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Attorneys for Plaintiff Marcelino Garcia and the Putative Classes

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

MARCELINO GARCIA on behalf of himself
and all others similarly situated;

Plaintiffs,

v.

J-M MANUFACTURING COMPANY, INC.
WHICH WILL DO BUSINESS IN
CALIFORNIA AS J-M PIPE
MANUFACTURING COMPANY, a
California Corporation; and DOES 1 through
50, inclusive;

Defendants.

CASE NO.: STK-UOE-2021-4926

**FIRST AMENDED CLASS &
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. FAILURE TO PAY MINIMUM WAGES;
2. FAILURE TO PAY OVERTIME WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. FAILURE TO PAY DUE WAGES AT SEPARATION;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;
7. FAILURE TO PROVIDE SUITABLE SEATING;
8. UNFAIR COMPETITION;
9. FAILURE TO REIMBURSE BUSINESS EXPENSES; AND

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10. PAGA PENALTIES

DEMAND FOR JURY TRIAL

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Attorneys for Plaintiff Jeremiah Silveira and the Putative Classes

1 Plaintiffs Marcelino Garcia and Jeremiah Silveira ("Plaintiffs"), on behalf of themselves,
2 and all others similarly situated complains and alleges as follows:

3 **COMMON FACTUAL ALLEGATIONS**

4 1. Plaintiffs bring this class and representative action against their former employer, J-
5 M Manufacturing Company, Inc. which will do business in California as J-M Pipe Manufacturing
6 Company, and Does 1 through 50, (collectively "Defendants") on behalf of himself, and all other
7 similarly situated current and former non-exempt employees who work or worked at any facility
8 owned and/or operated by defendant J-M Manufacturing Company, Inc., in California for Labor
9 Code violations stemming from Defendants' failure to pay minimum and overtime wages for all
10 hours worked, failure to provide compliant meal and rest periods or compensation in lieu thereof,
11 failure to provide suitable seating, failure to timely pay final wages, failure to reimburse for
12 incurred business expenses, and failure to issue accurate itemized wage statements.

13 2. Defendants manufacture plastic pipe in numerous plants in North America, including
14 various locations in California, Defendants manufacture polyvinyl chloride and high-density
15 polyethylene pipe for a variety of industries including utility, plumbing, electrical, natural gas,
16 irrigation, potable water, drainage, and sewage.

17 3. Plaintiffs were employed by Defendants as a non-exempt employee.

18 4. Plaintiffs allege on information and belief that other similarly situated non-exempt
19 employees were subjected to the same policies, procedures, and practices, working conditions, and
20 corresponding wage and hour violations to which Plaintiffs were subjected during their
21 employment.

22 5. Plaintiffs and other non-exempt employees were employed as non-exempt
23 employees working out of Defendants' California facilities. At all relevant times, Plaintiffs and
24 other non-exempt employees regularly worked various shifts, many of which were in excess of 8.0
25 (usually 12.0 hours) hours in a workday and 40.0 hours in a workweek. Plaintiffs allege that non-
26 exempt employees were also subjected to the same policies, procedures, and practices, working
27 conditions, and corresponding wage and hour violations to which Plaintiffs were subjected during
28 their employment with Defendants.

1 6. At all relevant times, Defendants have had a consistent policy of rounding Plaintiffs
2 and other non-exempt employees' time entries to the nearest 6 minutes. As a result of this practice,
3 Plaintiffs and other non-exempt employees are not compensated for all the hours that they work and
4 all of the overtime hours they work, in violation of Cal. Labor Code Sections 204, 510, 1194,
5 1197.1, 1199, and applicable Wage Orders.

6 7. The Court in *See's Candy Shops v. Superior Court* (2012) 210 Cal.App.4th 889, 907,
7 held that rounding time policies can be lawful, "if the rounding policy is fair and neutral on its face
8 and 'it is used in such a manner that it will not result, over a period of time, in failure to compensate
9 the employees properly for all the time they have actually worked,..'"(29 C.F.R. Section 785.48; see
10 DLSE Manual, *supra*, Sections 47.1, 47.2.).

11 8. Here, Defendants' rounding time policy is not neutral on its face as Plaintiffs and
12 other non-exempt employees are subject to discipline, including termination for being tardy in
13 reporting to work, or returning from a meal period. Moreover, because Defendants can track the
14 time worked by non-exempt employees to the minute, the policy itself exists not for the
15 convenience or benefit of the employees who are trying to report their time on timecards or
16 otherwise, but for Defendants' benefit. As a result, the policy is not neutral on its face, and over a
17 period of time, Plaintiffs and other non-exempt employees were not properly paid for all hours
18 worked in violation of Cal. Labor Code Sections 204, 510, 1194, 1197.1, 1199, and applicable
19 Wage Orders.

20 9. Furthermore, at all relevant times, Defendants have had a uniform practice of
21 requiring Plaintiffs and other non-exempt employees to undergo mandatory temperature screening
22 in light of the COVID-19 pandemic. Thus, Plaintiffs and other non-exempt employees were
23 required to spend several minutes waiting in line in order to undergo a temperature screening before
24 clocking in. After undergoing a temperature screening, Plaintiffs and other non-exempt employees
25 were also required to clock in using Defendants' time recording machines. Defendants only made
26 available a very limited number of time recording machines to non-exempt employees. As a result,
27 Plaintiffs and other non-exempt employees were required to spend several minutes off-the-clock
28 before each shift to undergo a temperature screening and then wait to clock in to begin work.

1 10. As a result of Defendants' uniform temperature screening procedures/practices,
2 Plaintiffs and other non-exempt employees were not fully compensated for all hours they were
3 undergoing a temperature screening and waiting in line to clock-in and thus, subject to the control
4 of Defendants. As such, Defendants systematically failed to pay Plaintiffs and other non-exempt
5 employees for all hours worked and minimum and overtime wages due. Defendants has no valid
6 defense to this claim given the California Supreme Court's recent unanimous decision in *Frlekin v.*
7 *Apple, Inc.* (2020) 8 Cal.5th 1038, which held that employees "must be paid" during security
8 checks since "it is clear that [employees] are subject to [the employer's] control while awaiting, and
9 during, [the] exit searches."

