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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

AUG 31 2023

BY: 
Jordyn Drake, Deputy

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10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF SAN BERNARDINO**

12 CANDISE HILL, an individual,
13 Plaintiff,

14 vs.

15 PACIFIC DERMATOLOGY INSTITUTE, INC.;
and DOES 1 through 20, inclusive,
16 Defendants.

Case No. CIVSB2312940

*Assigned to Honorable Joseph T. Ortiz
Dept. S-17*

FIRST AMENDED COMPLAINT

Complaint Filed: June 05, 2023
Trial Date: None

FAXED

1 Plaintiff Candise Hill alleges as follows:

2 **INTRODUCTION**

3 1. Plaintiff brings this representative action under Labor Code Section 2698, et seq., the
4 Private Attorneys General Act (“PAGA”), against Defendants Pacific Dermatology Institute, Inc. and
5 DOES 1 through 20, inclusive (“Defendants”) for civil penalties, attorney’s fees, and costs, due to
6 Defendants’ violations of the Labor Code, on behalf of all non-exempt employees of Defendant (the
7 “Aggrieved Employees”).

8 2. Defendants jointly controlled and governed the Aggrieved Employees’ employment
9 terms and conditions, including their wages, hours, and general working conditions, via the same
10 policies, procedures, and practices (the “Policies, Procedures, and Practices”).

11 3. Through the Policies, Procedures, and Practices, Defendants systematically violated the
12 Aggrieved Employees’ rights under the Labor Code.

13 **THE PARTIES**

14 4. Defendants are California corporations doing business in California, including San
15 Bernardino County.

16 5. Plaintiff is unaware of the real names or capacities of the defendants that they have sued
17 under the fictitious names DOES 1 through 20. However, she will seek this Court’s leave to amend this
18 Complaint and serve such fictitiously named Defendants once their names and capacities become known.

19 6. Plaintiff is informed and believes that DOES 1 through 20 are or were the partners, agents,
20 owners, shareholders, managers, or employees of Defendants at all relevant times.

21 7. Plaintiff is informed and believes that every Defendant acted as the other Defendant’s
22 agent or joint employer and conducted a joint scheme, business plan, or policy accordingly. Thus, the
23 acts of each Defendant are legally attributable to the other defendant.

24 8. Defendants also acted within the scope of such agency or employment or ratified every
25 act or omission alleged by Plaintiff. Defendants also aided and abetted each and all the other Defendants’
26 acts and omissions in proximately causing the violations that the Aggrieved Employees suffered.

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9. Plaintiff is informed and believes that each Defendant is intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged in this Complaint.

VENUE

10. The Superior Court of California, County of San Bernardino, is the proper venue for this action because the acts giving rise to the class claims occurred substantially in San Bernardino County; with four of Defendants' fifteen locations conducting business in this County.

11. The Superior Court of California, County of San Bernardino has personal jurisdiction over Defendants because they personally availed themselves of the laws of the State of California and had minimum contact with California such that the exercise of personal jurisdiction over them would be consistent with the traditional notions of fair play and substantial justice.

BACKGROUND FACTS

12. The Aggrieved Employees work for Defendants as assistants, including medical assistants, physician’s assistants, and technicians—all in non-exempt positions where they spent more than 50% of their workdays and shifts performing non-exempt duties.

13. Defendants have a practice in place under which they failed to provide meal periods and failed to permit and authorize rest breaks, or pay premiums. Defendants, while purporting to provide the Aggrieved Employees with meal periods and rest breaks, implemented and enforced a scheduling practice that left the Aggrieved Employees with insufficient time in a day to take meal periods and rest breaks, while still competently performing their assigned work and duties. Concurrent with this practice, Defendants had a policy and practice that threatened the Aggrieved Employees with disciplinary action for failure to perform their duties.

14. Consequently, when the Aggrieved Employees lacked the staff support and/or time to perform and complete their duties (as expected by Defendants) while taking compliant meal periods and rest breaks—which was a regular occurrence—they had no choice but to miss rest breaks and meal periods or to take non-compliant meal periods and rest breaks, e.g., on-premises breaks and meal periods, interrupted breaks and meal periods, short breaks and meal periods, or late meal periods.

