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Superior Court of California
County of Los Angeles

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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF LOS ANGELES**

14 MARIA SALOME RODRIGUEZ, on behalf of
15 herself and all others similarly situated,

CASE NO.: 21STCV18743

16 Plaintiff,

**FIRST AMENDED CLASS &
REPRESENTATIVE ACTION COMPLAINT**

17 v.

18 J&M PRODUCTS, INC., a Delaware
19 Corporation; and DOES 1-50, inclusive.

20 Defendants.

- (1) FAILURE TO PAY ALL MINIMUM WAGES;
- (2) FAILURE TO PAY ALL OVERTIME WAGES;
- (3) MEAL PERIOD VIOLATIONS;
- (4) REST PERIOD VIOLATIONS;
- (5) WAGE STATEMENT VIOLATIONS;
- (6) WAITING TIME PENALTIES;
- (7) UNFAIR COMPETITION; and
- (8) PAGA PENALTIES

DEMAND FOR JURY TRIAL

1 Plaintiff Maria Salome Rodriguez (“Plaintiff”) on behalf of herself, and all other similarly
2 situated employees, alleges and complains of defendants J&M Products, Inc. and DOES 1 to 50
3 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant J&M Products, Inc. is a leading manufacturer of clamps, brackets, and
6 electrical wire harness assemblies for automotive and aerospace companies. Plaintiff brings this class
7 action against Defendants for alleged violations of the California Labor Code and Business and
8 Professions Code.

9 2. As set forth below, Plaintiff alleges that Defendants had a uniform payroll
10 practice/policy that unfairly rounded Plaintiff’s and other similarly situated employees’ time entries
11 and which over time resulted in a failure to pay for all hours worked. Plaintiff further alleges that
12 Defendants failed to pay all overtime compensation at the legal rate, and that Defendants’ meal and
13 rest period policies and practices failed to provide her and all other similarly situated employees with
14 compliant meal and rest periods, or premium wages in lieu thereof. Additionally, Plaintiff alleges that
15 Defendants failed to provide non-exempt employees with accurate written itemized wage statements
16 and failed to timely pay final wages upon separation of employment. Based on these alleged Labor
17 Code violations, Plaintiff now brings this class action to recover unpaid wages, restitution, penalties,
18 and other related relief on behalf of herself and all others similarly situated.

19 **JURISDICTION AND VENUE**

20 3. Plaintiff, on behalf of herself and all others similarly situated employees hereby brings
21 this class action for recovery of unpaid wages and penalties under California Labor Code §§ 201-
22 203, 204, 210, 226a, 226.7, 510, 516, 512, 1182.12, 1194, 1194.2, and 1197 and applicable Industrial
23 Welfare Commission Wage Orders (“Wage Orders”), in addition to seeking declaratory relief and
24 restitution pursuant to California Business and Professions Code § 17200, *et. seq.* This class action is
25 brought pursuant to California Code of Civil Procedure § 382.

26 4. This Court has jurisdiction over Defendants’ violations of the California Labor Code
27 and applicable Wage Orders because the amount in controversy exceeds this Court’s jurisdictional
28 minimum.

5. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the City of San Fernando, County of Los Angeles. Defendants own, maintain offices, transact business, have an agent or agents within the County of Los Angeles, and/or otherwise are found within the County of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

6. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is a California resident residing in the State of California. Defendants employed Plaintiff as a non-exempt employee in San Fernando, California in the County of Los Angeles.

7. Plaintiff is informed and believes and thereon alleges that defendant J&M Products, Inc. is a Delaware corporation authorized to and doing business in Los Angeles County, California, and is and/or was the legal employer of Plaintiff and the Class Members during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein and has been deprived of the rights guaranteed to him by California Labor Code §§ 201-203, 204, 210, 226a, 226.7, 510, 512, 516, 1182.12, 1194, 1194.2, 1197, and California Business and Professions Code § 17200 *et seq.*, and applicable Wage Orders.

8. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business in the State of California, County of Los Angeles. Defendants operate/manage their manufacturing facility in San Fernando, California.

9. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices

1 alleged herein.

