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Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

BRETT CONSTANT, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

ROOTER RANGER, LLC, an Arizona
Limited Liability Company; BEEBE
ENTERPRISES, INC., a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVSB 2206149
*[Assigned to Hon. Judge David Cohn, Dept
S26, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing

Date: February 17, 2023

Time: 10:00 a.m.

Dept.: S26

Complaint filed: March 21, 2022

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment department within my firm where I am also a Partner. I represent Plaintiff in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

1 **COUNSEL'S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled over 500 employee vs. employer litigation matters during my 22
7 years in practice. Over the last 15 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled over 250 class action and representative
10 action wage/hour cases, and have been appointed by the court as class counsel and have received
11 final court approval and judgment in close to half of those actions to date, and anticipate
12 receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). As of the end of last year, my team and I held the record for the largest
17 known PAGA-only case in California's history as of that time - a \$12.5 million-dollar court
18 approved settlement, which followed extensive litigation, summary adjudication and writs to the
19 CA Supreme Court against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior
20 Court).

21 5. I have tried two class and PAGA cases against Fortune 100 companies. In 2018, I
22 was lead counsel in a PAGA case that my firm tried to the bench in the Orange County Superior
23 Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case
24 against Walmart that was tried to the jury in District Court for the Central District, wherein the
25 jury awarded Plaintiffs over \$6 million. Following the successful outcome in trial, both cases
26 were appealed.

27 6. Over the last four or five consecutive years, I have been selected by my peers as a
28 "Super Lawyer" in Employment Litigation, a distinction that only 5% of lawyers receive.

BRIEF SUMMARY OF THE SETTLEMENT

7. Following a contested mediation, Plaintiff and Defendant (collectively, the “Parties”) continued additional negotiations and eventually entered into a Class Action and PAGA Settlement Agreement and Release of Claims resolving the wage and hour claims of the putative class (the “Settlement Agreement” or “S.A.”), which is attached hereto as **Exhibit 1**. The Settlement Agreement seeks to release and discharge Defendants from the claims brought against it in exchange for Defendants’ agreement to pay \$400,000 on a non-reversionary, non-claims made basis (each Class Member will receive his/her share of the Net Settlement Amount without having to submit a claim form or take any action, except for those who opt-out). Plaintiff seeks to represent a class of all current and former non-exempt employees employed by Defendant Rooter Ranger, LLC in California at any time during the Class Period of March 21, 2018, through January 9, 2023. Under the terms of the Settlement Agreement, Defendant will not oppose Class Counsel’s application for a reasonable award of attorneys’ fees not to exceed one-third of the Settlement Amount, Class Counsel’s litigation expenses not to exceed \$20,000, settlement administrator costs of \$6,500, PAGA Penalties of \$40,000 of which \$30,000 will be paid to the LWDA and the remaining \$10,000 will be paid to the Aggrieved Employees, and a service award not to exceed \$10,000 to Plaintiff. After subtracting these deductions from the Settlement Amount, approximately \$190,166.67 will be available to pay individual settlement amounts to approximately 122 Class Members who do not opt-out of the settlement, as follows:

<i>Gross Settlement Amount</i>	\$ 400,000.00
Attorneys’ Fees (1/3)	\$ 133,333.33
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs	\$ 6,500.00
PAGA Penalties	\$ 40,000.00
Class Representative Service Award	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 190,166.67

8. Assuming 122 Class Members, the average payment to each Class Member will be approximately \$1,558.74 (\$190,166.67 / 122). However, the actual payment will be calculated on a pro-rata basis according to the number of Weeks Worked by each Class

1 Member during the Class Period, with each Work Week having a value of approximately
2 \$51.40 (\$190,166.67 / 3,700 estimated Work Weeks).

3 9. Each Class Member will receive the Class Notice, explaining the nature of the
4 case, and the process for participating, objecting and opting-out, and advising of his/her
5 estimated settlement payment and the number of Weeks Worked he/she is credited with
6 working during the Class Period.

7 **PROCEDURAL BACKGROUND**

8 10. My office has performed considerable work and diligently investigated and
9 prosecuted this case to a successful conclusion. Our work has resulted in the creation of a
10 significant settlement fund for the benefit of the Class. We efficiently communicated and
11 exchanged information informally with Defense counsel which enabled the parties to
12 successfully settle the case. Because of the risks involved in litigating the case and the contested
13 legal and factual issues, my office believes this settlement to be fair, reasonable, and adequate.

14 11. After being retained by Plaintiff, we submitted on March 18, 2022, letter to the
15 California Labor Workforce Development Agency (the "LWDA") for civil penalties under the
16 Private Attorney General Act of 2004 (the "PAGA"), and simultaneously sent a letter to
17 Defendant requesting the production of Plaintiff's personnel and timekeeping records to further
18 evaluate the wage and hour claims. The LWDA ultimately declined to assert jurisdiction over
19 the PAGA, thereby giving Plaintiff the right to bring PAGA claims.

20 12. On March 21, 2022, we filed a complaint alleging class action causes of action
21 and corresponding PAGA claims against Defendant for (1) failure to pay minimum wages; (2)
22 failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to provide rest
23 breaks; (5) failure to reimburse business expenses; (6) failure to timely pay final wages; (7)
24 failure to provide accurate itemized wage statements; and (8) unfair and unlawful competition.

25 13. Defendant retained counsel and immediately began to defend the case. Then,
26 after early discussions among counsel, the Parties agreed to attend private mediation.

27 14. In preparation for the mediation, the Parties informally exchanged documents and
28 information that allowed both sides to calculate the potential damages and evaluate potential risk,

1 including policies and procedures pertaining to each claim alleged, and statistics relating to the
2 number of current and former employees, number of shifts, pay periods worked and other things.
3 Defendant also provided their written policies and practices and a robust sampling of payroll and
4 timekeeping records for Class Members. This information enabled both parties to take a deep
5 dive into the claims. Additionally, during this process, Plaintiff and their counsel analyzed,
6 researched, and investigated the potential issues, including matters related to the calculation of
7 damages, trial, and appellate issues and risks.

8 15. On November 10, 2022, Plaintiff and Defendant participated in mediation before
9 Hon. Jonathan H. Cannon (Ret.), a well-respected wage-and-hour mediator. The mediation was
10 successful, and the Parties reached a global settlement that resolved all claims brought Plaintiff.
11 Now the Parties seek the Court's preliminary approval of the Settlement.

12 **THE WAGE AND HOUR CLAIMS, CLASS COUNSEL'S INVESTIGATION, AND**
13 **EVALUATION OF THE SETTLEMENT**

14 16. The putative Class in this case consists of approximately 122 similarly situated
15 non-exempt employees employed by Defendant in California at any time during the Class
16 Period. Plaintiff alleged numerous wage and hour violations on behalf of the Class Members.
17 However, Defendant vigorously contested and denied each of Plaintiff's material allegations on
18 the merits and as to the propriety of a class action or PAGA representative action, as discussed
19 herein.

20 17. In preparation for mediation, Kristina Bui Carlson, an associate within my firm,
21 and I formulated a damages model and risk analysis based upon detailed data obtained through
22 informal discovery and information exchanges. The summary of the claims below is based on
23 calculations by our expert and us, and the risks that we potentially faced, giving significant credit
24 to the defenses that Defendant raised or would like raise in further proceedings. Following the
25 informal exchange and other information provided by Defendant, we estimated the following
26 data points through the date of mediation: (1) 122 class members, (2) 114 class members that
27 separated from employment during the 3-year lookback for Labor Code § 203, (3) 3,349
28 workweeks, (4) 16,745 shifts worked, and (4) approximately 1,121 wage statements during the

1 PAGA Period. From these metrics, and when factoring in claim certification probabilities and
2 liability probabilities, we formulated detailed damages models to value the claims in preparation
3 for mediation and to reach a realistic and reasonable resolution.

4 18. Here, there were three primary categories of claims alleged by Plaintiffs: (1)
5 unpaid wage claims under various theories, (2) meal and rest break violations, and (3) derivative
6 claims for waiting time and wage statement penalties due to the other alleged violations

7 19. As to the unpaid wage claims, Plaintiff alleged two distinct theories of liability.
8 First, Plaintiff alleged that Defendant required Plaintiff and the Class Members to remain on-call
9 from 7 am to 7 pm each workday, yet Defendant failed to compensate Class Members for all
10 hours worked. Second, Plaintiff alleged that Defendant failed to pay proper overtime when Class
11 Members worked more than 8 hours in a day. Furthermore, on the rare occasions when
12 Defendant paid overtime, it failed to factor in non-discretionary compensation (*e.g.*, bonuses and
13 commissions) received by Class Members into calculating the regular rate of pay. In total,
14 Plaintiff's counsel estimated the maximum value of these unpaid wages to be \$900,203.

