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Attorney for Plaintiff,
MARC DAVILA and MADELEINE GRANT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF RIVERSIDE**

MARC DAVILA, an individual, and
MADELEINE GRANT, an individual,

Plaintiffs,

v.

WEST COAST TANNING DBA PALM
BEACH TAN, a California corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No.: CVRI2404266

[Assigned to Hon. Harold W. Hopp, in Dept., 1]

**PLAINTIFF'S FIRST AMENDED
COMPLAINT**

**1. PRIVATE ATTORNEY GENERAL ACT
("PAGA")**

Action Filed: July 19, 2024

MARC DAVILA ("DAVILA") and MADELEINE GRANT ("GRANT," collectively
"Plaintiffs") allege the following:

I. PARTIES

1. Plaintiff Marc Davila is and, at all times, relevant to the matters alleged herein,
has been over the age of 18 and a resident of Los Angeles County.

1 2. Plaintiff Madeleine Grant is and, at all times, relevant to the matters alleged herein,
2 has been over the age of 18 and a resident of Los Angeles County.

3 3. Plaintiffs are informed and believe and allege that Defendant West Coast Tanning
4 dba Palm Beach Tan (“Palm Beach Tan” or “Defendant”) is a corporation organized pursuant to
5 the laws of the State of California, authorized to do business in California, and is doing business
6 in California.

7 4. Plaintiffs are ignorant of the true names and capacities of the defendants sued
8 herein as DOES 1 through 100, inclusive, and therefore, Plaintiffs sue these defendants by such
9 fictitious names and capacities. Plaintiffs will amend their Complaint to show their true names
10 and capacities when they have been ascertained. Plaintiffs are informed and believe and thereon
11 alleges that at all times relevant, each of these fictitiously named DOE Defendants was a person
12 who owned, controlled, or managed the business for which Plaintiffs worked and/or who directly
13 or indirectly exercised operational control over the wages, hours, and working conditions of
14 Plaintiffs. These DOE Defendants held ownership, officer, director and/or executive positions
15 with the remaining Defendants, and acted on behalf of the remaining Defendants, which included
16 decision-making responsibility for, and establishment of, illegal Private Attorney General Act
17 (“PAGA”) violations for Defendants which have damaged Plaintiffs. Therefore, Defendants are
18 “employers” as a matter of law and personally liable for the causes of action alleged herein
19 pursuant to California wage and hour laws and regulations as alleged herein.

20 5. Plaintiffs are informed and believe and thereon allege that at least some of the
21 Defendant DOES 1 through 100 are, and at all times relevant hereto were, persons, corporations
22 or other business entities organized and existing under and by virtue of the laws of the State of
23 California, and are/were qualified to transact and conduct business in the State of California, and
24 did transact and conduct business in the State of California, and are thus subject to the jurisdiction
25 of the State of California. Specifically, said DOES 1 through 100 maintain offices, operate
26 businesses, employ persons, conduct business in, and illegally pay employees by illegal payroll
27 practices and policies in the County of Riverside.

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1 6. Plaintiffs are informed and believe and thereon allege that at all times relevant
2 herein, Defendants and some of DOES 1 through 100 were the agents, employees, and/or
3 servants, masters, or employers of the remaining DOES 1 through 100, and in doing the things
4 herein alleged, were acting within the course and scope of such agency or employment, and with
5 the approval and ratification of each of the other Defendants.

6 7. Plaintiffs are informed and believe and thereon allege that at all times relevant,
7 Employers established the wages, hours and other terms and conditions of Plaintiffs employment
8 to such a degree that Plaintiffs were their employees.

9 8. An employer or other person acting on behalf of an employer who violates, or
10 causes to be violated, a provision regulating minimum wages or hours and days of work in an
11 order of the Industrial Welfare Commission may be held liable as the employer for that violation.
12 (Lab. Code §558.1(a).) The term “other person acting on behalf of an employer” is limited to a
13 natural person who is an owner, director, officer, or managing agent of the employer, and the
14 term “managing agent” has the same meaning as in C.C.P. §3294(b). (Lab. Code. §558.1(b).)

