

1 CATHERINE CORTEZ MASTO
Attorney General
2 SUSAN K. STEWART (CA State Bar No. 174985)
SStewart@ag.nv.gov
3 Deputy Attorney General
Attorney General's Office
4 100 North Carson Street
Carson City, NV 89701-4717
5 Tel: (775) 684-1217
Fax: (775) 684-1108

6 **Attorneys for the State of Nevada**

7
8 UNITED STATES DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 UNITED STATES, THE STATES OF
11 CALIFORNIA, DELAWARE,
12 FLORIDA, ILLINOIS, INDIANA,
13 NEVADA, NEW MEXICO, NEW
YORK, and TENNESSEE, THE
14 COMMONWEALTHS OF
MASSACHUSETTS AND VIRGINIA,
15 and THE DISTRICT OF COLUMBIA
ex rel. JOHN HENDRIX,
16 Plaintiffs,
17 vs.
18 J-M MANUFACTURING
19 COMPANY, INC., d/b/a JM Eagle, a
Delaware corporation, FORMOSA
20 PLASTICS CORPORATION, U.S.A.,
21 a Delaware corporation, and WALTER
WANG, a resident of the State of
22 California,
23 Defendants.

Case No.: ED CV06-00055-GW

**COMPLAINT IN INTERVENTION
BY THE STATE OF NEVADA**

JURY TRIAL DEMANDED

24 **I. INTRODUCTION**

25 1. This action is based on a massive fraud that defendants J-M
26 Manufacturing Company, Inc. ("J-M"), currently doing business as JM Eagle™,
27 Formosa Plastics Corporation, U.S.A. ("Formosa"), and Walter Wang ("Mr. Wang"
28 or "Wang"), the owner and principal of J-M (J-M, Formosa, and Wang collectively,

1 “Defendants”) perpetrated for many years on federal, state, and local governments
2 that purchased, installed, and/or acquired C900, C905, and/or ASTM D2241
3 polyvinyl chloride pipe (“PVC pipe”) manufactured by J-M or its predecessors or
4 successors (hereinafter “J-M Pipe”). This Court has jurisdiction over this action
5 pursuant to 31 U.S.C. § 3732(b) (false claims jurisdiction) and 28 U.S.C. § 1367
6 (supplemental jurisdiction). As described in detail below, the fraud perpetrated by
7 Defendants has caused the State of Nevada and political subdivisions within the
8 State of Nevada (as defined in Nev. Rev. Stat. Ann. § 357.030) (collectively,
9 “Nevada”), to acquire, purchase, and/or install J-M Pipe that has only a fraction of
10 the strength and endurance Defendants represented it to have. This, in turn, has
11 resulted in J-M Pipe in the ground that will need to be replaced in a fraction of the
12 time that Defendants represented it would last, and that Nevada, relying on those
13 representations, expected it to last. Defendants perpetrated this fraud through the
14 following actions, among others:

15 a) using cheap, poor-quality materials in the recipe of J-M Pipe, in place of
16 better materials that were used previously;

17 b) running the manufacturing process, called extrusion, at speeds that
18 damaged the quality of J-M Pipe while failing to properly maintain the
19 manufacturing equipment;

20 c) cherry-picking, rather than randomly selecting, J-M Pipe for testing, thus
21 ensuring that the tests provided no results representative of the quality and strength
22 of J-M Pipe sold to Nevada;

23 d) consistently misrepresenting the quality and strength of J-M Pipe on the
24 pipe itself, as well as in corporate and sales literature; and

25 e) presenting and causing contractors, installers, suppliers, distributors,
26 vendors, developers, and/or other third parties to present false claims to Nevada.

27 2. This action seeks to recover damages and civil penalties on behalf of
28 Nevada arising from false statements and claims made, and caused to be made, by

1 Defendants during the period from at least 1990 to the present (the “Relevant
2 Period”), in violation of the Nevada False Claims Act, Nev. Rev. Stat. Ann. §
3 357.010 et seq. (the “NFCA”). Defendants presented, or caused to be presented,
4 false claims to Nevada, who, in turn, purchased and/or acquired J-M Pipe during the
5 Relevant Period.

6 3. This action also seeks to recover compensatory and punitive damages
7 on behalf of Nevada arising from fraud – both by way of affirmative
8 misrepresentation and concealment – committed by Defendants during the Relevant
9 Period. During the Relevant Period, Defendants engaged in a scheme to defraud
10 Nevada through repeated false and fraudulent representations concerning the quality
11 of J-M Pipe, knowing that a significant percentage of that pipe fell short of the
12 representations being made. Nevada, in turn, relied on Defendants’ representations
13 to their detriment, purchasing, acquiring, maintaining, and/or burying in the ground
14 quantities of defective pipe. Defendants concealed their fraud from Nevada.
15 Defendants continue to perpetuate that fraud currently through public statements,
16 customer mailings, and misrepresentations about the quality and tensile strength of
17 defective J-M Pipe that Defendants know are not true.

18 4. This action also asserts claims and seeks to recover damages during the
19 Relevant Period for: (a) violations of Nevada’s Deceptive Trade Practices Act (Nev.
20 Rev. Stat. Ann. § 598.0915); (b) negligent misrepresentation; (c) intentional
21 misrepresentation; (d) fraudulent concealment; (e) civil conspiracy to defraud; (f)
22 breach of contract; (g) breach of express and implied warranties; (h) strict liability
23 for defective products; and (i) unjust enrichment.

24 **II. PROCEDURAL BACKGROUND**

25 5. On January 18, 2006, qui tam plaintiff John Hendrix (“Hendrix” or
26 “Relator”) filed a Complaint pursuant to, inter alia, the Federal False Claims Act, 31
27 U.S.C. § 3729 et seq. and the NFCA, seeking to recover damages and civil penalties
28 arising from Defendants’ actions in presenting, or causing to be presented, false

1 claims, and Defendants' actions in presenting, or causing to be presented, false
2 records and statements to Nevada and other government entities (the "Hendrix
3 Action"). Hendrix amended his Complaint on October 10, 2008. Hendrix filed a
4 motion for leave to file a Second Amended Complaint on February 4, 2010, which
5 was granted. The Second Amended Complaint was filed on February 5, 2010 (as
6 corrected and re-filed on March 18, 2010).

7 6. By notice filed February 1, 2010, Nevada intervened in the Hendrix
8 Action. See Nev. Rev. Stat. Ann. § 357.110. Nevada incorporates all of the
9 allegations of Hendrix's Second Amended Complaint by reference herein, including
10 but not limited to Defendants' scheme to defraud as set forth in paragraphs 26
11 through 297, inclusive, of Hendrix's Second Amended Complaint. As to those
12 allegations based on non-documentary evidence, Nevada incorporates those herein
13 upon information and belief.

14 III. SUPPLEMENTAL FACTUAL ALLEGATIONS

15 7. J-M was founded in 1982 when Formosa acquired the Pipe Division of
16 Johns-Manville Corporation and created J-M. From 1982 until at least November 1,
17 2005, J-M was a wholly owned subsidiary of Formosa, although some industry
18 publications referred to J-M as a unit or operating division of Formosa. For the
19 twenty-three years during which Formosa owned J-M, it exercised strict control over
20 J-M's business operations, substantially decided who J-M employed as managers
21 and officers, forced J-M to use resin manufactured by Formosa, and, for the vast
22 majority of that period, had J-M occupy the same headquarters space in Livingston,
23 New Jersey that was occupied by Formosa.

24 8. Defendant Formosa is largely controlled by the Wang family of
25 Taiwan. Yung-ching Wang, known as "Y.C. Wang," was chairman of Formosa for
26 many years and also served as Founder and former Chairman of the Board of
27 Formosa Plastics Group, the parent of Formosa. He passed away on October 15,
28 2008. Each of Y.C. Wang's ten children has served as an executive at either

1 Formosa Plastics Group or one of its subsidiaries.

2 9. One of Formosa's core business functions is to produce plastic resins.
3 Formosa required J-M to use its resin in J-M's production of PVC pipe, including
4 most of the PVC pipe at issue in this case. During the Relevant Period, Formosa
5 had annual revenues exceeding \$4 billion.

6 10. For its first ten years, J-M's management consisted largely of former
7 Johns-Manville employees. However, by the mid-1990s, most of the old Johns-
8 Manville employees had either retired or left. In 1990, J-M's parent company,
9 Formosa, installed Defendant Walter Wang, the youngest son of Formosa's
10 Chairman Y.C. Wang, as J-M's President. Mr. Wang is the President and current
11 CEO of defendant J-M and has been since 1990.

12 11. At the time he assumed this post, Mr. Wang was only twenty-five years
13 old. Having just graduated from college, he had little to no practical experience in
14 managing a company, let alone the world's largest manufacturer of PVC pipe.
15 Shortly after naming Mr. Wang as president, J-M moved its corporate headquarters
16 from Stockton, California to Livingston, New Jersey, where until approximately
17 October 2008 it occupied the same office building in which Formosa and several
18 other Formosa subsidiaries also have corporate offices.

19 12. Under Mr. Wang's leadership and direction, and with Formosa's
20 knowledge and encouragement, J-M implemented a series of cost-cutting measures
21 that undermined the quality of J-M Pipe. At Mr. Wang's direction, the outgoing
22 former Johns-Manville managers were replaced by individuals with significantly
23 less experience and fewer credentials. For instance, the Director of Production, who
24 formerly had been a senior engineer, was replaced by Barry Lin ("Lin"), an
25 accountant from Formosa's management center in Taiwan with no engineering
26 background. The new Director of Engineering, Kaider Liao, did not have an
27 engineering degree. The new Quality Control Manager, Jack Hwang ("Hwang"),
28 was an electrical engineer with no experience or formal training in failure analysis.

1 After Hwang left the Quality Control Manager post in 2004, the position was later
2 filled in 2005 by a recent college graduate.

3 13. Mr. Wang exercised, and continues to exercise, broad and strict control
4 over the operations, decisions, and finances of J-M. For example, Mr. Wang has
5 reviewed – and condoned – practices and policies within J-M to cherry-pick samples
6 by pre-testing them before submitting samples to outside labs or agencies for
7 qualification testing. Indeed, in September 2003, Mr. Wang was sent a memo
8 detailing that the practice of the company would be that samples of pipe were not to
9 be sent out to any third parties, including qualification organizations, before J-M
10 pre-tested samples themselves. Such pre-testing would permit J-M to cherry-pick
11 the samples it would send to the qualification bodies, ensuring that it sent only those
12 samples that had the best chance of passing the qualification tests. As detailed in
13 Relator’s Second Amended Complaint incorporated herein by reference, such
14 practices are not permitted because they completely defeat the representativeness
15 requirement of qualification testing. Indeed, Mr. Wang knew, in fact, that cherry-
16 picking defeated the purposes of outside testing. On or about February 18, 2010, J-
17 M’s authorized representative, Lanny Davis of McDermott Will & Emery LLP,
18 confirmed in a press conference the importance of samples being randomly selected.
19 In responding to a question regarding PVC pipe testing by qualification bodies, Mr.
20 Davis stated that “Underwriter’s Laboratory [sic] prides its reputation . . . and it
21 does insist on random sampling. Of course, it knows it wouldn’t be valid if it
22 weren’t random.”

23 14. As another example of Mr. Wang’s tight control over the operations,
24 decisions, and finances of J-M, during the Relevant Period, Mr. Wang was the only
25 person at J-M who had authority to resolve customer claims or returns of pipe that
26 exceeded \$15,000.

27 15. Mr. Wang also is aware of numerous testing failures and pipe failures
28 that J-M Pipe has experienced for more than a decade, both on sample pipe as well

1 as production pipe, in particular the failure of the company on numerous occasions
2 to meet the Hydrostatic Design Basis (“HDB”) and Longitudinal Tensile-Strength
3 (“LTS”) tests, contained within the standards of, among others, the American Water
4 Works Association (“AWWA”), Underwriters Laboratories, Inc. (“UL”), NSF
5 International (formerly known as the National Sanitation Foundation), and FM, a
6 division of FM Global (formerly known as Factory Mutual). Mr. Wang also is
7 aware of numerous test results J-M obtained on a daily basis from each of its plants
8 for Quick Burst testing that fell below 7200 psi on production pipe. Despite his
9 knowledge of these numerous failures, Mr. Wang did not take steps, or at the very
10 least did not take sufficient steps, to ensure that pipe manufactured by J-M
11 conformed to the standards affixed on the pipe itself. Nor did Mr. Wang take steps
12 to order requalification of pipe under these standards although he was aware, for
13 many years, of the test results showing J-M Pipe was not meeting these standards.