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1 **15.** Through the above policies, procedures, and practices, Defendants failed to provide duty-
2 free meal periods and rest breaks; failed to relinquish control over the Aggrieved Employees during meal
3 periods and rest breaks; failed to provide the Aggrieved Employees with a reasonable opportunity to
4 take uninterrupted 30-minute meal periods and uninterrupted rest breaks; and impeded and discouraged
5 rest breaks.

6 **16.** Moreover, Defendants regularly failed to pay premiums to the Aggrieved Employees for
7 these meal period violations and rest break violations.

8 **17.** Further, Defendants failed to provide the Aggrieved Employees with accurate wage
9 statements. Defendants regularly issued wage statements inaccurately stating the “wages earned” by the
10 Aggrieved Employees. The wage statements were inaccurate because they omitted the premiums owed
11 to the Aggrieved Employees for meal period violations and rest break violations. They also were
12 inaccurate because they omitted the travel time worked by the Aggrieved Employees when they traveled
13 between office locations.

14 **18.** Defendants failed to pay the Aggrieved Employees the minimum wage for all hours
15 worked, and overtime wages for overtime hours worked. Defendants regularly required the Aggrieved
16 Employees to travel from one office location to another, under Defendants’ direction and control.
17 However, Defendants did not pay the Aggrieved Employees for this travel time.

18 **19.** Defendants also failed to timely pay Aggrieved Employees all wages due to them
19 throughout their employment and following the end of these workers’ employment with the Defendants,
20 thus violating Labor Code sections 201-203, 204, and 210. Namely, Defendants failed to pay meal and
21 rest break premiums owed to the Aggrieved Employees during their employment and once their
22 employment with Defendants ended. Additionally, Defendants did not pay the Aggrieved Employees for
23 travel time, when these Aggrieved Employees drove from one location to another, under Defendants’
24 direction and control.

25 **20.** Under PAGA, any provision of the Labor Code that provides for a civil penalty to be
26 assessed and collected by the LWDA or any of its departments, divisions, commissions, boards,
27 agencies, or employees for violation of the code may, as an alternative, be recovered through a civil
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1 action brought by an aggrieved employee on behalf of himself and other current or former employees
2 under the procedures specified in Labor Code section 2699.3. For all provisions of the Labor Code except
3 those for which a civil penalty is specifically provided, Labor Code section 2699(f) imposes upon
4 Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for
5 the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for
6 each subsequent pay period in which Defendants violated these provisions of the Labor Code.

7 **21.** Defendants systematically engaged in unlawful conduct in violation of the California
8 Labor Code and IWC Wage Orders, such as failing to pay minimum wages and overtime wages, failing
9 to provide meal periods and rest breaks or compensation in lieu thereof, failing to furnish accurate wage
10 statements, and failing to timely pay all wages due and owing upon separation of employment—to
11 increase their profits.

12 **22.** Plaintiff is an “aggrieved employee” because Defendants employed her and because
13 Plaintiff suffered multiple violations of the Labor Code while working for Defendants.

14 **23.** Further, Plaintiff timely exhausted the procedural requirements of PAGA (under section
15 2699.3) and thus, has standing to bring PAGA claims against Defendants for penalties on behalf of the
16 LWDA and the Aggrieved Employees.

17 **24.** Under Labor Code sections 2699(a), 2699.3, and 2699.5, the Aggrieved Employees can
18 recover penalties against Defendants for violations of the Labor Code sections cited above.

19 **25.** Defendants’ conduct has been and continues to be unfair, unlawful, and harmful to the
20 Aggrieved Employees and the general public. Plaintiff, therefore, seeks to enforce important rights
21 affecting the public interest within the meaning of section 1021.5 of the Code of Civil Procedure.
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23 **CAUSES OF ACTION**

24 **First Cause of Action: Enforcement of Private Attorneys General Act**

25 **for Failure to Pay the Minimum Wage**

26 **(Against all Defendants)**

27 **26.** Plaintiff incorporates by reference and re-alleges the preceding allegations as if she stated
28 the allegations within this cause of action.

