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DAVID HERRERIA TORRES, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES-CENTRAL DISTRICT

(UNLIMITED JURISDICTION)

DAVID HERRERIA TORRES, on behalf of
himself, and as an “aggrieved employee” on
behalf of other similarly situated “aggrieved
employees” under the Labor Code Private
Attorneys General Act of 2004,

Plaintiff,

vs.

JMG SPECIALTIES, INC., a California
corporation; JOSEPH M. GAGE, an
individual; and DOES 1 to 25, inclusive,

Defendant(s).

Case No.: 24STCV05341

COMPLAINT FOR:

- 1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
- 2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
- 4) Failure to Indemnify (Lab. Code § 2802);
- 5) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
- 6) Failure To Pay Wages When Employment Ends (Lab. Code §§ 201–203);
- 7) Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204);
- 8) Failure to Provide Personnel Records;
- 9) Failure to Provide Pay Records;
- 10) Civil Penalties (Lab. Code §§ 2698, *et seq.*); and
- 11) Unfair Competition (Bus. & Prof. Code, § 17200 *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff, David Herrera Torres (hereafter “Plaintiff”), on behalf of himself, the State
2 of California, and other Aggrieved Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this individual and representative action based on alleged
5 violations of the California Labor Code, Industrial Welfare Commission Order No. 1-2001
6 (hereafter “the Wage Order”), and the Business and Professions Code, against JMG
7 Specialties, Inc., a California corporation; Joseph M. Gage, an individual; and DOES 1 to 25,
8 inclusive (collectively “JMG” or “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him, the State of California, and other similarly situated aggrieved current and former non-
11 exempt hourly employees who worked for Defendants in California at any time during the
12 relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code
13 Private Attorneys General Act of 2004 (“PAGA”), for civil penalties and other related relief.
14 These claims are based on Defendants’ alleged failures to: (1) pay all wages earned for all
15 hours worked at the correct rates of pay; (2) provide all rest breaks and meal periods; (3)
16 indemnify for business expenses; (4) provide accurate and complete written wage statements;
17 (5) timely pay wages during and upon termination of employment; and (6) fairly compete.
18 Accordingly, Plaintiff now seeks to recover unpaid wages, civil penalties, and related relief
19 through this action.

20 **JURISDICTION AND VENUE**

21 3. This Court has subject matter jurisdiction because the aggregate claims of
22 Plaintiff and the Aggrieved Employees, inclusive of all relief, place more than \$25,000 in
23 controversy.

24 4. There is no basis for federal question subject matter jurisdiction in this case.
25 Specifically, Plaintiff asserts claims on behalf of himself, the State of California, and
26 Aggrieved Employees that solely arise under California law rather than federal law.

27 5. There is no basis for federal diversity jurisdiction in this case.

28 6. Venue is proper in Los Angeles County pursuant to California Code of Civil

1 Procedure § 395(a) and § 395.5 because at least some of the transactions that are the subject
2 matter of this Complaint occurred therein and/or because each defendant is found, maintains
3 offices, transacts business, and/or has an agent therein.

4 **THE PARTIES**

5 7. Plaintiff David Herreria Torres is a resident of Santa Clarita, California. At all
6 relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of
7 Regulations Section 11010 and an “Aggrieved Employee” within the meaning of Labor Code
8 Section 2699(c).

9 8. Defendant JMG Specialties, Inc. is a corporation organized and existing under
10 the laws of California and a citizen of California based on Plaintiff’s information and belief.

11 9. Defendant Joseph M. Gage is a citizen of California based on Plaintiff’s
12 information and belief.

13 10. In relevant part, Labor Code section 558.1 states:

14 (a) Any employer or other person acting on behalf of an employer, who violates,
15 or causes to be violated, any provision regulating minimum wages or hours and
16 days of work in any order of the Industrial Welfare Commission, or violates, or
causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
held liable as the employer for such violation.

17 (b) For purposes of this section, the term “other person acting on behalf of an
18 employer” is limited to a natural person who is an owner, director, officer, or
19 managing agent of the employer, and the term “managing agent” has the same
meaning as in subdivision (b) of Section 3294 of the Civil Code.

