

1 MATTHEW T. DUSHOFF, ESQ.  
Nevada Bar No. 004975  
2 MATTHEW D. SALTZMAN, ESQ.  
Nevada Bar No. 006481  
3 **KOLESAR & LEATHAM, CHTD.**  
4 400 S. Rampart Boulevard, Suite 400  
Las Vegas, NV 89145  
5 Telephone: (702) 362-7800  
Facsimile: (702) 362-9472  
6 E-Mail: [mdushoff@klnevada.com](mailto:mdushoff@klnevada.com)  
[msaltzman@klnevada.com](mailto:msaltzman@klnevada.com)

7 and

8 DORAN ARIK\*, ESQ.  
**INSTITUTE FOR JUSTICE**  
9 901 N. Glebe Road, Suite 900  
Arlington, VA 22203  
10 Telephone: (703) 682-9320  
Facsimile: (703) 682-9321  
11 E-Mail: [darik@ij.org](mailto:darik@ij.org)

12 TIM KELLER\*, ESQ.  
**INSTITUTE FOR JUSTICE**  
13 Arizona Chapter  
14 398 South Mill Avenue  
Suite 301  
15 Tempe, AZ 85281  
Telephone: (480) 557-8300  
16 Facsimile: (480) 557-8305  
E-Mail: [tkeller@ij.org](mailto:tkeller@ij.org)

17 *\*Will comply with LR IA 10-2 within 7 days.*

18 Attorneys for Plaintiffs  
19 **LISSETTE WAUGH AND WENDY ROBIN**

20  
21 **UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

22 LISSETTE WAUGH AND WENDY ROBIN, ) Civil Action No. \_\_\_\_\_  
23 Plaintiffs, )  
24 vs. )  
25 NEVADA STATE BOARD OF COSMETOLOGY, )  
Defendants. )  
26 \_\_\_\_\_ )

**COMPLAINT**

27  
28

1 **INTRODUCTION**

2 1. This lawsuit seeks to vindicate the constitutional and civil rights of Plaintiffs  
3 Lissette Waugh and Wendy Robin, both makeup artistry instructors and owners of makeup  
4 artistry schools, to teach without first obtaining an arbitrary, excessive, and unreasonable  
5 occupational license from the Nevada State Board of Cosmetology.

6 2. Ms. Waugh has been a makeup artist for nearly 20 years and has taught  
7 makeup artistry to others for 10 years.

8 3. Ms. Waugh opened L Makeup Institute, a school devoted exclusively to  
9 teaching makeup artistry, in Las Vegas, Nevada in June 2010.

10 4. Ms. Robin has been a makeup artist for 25 years and a makeup artistry  
11 instructor for 15 years.

12 5. Ms. Robin opened Studio W, also devoted exclusively to teaching makeup  
13 artistry, at a temporary location in Henderson, Nevada in December 2010 with plans to  
14 move to a larger permanent location.

15 6. Makeup artistry includes the theory, technique, and application of makeup  
16 for the retail and entertainment industries. Makeup artistry encompasses a broad range of  
17 skills and techniques not taught in aesthetics or cosmetology schools including, but not  
18 limited to, advanced color theory, applying different types of stage makeup and high-  
19 definition film makeup, and the use of an airbrush machine.

20 7. Makeup artistry does not include, among other things, hair cutting, hair  
21 coloring, hair styling, or hair removal.

22 8. In Nevada, makeup artists working on the sets of movies, television  
23 programs, commercials and advertisements, as well as at retail establishments and in  
24 conjunction with photographers, are exempt from Nevada’s cosmetology licensing scheme.  
25 That means they do not need a cosmetology or aesthetics license to practice makeup  
26 artistry.

27 9. The Defendant Nevada State Board of Cosmetology, a state agency, forbids  
28 Plaintiffs from teaching makeup artistry without first obtaining either a government-issued

1 cosmetology instructor's license or aesthetics instructor's license.

2 10. The Nevada State Board of Cosmetology forbids anyone, including  
3 Plaintiffs, from teaching makeup artistry unless they also teach Nevada's cosmetology  
4 curriculum.

5 11. The Nevada State Board of Cosmetology requires all makeup artistry  
6 schools, including Plaintiffs' makeup artistry schools, to be licensed as cosmetology  
7 schools and comply with the structural and equipment requirements for cosmetology  
8 schools.

9 12. Plaintiffs are not and do not claim to be cosmetology or aesthetics  
10 instructors.

11 13. Plaintiffs' schools do not teach cosmetology or aesthetics.

12 14. Plaintiffs' courses do not and are not intended to satisfy the state's required  
13 coursework to obtain a cosmetology or aesthetician license.

14 15. The Nevada State Board of Cosmetology's arbitrary and irrational  
15 application of Nevada's cosmetology licensing scheme to Plaintiffs' speech and to their  
16 businesses precludes Plaintiffs from lawfully pursuing their chosen livelihood.

17 16. Application of the cosmetology licensing scheme to Plaintiffs and their  
18 schools denies Plaintiffs' right to pursue a lawful occupation under the Due Process,  
19 Privileges or Immunities, and Equal Protection Clauses of the Fourteenth Amendment of  
20 the United States Constitution.

21 17. Application of the cosmetology licensing scheme to Plaintiffs also denies  
22 Plaintiffs' right under the First Amendment of the United States Constitution to speak  
23 freely without having to first obtain a government license.

#### 24 **JURISDICTION**

25 18. Plaintiffs bring this civil rights lawsuit pursuant to the First and Fourteenth  
26 Amendments to the United States Constitution; the Civil Rights Act of 1871, 42 U.S.C.  
27 § 1983; and the Declaratory Judgments Act, 28 U.S.C. § 2201.

