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RICARDO PANTOJA, on behalf of himself and all others similarly situated,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

RICARDO PANTOJA, on behalf of himself and
all others similarly situated;

Plaintiff,

v.

SOUTH BAY SAFETY, INC., a California
Corporation; ACME FURNITURE INDUSTRY,
INC., a California Corporation, and DOES 1
through 50 inclusive,

Defendants.

Case No.: 21STCV38848

*Assigned to the Hon. Carolyn B. Kuhl, Dept.
SS12*

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR DAMAGES**

1. Failure to Pay Minimum Wage and Overtime Wages;
2. Failure to Provide Meal Periods;
3. Failure to Provide Rest Periods;
4. Failure to Provide Accurate Wage Statements;
5. Failure to Pay Wages Upon Ending Employment;
6. Unfair Competition (Business and Professions Code § 17200 *et seq.*); and
7. Civil Penalties Pursuant to Labor Code § 2698 *et seq.* for Violations of Labor Code §§ 201-202, 226(a), 226.7, 510, 512, 1174, 1174.5, and 1194 and Pursuant to Labor Code § 2699(a) for Violations of Labor Code §§ 226.3 and 558

DEMAND FOR JURY TRIAL

Complaint Filed: October 21, 2021

1 Plaintiff RICARDO PANTOJA (hereinafter “Plaintiff”), individually and on behalf of all others
2 similarly situated (the “Class” or “Plaintiff’s Class”), and on behalf of the general public, and as an
3 “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complains and
4 alleges as follows:

5 **I.**

6 **INTRODUCTION**

7 1. This is a class and representative action, pursuant to Code of Civil Procedure § 382 and
8 Labor Code § 2698 *et seq.*, on behalf of Plaintiff RICARDO PANTOJA and the class he seeks to
9 represent (“Plaintiff Class”), as defined herein, as all non-exempt employees employed by or formerly
10 employed by Defendant SOUTH BAY SAFETY, INC. (hereinafter “South Bay”) and Defendant ACME
11 FURNITURE INDUSTRY, INC. (hereinafter “ACME”). (South Bay and ACME are collectively
12 referred hereinafter as “Defendants”) The Plaintiff Class consists of all non-exempt employees employed
13 by or formerly employed by Defendants within the State of California who are California Citizens at the
14 time of the filing of this Complaint. The “Class Period” is defined as the four (4) years prior to the filing
15 of the Complaint through the date final judgment is entered. Plaintiff reserves the right to amend this
16 Complaint to reflect a different “Class Period” as further discovery is conducted.

17 2. Plaintiff individually, and on behalf the class he seeks to represent, seeks relief against
18 Defendants for (1) failure to pay all wages due, including minimum, regular, and overtime wages as a
19 result of Defendants’ policy of improperly paying its non-exempt hourly employees; (2) failure to
20 provide meal periods; (3) failure to provide rest periods; and (5) failure to provide accurate wage
21 statements. Plaintiff further seeks equitable remedies in the form of declaratory relief and relief under
22 Business and Professions Code section 17200 *et seq.* for unfair business practices.

23 3. Plaintiff, on behalf of himself and all aggrieved employees pursuant to Labor Code §
24 2698 *et seq.* seeks penalties for Defendants’ various violations of the California Labor Code.

25 4. At all relevant times herein, Defendants, have consistently maintained and enforced
26 against Plaintiff Class the unlawful practices and policies described herein.

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1 including minimum wage, overtime premium for overtime hours worked, failed to provide lawful meal
2 and rest periods or compensation in lieu thereof, failed to provide accurate itemized wage statements,
3 and failed to pay due and owing wages upon ending of employment for employees within California. On
4 information and belief and based thereon alleges that Defendant South Bay is conducting business in
5 good standing in California.

6 10. Plaintiff is informed and believes, and based thereon alleges that, Defendant ACME, is a
7 California Corporation doing business in the state of California and is and/or was the employer of the
8 Plaintiff and Plaintiff Class during the Class Period. During the liability period, Defendant employed
9 Plaintiff and similarly situated persons and failed to pay Plaintiff and Plaintiff Class for all hours worked
10 including minimum wage, overtime premium for overtime hours worked, failed to provide lawful meal
11 and rest periods or compensation in lieu thereof, failed to provide accurate itemized wage statements,
12 and failed to pay due and owing wages upon ending of employment for employees within California. On
13 information and belief and based thereon alleges that Defendant South Bay is conducting business in
14 good standing in California.