10 11. Moreover, at all relevant times, Plaintiffs and other non-exempt employees worked
11 regular shifts that lasted longer than 8.0 hours (and often 122.0 hours) in a workday and resulted in
12 Plaintiffs and other non-exempt employees regularly working more than 40 hours in a workweek.
13 However, upon information and belief, Plaintiffs and other non-exempt employees were not
14 properly paid at the correct overtime rate for all overtime hours worked due to Defendants' uniform
15 failure to include all forms of compensation/renumeration, including, but not limited to, non-
16 discretionary bonus payments and shift differential pay in calculating the regular rate of pay for
17 purposes of overtime compensation.

18 12. Under the California Labor Code (as well as the FLSA), courts have held that
19 regularly paid non-discretionary Shift Premium Pay/Bonuses must be included in determining an
20 employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v. The*
21 *Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
22 bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435
23 F. Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiffs under
24 California and federal law on the grounds, that Defendant improperly calculated overtime by
25 excluding annual bonuses paid to employees from the "regular rate of compensation"].)

26 13. At all relevant times, Defendants consistently paid Plaintiffs and other non-exempt
27 employees' non-discretionary compensation/renumeration, including bonuses and shift differential
28 pay, as well as overtime pay, however these forms of compensation were uniformly omitted when

1 calculating non-exempt employees' regular rate of pay for overtime purposes.

2 14. By their policy of requiring non-exempt employees to work in excess of eight (8)
3 hours in a workday and/or forty (40.0) hours in a workweek without compensating them at the rate
4 of one-half (11/2) their regular rate of pay, Defendants willfully violated the provisions of Labor
5 Code Section 510 and the applicable Wage Orders.

6 15. Moreover, at all relevant times, Plaintiffs and other non-exempt employees were
7 denied complaint and timely 30-minute off-duty meal periods as mandated by California law. As a
8 result of Defendants' uniform meal period policies/practices, Plaintiffs and other non-exempt
9 employees were often unable to take timely and uninterrupted 30-minute first meal periods before
10 the end of the fifth hour of work. Additionally, at all relevant times, when Plaintiffs and other non-
11 exempt employees worked in excess of 10 hours in a shift, they were not allowed and permitted to
12 take a mandated and timely second meal period before the end of the tenth hour of work in violation
13 of the Labor Code and applicable Wage Orders. In addition, Defendant has had a policy that
14 prevented Plaintiffs and other non-exempt employees from leaving the work premises during meal
15 periods thereby exercising control over aggrieved employees during their rest periods in violation
16 of the Labor Code Moreover, Plaintiffs and other non-exempt employees were not provided meal
17 period premiums for their missed or non-complaint meal periods.

18 16. Moreover, Plaintiffs and other non-exempt employees were not provided meal
19 period premiums for their missed or non-complaint meal periods.

20 17. Accordingly, due to Defendants' uniform meal period policies/practices, Plaintiffs
21 and other non-exempt employees were also regularly denied legally complaint meal periods in
22 violation of Labor Code §§ 226.7, 510, 516, and applicable IWC Wage Orders.

23 18. Furthermore, at all relevant times, Plaintiffs and other non-exempt employees were
24 also not provided with 10 minutes of net rest period time for every 4 hours worked, or major
25 fraction thereof as mandated by California law. Specifically, in light of the stringent work demands
26 imposed by Defendants and as a result of staffing shortages, Plaintiffs and other non-exempt
27 employees were often unable to take complaint rest periods of 10 minutes time for every 4 hours
28 worked, or major fraction thereof. On occasions when Plaintiffs and other non-exempt employees

1 worked in excess of 10.0 hours in a shift, Defendants failed to authorize and/or permit a third
2 mandated rest break. In addition, Defendants has had a policy that prevented Plaintiffs and other
3 non-exempt employees from leaving the work premises during rest breaks thereby exercising
4 control over non-exempt employees during their rest periods in violation of the Labor Code.

5 19. Finally, Plaintiffs and other non-exempt employees were not provided rest period
6 premiums for their missed or non-compliant rest breaks. Accordingly, due to Defendants' uniform
7 rest period policies/practices, Plaintiffs and other non-exempt employees were also regularly denied
8 legally complaint rest breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage
9 Orders.

10 20. As a result of Defendants' failure to pay Plaintiffs and other non-exempt employees
11 for all hours they were subject to the control of Defendants, including all minimum and overtime
12 wages, failure to adequately compensate Plaintiffs and other non-exempt employees at the
13 appropriate legal overtime rate, and failure to pay for meal/rest period premiums for missed/non-
14 compliant meal and rest periods, Defendants issued wage statements which failed to accurately
15 identify the gross wages earned, the total hours worked, the net wages earned, and the correct
16 corresponding number of hours worked at each hourly rate, in violation of Labor Code §226(a) (1,
17 2, 5, and 9).

18 21. In addition, as to Plaintiffs and other similarly non-exempt employees, Defendants
19 also failed and continue to fail to provide accurate itemized wage statements in accordance with
20 Labor Code § 226(a)(9). Specifically, Defendants' wage statements fail to state all applicable
21 hourly rate(s) in effect during the pay period in violation of Labor Code Section 226(a)(9).
22 (Attached hereto as **Exhibit A** is a true and correct copy of Plaintiffs' Wage Statement that fails to
23 state the applicable hourly rates in effect) Plaintiffs is informed and believes that Defendants
24 uniformly furnished inaccurate and non-compliant wage statements to Plaintiffs and other non-
25 exempt employees which failed to include the applicable hourly rates (including overtime and
26 double time rates) in effect during all pay periods. Specifically, Defendants' wage statements fail to
27 state all applicable hourly rate(s) and hours in effect during the pay period in violation of Labor
28 Code § 226(a)(9). For example, Plaintiffs' wage statement for the pay period 02/01/2021-

02/14/2021 fails to state the applicable hours and rate of pay for “Shift Prem. Reg” (Attached hereto as **Exhibit “A”** is a true and correct copy of Mr. Garcia’s Wage Statement) Plaintiffs is informed and believes that Defendants uniformly furnished inaccurate and non-compliant wage statements to Plaintiffs and other non-exempt employees which failed to include the applicable hourly rates (including overtime and double time rates) in effect during all pay periods.