28 19. Plaintiffs seek injunctive and declaratory relief against the enforcement of

1 Nevada’s cosmetology licensing scheme, Nev. Rev. Stat. Ann. §§ 644.020–.510, its  
2 implementing rules and regulations, and the practices and policies of the Nevada State  
3 Board of Cosmetology, as applied to Plaintiffs as makeup artistry instructors and to  
4 Plaintiffs’ makeup artistry schools.

5 20. This Court has jurisdiction over this action pursuant to 28 U.S.C §§ 1331  
6 and 1343.

7 **VENUE**

8 21. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b).

9 **PARTIES**

10 22. Plaintiff Lissette Waugh is a United States citizen and a resident of Las  
11 Vegas in Clark County, Nevada. She currently owns and operates L Makeup Institute in  
12 Las Vegas, Nevada.

13 23. Plaintiff Wendy Robin is a United States citizen and a resident of Las Vegas  
14 in Clark County, Nevada. She opened Studio W in Henderson, Nevada in December 2010.

15 24. Defendant is the Nevada State Board of Cosmetology (“Board”). The Board  
16 is responsible for enforcing Nevada’s cosmetology licensing laws and regulations.

17 **STATEMENT OF FACTS**

18 **Plaintiffs Are Makeup Artists and Makeup Artistry Instructors**

19 Lissette Waugh

20 25. Plaintiff Lissette Waugh has been a makeup artist for nearly 20 years and  
21 has taught makeup artistry to others for 10 years.

22 26. Ms. Waugh received her aesthetics training at Aveda Institute in Las Vegas,  
23 which offers both cosmetology and aesthetics curricula, and obtained her aesthetician  
24 license from the Board in 1995. Finding a career as a skincare specialist unfulfilling, Ms.  
25 Waugh turned to a career in makeup artistry.

26 27. Ms. Waugh did not learn makeup artistry in aesthetics school. There were  
27 no schools in Las Vegas, cosmetology or otherwise, that taught makeup artistry.

28 28. Ms. Waugh attended workshops in Los Angeles offered by Cinema Secrets,

1 a makeup artistry school in California. Some of the workshops were only a day long, others  
2 as long as a week. She also obtained significant experience working on designer trunk  
3 shows (special sales in which vendors present merchandise directly to store personnel or  
4 select customers) for Neiman Marcus.

5 29. Ms. Waugh has worked as a freelance celebrity makeup artist in Las Vegas  
6 for many years doing makeup for high-profile clients and on the sets of fashion shows and  
7 photo shoots. Ms. Waugh was also the makeup director at the Bellagio.

8 Wendy Robin

9 30. Plaintiff Wendy Robin has been a makeup artist for 25 years and a makeup  
10 artistry instructor for 15 years.

11 31. Ms. Robin attended cosmetology school and has been a licensed  
12 cosmetologist in California since 1981.

13 32. Ms. Robin did not learn makeup artistry in cosmetology school. After  
14 obtaining her cosmetology license, Ms. Robin trained as a makeup artist at Sunset Gower  
15 Studio Makeup Academy in Hollywood, California in 1990.

16 33. Ms. Robin held a teaching credential from the California Board for Private  
17 Postsecondary Education from 1995 to 2010.

18 34. Ms. Robin obtained a cosmetology license in Hawaii in 2003.

19 35. Ms. Robin obtained a cosmetology license from the Nevada State Board of  
20 Cosmetology in 2010, based on reciprocity with Hawaii.

21 36. Ms. Robin has worked as a makeup artist with celebrities in the film,  
22 television, and modeling industries for two decades, as well as on the sets of movies and  
23 television shows.

24 **Plaintiffs Opened Makeup Artistry Schools**

25 37. In June 2010 Ms. Waugh opened L Makeup Institute, a school dedicated  
26 exclusively to teaching makeup artistry.

27 38. L Makeup Institute was intended to fill an important gap in the education  
28 market, because makeup artistry is not taught in cosmetology or aesthetics schools.

1           39.     Ms. Robin opened Studio W, a school devoted exclusively to teaching  
2 makeup artistry, at a temporary location in Henderson, Nevada in December 2010 with  
3 plans to move to a larger permanent location.

4           40.     This was Ms. Robin’s second location; she opened her first school in  
5 Honolulu, Hawaii in 2003.

6           41.     L Makeup Institute and Studio W are designed to train individuals how to  
7 work as freelance makeup artists in the competitive entertainment and retail industries.

8           42.     L Makeup Institute and Studio W offer instruction in advanced color theory  
9 and how to do different styles of makeup, including beauty, high fashion, and special  
10 effects.

11          43.     L Makeup Institute and Studio W also offer instruction in different types of  
12 makeup, such as high-definition film and stage makeup, and in different makeup  
13 application techniques, including layering, blending, contouring, highlighting, and  
14 airbrushing.

15          44.     Neither L Makeup Institute nor Studio W teaches how to cut, color, or style  
16 hair.

17          45.     Neither L Makeup Institute nor Studio W teaches facial massage, facial hair  
18 removal, or any type of skin treatment.

19          46.     Neither L Makeup Institute nor Studio W teaches how to manicure nails.

20          47.     Neither Ms. Robin nor Ms. Waugh hold themselves out as cosmetology or  
21 aesthetics instructors, whether licensed or unlicensed.

22          48.     Neither L Makeup Institute nor Studio W advertises as a cosmetology school  
23 or offers classes that will satisfy any of Nevada’s required coursework to obtain a  
24 cosmetology or aesthetician license.