15 11. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation
16 in the conduct herein alleged, of the Defendants sued herein as DOES 1 through 50, inclusive, but on
17 information and belief allege that said Defendants are legally responsible for (1) failure to pay all wages
18 due; (2) failure to provide meal periods; (3) failure to provide rest periods; (4) failure to provide accurate
19 wage statements; and (6) failure to pay wages upon ending employment to Plaintiff and the Plaintiff Class
20 members by virtue of their unlawful practices, and therefore sue these Defendants by such fictitious
21 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE Defendant
22 when ascertained.

23 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
24 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,
25 business plan or policy in all respects pertinent hereto, and the acts of each Defendant legally attributable
26 to the other Defendant.

1 IV.

2 **GENERAL ALLEGATIONS**

3 13. California *Labor Code* § 1194 provides that notwithstanding any agreement to work for
4 a lesser wage, an employee receiving less than the legal overtime compensation is entitled to recover in
5 a civil action the unpaid balance of their overtime compensation, including interest thereon, reasonable
6 attorneys' fees, and costs of suit.

7 14. Further, *Business and Professions Code* § 17203 provides that any person who engages
8 in unfair competition may be enjoined in any court of competent jurisdiction. *Business and Professions*
9 *Code* § 17204 provides that any person who has suffered actual injury and has lost money or property as
10 a result of the unfair competition may bring an action in a court of competent jurisdiction.

11 15. During all, or a portion of the Class Period, Plaintiff and each member of the Plaintiff
12 Class was employed by Defendants and each of them, in the State of California. Plaintiff and each of the
13 Plaintiff Class members were non-exempt employees covered under one or more Industrial Welfare
14 Commission (IWC) Wage Orders, and *Labor Code* § 510, and/or other applicable wage orders,
15 regulations and statutes, and each Plaintiff Class member was not subject to an exemption for executive,
16 administrative and professional employees, which imposed obligations on the part of the Defendants to
17 pay Plaintiff and Plaintiff Class members lawful overtime compensation.

18 16. During the Class Period, Defendants were obligated to pay Plaintiff and Plaintiff Class
19 Members for all hours worked. Defendants were obligated to pay Plaintiff and Plaintiff Class Members
20 minimum wages and overtime compensation for all hours worked over eight (8) hours of work in one (1)
21 day or forty (40) hours in one (1) week and double-time for hours worked in excess of twelve (12) in one
22 day.

23 17. Plaintiff and each Class Member primarily performed non-exempt work in excess of the
24 maximum regular rate hours set by the IWC in the applicable Wage Orders, regulations or statutes, and
25 therefore entitled the Plaintiff and Plaintiff Class members to overtime compensation at time and a half
26 rate, and when applicable, double time rates as set forth by the applicable Wage Orders, regulations
27 and/or statutes.

28 18. During the Class Period, the Defendants and each of them, required the Plaintiff and Class
members to work under a "Rounding Policy" that is not fair and neutral and resulted, over a period of

1 time, in failure to compensate the employees properly for all the time they have actually worked, in
2 violation of the various applicable Wage Orders, regulations and statutes, and the Defendants: (1)
3 Willfully failed and refused, and continues to fail and refuse to pay compensation for all hours worked,
4 including minimum wage and lawful overtime compensation to the Plaintiff Class Members; and (2)
5 willfully failed and refused, and continues to fail and refuse to pay due and owing wages promptly upon
6 termination of employment to Plaintiff and Plaintiff Class Members.