20 11. Based on Plaintiff’s information and belief, Defendant Joseph M. Gage is a
21 natural person, and an owner, director, officer, and/or managing agent of JMG Specialties, Inc.,
22 who directly or indirectly, or through his agent, employed or exercised control over the wages,
23 hours, or working conditions of Plaintiff and the Aggrieved Employees (defined below).
24 Therefore, he is liable to Plaintiff and the Aggrieved Employees for his violations of, or
25 causing Defendants to violate, Labor Code sections 203, 226, 226.7, 1194, and 2802 pursuant
26 to Labor Code section 558.1.

27 12. The “Aggrieved Employees” are all current and former non-exempt or hourly
28 paid employees who worked for Defendants in California during the relevant time period

1 pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys
2 General Act of 2004 (“PAGA”).

3 13. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
4 participation in the conduct alleged herein, of the defendants sued as DOES 1-25, inclusive, but
5 is informed and believes and thereon alleges that said defendants are legally responsible for the
6 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.
7 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE
8 defendants when ascertained.

9 14. Plaintiff is informed and believes and thereon alleges that, at all relevant times
10 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
11 remaining Defendants, and in doing the things hereinafter alleged, were acting within the
12 course and scope of such agency or employment, and with the approval and ratification of each
13 of the other Defendants.

14 15. Plaintiff is informed and believes and thereon alleges that each and every one of
15 the acts and omissions alleged herein were performed by, and/or are attributable to, all
16 Defendants, each acting as agents and/or employees, and/or under the direction and control of
17 each of the other Defendants, and that said acts and failures to act were within the course and
18 scope of said agency, employment, and/or direction and control.

19 16. At all relevant times, in perpetrating the acts and omissions alleged herein,
20 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a
21 lack of a practice which resulted in Defendants not paying Plaintiff and the Aggrieved
22 Employees in accordance with applicable California labor laws as alleged herein.

23 **GENERAL ALLEGATIONS**

24 17. The Wage Order applies to “all persons employed in the mercantile industry
25 whether paid on a time, piece rate, commission, or other basis[.]” § 1. The Wage Order defines
26 “mercantile industry” to include: “any industry, business, or establishment operated for the
27 purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or
28 for the purpose of renting goods or commodities.” § 2(H). At all relevant times, JMG engaged

1 in manufacturing and material handling. Accordingly, Plaintiff and the Aggrieved Employees
2 are entitled to the protections afforded by the Wage Order.

3 18. JMG began to employ Plaintiff in or around June/July of 2021 to work at its
4 facility located at 28620 Livingston Ave. in Valencia, California (previously 29120 Commerce
5 Center Dr #2, Valencia, CA 91355). During his employment tenure, Plaintiff worked in the
6 shipping department and his latest job title was “Welder.” JMG continuously employed
7 Plaintiff until on or about November 4, 2023 when his employment ended.

8 19. At all relevant times, JMG issued wages to Plaintiff and all of the other
9 Aggrieved Employees on a weekly basis and paid them by the hour. At all relevant times, JMG
10 classified Plaintiff and all of the other Aggrieved Employees as non-exempt employees entitled
11 to the protections of the Labor Code and the Wage Order. During his tenure, Plaintiff generally
12 worked Monday through Friday from 6:00 a.m. to 2:30 p.m., and his latest rate of pay was
13 approximately \$20.50 per hour.

14 20. JMG failed to pay Plaintiff and other Aggrieved Employees for all time worked
15 or subject to its control. This is so because JMG had a policy wherein it would
16 disproportionately round down the number of hours worked, resulting in “time shaving” and
17 further resulting in Aggrieved Employees not being paid for all hours worked. Moreover,
18 Tores’ supervisor, William, as well as the owner, Joseph Gage, would often instruct Plaintiff to
19 continue working after he had already clocked out for the end of his shift. Plaintiff has spent up
20 to two hours continuing to weld after clocking out. Furthermore, and to the extent that Plaintiff
21 and others worked through their meal periods and those meal periods were interrupted, while
22 “off the clock”, they were not compensated for all hours worked, which would be akin to a
23 minimum wage violation. Finally, JMG required Plaintiff and the other employees to bring and
24 use their own personal tools and did not pay Plaintiff and others twice the minimum wage rate
25 in violation of Wage Order 1-2001, section 9(B).