2 10. Plaintiff is informed, and believes, and thereon allege, that at all times mentioned
3 herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all
4 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
5 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of
6 them, were the agents, servants, and employees of each and every one of the other Defendants, as
7 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
8 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
9 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

10 11. At all times mentioned herein, Defendants, and each of them, were members of and
11 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
12 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
13 alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the
14 Classes.

15 **COMMON FACTUAL ALLEGATIONS**

16 12. Defendants are a manufacturer of clamps, brackets, and electrical wire harness
17 assemblies for automotive and aerospace companies. With a sprawling 61,000 sq. ft manufacturing
18 facility located in San Fernando, California, Defendants employed Plaintiff as a non-exempt
19 production assembly employee from 2005 until her termination on October 1, 2020. Plaintiff and
20 other non-exempt employees (including but not limited to, assemblers, finishers, and other positions)
21 were responsible for all aspects of manufacturing, assembly and other services provided by
22 Defendants.

23 13. At all relevant times, Defendants have had a uniform payroll policy/practice of
24 rounding Plaintiff and other non-exempt employees' time entries to the nearest 10 minutes. As a
25 result of this rounding policy/practice, non-exempt employees were and are not compensated for all
26 the hours that they work and all of the overtime hours they work in violation of Labor Code §§
27 204,210, 510, 1194, 1197.1, 1199, and applicable Wage Orders. *See's Candy Shops v. Superior Court*
28 (2012) 210 Cal. App. 4th 889, 907 [rounding time policies can be lawful, "if the rounding policy is

1 fair and neutral on its face and ‘it is used in such a manner that it will not result, over a period of time,
2 in failure to compensate the employees properly for all the time they have actually worked,’ See 29
3 C.F.R. § 785.48; see DLSE Manual, *supra*, §§ 47.1, 47.2.)”].

4 14. Here, Defendants’ rounding policy/practice is not neutral and non-exempt employees
5 were subject to discipline, including termination, for being tardy in reporting to work. Moreover,
6 because Defendants are capable of tracking the time worked by non-exempt employees to the minute,
7 the rounding policy/practice itself exists not for the convenience or benefit of the employees who are
8 trying to report their time on timecards or computer log, but for Defendants’ benefit.

9 15. As a result of the rounding policy, Plaintiff and other non-exempt employees were
10 uniformly underpaid for all hours worked, including all minimum and overtime wages, in violation
11 of Labor Code §§ 204, 510, 1194.2, 1197.1, 1199, and applicable Wage Orders. Accordingly, Plaintiff
12 and other non-exempt employees are entitled to recover liquidated damages for violations of Labor
13 Code § 1197.1 and penalties under Labor Code § 1199.

14 16. Moreover, at all relevant times, Plaintiff and other non-exempt employees were not
15 properly paid at the correct overtime rate for all hours worked in excess of eight hours per workday
16 or 40 hours per workweek. When Plaintiff and the other non-exempt employees worked overtime
17 hours, Defendants failed to include all forms of compensation, including, but not limited to non-
18 discretionary bonus payments such as “Safety Bonuses” when calculating the regular rate of pay used
19 in overtime calculations. For instance, although Defendants consistently and regularly paid non-
20 exempt employees non-discretionary Safety Bonuses, Defendants omitted the bonus payments when
21 calculating the regular rate of pay used in overtime calculations and when paying overtime to Plaintiff
22 and the other non-exempt employees.

23 17. Under the California Labor Code (as well as the FLSA), courts have held that regularly
24 paid non-discretionary incentive pay/bonuses must be included in determining an employee’s
25 “regular rate of pay” for purposes of calculating overtime. See *Haber v. The Americana Corp.* 378 F.
26 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be included in
27 calculating the “regular rate”]; *Wang v. Chinese Daily News, Inc.* 435 F. Supp. 2d 1042, 1055-1057
28 (C.D. Cal. 2006) [granting summary judgement to Plaintiffs under California and federal law on the

1 grounds, tat defendant improperly calculated overtime by excluding annual bonuses paid to
2 employees from the “regular rate of compensation”].