22. Moreover, at all relevant times, Plaintiffs and other non-exempt employees were not provided with suitable seats even though the nature of the work reasonably permitted the use of seats. In addition, Plaintiffs and other non-exempt employees were also not allowed to sit when not engaged in active duties due to Defendants’ failure to place seats in reasonable proximity to the work area.

23. Labor Code Section 1198 and applicable Wage Orders provide that all employees “shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.” Additionally, when employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties. The statute provides a penalty of \$100 for each aggrieved employee per pay period for the first violation and \$200 per employee per pay period for each subsequent violation for “all provisions of this code except those for which a civil penalty is specifically provided.”

24. Accordingly, due to Defendants’ uniform failure to provide suitable seating in violation of the applicable Wage Orders, Plaintiffs and other non-exempt employees are entitled to penalties pursuant to Labor Code 1198 and 2698 *et seq.*

25. Finally, because of, Defendants’ failure to pay all minimum and overtime wages, and meal and rest period premiums for non-complaint meal and rest periods, Defendants also failed and continues to fail to pay Plaintiffs and other non-exempt employees all wages owed at their time of separation from employment in violation of Labor Code Sections 201-203 and applicable Wage Orders. Thus, non-exempt employees would be entitled to recover penalties under Labor Code Sections 201-203.

26. Plaintiffs alleges that Defendants' violations of the wage and hour components of the California Labor Code and applicable IWC Wage Orders enabled it to decrease expenses and to increase its level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over its competitors.

27. Plaintiffs brings this lawsuit seeking declaratory, injunctive, equitable, and monetary relief against Defendants and each of them, on behalf of himself and other similarly situated non-exempt employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees, penalties, costs and expenses pursuant to California Labor Code §§ 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 1194, and 1194.2, among possibly other sections inadvertently omitted. Plaintiffs also reserves the right to name additional representatives throughout the State of California.

28. Finally, at all relevant times, Defendants required Plaintiffs and other non-exempt employees to incur necessary business expenses including but not limited to, costs associated with personal cell phones for work related purposes, Covid-19 testing, and other business expenses but did not reimburse non-exempt employees for these necessary expenditures. Defendants' uniform failure to reimburse Plaintiffs and other non-exempt employees for their on-going business expenses incurred in their discharge of their duties continues through the present day. Indeed, adequate reimbursement is absent from Plaintiffs' wage statements during their employment.

JURISDICTION

28. This Court has jurisdiction over the claims for relief of Plaintiffs and other similarly situated non-exempt employees pursuant to the Labor Code and the applicable IWC Wage Orders, among other sections.

VENUE

29. Venue as to each Defendant is proper in this Court, pursuant to Code of Civil Procedure § 395(a). Defendants transact business in San Joaquin County and the unlawful acts alleged herein have a direct effect on Plaintiffs and other similarly situated non-exempt employees of Defendants in San Joaquin County. Furthermore, Defendants employed or employ Plaintiffs and other non-exempt employees in San Joaquin County.

1 **PARTIES**

2 **Plaintiffs**

3 30. Plaintiffs and Class Representative Marcelino Garcia was employed by Defendants
4 from approximately March 2021 until his termination in May 2021.

5 **Defendants**

6 31. Plaintiffs are informed and believes and thereon alleges that Defendant J-M
7 Manufacturing Company, Inc., is a California corporation authorized to and doing business in San
8 Joaquin County, California, and is and/or was the legal employer of Plaintiffs and other similarly
9 situated non-exempt employees during the applicable statutory periods.

10 32. Plaintiffs are ignorant of the true names, capacities, relationships, and extent of
11 participation in the conduct herein alleged, of Defendants sued herein as Does 1 through 50,
12 inclusive, but on information and belief allege that those Defendants are legally responsible for the
13 payment of penalties and damages to Plaintiffs and other similarly situated non-exempt employees
14 by virtue of Defendants' unlawful actions and practices and therefore sues these Defendants by
15 such fictitious names. Plaintiffs will amend this complaint to allege the true names and capacities of
16 the Doe Defendants when ascertained.

17 33. Plaintiffs also alleges that they and other similarly situated non-exempt employees
18 worked under the joint direction and control of Defendants and that Defendants, and each of them,
19 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
20 scheme, business plan or policy in all respect pertinent hereto, and the acts of each Defendant are
21 legally attributable to the other Defendants. On information and belief, a unity of interest and
22 ownership between each Defendant exists such that all Defendants acted as a single employer of
23 Plaintiffs and other similarly situated non-exempt employees.

24 34. Furthermore, on information and belief, Defendants are an integrated enterprise and
25 should be treated as a single employer because Defendants share an interrelation of operations, with
26 common human resources and personnel policies and shared common offices and facilities. Upon
27 information and belief, Defendants share common management, a centralized control of labor
28 operations, and common ownership or financial control.

1 35. Plaintiffs are informed and believes and thereon alleges that the Defendants sued
2 herein as Does 11-50 are now and at all material times herein mentioned were the owner/owners of
3 certain Defendants and the actual employer of Plaintiffs and other similarly situated non-exempt
4 employees or, in the alternative, were individuals employed by Defendants as a managerial and/or
5 supervisory employee and/or agent. In addition, Plaintiffs alleges that at all relevant times herein
6 the Defendants sued herein as Does 11-50 had the authority, in the interest of certain Defendants, to
7 exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other
8 similar actions against Plaintiffs, and were in Plaintiffs' chain of command at the time of and direct
9 participants in the wrongful conduct which constitutes the basis of Plaintiffs' complaint herein.

10 36. Plaintiffs also alleges that the Defendants sued herein as Does 11-50 and certain
11 Defendants are the agents, servants, employees, partners, affiliates, and/or representatives of each
12 other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such
13 relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in
14 conducting themselves in the manner described herein, the Defendants sued herein as Does 11-50
15 and certain Defendants were acting in active concert with on another such that the acts of each were
16 fully attributable to the other in all material respects.

17 37. Plaintiffs also alleges that certain Defendants were merely the alter ego of the
18 Defendants sued herein as Does 11-50 in that there existed a unity of interest and ownership such
19 that any separateness between them ceased to exist and the Defendants sued herein as Does 11-50
20 exercised undue dominance, control, influence, and management over certain Defendants. Plaintiffs
21 further alleges that, at all relevant times, certain Defendants have been inadequately capitalized to
22 conduct business, have failed to follow appropriate corporate formalities, and have simply been a
23 shell and instrumentality through which the Defendants sued herein as Does 11-50 have conducted
24 their personal affairs.