26 21. Due to the above “off the clock” violations, JMG failed to pay Plaintiff and the
27 Aggrieved Employees properly-calculated overtime wages. The Aggrieved Employees’ actual
28 work hours, which included the “off the clock” work as described above, entitled them to

1 overtime, however, it was not company policy to keep accurate track of all hours worked and to
2 pay employees the accurate amount of overtime, especially since the “off the clock” work was
3 not factored into the equation. Furthermore, any incentive payments and/or bonus payments
4 were not factored into employees’ regular rate of pay for purposes of deciphering the correct
5 overtime rate of pay. In addition, any bonus and/or incentive payments were not factored into
6 the correct meal and rest break premium pay per *Ferra v. Loews Hollywood Hotel, LLC* (2021)
7 11 Cal. 5th 858, 863.

8 22. JMG failed to provide all compliant meal periods and authorize and permit all
9 compliant rest periods to which Plaintiff and the other Aggrieved Employees were entitled.
10 Plaintiff and other Aggrieved Employees were entitled to take off-duty, uninterrupted 30-
11 minute meal periods before the fifth and tenth hours of work and to take uninterrupted 10-
12 minute rest periods for every four hours or major fraction thereof worked. However, Plaintiff
13 and the Aggrieved Employees did not always receive their meal and rest periods on time due to
14 the workload. During his time in the shipping department, Plaintiff would not be able to take
15 his meal period until 12:00 p.m./1:00 p.m. Moreover, even when Plaintiff and other Aggrieved
16 Employees would be clocked out for a meal period or would be on their rest breaks, JMG
17 management or ownership would interrupt them with questions about work related matters.
18 Plaintiff was often interrupted by the owner, Joseph Gage, providing work instructions,
19 assigning more tasks, or commenting on his work, among others. On information and belief,
20 JMG did not provide premium wages for these meal and rest break violations; if JMG did
21 provide premium wages, they were not paid at the correct rate, as explained above.

22 23. JMG failed to reimburse Plaintiff and the other Aggrieved Employees for
23 business expenses they incurred in direct consequence of the discharge of their duties. During
24 his employment, Plaintiff purchased PPE equipment and clothing, including, but not limited to,
25 special masks for welding, thick shirts, gloves, steel tip shoes. Arrona also purchased numerous
26 tools, including but not limited to, a measuring tape, hammer, framing square, and steel tips,
27 among others, in order to perform his work. However, JMG did not provide these tools and did
28 not reimburse Plaintiff and the other Aggrieved Employees for these tool expenses. JMG also

1 required Plaintiff and the other Aggrieved Employees to use their own personal cell phones to
2 communicate with management concerning work matters. JMG did not reimburse Plaintiff or
3 the other employees for their mobile phone expenses. Accordingly, JMG was in violation of
4 California Labor Code sections 2800 and 2802.

5 24. JMG failed to pay its employees all wages due to them within any time period
6 specified by California Labor Code section 204, including the minimum wages and overtime as
7 described above as well as meal/rest break premiums. JMG did not provide Plaintiff and other
8 Aggrieved Employees accurate, itemized wage statements. Wage statements must include,
9 among other things, total hours worked by the employee. Labor Code § 226(a)(2). JMG issued
10 wage statements that inaccurately reflected total hours worked, gross and net wages earned, and
11 the number of hours worked at each hourly rate because of JMG's failure to properly pay
12 wages as explained herein. Labor Code §§ 226(a)(1), (2), (5), (9). JMG's failure to maintain
13 accurate records as to the hours worked daily by employees also constitutes a violation of
14 Labor Code section 1174(d).

15 25. JMG failed to provide paid sick leave to Plaintiff and all of the other Aggrieved
16 Employees in violation of Labor Code sections 233 and 246. JMG also failed to provide
17 Plaintiff and all of the other Aggrieved Employees with an itemized wage statement or separate
18 writing that set forth the amount of paid sick leave available.

19 26. Finally, because JMG did not properly pay all wages earned as explained herein,
20 JMG also failed to pay final wages owed to Plaintiff and other Aggrieved Employees in
21 violation of Labor Code section 203. These earned but unpaid wages include minimum wages
22 and compensation for all hours worked, overtime compensation, premium pay for missed meal
23 and rest breaks, and business expense reimbursement, among others.

24 27. JMG has also violated Labor Code section 558 and engaged in business
25 practices which violate Business and Professions Code Section 17200.

