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Attorneys for Plaintiff Sergio Palicio, individually,
and on behalf of all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

SERGIO PALICIO, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

POLLY’S, INC.; POLLY’S PIES, INC.;
POLLY’S GOURMET COFFEE, INC.;
KENTUCKY FRIED CHICKEN OF
POLLY’S, INC.; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 21STCV11093

Assigned for All Purposes to:
Hon. Carolyn B. Kuhl
Dept. 12

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

FILED
Superior Court of California
County of Los Angeles
06/22/2021
Sherri R. Carter, Executive Officer / Clerk of Court
By: S. Brown Deputy

1 Plaintiff Sergio Palicio, individually, and on behalf of others similarly situated, alleges
2 as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Sergio Palicio (“Plaintiff”) brings this representative action pursuant to
5 California Code of Civil Procedure section 382, against defendants Polly’s, Inc., Polly’s Pies,
6 Inc., Polly’s Gourmet Coffee, Inc., and Kentucky Fried Chicken of Polly’s, Inc, and DOES 1
7 through 20, inclusive (collectively, “Defendants”), on behalf of himself individually and other
8 aggrieved employees who are and were employed by Defendants as non-exempt employees
9 throughout California.

10 2. Defendants are in the business of owning and operating restaurants.

11 3. Plaintiff is informed and believes, and thereon alleges, that Defendants have
12 increased their profits by violating state wage and hour laws by, among other things:

13 (a) failing to pay all wages (including minimum wages and overtime
14 wages);

15 (b) failing to provide lawful meal periods or compensation in lieu thereof;

16 (c) failing to authorize or permit lawful rest breaks or provide compensation
17 in lieu thereof;

18 (d) failing to provide accurate itemized wage statements;

19 (e) failing to pay all wages due upon separation of employment.

20 4. Plaintiff seeks monetary relief against Defendants on behalf of himself and all
21 others aggrieved employees in California to recover, among other things attorneys’ fees, costs
22 and expenses, and penalties pursuant to Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3,
23 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and Code of
24 California Civil Procedure § 1021.5.

25 **JURISDICTION AND VENUE**

26 5. This is a representative action pursuant to Private Attorneys General Act of 2004
27 (Cal. Lab. Code §§ 2698, *et seq.*)(“PAGA”). The civil penalties sought by Plaintiff exceeds the
28

1 minimal jurisdictional limits of the Superior Court and will be established according to proof at
2 trial.

3 6. 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 7. This Court has jurisdiction over all Defendants 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 **THE PARTIES**

13 8. Plaintiff is a resident of California and worked for Defendants in California
14 during the relevant time periods as alleged herein.

15 9. Plaintiff is informed and believes, and thereon alleges that at all times
16 hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage
17 Orders as employers, whose employees were and are engaged throughout this county and the
18 State of California.

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

23 11. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20
24 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants
25 at all relevant times.

26 12. 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

are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the employer and/or joint employer of Plaintiff and other aggrieved employees.

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

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

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

GENERAL ALLEGATIONS

16. At all relevant times mentioned herein, Defendants employed Plaintiff and other California residents as non-exempt employees at Defendants' California business location(s).

17. Defendant employed Plaintiff as a non-exempt employee at Defendants' California business location.

18. Defendants continue to employ non-exempt employees within California.

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

20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other aggrieved employees were entitled to receive wages for all time worked (including minimum wages and overtime wages) and that they were not receiving all wages earned for work that was required to be performed. In violation of the

1 Labor Code and IWC Wage Orders, Plaintiff and other aggrieved employees were not paid all
2 wages (including minimum wages and overtime wages) for all hours worked at the correct rate
3 due to requirements to work off-the-clock, among other issues.

4 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other aggrieved employees were entitled to receive all
6 required meal periods or payment of one (1) additional hour of pay at Plaintiff's and other
7 aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted
8 meal period. In violation of the Labor Code and IWC Wage Orders, Plaintiff and other
9 aggrieved employees did not receive all meal periods or payment of one (1) additional hour of
10 pay at Plaintiff's and other aggrieved employees' regular rate of pay when they did not receive
11 a timely, uninterrupted meal period.