25 38. Accordingly, the corporate veil should be pierced, and any liability attached to
26 certain Defendants should be imposed jointly and severally against the Defendants sued herein as
27 Does 11-50. Adherence to the fiction of the separate existence of these corporate entities would
28 permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

1 **CLASS ACTION ALLEGATIONS**

2 39. Plaintiffs incorporates the preceding paragraphs as if fully alleged herein.

3 40. Plaintiffs brings this action on behalf of themselves and all others similarly situated
4 as a class action pursuant to Code of Civil Procedure § 382.

5 41. The relevant time period for this class action is defined as the time period beginning
6 four years prior to the filing of this action until judgment is entered (the "Relevant Time Period").

7 42. The Classes that Plaintiffs seeks to represent are defined as follows:

8 (1) All current and former non-exempt employees employed by
9 Defendants in California at any time during the Relevant Time
Period. ("Class")

10 (2) All current and former non-exempt employees employed by
11 Defendants in California, and who worked overtime hours and
12 earned additional non-discretionary remuneration/compensation at
any time during the Relevant Time Period. ("Overtime Regular Rate
13 Class")

14 (3) All current and former non-exempt employees employed by
15 Defendants in California, and who was issued at least one wage
statement during one year prior to the filing of this Complaint and
16 ending when final judgment is entered. ("Wage Statement Class")

17 (4) All current and former non-exempt employees who separated from
their employment with Defendants during the period three years
18 before the filing of this action and ending when final judgment is
entered. ("Waiting Time Penalty Class")

19 (collectively "Classes")
20

21 43. Plaintiffs reserve the right to amend or modify the class descriptions with greater
22 specificity or further division into subclasses or limitation to particular issues as appropriate.

23 44. Plaintiffs, as Class Representatives, are members of the Classes that they seeks to
24 represent.

25 45. This action has been brought and may properly be maintained as a class action under
26 Code of Civil Procedure § 382 because there is a well-defined community of interest in the
27 litigation and the proposed class is easily ascertainable from Defendants' personnel and payroll
28 records.

1 46. **Numerosity:** The potential members of the Classes as defined are so numerous that
2 a joinder of all similarly situated non-exempt employees is impracticable. Although the exact
3 number is currently unknown to Plaintiffs, this information is easily ascertainable from Defendants'
4 payroll and personnel records.

5 47. **Commonality:** There are questions of law and fact common to the Classes which
6 predominate over any questions affecting only individual members of the Classes, including
7 without limitation:

8 i. Whether Defendants violated the California Labor Code and applicable IWC
9 Wage Orders by failing to pay wages to Plaintiffs and the Classes for all hours worked, including
10 minimum and overtime wages;

11 ii. Whether Defendants violated the California Labor Code and applicable IWC
12 Wage Orders by failing to account for all non-discretionary compensation/renumeration/Shift Pay
13 in calculating the regular rate of pay for overtime purposes;

14 iii. Whether Defendants violated the California Labor Code and applicable IWC
15 Wage Orders by failing to provide legally complaint meal periods to Plaintiffs and the Classes and
16 whether Defendants failed to compensate Plaintiffs and the Classes with one additional hour of
17 wages for each instance when a mandated meal period was not provided;

18 iv. Whether Defendants violated the California Labor Code and applicable IWC
19 Wage Orders by failing to provide paid rest breaks to Plaintiffs and the Classes and whether
20 Defendants failed to compensate Plaintiffs and the Classes with one additional hour of wages for
21 each instance when a paid rest break was not provided;

22 v. Whether Defendants violated the California Labor Code and applicable IWC
23 Wage Orders by failing to provide suitable seating to Plaintiffs and the Class.;

24 vi. Whether Defendants violated the California Labor Code by failing to pay all
25 wages due upon separation of employment between Defendants and Plaintiffs and the Waiting
26 Time Penalty Class, whether such separation was voluntary or involuntary;

27 vii. Whether Defendants violated the California Labor Code by failing to provide
28 Plaintiffs and the Classes with complete, accurate, itemized wage statements;

viii. Whether Defendants violated California Business & Professions Code §§ 17200 *et seq.* due to the: failure to pay minimum and overtime wages; failure to provide mandated meal periods; failure to provide mandated paid rest breaks; and failure to timely pay final wages;

ix. Whether Defendants violated § 17200 *et seq.* of the California Business and Professions Code and, without limitation, California Labor Code §§ 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 1194, 1194.2, and 1197, among possibly other sections inadvertently omitted, and the applicable IWC Wage Orders, which violations constitute false, fraudulent, unlawful, unfair and deceptive business practices; and

x. Whether Plaintiffs and the Classes are entitled to equitable relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

48. **Typicality:** Plaintiffs' claims, as the Class Representative, are typical of the claims of the Classes. Plaintiffs, like other members of the Classes, was subjected to Defendants' ongoing Labor Code and Wage Order violations including pertaining to the failure to pay minimum and overtime wages at the appropriate legal rate, failure to provide mandated meal periods, failure to provide mandated paid rest breaks, failure to timely pay final wages, failure to provide suitable seating, and failure to provide accurate itemized wage statements.

49. **Adequacy of Representation.** Plaintiffs, as the Class Representative, will fairly and adequately represent and protect the interests of the Classes. Plaintiffs' interests are not in conflict with those of the Classes. Class Representatives' counsel are competent and experienced in litigating large employment class actions and other complex litigation matters, including cases like this case.

50. **Superiority of Class Action.** Class certification is appropriate because a class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all similarly situated non-exempt employees is not practicable, and questions of law and fact common to the Classes predominate over any questions affecting only individual members of the Classes. Each class member has been damaged and is entitled to recovery by reason of Defendants' illegal policies and practices set forth above. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and

1 economical for the parties and the judicial system.

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PAY MINIMUM WAGES**

4 (Labor Code §§ 1194, 1194.2, 1197; IWC Wage Order § 4)

5 (*Against All Defendants*)

6 51. Plaintiffs incorporates the preceding paragraphs as if fully alleged herein.

7 52. As a result of Defendants' policies or practices described herein above, including but
8 not limited to, unlawful rounding of time entries, and temperature screening/clock-in
9 policies/procedures, Plaintiffs and the Class were not paid the minimum wage for all hours worked.