1 27. Under Labor Code sections 1194 and 1197, the minimum wage for employees fixed by
2 the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage than the
3 minimum is unlawful. Labor Code section 1182.12 provides the minimum wages for all industries. A
4 failure to pay wages for any work is a failure to pay the minimum wage for all hours worked.

5 28. Defendants paid the Aggrieved Employees less than the minimum wage when they failed
6 to pay for travel time between office locations.

7 29. Thus, during the relevant time, Defendants regularly failed to pay at least minimum wage
8 to the Aggrieved Employees for all hours worked under Labor Code sections 1194, 1197, and 1182.12.

9 30. Defendants' failure to pay the Aggrieved Employees the required minimum wage violates
10 Labor Code sections 1194, 1194.2, 1197, and 1182.12 of the Labor Code and section four of the
11 applicable Wage Order.

12 31. Thus, the Aggrieved Employees are entitled to recover civil penalties, attorney's fees,
13 and costs.

14 **Second Cause of Action: Enforcement of Private Attorneys General Act**
15 **for Failure to Pay Overtime Wages**
16 **(Against all Defendants)**

17 32. Plaintiff incorporates by reference and re-alleges the preceding allegations as if she stated
18 the allegations within this cause of action.

19 33. Under Labor Code section 1198 and the applicable IWC Wage Order, it is unlawful to
20 employ persons without compensating them at a rate of pay either one and one-half (1½) or two (2) times
21 the person's regular rate of pay, depending on the number of hours worked by the person on a daily or
22 weekly basis.

23 34. Further, the applicable IWC Wage Orders required Defendants to pay overtime
24 compensation to the Aggrieved Employees at the rate of one and one-half times (1½) their regular rate
25 of pay for all hours worked more than eight (8) hours in a day or more than forty (40) hours in a
26 workweek and for the first eight (8) hours of work on the seventh day of work in a workweek.

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1 **35.** The applicable IWC Wage Orders also required Defendants to pay overtime
2 compensation to the Aggrieved Employees at a rate of two times their regular rate of pay when working
3 and for all hours worked more than twelve (12) hours in a day or excess of eight (8) hours on the seventh
4 day of work in a workweek.

5 **36.** Further, Labor Code section 510 codifies the right to overtime compensation at one and
6 one-half (1½) times the regular hourly rate for hours worked more than eight (8) hours in a day or forty
7 (40) hours in a week and for the first eight (8) hours worked on the seventh consecutive day of work,
8 and overtime compensation at twice the regular hourly rate for hours worked more than twelve (12)
9 hours in a day or excess of eight (8) hours in a day on the seventh day of work in a workweek.

10 **37.** The Aggrieved Employees were non-exempt employees entitled to overtime wages
11 specified and required by sections 510 and 1194 of the Labor Code.

12 **38.** During the relevant time, Defendants required the Aggrieved Employees to work more
13 than eight (8) hours in a day and forty (40) hours in a week, entitling them to overtime wages. They also
14 regularly worked more than twelve (12) hours in a day, thus entitling them to double-time wages.

15 **39.** However, Defendants did not pay the Aggrieved Employees overtime and double-time
16 wages as the law required. Defendants failed to pay the Aggrieved Employees for travel time between
17 office locations.

18 **40.** Thus, Defendants knowingly and willfully refused to perform their obligations and
19 compensate the Aggrieved Employees for all overtime wages earned for all overtime hours worked.

20 **41.** Defendants' failure to pay the Aggrieved Employees the unpaid balance of overtime
21 compensation, as required by California law, violates Labor Code sections 510, 1194, and 1198 and is
22 unlawful.

23 **42.** Thus, the Aggrieved Employees are entitled to recover civil penalties, attorney's fees,
24 and costs.

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Third Cause of Action: Enforcement of Private Attorneys General Act
for Failure to Provide Meal Periods
(Against all Defendants)

43. Plaintiff incorporates by reference and re-alleges the preceding allegations as if she stated the allegations within this cause of action.