15 20. However, Defendants vehemently opposed these unpaid wage claims on the
16 merits and as to the propriety of class certification. For example, Defendants argued that the
17 majority of employees worked out on the field alone, completed their own timesheets, approved
18 their own timesheets, and when employees reported overtime, it was paid. Moreover, in addition
19 to its other defenses on the merits, Defendants argued that Plaintiffs would be unable to meet its
20 evidentiary burden at summary judgment and/or trial because Plaintiffs and the Class would be
21 unable to introduce evidence as to the amount of unpaid wages (since the claims are not apparent
22 from the timekeeping records alone), thus defeating liability. Furthermore, Defendants argue a
23 lack of commonality due to the fact that there are a number of varying job positions and duties of
24 non-exempt employees.

25 21. Due to these defenses and arguments, Plaintiff assigned a 20% risk for the
26 minimum wage claim and 20% risk for the unpaid overtime claim at the class certification stage.
27 And, due to the defenses as to the merits, Plaintiff assigned the following merits-based risk to
28 each claim: 30% risk on the minimum wage claim and a 30% risk on the unpaid overtime claim.

1 In sum, Plaintiff's counsel calculated the risk-adjusted value of the unpaid wage claims as
2 \$656,404.

3 22. Plaintiff also alleged meal and rest break claims against Defendant. Given the
4 total number of shifts at issue (an estimate of 16,745), and when incorporating violation rates
5 from expert review of the timekeeping records and other evidence, Plaintiff's counsel estimated a
6 20% violation rate for meal breaks and a 30% violation rate for rest breaks, leading to 5,024
7 alleged meal violations and 10,047 alleged rest break violations. This established a maximum
8 potential value for these claims of \$227,120 (15,071 violations multiplied by the average hourly
9 rate of \$15.07 as the applicable premium rate under § 226.7).

10 23. However, Defendant raised numerous arguments in response to this claim,
11 including that it maintained fully compliant written policies and specifically authorized the Class
12 Members to take meal and rest breaks, meaning that no one had a reason or cause to miss a break
13 or take a short/late break. Therefore, Defendant asserted that a fact-finder would have to
14 determine for each Class Member whether a break was missed and why, and why a break was
15 noncompliant or nonexistent, because if it was by the employee's choice, no liability attaches to
16 Defendant. These defenses are factored into Plaintiff's analysis in two ways. First, these issues
17 raise questions regarding whether the meal and rest break claims could be certified, and second
18 these defenses also go toward the merits given the evidentiary question of proving the number of
19 meal and rest violations. As such, Plaintiff placed a 40% risk on the meal break claim, and a
20 50% risk on the rest break claim, resulting in a risk-adjusted value for the combined meal and
21 rest break claims at \$77,221.

22 24. Finally, Plaintiff alleged claims for waiting time penalties and wage statement
23 violations. But these claims were entirely derivative of the claims above, meaning that they only
24 had merit if the claims for unpaid wages or meal/rest breaks were successful. The maximum
25 values for these claims were as follows: (1) \$515,394 for waiting time penalties [114 former
26 employees x \$15.07 per hour x 10 hours per day x 30 days], and (2) \$102,100 for wage statement
27 violations [1,121 wage statements at the \$50/\$100 formula under § 226(e)].

28 ///

1 25. But Defendant raised a variety of defenses to these derivative claims that
2 impacted the valuation. Namely, as to the wage statement violations, Defendant argued that its
3 wage statements did not violate Labor Code § 226 and, even if there was a “technical” violation,
4 that Plaintiff would be unable to prove the required “knowing and intentional” and “injury”
5 elements. Based on these facts and defenses, Plaintiff placed a nominal 20% risk at class
6 certification (mirroring the claims on which the wage statement claim was based) and estimated
7 another 20% risk the merits, leading to a risk-adjusted value of \$65,344 for the wage statement
8 claims.

9 26. Then, as to the waiting time penalty claim, Plaintiff’s valuation had to account for
10 the fact that this claim was derivative of the unpaid wage and meal/rest break claims (*e.g.*, the
11 unpaid wage premiums) and, if those claims failed at certification or on the merits, there would
12 be no waiting time penalties owed, so the same risks for those claims applied to this claim.
13 Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification and on
14 the merits, Plaintiff would have to prove that the violations (if any existed) were “willful” under
15 the meaning of Labor Code § 203. And, here, Defendant argued that there could not be a finding
16 of a “willful” violation since they had compliant written policies and any deviations therefrom
17 were inadvertent and unintentional. As a result of this analysis, Plaintiff’s counsel applied a 20%
18 risk at class certification and a 30% risk on the merits, leading to a risk-adjusted value of
19 \$288,621.

20 27. In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff
21 estimates the risk-adjusted class recovery as follows:

22	• Unpaid Wage Claims	\$ 656,404
23	• Meal and Rest Break Claims	\$ 77,221
24	• Wage Statement Claims	\$ 65,344
25	• Waiting Time Penalty Claims	<u>\$ 288,621</u>
26	• Total Risk Adjusted Penalties and Damages	\$ 1,087,590

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1 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

2 28. The settlement was the product of extensive arm's length negotiations, facilitated
3 by an experienced mediator. Though cordial and professional, the settlement negotiations were
4 adversarial and non-collusive in nature. The settlement reached is the product of substantial
5 effort by the parties and their counsel. Although we believed that there was a possibility of
6 certifying the claims, we recognized the potential risk, expense, and complexity posed by
7 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
8 on the damages awarded, and/or on an appeal that can take several more years to litigate.

9 29. The settlement will result in a fair payment to each class member based on the
10 number of Weeks Worked during the Class Period. As set forth hereinabove, Plaintiff and his
11 counsel have diligently investigated the claims and defenses on behalf of the Class Members and
12 worked to achieve a resolution of the claims to maximize the recovery by avoiding further
13 expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with
14 further litigation described above and weighing them against the benefits of a known
15 compromise and settlement as set forth in the Settlement Agreement, settlement on the terms
16 agreed to is believed to be in the best interest of Plaintiff and the Class, and is a fair and
17 reasonable resolution of the claims alleged.

18 30. Plaintiff's counsel brought to bear a great deal of experience in negotiating the
19 settlement of this case. As detailed herein, Plaintiff's counsel engaged in the necessary discovery
20 and investigation, making it possible to exercise informed judgment throughout the settlement
21 process, including significant document review (*e.g.*, documents pertaining to Defendant's
22 policies and procedures, personnel documents, among others), and conducted an extensive
23 analysis of the detailed class-wide data provided by Defendant.

24 31. Based on my experience in other cases, including wage and hour matters, I
25 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
26 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
27 settlement at this time is in the best interests of the class. The settlement provides each class
28 member with compensation for the alleged violations when viewed in relation to the costs and

1 risks inherent in obtaining class certification and proceeding to trial.

2 32. Plaintiff's counsel, as well as Defendant's counsel, fully endorse the terms and
3 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

4 33. Of course, the settlement amount represents a compromise figure, taking into
5 account the various risks surrounding class certification and the merits of Defendant's asserted
6 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
7 members, with no reversion to Defendant.

8 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENT**

9 34. Plaintiff seeks an enhancement payment of \$10,000 for his service to the Class,
10 which I believe is fair and warranted. Mr. Constant came forward in an effort to effectuate a
11 policy and practice change that benefitted all other Class Members, and to recover unpaid wages.
12 They each assumed significant risk in bringing this litigation—namely, had he lost, he would
13 have been ordered to pay Defendant's costs.

14 35. Plaintiff provided invaluable assistance to my office and the Class in this case,
15 including providing factual background for the Class Complaint; reviewing the litigation
16 documents; providing information and documents about Defendant's policies and practices;
17 participating in phone calls to discuss litigation and settlement strategy; and reviewing the
18 settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal
19 benefit. At final approval, Plaintiff will submit a comprehensive declaration setting forth all of
20 the reasons why he believes that the service award should be approved.

21 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
22 **REQUESTED FEES AND COSTS**

23 36. As set forth above, I have handled over 250 class and representative actions, have
24 been appointed as class counsel and have successfully resolved over half of those cases, and
25 many others remain pending and will successfully resolve in the future.

26 37. When this case was taken on a contingency fee basis, with my firm agreeing to
27 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
28 course of this litigation, my firm and my co-counsel paid all costs including filing fees, court

1 costs, research fees, and mediation costs. There was never a guarantee that we would recoup
2 those expenditures.

3 38. It is my experience that attorney fee awards of one-third of a common fund
4 settlement is the standard in California. In this case, Plaintiff's counsel agreed to seek one-third
5 of the Settlement Amount for attorneys' fees. Defendants do not oppose this fee request. The fee
6 is further warranted because it is within the range of reasonableness typically awarded in class
7 actions. The litigation costs are reasonably capped at \$20,000 and will be based on the actual
8 amount of costs incurred at the time of final approval.