10 53. Consequently, Defendants violated California Labor Code laws and minimum wage
11 laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, applicable IWC Wage Orders, § 4, and
12 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

13 54. Plaintiffs is informed and believes and thereon alleges that Defendants intentionally,
14 willfully, and improperly failed to pay wages to Plaintiffs and members of the Classes for each hour
15 worked in violation of Labor Code §§ 221-223, 1194 and 1197.

16 55. Defendants' conduct was willful, as Defendants knew that Plaintiffs and members of
17 the Classes were entitled to be paid wages throughout the statutory period for each hour worked,
18 including proper minimum wages, yet Defendants chose not to pay them in accordance thereto.

19 56. At all material times, Defendants Does 1 through 50 were and/or are the employers
20 of Plaintiffs and members of the Classes, or were persons acting on behalf of said employer(s),
21 within the meaning of California Labor Code § 558, who violated or caused to be violated Labor
22 Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California Labor Code
23 regulating hours and days of work respectively.

24 57. At all relevant times, Defendants failed to pay all wages to which Plaintiffs and
25 members of the Class were entitled, thereby receiving an economic benefit.

26 58. As a result of Defendants' wrongful conduct, Plaintiffs and members of the Class
27 have been damaged in amounts to be proven at trial.

1 59. Plaintiffs, on behalf of themselves, and members of the Class, seeks recovery of all
2 unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of suit,
3 pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven at trial.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY ALL OVERTIME WAGES**

6 (Labor Code §§ 1194, 1194.2, 1197; IWC Wage Order § 4)

7 *(Against All Defendants)*

8 60. Plaintiffs incorporate the preceding paragraphs as if fully alleged herein.

9 61. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
10 and 1198, which provide that non-exempt employee are entitled to overtime wages for all overtime
11 hours worked and provide a private right of action for the failure to pay all overtime compensation
12 for overtime work performed.

13 57. As a result of Defendants' uniform policies or practices described herein above,
14 Plaintiffs and members of the Class were not paid for all overtime hours worked due to Defendants'
15 rounding practices and temperature screening procedures. In addition, as further described above,
16 Defendants failed to pay for all overtime hours worked at the appropriate premium rate due to its
17 uniform failure to include all forms of compensation/renumeration/shift pay in calculating the
18 regular rate of pay for purposes of overtime pay to the Overtime Regular Rate Class.

19 58. At all times relevant herein, Defendants were required to properly pay Plaintiffs and
20 members of the Classes for all overtime hours worked pursuant to California Labor Code § 1194
21 and applicable Wage Orders. Section 3 of the Wage Order requires an employer to pay an employee
22 "one and one-half (1 1/2) times the employee's regular rate of pay" for work in excess of 8 hours per
23 workday and/or in excess of 40 hours of work in the workweek. Section 3 further requires an
24 employer to pay an employee double the employee's regular rate of pay for work in excess of
25 twelve hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of
26 work in the workweek. As alleged herein, Defendants caused Plaintiffs and members of the Classes
27 to work overtime hours but did not compensate Plaintiffs or members of the Classes at one and one-
28 half times their regular rate of pay for such hours worked.

59. Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform rounding, temperature screening and clock-in policies/procedures, which resulted in these individuals not being paid for all hours worked and Defendants' uniform failure to pay for all overtime hours worked at the appropriate premium rate. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiffs and the members of the Class and Overtime Regular Rate Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, applicable IWC Wage Orders, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

(Against All Defendants)

60. Plaintiffs incorporates the preceding paragraphs as if fully alleged herein.

61. Labor Code § 226.7 requires employers, including Defendants, to provide non-exempt employees with meal periods as mandated by the Industrial Welfare Commission.

62. Labor Code § 512(a), in part, provides that employers, including Defendants, may not employ an employee for a work period of more than five hours per day without providing an employee the opportunity to take an uninterrupted meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and the employee. Employers may not employ an employee for a work period more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.

63. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B), Defendants shall pay an employee one additional hour of pay at the employee's regular rate of compensation for each meal period that is missed.

64. At all relevant times herein, Plaintiffs and members of the Classes were denied the legally complaint 30-minute off-duty meal periods to which they were entitled.

65. As detailed herein above, as a result of Defendants' clock-in policies/procedures, Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order every pay period with respect to Plaintiffs and the Classes because Plaintiffs and the Classes were not provided with all mandatory meal periods, and Defendants failed to pay Plaintiffs and the Classes one additional hour of compensation in lieu thereof.

66. At all relevant times herein, Defendants failed to provide Plaintiffs and the Classes all mandated meal periods and failed to pay wage premiums in lieu of mandated meal periods, thereby receiving an economic benefit.

67. On information and belief, Plaintiffs and the Classes did not voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers obtained from Plaintiffs and the Classes were not willfully obtained, were not voluntarily agreed to, were a condition of employment, or were a part of a contract of unlawful adhesion. Defendants did not permit or authorize Plaintiffs and the Classes to take meal periods in accordance with California law.

68. By their failure to provide Plaintiffs and the Classes with meal periods as required by California law, and failing to pay one hour of additional wages in lieu of each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and applicable IWC Wage Order. Accordingly, Defendants are liable for one hour of additional wages at the employee's regular rate of compensation for each work day that a meal period and/or paid rest break was not lawfully provided in an amount to be proven at time of trial.

69. Additionally, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512, and applicable IWC Wage Orders, Defendants, and each of them, are liable to Plaintiffs and the Classes for unpaid wage premiums, penalties, costs, and interest.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

(Labor Code § 226.7 and 512; IWC Wage Order § 12)

(Against All Defendants)

70. Plaintiffs incorporate the preceding paragraphs as if fully alleged herein.

71. Labor Code § 226.7 requires employers, including Defendants, to provide rest breaks

1 to its non-exempt employees as mandated by Order of the Industrial Welfare Commission.

2 72. IWC Wage Order § 12 states, in part, that every employer shall authorize and permit
3 all employees to take rest periods, which insofar as practicable shall be in the middle of each work
4 period. Employees shall receive a 10-minute rest period every four hours or major fraction thereof
5 that they are required to work. Authorized rest period time shall be counted, as hours worked, for
6 which there shall be no deduction from wages.