44. Under Labor Code section 226.7, no employer shall require an employee to work during any meal period mandated by the IWC Wage Orders. Further, under Section 11 of the applicable IWC Wage Order, “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.”

45. Also, under Labor Code section 512(a), an employer may not require, cause, or permit an employee to work for more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. And, under Labor Code section 512(a), an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

46. Via the Policies, Procedures, and Practices, Defendants failed to relieve the Aggrieved Employees of all duties during meal periods, failed to permit them a reasonable opportunity to take meal periods, failed to relinquish control over them during meal periods, and discouraged them from taking meal periods.

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1 47. In such circumstances, Labor Code section 226.7(b) and section 11 of the applicable IWC
2 Wage Order require an employer to pay an employee one (1) additional hour of pay at the employee's
3 regular rate of compensation for each workday that the employer fails to provide a compliant meal
4 period.

5 48. However, Defendants failed to pay the Aggrieved Employees meal period premiums for
6 missed, late, and short meal periods under Labor Code section 226.7(b) and section 11 of the applicable
7 IWC Wage Order.

8 49. Thus, the Aggrieved Employees are entitled to recover civil penalties, attorney's fees,
9 and costs.

10 **Fourth Cause of Action: Enforcement of Private Attorneys General Act**
11 **for Failure to Permit or Authorize Rest Breaks**

12 **(Against all Defendants)**

13 50. Plaintiff incorporates by reference and re-alleges the preceding allegations as if she stated
14 the allegations within this cause of action.

15 51. Under Labor Code section 226.7(a), no employer shall require an employee to work
16 during any rest period mandated by the IWC Wage Orders.

17 52. Section 12 of the applicable IWC Wage Order states "[e]very employer shall authorize
18 and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each
19 work period[,]" and the "[a]uthorized rest period time shall be based on the total hours worked daily at
20 the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof[,]" unless the total
21 daily work time is less than three and one-half (3½) hours.

22 53. However, Defendants did not permit or authorize the Aggrieved Employees to take a ten
23 (10) minute rest period for every four (4) hours, or a major fraction thereof worked because, via the
24 Policies, Procedures, and Practices, Defendants: (a) failed to relieve the Aggrieved Employees of all
25 duties for rest breaks; (b) failed to relinquish control over the Aggrieved Employees and their activities
26 to allow for rest breaks; (c) failed to permit the Aggrieved Employees a reasonable opportunity to take
27 uninterrupted breaks; and (d) discouraged the Aggrieved Employees from taking rest breaks.
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1 54. Labor Code section 226.7(b) and section 12 of the applicable IWC Wage Order require
2 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of
3 compensation for each workday the employer fails to permit a compliant rest period.

4 55. However, Defendants failed to pay the Aggrieved Employees rest break premiums for
5 missed, late, and interrupted rest breaks under Labor Code section 226.7(b) and section 12 of the
6 applicable IWC Wage Order.

7 56. Thus, the Aggrieved Employees are entitled to recover civil penalties, attorney's fees,
8 and costs.

9 **Fifth Cause of Action: Enforcement of Private Attorneys General Act**
10 **for Failure to Issue Accurate Wage Statements**

11 **(Against all Defendants)**

12 57. Plaintiff incorporates by reference and re-alleges the preceding allegations as if she stated
13 the allegations within this cause of action.

14 58. Labor Code section 226(a) requires Defendants to provide each employee with an
15 accurate wage statement in writing showing nine pieces of information, including the following: (1)
16 gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned
17 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
18 that all deductions made on written orders of the employee may be aggregated and shown as one item,
19 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
20 of the employee and the last four digits of his or her social security number or an employee identification
21 number other than a social security number, (8) the name and address of the legal entity that is the
22 employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding
23 number of hours worked at each hourly rate by the employee.

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1 **59.** However, Defendants knowingly and intentionally failed to comply with Labor Code
2 section 226(a) on the Aggrieved Employees' wage statements. For example, the wage statements
3 Defendants issued to the Aggrieved Employees inaccurately stated: (a) the gross and net wages that they
4 earned; and (b) the number of hours they worked. These wage statements also omitted owed meal and
5 rest premiums.