26 28. Accordingly, Plaintiff now seeks civil penalties on behalf of himself and the
27 Aggrieved Employees based on JMG's alleged violations of the California Labor Code and the
28 Wage Order.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

3 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

4 **(By Plaintiff against all Defendants)**

5 29. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

6 30. At all relevant times, Plaintiff was a non-exempt employee of Defendants and
7 entitled to the benefits and protections of California Labor Code §§ 510, 1194, 1197, and 1198,
8 and the Wage Order.

9 31. Section 2(G) of the Wage Order defines “hours worked” as “the time during
10 which an employee is subject to the control of an employer, and includes all the time the
11 employee is suffered or permitted to work, whether or not required to do so.”

12 32. Section 3 of the Wage Order states:

13 (A) Daily Overtime - General Provisions

14 (1) The following overtime provisions are applicable to
15 employees 18 years of age or over and to employees 16 or
16 17 years of age who are not required by law to attend
17 school and are not otherwise prohibited by law from
18 engaging in the subject work. Such employees shall not
19 be employed more than eight (8) hours in any workday or
20 more than 40 hours in any workweek unless the employee
21 receives one and one-half (1 ½) times such employee’s
22 regular rate of pay for all hours worked over 40 hours in
23 the workweek. Eight (8) hours of labor constitutes a day’s
24 work. Employment beyond eight (8) hours in any
25 workday or more than six (6) days in any workweek is
26 permissible provided the employee is compensated for
27 such overtime at not less than:

23 (a) One and one-half (1 ½) times the employee’s
24 regular rate of pay for all hours worked in excess
25 of eight (8) hours up to and including 12 hours in
26 any workday, and for the first eight (8) hours
27 worked on the seventh (7th) consecutive day of
28 work in a workweek.

(b) Double the employee’s regular rate of pay for
all hours worked in excess of 12 hours in any
workday and for all hours worked in excess of

eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

33. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

34. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

35. California Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

36. California Labor Code § 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

37. California Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

38. In conjunction, these provisions of the California Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates

1 for all hours worked, including unrecorded hours when the employer knew or reasonably should
2 have known that employees were working during those hours. (*See Morillion v. Royal Packing*
3 *Co.* (2000) 22 Cal.4th 575, 585.)

4 39. Defendants required Plaintiff to work in excess of eight (8) hours in one workday
5 and forty (40) hours in one workweek without compensating him for such time worked at the
6 premium rates required by California law.

7 40. As described more fully above, Defendants failed to pay all minimum, regular,
8 overtime, and double time wages to Plaintiff because Defendants paid wages based on rounded
9 times, did not pay for off-the-clock work, and failed to pay overtime and double time wages
10 based on correct regular rates of pay.

11 41. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
12 amount, subject to proof, to the extent that he was not paid the full amount of wages earned
13 during each pay period during the applicable limitations period, including minimum, overtime,
14 and double-time wages.

15 42. As a result of Defendants' conduct, Plaintiff seeks damages and/or restitution for
16 unpaid wages which Defendants failed to pay him at the rates set forth herein, interest thereon,
17 and costs of suit and reasonable attorney's fees pursuant to California Labor Code §§ 1194.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PROVIDE REST BREAKS**

20 **(Lab. Code §§ 226.7 and 1198)**

21 **(By Plaintiff against all Defendants)**

22 43. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

23 44. At all relevant times during the applicable limitations period, Plaintiff was a
24 non-exempt employee of Defendants and entitled to the benefits and protections of California
25 Labor Code §§ 226.7, 1198, and the Wage Order.

26 45. Labor Code § 1198 states,

27 "The maximum hours of work and the standard conditions of labor
28 fixed by the commission shall be the maximum hours of work and the
standard conditions of labor for employees. The employment of any

employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

46. In relevant part, Section 12 of the Wage Order states:

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.

47. In addition, Labor Code Section 226.7 states

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

48. Pursuant to the Wage Order, Plaintiff was entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

49. Defendants failed to authorize and permit Plaintiff to take compliant rest periods and failed to pay one hour of correctly-calculated premium pay for each day such a

1 rest period was not provided.

2 50. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
3 an amount subject to proof to the extent he was not paid additional wages owed for all rest
4 breaks not provided to him.