14 16. As one example, in the spring of 2005, Mr. Wang overruled his
15 Director of Production and ordered that No-Thickened-Section pipe (the only type
16 of C900 and C905 pipe J-M currently manufactures) be manufactured at all plants,
17 effective three weeks from his directive. At the time Mr. Wang issued his directive,
18 he was aware of the numerous testing failures this type of pipe had experienced over
19 the preceding six months, the re-tooling and changes to its normal production
20 process J-M undertook in order to be able to make a few samples of pipe that could
21 pass the tests, and the impossibility of making changes to its production process
22 across all of its plants within a three-week period of time to incorporate the changes
23 made that were essential to producing the passing samples. Despite all of this, Mr.
24 Wang overruled his Director of Production and ordered that the pipe be
25 manufactured at all plants.

26 17. Mr. Wang has made numerous statements over the past two decades,
27 and has directed others who work for him to make numerous statements or pass on
28 statements from him or J-M, that tout the reliability of J-M Pipe and that represent

1 that J-M Pipe conforms to applicable standards as well as the specifications of
2 Nevada. Mr. Wang knew, within the meaning of the NFCA, that these statements
3 and representations were false as applied to the substantial majority of J-M Pipe.
4 Mr. Wang intended and knew that these statements would reach Nevada. At no time
5 did Mr. Wang take steps to correct those misstatements and misrepresentations.

6 18. Mr. Wang has authorized, directed, and/or participated in, inter alia,
7 false statements and representations concerning the quality of J-M Pipe and
8 authorized, directed, and/or participated in a scheme to defraud Nevada by
9 maintaining that the pipe J-M manufactured met the specifications of Nevada, when
10 Mr. Wang in fact knew, within the meaning of the NFCA, the substantial majority
11 of J-M C900, C905, and ASTM D2241 pipe did not meet those specifications.

12 19. Mr. Wang's actions have caused the submission of false claims to
13 Nevada and have caused Nevada to suffer harm. Mr. Wang has personally benefited
14 from the fraud perpetrated by Defendants upon Nevada.

15 20. In or about November 2005, Mr. Wang purchased J-M from Formosa
16 for approximately \$100 million. Thereafter, as of June 22, 2007, J-M completed the
17 acquisition of PW Eagle Inc., North America's second largest producer of PVC
18 pipe, for approximately \$400 million. The new company has operated under the
19 trade name JM Eagle™ since the merger. (References to J-M herein after June 2007
20 are intended to, and should be deemed to, refer to JM Eagle as appropriate.) With
21 currently close to \$2 billion in annual sales, J-M was and is the largest manufacturer
22 of PVC pipe in the United States and the world at all times relevant hereto.

23 21. Prior to its merger with PW Eagle, J-M manufactured its PVC pipe in
24 at least eleven plants, including the following locations: Fontana and Stockton,
25 California; Pueblo, Colorado; Adel, Georgia; Wilton, Iowa; Batchelor, Louisiana;
26 Winnebago, Minnesota; Butner, North Carolina; McNary, Oregon; Meadville,
27 Pennsylvania; and Wharton, Texas. J-M now manufactures its PVC pipe at twenty-
28 two plants around the country.

1 22. Throughout the Relevant Period, J-M entered into agreements with
2 third parties for distribution of J-M Pipe that was ultimately purchased or acquired
3 by Nevada. Nevada was the intended third-party beneficiary of the third-party
4 agreements. J-M sold J-M Pipe primarily through distributors. The J-M Pipe
5 contained representations that it conformed to applicable industry standards,
6 including the requirements of AWWA, UL, and, routinely, those of NSF
7 International, ASTM International (formerly known as the American Society for
8 Testing and Materials), and/or FM. These representations were stenciled on
9 individual sticks of C900, C905, and ASTM D2241 J-M Pipe. J-M additionally
10 provided end users, both directly and through agents including its distributors, with
11 marketing and sales material such as catalogues, “new product bulletins,” and other
12 sales literature that described J-M Pipe. These descriptions contained
13 representations that J-M Pipe conformed to applicable industry standards, including
14 the requirements of AWWA, UL, NSF International, ASTM International, and/or
15 FM. J-M did employ, and continues to employ, the proprietary names “Blue Brute”
16 to refer to its C900 pipe and “Big Blue” to refer to its C905 pipe. Defendants knew
17 that a significant percentage of J-M Pipe did not meet those standards because the
18 products were made using inferior materials, processing, and tooling that resulted in
19 the products having substandard tensile strength, as measured by various tests.
20 However, because Nevada has specifications requiring such standards, J-M knew
21 that J-M Pipe could not be supplied to Nevada without such representations.

22 23. Defendants therefore intended or reasonably expected that such
23 representations would be made known to Nevada, either directly or through
24 contractors, installers, suppliers, distributors, vendors, developers, and/or other third
25 parties who sold J-M Pipe or purchased it on behalf of Nevada. In making such
26 false representations, Defendants intended that their false representations be used to
27 induce Nevada to purchase or otherwise acquire its products. As a result of the
28 diminished tensile strength, the J-M Pipe purchased and/or acquired by Nevada will

1 have a shorter life span, be more likely to fracture, swell, and/or leak, and need to be
2 replaced more quickly than pipe manufactured to specification. As a result, Nevada
3 has suffered, and will continue to suffer, substantial damage.

4 24. Nevada purchased or otherwise acquired ownership of J-M Pipe in one
5 or more ways, including: (a) by direct purchase from J-M and/or its sales agents; (b)
6 by payment to contractors, installers, suppliers, distributors, vendors, and/or other
7 third parties; and/or (c) by accepting title to pipe from developers who acquired and
8 used J-M Pipe and then deeded it to Nevada in exchange for the provision of money,
9 property, and/or services to developments or private projects, as set forth in greater
10 detail in paragraphs 25 through 27 below. In each of these instances, Defendants'
11 false representations and omissions caused the submission of false claims and
12 caused contractors, distributors, and/or Nevada's personnel to falsely represent to
13 Nevada that J-M Pipe acquired by them conformed to its specifications. As a result,
14 Nevada was deprived of money, property, and/or services that are recoverable as set
15 forth in the Counts herein.

16 25. In connection with item (c) in paragraph 24 above, Nevada acquired J-
17 M Pipe when it accepted newly constructed developments or other private projects
18 built by private developers. Such transactions enabled developers to complete
19 developments or other private projects without having Nevada install, or contract to
20 install, the necessary J-M Pipe.

21 26. Although the J-M Pipe was installed by developers, the installation was
22 strictly regulated by Nevada through specifications because the system containing
23 the installed J-M Pipe was constructed with the specific knowledge that the system
24 would be owned by Nevada and ultimately deeded to Nevada. These specifications
25 dictate, among other requirements, which products may be used in the developments
26 or private projects.

27 27. Defendants' false representations caused developers, their contractors,
28 and/or Nevada's personnel to represent to Nevada that newly constructed

1 developments and other private projects were equipped with J-M Pipe that met basic
2 safety and reliability standards, when, in fact, much of the J-M Pipe did not. As a
3 result, Nevada was deprived of money, property, and/or services that are recoverable
4 as set forth in the Counts herein.

5 28. During the Relevant Period when Nevada purchased or otherwise
6 acquired J-M Pipe, J-M made certain representations and warranties in connection
7 with the J-M Pipe it sold. These representations and warranties were stamped on the
8 J-M Pipe itself, printed on invoices and other shipping documentation that
9 accompanied the J-M Pipe, published in J-M's sales literature or on its website,
10 and/or stated orally to Nevada by or on behalf of J-M by one or more of the
11 Defendants.

12 29. During the Relevant Period when Nevada purchased or otherwise
13 acquired J-M Pipe, J-M falsely represented and warranted that J-M Pipe was fit for
14 the ordinary purposes for which it is used, was merchantable, and was not otherwise
15 defective. These representations and warranties were stamped on the J-M Pipe,
16 printed on invoices and other shipping documentation that accompanied the J-M
17 Pipe, published in J-M's sales literature or on its website, and/or stated orally to
18 Nevada by or on behalf of J-M by one or more of the Defendants.

19 30. During the Relevant Period when Nevada purchased or otherwise
20 acquired J-M Pipe, Nevada relied on the representations and warranties Defendants
21 made in connection with the J-M Pipe they sold, including that J-M Pipe met certain
22 industry specifications, was fit for the ordinary purposes for which it is used, was
23 merchantable, and was not otherwise defective.

24 31. During the Relevant Period, Nevada has experienced several instances
25 where J-M Pipe has failed. When J-M Pipe fails, Nevada is compelled to expend
26 money to address the failures.

27 **IV. PARTIES**

28 32. Nevada is a state of the United States of America and a body politic

1 with the power to sue and be sued. Nevada brings this action on behalf of the State
2 of Nevada and its political subdivisions that purchased or otherwise acquired J-M
3 Pipe during the Relevant Period, whether or not such entity is specifically identified
4 by name in this Complaint. “Political subdivision” is defined as “a county, city,
5 assessment district or any other local government as defined in NRS 354.474,”
6 pursuant to Nev. Rev. Stat. Ann. § 357.030. Certain public water authorities
7 constitute “political subdivisions” as a matter of Nevada law. See, e.g., Nev. Rev.
8 Stat. Ann. § 538.041. Nevada is vested with control over, inter alia, the installation,
9 operation, and maintenance of water systems for the distribution of potable and
10 reclaimed water to its residents, and is also responsible for the installation,
11 operation, and maintenance of sewer lines. Nevada brings this action on its own
12 behalf and on behalf of those agencies of state government and political
13 subdivisions that purchased and/or acquired J-M Pipe during the Relevant Period,
14 including but not limited to those set forth in Exhibit NV1, attached hereto and
15 incorporated herein.

16 33. The Relator is John Hendrix, a resident of Colonia, New Jersey.
17 Nevada is informed and believes, and therefore avers, that Relator worked for
18 Defendant J-M from July 2002 through November 2005 as an engineer in J-M’s
19 Product Assurance Division, advising J-M on the technical aspects of claims
20 brought by J-M’s customers for failing or nonconforming product. Nevada is
21 informed and believes, and therefore avers, that Relator also did some sales and
22 customer service work, including advising current and prospective customers
23 (primarily fellow engineers) on technical aspects of J-M’s products.

24 34. Defendant Formosa is a Delaware corporation, having its headquarters
25 at 9 Peach Tree Hill Road, Livingston, New Jersey. At all times relevant to this
26 Complaint, Formosa was a privately held foreign for-profit corporation and a
27 subsidiary of the Taiwan-based Formosa Plastics Group.

28 35. Defendant J-M is a Delaware corporation, having its headquarters at

1 5200 West Century Boulevard, Los Angeles, California. Prior to moving its
2 headquarters to California in 2008, J-M's headquarters were located at 9 Peach Tree
3 Hill Road, Livingston, New Jersey.

4 36. Defendant Walter Wang is the Chairman of the Board and Chief
5 Executive Officer of Defendant J-M. Along with his wife, he is the beneficial
6 owner of the controlling stock of J-M. His present business address is 5200 West
7 Century Boulevard, Los Angeles, California. Prior to J-M moving its headquarters
8 to California in 2008, Mr. Wang's business address was 9 Peach Tree Hill Road,
9 Livingston, New Jersey.

10 37. During the Relevant Period, Defendants were the agents, servants,
11 and/or employees of each other, and in doing the acts or omissions alleged herein
12 were acting within the course and scope of their authority, service, and/or
13 employment.