25          49.     No student could reasonably believe that courses taken at L Makeup Institute  
26 or Studio W would satisfy any of Nevada’s required coursework to obtain a cosmetology or  
27 aesthetician license.

28

1           **Makeup Artistry Is Not Cosmetology and Is Not Taught at Cosmetology Schools**

2           50.     Cosmetology is governed by the Nevada Revised Statutes and the Nevada  
3 Administrative Code. Nev. Rev. Stat. Ann. §§ 644.020–.510; Nev. Admin. Code  
4 §§ 644.010–.711.

5           51.     Cosmetology refers to a broad range of specialty occupations focusing on  
6 hair care, skincare, nail care, and massage.

7           52.     Cosmetology schools train students to work as hair stylists, skincare  
8 specialists (“aestheticians”), and manicurists by teaching them how to treat the hair, skin,  
9 and nails.

10          53.     As skincare specialists, aestheticians must be trained in “massaging,  
11 cleansing or stimulating the skin . . . by the use of cosmetic preparations, antiseptics, tonics,  
12 lotions or creams.” They must know how to “appl[y] cosmetics,” “tint[] eyelashes and  
13 eyebrows, and lighten[] hair on the body.” Aestheticians must also be trained to “remov[e]  
14 superfluous hair from the body . . . by the use of depilatories, waxing, tweezers or  
15 sugaring.” Nev. Rev. Stat. Ann. § 644.0205.

16          54.     The cosmetology and aesthetics occupations do not include makeup artistry.

17          55.     Cosmetology schools must teach Nevada’s approved cosmetology  
18 curriculum, which does not include makeup artistry.

19          56.     Training hours earned at licensed cosmetology schools satisfy the training  
20 requirements for obtaining a government-issued cosmetology or aesthetician license.

21          57.     Upon information and belief, cosmetology schools provide only limited  
22 instruction in basic makeup application for a salon setting.

23          58.     At least one Nevada cosmetology school invites Ms. Waugh to give its  
24 students a one-day demonstration about makeup artistry so that its students can be exposed  
25 to makeup artistry. The students are told that instruction in makeup artistry can be obtained  
26 at L Makeup Institute if they desire to learn more about makeup artistry.

27          59.     In order to become a licensed aesthetician, individuals must complete 900  
28 hours of training; pass an oral or written examination on Nevada’s cosmetology regulations,

1 basic sanitation, and skincare including questions on the use of electricity to treat the skin;  
2 and perform practical demonstrations of skincare techniques including facial massage, the  
3 application of “cosmetics,” and/or arching the eyebrow. Nev. Rev. Stat. Ann. §§ 644.207,  
4 .247. The training hours must be obtained at a licensed school. Nev. Rev. Stat. Ann. §  
5 644.207.

6 60. In order to become a licensed cosmetologist, individuals must complete  
7 1,800 hours of training; pass an oral or written examination on Nevada’s cosmetology  
8 regulations, basic sanitation, and the use of mechanical and electrical apparatuses in the  
9 practice of cosmetology; and perform practical demonstrations including hairdressing,  
10 manicures, and scalp massage. Nev. Rev. Stat. Ann. §§ 644.200, .240. The training hours  
11 must be obtained at a licensed school. Nev. Rev. Stat. Ann. § 644.200.

12 61. On information and belief, the aesthetics and cosmetology exams test only  
13 the most basic makeup application techniques.

14 62. Basic makeup application is not makeup artistry.

15 63. In contrast to cosmetology and aesthetics schools, specialized makeup  
16 artistry schools train students to work as freelance makeup artists in the entertainment and  
17 retail industries by teaching them advanced color theory, how to use and apply different  
18 types of makeup, and how to properly use an airbrush machine, among other skills.

19 64. Nevada does not mandate that students receive any instruction in makeup  
20 artistry.

21 65. Nevada’s cosmetology and aesthetics curricula do not include instruction in  
22 makeup artistry.

23 66. The classes and skills taught at L Makeup Institute and Studio W will not  
24 equip students to pass Nevada’s cosmetology or aesthetics licensing exam because makeup  
25 artistry is not tested on the exam.

#### 26 **License Required to Teach but Not to Practice**

27 67. As a practical matter, makeup artists do not need a license to practice  
28 makeup artistry because Nevada law exempts most practicing makeup artists from the



1 state's cosmetology licensing scheme.

2 68. Makeup artists working on the "production of a motion picture, television  
3 program, commercial or advertisement" are exempt from the cosmetology licensing scheme  
4 and do not need licenses to practice makeup artistry. Nev. Rev. Stat. Ann. § 644.190(4).

5 69. Makeup artists working at retail establishments such as makeup counters at  
6 department stores are exempt from the cosmetology licensing scheme and do not need  
7 licenses to practice makeup artistry. Nev. Rev. Stat. Ann. § 644.460(d).

8 70. Makeup artists working for photographers are exempt from the cosmetology  
9 licensing scheme and do not need licenses to practice makeup artistry. Nev. Rev. Stat. Ann.  
10 § 644.460(e).

11 71. In order to legally teach makeup artistry, an individual must have a  
12 cosmetology or aesthetics instructor's license, teach makeup artistry in a licensed  
13 cosmetology school, and also teach Nevada's entire cosmetology curriculum.

14 72. In other words, it is legal to do makeup artistry without a license, but it is not  
15 legal to teach someone how to do makeup artistry without a license.

16 **Board Deems Plaintiffs "Cosmetology Instructors" and**  
17 **Their Schools "Cosmetology Schools"**

18 L Makeup Institute

19 73. In October 2010, two representatives from the Nevada State Board of  
20 Cosmetology contacted Ms. Waugh and asked if they could meet with her at L Makeup  
21 Institute to learn more about her business.