3 18. Labor Code § 510 requires an employer to compensate an employee who works more
4 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
5 worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for
6 an employee. In addition, Labor Code § 510 obligates employers to compensate employees at no less
7 than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or
8 more than eight (8) hours on the seventh consecutive day of work.

9 19. Pursuant to Section 3 of the applicable Wage Orders, employees shall not be employed
10 more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee
11 receives one and one-half (1 1/2) times such employee’s regular rate of pay for all hours worked over
12 40 hours in the workweek. By their policy of requiring Plaintiff and the other non-exempt employees
13 to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
14 compensating them at the rate of one-half (1 1/2) their regular rate of pay, Defendants willfully
15 violated the provisions of Labor Code §§ 510 and applicable Wage Orders.

16 20. As a result of Defendants’ failure to include all forms of compensation in calculating
17 the regular rate as set forth above, Defendants failed to compensate Plaintiff and other non-exempt
18 employees for all overtime wages at the proper rates. Accordingly, Plaintiff and other non-exempt
19 employees are entitled to recover liquidated damages for violations of Labor Code § 1197.1.

20 21. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were
21 denied legally complaint and timely off-duty meal periods of at least thirty (30) minutes due to
22 Defendants’ unlawful policies/practices (including its unlawful rounding policy that also applied to
23 meal periods) that routinely prevented employees from taking complaint 30-minute first meal periods
24 before the end of the fifth hour of work, and second meal periods before the end of the tenth hour of
25 work as required by California law.

26 22. Additionally, Defendants have no mechanism for the payment of meal period
27 premiums for non-complaint meal periods. Based on the foregoing, Plaintiff seeks to recover on
28 behalf of herself and other non-exempt employees’ meal period premiums and penalties.

1 Consequently, Defendants has violated Labor Code §§ 226.7, 512, 516 and applicable Wage Orders.

2 23. Additionally, at all relevant times, Defendants failed and continues to fail to authorize
3 and permit Plaintiff and other non-exempt employees from taking legally complaint rest periods as a
4 result of its unlawful rest period policy/practice that requires non-exempt employees to remain on
5 premises during breaks. As a result, Plaintiff and other non-exempt employees were and are routinely
6 unable to take (10) minute duty free rest periods for every major fraction of four hours worked. This
7 includes a second rest period for shifts in excess of six hours, and a third rest period for shifts in
8 excess of 10 hours in a workday. By requiring non-exempt employees to remain on the Company
9 premises during breaks, non-exempt employees are not relieved of all duties during rest periods. See
10 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that “during rest
11 periods employers must relieve employees of all duties and relinquish control over how employees
12 spend their time.”]. In *Augustus*, the court expressly rejected the employers’ assertion that it could
13 provide an on-duty rest period to employees who worked as security guards and further explained
14 “that employers [must] relinquish any control over how employees spend their break time and relieve
15 their employees of all duties.” *Id.* at 273. Each time Plaintiff and other non-exempt employees were
16 unable to take a complaint rest periods, Defendants failed and continues to fail to pay meal period
17 premium payments as required by Labor Code § 226.7.

18 24. As a result of Defendants’ unlawful rest period policies and/or practices, Plaintiff seeks
19 to recover on behalf of herself and all non-exempt employees rest period premiums and penalties.
20 Consequently, Defendants has violated Labor Code §§ 204, 210, 226.7, 510, 512 and applicable Wage
21 Orders.

22 25. As a result of Defendants’ failure to pay Plaintiff and other non-exempt employees all
23 minimum and overtime wages, and failure to provide all statutorily-mandated rest and meal periods,
24 or compensation in lieu thereof, Defendants also intentionally failed and continues to fail to furnish
25 Plaintiff and other non-exempt employees with accurate itemized wage statements that reflect the
26 correct amount of gross wages earned, net wages earned and premium wages due for missed meal
27 and rest periods as required by Labor Code § 226(a)(1),(5),(9).

26. As a further result of Defendants' Labor Code violations stated above, Defendants also failed to pay Plaintiff and other non-exempt employees all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203. Pursuant to Labor Code §§ 201-202, an employer must provide an employee wages at the time of discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203 provides "if an employer willfully fails to pay ... any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty ..." for up to 30 days.

