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individually and on behalf of all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

DAVID YOUNG, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

LOS ALAMITOS FISH COMPANY, A
CALIFORNIA LIMITED PARTNERSHIP;
and DOES 1 through 20, inclusive,

Defendant.

Case No. 30-2020-01176500-CU-OE-CXC

**FIRST AMENDED COMPLAINT FOR
VIOLATION OF THE CALIFORNIA
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (CAL. LAB. CODE
§§ 2698, *ET SEQ.*) AND FOR:**

1. Failure to Provide Meal Periods;
2. Failure to Permit Rest Breaks;
3. Failure to Pay All Wages Due Upon
Separation of Employment; and

1 Plaintiff David Young, individually and on behalf of aggrieved employees and others
2 similarly situated, alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff David Young (“Plaintiff”) brings this representative and putative class
5 action against defendant Los Alamitos Fish Company, A California Limited Partnership; and
6 DOES 1 through 20, inclusive (collectively, “Defendant”), on behalf of himself individually
7 and a putative class of non-exempt employees employed by Defendant throughout California.

8 2. Defendant is in the business of operating restaurants.

9 3. Through this action, Plaintiff alleges that Defendant has engaged in a systematic
10 pattern of wage and hour violations under the California Labor Code and Industrial Welfare
11 Commission (“IWC”) Wage Orders, all of which contribute to Defendant’s deliberate unfair
12 competition.

13 4. Plaintiff is informed and believes, and thereon alleges, that Defendant has
14 increased their profits by violating state wage and hour laws by, among other things:

- 15 (a) Failing to provide meal periods or compensation in lieu thereof;
16 (b) Failing to authorize or permit rest breaks or provide compensation in lieu thereof;
17 (c) Failing to provide accurate itemized wage statements; and
18 (d) Failing to pay all wages due upon separation of employment.

19 5. Plaintiff brings this lawsuit seeking monetary relief against Defendant on behalf
20 of himself, aggrieved employees, and all others similarly situated in California to recover,
21 among other things, civil penalties pursuant to Labor Code §§ 2698 *et seq.*, interest, attorneys’
22 fees, costs and expenses, unpaid wages, and penalties pursuant to Labor Code §§ 201-203, 204,
23 210, 226.7.

24 **JURISDICTION AND VENUE**

25 6. This is a representative action pursuant to Private Attorneys General Act of 2004
26 (Cal. Lab. Code §§ 2698, *et seq.*) (“PAGA”), and a class action, pursuant to California Code of
27 Civil Procedure § 382. The civil penalties and monetary damages sought by Plaintiff exceeds
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1 the minimal jurisdictional limits of the Superior Court and will be established according to
2 proof at trial.

3 7. This Court has jurisdiction over this action pursuant to the California
4 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all
5 causes except those given by statutes to other courts. The statutes under which this action is
6 brought do not specify any other basis for jurisdiction.

7 8. This Court has jurisdiction over all Defendant because, upon information and
8 belief, they are citizens of California, have sufficient minimum contacts in California or
9 otherwise intentionally avail themselves of the California market so as to render the exercise of
10 jurisdiction over them by the California courts consistent with traditional notions of fair play
11 and substantial justice.

12 9. Venue is proper in this Court because, upon information and belief, Defendant
13 resides, transacts business or has offices in this county, or the acts and omissions alleged herein
14 took place in this county.

15 **THE PARTIES**

16 10. Plaintiff is a citizen of California. Plaintiff was employed by Defendant during
17 the Class Period in California.

18 11. Plaintiff is informed and believes, and thereon alleges, that Defendant at all
19 times hereinafter mentioned, were and are employers as defined in and subject to the Labor
20 Code and IWC Wage Orders, whose employees were and are engaged throughout this county
21 and the State of California.

22 12. Plaintiff is unaware of the true names or capacities of the defendant sued herein
23 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
24 Complaint and serve such fictitiously named defendant once their names and capacities become
25 known.

26 13. Plaintiff is informed and believes, and thereon alleges, that each defendant acted
27 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
28 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant

1 are legally attributable to the other defendant. Furthermore, defendant in all respects acted as
2 the employer and/or joint employer of Plaintiff and the class members.

3 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the
4 acts and omissions alleged herein were performed by, or are attributable to, Defendant and/or
5 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
6 the other's behalf. The acts of any and all Defendant were in accordance with, and represent,
7 the official policy of Defendant.

8 15. At all relevant times, Defendant, and each of them, acted within the scope of
9 such agency or employment, or ratified each and every act or omission complained of herein.
10 At all relevant times, Defendant, and each of them, aided and abetted the acts and omissions of
11 each and all the other Defendant in proximately causing the damages herein alleged.