7 19. During the Class Period, the Defendants and each of them, as a result of Defendants'
8 failure to provide Plaintiff and Plaintiff Class with all wages earned as described herein, also failed to
9 provide Plaintiff and Plaintiff with accurate itemized wage statements listing the accurate gross wages
10 earned, total hours worked, net wages earned, and all applicable hourly rates and the corresponding
11 number of hours worked at each hourly rate by the employee. Further, Defendants' listed address, 6347
12 Atlantic Ave., Bell, CA 90201, on Plaintiff's and his coworker's pay stubs instead of its legal address as
13 listed on its Statement of Information filed with the State of California, which is 1551 W Whittier Blvd.,
14 La Habra, CA 90631

15 20. During the Class Period, Defendants were obligated to provide Plaintiff and Plaintiff Class
16 with a timely work free meal and/or rest period(s). During the Class Period, Defendants, and each of
17 them failed and/or refused to schedule Plaintiff and Plaintiff Class in an overlapping manner so as to
18 reasonably provide lawful and timely meal and/or rest breaks and/or shift relief for Plaintiff and Plaintiff
19 Class, thereby causing members of the Plaintiff Class to work without being given paid ten (10) minute
20 rest periods for every four (4) hours or major fraction thereof worked and without being given a timely
21 thirty (30) minute meal period for shifts of at least five (5) hours and a second thirty (30) minute meal
22 period for shifts of at least ten (10) hours during which Plaintiff Class was relieved of all duties and free
23 to leave the premises. Defendants further failed and/or refused to schedule Plaintiff and Plaintiff Class
24 in an overlapping manner and/or provide shift relief for Plaintiff and Plaintiff Class so as to reasonably
25 ensure meal and/or rest breaks were taken within the required statutory time frame as required by law.
26 Furthermore, Defendants failed and/or refused to pay any Plaintiff Class one (1) hour's pay at the
27 employees' regular rate of pay as premium compensation for failure to provide lawful rest and/or meal
28 periods or to providing such rest and/or meal periods within the statutory time frame as a result of their
scheduling policy.

21. Class Members who ended their employment during the Class Period but were not paid the above due compensation for all hours worked, overtime compensation timely upon the termination of their employment as required by *Labor Code* §§ 201-203 and are entitled to penalties as provided by *Labor Code* § 203.

V.

CLASS ALLEGATIONS

22. Plaintiff brings this action on behalf of himself and all other similarly situated persons, as a class action pursuant to California Civil Code of Procedure section 382 on behalf of himself and all other similarly situated persons in the Class, which is composed of and defined as follows:

a. **Class 1: “Failure to Pay All Wages Due to Unlawful Rounding Policy”**

All current and former California hourly non-exempt employees who work or worked for Defendants during the Class Period to be determined and who were not paid all wages due to them, including but not limited to minimum and/or overtime wages as a result of Defendants requiring Plaintiff and Plaintiff Class under a “Rounding Policy” that is not fair and neutral and resulted, over a period of time, in failure to compensate non-exempt employees properly for all the time they have actually worked, thereby causing non-exempt employees to work without compensation for regular and overtime wages;

b. Class 2: "Failure to Provide Meal Periods"

All current and former California hourly non-exempt employees who work or worked for Defendants during the Class Period to be determined and who were not provided legally complaint meal periods;

c. Class 3: "Failure to Provide Rest Breaks"

All current and former California hourly non-exempt employees who work or worked for Defendants during the Class Period to be determined and who did not receive, or were not afforded, or were not authorized or permitted, a rest period of at least ten

(10) consecutive minutes for each four (4) hours or major fraction thereof pursuant to California law;

d. Class 4: "Waiting Time Class"

All current and former California hourly non-exempt employees who worked for Defendants during the Class Period, who have been terminated or resigned, and have not been paid wages pursuant to Labor Code section 203 and are owed restitution for waiting time penalties deriving from wages;

e. Class 5: "Failure to Furnish Accurate Itemized Wage Statements"

All current and former California hourly non-exempt employees who work or worked for Defendants during the Class Period to be determined and who were not provided pay stubs that complied with Labor Code section 226;

23. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or modify the Class description with greater specificity or further division into subclasses or limitation to particular issues.

24. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined common interest of many persons and it is impractical to bring them all before the Court.