9 SETTLEMENT ADMINISTRATOR

10 39. The parties request that the Court appoint Phoenix Settlement Administrators to
11 serve as the Settlement Administrator. Phoenix is experienced in administering class action
12 settlements, and has provided a proposal to administer this settlement for a total of \$6,500, which
13 is attached hereto as **Exhibit 4**.

14 SUBMISSION TO THE LWDA

15 40. Plaintiffs have concurrently submitted the settlement to the LWDA in accordance
16 with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit 5**.

17 EXHIBITS AND CONCLUSION

18 41. A true and correct copy of the Settlement Agreement is attached as **Exhibit 1**.

19 42. The proposed Class Notice is attached as **Exhibit 2**.

20 43. A true and correct copy of the notice letter we submitted to the LWDA is attached
21 as **Exhibit 3**.

22 44. Phoenix's proposal to administer the Settlement is attached hereto as **Exhibit 4**.

23 45. The LWDA's confirmation of receipt of this Motion and Declarations is attached
24 hereto as **Exhibit 5**.

25 46. For the foregoing reasons, it is respectfully requested that the Court grant
26 preliminary approval of the settlement as being fair, reasonable, and in the best interests of the
27 class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement
28 payment to the Class Representative.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct. Executed on January 25, 2023 at Riverside, California.

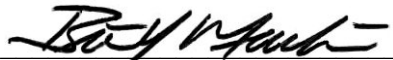
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EXHIBIT “1”

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
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BRETT CONSTANT, individually, on a
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*[Assigned to Hon. Judge David Cohn, Dept
S26, for all purposes]*

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint filed: March 21, 2022

1 This Class Action and PAGA Settlement Agreement and Release of Claims is entered
2 into by and between Plaintiff Brett Constant, individually and on behalf of all others similarly
3 situated, and Defendant Rooter Ranger, LLC, and is approved by their respective counsel of
4 record, subject to the terms and conditions hereof and the Court's approval.

5 **A. Definitions**

6 As used herein, for the purposes of this Settlement Agreement and Release of Claims
7 only, the following terms shall be defined as set forth below:

8 1. "Action" means and refers to the case entitled *Brett Constant v. Rooter Ranger,*
9 *LLC, et al.*, Superior Court of California, County of San Bernardino, Case No. CIVSB 2206149.

10 2. "Agreement" shall mean this Class Action and PAGA Settlement Agreement and
11 Release of Claims.

12 3. "Aggrieved Employees" means all current and former nonexempt employees
13 employed by Defendant in California at any time during the PAGA Period.

14 4. "Class Counsel" refers to Brian Mankin and Kristina Bui Carlson of Lauby
15 Mankin Lauby LLP.

16 5. "Class Data" means a complete list that Defendant will diligently and in good
17 faith compile from its records and provide to the Settlement Administrator on one or more
18 spreadsheets and shall include the Class Members' and Aggrieved Employees' full names; last
19 known addresses; last known telephone numbers (if available); Social Security Numbers; the
20 total Pay Periods Worked during the PAGA Period for each Aggrieved Employee; and the total
21 Weeks Worked during the Class Period for each Class Member.

22 6. "Class Member" means all current and former nonexempt employees employed
23 by Defendant in California at any time during the Class Period.

24 7. "Class Period" is deemed to be any time during the period of March 21, 2018
25 through and including January 9, 2023.

26 8. "Class Representative" or "Plaintiff" means and refers to Brett Constant.

27 9. "Complaint" refers to the operative complaint in the Action, alleging Class
28 Claims and representative PAGA Claims and including the March 18, 2022 LWDA Notice.

1 10. “Court” (or “Judge”) means the Superior Court of California, County of San
2 Bernardino.

3 11. “Defendant” refers to Defendant Rooter Ranger, LLC.

4 12. “Defendant’s Counsel” means and refers Greenberg Traurig, LLP.

5 13. “Effective Date” means the latest of the following dates: (i) if no Class Member
6 timely and properly intervenes or files a motion to vacate the Judgment under Code of Civil
7 Procedure § 663, then the date the Court enters an order granting Final Approval of the
8 Settlement; (ii) if a Class Member intervenes or files a motion to vacate the Judgment, then
9 sixty-one (61) calendar days following the date the Court enters an order granting final approval,
10 assuming no appeal is filed; or (iii) if a Class Member timely and properly intervenes or files a
11 motion to vacate the Judgment under Code of Civil Procedure § 663, and if a timely appeal is
12 filed, then the date of final resolution of that appeal (including any requests for rehearing and/or
13 petitions for *certiorari*), resulting in final judicial approval of the Settlement. Defendants shall
14 deliver the Court-approved Gross Settlement Amount to the Settlement Administrator by no later
15 than thirty (30) days after the Effective Date.

16 14. “Final Approval” refers to the order of the Court granting final approval of this
17 Agreement and entering a judgment approving this Agreement on substantially the terms
18 provided herein or as the same may be modified by subsequent agreement of the Parties.

19 15. “Gross Settlement Amount” shall have the meaning ascribed to it in Paragraph
20 48(a) below.

21 16. “Individual Settlement Payment(s)” shall have the meaning ascribed to it in
22 Paragraph 48(g) below.

23 17. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 48(b)
24 below.

25 18. “Non-Participating Class Member” means any and all Class Members who submit
26 a valid and timely Request for Exclusion. Non-Participating Class Members shall not receive an
27 Individual Class Payment or have the right to object to the class action components of the
28 Agreement. Non-Participating Class Members who are Aggrieved Employees are nevertheless

1 deemed to release, on behalf of themselves and their respective former and present
2 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released
3 Parties from all claims for PAGA penalties that were alleged, or reasonably could have been
4 alleged, based on the facts alleged in the Complaint, as set forth in paragraphs 121-184 and as set
5 forth in paragraphs 7 and 8 in the Prayer for Relief. Non-Participating Class Members who are
6 Aggrieved Employees will receive an Individual PAGA Payment.

7 19. “Notice” means the notice of class action and PAGA settlement that will be sent
8 to the Class Members and Aggrieved Employees.

9 20. “Notice Response Deadline” is thirty (30) calendar days from the date the Notice
10 is mailed to the Class Members and Aggrieved Employees.

11 21. “Objecting Participating Class Member” means a Participating Class Member,
12 other than Plaintiff, who submits a valid and timely objection to the terms of this Agreement
13 with respect to the Class Claims, pursuant to Paragraph 73(c) below.

14 22. “PAGA” means the California Private Attorneys General Act of 2004, California
15 Labor Code §§ 2698 *et seq.*

16 23. “PAGA Penalties” means the total amount of civil penalties that the Parties have
17 agreed will be paid from the Gross Settlement Amount to settle the PAGA Claims, allocated
18 75% to the California Labor and Workforce Development Agency (“LWDA”) in accordance
19 with PAGA, and 25% for the individual PAGA payments to Aggrieved Employees, as set forth
20 further below in Paragraph 48(f).

21 24. “PAGA Period” is deemed to be any time during the period of March 21, 2021,
22 through and including January 9, 2023.

23 25. “PAGA Claims” means the claims listed in this paragraph which will be released
24 as noted herein: Upon Final Approval of the Settlement by the Court and Defendants funding of
25 the settlement, Plaintiff, on behalf of the State of California and the Aggrieved Employees, shall
26 completely release and discharge the Released Parties of the PAGA claims that Plaintiff alleged
27 against the Released Parties, on behalf of the Aggrieved Employees and the State of California,
28 based on the facts stated in the Complaint and in the relevant LWDA notice letters or claims

arising out of or related to facts pled in the operative Complaint and relevant LWDA notice letters, including all PAGA claims seeking civil penalties premised upon: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to reimburse business expenses, (f) failure to timely pay wages each period, (g) failure to time pay wages upon separation of employment, and (h) failure to provide accurate itemized wage statements, and (i) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the LWDA Notice and the Complaint.

26. “Participating Class Member” means any and all Class Members who do not submit a timely and valid Request for Exclusion. All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint as set forth in paragraphs 121-184 and as set forth in paragraphs 7 and 8 in the Prayer for Relief Participating Class Members will receive an Individual Class Payment as set forth in Paragraph 48(g).

27. “Parties” means Plaintiff and Defendant, collectively.

28. “Pay Period(s) Worked” means all pay periods during the PAGA Period in which an Aggrieved Employee was employed by Defendant in California as a nonexempt employee and worked at least one shift during the pay period. For purposes of calculating Pay Periods Worked, there will no fractional calculations (*i.e.*, a situation where an individual worked only one shift during a pay period still counts as one Pay Period Worked).