12 16. Plaintiff is informed and believes, and thereon alleges, that each of said
13 Defendant is in some manner intentionally, negligently or otherwise responsible for the acts,
14 omissions, occurrences and transactions alleged herein.

15 **CLASS ACTION ALLEGATIONS**

16 17. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
17 himself and all others similarly situated who were affected by Defendant's Labor Code and
18 IWC Wage Order violations.

19 18. All claims alleged herein arise under California law for which Plaintiff seeks
20 relief authorized by California law.

21 19. Plaintiff's proposed Class consists of and is defined as follows:

22 Class

23 All California citizens currently or formerly employed as non-exempt
24 employees by Defendant in the State of California at any time between July 5,
2017¹ and the date of class certification.

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27 ¹ The statute of limitations for this matter was tolled between April 6, 2020 and October 1, 2020
28 pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

1 20. Plaintiff also seeks to certify the following Subclass of employees:

2 Waiting Time Subclass

3 All members of the Class who separated their employment from Defendant at
4 any time between July 5, 2017 and the date of class certification.

5 21. Members of the Class and Subclass described above will be collectively referred
6 to as “class members.” Plaintiff reserves the right to establish other or additional subclasses, or
7 modify any Class or Subclass definition, as appropriate based on investigation, discovery and
8 specific theories of liability.

9 22. This action has been brought and may properly be maintained as a class action
10 under the California Code of Civil Procedure § 382 because there are common questions of law
11 and fact as to the Class that predominate over questions affecting only individual members
12 including, but not limited to:

- 13 (a) Whether Defendant deprived Plaintiff and class members of timely meal periods;
14 (b) Whether Defendant deprived Plaintiff and class members of rest breaks; and
15 (c) Whether Defendant failed to timely pay Plaintiff and former class members all
16 wages due upon termination or within 72 hours of resignation;

17 23. There is a well-defined community of interest in this litigation and the Class is
18 readily ascertainable:

19 (a) Numerosity: The members of the Class are so numerous that joinder of
20 all members is impractical. Although the members of the Class are
21 unknown to Plaintiff at this time, on information and belief, the Class is
22 estimated to be greater than 100 individuals. The identity of the class
23 members are readily ascertainable by inspection of Defendant’s
24 employment and payroll records.

25 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
26 claims (or defenses, if any) of the Class because Defendant’s failure to
27 comply with the provisions of California wage and hour laws entitled
28 each class member to similar pay, benefits and other relief. The injuries
 sustained by Plaintiff are also typical of the injuries sustained by the

1 Class because they arise out of and are caused by Defendant's common
2 course of conduct as alleged herein.

3 (c) Adequacy: Plaintiff is qualified to, and will fairly and adequately
4 represent and protect the interests of all members of the Class because it
5 is in his best interest to prosecute the claims alleged herein to obtain full
6 compensation and penalties due to him and the Class. Plaintiff's
7 attorneys, as proposed class counsel, are competent and experienced in
8 litigating large employment class actions and are versed in the rules
9 governing class action discovery, certification and settlement. Plaintiff
10 has incurred and, throughout the duration of this action, will continue to
11 incur attorneys' fees and costs that have been and will be necessarily
12 expended for the prosecution of this action for the substantial benefit of
13 each class member.

14 (d) Superiority: The nature of this action makes the use of class action
15 adjudication superior to other methods. A class action will achieve
16 economies of time, effort and expense as compared with separate
17 lawsuits, and will avoid inconsistent outcomes because the same issues
18 can be adjudicated in the same manner and at the same time for each
19 Class. If appropriate this Court can, and is empowered to, fashion
20 methods to efficiently manage this case as a class action.

21 (e) Public Policy Considerations: Employers in the State of California and
22 other states violate employment and labor laws every day. Current
23 employees are often afraid to assert their rights out of fear of direct or
24 indirect retaliation. Former employees are fearful of bringing actions
25 because they believe their former employers might damage their future
26 endeavors through negative references and/or other means. Class actions
27 provide the class members who are not named in the complaint with a
28

1 type of anonymity that allows for the vindication of their rights at the
2 same time as affording them privacy protections.

3 **GENERAL ALLEGATIONS**

4 24. At all relevant times mentioned herein, Defendant employed Plaintiff and other
5 persons as non-exempt employees.

6 25. Plaintiff was employed in a non-exempt position at Defendant's California
7 business location(s).

8 26. Defendant continues to employ non-exempt employees within California.

