct
7 will continue unremedied and uncorrected.

8 **FIRST CAUSE OF ACTION**

9 **(Failure to Pay Overtime Wages Pursuant to California Labor Code § 1194)**

10 15. Plaintiff and the members of the Class incorporate by reference the allegations
11 contained in the foregoing paragraphs of this complaint as if fully set forth herein.

12 16. During all relevant periods, Defendants required Plaintiff and the members of the
13 Class to work in excess of 8 hours per day and 40 hours per week.

14 17. During all relevant periods, both the California Labor Code and the pertinent
15 Wage Orders required that all work performed by an employee in excess of 8 hours per day and 40
16 hours per week to be compensated at one and one-half times the employee's regular rate of pay.
17 Defendants required the members of the Class to apply makeup prior to clocking in for the day's
18 work shift. Defendants further required the members of the Class to maintain their required
19 uniforms, and failed to calculate overtime pay at the lawful rate. As a result, Defendants failed to
20 pay Plaintiff and the members of the Class earned overtime wages. As a result of this failure,
21 Defendants failed to provide Plaintiff and the members of the Class wage statements as required
22 by California Labor Code section 226. Plaintiff and the members of the Class are entitled to
23 recover their overtime compensation and penalties arising therefrom.

24 18. Plaintiff and the members of the Class are therefore entitled to the relief requested
25 below.

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SECOND CAUSE OF ACTION

(Failure to Reimburse For Expenses In Violation Of California Labor Code § 2802, Industrial Welfare Commission Wage Order No. 7-2001, 8 Cal. Code Regs. § 11070 ¶9(A))

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3 19. Plaintiff and the members of the Class incorporate by reference the allegations
4 contained in the foregoing paragraphs of this complaint as if fully set forth herein.

5 20. During all relevant periods, Defendants required Plaintiff and the members of the
6 Class to incur expenses. Defendants required Plaintiff and the members of the Class to wear
7 uniforms, as that term is defined in paragraph 9(A) of the applicable Wage Orders, at all times
8 during their employment. Defendants, however, required Plaintiff and the members of the Class
9 to purchase and/or maintain the uniforms. Defendants failed to reimburse Plaintiff and the
10 members of the Class for the expenses incurred in violation of California Labor Code section
11 2802.

12 21. In failing to reimburse Plaintiff and the members of the Class for the expenses
13 incurred, Defendants acted willfully with the wrongful intention of causing injury and hardship to
14 Plaintiff and class members by reaping economic gain at the expense of Plaintiff and class
15 members, in willful and conscious disregard of Plaintiff's and the class members' statutory and
16 regulatory right to reimbursement.

17 22. Plaintiff and the members of the Class are therefore entitled to the relief requested
18 below.

THIRD CAUSE OF ACTION

(Violation Of California Labor Code Section 450)

20 23. Plaintiff and the members of the Class incorporate by reference the allegations
21 contained in the foregoing paragraphs of this complaint as if fully set forth herein.

22 24. Defendants compelled and/or coerced Plaintiff and class members to purchase
23 Defendants' merchandise, and/or the merchandise of a third party, in violation of California Labor
24 Code section 450.
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26 25. Plaintiff and the members of the Class are therefore entitled to the relief requested
27 below.
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FOURTH CAUSE OF ACTION

(Unlawful, Unfair And Fraudulent Business Practices Pursuant to California Business and Professions Code § 17200, et seq.)

26. Plaintiff and the members of the Class incorporate by reference the allegations contained in the foregoing paragraphs of this complaint as if fully set forth herein.

27. California Business & Professions Code section 17200, et seq., prohibits acts of unfair competition, defined as an “unlawful, unfair, or fraudulent business act or practice.”

28. During all relevant periods, Defendants required the members of the Class to apply makeup prior to clocking in for the day’s work shift. Defendants further required the members of the Class to maintain their required uniforms. As a result, Defendants failed to pay Plaintiff and the members of the Class earned regular and overtime wages. Hence, Defendants failed to pay Plaintiff and class members regular and overtime wages, and failed to pay overtime wages at the lawful rate and did not timely pay all earned wages due to Plaintiff and the members of the class in violation of California Labor Code sections 201, 202, 203, 204, 510, and 1194.

29. The policies, acts and practices heretofore described were and are an unlawful business act or practice because of Defendants’ failure to pay regular and overtime wages for time worked, failure to reimburse costs of the purchase and maintenance of required uniforms, failure to pay for costs of required merchandise purchases, and failure to provide accurate and timely wage statements violates applicable California Labor Code sections, including but not limited to Labor Code sections 201, 202, 203, 204, 226, 450, 510, 1174, 1194, 2802, and applicable Industrial Welfare Commission Wage Orders, the California Labor Code Private Attorney General Act of 2004, Labor Code section 2698, et seq., and other provisions of California common and/or statutory law. Plaintiff reserves the right to allege additional statutory and common law violations by Defendants. Such conduct is ongoing to this date.