29. “Preliminary Approval Date” means the date the Court preliminarily approves the Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

30. “Preliminary Approval Order” means the judicial Order to be entered by the Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement and providing for the issuance of the Notice to the Class Members and Aggrieved Employees, an opportunity for Class Members to opt-out of the Settlement, an opportunity to submit timely

1 objections to the Agreement, and setting a hearing on the fairness of the terms of Settlement,
2 including approval of attorneys' fees and costs.

3 31. "QSF" means the Qualified Settlement Fund set up by the Settlement
4 Administrator for the benefit of the Participating Class Members and Aggrieved Employees, and
5 from which the settlement payments shall be made, and which is intended to be a fund that
6 qualifies under Internal Revenue Code Sec. 468.

7 32. "Class Claims" means the claims listed in this paragraph which will be released
8 as noted herein: Upon Final Approval of the Settlement by the Court and Defendants funding the
9 Gross Settlement Amount, the Participating Class Members will fully release and discharge the
10 Released Parties of the claims stated in the operative complaint and those arising out of or related
11 to the facts pled in the Complaint, including: (a) failure to pay minimum wages, (b) failure to pay
12 overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure
13 to reimburse business expenses, (f) failure to timely pay wages, (g) failure to timely pay wages
14 upon separation of employment, (h) failure to provide accurate itemized wage statements, (i)
15 unfair and unlawful competition, and (j) all other claims that reasonably could have arisen out of
16 the allegations made and based on the facts alleged in the Complaint.

17 33. "Released Parties" means all Defendants named in the Action and LWDA Notice
18 letter and each of its former and present directors, officers, shareholders, owners, limited
19 partners, attorneys, insurers, predecessors, successors, employees, assigns, parents, subsidiaries,
20 and affiliates, and all persons acting by, through, under, or in concert with them, and each of
21 these entities' present or past officers, directors, former and present directors, officers,
22 shareholders, owners, limited partners, attorneys, insurers, predecessors, successors, employees,
23 assigns, parents, subsidiaries, and affiliates.

24 34. "Release" shall mean (1) the release and discharge of the Class Claims by
25 Plaintiff and all Participating Class Members, and (2) the release and discharge of the PAGA
26 Claims by Plaintiff, the State of California, and all of the Aggrieved Employees. The *res*
27 *judicata* effect of the Judgment will be the same as that of the Release of the Class Claims and
28 PAGA Claims.

1 35. “Request for Exclusion” means and refers to a valid and timely request for
2 exclusion from the Settlement of the Class Claims, which may be submitted by any Class
3 Member, other than Plaintiff, pursuant to Paragraph 73(a) below.

4 36. “Service Payment” means, as set forth further in Paragraph 48(d) below, the
5 amount approved by the Court to be paid from the Gross Settlement Amount to the Class
6 Representative, Brett Constant, in addition to his Individual Settlement Payment as a
7 Participating Class Member and Aggrieved Employee.

8 37. “Settlement Administrator” means and refers to Phoenix Settlement
9 Administrators, the third-party class action settlement administrator agreed to by the Parties, that
10 will provide the Notice to the Class Members and Aggrieved Employees and distribute the
11 settlement amounts as described in this Agreement.

12 38. “Settlement Administration Costs” means the costs payable from the Gross
13 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
14 but not limited to, printing, distributing, and tracking documents for this Settlement, tax
15 reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property
16 due diligence, reporting and remittance obligations, distributing the Gross Settlement Amount,
17 and providing necessary reports and declarations, as requested by the Parties.

18 39. “Work Week(s)” or “Weeks Worked” means all calendar weeks in which the
19 Class Member was employed by Defendant in California as a nonexempt employee and worked
20 at least one shift during the week. For purposes of calculating Weeks Worked, there will no
21 fractional calculations (*i.e.*, a situation where an individual worked only one shift during a week
22 does not equal 1/7th of a Work Week, it counts as one Work Week).

23 **B. General Terms**

24 40. Pursuant to California Labor Code § 2699.3(a), Plaintiff gave timely written
25 notice to Defendant and the LWDA by sending his LWDA notice letter on March 18, 2022.

26 41. On March 21, 2022, Plaintiff filed a class action complaint and representative
27 PAGA claims, including the following causes of action: (1) failure to pay minimum wages, (2)
28 failure to pay overtime, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5)

1 failure to reimburse business expenses, (6) failure to timely pay final wages, (7) failure to
2 provide accurate itemized wage statements, (8) unfair and unlawful competition pursuant to
3 California Business and Professions Code §§ 17200 *et seq.*, and (9)-(16) related claims under
4 PAGA, including but not limited to, failure to timely pay wages.

5 42. Defendant denies Plaintiff's claims and allegations and contend that the Action is
6 not suitable for class certification or manageable as a class or representative action.

7 43. The Class Representative believes he can proceed with his representative and
8 class claims, that the Action is meritorious, and that class certification is appropriate.

9 44. The Parties have conducted a thorough investigation into the facts of the Action.
10 This includes conducting an extensive exchange of informal discovery, including Defendant's
11 written policies and practices and confirmation regarding the uniform payroll and timekeeping
12 practices for Class Members and Aggrieved Employees. Class Counsel is both knowledgeable
13 about and has done extensive research with respect to the applicable law and potential defenses
14 to the claims of the Class Members and Aggrieved Employees. Class Counsel has diligently
15 pursued an investigation of the Class Members' and Aggrieved Employees' claims against
16 Defendant. Based on the foregoing data and on their own independent investigation and
17 evaluation, Class Counsel is of the opinion that the settlement with Defendant for the
18 consideration and on the terms set forth in this Agreement is fair, reasonable, and adequate and is
19 in the best interest of the Class Members and Aggrieved Employees in light of all known facts
20 and circumstances, including the risk of significant delay and uncertainty associated with
21 litigation, various defenses asserted by Defendant, and numerous potential appellate issues.

22 45. On November 10, 2022, Plaintiff and Defendant participated in mediation before
23 Hon. Jonathan Cannon (Ret.), a well-respected wage and hour mediator. The Action resolved at
24 mediation and, thereafter, the Parties continued to negotiate the terms embodied in this
25 Agreement.

26 46. The Parties agree that neither the Parties' settlement, this Agreement, nor the acts
27 to be performed or judgments to be entered pursuant to the terms of the settlement and
28 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of

any statute or law or liability on the claims or allegations in the Action.

47. Stipulation to Class Certification and Representative Treatment. For settlement purposes only, Defendant will stipulate that the Class described herein may be conditionally certified as a settlement class as to all claims asserted in the Complaint, and that the Aggrieved Employees' claims are appropriate for representative treatment for purposes of settlement. This stipulation to certification and representative treatment is in no way an admission that class action certification and/or representative treatment is proper and shall not be admissible in this or in any other action except for the sole purpose of enforcing this Agreement. Nor should Defendant's stipulation to conditional class certification and representative treatment be deemed as a waiver to any additional defenses against class or representative action treatment. Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to class certification and representative treatment as part of the Settlement shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification and/or representative treatment would be appropriate in a non-settlement context. Defendant expressly reserves its rights and declare that they would continue to oppose class certification, representative treatment, and the substantive merits of the case should the Court decline to issue Final Approval. Plaintiff expressly reserves his rights and declares that he will continue to pursue class certification, representative treatment, and a trial should the Court decline to issue Final Approval.

C. Terms of Settlement

48. The financial terms of the Settlement are as follows:

(a) Gross Settlement Amount: The Parties agree to settle this Action for Four Hundred Thousand Dollars (\$400,000) ("the Gross Settlement Amount"). The Gross Settlement Amount is the maximum amount that will be paid, and includes Individual Settlement Payments, Attorneys' Fees and Costs Award, the Service Payment to the Class Representative, all Settlement Administration Costs, PAGA Penalties, and interest. Defendant shall separately pay the employer's share of applicable payroll tax obligations due on the wage portions of the Individual Settlement Payments, which shall be reported through the Settlement Administrator.

1 (b) Net Settlement Amount: The “Net Settlement Amount” is defined as the
2 Gross Settlement Amount less the court-approved Attorneys’ Fees and Costs Award, the court-
3 approved Service Payment to the Class Representative, the court-approved Settlement
4 Administration Costs, and PAGA Penalties. If the Court reduces the Attorneys’ Fees and Costs
5 Award, Service Payment to the Class Representative, or Settlement Administration Costs, or
6 either increases or decreases the amount allocated to the PAGA Penalties, the Net Settlement
7 Amount shall be increased or decreased accordingly.