25. This Court should permit this action to be maintained as a class action pursuant to California Code of Civil Procedure section 382 because:

- a) The questions of law and fact common to the Plaintiff Class predominate over any question affecting only individual members;
- b) A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Plaintiff Class;
- c) The Plaintiff Class is so numerous that it is impractical to bring all member of the Class before the Court;

- 1 d) Plaintiff and the other members of the Plaintiff Class will not be able to obtain
2 effective and economic legal redress unless the action is maintained as a class action;
- 3 e) There is a community of interest in obtaining appropriate legal and equitable relief
4 for the common law and statutory violations and other improprieties, and in obtaining
5 adequate compensation for the damages and injuries which Defendants' actions have
6 inflicted upon the Plaintiff Class;
- 7 f) There is a community of interest in ensuring that the combined assets and available
8 insurance of the Defendants are sufficient to adequately compensate members of the
9 Plaintiff Class for the injuries sustained;
- 10 g) Without class certification, the prosecution of separate actions by individual members
11 of the Plaintiff Class would create a risk of:
- 12 1) Inconsistent or varying adjudications with respect to individual members
13 of the Plaintiff Class which would establish incompatible standard of
14 conduct for the Defendants; and/or
- 15 2) Adjudications with respect to the individual members which would, as a
16 practical matter, be dispositive of the interests of other members not
17 parties to the adjudications, or would substantially impair or impede their
18 ability to protect their interests, including but not limited to the potential
19 for exhausting the funds available from those parties who are, or may be,
20 responsible for Defendants; and
- 21 h) Defendants have acted or refused to act on grounds generally applicable to the
22 Plaintiff Class, thereby making final injunctive relief appropriate with respect to the
23 Class as a whole.

24 **VI.**

25 **FIRST CAUSE OF ACTION**

26 **FAILURE TO PAY MINIMUM WAGE AND OVERTIME WAGES**

27 **(Plaintiff and Plaintiff Class against Defendants South Bay and ACME, and Does 1-50, Inclusive)**

28 26. Plaintiff and Plaintiff Class re-allege and incorporate by reference the allegations in the preceding paragraphs.

27. Plaintiff and Plaintiff Class members regularly worked over eight (8) hours per day and forty (40) hours per week. Defendants failed to pay Plaintiff, and Plaintiff Class members minimum wage for all hours worked and overtime premium for hours worked in excess of over eight (8) hours per day and forty (40) hours per week for work performed for the Defendants. Defendants willfully violated the Labor Code when Defendants failed to pay Plaintiff and Plaintiff Class the legally mandated wage rates for all hours worked. Instead, Defendants paid Plaintiff and Plaintiff Class under a “Rounding Policy” that is not fair and neutral and resulted, over a period of time, in failure to compensate the employees properly for all the time they have actually worked, thereby causing Plaintiff and Plaintiff Class members to work in excess of eight (8) hours per day and/or forty (40) hours per week. As such Plaintiff and Plaintiff Class seek overtime in an amount according to proof. Pursuant to *Labor Code* § 1194, the Class members seek the payment of all overtime compensation which they earned and accrued four (4) years prior to filing this complaint, according to proof.

28. Additionally, Plaintiff and Plaintiff Class members are entitled to attorneys' fees, costs, pursuant to California *Labor Code* § 1194 and prejudgment interest.

VII.

SECOND CAUSE OF ACTION

Failure to Provide Meal Periods or Compensation in Lieu Thereof
(Plaintiff and Plaintiff Class against Defendants South Bay and ACME, and Does 1-50,
Inclusive)

29. The Plaintiff and Plaintiff Class re-allege and incorporate by reference all the above paragraphs of this complaint as if fully alleged herein.

30. Labor Code sections 226.7 and 512 provide that no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes or employ any person for a work period of more than ten (10) hours without a second (2nd) meal period of not less than thirty (30) minutes.

31. Labor Code section 226.7 provides that if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided in accordance with this section.

32. Defendants failed to schedule Plaintiff and similarly situated persons in an overlapping manner so as to reasonably ensure that Plaintiff and Plaintiff Class could take and/or receive such meal periods uninterrupted and within the statutory timeframe. As a result, Plaintiff and Plaintiff Class were often forced to forego a timely uninterrupted meal period and/or work during their meal period. In so doing, Defendants have intentionally and improperly denied timely uninterrupted meal periods to the Plaintiff and Plaintiff Class in violation of Labor Code sections 226.7 and 512 and other regulations and statutes.