14 **V. JURISDICTION AND VENUE**

15 38. This Court has jurisdiction over the subject matter of the Hendrix
16 Action pursuant to 28 U.S.C. § 1331 and 31 U.S.C. § 3732(a), which specifically
17 confer jurisdiction on this Court for actions brought pursuant to 31 U.S.C. §§ 3729
18 and 3730. This Court has jurisdiction over the subject matter of Nevada's action,
19 brought under the NFCA and other statutory and common law, pursuant to 28
20 U.S.C. § 1367 and 31 U.S.C. § 3732(b), because the claims in this action arise from
21 the same transactions or occurrences as the Hendrix Action.

22 39. This Court has personal jurisdiction over Defendants J-M, Formosa,
23 and Walter Wang pursuant to 31 U.S.C. § 3732(a), which provides that "[a]ny
24 action under section 3730 may be brought in any judicial district in which the
25 defendant, or in the case of multiple defendants, any one defendant can be found,
26 resides, transacts business or in which any act proscribed by section 3729 occurred."
27 Section 3732(a) also authorizes nationwide service of process. During the Relevant
28 Period, J-M operated a foundry in Fontana, California, at which many of the

1 fraudulent practices occurred, and thereby transacted business in the Central District
2 of California. In addition, J-M's headquarters are located in Los Angeles, California
3 and were located there during the Relevant Period.

4 40. Venue is proper in this district pursuant to 31 U.S.C. § 3732(a) because
5 J-M can be found in, resides in, and/or transacts business in the Central District of
6 California and because many of the violations of 31 U.S.C. § 3729 described herein
7 occurred within this judicial district.

8 **VI. NEVADA PURCHASED AND ACQUIRED DEFECTIVE J-M PIPE**

9 **A. Nevada Purchased Defective J-M Pipe for Capital Improvement** 10 **Projects.**

11 41. Within Nevada, J-M Pipe is used in water, sewer, and reclaimed water
12 systems that are, *inter alia*, the result of capital improvement projects. In connection
13 with these projects, J-M Pipe is installed underneath roads and pedestrian
14 passageways within Nevada. Exhibit NV2, attached hereto and incorporated herein,
15 identifies some examples of the capital improvement projects that involved the
16 installation of J-M Pipe throughout the Relevant Period. In each such case, Nevada
17 chose to use or accept J-M Pipe based upon Defendants' representations that the J-
18 M Pipe conformed to particular specifications for PVC pipe.

19 42. Nevada has particular specifications for PVC pipe to be installed within
20 its areas, including PVC pipe installed during the construction of capital
21 improvement projects. These projects are governed by various public works
22 standards. As a specific example, the State of Nevada regularly uses the Nevada
23 State Public Works Board Adopted Standards ("Adopted Standards") for State
24 construction projects. Exhibit NV3. The Adopted Standards adopt and reference
25 various other Codes and Regulations, including the 2006 Uniform Plumbing and
26 Mechanical Codes published by the International Association of Plumbing and
27 Mechanical Officials ("IAPMO") and the most current regulations of the State Fire
28 Marshal. *Id.* A copy of the Adopted Standards is available for review at the

1 Northern and Southern offices of the Nevada State Public Works Board and is
2 therefore available to prospective and actual bidders for capital improvement
3 projects. The Adopted Standards are also publicly available online at
4 <http://spwb.state.nv.us/PDFs/adopted-standards-2010.pdf>. As a second example of
5 such Nevada specifications, attached hereto and incorporated herein are excerpts
6 from the Standard Specifications for Public Works Construction (“Orange Book”).
7 Exhibit NV4. The Orange Book governs the installation of PVC pipe in Carson
8 City, Churchill and Washoe Counties, and the cities of Reno, Sparks, and Yerington.
9 A copy of the Orange Book is available for review at the office of the Regional
10 Transportation Commission of Washoe County, Nevada and is therefore available to
11 prospective and actual bidders for capital improvement projects. A copy of the
12 Orange Book is also available online for review at
13 [http://www.rtcwashoe.com/streetshighways/documents/Full_Orange_Book_2007co](http://www.rtcwashoe.com/streetshighways/documents/Full_Orange_Book_2007compressed.pdf)
14 [mpressed.pdf](http://www.rtcwashoe.com/streetshighways/documents/Full_Orange_Book_2007compressed.pdf). As a third example of such Nevada specifications, attached hereto
15 and incorporated herein are excerpts from the Uniform Design and Construction
16 Standards for Potable Water Systems (“UDACS”). Exhibit NV5. The UDACS
17 govern the installation of PVC in the cities of North Las Vegas, Henderson, Boulder
18 City, and the Las Vegas Valley Water District. A copy of the UDACS is available
19 for review at the office of the Las Vegas Valley Water District and is therefore
20 available to prospective and actual bidders for capital improvement projects. A
21 copy of the UDACS is also available online for review at
22 http://www.lvvwd.com/assets/pdf/eng_udacs_2010.pdf.

23 43. Projects within Nevada regularly refer to authorities having jurisdiction
24 for fire protection systems and such authorities’ additional requirements. The
25 Nevada State Fire Marshal’s codes often control such projects. The fire marshal has
26 specifically adopted by reference NFPA 24. Nev. Admin. Code 477.281 (2.) See
27 also Nev. Admin. Code 477.350 (2.) (requiring that "fire systems must comply with
28 standards published by the N.F.P.A."). The fire marshal further specifically requires

1 that “[n]o fire system, device or component of any fire system” and “[n]o
 2 component or device of an automatic sprinkler system” “may be sold, leased or
 3 installed in this State unless it has been approved, labeled or listed by Underwriters
 4 Laboratories Inc., . . . FM Global Technologies LLC or [other qualified fire-testing
 5 laboratory].” See Nev. Admin. Code 477.350 (1.), 477.455. An integral component
 6 of a fire protective system is the piping connected to the water supply that feeds a
 7 sprinkler suppression system. See Nev. Admin. Code 477.190 (“Protective systems,
 8 equipment or apparatus” “means automatic sprinklers”); 477.220 (definition of
 9 “sprinkler system” includes “integrated system of piping connected to a water
 10 supply”). As alleged extensively in Hendrix's Second Amended Complaint
 11 incorporated herein, the only means by which J-M can claim compliance with fire
 12 listing requirements of NFPA 24, UL, or FM, are through its claims of listing and
 13 approval per UL 1285 and/or FM 1610/1612 (see Hendrix SAC, ¶¶ 117, 287-88).

14 1. Public Works Department High-Desert Prison Project (aka Cold Creek
 15 State Prison)

16 44. As a specific example of one of the State's capital improvement
 17 projects in which J-M Pipe was installed, on or about November 6, 1998 the State
 18 Public Works Board entered into a contract with Sletten Construction of Nevada,
 19 Inc. to commence work on Project Nos. 95-G1 & 97-C1, Men's Prison No. 7 (Cold
 20 Creek State Prison), Phase I. Attached hereto as Exhibit NV6 and incorporated
 21 herein by reference are, inter alia, the Notice to Proceed issued to the contractor, and
 22 the agreement between the State and the contractor. The contract award amount of
 23 this project was over \$83,000,000. Id. at 1. Construction on Phase II commenced
 24 on October 11, 1999; this phase of the project was known as Men's Prison No. 7
 25 (High Desert State Prison), Phase II, Project No. 99-C1. Phase I and Phase II of this
 26 project will be referred to collectively as the “High Desert Prison Project.”

27 45. The High Desert Prison Project was an extensive public-works project
 28 to include some 34,650 linear feet of PVC pressure pipe, serving as the main

1 waterline supply for a 3,000-bed prison. Phase I of this project included the
2 construction of all mass earthwork, building pads, finish grading and associated site
3 work, concrete walkways, asphalt and/or gravel roadways, parking lot, and on-and
4 off-site utilities. Utilities included an extensive water distribution system, three
5 water storage tanks, and a gravity sanitary sewer system. Construction also included
6 Core Facilities that consisted of an Outside Administration Building, Entrance
7 Building, Security Administration Building, Program Services Building, Inmate
8 Services & Culinary Building, Medical/Intake Building, and Maintenance/Central
9 Plant Building, four housing units, and the perimeter fencing. The contract also
10 included the relocation on-site and the monthly watering of 1,200 large Joshua &
11 Yucca trees and 1,500 small cacti plants. See Exhibit NV6 at 13. Phase II included
12 construction of four additional housing units, four security towers, general
13 warehouse/motor pool, lethal security fence, and installation of site utilities for the
14 Phase II works.

15 46. The construction specifications for the water systems for the High
16 Desert Prison Project included “water systems for piping for potable water service
17 and fire protection service outside the building.” Exhibit NV7 at 3. The water main
18 to be constructed was both for potable water and for fire suppression, specifically
19 including a sprinkler system. The specifications incorporate the drawings and
20 general provisions of the contract, “including General and Supplementary
21 Conditions and Division 1 Specification Sections.” Id. A copy of the State Public
22 Works Board’s General and Supplementary Conditions is attached hereto as Exhibit
23 NV8. The construction specifications require PVC pipe to meet “AWWA C900;
24 Classes 150 and 200” standards. Exhibit NV7 at 5. Further, the specifications
25 require compliance “with standards of authorities having jurisdiction for fire
26 protection systems,” which, in this case, was the Nevada Fire Marshal. Exhibit NV7
27 at 4; see also Exhibit NV8 at 8 (“The Laws of the State of Nevada and the
28 applicable rules and regulations of its departments, agencies and institutions shall

1 govern the Project and the Work.”). Per the fire marshal’s codes and requirements
2 as described above, the pipe used for this project was required to comply with
3 NFPA 24, UL, and/or FM standards. As described above, J-M Pipe could meet such
4 standards only through its claimed compliance with UL 1285 (and sometimes FM
5 1610/1612).

6 47. As with all public works projects in the State, pursuant to NRS 339.025
7 the State required the contractor for the High Desert Prison Project to post a
8 performance bond in the sum of the contract amount to assure, inter alia, that funds
9 would be available to correct any failure by the contractor to complete the project in
10 accordance with the specifications. Pursuant to the statutory requirement and the
11 General Conditions of the Contract (Exhibit NV8 at 24), the contractor for this
12 project posted a performance bond for the contract award price of over \$83,000,000.
13 Exhibit NV6 at 8. Only upon inspection to confirm that the project was completed
14 in accordance with specifications would the project be accepted, final payment made
15 to the contractor, and water and water maintenance services provided pursuant to the
16 project. Subsequently, upon completion of the project, the performance bond would
17 be released, provided that the State did not discover during that time any failure by
18 the contractor to complete the project in accordance with the specifications.

19 48. Attached hereto as Exhibit NV9 are copies of the approved “cut sheets”
20 submitted by the contractor in the High Desert Prison Project, identifying J-M as a
21 manufacturer of the PVC pipe to be installed in the project. The J-M cut-sheets are
22 for its C900 “Blue Brute” and C905 “Big Blue” pipe. The cut-sheets are replete
23 with J-M’s representations that its pipe “meets AWWA C900,” is “Underwriters
24 Laboratories and NSF Listed, Factory Mutual Approved,” “are listed for critical use
25 in firelines and water mains and are F/M approved,” and “Meets Accepted
26 Standards AWWA C905, Underwriters Laboratories.” Exhibit NV9. The State,
27 through its retained consultant, accepted and authorized the acquisition of J-M Pipe
28 in the High Desert Prison Project based upon review, inspection, and approval of the

1 contractor's submittal of J-M C900/905 pipe, and upon inspection of the J-M Pipe as
2 installed.

3 49. All told, some 34,650 linear feet of J-M pipe was shipped to the High
4 Desert Prison Project, which pipe was installed beginning in late 1999 or early 2000.
5 The project utilized both J-M C900 and C905 pipe in several different sizes. The
6 State Public Works Board accepted the water-system work completed by the
7 contractor and issued Certificates of Substantial Completion, effective June 6 and
8 June 7, 2000. Attached hereto as Exhibit NV10 are copies of the certificates
9 reflecting said acceptance. The State issued these certificates with the
10 understanding, and pursuant to the representation, that the waterlines were installed
11 in conformance with specifications and requirements, and that that the contractor
12 had fulfilled all contractual obligations. The water system was placed into service
13 in approximately September 2000.