6 **60.** Because of Defendants' knowing and intentional failures to comply with Labor Code
7 section 226(a), The Aggrieved Employees have suffered injury and damage to their rights because, as
8 specified by Labor Code section 226(e), Defendants' violations of section 226(a) were intentional, e.g.,
9 they knowingly stated incorrect figures for hours worked, and gross and net wages, and knowingly
10 omitted premiums.

11 **61.** Defendants denied the Aggrieved Employees their legal right to receive, and their
12 protected interest in receiving, accurate itemized wage statements under Labor Code section 226(a).

13 **62.** Defendants prevented The Aggrieved Employees from determining if all hours worked
14 were paid at the appropriate rate. They were also prevented from determining the extent of the
15 underpayment.

16 **63.** But for Defendants' failures alleged here, The Aggrieved Employees would not have had
17 to engage in these efforts or incur costs. All of this could have been avoided if Defendants provided the
18 accurate hours worked, wages earned, and rates of pay.

19 **64.** Defendants' failures in this regard have also delayed the Aggrieved Employees' ability
20 to recover the unpaid wages from Defendants.

21 **65.** Defendants' violations of section 226(a) prevented the Aggrieved Employees from
22 knowing, understanding, and disputing the wages paid to them and resulted in an unjustified economic
23 enrichment to Defendants. Because of Defendants' knowing and intentional failure to comply with Labor
24 Code section 226(a), Aggrieved Employees have suffered injuries.

25 **66.** Thus, the Aggrieved Employees are entitled to recover civil penalties, attorney's fees,
26 and costs.

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Sixth Cause of Action: Enforcement of Private Attorneys General Act
for Failure to Pay All Wages Upon Separation of Employment
(Against all Defendants)

67. Plaintiff incorporates by reference and re-alleges the preceding allegations as if she stated the allegations within this cause of action.

68. Under Labor Code sections 201 and 202, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours after that unless the employee has given seventy-two (72) hours previous notice of an intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

69. Defendants willfully failed to pay Aggrieved Employees all earned wages upon the end of their employment with Defendants including, but not limited to, proper minimum wage and overtime compensation, meal period premiums, and rest period premiums either at the time of discharge or within seventy-two (72) hours of them ending their employment with Defendants.

70. Defendants' failure to pay The Aggrieved Employees all earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ violates Labor Code sections 201 and 202.

71. Under Labor Code section 203, if an employer willfully fails to pay wages owed immediately upon discharge or resignation per Labor Code sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

72. Thus, the Aggrieved Employees are entitled to recover civil penalties, attorney's fees, and costs.

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Seventh Cause of Action: Enforcement of Private Attorneys General Act
for Failure to Pay All Wages During Employment

(Against all Defendants)

73. Plaintiff incorporates by reference and re-alleges the preceding allegations as if she stated the allegations within this cause of action.

74. Under Labor Code section 204: “[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

75. Defendants failed timely pay all earned wages to the Aggrieved Employees during their employment, thus violating Labor Code sections 204 and 210.

76. Specifically, during the Aggrieved Employees’ employment with Defendants, they were owed meal and rest break premiums, and overtime wages, as described above. However, Defendants failed to timely pay said wages.

77. Thus, the Aggrieved Employees are entitled to recover civil penalties, attorney’s fees, and costs.

PRAYER FOR RELIEF

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

78. civil penalties;

79. attorney’s fees;

80. costs; and

81. other relief as the Court deems proper.

PRAYER FOR JURY TRIAL

82. Plaintiff prays for a trial by jury on all triable claims.

1 Dated August 30, 2023

2 **GONZALEZ WEERASURIYA, APC**

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5 Suren N. Weerasuriya
6 Attorneys for Plaintiff,
7 Candise Hill
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On August 30, 2023, I served **FIRST AMENDED COMPLAINT** on the parties listed below by electronically serving the documents in full compliance with the California Rules of Court and sections 1010.6(a)(2)(A)(ii) and (e)(1) the Code of Civil Procedure, pursuant to a court order requiring e-service of all documents in this case.

Executed on August 30, 2023, at Irvine, California.


Diana Ortiz