33. At all times relevant hereto, Plaintiff and Plaintiff Class have worked more than five (5) hours in a workday.

34. At varying times relevant hereto, Plaintiff and Plaintiff Class have worked more than ten (10) hours in a workday.

35. At all times relevant hereto, the Defendants failed to schedule Plaintiff and similarly situated persons in a manner so as to reasonably provide timely uninterrupted thirty (30) minute meal and/or work free meal period as required by Labor Code sections 226.7 and 512.

36. By virtue of the Defendants' failure to schedule Plaintiff and Plaintiff Class in such a way as to provide a timely and uninterrupted meal period, and/or work free meal period to the Plaintiff and Plaintiff Class, thereby causing Plaintiff and Plaintiff Class to suffer, and will continue to suffer, damages in the amounts which is presently unknown, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

37. Plaintiff individually, and on behalf of the Plaintiff Class, requests recovery of meal period compensation pursuant to Labor Code section 226.7 which they are owed beginning four (4) years prior to filing this complaint as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

VIII.

THIRD CAUSE OF ACTION

Failure to Provide Rest Periods or Compensation in Lieu Thereof

(Plaintiff and Plaintiff Class against Defendants South Bay and ACME, and Does 1-50, Inclusive)

38. The Plaintiff and Plaintiff Class re-allege and incorporate by reference all the above

1 paragraphs of this complaint as if fully alleged herein.

2 39. Labor Code section 226.7 provides that employers authorize and permit all employees to
3 take rest periods at the rate of ten (10) minutes rest time per four (4) work hours or major fraction thereof.

4 40. Labor Code section 226.7(b) provides that if an employer fails to provide and employee
5 rest periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at
6 the employees' regular rate of compensation for each workday that the rest period is not provided.

7 41. Defendants failed and or refused to implement a relief system by which Plaintiff and
8 Plaintiff Class could receive rest breaks and/or work free rest breaks. Furthermore, due to Defendants'
9 relief system, Plaintiff and Plaintiff Class did not receive their rest breaks within the required statutory
10 time frame. By and through their actions, Defendants intentionally and improperly denied rest periods
11 to the Plaintiff and Plaintiff Class in violation of Labor Code sections 226.7 and 512.

12 42. At all times relevant hereto, the Plaintiff and Plaintiff Class, have worked more than four
13 (4) hours in a workday.

14 43. By virtue of the Defendants' unlawful failure to provide rest periods to Plaintiff and
15 Plaintiff Class as a result of their scheduling and shift relief system, Plaintiff and Plaintiff Class have
16 suffered, and will continue to suffer, damages in amounts which are presently unknown, but which
17 exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

18 44. Plaintiff, individually, and on behalf of employees similarly situated, requests recovery
19 of rest period compensation pursuant to Labor Code section 226.7, which they are owed beginning four
20 (4) years prior to filing this complaint as well as the assessment of any statutory penalties against the
21 Defendants, in a sum as provided by the Labor Code and/or any other statute.

22 **IX.**

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

25 **(Plaintiff and Plaintiff Class against Defendants South Bay and ACME, and Does 1-50,**
26 **Inclusive)**

27 45. Plaintiff and Plaintiff Class re-allege and incorporate by reference the allegations in the
28 preceding paragraphs.

1 46. Labor Code sections 226, 226.3, 1174 and 1174.5 and applicable IWC Wage Order
2 provides that employers must keep records and provide employees with itemized wage statements
3 showing total hours worked and each applicable rate of pay in effect during the pay period with the
4 corresponding number of hours worked at each hourly rate.

5 47. Labor Code section 226, subdivision (a), requires an employer provide employees-either
6 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when
7 wages are paid by personal check or cash-an accurate itemized wage statement in writing showing: "(1)
8 gross wages earned, (2) total hours worked by the employee, (4) all deductions, (5) net wages, (6) the
9 inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the
10 last four digits of his or her social security number or an employee identification number other than a
11 social security number, (8) the name and address of the legal entity that is the employer, and (9) all
12 applicable hourly rates in effect during the pay period and corresponding number of hours worked at
13 each hourly rate by the employee."