14 50. During the one-year warranty period after completion of the water main
15 for the High Desert Prison Project (approximately June 2000 to June 2001), the
16 contractor made three repairs to the pipeline. From April 2005 to August 2005, the
17 installed J-M Pipe failed another five times, specifically on May 27, 2005, July 13,
18 2005, July 18, 2005, July 20, 2005, and August 8, 2005. At that point, the State
19 notified J-M of the failures. Thereafter, the J-M Pipe failed at least another four
20 times – on September 26, 2005, March 3, 2006, March 22, 2006, and April 10,
21 2006. Photos of some of these failures are attached at Exhibit NV11.

22 51. In September 2005, J-M sent samples of some of the pipe that failed in
23 the High Desert Prison Project to CRT Laboratories for testing. One of the tests
24 CRT conducted was a longitudinal tensile strength test per ASTM D638 and ASTM
25 D1784. See Exhibit NV12 at 6. The industry standards UL 1285, FM 1612, and
26 AWWA C900 and C905, which standards were incorporated into the contracts and
27 requirements of the High Desert Prison Project, require that the longitudinal tensile
28 strength of the pipe equal or exceed 7,000 psi. The lab tested five specimens for

1 tensile strength, and each and every specimen failed to meet the minimum of 7,000
2 psi. The average tensile strength of the specimens was only 6,349 psi, substantially
3 below the 7,000 psi minimum required. Id.

4 52. By May 2007, the J-M Pipe in the ground from the High Desert Prison
5 Project had failed a total of at least 17 times. At least one of the water-main breaks -
6 - occurring on April 27, 2007 -- caused the Nevada Department of Corrections to
7 shut-off the water supply to the 3,000-bed prison for two days, requiring water to be
8 hauled in on 8,000-gallon water trucks. The Department of Corrections faced the
9 prospect of no water at this desert facility during summer months, and as the now-
10 responsible agency for the prison, the Department had already paid over \$24,000 to
11 repair the numerous breaks to the line. Exhibit NV13. After these and other
12 failures, the Nevada State Public Works Board decided to replace the water line
13 completely and abandon the existing J-M Pipe pipeline in the ground. The State
14 entered into a contract to replace the line for a contract price of \$630,000, which
15 new waterline was ultimately installed. Exhibit NV14.

16 2. City of Henderson Cactus Wren Park Project

17 53. Another example of public works standards related to capital
18 improvement projects, attached hereto and incorporated herein as Exhibit NV15, are
19 excerpts from the Uniform Standard Specifications for Public Works Construction
20 Off-Site Improvements, Clark County Area, Nevada (the “Uniform Standard
21 Specifications”), which is used by the City of Henderson (“Henderson”), a political
22 subdivision within Nevada. A copy of the Uniform Standard Specifications is
23 available for review and purchase at the office of the Regional Transportation
24 Commission of Southern Nevada (“RTC”) and was therefore available to
25 prospective and actual bidders for capital improvement projects. The Uniform
26 Standard Specifications are also available online on the RTC’s website at
27 http://www.rtcsonthernnevada.com/mpo/strees/streets_specsindex.cfm.

28 54. As a specific example, Henderson requires that “[t]he design and

1 construction of all water distribution and wastewater collection facilities within the
2 City of Henderson must comply with the guidelines set forth in the Uniform Design
3 and Construction Standards and the Design and Construction Standards for
4 Wastewater Collection Systems,” Exhibit NV16 at 2. The Uniform and Design
5 Construction Standards, a copy of which is available online at
6 http://www.lvvw.com/assets/pdf/eng_udacs_2010.pdf, provide that PVC pipe shall
7 be at least “Class 150 DR 18 and shall conform to AWWA Standard C900.” Exhibit
8 NV5 at 8. Henderson has also created an Approved Materials List, which identifies
9 acceptable water main pipe options. Exhibit NV16 at 10. PVC C900 pipe of
10 pressure Class 150 is listed as an approved material and, until February 2010, J-M
11 was an approved manufacturer of such pipe. Exhibit NV16 at 3.

12 55. After accepting a bid for a capital improvement project, and as a
13 condition of accepting the materials that the contractor proposes to use, Nevada, and
14 as a specific example, Henderson, requires that the contractor provide submittals.
15 Section 105.02.01 of the Supplementary Specifications for Henderson requires that
16 the contractor furnish eight copies of each submittal to the City for review. See
17 Exhibit NV17 at 11. The submittals must include, inter alia, product information
18 sheets (also known as “cut sheets”) issued by the manufacturer. See id. In
19 accepting the J-M Pipe for its projects, including one or more of those identified in
20 Exhibit NV2, Henderson received, inspected, and relied upon, inter alia, spec sheets
21 that identified the PVC pipe as J-M Pipe and that contained representations by J-M
22 that the J-M Pipe “meet[s] the requirements of AWWA C900.” See Exhibit NV18.

23 56. In addition to strict compliance with its specifications, Nevada also
24 requires for public works projects that contractors provide a performance bond.
25 Nevada requires for the “new construction, repair or reconstruction of any public
26 building or other public work or public improvement” exceeding \$100,000.00, that
27 contractors provide a performance bond in an amount not less than fifty percent
28 (50%) of the contract amount. See Nev. Rev. Stat. § 339.025. By way of specific

1 example, Henderson requires that each bond be “in the sum of not less than 100
2 percent of the contract price” and that the performance bond be “so conditioned as
3 to ensure the faithful performance by the CONTRACTOR of all work under said
4 contract within the time limit prescribed in a manner that is satisfactory and
5 acceptable to the Contracting Agency.” See Exhibit NV17 at 9.

6 57. Only upon inspection to confirm that the project is completed in
7 accordance with specifications will the project be accepted, payment made to the
8 contractor for labor and cost of materials, and water, sewer, and water maintenance
9 services be provided to the project. Subsequently, upon completion of the project,
10 the performance bond is generally released, provided that Henderson does not
11 discover during that time any failure by the contractor, inter alia, to complete the
12 project in accordance with the specifications.

13 58. During the Relevant Period, Henderson acquired ownership of J-M
14 Pipe through capital improvement projects set forth in Exhibit NV2, attached hereto
15 and incorporated herein

16 59. As a specific example of one of the above-described capital
17 improvement projects in which J-M Pipe was installed, on or about November 2,
18 2004, Henderson entered into a contract with Capriati Construction Corp. Inc. to
19 commence work on the Cactus Wren Park Project. Attached hereto as Exhibit
20 NV19 and incorporated herein by reference are provisions of the specifications and
21 contract documents for the Cactus Wren Park Project. The contract documents
22 provide that the latest edition of the Uniform Standard Specifications and
23 Henderson’s Supplementary Specifications be incorporated in full. The
24 Supplementary Specifications require that the work shall also conform to the
25 “Uniform Design and Construction Standards for Water Distribution Systems.” The
26 Uniform Design and Construction Standards require that all PVC pipe installed
27 within Henderson “shall be at least Class 150 DR 18 and shall conform to the
28 ‘Standard for Polyvinyl Chloride (PVC) Pressure Pipe, 4 inches through 12 inches,

1 For Water' (AWWA C900).” Exhibit NV20 at 4.

2 60. In connection with the Cactus Wren Park Project, the Contractor
3 installed J-M C900 PVC pipe for the water main installation phase of the project.
4 Attached hereto as Exhibit NV21 is a letter of transmittal, indicating that J-M Pipe
5 was used in the Cactus Wren Park Project and a copy of the approved “cut sheet”
6 submitted by the contractor in the Cactus Wren Park Project, Exhibit NV18,
7 identifying J-M as the manufacturer of the PVC pipe to be installed in the project
8 and containing J-M’s representations that its pipe “meets the requirements of the
9 American Water Works Association water distribution standard AWWA C900.”

10 61. On or about May 30, 2006, Henderson approved and accepted the work
11 completed by the contractor in the Cactus Wren Park Project. Attached hereto as
12 Exhibit NV22 is a copy of the Notice of Completion reflecting said acceptance. In
13 connection with the completion of this project, Nevada now owns the J-M Pipe, is
14 responsible for maintaining it, and is responsible for eventually replacing it.
15 Henderson accepted and authorized the acquisition of J-M Pipe in the Cactus Wren
16 Park Project based upon review, inspection, and approval of the contractor’s
17 submittal of J-M C900 Blue Brute pipe.

18 3. City of Reno Phase I System Reuse Project

19 62. As another specific example, like many other Nevada political
20 subdivisions, the City of Reno (“Reno”) uses the Standard Specifications for Public
21 Works Construction for PVC pipe installation within its areas. These standards
22 require that “Polyvinyl chloride pressure pipe shall . . . [meet] the requirements of
23 AWWA C900 . . . and Polyvinyl chloride (PVC) water transmission pipe shall . . .
24 conform[] to AWWA C905.” Exhibit NV4 at 4-5. Additionally, Reno also uses the
25 City of Reno Design Manual, which requires for all reclaimed water projects that
26 PVC pipe “shall meet all the dimensional, chemical, and physical requirements as
27 outlined in AWWA C900” and that “[s]izes 14-inch to 30-inch shall meet all the
28 dimensional, chemical, and physical requirements as outlined in AWWA C905.”

1 Exhibit NV23 at 4. A copy of the City of Reno Design Manual is available for
2 review at the Office of the City Clerk, and is therefore available to prospective and
3 actual bidders for capital improvement projects.

4 63. During the Relevant Period, Reno acquired ownership of J-M Pipe
5 through capital improvement projects, some of which are set forth in Exhibit NV2,
6 attached hereto and incorporated herein.

7 64. As a specific example of one of Reno's capital improvement projects in
8 which J-M Pipe was installed, on or about October 2001, Reno entered into a
9 contract with T.W. Construction Co., Inc. to commence work on the Phase 1 Reuse
10 System Project. Attached hereto as Exhibit NV24 and incorporated herein by
11 reference are provisions of the conformed contract and specifications for the Phase 1
12 Reuse System Project. The Phase 1 Reuse System Project was an extensive work to
13 include some 13,750 linear feet of 30-inch reuse piping and 2,050 linear feet of 24-
14 inch reuse piping from a water reclamation facility to a number of destinations,
15 including farm irrigation systems. Exhibit NV24 at 2. The project also called for 8-
16 inch and 12-inch PVC pipe. Id. A specific Bid Item was for 2,280 linear feet of 235
17 psi, 1.433-inch thickness AWWA purple PVC pipe. Id. at 3.

18 65. The contract documents provide that “[a]ll materials furnished and
19 work performed shall be done in accordance with the 1996 edition of ‘Standard
20 Specifications for Public Works Construction’” (Standard Specifications), as well
21 as any additional General Conditions and Special Provisions. Exhibit NV24 at 13.
22 The 1996 Standard Specifications provide that “[a]ll materials used in the
23 construction of domestic water and irrigation systems shall be in accordance with
24 Section 203 – ‘Non-Pressure and Pressure Pipe and Joint Materials’ – of these
25 Specifications.” Exhibit NV25 at 9. Section 203 provides, in turn, that “Polyvinyl
26 Chloride pressure pipe shall be minimum Class 150 DR 18 meeting the
27 requirements of (AWWA C900).” Id. at 7. Section 02668 of the technical
28 specifications for this project specifically required: “PVC pipe shall conform to the

1 requirements of AWWA C900 “Standard for PVC pressure pipe 4” – 12” and
2 AWWA C905 “Standard for PVC pressure pipe 14” – 36” shall be furnished . . .
3 with a minimum Pressure Rating (PR) of 200 psi (DR 14) for the C900 . . . piping
4 and a minimum Pressure Rating (PR) of 235 psi (DR 18) for the C905 . . . piping.”
5 Exhibit NV24 at page 16. Additionally, the as-built Construction Drawings for the
6 project required that “RECLAIMED IRRIGATION WATER PIPE WILL BE
7 PURPLE AWWA C900 PVC PRESSURE CLASS 200” and “ALL POTABLE
8 WATER PIPE SHALL MEET ASTM AND AWWA SPECIFICATIONS FOR THE
9 PRESSURE RATING AND SERVICE SPECIFIED IN THE PLANS.” Exhibit
10 NV26 at 2 (capital letters in original).