8 (c) Attorneys’ Fees and Costs Award: Defendant agrees to not oppose a
9 request by Class Counsel to the Court for an award of attorneys’ fees of not more than one-third
10 of the Gross Settlement Amount (\$133,333.33), plus reasonable litigation costs not to exceed
11 \$20,000 (“Attorneys’ Fees and Cost Award”), subject to Court approval. The Attorneys’ Fees
12 and Cost Award shall be paid from the Gross Settlement Amount, and except for this award,
13 Defendant shall have no further obligation to pay any attorneys’ fees, costs, or expenses to Class
14 Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the
15 difference shall be added to the Net Settlement Amount to be distributed to the Participating
16 Class Members. The Parties agree that any amount awarded as attorneys’ fees and costs to Class
17 Counsel less than the requested amount shall not be a basis for Class Counsel to rescind or
18 otherwise void this Agreement. The Settlement Administrator shall issue to Class Counsel an
19 IRS Form 1099 reflecting the amount of attorneys’ fees and costs awarded by the Court.

20 (d) Service Payment to Class Representative: The amount, if any, awarded to
21 the Class Representative as a Service Payment will be set by the Court in its discretion, not to
22 exceed \$10,000, in exchange for the services Plaintiff performed on behalf of the Class
23 (including taking steps to support the Settlement) and for entering into the general and expansive
24 release discussed hereinafter. Defendant agrees not to oppose this request and Plaintiff agrees to
25 participate in the Settlement and not take any action, directly or indirectly, to undercut this
26 Settlement. The Service Payment to Plaintiff will be paid out of the Gross Settlement Amount.
27 The Class Representative will be issued IRS Form 1099 in connection with this payment.
28 Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on this

1 payment. The Parties agree that any amount awarded as the Service Payment to Plaintiff less
2 than the requested amount shall not be a basis for Class Counsel to void this Agreement or to
3 appeal this aspect of the Court’s ruling. Should the Court approve a lesser amount for the
4 Service Payment, the difference shall be added to the Net Settlement Amount to be distributed to
5 the Participating Class Members.

6 (e) Settlement Administration Costs: The fees and other charges of the
7 Settlement Administrator will be paid from the Gross Settlement Amount, not to exceed \$6,500,
8 unless approved by all Parties and the Court.

9 (f) PAGA Penalties: The Parties agree that \$40,000 is allocated to PAGA
10 Penalties and is to be paid from the Gross Settlement Amount, subject to the Court’s approval.
11 Of this amount, \$30,000 (75%) shall be paid to the LWDA in satisfaction of civil penalties under
12 the Private Attorney General Act of 2004 (“PAGA”) and \$10,000 (25%) will be paid to the
13 Aggrieved Employees based upon the number of Pay Periods Worked by each Aggrieved
14 Employee during the PAGA Period, which will be treated entirely as civil penalties and reported
15 as required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the
16 Settlement.

17 (g) Individual Settlement Payments: Individual Settlement Payments include
18 Individual Class Payments and Individual PAGA Payments (as applicable), as described herein:

19 (i) Individual Class Payments: “Individual Class Payment” means the
20 Participating Class Member’s pro rata share of the Net Settlement Amount calculated
21 according to the number of Work Weeks the Participating Class Member worked during
22 the Class Period. Each specific Individual Class Payment will be calculated by:
23 (a) dividing the Net Settlement Amount by the total number of Weeks Worked by all
24 Participating Class Members during the Class Period, and (b) multiplying the result by
25 each Participating Class Members’ Weeks worked. The entire Net Settlement Amount
26 will be disbursed to all Participating Class Members. If there are any valid and timely
27 Requests for Exclusion, the Settlement Administrator shall remove the Weeks Worked by
28 the Non-Participating Class Member(s) and proportionally increase the Individual Class

1 Payment for each Participating Class Member according to the number of Weeks
2 Worked, so that the amount actually distributed to Participating Class Members equals
3 100% of the Net Settlement Amount.

4 (ii) Allocation of Individual Class Payments: The Individual Class
5 Payments will be allocated based on the allegations in the Action as follows: twenty
6 percent (20%) will be allocated as wages subject to withholding of all applicable local,
7 state and federal taxes; and the remaining eighty percent (80%) will be allocated as
8 interest and penalties (pursuant to, *e.g.*, California Labor Code sections 203, 210, 226,
9 2699) from which no taxes will be withheld. The Settlement Administrator will issue to
10 each Participating Class Member an Internal Revenue Service Form W-2 and comparable
11 state forms with respect to the wage allocation and a Form 1099 with respect to the
12 penalties and interest allocations.

13 (iii) Individual PAGA Payments: “Individual PAGA Payment” means
14 the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated
15 according to the number of Pay Periods worked during the PAGA Period. Each specific
16 Individual PAGA Payment will be calculated by: (a) dividing the 25% Aggrieved
17 Employee share of the PAGA Penalties by the total number of Pay Periods worked by all
18 Aggrieved Employees during the PAGA Period, and (b) multiplying the result by each
19 Aggrieved Employees Pay Periods Worked. The entire 25% of the PAGA Penalties will
20 be disbursed to all Aggrieved Employees.

21 (h) Tax Liability: Class Counsel, Defendant, and Defendant’s counsel make
22 no representations as to the tax treatment or legal effect of Settlement Amounts called for
23 hereunder, and Plaintiff, Class Members, and Aggrieved Employees are not relying on any
24 statement or representation by Class Counsel, Defendant, or Defendant’s counsel in this regard.
25 Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that they
26 will be solely responsible for the payment of any taxes and penalties assessed on their respective
27 Settlement Amounts described herein. The amount of federal income tax withholding will be
28 based upon a flat withholding rate for supplemental wage payments in accordance with Treas.

1 Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be
2 made pursuant to applicable state and/or local withholding codes or regulations. Forms W-2
3 and/or Forms 1099 will be distributed at the times and in the manner required by the Internal
4 Revenue Code of 1986 (the “Code”) and consistent with this Agreement. If the Code, the
5 regulations promulgated thereunder, or other applicable tax law, are changed after the date of this
6 Agreement, the processes set forth in this Section may be modified in a manner to bring
7 Defendant into compliance with any such changes. Plaintiff, Participating Class Members, and
8 Aggrieved Employees understand and agree that they will be solely responsible for the payment
9 of any taxes and penalties assessed on their respective payments described herein and will hold
10 Defendant harmless from and against any claims resulting from treatment of such payments as
11 non-taxable damages.

12 (i) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
13 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
14 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
15 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
16 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
17 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
18 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
19 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
20 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
21 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
22 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
23 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
24 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
25 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
26 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
27 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
28 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY

1 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
2 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
3 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
4 ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
5 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
6 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
7 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

8 (k) For any Class Member whose Individual Class Payment check or Individual
9 PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall
10 transmit the funds represented by such checks to a Court-approved nonprofit organization or
11 foundation consistent with Code of Civil Procedure Section 384, subd. (b) ("Cy Pres Recipient")
12 Su Casa – Ending Domestic Violence . The Parties, Class Counsel and Defense Counsel
13 represent that they have no interest or relationship, financial or otherwise, with the intended Cy
14 Pres Recipient.

15 49. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
16 Participating Class Members under this Agreement, as well as any other payments made
17 pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any
18 benefit plans to which any Participating Class Members may be eligible, including, but not
19 limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase or other types of
20 equity plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it
21 is the Parties' intention that this Settlement will not affect any rights, contributions, or amounts
22 to which any Participating Class Members may be entitled under any benefit plans. The Parties
23 agree that the amounts paid pursuant to this Settlement are not for days or hours worked, and
24 shall not be included toward any regular rate of pay calculation, or any benefit vesting or accrual
25 purpose.

26 50. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
27 no circumstances will any portion of the Gross Settlement Amount revert to Defendant.
28 Participating Class Members will not have to make a claim in order to receive an Individual

1 Settlement Payment, and Aggrieved Employees will not have to make a claim in order to receive
2 their share of PAGA Penalties. Distributions, in the form of Individual Settlement Payments,
3 will be made directly to each Participating Class Member and Aggrieved Employee. The
4 Settlement Administrator shall be responsible for accurately and timely reporting and remittance
5 obligations with respect to unclaimed funds as a result of a Participating Class Member or
6 Aggrieved Employee not cashing an Individual Settlement Payment by the check cashing
7 deadline, as set forth herein.

8 51. Class Size Estimate and Escalator Clause. Based on a review of its records,
9 Defendant estimated, that as of September 12, 2022 (the date of Defendant's Response to
10 Plaintiff's Pre-Mediation Requests for Data and Information) there were 122 Class Members
11 who collectively worked a total of 3,349 Workweeks, and 70 Aggrieved Employees who worked
12 a total of 1,121 PAGA Pay Periods, and that as of November 10, 2022 (the date of mediation),
13 the Class Members collectively worked approximately 3,700 workweeks during the Class
14 Period. As such, the Parties agree that, should the total number of workweeks during the Class
15 Period exceed 4,070 (10% more than Defendants' representation), then the Settlement Amount
16 shall increase by \$98.28 (\$400,000 divided by 4,070) for each additional workweek above 4,070.