CLASS ACTION ALLEGATIONS

27. Plaintiff brings this action on behalf of herself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- (1) All non-exempt employees who work or worked for Defendants in California, during the four years immediately preceding the filing of the Complaint through the date of trial. (“Class”)
 - (2) All non-exempt employees who worked for Defendants in California and who worked overtime hours during at least one shift and earned a non-discretionary bonus payment, during the four years immediately preceding the filing of the Complaint through the date of trial. (“Overtime Reg Rate Subclass”)
 - (3) All non-exempt employees who worked for Defendants in California, and who have separated their employment with Defendants during one year immediately preceding the filing of the Complaint through the date of trial. (“Waiting Time Subclass”)
 - (4) All employees who work or worked for Defendants in California and who received at least one wage statement, during the one year immediately preceding the filing of the Complaint through the date of trial
 (“Wage Statement Subclass”)
- (collectively “the Classes”)

28. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes consist of at least one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment and payroll records.

1 29. **Common Questions of Law and Fact Predominate/Well Defined Community of**

2 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated
3 employees, which predominate over questions affecting only individual members including, without
4 limitation to:

5 1. Whether Defendants' rounding timekeeping policies/practices resulted in a failure to
6 pay for all hours worked to the members of the Classes;

7 2. Whether Defendants' payroll policies/practices resulted in a failure to pay overtime at
8 the appropriate premium rate resulted to members of the Overtime Subclass;

9 3. Whether Defendants provided legally compliant meal and rest periods or compensation
10 in lieu thereof to members of the Classes;

11 4. Whether Defendants furnished legally compliant wage statements to members of the
12 Wage Statement Subclass pursuant to Labor Code § 226(a); and

13 5. Whether the timing and amount of payment of final wages to members of the Waiting
14 Time Subclass at the time of separation from employment were unlawful.

15 30. **Predominance of Common Questions:** Common questions of law and fact
16 predominate over questions that affect only individual members of the Classes. The common
17 questions of law set forth above are numerous and substantial and stem from Defendants' policies
18 and/or practices applicable to each individual class member, such as Defendants' uniform rounding
19 policy/practice, policy/practice of failing to account for non-discretionary bonus payments in
20 calculating employees' regular rate for overtime purposes, Defendants' uniform policy of failing to
21 provide complaint meal and rest periods, and Defendants' resulting failure to provide accurate
22 itemized wage statements, and to pay for all wages due upon separation of employment. As such, the
23 common questions predominate over individual questions concerning each individual class member's
24 showing as to his or her eligibility for recovery or as to the amount of his or her damages.

25 31. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
26 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
27 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
28 Plaintiff, like the members of the Classes was deprived of minimum and overtime wages, was

1 deprived of meal and rest period premium wages, was subject to Defendants' uniform meal and rest
2 period policies/practices, was not provided accurate itemized wage statements, and was not paid all
3 wages owed at the time of her separation of employment.

4 32. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
5 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
6 attorneys are ready, willing and able to fully and adequately represent the members of the Classes.
7 Plaintiff's attorneys have prosecuted and are actively litigating several wage-and-hour class actions
8 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the
9 members of the Classes.

10 33. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
11 important public interest in establishing minimum working conditions and standards in California.
12 These laws and labor standards protect the average working employee from exploitation by
13 employers who have the responsibility to follow the laws and who may seek to take advantage of
14 superior economic and bargaining power in setting onerous terms and conditions of employment. The
15 nature of this action and the format of laws available to Plaintiff and members of the Classes make
16 the class action format a particularly efficient and appropriate procedure to redress the violations
17 alleged herein. If each employee were required to file an individual lawsuit, Defendants would
18 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the
19 limited resources of each individual plaintiff with their vastly superior financial and legal resources.