11 66. Reno required the contractor for the Phase 1 Reuse System Project to
12 post, inter alia, material and performance bonds in order to win the contract, to
13 ensure that funds would be available to correct any failure by the contractor to
14 complete the project in accordance with the specifications. Exhibit NV24 at 7-11.
15 Only upon inspection to confirm that the project is completed in accordance with
16 specifications are Reno projects accepted, payment made to the contractor for labor
17 and cost of materials, and water, sewer, and water maintenance services provided
18 for the project. Subsequently, upon completion of the project and expiration of the
19 warranty period, the performance bond would be released, provided that Reno did
20 not discover during that time any failure by the contractor to complete the project in
21 accordance with the specifications.

22 67. In connection with the Phase 1 Reuse System Project, the Contractor
23 installed approximately 2,280 linear feet of 24-inch J-M Pipe at an aggregate cost of
24 \$230,280 for the pipe alone. Exhibit NV24 at 3. The Contractor also installed
25 11,880 linear feet of J-M 12-inch PVC irrigation pipe (cost: \$249,480) and 26,300
26 linear feet of J-M 8-inch PVC irrigation pipe (cost: \$368,200). Id. at 4.

27 68. Attached hereto as Exhibit NV27 are copies of the “cut sheets”
28 submitted by the contractor in the Phase 1 Reuse System Project, identifying J-M as

1 the manufacturer of the PVC pipe to be installed in the project. The J-M cut-sheets
2 are for its C900 “Blue Brute” and C905 Purple “Big Blue” pipe. The cut-sheets are
3 replete with J-M’s representations that its pipe “meets AWWA C900,” is
4 “Underwriters Laboratories and NSF Listed, Factory Mutual Approved,” “are listed
5 for critical use in firelines and water mains and are F/M approved,” and “Meets
6 Accepted Standards AWWA C905, Underwriters Laboratories.” Id.

7 69. Reno accepted and authorized the acquisition of J-M Pipe in the Phase
8 1 Reuse Project based upon review, inspection, and approval of the contractor’s
9 submittal of J-M C900/905 pipe. Exhibit NV28. In addition, the inspector for the
10 project visually examined the pipe before accepting it.

11 70. In approximately December 2001 or January 2002, on information and
12 belief J-M shipped significant quantities of 24-inch DR 18, 12-inch DR 14 and 8-
13 inch DR 14 purple PVC pipe to a distributor, Western Nevada Supply Company,
14 for use in Reno’s Phase 1 Reuse System Project. Exhibit NV29 at 1-2. According
15 to J-M’s own account, after installing some 1,800 to 2,100-feet of J-M pipe in the
16 ground, the contractor ran a pressure test in the line at 250 psi, whereupon the line
17 failed when a piece of pipe split. Id. The contractor conducted a subsequent
18 pressure test whereupon a second section of J-M’s pipe split, some 800 feet away
19 from the first break. When the sections failed, as described by the project manager
20 hired by Reno:

21 “By the scatter of the drain rock, it was evident that the rock was
22 launched at a considerable velocity in order for it to be ejected from
23 approximately 12 feet of compacted cover. [¶] The pressure testing
24 was performed at 250 psi and the normal working pressure in this
25 particular section of pipeline will be approximately 200 psi within
26 the next year. The potential of the pipe violently failing and a
27 worker being injured or killed while moving sprinkler wheel lines is
28 evident. The City will not accept the responsibility of allowing a

1 potential life-threatening installation to remain active.”
2 Exhibit NV29 at 3-4. Photographs of the exploded pipe are attached
3 hereto and incorporated herein as Exhibit NV30.

4 71. A J-M representative visited the site and found a “mid wall void in the
5 rear slope of the ring groove.” Ex. NV29 at 1-2. A mid wall void is the absence of
6 material within the wall of the pipe; it constitutes a substantial defect in the pipe that
7 severely weakens the pipe. Such voids are often observed after the pipe cools,
8 appearing as indentations or “dimples” in the pipe. J-M evaluated samples of the
9 failed pipe and reported to its distributor: “Although there was no conclusive
10 evidence, it was determined that the failed bell section has a mid wall void which
11 may have been a contributing factor to the pipe failure. Our investigative report
12 notes that the occurrence of such report notes that the occurrence of such voids is
13 usually sporadic and intermittent.” Id. J-M further represented: “J-M remains
14 confident that the two splits were isolated events and we do not anticipate the need
15 to remove or replace any of our pipe.” Id.

16 72. Despite J-M’s representation that mid-wall voids were unusual, when
17 the contractor tested yet another waterline (300-feet) in a critical location, this third
18 section also shattered.

19 73. After these repeated failures, the Project Manager for the Phase 1
20 Reuse System Project noted the “significant potential for other defects being present
21 in the remaining 24-inch PVC piping already installed” and stated that “[t]he City is
22 not convinced that the defects are random and intermittent because the pipes failed
23 in the same manner in both pipe sections and the pipes were manufactured at the
24 same plant within one day of each other.” Exhibit NV29 at 3-4. The Project
25 Manager required that J-M would pay for removing and disposing the current line
26 (some 2,100 feet) and replace the entire line, providing manufacturing quality
27 control and testing reports for all replacement pipe, and provide a 5-year warranty
28 (as opposed to the official 1-year warranty) on the pipe materials. Id. J-M acceded

1 to these demands. The contractor sought some \$179,426.26 in back-charges for
2 removing and replacing the 2,100-ft of pipe alone, and J-M acceded to most of this
3 demand.

4 74. On or about June 21, 2002, Reno issued a Notice of Completion of
5 Work, accepting the work completed by the contractor T.W. Construction Co. in the
6 Phase 1 Reuse System Project. Attached hereto as Exhibit NV31 is a copy of the
7 Notice of Completion reflecting said acceptance. In connection with the completion
8 of this project, Reno now owns the J-M Pipe, is responsible for maintaining it, and is
9 responsible for eventually replacing it.

10 75. In addition to the failures described in this Complaint, during the
11 Relevant Period, Nevada has experienced several other instances where J-M Pipe
12 has failed. When J-M Pipe fails, Nevada is compelled to expend money to address
13 the failures.

14 **B. Nevada Acquired Ownership of Defective J-M Pipe from**
15 **Developers**

16 76. In addition to Capital Improvement Projects, Nevada acquires water,
17 sewer, and/or reclaimed water lines installed in developments by accepting title to
18 pipe from developers who acquired and used pipe, including J-M Pipe, and then
19 deeded it over to Nevada. In connection with these developments, J-M Pipe is used
20 throughout Nevada's distribution system in water, sewer, and reclaimed water
21 systems that were installed beneath roads and pedestrian passageways within
22 Nevada.

23 77. Nevada has particular specifications for PVC pipe to be installed within
24 its area, including PVC pipe installed during the construction of developments.
25 Attached hereto and incorporated herein as Exhibit NV5, as another example of
26 PVC pipe specifications within Nevada, are excerpts from The Uniform Design and
27 Construction Standards for Potable Water Distribution Systems ("UDACS") of the
28 Las Vegas Valley Water District ("LVVWD"), a municipal entity that provides

1 water to Nevada residents. The UDACS is publicly available at the LVVWD
2 offices and online at http://www.lvvwd.com/eng/references_udacs.html and is
3 therefore available to contractors and developers.

4 78. In addition to other requirements, section 2.06.01 of the UDACS
5 mandates that “[u]nless otherwise specified or shown on the drawings, polyvinyl
6 chloride pressure pipe shall be at least Class 150 DR 18 and shall conform to
7 AWWA Standard C900, ‘Polyvinyl Chloride (PVC) Pressure Pipe And Fabricated
8 Fittings, Four (4) Inches Through Twelve (12) Inches For Water Distribution.’”
9 Exhibit NV5 at 8.

10 79. LVVWD is responsible for providing water to its customers and
11 ensuring the pipe used is compliant with relevant standards including UDACS and
12 AWWA. In addition to strict compliance with the UDACS, Nevada, and, as a
13 specific example its political subdivision LVVWD, also rely upon four warranty
14 bonds that developers are required to provide where projects exceed \$30,000.
15 LVVWD’s requirements with respect to the provision of bonds is publicly available
16 online at http://www.lvvwd.com/b2b/purchasing_bonds.html. Developers are
17 required to provide a bid bond, performance bond, labor and material bond, and
18 guarantee bond to ensure that funds will be available to correct any failure by the
19 developer to complete the project in accordance with, *inter alia*, LVVWD’s
20 specifications.

21 80. Only upon inspection by LVVWD to confirm that the water, sewer,
22 and/or reclaimed waterline project is completed in accordance with the
23 specifications will the project be accepted, the warranty bonds released, and water
24 and water maintenance services be provided to the project.

25 81. After the release of the warranty bonds, the installed PVC pipe
26 automatically becomes the property of LVVWD, and LVVWD becomes responsible
27 for all repairs or replacement work.

28

1 1. Las Vegas Valley Water District Buffalo 2745 Zone South Pipeline
2 Project

3 82. During the Relevant Period, J-M Pipe was installed by developers,
4 placed into service, and maintained by Nevada. An example of one such acquisition
5 was the “Buffalo 2745 Zone South Pipeline” project in which J-M C900 pipe was
6 installed by a developer and then deeded over to LVVWD on September 4, 2003.
7 Attached hereto and incorporated herein as Exhibit NV32 at 3 is a copy of the Bill
8 of Sale wherein the developer assigned the installed J-M Pipe to LVVWD.

9 83. LVVWD required that the pipe used conform to the Standard for
10 Polyvinyl Chloride (PVC) Pressure Pipe, AWWA C900. Attached hereto and
11 incorporated herein as Exhibit NV33 is a copy of the relevant section of the UDACS
12 stating the requirements for PVC pipe. Also attached hereto and incorporated herein
13 as Exhibit NV32 at 5-9 is an approved “cut sheet” or “shop drawing” submitted by
14 the Buffalo 2745 Zone South Pipeline contractor, identifying J-M as the
15 manufacturer of the PVC pipe to be installed in the project and containing J-M’s
16 representations that its Class 150 pipe “meets [the water distribution standard]
17 AWWA C900” requirements and that the pipe “meet[s] the commonly accepted
18 high safety requirements of municipal water systems.” Based upon Defendants’
19 representations in the “cut sheet,” a consulting firm G.C. Wallace, approved the use
20 of J-M Pipe as a responsible engineer on behalf of the developer and/or LVVWD on
21 December 31, 2001.

22 84. During the installation period, a LVVWD employee visited the Buffalo
23 2745 Zone South Pipeline project site to inspect the pipe and confirm that its
24 stamping indicated compliance with AWWA C900, as represented in the previously
25 submitted cut sheets. Because the J-M Pipe was stamped with the appropriate
26 markings, the LVVWD employee approved and accepted the J-M Pipe at the site.
27 LVVWD chose to use and accept J-M Pipe based upon Defendants’ representations
28 that the J-M Pipe installed in the development conformed to LVVWD’s

1 specifications for PVC pipe. LVVWD's direct involvement in the inspection and
2 approval of the J-M Pipe used in the Buffalo 2745 Zone South Pipeline project is
3 crucial because all of the pipe installed was ultimately incorporated into LVVWD's
4 water system. In connection with the completion of this project, LVVWD now
5 owns the J-M Pipe, is responsible for maintaining it, and is responsible for replacing
6 it.

7 2. Las Vegas Valley Water District Hualapai 2860 Zone North Pipeline
8 Project

9 85. Another example of an acquisition of J-M Pipe from a developer is the
10 "Hualapai 2860 Zone North Pipeline" project in which J-M C900 pipe was installed
11 by a developer and then deeded over to LVVWD on June 24, 2002. Attached hereto
12 and incorporated herein as Exhibit NV34 at 3 is a copy of the Bill of Sale wherein
13 the developer assigned the installed J-M Pipe to LVVWD.