17 52. Defendant's Right to Withdraw. If the number of valid Requests for Exclusion
18 identified exceeds 5% of the class list, and/or if Richard "Rick" Constant opts out, Defendant
19 may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if
20 Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever,
21 and that neither Party will have any further obligation to perform under this Agreement;
22 provided, however, Defendant will remain responsible for paying all Settlement Administration
23 Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its
24 election to withdraw not later than [seven] days after the Administrator sends the final Exclusion
25 List to Defense Counsel; late elections will have no effect.

26 53. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
27 adequate, and will so represent same to the Court.

28 **D. Release by Plaintiff, Participating Class Members, and Aggrieved Employees**

1 54. Upon entry of the Final Approval Order and Defendant's funding of the entire
2 Gross Settlement Amount, and except as to such rights or claims as may be created by this
3 Agreement, the Participating Class Members will forever completely release and discharge the
4 Released Parties from the Class Claims for the Class Period. It is the intent of the Parties that the
5 Final Approval Order and judgment entered by the Court shall have full equitable and collateral
6 estoppel and *res judicata* effect and be final and binding upon Participating Class Members
7 regarding the Class Claims.

8 55. Each Participating Class Member will be deemed to have made the foregoing
9 Release as if by manually signing it.

10 56. Upon entry of the Final Approval Order and Defendant's funding of the entire
11 Gross Settlement Amount, Plaintiff, standing in the shoes of the Labor Commissioner/LWDA,
12 and on behalf of the State of California and all Aggrieved Employees, will forever completely
13 release and discharge the Released Parties from the PAGA Claims for the PAGA Period. It is
14 the intent of the Parties that the Final Approval Order and judgment entered by the Court shall
15 have full equitable and collateral estoppel and *res judicata* effect and be final and binding upon
16 Aggrieved Employees regarding the PAGA Claims.

17 57. Each Aggrieved Employee and the LWDA will be deemed to have made the
18 foregoing Release as if by manually signing it.

19 58. Plaintiff and Defendant intend that the Settlement described in this Agreement
20 will release and preclude any further claim, whether by lawsuit, administrative claim or action,
21 arbitration, demand, or other action of any kind, by each and all of the Participating Class
22 Members to obtain a recovery based on, arising out of, and/or related to any and all of the Class
23 Claims. The Class Members shall be so notified in the Notice. This paragraph only applies to
24 Participating Class Members and, thus, does not apply to any Class Member who timely and
25 validly submits a Request for Exclusion.

26 59. Plaintiff and Defendant also intend that the Settlement described in this
27 Agreement will release and preclude any further PAGA claim, whether by lawsuit,
28 administrative claim or action, arbitration, demand, or other PAGA action of any kind, by each

1 and all of the Aggrieved Employees to obtain a recovery based on, arising out of, and/or related
2 to any and all of the PAGA Claims. The Aggrieved Employees shall be so notified in the Notice
3 and Class Counsel shall provide appropriate notice to the LWDA of this Agreement prior to the
4 filing of the Motion for Preliminary Approval. This paragraph is not intended to preclude any
5 Aggrieved Employee other than Plaintiff from bringing any claim other than a PAGA claim.

6 60. Class Representative, on behalf of himself and the Participating Class Members,
7 acknowledges and agrees that the claims, including claims for unpaid and/or untimely payment
8 of wages and/or penalties and/or unreimbursed expenses are disputed, and that the payments set
9 forth herein constitute payment of all sums allegedly due to them. Class Representative, on
10 behalf of himself and the Participating Class Members, acknowledges and agrees that California
11 Labor Code § 206.5 and 2804 are not applicable to the Parties hereto. Section 206.5 provides in
12 pertinent part as follows:

13 An employer shall not require the execution of a release of a claim or right
14 on account of wages due, or to become due, or made as an advance on wages
15 to be earned, unless payment of those wages has been made.

16 **E. Release by Class Representative**

17 61. As a material inducement to Defendant to enter into this Agreement and in
18 consideration of the Service Payment, and in addition to the Class Representative's release of the
19 Class Claims and PAGA Claims:

20 (a) Class Representative does hereby, for himself and for his respective
21 spouses, domestic partners, marital community, children, estates, attorneys, heirs, successors,
22 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians,
23 personal representatives, and assigns ("Individual Releasing Parties") forever and completely
24 release and discharge and covenants not to sue the Released Parties with respect to any and all
25 claims, demands, liens, agreements, contracts, covenants, actions, suits, causes of action, wages,
26 obligations, debts, liquidated damages, penalties, interest, costs, expenses, attorneys' fees,
27 damages, judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise,
28 whether now known or unknown, suspected or unsuspected, concealed or hidden, which Plaintiff

1 now owns or holds or has at any time heretofore owned or held as against said Released Parties,
2 or any of them. This release includes, to the fullest extent permissible, but is not limited to, any
3 and all claims in law, equity, tort and/or contract; all claims of violation of public policy,
4 including a claim for wrongful and/or constructive termination of employment; claims for
5 discrimination, harassment, and/or retaliation; claims for misclassification; claims for untimely
6 or unpaid minimum and overtime wages, claims for any wage and hour violations, including but
7 not limited to meal period and rest break violations and reimbursement of business expenses;
8 assault, battery, false imprisonment, intentional interference with contractual relations,
9 intentional or negligent infliction of emotional distress, invasion of privacy, negligence,
10 defamation, intentional or negligent misrepresentation, fraud; breach of contract, oral or written,
11 express or implied, breach of any covenant of good faith and fair dealing, express or implied,
12 and/or promissory estoppel; any claim for unlawful or unfair business practices; any claims
13 under Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the
14 Americans with Disabilities Act of 1990, as amended; the Rehabilitation Act of 1973, as
15 amended; the Rehabilitation Act of 1973, as amended; the National Labor Relations Act
16 (NLRA), as amended; the Labor-Management Relations Act, as amended; the Family and
17 Medical Leave Act (FMLA); the Employee Retirement Income Security Act (ERISA); the Lily
18 Ledbetter Fair Pay Act; the Pregnancy Discrimination Act; the California Occupational Safety
19 and Health Act and the Federal equivalent (OSHA); the Federal Worker Adjustment and
20 Retraining Notification Act; the California Worker Adjustment and Retraining Notification Act;
21 the Fair Labor Standards Act (including the Equal Pay Act); the Sarbanes-Oxley Act of 2002; the
22 Immigration Control and Reform Act; the California Government Code; the California Business
23 & Professions Code; the California Family Rights Act; the California Labor Code; the California
24 Industrial Welfare Commission Wage Orders; the California Fair Employment and Housing Act;
25 the California and United States Constitutions; and any local ordinance or federal or state statute,
26 regulation, or constitution (collectively, the “Class Representative’s Claims”).

27 (b) ***Specific release of ADEA claims.*** Class Representative, on behalf of
28 himself and the Individual Releasing Parties knowingly and voluntarily waives, releases and

1 forever discharges Released Parties from any and all claims, whether known or unknown,
2 suspected or unsuspected, that Plaintiff may possess against any of the Released Parties under
3 the Age Discrimination in Employment Act ADEA, as amended, and its implementing
4 regulations. Plaintiff acknowledges and agrees that Plaintiff (i) has read this Settlement
5 Agreement in its entirety and understands all of its terms; (ii) has been advised to consult with an
6 attorney of Plaintiff's choosing before signing this Settlement Agreement; (iii) knowingly,
7 freely, and voluntarily agrees to all of the terms and conditions in this Settlement Agreement
8 including, but not limited to, the waiver, release, and covenants set forth herein; (iv) is signing
9 this Settlement Agreement, including the waiver and release, in exchange for good and valuable
10 consideration in addition to anything of value to which Plaintiff is otherwise entitled; (v) was
11 given at least twenty-one (21) days to consider the terms of this Settlement Agreement and
12 consult with an attorney of Plaintiff's choice, although Plaintiff may sign this Agreement sooner
13 if desired, and any changes, whether material or immaterial, do not restart the 21-day period; (vi)
14 understands that Plaintiff has seven (7) days after signing this Agreement (the "Revocation
15 Period") to revoke the release in this Section 61(b) by delivering notice of revocation to Lisa
16 Herald (by email to Lisa.h@rooterranger.com), before the end of the Revocation Period; and
17 (vii) understands that the release in this Section 61(b) does not apply to rights and claims that
18 may arise after the date on which Plaintiff signs this Settlement Agreement.