20 34. Moreover, requiring each member of the Classes to pursue an individual remedy would
21 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
22 against their former and/or current employer for real and justifiable fear of retaliation and permanent
23 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
24 the individual class members, even if possible, would create a substantial risk of inconsistent or
25 varying verdicts or adjudications with respect to the individual class members against Defendants
26 herein; and which would establish potentially incompatible standards of conduct for Defendants;
27 and/or legal determinations with respect to individual class members which would, as a practical
28 matter, be dispositive of the interest of the other class members not parties to adjudications or which

1 would substantially impair or impede the ability of the class members to protect their interests.
2 Further, the claims of the individual members of the class are not sufficiently large to warrant
3 vigorous individual prosecution considering all of the concomitant costs and expenses attending
4 thereto. As such, the Classes identified in Paragraph 27 are maintainable as Classes under § 382 of
5 the Code of Civil Procedure.

6 **FIRST CAUSE OF ACTION**
7 **MINIMUM WAGE VIOLATIONS**
8 **(AGAINST ALL DEFENDANTS)**

9 35. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 36. Section 4 of the applicable Wage Orders and California Labor Code §§ 1197 and
11 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts
12 set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been
13 paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance
14 together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to
15 the unpaid wages and interest accrued thereon.

16 37. At all relevant times herein, Defendants failed to conform their pay practices to the
17 requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform
18 and unlawful practice of failing to pay for all off-the clock work and rounding/altering Plaintiff's and
19 members of the Classes' time entries, which resulted in these individuals not being paid for all hours
20 actually worked. Accordingly, Plaintiff and members of the Classes were not compensated for all
21 hours worked including, but not limited to, all hours they were subject to the control of Defendants
22 and/or suffered or permitted to work under the California Labor Code and applicable Wage Orders.

23 38. Labor Code § 1198 makes unlawful the employment of an employee under conditions
24 that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer
25 who has failed to pay its employees the legal minimum wage is liable to pay those employees the
26 unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages
27 due and interest thereon.

39. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Classes have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and applicable Wage Orders.

40. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members of the Classes in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

41. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

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

43. At all times relevant herein, Defendants were required to properly pay Plaintiff and members of the Classes and Overtime Subclass for all overtime hours worked pursuant to California Labor Code § 1194 and the applicable Wage Orders.

44. Section 3 of the applicable Wage Order requires an employer to pay an employee “one and one-half (1 1/2) times the employee’s regular rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours of work in the workweek. The same section also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff to work overtime and hours but did not compensate Plaintiff or members of the Classes at one and one-half times their regular rate of pay for such hours.

45. Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful policy/practice of (1) rounding non-exempt employees time entries and (2) failing to account for non-discretionary bonuses in calculating the regular rate for calculating members of the Classes and Overtime Subclass overtime rate which resulted in these individuals not being paid all overtime wages owed.

46. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the members of the Classes and Overtime Subclass in a civil action for the unpaid amount of overtime wages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

48. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their hourly non-exempt employees, including Plaintiff and members of the Classes, with all required meal periods in accordance with the mandates of the California Labor Code and applicable Wage Orders, for the reasons set forth in the Common Allegations section of this Complaint.

49. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

50. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

51. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516 establish the right of non-exempt employees to be provided with a rest period of at least ten (10) minutes for

1 each four (4) hour period worked, or major fraction thereof.

2 52. Due to their unlawful rest period policy and practices, Defendants did not authorize
3 and permit Plaintiff and members of the Classes to take any rest periods to which they were legally
4 entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay to
5 Plaintiff and members of the Classes at their respective regular rates of pay for each violation, in
6 accordance with California Labor Code § 226.7.

7 53. The foregoing violations create an entitlement to recovery by Plaintiff and members of
8 the Classes in a civil action for the unpaid amount of rest period premiums owing, including interest
9 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
10 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

11 **FIFTH CAUSE OF ACTION**

12 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
13 **(AGAINST ALL DEFENDANTS)**

14 54. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 55. Labor Code 226(a) states in pertinent part the following:

16 “(a) An employer, semimonthly or at the time of each payment of wages,
17 shall furnish to his or her employee, either as a detachable part of the check,
18 draft, or voucher paying the employee's wages, or separately if wages are
19 paid by personal check or cash, an accurate itemized statement in writing
20 showing (1) gross wages earned, (2) total hours worked by the employee,
21 except as provided in subdivision (j), (3) the number of piece-rate units
22 earned and any applicable piece rate if the employee is paid on a piece-rate
23 basis, (4) all deductions, provided that all deductions made on written orders
24 of the employee may be aggregated and shown as one item, (5) net wages
25 earned, (6) the inclusive dates of the period for which the employee is paid,
26 (7) the name of the employee and only the last four digits of his or her social
27 security number or an employee identification number other than a social
28 security number, (8) the name and address of the legal entity that is the
employer and, if the employer is a farm labor contractor, as defined in
subdivision (b) of Section 1682, the name and address of the legal entity
that secured the services of the employer, and (9) all applicable hourly rates
in effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee. . .”

56. As set forth above, during the Class Period, Defendants issued and continues to issue wage statements to its employees including Plaintiff and members of the Wage Statement Penalty Subclass, which are inadequate under Labor Code Section 226(a).

57. As a result of Defendants failure to pay Plaintiff and the Classes for all overtime wages at the appropriate legal rate, and missed meal and rest period premiums, Defendants failed to include required information on Plaintiff and the Classes' wage statements, including, but not limited to, the gross wages earned, the net wages earned in violation of Labor Code section 226a. Additionally, Defendants wage statements issued failed to state the name and address of the legal entity that is the employer in violation Labor Code Section 226(a)(8).

58. Defendants' failure to comply with section 226(a) of the Labor Code was knowing and intentional.

59. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff and members of the Wage Statement Subclass in violation of section 226(a) of the California Labor Code, Plaintiff and members of the Wage Statement Subclass are each entitled to recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per every member of the Wage Statement Subclass from Defendants pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

60. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

61. The actionable period for this cause of action is three years prior to the filing of this Complaint through the present, and on-going until the violation are corrected or the class is certified.

62. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing to Plaintiff and the Waiting Time Class during the actionable period for this cause of action at or around the time that their employment is or was terminated or ended.

63. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, then the

1 employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

2 64. Defendants willfully failed to pay Plaintiff and the Waiting Time Subclass for all hours
3 worked, including all minimum and overtime wages, and their meal and rest period premiums, prior
4 to or upon termination or separation from employment with Defendants as required by Labor Code
5 §§ 201 and 202.

6 65. As a result, Defendants are liable to Plaintiff and the Waiting Time Subclass for waiting
7 time penalties amounting to thirty (30) days wages for Plaintiff and the Waiting Time Subclass
8 pursuant to Labor Code § 203. *See, e.g.* DLSE Manual, 4.3.4 (Failure to pay any sort of wages due
9 upon termination entitles an employee to recover waiting time penalties).

10 **SEVENTH CAUSE OF ACTION**

11 **UNFAIR COMPETITION**

12 **(AGAINST ALL DEFENDANTS)**

13 66. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

14 67. Defendants have engaged and continue to engage in unfair and/or unlawful business
15 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
16 failing to pay all minimum and overtime wages at the legal rate, by failing to provide all legally
17 required meal and rest periods or pay premium payments in lieu thereof, by failing to provide accurate
18 wage statements, and by failing to pay all earned wages at the time of separation from employment.

19 68. Defendants' utilization of these unfair and/or unlawful business practices deprived
20 Plaintiff and continues to deprive members of the Classes of compensation to which they are legally
21 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over
22 Defendants' competitors who have been and/or are currently employing workers and attempting to
23 do so in honest compliance with applicable wage and hour laws.

24 69. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
25 herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full restitution of
26 monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or
27 converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

28 70. The acts complained of herein occurred within the last four years immediately

1 preceding the filing of the Complaint in this action.

2 71. Plaintiff was compelled to retain the services of counsel to file this court action to
3 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of
4 Defendants' current hourly non-exempt employees and to enforce important rights affecting the
5 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which
6 he is entitled to recover under Code of Civil Procedure § 1021.5.