22 74. In October 2010, the Board's Chief Inspector, Annie Curtis, and a field  
23 inspector named Jeffrey Green met with Ms. Waugh and her husband Kyle at L Makeup  
24 Institute.

25 75. The Board's inspectors told Ms. Waugh that they were responding to an  
26 anonymous complaint and, based on L Makeup Institute's website, it was the Board's  
27 position that she was teaching aesthetics without an instructor's license and that L Makeup  
28 Institute was an illegal unlicensed cosmetology school.

1           76.     The Board’s inspectors told Ms. Waugh that she could not teach makeup  
2     artistry without an instructor’s license issued by the Board.

3           77.     The Board’s inspectors told Ms. Waugh that she must stop holding her  
4     business out as a school that teaches makeup artistry.

5           78.     The Board’s inspectors made it clear that it was the Board’s position that L  
6     Makeup Institute fell under the Board’s jurisdiction and that in order to advertise L Makeup  
7     Institute as a school she would have to apply for a cosmetology school license and comply  
8     with all of the regulations that govern cosmetology schools.

9           79.     After listening to Ms. Waugh’s reasons why she believes makeup artistry is  
10    distinct from cosmetology and should not be regulated as a cosmetology school, the  
11    Board’s inspectors suggested that she present her case directly to the Board.

12          80.     In order to avoid being shut down immediately, the Board’s inspectors gave  
13    Ms. Waugh detailed instructions, including printed pages of her website marked up by  
14    Chief Inspector Curtis, on how to change her website so that it no longer advertised L  
15    Makeup Institute as a school that teaches makeup artistry in a classroom setting.

16          81.     The Board had a problem with the website’s use of the words “training” and  
17    “students” as well as references to teaching.

18          82.     The Board’s inspectors advised Ms. Waugh to advertise L Makeup Institute  
19    as a retail cosmetics store that sold makeup kits that include free demonstrations.

20          83.     Ms. Waugh was told by the Board’s inspectors to stop charging fees for  
21    instruction. Any instruction had to be offered for free as part of the sale of a makeup kit  
22    and the instruction had to be advertised as a demonstration.

23          84.     If Ms. Waugh changed the words on her website, the Board’s inspectors said  
24    that Ms. Waugh could essentially continue operating in the same manner that she had been  
25    operating, at least until such time as she met with the Board.

26          85.     Ms. Waugh tried to comply with the Board’s instructions regarding her  
27    website and had numerous e-mail exchanges with Field Inspector Green, but the Board was  
28    never satisfied and always asked for more changes.

1           86.     Ms. Waugh made a presentation to the Board at its February 14, 2011  
2 meeting. The Board advised Ms. Waugh that the state’s cosmetology licensing scheme  
3 applied to her and her school, that she was operating an unlicensed cosmetology school,  
4 that she was teaching cosmetology without a cosmetology instructor’s license, and that the  
5 only way to obtain an exemption for makeup artistry from the state’s occupational licensing  
6 laws would be to ask the legislature to change the law.

7           87.     In May 2011, Ms. Waugh met one last time with Chief Inspector Curtis,  
8 Field Inspector Green, and for the first and last time with the Board’s Executive Director  
9 Vincent Jimno.

10          88.     Mr. Jimno informed Ms. Waugh that if she was going to ask the legislature  
11 to change the law, Ms. Waugh would need to lobby for a limited license for makeup artists  
12 and licenses for makeup artistry schools and instructors.

13          89.     Mr. Jimno informed Ms. Waugh that if she lobbied for a complete  
14 exemption for makeup artistry, the Board would oppose her efforts. Mr. Jimno added that  
15 Ms. Waugh would never have enough money to successfully fight the Board.

16          90.     Eventually, Ms. Waugh stopped trying to satisfy the Board and launched a  
17 new website in February 2012 that honestly advertises L Makeup Institute as a school that  
18 offers students instruction in makeup artistry.

19 Studio W

20          91.     In February 2011, Field Inspector Green called Ms. Robin and told her that  
21 the Board had received a tip that she was teaching makeup artistry illegally.

22          92.     On February 11, 2011, Ms. Robin met with Field Inspector Green and Chief  
23 Inspector Curtis at the Board’s office in Las Vegas.

24          93.     At the February 11, 2011 meeting, Field Inspector Green and Chief  
25 Inspector Curtis told Ms. Robin that she could not teach makeup artistry without an  
26 instructor’s license issued by the Board and that she was operating an illegal unlicensed  
27 cosmetology school.

28          94.     Field Inspector Green and Chief Inspector Curtis informed Ms. Robin that,

1 in addition to obtaining an instructor’s license, Ms. Robin would have to close her school  
2 and re-open as a cosmetology school.

3 95. Field Inspector Green and Chief Inspector Curtis also advised Ms. Robin  
4 that she would have to either disable the Studio W website or completely change the  
5 website’s language.

6 96. According to Field Inspector Green and Chief Inspector Curtis, Ms. Robin  
7 could not use the words “education,” “lessons,” “coaching,” “teaching,” “training,” “class,”  
8 “course,” “workshop,” or “program” on her website.

9 97. Field Inspector Green and Chief Inspector Curtis explained to Ms. Robin  
10 that she was allowed to offer free “makeup demonstrations” and advertise the sale of  
11 “makeup kits.”

12 98. Field Inspector Green and Chief Inspector Curtis made it clear that if Ms.  
13 Robin did not comply, she would be subject to penalties including a fine, but that if she  
14 changed her website they would allow her to continue operating.