14 48. Labor Code section 226.2, subdivision (a)(2), requires the itemized statements required
15 by subdivision (a) of section 226 shall, in addition to the other items specified in that subdivision, state
16 the following: total hours of compensable rest and recovery periods, the rate of compensation, and the
17 gross wages paid for those periods during the pay period.

18 49. Defendants willfully violated Labor Code section 226(a) by failing to provide Plaintiff
19 and Plaintiff's Class with wage statements that accurately reflect the total hours worked, and the rate of
20 pay for each hour worked, and net and gross wages earned.

21 50. Lab. Code, § 226, subdivision (a) states that, "every employer shall, semimonthly or at
22 the time of each payment of wages, furnish each of his or her employees, either as a detachable part of
23 the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal
24 check or cash, an accurate itemized statement in writing ..."

25 51. IWC Wage Order Number 7-2001, paragraph 7(a) requires that every employer shall
26 keep accurate information with respect to each employee, including time records showing when each
27 employee begins and ends each work period, the total daily hours worked by each employee and the
28 total hours worked in each payroll period, applicable rates of pay, and net and gross wages earned.

52. Plaintiff is informed, and believe that Defendants willfully and intentionally failed to make and/or keep records which accurately reflect the hours worked by Plaintiff and Plaintiff Class. Specifically, Plaintiff believes that Defendants' records do not accurately reflect the start and end times Plaintiff and Plaintiff Class were required to work due to Defendants' "Rounding Policy" that is not fair and neutral and resulted, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.

53. Plaintiffs are informed, and believe that Defendants' failure to keep accurate payroll records, as described above, violated Lab. Code, § 1174, subdivision (d) and the applicable wage order. Plaintiffs and the Plaintiff Class are entitled to penalties of one hundred dollars (\$100.00) for the initial violation and two hundred dollars (\$200.00) for each subsequent violation for every pay period during which these records and information was not kept by Defendants.

54. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Lab. Code, § 1174, subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

55. Plaintiffs are informed and believe that Defendants' failure to keep and maintain accurate records and information, as described above, were willful, and Plaintiffs and Plaintiff Class are entitled to a statutory penalty of five hundred dollars (\$500.00) for Plaintiffs and each member of Plaintiff Class pursuant to Lab. Code, § 1174.5.

X.

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES UPON ENDING EMPLOYMENT

(Plaintiff and Plaintiff Class against Defendants South Bay and ACME, and Does 1-50, Inclusive)

56. Plaintiff and Plaintiff Class re-allege and incorporate by reference, as though fully set forth herein, the above paragraphs in their entirety as if fully alleged herein.

57. Plaintiff and certain members of the Plaintiff Class who ended their employment with Defendants during the Class Period, were entitled to be promptly paid both minimum wage and lawful overtime compensation and other premiums, as required by *Labor Code* §§ 201-203. Defendants refused and/or failed to promptly compensate Plaintiff and Plaintiff Class wages owed as a result of their failure to pay Plaintiff and Plaintiff Class both minimum wage, overtime, and premium compensations. Pursuant to *Labor Code* § 203, such Plaintiff and Plaintiff Class seek the payment of penalties pursuant to *Labor Code* § 203, according to proof.

XI.

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION LAW

**(Plaintiff and Plaintiff Class against Defendants South Bay and ACME, and Does 1-50,
Inclusive)**

58. Plaintiff and Plaintiff Class re-allege and incorporate by reference, as though fully set forth herein, the above paragraphs in their entirety.

59. *California Business and Professions Code* § 17200 et. seq. (also referred to herein as the "Unfair Business Practices Act" or "Unfair Competition Law") prohibit unfair competition in the form of any unlawful, unfair or fraudulent business act or practice.

60. *California Business and Professions Code* § 17204 allows "any person who has suffered injury in fact and has lost money or property as a result of such unfair competition" to prosecute a civil action for violation of the Unfair Competition Law ("UCL").

61. *Labor Code* § 90.5(a) states that it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

62. Beginning at an exact date unknown to Plaintiff, but at least four years prior to the filing of this lawsuit, Defendants have committed acts of unfair competition as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent business practices and acts described

1 in this Complaint including but not limited to violations of *Labor Code* §§ 510, 226.7, 226, 1194, 1197,
2 1198 as well as other statutes.