15 9. Plaintiffs are further informed and believe, and thereon allege, that each of the
16 fictitiously named Defendants aided and assisted the named Defendant in committing the
17 wrongful acts alleged herein and that Plaintiffs’ damages were proximately caused by each.

18 10. Pursuant to the California Labor Code, the Plaintiffs filed a notice with the Labor
19 and Workforce Development Agency (LWDA) of their intent to pursue claims against
20 the Defendant under the Private Attorney General Act (PAGA). More than 65 days have passed,
21 and Plaintiffs’ counsel has not received any notice from the LWDA stating an intention to
22 prosecute Plaintiffs’ PAGA claims. Plaintiffs have, therefore, complied with the administrative
23 exhaustion requirements of PAGA and, therefore, now submit this Amended Complaint.

24 **II. JURISDICTION AND VENUE**

25 11. This Court has jurisdiction over this First Amended Complaint under Code of
26 Civil Procedure § 410.10. This action is brought under *Code of Civil Procedure* § 382.

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12. Venue is proper in this county under Code of Civil Procedure § 395 and 395.5 because the claims made and the Labor Code violations against the persons identified hearing occurred in the County of Riverside and because Defendant owned and operated their business in the County of Riverside.

III. FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

13. At all times material hereto, Plaintiffs have been and are Tanning/Sales Consultants that checked clients in for their appointments and solicited them to sign up for memberships.

14. The employment by the Defendant of the Plaintiffs, and each of them, is governed by Industrial Welfare Commission Wage Order 2, which covers those persons employed in the personal service industry.

15. Starting on or about January 8, 2023, and continuing to July 26, 2023, Defendant employed Mr. Davila on an hourly basis as a Tanning/Sales Consultant at its location in West Hollywood, California. During his employment with Defendant, Mr. Davila earned \$18.00 per hour.

16. Starting on or about November 7, 2022, and continuing to August 1, 2023, Defendant employed Ms. Grant on an hourly basis as a Tanning/Sales Consultant at its location in West Hollywood, California. During her employment with Defendant, Ms. Grant earned \$18.00 per hour.

17. Throughout their employment with Defendant, Plaintiffs were subjected to multiple PAGA violations. These violations included the following:

- a. Plaintiffs were required to regularly perform compensable tasks post-shift-off-the-clock for which they did not receive any compensation. Specifically, about two times per week, Plaintiffs were required to work off the clock for approximately 30 minutes after clocking out when their manager(s) told them they were required to work a double shift. As a result, and because they improperly treated such post-shift activities as non-compensable, Defendant failed to compensate Plaintiffs for such time.

- 1 b. At all times during their employment, Plaintiffs routinely worked schedules
2 such that they were due pay at overtime rates. During this period, it was the
3 practice and policy of Defendant not to pay Plaintiffs overtime wages. Monies
4 for unpaid overtime remain due and owing.
- 5 c. It was the practice and policy of Defendant to pay Plaintiffs less than minimum
6 wage rates due to off-the-clock work and the lack of proper meal/rest breaks.
7 Monies for these underpaid amounts remain due and owing.
- 8 d. Plaintiffs were routinely not afforded proper meal breaks. Meal breaks were
9 routinely interrupted and/or not afforded. Further, on days when Plaintiffs
10 worked 10–12-hour shifts, they were not afforded second meal breaks.
- 11 e. Plaintiffs were routinely not afforded proper rest breaks. At times, Plaintiffs
12 had to work during their rest periods. On days when Plaintiffs worked between
13 10-12 hours, they were not afforded third rest breaks.
- 14 f. As a result of Defendant’s failure to pay Plaintiffs their required overtime
15 wages, minimum wages and failure to afford meal/rest breaks and sick pay,
16 the wage statements issued to the Plaintiffs did not comply with *Labor Code*
17 §226 and California Industrial Welfare Commission (“IWC”) Wage Order 2
18 in that they did not accurately reflect all wages earned and due and owing.
- 19 g. Plaintiffs’ paystubs showed they had 24 hours of sick pay available; however,
20 they were never paid sick pay.
- 21 h. As a further result of Defendant’s failure to pay Plaintiffs at required overtime
22 wage rates due to off-the-clock work, minimum wages, meal/rest breaks not
23 properly afforded, they were not provided with sick pay, when the Plaintiffs
24 left their employ, they were not timely paid all wages due them, as required
25 by Labor Code §§ 201, 202 and Wage Order 2. Further, it was the practice of
26 Defendant not to pay Plaintiffs the final paychecks within the time periods
27 mandated by Labor Code §§201, 202 and Wage Order 2.