15 99. After her visit with the Board, Ms. Robin paid a webmaster \$376 to change  
16 the Studio W website to say that she offered free makeup demonstrations with the purchase  
17 of makeup kits.

18 100. As a result of her meeting with the Board and the threat of facing a fine, Ms.  
19 Robin also cancelled the makeup classes scheduled to begin at Studio W in April 2011.

20 101. After changing the language on her website, potential students stopped  
21 contacting Studio W about makeup artistry classes.

22 102. With little to no student interest for free makeup demonstrations and under  
23 the threat of facing penalties from the Board, Ms. Robin was forced to close Studio W.

24 103. In September 2011, Ms. Robin changed the language on her website to again  
25 advertise makeup classes.

26 104. Ms. Robin now occasionally teaches classes with a small number of students  
27 at various locations, but she would like to find a permanent location and reopen her school.  
28

1 **Cost of Complying with the Cosmetology Licensing Scheme**

2 Ms. Waugh and Ms. Robin Would Have to Become Licensed Cosmetology or Aesthetics  
3 Instructors

4 105. In order to comply with the Board’s interpretation of Nevada’s cosmetology  
5 licensing scheme, Ms. Waugh and Ms. Robin would have to obtain cosmetology or  
6 aesthetics instructor’s licenses.

7 106. In order to obtain a cosmetology instructor’s license, an applicant must be  
8 licensed as a cosmetologist and “complete[] 1,000 hours of training as an instructor” in a  
9 licensed cosmetology school. Nev. Rev. Stat. Ann. § 644.195.

10 107. In order to obtain an aesthetics instructor’s license, an applicant must be  
11 licensed as an aesthetician and complete “a minimum of 700 hours of training as an  
12 instructor” in a licensed cosmetology school. Nev. Rev. Stat. Ann. § 644.1955.

13 108. The Nevada statutes and regulations governing the licensing of cosmetology  
14 and aesthetics instructors do not include any particular coursework or curriculum  
15 requirements, but the training must be completed at a licensed cosmetology school.

16 109. Licensed cosmetology schools do not teach makeup artistry.

17 110. On information and belief, the cosmetology and aesthetics instructor training  
18 provided at licensed cosmetology schools does not include training in makeup artistry or  
19 makeup artistry instruction.

20 111. On information and belief, only a tiny fraction of the mandatory 1,000 hours  
21 of training required to obtain a cosmetology instructor’s license could be even conceivably  
22 relevant to makeup artistry.

23 112. On information and belief, only a tiny fraction of the mandatory 700 hours  
24 of training required to obtain an aesthetics instructor’s license could be even conceivably  
25 relevant to makeup artistry.

26 113. An applicant for licensure as an instructor must complete a “nationally  
27 recognized written examination, with a passing score of not less than 75 percent; and [a]  
28 law examination consisting of 50 multiple-choice questions, with a passing score of not less

1 than 75 percent.” Nev. Admin. Code § 644.052.

2 114. On information and belief, the instructor licensing exam does not test  
3 makeup artistry or makeup artistry instruction.

4 L Makeup Institute and Studio W Would Have to Become Licensed Cosmetology Schools

5 115. Complying with the Board’s interpretation of the cosmetology licensing  
6 scheme would also require Ms. Waugh and Ms. Robin to transform their makeup artistry  
7 schools into cosmetology schools.

8 116. Operating as cosmetology schools means Ms. Waugh and Ms. Robin would  
9 be required to teach Nevada’s cosmetology curriculum, including courses on how to cut and  
10 color hair; perform skin treatments, facials, and hair removal; and how to manicure nails.

11 117. Nevada’s cosmetology and aesthetics curricula do not include and are not  
12 relevant to makeup artistry.

13 118. Ms. Waugh and Ms. Robin do not teach—and do not want to teach—hair  
14 care, including how to cut, color, and style hair.

15 119. Ms. Waugh and Ms. Robin do not teach—and do not want to teach—  
16 skincare, including how to perform facials and facial hair removal.

17 120. Ms. Waugh and Ms. Robin do not teach—and do not want to teach—nail  
18 care, including how to manicure nails.

19 121. Operating as cosmetology schools also means L Makeup Institute and Studio  
20 W would be required to meet structural and equipment requirements mandated for  
21 cosmetology schools, including equipment that is unnecessary and unrelated to makeup  
22 artistry like shampoo bowls, facial chairs, manicure tables, and different combs and heat-  
23 styling tools.

24 122. Ms. Waugh and Ms. Robin do not want to install useless equipment that is  
25 unnecessary for and unrelated to makeup artistry.

26 **INJURY**

27 The Board’s Application of the Licensing Scheme Violates Plaintiffs’ Right to Economic  
28 Liberty

1 *Injury to Ms. Waugh*

2 123. Before being contacted by the Board, Plaintiff Lissette Waugh invested  
3 significant resources into L Makeup Institute.

4 124. In order for Ms. Waugh to comply with the Board's demand that she turn L  
5 Makeup Institute into a cosmetology school, she would have to spend thousands of dollars  
6 to install equipment that is useless and irrelevant to makeup artistry, and hire licensed  
7 instructors to teach Nevada's irrelevant cosmetology curriculum, which does not include  
8 makeup artistry, leaving little if any time to devote to makeup artistry instruction.

9 125. By continuing to operate L Makeup Institute as a makeup artistry school  
10 without turning it into a full-scale cosmetology school, Ms. Waugh risks punishment  
11 including a fine of up to \$2,000.

12 126. The Board's claim of jurisdiction over L Makeup Institute also prevents the  
13 school from being registered with the Nevada Commission on Postsecondary Education.