3 63. The violations of these laws and regulations, as well as of the fundamental California
4 public policies protecting workers, serve as unlawful predicate acts and practices for purposes of *Business*
5 *and Professions Code* § 17200 et. seq.

6 64. The acts and practices described above constitute unfair, unlawful and fraudulent
7 Business Practices, and unfair competition, within the meaning of *Business and Professions Code* §
8 17200 et. seq. Among other things, the acts and practices have forced Plaintiff and other similarly
9 situated employees to labor for many hours without receiving the both minim wage and overtime
10 compensation, to forgo lawful meal and rest periods or compensation in lieu thereof, to which they are
11 entitled by law, while enabling Defendants to gain an unfair competitive advantage over law-abiding
12 employers and competitors.

13 65. As a result of Defendants' acts, Plaintiff and Plaintiff Class have suffered injury in fact
14 in being denied their statutorily entitled full compensation for hours of labor and not indemnified for
15 necessary business-related expenses. As a direct and proximate result of Defendants' unlawful acts of
16 unfair competition, Plaintiff and Plaintiff Class have lost money and property in the form of a loss of
17 wages in an amount to be proven at trial.

18 66. *Business and Professions Code* § 17203 provides that a court may make such orders or
19 judgments as may be necessary to prevent the use or employment by any person of any practice which
20 constitutes unfair competition.

21 67. *Business and Professions Code* § 17203 provides that the Court may restore to any person
22 in interest any money or property that may have been acquired by means of such unfair competition.
23 Plaintiff and Plaintiff Class are entitled to restitution pursuant to *Business and Professions Code* § 17203
24 for all wages and payments unlawfully withheld from employees during the four-year period prior to the
25 filing of this Complaint.

26 68. *Business and Professions Code* §17202 provides, "Notwithstanding section 3369 of the
27 *Civil Code*, specific or preventative relief may be granted to enforce a penalty, forfeiture, or penal law in
28 a case of unfair competition." Plaintiff and Plaintiff Class are entitled to enforce all applicable penalty
provisions of the *Labor Code* pursuant to *Business and Professions Code* § 17202.

69. Plaintiff's success in this action will enforce important rights affecting public interest, and in that regard, Plaintiff sues on behalf of the general public, as well as himself and other similarly situated employees. Plaintiff and Plaintiff Class seek and are entitled to restitution, civil penalties, declaratory relief, and all other equitable remedies owing them.

70. Plaintiff herein takes upon himself enforcement of these laws and lawful claims. There is a financial burden involved in pursuing this action, the action is seeking to vindicate a public right, and it would be against the interests of justice to penalize Plaintiff by forcing her to pay attorney's fees from the recovery in this action. Attorney's fees are appropriate pursuant to *Code of Civil Procedure* § 1021.5 and otherwise.

XII.

SEVENTH CAUSE OF ACTION

PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS

PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF

LABOR CODE §§ 201-202, 226(a), 226.7, 512, 1174, 1174.5, AND 1194 AND PURSUANT TO

LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558

71. Plaintiff and all aggrieved employees re-allege and incorporate by reference, as though fully set forth herein, the above paragraphs in their entirety.

72. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.*

73. For each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201-202, 226(a), 226.7, 512, 1174, 1174.5, and 1194; and
- b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 226.3 and 558.

74. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

75. On October 20, 2021, Plaintiff sent a letter, by online submission to the LWDA

1 and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the
2 violations alleged against Defendants, as prescribed by Labor Code § 2698 et seq. Pursuant to Labor
3 Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65)
4 calendar days of October 20, 2021. Plaintiff may therefore commence this action to seek civil penalties
5 pursuant to Labor Code § 2698 et seq.

6 76. Wherefore, Plaintiff and the aggrieved employees he seeks to represent request relief as
7 described below.