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- i. Defendant failed to reimburse Plaintiffs for their necessary business expenses, such as cell phone use and purchases of snacks and water.
- j. Plaintiffs worked at the front desk and were not provided a seat to perform their jobs. Plaintiffs' manager took away the chairs that were at the front desk and told Plaintiffs that it was "unprofessional" for them to sit.
- k. Defendant failed to allow Plaintiffs to timely inspect their personnel records and payroll file.

FIRST CAUSE OF ACTION

(Damages Pursuant to Private Attorney General Act Against Employers)

18. Plaintiffs reallege and incorporate by reference all of the allegations set forth in this Amended Complaint.

19. As alleged above, during their employment with the Defendant, the Plaintiffs were subjected to multiple PAGA violations. These violations include the Defendant's systematic failure to pay overtime and minimum wages, to issue accurate wage statements, to pay all wages due on termination, to reimburse business expenses, to provide a uniform maintenance allowance, to provide suitable seating, to pay sick pay, and to allow inspection of employment records.

20. Plaintiffs, pursuant to California Labor Code §§2699, et seq., by and through their attorneys, uploaded a Private Attorney General Act ("PAGA") claim to the State of California Labor and Workforce Development Agency ("LWDA") and sent a letter via Certified Mail Return Receipt Requested to the defendant.

21. More than 65 days have passed since the above letter, and Plaintiffs' counsel has not received any notice from the LWDA stating an intention to prosecute Plaintiffs' PAGA claims.

22. Plaintiffs have, therefore, complied with the administrative exhaustion requirements of PAGA.

23. Plaintiffs seek Labor Code penalties, attorney's fees, and costs, in an amount according to proof at trial, as provided by the Labor Code Private Attorney General Act.

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1 **IV. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment in his favor
3 and against Defendant as follows:

- 4 1. For civil penalties for each violation of the Labor Code pursuant to Cal. Labor
5 Code §§ 203, 226(e), 226.7, 248.5, 1194.2, 17200, 248.5, 2699;
- 6 2. For compensatory damages in an amount according to proof at the time of trial;
- 7 3. For reasonable costs, including attorneys' fees, in an amount according to proof
8 pursuant to Cal. Labor Code § 2699(g);
- 9 4. For pre – and post-judgment interest in an amount according to proof at the time
10 of trial;
- 11 5. For Declaratory relief finding that the Defendant violated the law as alleged; and
- 12 6. For such other and further relief as the Court deems just and proper.

13 **V. DEMAND FOR JURY TRIAL**

14 Plaintiffs Marc Davila and Madeleine Grant hereby respectfully request a trial by jury for
15 all claims and issues raised in this Amended Complaint that may be entitled to a jury trial.

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18 Date: October 22, 2024

LIPELES LAW GROUP, APC

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20 By: _____


Jasmine J. Badawi
Attorneys for Plaintiffs,
MARC DAVILA and MADELEINE GRANT

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On this date hereon, I served a true copy of the following document(s):

☐ by personally delivering it to the person(s) indicated below in the manner as provided by Rule of the California Rules of Civil Procedure;

☐ by transmitting it via facsimile machine to a telephone number listed below and known or represented to me to be the receiving telephone number for the facsimile copy transmission of the parties/persons/firms listed below;

☒ by transmitting it via electronically to the electronic mail address listed below;

☐ by overnight delivery service to be delivered the next day to the parties/firms listed below;

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Nicole Bathon
Nicole Bathon