30. The policies, acts or practices described herein were and are an unfair business act or practice because any justifications for Defendants’ illegal and wrongful conduct were and are

1 vastly outweighed by the harm such conduct caused Plaintiff, the class members, and the members
2 of the general public. Such conduct is ongoing to this date.

3 31. Plaintiff and the members of the Class are therefore entitled to the relief requested
4 below.

5 **FIFTH CAUSE OF ACTION**

6 **(Labor Code Private Attorneys General Act of 2004: Labor Code Section 2698, et seq.)**

7 **(Against All Defendants)**

8 32. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing
9 paragraphs as if fully set forth herein.

10 33. Defendants are persons within the meaning of Labor Code sections 18 and 2699(c).

11 34. As set forth in Labor Code section 558, Defendants Bare Escentuals, Inc. and Bare
12 Escentuals Beauty, Inc., either as Plaintiff's employer and/or as a person acting on behalf of
13 Plaintiffs' employer, violated, or caused to be violated, Labor Code sections 510 and 2802, and
14 provisions regulating the hours, days and conditions of work in the applicable Industrial Welfare
15 Commission Wage Orders. As such, Defendants Bare Escentuals, Inc. and Bare Escentuals
16 Beauty, Inc. are liable for civil penalties as provided by Labor Code section 558.

17 35. The policies, acts and practices heretofore described were and are unlawful acts in
18 violation of applicable Labor Code sections and the applicable Industrial Welfare Commission
19 Wage Orders and give rise to statutory penalties as a result of such conduct, including, but not
20 limited to, penalties as provided by the Labor Code Private Attorneys General Act of 2004
21 ("PAGA"). The unlawful policies, acts and practices include, but are not limited to, Defendants'
22 failure to pay regular and overtime wages as required by Labor Code sections 510, 558, and 1194,
23 failure to issue proper wage instruments to its California employees in violation of Labor Code
24 section 226, failure to reimburse regarding uniforms in violation of Section 2802, unlawful
25 merchandise purchase requirement in violation of Section 450 and the applicable Industrial
26 Welfare Commission Wage Orders, failure to pay all wages due upon termination in violation of
27 Labor Code sections 201, 202, 203, and 204, and failure to provide accurate wage statements in
28 violation of Labor Code section 226. Defendants' violations give rise to statutory penalties,



1 including but not limited to penalties as provided by Labor Code sections 201, 202, 203, 204, 212,
2 226, 226.3, 510, 558, 1194, and 2699.5, and applicable Industrial Welfare Commission Wage
3 Orders. Plaintiff, as an aggrieved employee, hereby seek recovery of civil penalties as prescribed
4 by the Labor Code Private Attorney General Act of 2004 on behalf of herself and other current
5 and former aggrieved employees of Defendants against whom one or more of the violations of the
6 Labor Code was committed.

7 36. On July 2, 2012, Plaintiff LaBoy gave written notice by certified mail to the
8 California Labor and Workforce Development Agency, Defendants Bare Escentuals, Inc. and Bare
9 Escentuals Beauty, Inc. of Labor Code violations as prescribed by California Labor Code section
10 2699.3. As of August 17, 2012, Plaintiff has not received a response from the Labor and
11 Workforce Development Agency

12 **PRAYER FOR RELIEF**

13 WHEREFORE Plaintiff prays for judgment and relief as follows:


- 14 1. An order certifying that the action may be maintained as a class action;
- 15 2. Compensatory and statutory damages, penalties and restitution, as appropriate and
16 available, in an amount to be proven at trial based on, inter alia, the unpaid balance of monies
17 Defendants owed;
- 18 3. Costs of this suit and attorneys' fees as authorized by California Labor Code
19 sections 1194, 2802, and 2699(g);
- 20 4. Pre- and post-judgment interest;
- 21 5. For recovery of penalties as provided by the California Labor Code Private
22 Attorneys General Act of 2004; and,
- 23 6. Such other and further relief as the Court deems just and proper.
- 24 7. Plaintiff is informed and believes that the damages, back wages, expense
25 reimbursements, restitution, value of injunctive relief sought, penalties, interest and attorneys' fees
26 do not exceed an aggregate of \$4,999,999.99 and that the pro-rata value of Plaintiff's individual
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1 claims, including damages, back wages, expense reimbursements, restitution, injunctive relief,
2 interest, attorneys' fees, and penalties, does not exceed \$74,999.99.

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Date: August 17, 2012

QUALLS & WORKMAN, L.L.P.

By: 
Daniel H. Qualls
Attorneys for Vanessa LaBoy on behalf of
and all others similarly situated