9 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
10 mentioned, Defendant was advised by skilled lawyers, employees and other professionals who
11 were knowledgeable about California's wage and hour laws, employment and personnel
12 practices and the requirements of California law.

13 28. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
14 should have known that Plaintiff, other aggrieved employees, and class members were entitled
15 to receive all required meal periods or payment of one (1) additional hour of wages at Plaintiff,
16 other aggrieved employees, and class members' regular rate of pay when they did not receive a
17 timely meal period. In violation of the Labor Code and IWC Wage Orders, Plaintiff, other
18 aggrieved employees, and class members did not receive all timely meal periods or payment of
19 one (1) additional hour of wages at Plaintiff, other aggrieved employees, and class members'
20 regular rate of pay when they did not receive a timely meal period.

21 29. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
22 should have known that Plaintiff, other aggrieved employees, and class members were entitled
23 to receive all rest breaks or payment of one (1) additional hour of wages at Plaintiff, other
24 aggrieved employees, and class members' regular rate of pay when a rest break was missed. In
25 violation of the Labor Code and IWC Wage Orders, Plaintiff, other aggrieved employees, and
26 class members did not receive all rest breaks or payment of one (1) additional hour of wages at
27 Plaintiff, other aggrieved employees, and class members' regular rate of pay when a rest break
28 was missed.

30. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or should have known that Plaintiff, other aggrieved employees, and Waiting Time Subclass members were entitled to timely payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff, other aggrieved employees, and Waiting Time Subclass members did not receive payment of all wages within permissible time periods.

31. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or should have known they had a duty to compensate Plaintiff, other aggrieved employees, and class members, and Defendant had the financial ability to pay such compensation but willfully, knowingly and intentionally failed to do so all in order to increase Defendant's profits.

FIRST CAUSE OF ACTION

ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. (“PAGA”)

32. Plaintiff re-alleges and incorporates by reference the previous paragraphs as though fully set forth herein.

33. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

34. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code § 2699(f) imposes upon Defendants a civil penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent pay period in which Defendants violated these provisions of the Labor Code.

35. Defendants' conduct violates numerous Labor Code sections, including, but not limited to, the following:

- 1 (a) violation of Labor Code §§ 201-203, 204, 558, and 1198 for failure to timely
2 pay all earned wages owed to Plaintiff and other aggrieved employees during
3 employment and upon separation of employment as herein alleged;
- 4 (b) violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
5 Plaintiff and other aggrieved employees and failure to pay premium wages for
6 missed meal periods as herein alleged;
- 7 (c) violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and
8 other aggrieved employees and failure to pay premium wages for missed rest
9 periods as herein alleged;
- 10 (d) violation of Labor Code § 226 for failure to provide accurate itemized wage
11 statements to Plaintiff and other aggrieved employees as herein alleged; and
- 12 (e) violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and
13 complete records showing, among other things, the hours worked daily and the
14 wages paid to Plaintiff and other aggrieved employees.

15 36. Plaintiff is an “aggrieved employee” because she was employed by the alleged
16 violator and had one or more of the violations committed against her, and therefore is properly
17 suited to represent the interests of all other aggrieved employees.

18 37. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3
19 as to Defendants and is therefore able to pursue a claim for penalties on behalf of herself and
20 all other aggrieved employees under PAGA.

21 38. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
22 recover civil penalties in addition to other remedies, for violation of the Labor Code sections
23 cited above.

24 39. For bringing this action, Plaintiff is entitled to attorneys’ fees and costs incurred
25 herein.

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48. Labor Code § 226.7(a) provides that no employer shall require an employee to work during any rest period mandated by the IWC Wage Orders.

49. Section 12 of the applicable IWC Wage Order states “every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and the “authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

50. During the relevant time period, Plaintiff and class members did not receive a ten (10) minute rest period for every four (4) hours or major fraction thereof worked.

51. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires an employer to pay an employee one additional hour of wages at the employee's regular rate of compensation for each work day that the rest period is not provided.

52. At all relevant times, Defendant failed to pay Plaintiff and class members rest period premiums for rest period violations pursuant to Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order.

53. As a result of Defendant's failure to pay Plaintiff and class members an additional hour of wages for each day a rest period was not provided, Plaintiff and class members suffered and continue to suffer a loss of wages and compensation.

FOURTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT

AND WITHIN THE REQUIRED TIME

(Violation of Labor Code §§ 201, 202 and 203)

54. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

55. California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his employment, his wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee

1 has given seventy-two (72) hours previous notice of his intention to quit, in which case the
2 employee is entitled to his wages at the time of quitting.