5 51. By reason of the above, Plaintiff is entitled to premium wages for workdays in
6 which one or more rest breaks were not provided to him pursuant to California Labor Code §
7 226.7, plus interest and costs.

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PROVIDE MEAL PERIODS**

10 **(Lab. Code §§ 226.7, 512, and 1198)**

11 **(By Plaintiff against all Defendants)**

12 52. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

13 53. At all relevant times during the applicable limitations period, Plaintiff was a
14 non-exempt employee of Defendants and entitled to the benefits and protections of California
15 Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

16 54. Labor Code § 1198 states,

17 "The maximum hours of work and the standard conditions of labor
18 fixed by the commission shall be the maximum hours of work and the
19 standard conditions of labor for employees. The employment of any
employee for longer hours than those fixed by the order or under
conditions of labor prohibited by the order is unlawful."

20 55. In relevant part, Labor Code Section 512 states

21 "An employer may not employ an employee for a work period of more
22 than five hours per day without providing the employee with a meal
23 period of not less than 30 minutes, except that if the total work period
24 per day of the employee is no more than six hours, the meal period may
25 be waived by mutual consent of both the employer and employee. An
26 employer may not employ an employee for a work period of more than
27 10 hours per day without providing the employee with a second meal
28 period of not less than 30 minutes, except that if the total hours worked
is no more than 12 hours, the second meal period may be waived by
mutual consent of the employer and the employee only if the first meal
period was not waived."

56. In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee...
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

57. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff was entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day he worked five or more hours. Pursuant to California Labor Code § 512, Plaintiff was also entitled to a second 30-minute meal period when he worked more than ten (10) hours in a workday.

58. During the relevant time period, Defendants failed to provide Plaintiff with compliant meal periods before the fifth hour of work and failed to pay one hour of correctly-calculated premium pay for each day such a meal period was not provided.

59. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an amount subject to proof to the extent he was not paid additional wages owed for all meal periods not provided to him.

60. By reason of the above, Plaintiff is entitled to premium wages for workdays in which one or more meal periods were not provided to him pursuant to California Labor Code § 226.7, plus interest and costs.

FOURTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code §§ 1198 & 2802)

(By Plaintiff against all Defendants)

61. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

62. At all relevant times, Plaintiff was a non-exempt employee of Defendants and entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802, and the

1 Wage Order.

2 63. In pertinent part, California Labor Code § 2802(a) states:

3 An employer shall indemnify his or her employee[s] for all necessary
4 expenditures incurred by the employee in direct consequence of the
5 discharge of his or her duties.

6 64. Section 9(B) of the Wage Order states:

7 When tools or equipment are required by the employer or are necessary to
8 the performance of a job, such tools and equipment shall be provided and
9 maintained by the employer, except that an employee whose wages are at
10 least two (2) times the minimum wage provided herein may be required to
11 provide and maintain hand tools and equipment customarily required by
12 the trade or craft.

13 65. California Labor Code § 1198 prohibits employers from employing their
14 employees under conditions prohibited by the Wage Order.

15 66. At all relevant times during the applicable limitations period, Defendants
16 required Plaintiff to purchase various PPE equipment, work shoes (steel tip), purchase and use
17 his own tools, and use his own personal cell phone to communicate with management
18 concerning work matters. However, Defendants did not provide Plaintiff with such PPE
19 equipment, uniform items, tools, or a mobile phone, and did not reimburse Plaintiff for these
20 expenses.

21 67. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
22 Defendants have maintained a policy, practice, or a lack of a policy which resulted in
23 Defendants' failure to indemnify Plaintiff for the reasonable expenses he incurred in the course
24 of performing his duties.

25 68. By reason of the above, Plaintiff is entitled to reimbursement for all necessary
26 expenditures and losses and interest due and owing to within three years (3) of the date of the
27 filing of the Complaint until the date of entry of judgment pursuant to California Labor Code §
28 2802(b). Further, Plaintiff seeks reasonable attorney's fees pursuant to Labor Code § 2802(c).

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1 **FIFTH CAUSE OF ACTION**

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

3 **(California Labor Code Section 226)**

4 **(By Plaintiff against all Defendants)**

5 69. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 70. Pursuant to California Labor Code Section 226, every employer must furnish
7 each employee an itemized statement of wages and deductions at the time of payment of wages.