19 62. Class Representative agrees that there is a risk that any injury that he may have
20 suffered by reason of the Released Parties' relationship with his might not now be known, and
21 there is a further risk that said injuries, whether known or unknown at the date of this
22 Agreement, might possibly become progressively worse, and that as a result thereof further
23 damages may be sustained. Nevertheless, Class Representative agrees to forever and fully
24 release and discharge the Released Parties, and understands that by the execution of this
25 Agreement no further claims for any such injuries that existed at the time of the execution of this
26 Agreement may ever be asserted by Class Representative with respect to claims arising in the
27 time period from the beginning of time to the execution of this Agreement.

28 63. Class Representative expressly waives and relinquishes all rights and benefits

1 afforded by Section 1542 of the Civil Code of the State of California and does so understanding
2 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil
3 Code of the State of California states:

4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
5 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
6 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
7 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
8 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
9 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
10 OR RELEASED PARTY.

9 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
10 full and complete release and discharge of all parties, Class Representative and Class Counsel
11 expressly acknowledge that this Agreement is intended to include in its effect, without limitation,
12 all claims that Class Representative knew of, as well as all claims that she does not know or
13 suspect to exist in his favor against the Released Parties, or any of them, for the time period from
14 the beginning of time to the execution of this Agreement, and that this Agreement contemplates
15 the extinguishment of any such Class Representative's claims. Notwithstanding the above, the
16 general release by Class Representative shall not extend to claims for workers' compensation
17 benefits, claims for unemployment benefits, or other claims that may not be released by law.

18 64. Class Representative represents and warrants that he has not filed and will not file
19 any other lawsuit, administrative claim or action, arbitration, demand, or other action of any kind
20 against Defendant or the Released Parties. Class Representative represents and warrants that the
21 only pending claims against Defendant or the Released Parties are included in this Action.

22 **F. Interim Stay of Proceedings**

23 65. Pending completion of all of the prerequisites necessary to effectuate this
24 Settlement, the Parties agree, subject to Court's approval, to a stay of all proceedings in the
25 Action except such as are necessary to effectuate the Settlement.

26 **G. Notice Process**

27 66. Appointment of Settlement Administrator. The Parties have agreed to the
28 appointment of the Settlement Administrator to perform the duties of a settlement administrator,

1 including mailing the Notice, using standard devices to obtain forwarding addresses,
2 independently reviewing and verifying documentation associated with any claims or opt-out
3 requests, resolving any disputes regarding the calculation or application of the formula for
4 determining the Individual Settlement Payments, drafting and mailing the settlement checks to
5 Participating Class Members, and Aggrieved Employees, issuing W-2 and 1099 Tax Forms,
6 performing unclaimed funds due diligence, reporting and performing remittance obligations, and
7 performing such other tasks as set forth herein or as the Parties mutually agree or that the Court
8 orders.

9 67. Disputes Regarding Settlement Administration. Any and all disputes relating to
10 administration of the Settlement by the Settlement Administrator (except for disputes regarding
11 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
12 over the terms and conditions of this Agreement, until Plaintiff and Defendant notify the Court
13 that all payments and obligations contemplated by this Agreement have been fully carried out.
14 Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to
15 resolve the dispute without the necessity of Court intervention. The Settlement Administrator
16 shall also be responsible for issuing to Plaintiff, Participating Class Members, Aggrieved
17 Employees, and Class Counsel any W-2, 1099, or other Tax Forms as may be required by law for
18 all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be
19 responsible for setting up all necessary tax accounts and forwarding all payroll taxes and
20 penalties to the appropriate government authorities.

21 68. Class Data. Within fourteen (14) calendar days after entry of the Preliminary
22 Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The
23 Settlement Administrator will run a check of the Class Members' addresses against those on file
24 with the U.S. Postal Service's National Change of Address Database. The Class Data provided
25 to the Settlement Administrator will remain confidential, shall be used solely to administer the
26 Settlement, and it will not be used or disclosed to anyone (including Class Counsel), except as
27 required by applicable tax authorities, pursuant to Defendant's express written consent, or by
28 order of the Court. Although Class Counsel will not be provided with the list of Class Data,

nothing herein shall prevent Class Counsel from communicating with Class Members regarding the Action and Settlement.

69. Notice. The Notice, as approved by the Court, shall be sent by the Settlement Administrator to the Class Members and Aggrieved Employees, by first class mail, in English, within ten (10) calendar days following the Settlement Administrator's receipt of the Class Data. The Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding addresses of Class Members and Aggrieved Employees if any envelopes are returned.

70. Returned Notices of Settlement. The Settlement Administrator will take steps to ensure that the Notice is received by all Class Members and Aggrieved Employees, including utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address. Notices of Settlement will be re-mailed to any Class Member for whom an updated address is located within ten (10) calendar days following both the Settlement Administrator learning of the failed mailing and its receipt of the updated address. The re-mailed Notice shall be identical to the original Notice, except that it shall notify the Class Member that the exclusion (opt-out) request or objection must be returned by the later of the Notice Response Deadline or fifteen (15) calendar days after the remailing of the Notice.

71. Disputes Regarding Information on Notices of Settlement. Class Members are deemed to participate in the Settlement, unless they timely opt-out, and Aggrieved Employees may not opt-out of the PAGA Claims. The Notice will inform Class Members of his/her estimated Individual Settlement Payment and the number of Weeks Worked during the Class Period and Pay Periods Worked during the PAGA Period, if applicable. Class Members and Aggrieved Employees may dispute their Weeks Worked and/or Pay Periods Worked as applicable if they feel they should be credited with more than represented on the Notice by timely submitting evidence to the Settlement Administrator. Defendant's records will be presumed determinative absent reliable evidence to rebut Defendant's records, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and/or Aggrieved

Employee and provide the evidence submitted to Class Counsel and Defendant's Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member and/or Aggrieved Employee's actual number of Weeks Worked and/or Pay Periods Worked and estimated Individual Settlement Payment. If Class Counsel and Defendant's Counsel are unable to agree, they agree to submit the dispute to the Settlement Administrator to render a final decision. Class Members and Aggrieved Employees will have until the Notice Response Deadline to dispute Weeks Worked and/or Pay Periods Worked, object or opt-out, unless extended by the Court. In the event that the Settlement Administrator increases the number of Weeks Worked and/or Pay Periods Worked for any Class Member or Aggrieved Employee, then the Settlement Administrator will recalculate the Participating Class Members' Individual Settlement Payments accordingly. In no event will Defendant be required to increase the Gross Settlement Amount.

72. Declaration of Due Diligence. The Settlement Administrator shall provide counsel for the Parties, at least twenty-five (25) calendar days prior to the Final Approval Hearing, a declaration of due diligence and proof of mailing with regard to the mailing of the Notices of Settlement.

73. Class Members' Rights. Each Class Member will be fully advised of the Settlement, the ability to object to the provisions in the Settlement related to the Class Claims, and the ability to opt-out or request exclusion from the Settlement with respect to the Class Claims. The Notice will inform the Class Members of the Court-established deadlines for filing objections or requesting exclusion from the Settlement with respect to the Class Claims in accordance with the following guidelines:

(a) Requests for Exclusion from Participating in the Settlement. Any Class Member, other than Plaintiff, may request to be excluded from the Settlement by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or before the Notice Response Deadline. The Request for Exclusion should state:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT IN
THE CONSTANT v. ROOTER RANGER, LLC LAWSUIT. I

1 UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM
2 THE SETTLEMENT, I WILL NOT RECEIVE ANY MONEY
3 FROM THE CLASS ACTION PORTION OF THIS LAWSUIT.”

4 To be valid, any Request for Exclusion must include the full name, address, telephone
5 number, last four digits of the social security number or date of birth, and signature of the Class
6 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
7 Settlement Administrator at the specified address set forth in the Notice. Any such Request must
8 be made in accordance with the terms set forth in the Notice. A Request for Exclusion will be
9 timely only if postmarked by the Notice Response Deadline, unless the Parties otherwise agree in
10 writing. Any Class Member who timely requests exclusion in compliance with these
11 requirements: (i) will not have any rights under this Agreement with respect to the Class Claims,
12 including the right to object, appeal, or comment on the Settlement; (ii) will not be entitled to
13 receive any payments under this Agreement for the Class Claims; and (iii) will not be bound by
14 this Agreement, or the Judgment, with respect to the Class Claims. Any Aggrieved Employee
15 who requests timely exclusion will still be subject to the PAGA Claims to the fullest extent
16 permitted by law and shall be sent his or her share of PAGA Penalties.