12 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and other aggrieved employees were entitled to receive all rest
14 breaks or payment of one (1) additional hour of pay at Plaintiff's and other aggrieved
15 employees' regular rate of pay when a rest break was missed. In violation of the Labor Code
16 and IWC Wage Orders, Plaintiff and other aggrieved employees did not receive all rest breaks
17 or payment of one (1) additional hour of pay at Plaintiff's and other aggrieved employees'
18 regular rate of pay when a rest break was missed.

19 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and other aggrieved employees were entitled to receive
21 itemized wage statements that accurately showed the following information pursuant to the
22 Labor Code: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of
23 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate
24 basis; (4) all deductions, provided that all deductions made on written orders of the employee
25 may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the
26 period for which the employee is paid; (7) the name of the employee and only the last four
27 digits of his or her social security number or an employee identification number other than a
28 social security number; (8) the name and address of the legal entity that is the employer; and

1 (9) all applicable hourly rates in effect during the pay period and the corresponding number of
2 hours worked at each hourly rate by the employee. In violation of the Labor Code, Plaintiff and
3 other aggrieved employees were not provided with accurate itemized wage statements.

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

8 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known they had a duty to compensate Plaintiff and other aggrieved employees, and
10 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
11 intentionally failed to do so in order to increase Defendants' profits.

12 26. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
13 against Defendants on behalf of himself and all other aggrieved employees to recover, among
14 other things, unpaid wages (including minimum wages and overtime wages), unpaid meal
15 period premium payments, unpaid rest period premium payments, interest, attorneys' fees,
16 penalties, costs, and expenses.

17 **FIRST CAUSE OF ACTION**

18 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

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

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

27 29. For all provisions of the Labor Code except those for which a civil penalty is
28 specifically provided, Labor Code § 2699(f) imposes upon Defendants a civil penalty of one

1 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
2 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent pay
3 period in which Defendants violated these provisions of the Labor Code.

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

6 (a) violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 1182.12, 1194, 1194.2,
7 1197, and 1198 for failure to timely pay all earned wages (including overtime wages)
8 owed to Plaintiff and other aggrieved employees during employment and upon
9 separation of employment as herein alleged;

10 (b) violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
11 Plaintiff and other aggrieved employees and failure to pay premium wages for missed
12 meal periods as herein alleged;

13 (c) violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and
14 other aggrieved employees and failure to pay premium wages for missed rest periods as
15 herein alleged;

16 (d) violation of Labor Code § 226 for failure to provide accurate itemized wage
17 statements to Plaintiff and other aggrieved employees as herein alleged; and

18 (e) violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and
19 complete records showing, among other things, the hours worked daily and the wages
20 paid to aggrieved employees.

21 31. Plaintiff is an "aggrieved employee" because he was employed by the alleged
22 violator and had one or more of the violations committed against him, and therefore is properly
23 suited to represent the interests of all other aggrieved employees.

24 32. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3
25 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and
26 all other aggrieved employees under PAGA.
27
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33. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties in addition to other remedies, for violation of the Labor Code sections cited above.

34. For bringing this action, Plaintiff is entitled to attorneys' fees and costs incurred herein.

PRAYER FOR RELIEF

Plaintiff, on his own behalf and on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

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

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

3. For such other relief as the Court deems just and proper.

Dated: June 11, 2021

AEGIS LAW FIRM, PC

By:

Kristy Acordy

Kristy R. Connolly

Attorneys for Plaintiff Sergio Palicio

CERTIFICATE OF SERVICE

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

On June 11, 2021, I served the foregoing document entitled:

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

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

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

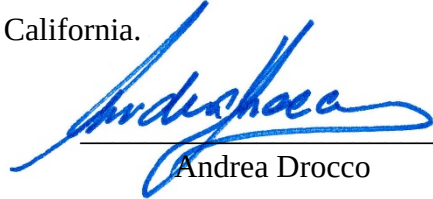
☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business practice of Aegis Law Firm PC for collection and processing correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained Federal Express 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 Case Anywhere 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).)

1 ☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to
2 the addressed named above. (*Cal Code Civ. Proc. § 1011; Fed. R. Civ. Proc.*
3 *5(b)(2)(A).*)

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

6 Executed on June 11, 2021, at Irvine, California.

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8 _____
9 Andrea Drocco
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