8 **XIII.**

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff and Plaintiff Class pray for judgment as follows:

- 11 1. For nominal damages;
- 12 2. For compensatory damages;
- 13 3. For restitution of all monies due to Plaintiff and Plaintiff Class, and disgorged profits from
14 the unlawful business practices of Defendants;
- 15 4. For waiting time penalties pursuant to *Labor Code* § 203, on behalf of the terminated or
16 resigned employees;
- 17 5. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other
18 aggrieved employees;
- 19 6. For penalties pursuant to *Labor Code* §§ 226, 226(e), 512, and 1194;
- 20 7. For interest accrued to date;
- 21 8. Declaratory relief, enjoining Defendants' practices as being unlawful and unfair business
22 practices within the meaning of *Bus. & Prof. Code* §§ 17200, et seq., and declaring Defendants
23 have unlawfully treated Plaintiff and Plaintiff Class, failed to pay all wages, premium, regular,
24 and overtime compensation in violation of California law, failed to pay wages to former
25 employees Plaintiff and other certain members of Plaintiff Class, failed to provide Plaintiff
26 and Plaintiff Class accurate itemized wage statements upon payment of wages, and declaring
27 the amounts of damages, penalties, equitable relief, costs, and attorney's fees Plaintiff and
28 Plaintiff Class are entitled to;

- 1 9. For costs of suit and expenses incurred herein pursuant to Code of Civil Procedure § 1021.5,
2 *Labor Code* §§ 226, 2699(g)(1), and 1194;
3 10. For reasonable attorneys' fees pursuant to Code of Civil Procedure § 1021.5, *Labor Code* §§
4 226, 2699(g)(1), and 1194, and;
5 11. For all such other and further relief as the Court may deem just and proper.
6

7 Dated: April 11, 2023

GAINES & GAINES, APLC

8
9 *Daniel F. Gaines*

Daniel F. Gaines, Esq.

Evan S. Gaines, Esq.

Attorneys for Plaintiff RICARDO PANTOJA

and on behalf of all employees similarly situated

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff RICARDO PANTOJA hereby requests a jury trial on all issues so
14 triable. Dated: April 11, 2023

GAINES & GAINES, APLC

16
17 *Daniel F. Gaines*

Daniel F. Gaines, Esq.

Evan S. Gaines, Esq.

Attorneys for Plaintiff RICARDO PANTOJA

and on behalf of all employees similarly situated

1 **PROOF OF SERVICE AND CERTIFICATION**

2 I am employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the
3 within action. My business address is 4550 East Thousand Oaks Boulevard, Suite 100, Westlake Village, CA 91362.

4 _____ (For messenger) my business address is:

5 On April 11, 2023, I served the foregoing document described as **FIRST AMENDED CLASS**
6 **AND REPRESENTATIVE ACTION COMPLAINT FOR DAMAGES** on the interested parties in this action
7 by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

8 **Edward C. Ho**
9 **Neil M. Katsuyama, Esq.**
10 **ATKINSON, ANDELSON, LOYA, RUUD & ROMO**
11 **201 South Lake Avenue, Suite 300**
12 **Pasadena, CA 91101**

13 **Eric Von Luedtke, Esq.**
14 **THE LAW OFFICES OF ERIC. V. LUEDTKE**
15 **3230 E Imperial Highway, Suite 208**
16 **Brea, CA 92821**

17 **Attorneys for Defendant ACME Furniture Industry,**
18 **Inc.**

19 **Attorneys for Defendant South Bay Safety, Inc.**

20 **Jake D. Finkel, Esq.**
21 **THE FINKEL FIRM**
22 **3470 Wilshire Blvd, Suite 830**
23 **Los Angeles, CA 90010**

24 **Attorneys for Plaintiff, Ricardo Pantoja**

25 On the above date:

26 _____ (BY ☐ U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was
27 mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing
28 correspondence for mailing. It is deposited with United States postal service on that same day in the ordinary course of
business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage
meter date is more that one day after date of deposit for mailing in affidavit.

_____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or
other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized
carrier or driver authorized by the express carrier to receive documents.

_____ (BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-
delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

22 X (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic
transmission of CASEANYWHERE on the counsel of record listed above.

23 I certify that the above document was printed on recycled paper.

24 I declare under penalty of perjury that the foregoing is true and

25 correct. Executed on April 11, 2023 at Westlake Village, California.

26 
27 _____
28 JEREMY REYES