14 86. LVVWD required that the pipe used conform to the Standard for
15 Polyvinyl Chloride (PVC) Pressure Pipe, AWWA C900. Attached hereto and
16 incorporated herein as Exhibit NV33 is a copy of the relevant section of the UDACS
17 stating the requirements for PVC pipe. Also attached hereto and incorporated herein
18 as Exhibit NV34 at 5-9 is an approved "cut sheet" or "shop drawing" submitted by
19 the Hualapai 2860 Zone North Pipeline Contractor, identifying J-M as the
20 manufacturer of the PVC pipe to be installed in the project and containing J-M's
21 representations that its Class 150 pipe "meets [the water distribution standard]
22 AWWA C900" requirements and that the pipes "meet the commonly accepted high
23 safety requirements of municipal water systems." Based upon Defendants'
24 representations in the "cut sheet," a consulting firm, VTN Nevada, approved the use
25 of J-M Pipe as a responsible engineer on behalf of the developer and/or LVVWD on
26 October 5, 2000.

27 87. During the installation period, a LVVWD employee visited the
28 Hualapai 2860 Zone North Pipeline project site to inspect the pipe and confirm that

1 its stamping indicated compliance with AWWA C900, as represented in the
2 previously submitted cut sheets. Because the J-M Pipe was stamped with the
3 appropriate markings, the LVVWD employee approved and accepted the J-M Pipe
4 at the site. LVVWD chose to use and accept J-M Pipe based upon Defendants'
5 representations that the J-M Pipe installed in the development conformed to
6 LVVWD's specifications for PVC pipe. LVVWD's direct involvement in the
7 inspection and approval of the J-M Pipe used in the Hualapai 2860 Zone North
8 Pipeline project is crucial because all of the pipe installed was ultimately
9 incorporated into LVVWD's water system. In connection with the completion of
10 this project, LVVWD now owns the J-M Pipe, is responsible for maintaining it, and
11 is responsible for replacing it.

12 3. Las Vegas Valley Water District Starr 2538 Zone South Pipeline
13 Project

14 88. Another example of an acquisition of J-M Pipe from a developer is the
15 "Starr 2538 Zone South Pipeline" project in which J-M C900 and J-M C905 pipe
16 was installed by a developer and then, upon information and belief, deeded over to
17 LVVWD.

18 89. At the time of the Starr 2538 Zone South Pipeline Project, LVVWD
19 required that the pipe used conform to the Standard for Polyvinyl Chloride (PVC)
20 Pressure Pipe, (AWWA C900), and, in some circumstances, the Standard for
21 Polyvinyl Chloride (PVC) Water Transmission Pipe, (AWWA C905), as determined
22 on a case-by-case basis. Attached hereto and incorporated herein as Exhibit NV33
23 is a copy of the relevant section of the UDACS stating the requirements for PVC
24 pipe. Also attached hereto and incorporated herein as Exhibit NV35 at 6-15 are
25 approved "cut sheets" or "shop drawings" submitted by the Starr 2538 Zone South
26 Pipeline contractor, identifying J-M as the manufacturer of the PVC pipe to be
27 installed in the project and containing J-M's representations that its C900 pipe meets
28 AWWA C900 requirements and that its C905 pipe meets AWWA C905

1 requirements. Based upon Defendants' representations in the "cut sheet," a
2 consulting firm, Post, Buckley, Schuh, Jernigan, Inc., approved the use of J-M Pipe
3 as a responsible engineer on behalf of the developer and/or LVVWD on February 5,
4 2003.

5 90. During the installation period, a LVVWD employee visited the Starr
6 2538 Zone South Pipeline project site to inspect the pipe and confirm that its
7 stamping indicated compliance with AWWA C900 and AWWA C905, as
8 represented in the previously submitted cut sheets. Because the J-M Pipe was
9 stamped with the appropriate markings, the LVVWD employee approved and
10 accepted the J-M Pipe at the site. LVVWD chose to use and accept J-M Pipe based
11 upon Defendants' representations that the J-M Pipe installed in the development
12 conformed to LVVWD's specifications for PVC pipe. LVVWD's direct
13 involvement in the inspection and approval of the J-M Pipe used in the Starr 2538
14 Zone South Pipeline project is crucial because all of the pipe installed was
15 ultimately incorporated into LVVWD's water system. In connection with the
16 completion of this project, LVVWD now owns the J-M Pipe, is responsible for
17 maintaining it, and is responsible for replacing it.

18 4. Las Vegas Valley Water District 3665 Zone Pumping Station
19 Discharge Pipeline and PRV Project

20 91. Another example of an acquisition of J-M Pipe from a developer is the
21 "3665 Zone Pumping Station Discharge Pipeline and PRV" project in which J-M
22 C900 and J-M C905 pipe was installed by a developer and then deeded over to
23 LVVWD on September 11, 2007. Attached hereto and incorporated herein as
24 Exhibit NV36 at 3 is a copy of the Bill of Sale wherein the developer assigned the
25 installed J-M Pipe to LVVWD.

26 92. LVVWD required that the pipe used conform to the Standard for
27 Polyvinyl Chloride (PVC) Pressure Pipe, AWWA C900 and the Standard for
28 Polyvinyl Chloride (PVC) Water Transmission Pipe, AWWA C905. Attached

1 hereto and incorporated herein as Exhibit NV37 is a copy of the relevant section of
2 the UDACS stating the requirements for PVC pipe. Attached hereto and
3 incorporated herein as Exhibit NV36 at 5-29 are approved “cut sheets” or “shop
4 drawings” submitted by the 3665 Zone Pumping Station Discharge Pipeline and
5 PRV contractor, identifying J-M as the manufacturer of the PVC pipe to be installed
6 in the project and containing J-M’s representations that its C900 pipe “meets [the
7 water distribution standard] AWWA C900” requirements and that the pipes “meet
8 the high safety requirements commonly needed by municipal water systems.” The
9 “cut sheets” or “shop drawings” also contained J-M’s representations that its C905
10 pipe “meets [the water transmission standard] AWWA C905” requirements and that
11 the pipes “meet the commonly accepted high safety requirements of municipal water
12 systems.” Based upon Defendants’ representations in the “cut sheets,” a consulting
13 firm, G.C. Wallace, approved the use of J-M Pipe as a responsible engineer on
14 behalf of the developer and/or LVVWD on March 15 and 16, 2006.

15 93. During the installation period, a LVVWD employee visited the 3665
16 Zone Pumping Station Discharge Pipeline and PRV project site to inspect the pipe
17 and confirm that its stamping indicated compliance with AWWA C900 and C905,
18 as represented in the previously submitted cut sheets. Because the J-M Pipe was
19 stamped with the appropriate markings, the LVVWD employee approved and
20 accepted the J-M Pipe at the site. LVVWD chose to use and accept J-M Pipe based
21 upon Defendants’ representations that the J-M Pipe installed in the development
22 conformed to LVVWD’s specifications for PVC pipe. LVVWD’s direct
23 involvement in the inspection and approval of the J-M Pipe used in the 3665 Zone
24 Pumping Station Discharge Pipeline and PRV project is crucial because all of the
25 pipe installed was ultimately incorporated into LVVWD’s water system. In
26 connection with the completion of this project, LVVWD now owns the J-M Pipe, is
27 responsible for maintaining it, and is responsible for replacing it.

28 5. Las Vegas Valley Water District 3665 South Pipeline Phase I Project

1 94. Another example of an acquisition of J-M Pipe from a developer is the
2 “3665 South Pipeline Phase I” project in which J-M C900 pipe was installed by a
3 developer and then deeded over to LVVWD on May 17, 2007. Attached hereto and
4 incorporated herein as Exhibit NV38 at 3 is a copy of the Bill of Sale wherein the
5 developer assigned the installed J-M Pipe to LVVWD.

6 95. LVVWD required that the pipe used conform to the Standard for
7 Polyvinyl Chloride (PVC) Pressure Pipe, AWWA C900. Attached hereto and
8 incorporated herein as Exhibit NV37 is a copy of the relevant section of the UDACS
9 stating the requirements for PVC pipe. Attached hereto and incorporated herein as
10 Exhibit NV38 at 5-26 is an approved “cut sheet” or “shop drawing” submitted by
11 the 3665 South Pipeline Phase I contractor, identifying J-M as the manufacturer of
12 the PVC pipe to be installed in the project and containing J-M’s representations that
13 its C900 pipe “meets [the water distribution standard] AWWA C900” requirements
14 and that the pipes “meet the high safety requirements commonly needed by
15 municipal water systems.” Based upon Defendants’ representations in the “cut
16 sheet,” a consulting firm, G.C. Wallace, approved the use of J-M Pipe as a
17 responsible engineer on behalf of the developer and/or LVVWD on April 7, 2006
18 and July 24 and 27, 2006.

19 96. During the installation period, a LVVWD employee visited the 3665
20 South Pipeline Phase I site to inspect the pipe and confirm that its stamping
21 indicated compliance with AWWA C900, as represented in the previously submitted
22 cut sheets. Because the J-M Pipe was stamped with the appropriate markings, the
23 LVVWD employee approved and accepted the J-M Pipe at the site. LVVWD chose
24 to use and accept J-M Pipe based upon Defendants’ representations that the J-M
25 Pipe installed in the development conformed to LVVWD’s specifications for PVC
26 pipe. LVVWD’s direct involvement in the inspection and approval of the J-M Pipe
27 used in the 3665 South Pipeline Phase I project is crucial because all of the pipe
28 installed was ultimately incorporated into LVVWD’s water system. In connection

1 with the completion of this project, LVVWD now owns the J-M Pipe, is responsible
2 for maintaining it, and is responsible for replacing it.

3 6. Las Vegas Valley Water District Mainwal 3205 Zone North Pipeline
4 Project

5 97. Another example of an acquisition of J-M Pipe from a developer is the
6 “Mainwal 3205 Zone North Pipeline” project in which J-M C905 pipe was installed
7 by a developer and then deeded over to LVVWD on April 4, 2007. Attached hereto
8 and incorporated herein as Exhibit NV39 at 3 is a copy of the Bill of Sale wherein
9 the developer assigned the installed J-M Pipe to LVVWD.

10 98. LVVWD required that the pipe used conform to the Standard for
11 Polyvinyl Chloride (PVC) Water Transmission Pipe, AWWA C905. Attached
12 hereto and incorporated herein as Exhibit NV37 is a copy of the relevant section of
13 the UDACS stating the requirements for PVC pipe. Attached hereto and
14 incorporated herein as Exhibit NV39 at 5-6 is an approved “cut sheet” or “shop
15 drawing” submitted by the Mainwal 3205 Zone North Pipeline contractor,
16 identifying J-M as the manufacturer of the PVC pipe to be installed in the project
17 and containing J-M’s representations that its Class 100, 165, and 235 pipe “meets
18 the requirements of the American Water Works Association [AWWA] water
19 transmission standard [AWWA C905].” Based upon Defendants’ representations in
20 the “cut sheet,” a consulting firm, VTN Nevada, approved the use of J-M Pipe as a
21 responsible engineer on behalf of the developer and/or LVVWD on September 13,
22 2005.

23 99. During the installation period, a LVVWD employee visited the
24 Mainwal 3205 Zone North Pipeline project site to inspect the pipe and confirm that
25 its stamping indicated compliance with AWWA C905, as represented in the
26 previously submitted cut sheets. Because the J-M Pipe was stamped with the
27 appropriate markings, the LVVWD employee approved and accepted the J-M Pipe
28 at the site. LVVWD chose to use and accept J-M Pipe based upon Defendants’

1 representations that the J-M Pipe installed in the development conformed to
2 LVVWD's specifications for PVC pipe. LVVWD's direct involvement in the
3 inspection and approval of the J-M Pipe used in the Mainwal 3205 Zone North
4 Pipeline project is crucial because all of the pipe installed was ultimately
5 incorporated into LVVWD's water system. In connection with the completion of
6 this project, LVVWD now owns the J-M Pipe, is responsible for maintaining it, and
7 is responsible for replacing it.