8 71. Defendants knowingly and intentionally did not furnish Plaintiff with pay stubs
9 that accurately reflected all information required by Labor Code Section 226, including but not
10 limited to, all hours worked, gross wages earned, including overtime, minimum wages, and
11 premium pay for missed meal and rest breaks, net wages earned, total hours worked by the
12 employee, all deductions, and business expense reimbursement. Therefore, Defendants failed
13 to maintain and provide accurate itemized wage statements to Plaintiff in accordance with
14 California Labor Code Section 226(a).

15 72. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover
16 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
17 violation occurs and one hundred dollars (\$100) per employee for each violation in a
18 subsequent pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000),
19 plus costs and reasonable attorney's fees. Plaintiff only claims damages under this cause of
20 action pursuant to the 3-year period immediately preceding the date this lawsuit was filed.

21 73. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
22 sustained damages, including loss of earnings, in an amount to be established at trial. As a
23 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
24 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
25 and attorney's fees pursuant to statute.

26 74. Under this cause of action, Plaintiff prays for penalties due under the statutes
27 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
28 proof at trial.

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

3 **(California Labor Code Sections 201-203)**

4 **(By Plaintiff against all Defendants)**

5 75. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 76. Pursuant to California Labor Code Section 201(a), an employer who discharges
7 an employee must immediately pay for all compensation due and owing.

8 77. Pursuant to California Labor Code Section 202, when an employee resigns, the
9 employer must pay all compensation due and owing within 72 hours of resignation, or on the
10 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

11 78. Pursuant to California Labor Code Section 203, if an employer willfully fails to
12 pay, without abatement or reduction, any wages of an employee whose employment ends, the
13 wages of the employee shall continue as a penalty from the due date at the same rate until paid
14 or until an action is commenced; however, the wages shall not continue for more than 30 days
15 for failure to pay an employee owed wages.

16 79. After Plaintiff's employment with Defendants ended, Defendants willfully
17 refused and continue to refuse to pay his unpaid wages as required by Labor Code Section 203.

18 80. Under this cause of action, Plaintiff prays for penalties due under the statutes
19 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
20 proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years
21 immediately preceding the filing of this lawsuit.

22 81. Under this cause of action, Plaintiff also prays for attorney's fees and costs
23 under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages
24 as set forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

25 82. Under this cause of action, Plaintiff prays for penalties due under the statutes
26 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
27 proof at trial.

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1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

3 **(California Labor Code Section 204)**

4 **(By Plaintiff against all Defendants)**

5 83. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

6 84. California Labor Code Section 204 establishes the fundamental right of all
7 employees in the State of California to be paid wages in a timely fashion for their work.

8 85. At all times relevant during the liability period, Defendants failed to pay
9 Plaintiff the full amount of all owed wages when due as required by California Labor Code
10 Section 204.

11 86. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
12 informed, believes, and thereon alleges, that all times relevant during the applicable limitations
13 period, Defendants maintained a policy or practice of not paying Plaintiff wages for all hours
14 worked, including the minimum wage, overtime hours, double time hours, and premium pay
15 for missed meal and rest breaks.

16 87. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
17 an amount, subject to proof, to the extent he was not paid all wages each pay period. The
18 precise amount of unpaid wages is not presently known to Plaintiff but can be determined
19 directly from Defendants' records or indirectly based on information from Defendants' records.

20 88. Under this cause of action, Plaintiff prays for penalties due under the statutes
21 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
22 proof at trial.

23 **EIGHTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE PERSONNEL RECORDS**

25 **(By Plaintiff against all Defendants)**

26 89. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

27 90. Labor Code section 1198.5 dictates "every current and former employee, or his
28 or her representative, has the right to inspect and receive a copy of the personnel records that

1 the employer maintains relating to the employee's performance or to any grievance concerning
2 the employee."

3 91. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, "the
4 employer shall make the contents of those personnel records available for inspection to the
5 current or former employee, or his or her representative, at reasonable intervals and at
6 reasonable times..." On information and belief, Defendants intentionally failed to provide
7 Plaintiff with personnel records when requested by Plaintiff via letter on December 18, 2023, as
8 required by law. Plaintiff requested his personnel records in accordance with California Labor
9 Code section 1198.5(k) on December 18, 2023 via certified U.S. mail.