14 127. Absent recognition by either the Commission on Postsecondary Education or  
15 the Nevada State Board of Cosmetology, L Makeup Institute cannot obtain private  
16 accreditation.

17 128. Absent accreditation, L Makeup Institute's students cannot obtain financial  
18 aid in the form of government or private loans and grants to attend the Institute.

19 129. L Makeup Institute does offer payment plans, but it is L Makeup Institute  
20 that assumes the risk of these plans. L Makeup Institute is thus forced to offer shorter  
21 courses, more often, and at lower costs in order to make a profit.

22 130. If L Makeup Institute's students could obtain financial aid, Ms. Waugh  
23 could offer longer, more in-depth courses and charge higher tuition. For example, due to  
24 the expense of teaching special-effects courses, Ms. Waugh can only offer her students  
25 week-long workshops to introduce them to the basics of special-effects makeup artistry. If  
26 she had the ability to charge more, she could offer multi-week courses that would provide  
27 her students in-depth training in special-effects makeup artistry.

28 131. But for the Board's assertion of jurisdiction over L Makeup Institute, Ms.

1 Waugh would register with the Nevada Commission for Postsecondary Education and offer  
2 more in-depth courses and charge higher tuition.

3 132. The cosmetology regulations thus operate to severely impair Ms. Waugh's  
4 ability to practice her chosen occupation.

5 *Injury to Ms. Robin*

6 133. Plaintiff Wendy Robin ran a successful makeup artistry school in Nevada  
7 before being contacted by the Board. Since being contacted by the Board she has been  
8 forced to close her school.

9 134. Before being contacted by the Board, Ms. Robin had plans to expand her  
10 school and move to a larger and more accessible location, but since being contacted by the  
11 Board she has had to abandon those plans.

12 135. Before being contacted by the Board, Ms. Robin advertised her makeup  
13 artistry classes and received significant student interest in her school.

14 136. Because of the Board's demands, Ms. Robin had to pay a webmaster \$376 to  
15 change the language on her website.

16 137. Because of the Board's threat to impose a fine or other penalties, Ms. Robin  
17 canceled upcoming classes and closed her school.

18 138. Because of the application of the cosmetology licensing scheme to her and  
19 her school, Ms. Robin lost her primary source of income.

20 139. But for application of the cosmetology licensing scheme to her and her  
21 school, Ms. Robin would re-open Studio W in a permanent location and again offer courses  
22 in makeup artistry.

23 140. Ms. Robin has many potential students that have heard of her and her school  
24 and want to take classes from her. But for application of the cosmetology licensing scheme  
25 to makeup artistry instructors and schools, Ms. Robin would conduct makeup artistry  
26 classes on a regular basis.

27 141. Because Ms. Robin occasionally teaches makeup artistry, each time she does  
28 so without an instructor's license she risks incurring a fine of up to \$2,000.



1           142. Ms. Robin inquired about registering with the Nevada Commission on  
2 Postsecondary Education when she moved to Las Vegas in 2010, but was unable to do so  
3 because the Nevada Board of Cosmetology has asserted jurisdiction over makeup artistry  
4 instructors and schools. But for the Board’s assertion of jurisdiction, Ms. Robin would  
5 obtain accreditation from the Nevada Commission on Postsecondary Education.

6           143. Studio W currently offers in-house payment plans, but may not be able to  
7 maintain that financial risk in the future. Without accreditation from the Commission on  
8 Postsecondary Education, Studio W students cannot obtain private or government financial  
9 aid or grants.

10          144. Ms. Robin may want her students to be able to obtain private or government  
11 financial aid in the future.

12          145. In order for Ms. Robin to comply with the Board’s demand that she turn  
13 Studio W into a cosmetology school, she would have to spend thousands of dollars to install  
14 equipment that is useless and irrelevant to makeup artistry, and hire licensed instructors to  
15 teach Nevada’s irrelevant cosmetology curriculum, which does not include makeup artistry,  
16 leaving little if any time to devote to makeup artistry instruction.

17          146. The cosmetology regulations thus operate to severely impair Ms. Robin’s  
18 ability to practice her chosen occupation.

19 The Board’s Application of the Licensing Scheme Violates Plaintiffs’ Right to Free Speech

20          147. Because Plaintiffs teach makeup artistry—as opposed to modern dance or  
21 theoretical physics—the Board requires them to obtain cosmetology or aesthetics  
22 instructor’s licenses. Restricting Plaintiffs’ ability to teach makeup artistry is a restriction  
23 on speech.

24          148. Upon information and belief, in order for Plaintiffs to comply with the  
25 Board’s demand that they obtain cosmetology instructor’s licenses, Plaintiffs would have to  
26 spend thousands of dollars and hundreds of hours taking classes in irrelevant subjects that  
27 have nothing to do with makeup artistry.

28          149. This license requirement is imposed on Plaintiffs solely because of the

1 nature and content of their speech. Requiring Plaintiffs to obtain a license at a high  
2 financial cost and commitment of significant time before being allowed to teach makeup  
3 artistry violates Plaintiffs' rights under the First Amendment.

4 150. Requiring Plaintiffs to obtain government licenses in order to teach  
5 impermissibly interferes with Plaintiffs' ability to convey information and disseminate  
6 knowledge about makeup artistry in violation of Plaintiffs' First Amendment right to  
7 freedom of speech.

8 151. In order for Plaintiffs to comply with the Board's demand that they turn their  
9 makeup artistry schools into cosmetology schools, Plaintiffs would also be forced to teach  
10 Nevada's cosmetology curriculum, including classes on subjects like how to cut and style  
11 hair that are irrelevant to makeup artistry.