7 **EIGHTH CAUSE OF ACTION**
8 **PRIVATE ATTORNEYS GENERAL ACT**
9 **(AGAINST ALL DEFENDANTS)**

10 72. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

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

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

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

26 c. Failing to authorize and permit Plaintiff and other similarly aggrieved employees with
27 all of their statutorily mandated rest periods or compensation in lieu thereof in violation of Labor
28 Code §§ 226.7, and 516;

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

3 e. Failing to timely compensate Plaintiff and similarly aggrieved employees with all
4 earnings at their separation of employment in violation of Labor Code §§ 201-203;

5 f. Failing to maintain accurate records on behalf of Plaintiff and similarly non-exempt
6 employees in violation of Labor Code § 1174.

7 74. On or about May 17, 2021, Plaintiff Maria Salome Rodriguez (“Plaintiff”) notified
8 Defendant J&M Products, Inc. (“Defendant”), and the California Labor and Workforce Development
9 Agency (“LWDA”) via email of Defendant’s violations of the California Labor Code § 2698 *et seq.*,
10 with respect to violations of the California Labor Code identified in Paragraph 73 (a)-(f). Now that
11 sixty-five days have passed from Plaintiff notifying the LWDA and Defendant of these violations,
12 Plaintiff has exhausted her administrative requirements for bringing a claim under the Private
13 Attorneys General Act with respect to these violations.

14 75. Plaintiff was compelled to retain the services of counsel to file this court action to
15 protect his interests and the interests of similarly non-exempt employees, and to assess and collect
16 the civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys’ fees and costs, which
17 he is entitled to receive under California Labor Code § 2699.

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, Plaintiff prays for judgment for herself and for all others on whose behalf
20 this suit is brought against Defendants, as follows:

- 21 1. For an order certifying the proposed Classes;
- 22 2. For an order appointing Plaintiff as representative of the Classes;
- 23 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 24 4. Upon the First Cause of Action, for compensatory, consequential, general and special
25 damages according to proof pursuant to Labor Code §§ 204, 210, 510, and 1194;
- 26 5. Upon the Second Cause of Action, for compensatory, consequential, general and
27 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;

1 6. Upon the Third Cause of Action, for compensatory, consequential, general and special
2 damages according to proof pursuant to Labor Code §§ 226.7 and 512;

3 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
4 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;

5 8. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 226(a), and
6 reasonable costs and attorneys' fees;

7 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor
8 Code §§ 201-203.

9 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
10 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
11 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

12 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other similarly
13 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
14 (a) and (f), including, but not limited to (1) \$100.00 for each initial violation and (2) \$200 for each
15 subsequent violation per employee per pay period for those violations of the Labor Code for which
16 no civil penalty is specifically provided;

17 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
18 § 218.6 and Civil Code §§ 3287 and 3289;

19 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
20 218.5, 226, and Code of Civil Procedure § 1021.5; and

21 14. For such other relief that the Court may deem just and proper.

22 Dated: July 22, 2021

FALAKSSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

23
24
25 By: _____

Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
Attorneys for Plaintiff 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 July 22, 2021, 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 Michael Fostakowsky, Esq.
8 mfostakowsky@pooleshaffery.com
9 Brian E. Koegle, Esq.
10 bkoegle@pooleshaffery.com
11 Caleb A. Miller, Esq.
12 cmiller@pooleshaffery.com

13 **POOLE SHAFFERY & KOEGLE, LLP**
25350 Magic Mountain Parkway, Suite 250
Santa Clarita, California 91355

Joshua S. Falakassa, Esq.
josh@falakassalaw.com
FALAKASSA LAW, P.C.
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067

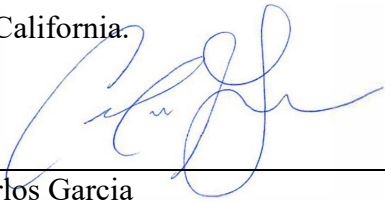
**Co-counsel for Plaintiff on behalf of herself
and all others similarly situated**

14 **Counsel for defendant J & M Products,**
15 **Inc.**

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

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

18 Executed on July 22, 2021, at Los Angeles, California.

19 
20 _____
21 Carlos Garcia
22
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25
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