7 73. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable IWC Wage
8 Orders, Defendants shall pay Plaintiffs one additional hour of pay at his regular rate of
9 compensation for each day that the rest period is not provided.

10 74. As a result of Defendants' security policies/procedures as described herein,
11 Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Orders every pay
12 period with respect to Plaintiffs and the Classes because Plaintiffs and the Classes were not
13 provided with all mandatory rest periods and Defendants failed to pay Plaintiffs and the Classes one
14 additional hour of compensation in lieu thereof.

15 75. At all relevant times herein, Defendants failed to provide Plaintiffs and the Classes
16 all mandated rest breaks and failed to pay wage premiums in lieu of mandated rest periods, thereby
17 receiving an economic benefit.

18 76. By their failure to provide Plaintiffs and the Classes with rest breaks as required by
19 California law, and failing to pay one hour of additional wages in lieu of each rest break not
20 provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and applicable IWC Wage
21 Order § 12. Accordingly, Defendants are liable for one hour of additional wages at the employee's
22 regular rate of compensation for each workday that a paid rest break was not lawfully provided in
23 an amount to be proven at time of trial.

24 77. Additionally, as a direct result of Defendants' violations of Labor Code §§ 226.7 and
25 512, and applicable IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiffs
26 and Classes for unpaid wage premiums, penalties, costs, and interest.

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY FINAL WAGES**

3 (Labor Code § 201 – 203)

4 (*Against All Defendants*)

5 78. Plaintiffs incorporates the preceding paragraphs as if fully alleged herein.

6 79. Labor Code § 201 requires that the employer immediately pay any wages, without
7 abatement or reduction, to any employee who is discharged.

8 80. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
9 without abatement or reduction, no later than 72 hours of receiving an employee's notice of intent to
10 quit or immediately at the time of quitting if at least a 72-hour notice was provided.

11 81. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
12 penalty from the due date thereof at the same rate until paid or until an action therefore is
13 commenced, but the wages shall not continue for more than thirty (30) days.

14 82. At all relevant times here, Defendants did not provide Plaintiffs and the Waiting
15 Time Penalty Class with all wages due and owing upon separation of employment, including, but
16 not limited to, minimum and overtime wages, as well as meal and rest period premiums, within the
17 time specified by Labor Code §§ 201 – 203.

18 83. Plaintiffs alleges that, at all times material to this action, Defendants had a pattern
19 and practice of failing to timely pay to Plaintiffs and the Waiting Time Penalty Class all wages due
20 and owing upon separation of employment as required by Labor Code §§ 201 and 202.
21 Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiffs and the Waiting Time
22 Penalty Class the above-described waiting time penalty, all in an amount to be shown according to
23 proof at trial and within the jurisdiction of this Court.

24 **SIXTH CAUSE OF ACTION**

25 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

26 (Labor Code § 226)

27 (*Against All Defendants*)

28 84. Plaintiffs incorporates the preceding paragraphs as if fully alleged herein.

1 85. Labor Code § 226(a) requires that employers furnish its employees with written
2 itemized wage statements, semimonthly or at the time of each payment of wages, that show the
3 gross wages earned, total hours worked, all deductions, net wages earned, and all applicable hourly
4 rates in effect during the pay period and the corresponding number of hours worked at each hourly
5 rate by the employee.

6 86. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiffs
7 and the Classes (including but not limited to the Wage Statement Class) because Defendants failed
8 to provide a wage statement to Plaintiffs and the Classes that complied with the requirements of
9 Labor Code § 226(a) by failing to accurately state gross wages earned, failure to accurately state
10 total hours worked, failure to accurately state all deductions, failure to accurately state net wages
11 earned, and failure to state all applicable hourly rates in effect during the pay period and the
12 corresponding number of hours at each hourly rate by the employee.

13 87. Additionally, Defendants' wage statements independently fail to state all applicable
14 hourly rate(s) in effect in violation of Labor Code § 226(a)(9).

15 88. Defendants' failure to provide the required writing deprived Plaintiffs and the
16 Classes of the ability to know, understand, and question the calculation and rate of pay and hours
17 used to calculate the wages paid by Defendants. Therefore, Plaintiffs and the Classes had no way to
18 dispute the resulting miscalculation of wages, all of which resulted in an unjustified economic
19 enrichment to said Defendants. As a direct result, Plaintiffs and the Classes have suffered and
20 continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on
21 such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform its
22 obligation under state law, all to their respective damages in amounts according to proof at trial.

23 89. As a result of Defendants' knowing and intentional failure to comply with Labor
24 Code § 226(a), Plaintiffs and the Classes have suffered an injury in that each was prevented from
25 knowing, understanding and disputing the wage payments paid to them. Furthermore, Plaintiffs and
26 the Classes have each suffered an injury in that the failure to show all wages earned on the itemized
27 wage statements resulted in Plaintiffs and the Classes being denied all necessary deductions,
28 payments, and withholdings owed by the employer, including, but not limited to, the failure to

1 make all necessary contributions for unemployment benefits, social security benefits, proper
2 payment of taxes and withholdings, and other mandated state and federal benefits.

3 90. Plaintiffs has also been injured as a result of having to bring this action to attempt to
4 obtain correct wage information following Defendants' refusal to comply with many of the
5 mandates of California's Labor Code and related laws and regulations.

6 91. Labor Code § 226(e) requires said Defendants to pay the greater of all actual
7 damages or fifty dollars (\$50.00) per employee for the initial pay period in which a violation
8 occurred, and one hundred dollars (\$100.00) per employee for each violation in subsequent pay
9 periods, plus attorney's fees and costs, to Plaintiffs and the Classes who were injured by
10 Defendants' failure to comply with Labor Code § 226(a). The exact amount of the applicable
11 penalty is all in an amount to be shown according to proof at trial.

12 **SEVENTH CAUSE OF ACTION**

13 (Failure To Provide Suitable Seating)

14 (*Against All Defendants*)

15 92. Plaintiffs incorporates the preceding paragraphs as if fully alleged herein

16 93. Labor Code Section 1198 and applicable Wage Orders provide that all employees
17 "shall be provided with suitable seats when the nature of the work reasonably permits the use of
18 seats." Additionally, when employees are not engaged in the active duties of their employment and
19 the nature of the work requires standing, an adequate number of suitable seats shall be placed in
20 reasonable proximity to the work area and employees shall be permitted to use such seats when it
21 does not interfere with the performance of their duties. The statute provides a penalty of \$100 for
22 each aggrieved employee per pay period for the first violation and \$200 per employee per pay
23 period for each subsequent violation for "all provisions of this code except those for which a civil
24 penalty is specifically provided."