12 152. Forcing Plaintiffs to teach the government's chosen curriculum in order to  
13 also teach makeup artistry violates Plaintiffs' First Amendment right to freedom of speech.

14 153. Ms. Waugh currently teaches makeup artistry classes at L Makeup Institute,  
15 and Ms. Robin occasionally teaches makeup artistry classes to small groups of students at  
16 various temporary locations.

17 154. Plaintiffs wish to continue teaching these courses, but the Board's  
18 application of the licensing scheme forces them to either obtain expensive and time-  
19 consuming instructor's licenses or stop teaching.

20 155. By continuing to teach makeup artistry without cosmetology instructor's  
21 licenses, Plaintiffs risk punishment including a fine of up to \$2,000.

22 156. Plaintiffs do not want to be forced to choose between obtaining expensive  
23 and burdensome government licenses in order to teach and facing severe penalties.

24 157. Ms. Waugh will continue operating her makeup artistry school and will offer  
25 more in-depth courses if not subject to Nevada's cosmetology licensing scheme.

26 158. Ms. Robin will re-open at a permanent location and will regularly teach  
27 makeup artistry classes, including specialty makeup techniques like special effects and  
28 body painting as well as advanced classes with guest artists, if she is not subject to

1 Nevada's cosmetology licensing scheme.

2 159. Plaintiffs face a credible threat of prosecution and enforcement of Nevada's  
3 cosmetology licensing scheme if they continue to speak about makeup artistry without a  
4 government-issued license.

5 **Count I**

6 **(Federal Due Process)**

7 160. Plaintiffs incorporate and re-allege all the allegations set forth above.

8 161. The Due Process Clause of the Fourteenth Amendment protects Plaintiffs'  
9 right to economic liberty.

10 162. By requiring makeup artistry instructors to obtain licenses to teach what  
11 practicing makeup artists do every day without licenses, Defendants, their agents and  
12 employees, acting under color of state law, violate Plaintiffs' right to due process of law as  
13 guaranteed by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §  
14 1983.

15 163. By requiring Plaintiffs' schools to provide hundreds of hours of instruction  
16 in courses that are utterly irrelevant to makeup artistry and install thousands of dollars of  
17 equipment that is unrelated to makeup artistry, Nevada's cosmetology licensing scheme as  
18 applied to Plaintiffs and their makeup artistry schools is unconstitutionally overbroad.

19 164. Applying Nevada's cosmetology licensing scheme to Plaintiffs and requiring  
20 their makeup artistry schools to operate as licensed cosmetology schools is  
21 unconstitutionally under-inclusive because cosmetology schools do not teach makeup  
22 artistry so the scheme does not ensure the competency of makeup artists.

23 165. Requiring Plaintiffs' to obtain instructor's licenses at a high financial cost  
24 and an additional 700 or 1,000 hours of training, only a tiny fraction of which could be even  
25 conceivably relevant to makeup artistry, does not rationally advance any legitimate health  
26 or safety concern about makeup artistry.

27 166. Requiring Plaintiffs to teach Nevada's cosmetology curriculum at their  
28 makeup artistry schools does not rationally advance any legitimate health or safety concern

1 about makeup artistry because Nevada does not mandate that students receive any  
2 instruction in makeup artistry; the cosmetology and aesthetics curricula do not include  
3 instruction in makeup artistry; and the cosmetology and aesthetics examinations do not test  
4 makeup artistry.

5 167. Nevada’s current cosmetology laws and regulations as applied to Plaintiffs  
6 by Defendants, their agents, and employees, acting under color of state law, prevent  
7 Plaintiffs from pursuing their chosen livelihood and are not rationally related to public  
8 health or safety. The arbitrary denial of Plaintiffs’ economic liberty by the imposition of  
9 these regulations deprives them of due process of law as guaranteed by the Fourteenth  
10 Amendment to the United States Constitution and 42 U.S.C. § 1983.

11 168. Because of Defendants’ application of the cosmetology licensing scheme  
12 against makeup artistry instructors and schools, including Plaintiffs, makeup artistry  
13 instructors have no adequate legal, administrative, or other remedy by which to prevent or  
14 minimize the continuing irreparable harm to their constitutional rights. Unless Defendants  
15 are enjoined from committing the above-described constitutional violations of the  
16 Fourteenth Amendment, makeup artistry instructors, including Plaintiffs, will continue to  
17 suffer great and irreparable harm.

18 **Count II**

19 **(Federal Equal Protection)**

20 169. Plaintiffs incorporate and re-allege all the allegations set forth above.

21 170. The Equal Protection Clause of the Fourteenth Amendment guarantees  
22 Plaintiffs’ right to equal treatment under the law.

23 171. Requiring makeup artistry instructors to obtain cosmetology or aesthetics  
24 instructor’s licenses, while excluding instruction and/or training in makeup artistry, is not  
25 rationally related to public health or safety.

26 172. By requiring makeup artistry instructors to obtain licenses to teach what  
27 practicing makeup artists do every day without licenses, Defendants, their agents and  
28 employees, acting under color of state law, violate Plaintiffs’ right to equal protection of the

1 laws as guaranteed by the Fourteenth Amendment to the United States Constitution and 42  
2 U.S.C. § 1983.

3 173. By exempting practicing makeup artists from the cosmetology licensing  
4 scheme while subjecting makeup artistry instructors to it, Defendants, their agents and  
5 employees, acting under color of state law, violate Plaintiffs' right to equal protection of the  
6 laws as guaranteed by the Fourteenth Amendment to the United States Constitution and 42  
7 U.S.C. § 1983.