3 56. During the relevant time period, Defendant willfully failed to pay Plaintiff and
4 Waiting Time Subclass members all their earned wages upon termination including, but not
5 limited to, proper minimum wages and overtime compensation, either at the time of discharge
6 or within seventy-two (72) hours of their leaving Defendant's employ.

7 57. Defendant's failure to pay Plaintiff and Waiting Time Subclass members all
8 their earned wages at the time of discharge or within seventy-two (72) hours of their leaving
9 Defendant's employ is in violation of Labor Code §§ 201 and 202.

10 58. California Labor Code § 203 provides that if an employer willfully fails to pay
11 wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201
12 and 202, then the wages of the employee shall continue as a penalty from the due date at the
13 same rate until paid or until an action is commenced; but the wages shall not continue for more
14 than thirty (30) days.

15 59. Plaintiff and Waiting Time Subclass members are entitled to recover from
16 Defendant the statutory penalty which is defined as Plaintiff's and Waiting Time Subclass
17 members' regular daily wages for each day they were not paid, at their regular hourly rate of
18 pay, up to a thirty (30) day maximum pursuant to Labor Code § 203.

19 **PRAYER FOR RELIEF**

20 Plaintiff, on his own behalf and on behalf of other aggrieved employees and all others
21 similarly situated, prays for relief and judgment against Defendant, jointly and severally, as
22 follows:

23 1. For civil penalties against Defendants on behalf of all aggrieved employees and
24 the LWDA pursuant to Labor Code § 2698, *et seq.*;

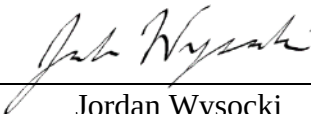
25 2. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
26 law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code § 2698 *et*
27 *seq.*;

- 1 3. For certification of this action as a class action, including certifying the Class
2 and Subclass alleged by Plaintiff;
- 3 4. For appointment of David Young as the class representative;
- 4 5. For appointment of Aegis Law Firm, PC as class counsel for all purposes;
- 5 6. For reasonable attorneys' fees, costs of suit and interest to the extent permitted
6 by law, including pursuant to Code of Civil Procedure § 1021.5 and Labor Code § 226(e);
- 7 7. For statutory penalties to the extent permitted by law, including those pursuant
8 to the Labor Code and IWC Wage Orders;
- 9 8. For an award of damages in the amount of unpaid compensation for unpaid
10 wages, including interest thereon;
- 11 9. For pre-judgment interest; and
- 12 10. For such other relief as the Court deems just and proper.

13
14 Dated: May 7, 2021

AEGIS LAW FIRM, PC

15
16 By: _____



Jordan Wysocki
Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
4 my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

5 On May 21, 2021, I served the foregoing document entitled:

- 6 • **FIRST AMENDED COMPLAINT FOR VIOLATION OF THE CALIFORNIA
7 LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (CAL. LAB.
8 CODE §§ 2698, ET SEQ.)**

9 on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true
10 copy thereof on the party(ies) addressed below as follows:

11 Ricardo Rozen
12 RAINES FELDMAN LLP
13 1800 Avenue of the Stars,
14 Los Angeles, CA 90067
15 Telephone: 310.440.4100
16 rrozen@raineslaw.com
17 bschroeder@raineslaw.com
18 jtran@raineslaw.com

19 *Attorneys for Defendant:*

20 LOS ALAMITOS FISH COMPANY, A CALIFORNIA LIMITED PARTNERSHIP

21 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
22 correspondence for mailing. Under that practice it would be deposited with the U.S.
23 Postal Service on that same day with postage thereon fully prepaid at Irvine, California
24 in the ordinary course of business. I am aware that on motion of the party served, service
25 is presumed invalid if postage cancellation date or postage meter date is more than one
26 day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed.*
27 *R. Civ. Proc.* 5(a); *Fed. R. Civ. Proc.* 5(c).)

28 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
practice of Aegis Law Firm PC for collection and processing correspondence for
overnight delivery, and I caused such document(s) described herein to be deposited for
delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
electronic transmission via the above listed email addresses on the date below. (*Cal.*
Code Civ. Proc. § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to
the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.*
5(b)(2)(A).)

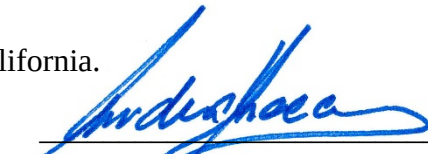
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1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed on May 21, 2021, at Irvine, California.

4 
Andrea Drocco