10 92. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his
11 records within 30 days. As a direct result of Defendants' violations alleged herein, Plaintiff has
12 suffered and continues to suffer substantial losses related to Defendants' failure to provide
13 personnel records.

14 93. Plaintiff seeks all available remedies for Defendants' violations including, but
15 not limited to penalties, and costs to the extent permitted by law and according to proof at trial.
16 Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the
17 amount of \$750.00, along with costs and attorney's fees.

18 **NINTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE PAY RECORDS**

20 **(By Plaintiff against all Defendants)**

21 94. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

22 95. Labor Code section 226 sub-section (b) dictates "an employer...shall afford
23 current and former employees the right to inspect or copy records pertaining to their
24 employment, upon reasonable request to the employer..."

25 96. Moreover, pursuant to sub-section (c) of Labor Code section 226, "an employer
26 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
27 pertaining to a current or former employee shall comply with the request as soon as practicable,
28 but no later than 21 calendar days from the date of the request." On information and belief,

1 Defendants intentionally failed to provide Plaintiff with pay records when requested by
2 Plaintiff via letter, on December 18, 2023, and as required by law. Plaintiff requested his pay
3 records in accordance with California Labor Code section 226 on December 18, 2023, via U.S.
4 certified mail. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his
5 pay records within 21 days.

6 97. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered
7 and continues to suffer substantial losses related to Defendants' failure to provide pay records.
8 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the
9 amount of \$750.00, along with costs and attorney's fees.

10 98. Plaintiff seeks all available remedies for Defendants' violations including, but
11 not limited to, penalties and costs to the extent permitted by law and according to proof at trial.

12 **TENTH CAUSE OF ACTION**

13 **CIVIL PENALTIES**

14 **(Lab. Code §§ 2698, et seq.)**

15 **(By Plaintiff against all Defendants)**

16 99. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

17 100. Plaintiff is an Aggrieved Employee under the Private Attorneys General Act of
18 2004 ("PAGA") because he was employed by Defendants during the applicable statutory
19 period and suffered one or more of the violations of the Labor Code set forth in this Complaint.
20 Plaintiff seeks to recover on his own behalf, on behalf of the State of California, and on behalf
21 of all current and former Aggrieved Employees of Defendants, the civil penalties provided by
22 PAGA, plus reasonable attorney's fees and costs in this representative action.

23 101. During the applicable time period, Defendants violated California Labor Code
24 §§ 201, 202, 203, 204, 226, 226.7, 233, 246, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and
25 2802.

26 102. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
27 behalf of themselves and other current or former employees, to bring a civil action to recover
28 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

1 103. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the
2 Aggrieved Employees are entitled to recover civil penalties for each of the Defendants'
3 violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 233, 246, 510, 512, 558,
4 558.1, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the
5 following amounts:

6 A. For violations of California Labor Code § 204, one hundred dollars
7 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
8 (\$200.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
9 established by California Labor Code § 210).

10 B. For violations of California Labor Code § 226(a), two hundred fifty
11 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
12 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
13 established by California Labor Code § 226.3).

14 C. For violations of California Labor Code §§ 510, 512, and 558.1, fifty
15 dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars
16 (\$100.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
17 established by California Labor Code § 558).

18 D. For violations of California Labor Code § 1174, five hundred dollars
19 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
20 California Labor Code § 1174.5).

21 E. For violations of California Labor Code § 1197, one hundred dollars
22 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
23 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation,
24 per pay period (regardless of whether the initial violations were intentionally committed)
25 (penalty amounts established by California Labor Code § 1197.1).

26 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 233,
27 246, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per
28 pay period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved

1 Employee per pay period for each subsequent violation (penalty amounts established by
2 California Labor Code § 2699(f)(2)).

3 104. Plaintiff has complied with the procedures for bringing suit specified in
4 California Labor Code § 2699.3. By letter dated December 18, 2023, Plaintiff filed written
5 notice online with the Labor and Workforce Development Agency (“LWDA”) and gave written
6 notice by certified mail to Defendants of the specific provisions of the California Labor Code
7 alleged to have been violated, including the facts and theories to support the alleged violations.
8 Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has
9 failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but
10 Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing him that it
11 does not intend to investigate these allegations.

12 105. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
13 Employees are entitled to an award of civil penalties and reasonable attorney’s fees and costs in
14 connection with their claims for civil penalties.