8 174. Because of Defendants' application of Nevada's cosmetology licensing  
9 scheme against makeup artistry instructors and schools, including Plaintiffs, makeup  
10 artistry instructors have no other adequate legal, administrative, or other remedy by which  
11 to prevent or minimize the continuing irreparable harm to their constitutional rights. Unless  
12 Defendants are enjoined from committing the above-described constitutional violations of  
13 the Fourteenth Amendment, makeup artistry instructors, including Plaintiffs, will continue  
14 to suffer great and irreparable harm.

15 **Count III**

16 **(Federal Privileges or Immunities)**

17 175. Plaintiffs incorporate and re-allege all the allegations set forth above.

18 176. The Privileges or Immunities Clause of the Fourteenth Amendment protects  
19 the right to earn a living in the occupation of a person's choice subject only to reasonable  
20 government regulation.

21 177. Application of Nevada's current cosmetology licensing scheme to makeup  
22 artistry instructors and schools arbitrarily and unreasonably impairs Plaintiffs' ability to  
23 pursue their chosen livelihood by forcing them to obtain a license that is unrelated to their  
24 occupation and subjecting them to fines and penalties, thus threatening the existence,  
25 profitability, and potential growth of their businesses, in violation of the privileges or  
26 immunities guarantee of the Fourteenth Amendment to the United States Constitution and  
27 42 U.S.C. § 1983.

28 178. Because of Defendants' application of Nevada's cosmetology licensing

1 scheme against makeup artistry instructors and schools, including Plaintiffs, makeup  
2 artistry instructors have no other adequate legal, administrative, or other remedy by which  
3 to prevent or minimize the continuing irreparable harm to their constitutional rights. Unless  
4 Defendants are enjoined from committing the above-described constitutional violations of  
5 the Fourteenth Amendment, makeup artistry instructors, including Plaintiffs, will continue  
6 to suffer great and irreparable harm.

7 **Count IV**

8 **(First Amendment)**

9 179. Plaintiffs incorporate and re-allege all the allegations set forth above.

10 180. The First Amendment to the United States Constitution, incorporated as  
11 against Nevada via the Fourteenth Amendment, protects Plaintiffs' right to teach makeup  
12 artistry.

13 181. Nevada law makes it illegal to teach makeup artistry without obtaining an  
14 onerous cosmetology or aesthetics instructor's license.

15 182. Nevada law makes it illegal to teach makeup artistry without also teaching  
16 Nevada's entire cosmetology curriculum, including courses on things like how to cut and  
17 color hair, facials, and manicures.

18 183. Teaching is speech and is protected by the First Amendment.

19 184. Because Plaintiffs receive money to talk about makeup artistry, the Board  
20 requires them to obtain government-issued instructor's licenses.

21 185. Requiring makeup artistry instructors to obtain government licenses at a cost  
22 of thousands of dollars and hundreds of hours in instruction that has nothing to do with  
23 makeup artistry is an unconstitutional burden on speech.

24 186. The Nevada State Board of Cosmetology does not have sufficient  
25 justification for its infringement on Plaintiffs' right to teach makeup artistry.

26 187. Because of Defendants' application of Nevada's cosmetology licensing  
27 scheme against makeup artistry instructors and schools, including Plaintiffs, makeup  
28 artistry instructors have no other adequate legal, administrative, or other remedy by which

1 to prevent or minimize the continuing irreparable harm to their constitutional rights. Unless  
2 Defendants are enjoined from committing the above-described constitutional violations of  
3 the First Amendment, makeup artistry instructors, including Plaintiffs, will continue to  
4 suffer great and irreparable harm.

5 **Request for Relief**

6 WHEREFORE, Plaintiffs pray for judgment as follows:

7 A. Enter a judgment declaring that the application of Nev. Rev. Stat. Ann.  
8 §§ 644.020–.510 and Nev. Admin. Code §§ 644.010–.711 to makeup artistry instructors  
9 and makeup artistry schools is unconstitutional in violation of the First and Fourteenth  
10 Amendments to the U.S. Constitution;

11 B. Permanently enjoin Defendants and their agents and employees from  
12 enforcing Nev. Rev. Stat. Ann. §§ 644.020–.510 and Nev. Admin. Code §§ 644.010–.711  
13 against makeup artistry instructors and makeup artistry schools, including Plaintiffs;

14 C. An award of attorney’s fees, costs, and expenses pursuant to 42 U.S.C.  
15 § 1988; and

16 D. Such other further relief as the Court deems just, equitable, and proper.

17 RESPECTFULLY SUBMITTED this 19th day of June, 2012.

18 **KOLESAR & LEATHAM**

19 /s/ Matthew T. Dushoff  
20 MATTHEW T. DUSHOFF, ESQ.  
21 Nevada Bar No. 004975  
22 MATTHEW D. SALTZMAN, ESQ.  
23 Nevada Bar No. 006481  
24 400 S. Rampart Boulevard, Suite 400  
25 Las Vegas, NV 89145  
26 Telephone: (702) 362-7800  
27 Facsimile: (702) 362-9472  
28 and

DORAN ARIK\*, ESQ.  
**INSTITUTE FOR JUSTICE**  
901 N. Glebe Road, Suite 900  
Arlington, VA 22203  
Telephone: (703) 682-9320  
Facsimile: (703) 682-9321

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TIM KELLER\*, ESQ.  
**INSTITUTE FOR JUSTICE**  
Arizona Chapter  
398 South Mill Avenue  
Suite 301  
Tempe, AZ 85281  
Telephone: (480) 557-8300  
Facsimile: (480) 557-8305

*\*Will comply with LR IA 10-2 within 7 days.*

Attorneys for Plaintiffs  
**LISSETTE WAUGH AND  
WENDY ROBIN**