25 94. Plaintiffs and other non-exempt employees were not provided with suitable seats
26 even though the nature of the work reasonably permitted the use of seats. In addition, Plaintiffs and
27 other non-exempt employees were also not allowed to sit when not engaged in active duties due to
28 Defendants' failure to place seats in reasonable proximity to the work areas.

95. Accordingly, due to Defendants' uniform failure to provide suitable seating in violation of the applicable Wage Orders, Plaintiffs and other non-exempt employees are entitled to penalties pursuant to Labor Code 1198 and 2698 *et seq.*

EIGHTH CAUSE OF ACTION

UNFAIR AND UNLAWFUL COMPETITION

(Business and Professions Code § 17200 *et seq.*)

(Against All Defendants)

96. Plaintiffs incorporate the preceding paragraphs as if fully alleged herein.

97. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice.” Plaintiffs and the Classes have suffered and continue to suffer injuries in fact, due to the unfair and unlawful business practices of Defendants as alleged herein.

98. Defendants, and each of them, are “persons” as defined under Business & Professions Code § 17021.

99. As alleged herein, Defendants engaged in conduct that violated California's wage and hour laws, including failure to pay minimum and overtime wages, failure to provide mandated meal periods and rest breaks, failure to provide suitable seating, failure to issue accurate itemized wage statements, and failure to timely pay final wages, all in order to decrease their costs and increase their profits.

100. At all times relevant herein, Defendants did not pay Plaintiffs and the Classes wages and monies and other financial obligations to which they were entitled.

101. As a result of Defendants' failure to comply with the Labor Code and IWC Orders, the members of the Classes, including Plaintiffs, suffered a loss of wages and monies, all in an amount to be shown according to proof at trial. Defendants' ongoing violations of the foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

102. Defendants' violations of the California Labor Code and IWC Wage Orders and its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business practices because it was done in a systematic manner over a period of time to the detriment of the Plaintiffs

1 and all others similarly-situated.

2 103. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
3 unlawful, and harmful to Plaintiffs, members of the Classes, and to the general public. Plaintiffs
4 seeks to enforce important rights affecting the public interest within the meaning of Code of Civil
5 Procedure § 1021.5.

6 104. A violation of California Business & Professions Code § 17200, *et seq.* may be
7 predicated on the violation of any state or federal law. All of the acts described herein as violations
8 of, among other things, the California Labor Code and IWC Wage Orders, are unlawful and in
9 violation of public policy, and in addition are immoral, unethical, oppressive, fraudulent and
10 unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in
11 violation of California Business and Professions Code §§ 17200, *et seq.*

12 105. Plaintiffs, individually, and on behalf of the Classes, has no plain, speedy, and/or
13 adequate remedy at law to redress the injuries which he has suffered as a consequence of
14 Defendants' unfair, unlawful and/or fraudulent business practices. As a result of the unfair,
15 unlawful and/or fraudulent business practices described above, Plaintiffs, individually, and on
16 behalf of the Classes, has suffered and will continue to suffer irreparable harm unless Defendants,
17 and each of them, are restrained from continuing to engage in said unfair, unlawful and/or
18 fraudulent business practices.

19 106. Plaintiffs, individually, and on behalf of the Classes, is entitled to, and does seek
20 such relief as may be necessary to disgorge the profits which Defendants have acquired, or of which
21 Plaintiffs and the Classes have been deprived, by means of the above-described unfair, unlawful
22 and/or fraudulent business practices. Plaintiffs and the Classes are not obligated to establish
23 individual knowledge of the unfair practices of Defendants in order to recover restitution.

24 107. Plaintiffs, individually, and on behalf of the Classes, is further entitled to and does
25 seek a declaration that the above described business practices are unfair, unlawful and/or fraudulent,
26 and injunctive relief restraining Defendants, and each of them, from engaging in any of the above-
27 described unfair, unlawful and/or fraudulent business practices in the future.

28

108. Pursuant to Business & Professions Code §§ 17200, *et seq.*, Plaintiffs and the Classes are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiffs and the Classes; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

NINTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR BUSINESS EXPENDITURES

(Against All Defendants)

109. Plaintiffs incorporates the preceding paragraphs of the Class and Representative Action Complaint as if fully alleged herein.

110. Labor Code § 2802(a) states in pertinent part the following: “(a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

111. As set forth above, Plaintiff and members of the Classes must be compensated for a reasonable portion of their monthly personal cell phone bills and expenses necessarily incurred in their discharge of their duties, as required by *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137 ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.") (reversing denial of class certification in cell phone reimbursement class action and setting forth the applicable law for these claims); *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. 2014) (granting Plaintiff's motion for partial summary judgment on the Mr. Toys' cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. 2014) (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*). Further, Defendants also failed to

1 reimburse Plaintiff and the members of the Classes for the cost of their required Covid-19 testing
2 pursuant to their written policy and various other business expenses.

3 112. Defendants have intentionally and willfully failed to reimburse Plaintiffs and the
4 Class Members for all necessary business-related expenses and costs. Plaintiffs and the Class
5 Members are entitled to recover from Defendants their business-related expenses and costs
6 incurred during the course and scope of their employment, plus interest accrued from the date on
7 which the employee incurred the necessary expenditures at the same rate as judgments in civil
8 actions in the State of California as well as penalties, reasonable attorneys' fees and costs of suit.

9 **TENTH CAUSE OF ACTION**

10 **PRIVATE ATTORNEYS GENERAL ACT**

11 *(Against All Defendants)*

12 113. Plaintiffs incorporates the preceding paragraphs as if fully alleged herein.