15 **ELEVENTH CAUSE OF ACTION**

16 **UNFAIR COMPETITION**

17 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

18 **(By Plaintiff against all Defendants except Joseph M. Gage)**

19 106. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

20 107. At all relevant times during the applicable limitations period, Plaintiff has been
21 an employee of Defendants and entitled to the benefits and protections of the Business and
22 Professions Code §§ 17200, *et seq.*

23 108. Defendants engaged in unfair competition by failing to 1) pay employees for all
24 hours worked at the correct rates of pay and 2) pay their employees premium wages for
25 workdays during which one or more meal or rest periods were not provided, and 3) reimburse
26 employees for necessary business expenses incurred in the course of performing their duties.

27 109. The unlawful conduct of Defendants alleged herein amounts to and constitutes
28 unfair competition within the meaning of California Business & Professions Code §§ 17200,

1 *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have
2 unfairly gained a competitive advantage over other comparable companies doing business in
3 California that comply with their legal obligations to, among other things, pay their employees
4 premium wages for workdays in which they did not provide employees with one or more meal
5 and rest periods, indemnify them for all business expenses incurred during the course of
6 performing their duties, including, but not limited to, PPE, tools, and mobile phone expenses,
7 and pay them all wages earned.

8 110. As a result of Defendants' unfair competition as alleged herein, Plaintiff has
9 suffered injuries in fact and lost money or property. Defendants failed to pay Plaintiff for all
10 hours worked, failed to provide him with premium wages for missed meal and rest periods,
11 and failed to reimburse Plaintiff for all expenses he incurred in the course of performing his
12 duties.

13 111. Pursuant to California Business & Professions Code § 17203, Plaintiff is
14 entitled to restitution of all monies rightfully belonging to him that Defendants did not pay him
15 or otherwise retained by means of their unlawful and unfair business practices.

16 112. Plaintiff is entitled to reasonable attorneys' fees in connection with his unfair
17 competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial
18 benefit doctrine and/or the common fund doctrine.

19 113. Accordingly, with respect to this cause of action, Plaintiff prays for the herein
20 stated relief, and an award of all reasonable costs and attorneys' fees, including interest
21 thereon, as permitted by law, all in amounts subject to proof.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff prays for relief and judgment against Defendants as follows:

- 24 1. For compensatory damages including lost past and future wages, commissions, and all
25 other sums of money, including employment benefits, together with interest on said
26 amounts, and any other economic injury to Plaintiff, according to proof;
27 2. For general damages according to proof;
28 3. For special and consequential damages to the extent allowed by law;

- 1 4. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
- 2 subject to proof at trial;
- 3 5. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
- 4 6. proof at trial;
- 5 7. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
- 6 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 7 8. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
- 8 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 9 9. For maximum civil penalties available under the Labor Code and applicable Wage
- 10 Order against Defendants as described more particularly in the Complaint;
- 11 10. For restitution and disgorgement for all unfair business practices by Defendant JMG
- 12 SPECIALTIES, INC. against Plaintiff in an amount according to proof;
- 13 11. For an order enjoining Defendant JMG SPECIALTIES, INC. from further unfair and
- 14 unlawful business practices in violation of Business and Professions Code Sections
- 15 17200, et seq.;
- 16 12. For all remedies available to Plaintiff under the applicable Wage Order and the Labor
- 17 Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated
- 18 damages, damages, penalties, and waiting time penalties according to proof to the
- 19 extent permitted by law;
- 20 13. For the imposition of civil penalties and/or statutory penalties;
- 21 14. For all interest as allowed by law;
- 22 15. For all costs and disbursements incurred in this suit;
- 23 16. Reasonable attorney's fees where available by law, including but not limited to,
- 24 pursuant to, Code of Civil Procedure section 1021.5, Labor Code section 1102.5(j),
- 25 and/or other applicable laws; and

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1 17. For such other and further relief as this Court may deem proper.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiff, on behalf of himself and all other Aggrieved Employees, hereby demands a
4 jury trial on all issues so triable.

5
6 Dated: March 3, 2024

MM LAW, APC

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8 By Maralle Messrelian
9 Maralle Messrelian, Esq.
10 Attorney for Plaintiff,
11 DAVID HERRERIA TORRES, and the
12 Aggrieved Employees
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