8 7. Las Vegas Valley Water District Egan Crest 3090 Zone North Pipeline
9 Project

10 100. Another example of an acquisition of J-M Pipe from a developer is the
11 "Egan Crest 3090 Zone North Pipeline" project in which J-M C900 pipe was
12 installed by a developer and then deeded over to LVVWD on March 27, 2007.
13 Attached hereto and incorporated herein as Exhibit NV40 at 3 is a copy of the Bill
14 of Sale wherein the developer assigned the installed J-M Pipe to LVVWD.

15 101. LVVWD required that the pipe used conform to the Standard for
16 Polyvinyl Chloride (PVC) Pressure Pipe, AWWA C900. Attached hereto and
17 incorporated herein as Exhibit NV37 is a copy of the relevant section of the UDACS
18 stating the requirements for PVC pipe. Also attached hereto and incorporated herein
19 as Exhibit NV40 at 5-12 is an approved "cut sheet" or "shop drawing" submitted by
20 the Egan Crest 3090 Zone North Pipeline Contractor, identifying J-M as the
21 manufacturer of the PVC pipe to be installed in the project and containing J-M's
22 representations that its Class 100, 150, and 200 pipe "meets [the water distribution
23 standard] AWWA C900" requirements and that the pipes "meet the commonly
24 accepted high safety requirements of municipal water systems." Based upon
25 Defendants' representations in the "cut sheet," a consulting firm, VTN Nevada,
26 approved the use of J-M Pipe as a responsible engineer on behalf of the developer
27 and/or LVVWD on July 21, 2005.

28 102. During the installation period, a LVVWD employee visited the Egan

1 Crest 3090 Zone North Pipeline project site to inspect the pipe and confirm that its
2 stamping indicated compliance with AWWA C900, as represented in the previously
3 submitted cut sheets. Because the J-M Pipe was stamped with the appropriate
4 markings, the LVVWD employee approved and accepted the J-M Pipe at the site.
5 LVVWD chose to use and accept J-M Pipe based upon Defendants' representations
6 that the J-M Pipe installed in the development conformed to LVVWD's
7 specifications for PVC pipe. LVVWD's direct involvement in the inspection and
8 approval of the J-M Pipe used in the Egan Crest 3090 Zone North Pipeline project is
9 crucial because all of the pipe installed was ultimately incorporated into LVVWD's
10 water system. In connection with the completion of this project, LVVWD now
11 owns the J-M Pipe, is responsible for maintaining it, and is responsible for replacing
12 it.

13 103. As set forth in paragraphs 76 through 102 and accompanying exhibits,
14 Nevada and, by way of specific example, LVVWD, have expended money and/or
15 relinquished property in the process of regulating and accepting pipe from
16 developers. All told, between 1997 and 2007, at least 2,902,420 linear feet (or 549.7
17 miles) of J-M Pipe was installed in the LVVWD. Exhibit NV41.

18 104. The preceding paragraphs, 41 through 103, and accompanying exhibits,
19 set forth some examples of the purchase and/or acquisition of J-M Pipe by Nevada
20 that was manufactured in a manner that was not in accordance with the way it was
21 tested and certified. These are only a few examples of J-M Pipe purchased and/or
22 acquired by Nevada during the Relevant Period.

23 **D. Nevada Has Been Damaged By Defendants' Misrepresentations**

24 105. Prior to purchasing and/or otherwise acquiring title to J-M Pipe from J-
25 M, Nevada knew about J-M and J-M Pipe through, among other things, reviewing J-
26 M's website, reviewing catalogues, brochures, and other publications issued by J-M,
27 reviewing trade publications that described J-M's products, and/or conducting
28 meetings with J-M sales personnel or agents of J-M.

1 106. Nevada decided to purchase, approve for purchase, and/or accept the
2 deeding of J-M Pipe based on representations made by J-M about the quality of its
3 pipe in one or more of the following ways: stencils on the pipe itself; written
4 materials issued by and on behalf of J-M; J-M's website; J-M's catalogues,
5 brochures, and other publications; trade publications that described J-M's products;
6 meetings with J-M sales personnel; and/or passed on from J-M to Nevada by
7 distributors and contractors. Nevada affirmatively relied upon these representations
8 when it made the decision to purchase and/or otherwise acquire J-M Pipe.

9 107. Nevada alleges that the J-M Pipe acquired and/or purchased is unfit for
10 the ordinary purposes for which it is used, is not merchantable, and is otherwise
11 defective.

12 108. At relevant times when Nevada purchased or otherwise acquired J-M
13 Pipe, Nevada relied on the representations and warranties made by J-M, in particular
14 the representations and warranties that the pipe conformed to the specifications set
15 forth by Nevada.

16 109. At relevant times when Nevada purchased or otherwise acquired the J-
17 M Pipe, Nevada did not know or have reason to know that the J-M Pipe did not
18 comply with the representations and warranties J-M had made concerning that
19 product.

20 110. At relevant times when Nevada purchased or otherwise acquired J-M
21 Pipe, Nevada had no knowledge from any source, including from J-M, Formosa,
22 Wang, or any third party, about the testing history of J-M Pipe (including the
23 failures set forth at paragraphs 59 through 117, inclusive, of the Second Amended
24 Complaint).

25 111. At relevant times when Nevada purchased or otherwise acquired J-M
26 Pipe, Nevada had no knowledge from any source, including from J-M, Formosa,
27 Wang, or any third party, about the defective quality of the J-M Pipe.

28 112. Defendants fraudulently concealed their wrongdoing from their

1 customers, including Nevada, by concealing facts establishing that the J-M Pipe sold
2 to them was made using inferior materials, processing, and tooling, all of which
3 resulted in the production of pipe with a substandard tensile strength, as measured
4 by various tests. In concealing this information from distributors, contractors, and
5 ultimate end-users, Defendants intended to induce Nevada to purchase or otherwise
6 acquire J-M Pipe. As a result of Defendants' actions, Nevada has suffered, and will
7 continue to suffer, substantial damage.

8 113. Nevada had no reason to know of, or means to otherwise discover, the
9 wrongdoing alleged herein prior to investigating the allegations contained in
10 Hendrix's Complaint.

11 114. Nevada would not have purchased or otherwise acquired the J-M Pipe
12 had it known, inter alia, that J-M Pipe: (a) did not comply with Nevada's
13 specifications; (b) did not comply with industry standards as represented by
14 Defendants and/or their agents; (c) was defective or unsafe; (d) would not perform
15 as represented; or (e) would have to be replaced sooner than Defendants represented
16 it would have to be replaced.

17 115. Nevada suffered injury as a result of acquiring J-M Pipe that did not
18 conform to industry standards and/or was otherwise defective or substandard,
19 including having paid money, exchanged property, or provided services in response
20 to a claim for money, property, or services in connection with its purchase or other
21 acquisition of J-M Pipe.

22 116. Nevada has expended many millions of dollars in purchasing and/or
23 acquiring J-M Pipe. Nevada has relinquished property in the form of performance
24 bonds, and provided water distribution and maintenance services in connection with
25 its acquisition of J-M Pipe. Defendants' conduct has directly led and/or will directly
26 lead to the need for Nevada to expend in the future funds that it did not budget for,
27 in order to replace defective pipe far earlier than would be required were
28 Defendants' representations true.

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COUNT I
Substantive Violations of Nevada False Claims Act
Nev. Rev. Stat. Ann. §§ 357.040(1)(a) and (1)(b)
(Against J-M)

1. Nevada realleges and incorporates by reference the allegations made in Paragraphs 1 through 116 of this Complaint.

2. Through the acts described above, J-M, its agents, employees and co-conspirators knowingly presented and caused to be presented to officers, employees, and/or agents of Nevada that purchased and/or acquired J-M Pipe during the Relevant Period, including, without limitation, those state agencies and political subdivisions set forth in Exhibit NV1, false and fraudulent claims related to, without limitation, purchases and/or acquisitions of J-M Pipe, and knowingly failed to disclose material facts, in order to obtain payment and/or approval from Nevada and its contractors, installers, suppliers, distributors, vendors, developers, and/or other recipients of Nevada’s money, property, and/or services.

3. Through the acts described above, J-M, its agents, employees, and co-conspirators knowingly made, used, and caused to be made and used false records and statements, which also omitted material facts, in order to induce Nevada and its contractors, grantees, installers, suppliers, distributors, vendors, developers, and/or other recipients of Nevada’s money, property, and/or services to approve and pay false and fraudulent claims, or provide money, property, and/or services in satisfaction of such false and fraudulent claims.

4. Nevada was unaware of the falsity of the records, statements, and claims made and submitted by J-M, its agents, employees, and co-conspirators, and as a result thereof, was deprived of money, property, and/or services, as a result of J-M’s actions.

5. By reason of the money, property, and/or services expended as a result of J-M’s fraud, Nevada has suffered damages, and continues to be damaged, in an amount to be determined at trial.

1 6. Nevada is entitled to the maximum penalty of \$10,000 for each and
2 every violation of Nev. Rev. Stat. Ann. § 357.040 alleged herein.

3 **COUNT II**
4 **Substantive Violations of Nevada False Claims Act**
5 **Nev. Rev. Stat. Ann. §§ 357.040(1)(a) and (1)(b)**
6 **(Against Formosa and Wang)**

7 1. Nevada realleges and incorporates by reference the allegations made in
8 Paragraphs 1 through 116 of this Complaint.

9 2. Through the acts described above, Formosa, Wang, their agents,
10 employees and co-conspirators knowingly caused to be presented to officers,
11 employees, and/or agents of Nevada that purchased and/or acquired J-M Pipe during
12 the Relevant Period, false and fraudulent claims related to, without limitation, those
13 purchases and/or acquisitions set forth above, and knowingly failed to disclose
14 material facts, in order to obtain payment and approval from Nevada and its
15 contractors, grantees, developers, and other recipients of Nevada’s money, property,
16 and/or services.

17 3. Through the acts described above, Formosa, Wang, and their agents,
18 employees and co-conspirators knowingly caused to be made and used false records
19 and statements, which also omitted material facts, in order to induce Nevada and its
20 contractors, grantees, developers, and other recipients of Nevada’s money, property,
21 and/or services to approve and pay false and fraudulent claims, or provide property
22 and/or services in satisfaction of such false and fraudulent claims.

23 4. Nevada was unaware of the falsity of the records, statements, and
24 claims caused to be submitted by Formosa, Wang, their agents, employees, and co-
25 conspirators, and as a result thereof, was deprived of money, property, and/or
26 services as a result of the actions of Formosa and Wang.

27 5. By reason of the money, property, and/or services expended as a result
28 of the fraud of Formosa and Wang, Nevada has suffered damages, and continues to
be damaged, in an amount to be determined at trial.

1 6. Nevada is entitled to the maximum penalty of \$10,000 for each and
2 every violation of Nev. Rev. Stat. Ann. § 357.040 alleged herein.

3 **COUNT III**

4 **Substantive Violations of Nevada False Claims Act**

5 **Nev. Rev. Stat. Ann. § 357.040(1)(h)**

6 **(Against All Defendants)**

7 1. Nevada realleges and incorporates by reference the allegations made in
8 Paragraphs 1 through 116 of this Complaint.

9 2. Through the acts described above, Defendants, their agents, employees
10 and co-conspirators became the beneficiaries of the inadvertent submission of false
11 claims to Nevada and subsequently discovered the falsity of the claims.

12 3. Defendants failed to disclose the false claims to Nevada within a
13 reasonable time after discovery that the claims were false.

14 4. By reason of Defendants' failures to disclose the false claims to
15 Nevada, Nevada has suffered damages, and continues to be damaged, in an amount
16 to be determined at trial.

17 5. Nevada is entitled to the maximum penalty of \$10,000 for each and
18 every violation of Nev. Rev. Stat. Ann. § 357.040 alleged herein.

19 **COUNT IV**

20 **Violations of Nevada's Deceptive Trade Practices Act**

21 **Nev. Rev. Stat. Ann. § 598.0915**

22 **(Against All Defendants)**

23 1. Nevada realleges and incorporates by reference the allegations made in
24 Paragraphs 1 through 116 of this Complaint.