13 114. Defendants have committed several Labor Code violations against Plaintiffs and
14 other similarly non-exempt employees. Plaintiffs, are "aggrieved employees" within the meaning of
15 Labor Code § 2698 *et seq.*, acting on behalf of himself and other similarly non-exempt employees,
16 brings this representative action against Defendants to recover the civil penalties due to Plaintiffs,
17 other similarly non-exempt employees, and the State of California according to proof pursuant to
18 Labor Code § 2699 (a) and (f) including, but not limited to (1) \$100 for each initial violation and
19 (2) \$200 for each subsequent violation per employee per pay period for those violations of the
20 Labor Code for which no civil penalty is specifically provided based on the following Labor Code
21 violations:

22 a. Failing to pay Plaintiffs and other similarly aggrieved employees for all hours
23 worked, including all minimum and overtime wages in violation of Labor Code §§ 204, 510, 1194,
24 1197, 1198, and 1182.12;

25 b. Failing to provide Plaintiffs and other similarly aggrieved employees with all of their
26 statutorily mandated meal periods or compensation in lieu thereof in violation of Labor Code §§
27 204, 510, 558, 1194 and 1198;

28 c. Failing to authorize and permit Plaintiffs and other similarly aggrieved employees

1 with all of their statutorily mandated rest periods or compensation in lieu thereof in violation of
2 Labor Code §§ 226.7, and 516;

3 d. Failing to furnish Plaintiffs and other similarly aggrieved employees with complete,
4 accurate, itemized wage statements in violations of Labor Code § 226(a)(9);

5 e. Failing to furnish Plaintiffs and other similarly aggrieved employees with complete,
6 accurate, itemized wage statements in violations of Labor Code § 226(a)(1)(5)(9);

7 f. Failing to timely compensate Plaintiffs and similarly aggrieved employees with all
8 earnings at their separation of employment in violation of Labor Code §§ 201-203;

9 g. Failing to provide suitable seating to Plaintiffs and other similarly aggrieved
10 employees in violation of Labor Code § 1198 and applicable Wage Orders;

11 h. Failure to reimburse incurred business expenses in violation of Labor Code §§ 2800-
12 2802;

13 i. Failing to maintain accurate records on behalf of Plaintiffs and similarly non-exempt
14 employees in violation of Labor Code § 1174.

15 115. On or about May 26, 2021, Plaintiff Marcelino Garcia (“Plaintiffs”) notified
16 Defendant J-M Manufacturing Company, Inc. which will do business in California as J-M Pipe
17 Manufacturing Company J-M, Inc. (“Defendant”), and the California Labor and Workforce
18 Development Agency (“LWDA”) via email of Defendant’s violations of the California Labor Code
19 § 2698 *et seq.*, with respect to violations of the California Labor Code identified in Paragraph 109
20 (a)-(h). After sixty-five days have passed from Plaintiffs notifying Defendant of these violations,
21 Plaintiffs will have exhausted his administrative requirements for bringing a claim under the Private
22 Attorneys General Act with respect to these violations.

23 116. Plaintiffs were compelled to retain the services of counsel to file this court action to
24 protect his interests and the interests of similarly non-exempt employees, and to assess and collect
25 the civil penalties owed by Defendants. Plaintiffs have hereby incurred attorneys’ fees and costs,
26 which he is entitled to receive under California Labor Code § 2699.

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiffs, on behalf of themselves, and all others similarly situated, prays
3 for judgment and relief against Defendants, jointly and severally, as follows:

- 4 1. That the First through Eighth Causes of Action be certified as a class action;
5 2. That Plaintiffs be appointed as a Class Representative;
6 3. That counsels for Plaintiffs be appointed as Class Counsel;
7 4. For all applicable statutory penalties recoverable under the First through Seventh
8 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
9 Orders of the Industrial Welfare Commission;
10 5. For reasonable attorneys' fees, costs of suit, and interest under the First through
11 Eighth Causes of Action to the extent permitted by law, including those pursuant to the California
12 Labor Code;
13 6. For injunctive relief and/or restitution as provided by the Labor Code and Business
14 and Professions Code § 17200, *et seq.*;
15 7. For a declaratory judgment that Defendants have violated Labor Code §§ 200, 201,
16 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1197, 2800-2802, and
17 among other sections inadvertently omitted;
18 8. For an award of damages in the amount of unpaid compensation including, but not
19 limited to, unpaid wages, benefits, and penalties according to proof, including interest thereon;
20 9. As to the Ninth Cause of Action, for civil penalties due to Plaintiffs, other similarly
21 non-exempt employees, and the State of California according to proof pursuant to Labor Code §
22 2699 (a) and (f), including, but not limited to (1) \$100.00 for each initial violation and (2) \$200 for
23 each subsequent violation per employee per pay period for those violations of the Labor Code for
24 which no civil penalty is specifically provided;
25 10. For pre- and post-judgment interest; and
26 11. For such other relief as the Court deems just and proper.

27 **DEMAND FOR JURY TRIAL**

28 **WHEREFORE**, Plaintiffs, on behalf of himself and all others similarly situated, hereby

1 demands a jury trial as to the First through Eighth Causes of Action pled herein.

2 Dated: May 10, 2022

FALAKASSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

3
4
5 By: _____

Joshua S. Falakassa, Esq.
Mehrdad Bokhour, Esq.
Attorneys for Plaintiffs and the Putative Classes

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 eighteen years and not a party to the within action; my business address is 1901 Avenue of the
Stars, Suite 450, Los Angeles, California 90067.

5 On May 25, 2022, I served the following document(s) described as **FIRST AMENDED**
6 **CLASS & REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this
action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

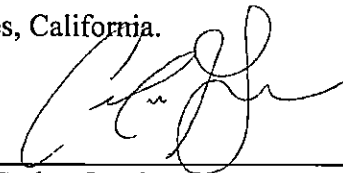
7 Kristen J. Nesbit, Esq.
8 knesbit@fisherphillips.com
9 Shaun J. Voigt, Esq.
10 svoigt@fisherphillips.com
11 FISHER & PHILLIPS, LLP
12 444 South Flower Street, Suite 1500
13 Los Angeles, California 90071

14 **Counsel for defendant J-M**
15 **Manufacturing Company, Inc.**

16 **BY ELECTRONIC MAIL:** Based on a Court order or an agreement by the parties to
17 accept service by e-mail or electronic transmission, I caused such the document(s) described above
18 to be sent from my email address to the persons listed above. I did not receive, within a reasonable
19 time after the transmission, any electronic message or indication that the transmission was
20 unsuccessful.

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

23 Executed on May 25, 2022, at Los Angeles, California.

24 
25 _____
26 Carlos Garcia
27
28