25 2. Through the acts described above, Defendants:

26 (a) knowingly made false representations as to the approval or
27 certification of goods for sale, in particular J-M Pipe;

28 (b) knowingly made false representations as to the characteristics and
ingredients of goods for sale, in particular J-M Pipe;

 (c) represented that goods for sale, in particular J-M Pipe, were of a

1 particular standard, quality or grade, despite that Defendants knew or should have
2 known that they were of another standard, quality, or grade; and/or

3 (d) knowingly made other false representations in connection with
4 the sale of its PVC pipe.

5 3. As a result of Defendants' wrongful conduct, Nevada has suffered
6 damages, and continues to be damaged, in an amount to be determined at trial.

7 4. In addition to compensatory damages, Nevada is entitled to recover
8 court costs and attorney's fees, as well as punitive damages.

9
10 **COUNT V**
11 **Negligent Misrepresentation**
12 **(Against All Defendants)**

13 1. Nevada realleges and incorporates by reference the allegations made in
14 Paragraphs 1 through 116 of this Complaint.

15 2. Through the acts described above, J-M supplied false information for
16 the guidance of others concerning the quality of J-M Pipe.

17 3. Defendants communicated this information without exercising
18 reasonable care or competence.

19 4. Nevada justifiably relied on the false information supplied by
20 Defendants when it purchased, used, and/or accepted J-M Pipe.

21 5. As a result of Defendants' wrongful conduct, Nevada has suffered
22 damages, and continues to be damaged, in an amount to be determined at trial.

23 **COUNT VI**
24 **Intentional Misrepresentation**
25 **(Against All Defendants)**

26 1. Nevada realleges and incorporates by reference the allegations made in
27 Paragraphs 1 through 116 of this Complaint.

28 2. Through the acts described above, Defendants made false
representations of fact concerning the quality of J-M Pipe.

3. Defendants made these misrepresentations of fact with knowledge or

1 belief of their falsity and/or without sufficient foundation.

2 4. Defendants made these misrepresentations of fact intending that
3 Nevada would rely, directly or indirectly, on their accuracy.

4 5. Nevada justifiably relied on these misrepresentations of fact when it
5 purchased, used, and/or accepted J-M Pipe.

6 6. As a result of Defendants' wrongful conduct, Nevada has suffered
7 damages, and continues to be damaged, in an amount to be determined at trial.

8 7. In addition to compensatory damages, Nevada is entitled to recover
9 punitive damages.

10 **COUNT VII**
11 **Fraudulent Concealment**
12 **(Against All Defendants)**

13 1. Nevada realleges and incorporates by reference the allegations made in
14 Paragraphs 1 through 116 of this Complaint.

15 2. Through the acts described above, Defendants deliberately concealed or
16 suppressed material facts about the quality of J-M Pipe.

17 3. Defendants were under a duty to disclose these facts to Nevada.

18 4. Defendants acted with the intent to induce Nevada, directly or
19 indirectly, to rely on their concealment.

20 5. Nevada was unaware of these facts and would not have acted as it did if
21 it had known of them.

22 6. Nevada relied upon the material completeness of Defendants'
23 representations.

24 7. As a result of Defendants' wrongful conduct, Nevada has suffered
25 damages, and continues to be damaged, in an amount to be determined at trial.

26 8. In addition to compensatory damages, Nevada is entitled to recover
27 punitive damages.

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COUNT VIII
Civil Conspiracy to Defraud
(Against All Defendants)

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1. Nevada realleges and incorporates by reference the allegations made in Paragraphs 1 through 116 of this Complaint.
2. As set forth above, since 2005 J-M and Formosa have been legally distinct entities involved in the production of PVC pipe.
3. Through the acts described above, Defendants agreed to defraud those who purchased or otherwise acquired J-M Pipe by intentionally concealing or suppressing and/or affirmatively misrepresenting material facts regarding the quality of J-M Pipe.
4. As a result of Defendants' wrongful conduct, Nevada has suffered damages, and continues to be damaged, in an amount to be determined at trial.
5. In addition to compensatory damages, Nevada is entitled to recover punitive damages.

COUNT IX
Breach of Contract
(Against J-M)

1. Nevada realleges and incorporates by reference the allegations made in Paragraphs 1 through 116 of this Complaint.
2. Nevada entered into agreements with J-M whereby J-M sold, and Nevada purchased, J-M Pipe (the "Two-Party Agreements").
3. J-M entered into agreements with various contractors, distributors, developers, and/or other persons and entities whereby J-M sold, and the persons and entities purchased, J-M Pipe (the "Third-Party Agreements").
4. When they entered into the Third-Party Agreements, J-M and the various persons and entities purchasing the J-M Pipe intended for the J-M Pipe to ultimately benefit Nevada.
5. Accordingly, Nevada was the intended third-party beneficiary of the Third-Party Agreements.

1 6. Under the terms of the Two-Party Agreements and the Third-Party
2 Agreements, J-M was obligated to provide J-M Pipe that met certain specified
3 quality standards.

4 7. As set forth above, the J-M Pipe provided by J-M did not meet these
5 standards.

6 8. Accordingly, J-M breached its obligations under the agreements.

7 9. J-M's breach of its obligations under the agreements has proximately
8 caused reasonably foreseeable damages to Nevada.

9 10. As a result of J-M's wrongful conduct, Nevada has suffered damages,
10 and continues to be damaged, in an amount to be determined at trial.

11
12 **COUNT X**
13 **Breach of Express Warranty**
 (Against J-M)

14 1. Nevada realleges and incorporates by reference the allegations made in
15 Paragraphs 1 through 116 of this Complaint.

16 2. In connection with the sale of J-M Pipe, J-M expressly represented that
17 the J-M Pipe met certain specified quality standards, by representations made
18 directly on the pipe itself and elsewhere.

19 3. These representations constituted part of the basis of the bargain.

20 4. Nevada justifiably relied on these representations when it purchased,
21 used, and/or accepted J-M Pipe.

22 5. J-M breached this express warranty by manufacturing and selling PVC
23 pipe that did not meet the quality standards.

24 6. As a result of J-M's wrongful conduct, Nevada has suffered damages,
25 and continues to be damaged, in an amount to be determined at trial.

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COUNT XI
Breach of Implied Warranty of Merchantability
(Against J-M)

1. Nevada realleges and incorporates by reference the allegations made in Paragraphs 1 through 116 of this Complaint.
2. Nevada used J-M Pipe for the ordinary purposes for which J-M Pipe is used.
3. J-M Pipe was not fit for the ordinary purposes for which such PVC pipe is used.
4. J-M Pipe did not conform to the promises or affirmations of fact made on the J-M Pipe itself.
5. As a result of J-M's wrongful conduct, Nevada has suffered damages, and continues to be damaged, in an amount to be determined at trial.

COUNT XII
Breach of Implied Warranty of Fitness for a Particular Purpose
(Against J-M)

1. Nevada alleges and incorporates by reference the allegations made in Paragraphs 1 through 116 of this Complaint.
2. At the time J-M sold the J-M Pipe at issue, J-M had reason to know of the reasons for which the J-M Pipe was purchased.
3. Nevada relied on J-M's skill or judgment to furnish suitable PVC pipe.
4. J-M Pipe was not fit for the purposes for which it was purchased.
5. As a result of J-M's wrongful conduct, Nevada has suffered damages, and continues to be damaged, in an amount to be determined at trial.

COUNT XIII
Strict Liability For Defective Products
(Against J-M and Formosa)

1. Nevada realleges and incorporates by reference the allegations made in

1 Paragraphs 1 through 116 of this Complaint.

2 2. J-M Pipe and its component elements were defective as to their
3 manufacturing and/or design.

4 3. J-M Pipe and its component elements were defective because they
5 failed to perform in the manner reasonably to be expected in light of their nature and
6 intended function.

7 4. J-M and Formosa were directly involved in the manufacture and design
8 of materials that made J-M Pipe defective.

9 5. The manufacturing defects in J-M Pipe and its component elements
10 existed at the time they left the control of J-M and Formosa.

11 6. As a result of the wrongful conduct of J-M and Formosa, Nevada has
12 suffered damages, and continues to be damaged, in an amount to be determined at
13 trial.

14 7. In addition to compensatory damages, Nevada is entitled to recover
15 punitive damages.

16 **COUNT XIV**
17 **Unjust Enrichment**
18 **(Against All Defendants)**

19 1. Nevada realleges and incorporates by reference the allegations made in
20 Paragraphs 1 through 116 of this Complaint.

21 2. Nevada conferred a benefit on Defendants by paying, directly or
22 indirectly, for J-M Pipe.

23 3. Defendants accepted and have retained that benefit.

24 4. As a result, Defendants have been unjustly enriched and Nevada is
25 entitled to the return of the monies it paid for J-M Pipe.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Nevada requests that judgment be entered in its favor and
28 against the Defendants as follows:

1 1. As to Count I, judgment against J-M in an amount equal to three times
2 the amount of damages sustained by the Nevada as a result of J-M's actions in
3 violation of the Nevada False Claims Act, as well as a civil penalty of \$10,000 for
4 each violation of Nev. Rev. Stat. Ann. § 357.040(1);

5 2. As to Count II, judgment against Formosa and Walter Wang in an
6 amount equal to three times the amount of damages sustained by the Nevada as a
7 result of Formosa's and Walter Wang's actions in violation of the Nevada False
8 Claims Act, as well as a civil penalty of \$10,000 for each violation of Nev. Rev.
9 Stat. Ann. § 357.040(1);

10 3. As to Count III, judgment against Defendants in an amount equal to
11 three times the amount of damages sustained by the Nevada as a result of
12 Defendants' actions in violation of the Nevada False Claims Act, as well as a civil
13 penalty of \$10,000 for each violation of Nev. Rev. Stat. Ann. § 357.040(1);

14 4. As to Count IV, judgment against Defendants in an amount equal to all
15 damages proximately caused by Defendants' conduct in an amount to be proven at
16 trial and for courts costs, attorneys' fees, and punitive damages;

17 5. As to Count V, judgment against Defendants in an amount equal to all
18 damages proximately caused by Defendants' conduct in an amount to be proven at
19 trial;

20 6. As to Count VI, judgment against Defendants in an amount equal to all
21 damages proximately caused by Defendants' conduct in an amount to be proven at
22 trial and for punitive damages;

23 7. As to Count VII, judgment against Defendants in an amount equal to all
24 damages proximately caused by Defendants' conduct in an amount to be proven at
25 trial and for punitive damages;

26 8. As to Count VIII, judgment against Defendants in an amount equal to
27 all damages proximately caused by Defendants' conduct in an amount to be proven
28 at trial and for punitive damages;

1 9. As to Count IX, judgment against J-M in an amount equal to all
2 damages proximately caused by J-M's conduct in an amount to be proven at trial;

3 10. As to Count X, judgment against J-M in an amount equal to all
4 damages proximately caused by J-M's conduct in an amount to be proven at trial;

5 11. As to Count XI, judgment against J-M in an amount equal to all
6 damages proximately caused by J-M's conduct in an amount to be proven at trial;

7 12. As to Count XII, judgment against J-M in an amount equal to all
8 damages proximately caused by J-M's conduct in an amount to be proven at trial;

9 13. As to Count XIII, judgment against J-M and Formosa in an amount
10 equal to all damages proximately caused by J-M's and Formosa's conduct in an
11 amount to be proven at trial and for punitive damages;

12 14. As to Count XIV, judgment against Defendants in the amount that the
13 Defendants were unjustly enriched, which amount will be proven at trial; and

14 15. Such other relief as the Court deems just and proper.
15

16 **JURY DEMAND**

17 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Nevada
18 hereby demands a trial by jury on all claims so triable.

19 Dated: August 30, 2010

CATHERINE CORTEZ MASTO
Attorney General
SUSAN K. STEWART (CA State Bar No.
174985)
Deputy Attorney General
Attorney General's Office
100 North Carson Street
Carson City, NV 89701-4717
Tel: (775) 684-1217
Fax: (775) 684-1108
SStewart@ag.nv.gov [counsel for Nevada]

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26 By: s/ Susan K. Stewart
SUSAN K. STEWART

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