17 (b) Binding Effect on Participating Class Members. Except for those Class
18 Members who exclude themselves in compliance with the procedures set forth above, all Class
19 Members will: (i) be deemed to be Participating Class Members for all purposes under this
20 Agreement; (ii) will be bound by the terms and conditions of this Agreement, the Judgment, and
21 the releases set forth herein; and (iii) except as otherwise provided herein, will be deemed to
22 have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the
23 Settlement.

24 (c) Objections to Settlement of the Class Claims. Any Participating Class
25 Member, other than Plaintiff, may object to the terms of this Agreement, except as to the PAGA
26 Claims. To object, a Participating Class Member shall inform the Settlement Administrator, in
27 writing, of his or her objection which must be postmarked by the Notice Response Deadline at
28 the address set forth in the Notice. Such objection shall include the objecting Participating Class

1 Member's full name, address, telephone number, last four digits of the social security number or
2 date of birth, signature, and dates of employment with Defendant, in addition to the case name
3 and number, the basis for the objection, including any legal support and each specific reason in
4 support of the objection, as well as any documentation or evidence in support thereof, and, if the
5 Objecting Participating Class Member is represented by counsel, the name and address of his or
6 her counsel. The Settlement Administrator shall provide objections, if any, to Class Counsel and
7 Defendant's Counsel within three (3) calendar days of receipt, and the Settlement Administrator
8 shall attach the same to its declaration of due diligence and file with the Court prior to the Final
9 Approval Hearing. Any Participating Class Member who files an objection remains eligible to
10 receive monetary compensation from the Settlement. Plaintiff and Defendant shall not be
11 responsible for any fees, costs, or expenses incurred by any Class Member and/or his or her
12 counsel related to any objections to the Settlement. Submitting an objection does not preserve
13 the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party
14 of record by timely and properly intervening or filing a motion to vacate the judgment under
15 California Code of Civil Procedure Section 663. Class Members and Aggrieved Employees may
16 not object to or opt-out of the Settlement with respect to the PAGA Claims.

17 (d) Failure to Object. Any Class Member who desires to object to the Class
18 Claims in the Settlement but fails to timely submit a written objection or in person objection at
19 the Final Approval Hearing waives any right to object and will be foreclosed from making any
20 objection to this Settlement. Any Class Member who does not timely and properly become a
21 party of record by intervening or filing a motion to vacate the judgment waives any and all rights
22 to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate
23 proceeding, such as a motion to vacate judgment, motion for new trial, a motion under California
24 Code of Civil Procedure Section 473, and extraordinary writs.

25 (e) Responses to Objections. Counsel for the Parties may file a response to
26 any objections submitted by objecting Participating Class Members at least five (5) court days
27 before the date of the Final Approval Hearing.

28 (f) Class Members will have until the Notice Response Deadline to object or

1 submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement
2 Administrator shall disclose jointly to Class Counsel and Defendant's counsel what objections or
3 Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class
4 Counsel or Defendant's Counsel.

5 (g) Defective Submissions. If a Class Member's Request for Exclusion or
6 objection is defective as to the requirements listed herein, that Class Member will be given an
7 opportunity to cure the defect(s). The Settlement Administrator will mail the Class Member a
8 cure letter within three (3) business days of receiving the defective submission to advise the
9 Class Member that his or her submission is defective and that the defect must be cured to render
10 the Request for Exclusion or objection valid. The Class Member will have the later of (i) the
11 Notice Response Deadline or (ii) fifteen (15) calendar days from the date of the cure letter to
12 postmark or fax a revised Request for Exclusion or objection. If the revised Request for
13 Exclusion or objection is not postmarked or received by fax within that period, it will be deemed
14 untimely and disregarded.

15 74. Funding of the Settlement Amount. Defendant shall make a one-time deposit into
16 the QSF of the Gross Settlement Amount, plus the employer's share of payroll taxes, no later
17 than thirty (30) calendar days after the Effective Date. Once Defendant has complied with their
18 obligation set forth in this paragraph, it shall be deemed to have satisfied all of the terms and
19 conditions of this Agreement, shall be entitled to all the protections afforded it under the
20 Agreement, and shall have no further obligations under the Agreement, regardless of what occurs
21 with respect to the further administration of the Settlement. The Settlement Administrator (and
22 not Defendant) shall issue the applicable W-2s and IRS Form 1099 reflecting all payments to the
23 Class Members.

24 75. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
25 payment into the QSF, the Settlement Administrator will mail the Individual Settlement
26 Payments to the Participating Class Members, the payment to Class Counsel for the Attorneys'
27 Fees and Costs Award, any Service Payment to the Class Representative, the payment to the
28 LWDA for PAGA Penalties, the payments to Aggrieved Employees for PAGA Penalties, and

1 will pay itself the Settlement Administration Costs.

2 76. Deadline for Cashing Settlement Checks. Participating Class Members and
3 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
4 Administrator to cash each settlement check. If any Participating Class Member's or Aggrieved
5 Employee's check is not cashed within that period, the check will be void and a stop-payment
6 will be issued, and the Settlement Administrator shall issue the unclaimed funds to the California
7 State Controller's Office in the name of the Class Member or Aggrieved Employee. The release
8 will be binding upon all Participating Class Members and Aggrieved Employees who do not cash
9 their checks within the 180-day period. In the event that any settlement check is returned to the
10 Settlement Administrator within 180 days of mailing, the Settlement Administrator will, within
11 five (5) business days of receipt of the returned settlement check, perform a skip trace to locate
12 the individual, and notify Defendant's Counsel and Class Counsel of the results. If a new
13 address is located by these means, the Administrator will have ten (10) business days to re-issue
14 the check. Neither Defendant, Defendant's Counsel, Class Counsel, Plaintiff, nor the Settlement
15 Administrator will have any liability for lost or stolen settlement checks, forged signatures on
16 settlement checks, or unauthorized negotiation of settlement checks. Without limiting the
17 foregoing, in the event a Participating Class Member or Aggrieved Employee notifies the
18 Settlement Administrator that he or she believes that a settlement check has been lost or stolen,
19 the Settlement Administrator shall immediately stop payment on such check. If the check in
20 question has not been negotiated prior to the stop payment order, the Settlement Administrator
21 will issue a replacement check.

22 77. No person shall have any claim against Defendant or the Released Parties,
23 Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on
24 mailings, distributions, payments or reports made in accordance with or pursuant to this
25 Agreement. This provision does not, however, prevent a Party from seeking enforcement of this
26 Agreement.

27 78. Without prejudice to any other remedies, the Settlement Administrator shall agree
28 to be responsible for any breach of its obligations (whether committed by the Settlement

Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from and against all liabilities, claims, causes of action, costs and expenses (including legal fees and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

H. Duties of the Parties Prior to the Court's Approval

79. Promptly after execution of this Agreement, Plaintiff will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

(a) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable and adequate as to the Class Members and Aggrieved Employees and a hearing on fees, costs and the Service Payment;

(b) Approving as to form and content of the proposed Notice;

(c) Directing the mailing of the Notice by first class mail to the Class Members and Aggrieved Employees;

(d) Preliminarily approving this Settlement; and

(e) Preliminarily certifying the class solely for purposes of this Settlement.

80. Reallocation of Settlement Proceeds. In the event the Court fails, on its first hearing, to approve this Agreement because the amount of the PAGA Penalties is not adequate, then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within this Agreement, in order to try to achieve Final Approval of the Agreement upon any subsequent Court hearings.

I. Duties of the Parties Following Court's Final Approval

81. In connection with the Final Approval Hearing provided for in this Agreement, Class Counsel shall submit a proposed Final Approval Order:

a. Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

b. Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representative, and the payment to the Settlement Administrator for costs of administering the settlement; and

1 c. Entering judgment approving settlement, thereby permanently barring all
2 Participating Class Members from prosecuting any Class Claims against any of the Released
3 Parties and permanently barring all Aggrieved Employees and the LWDA from prosecuting any
4 PAGA Claims against any of the Released Parties.

5 82. Final Judgment. The Settlement Administrator shall give the Participating Class
6 Members and Aggrieved Employees notice of the entry of Final Judgment on a postcard or letter
7 that will be included with the Individual Settlement Payments.

8 **J. Voiding the Agreement**

9 83. All Parties, signatories, and their counsel shall not encourage opt-outs or
10 objections to this Agreement. The Parties specifically agree not to solicit opt-outs, directly or
11 indirectly, through any means.

12 84. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will
13 have no further obligations under the Settlement, including any obligation by Defendant to pay
14 the Gross Settlement Amount, or any amounts that otherwise would have been owed under this
15 Settlement.

16 85. If the Settlement is voided or fails for any reason, any costs incurred by the
17 Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise
18 specified in this Agreement.

19 **K. Other Terms**

20 86. Waiver. The waiver by one Party of any breach of this Agreement by another
21 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

22 87. Full and Complete Defense. This Agreement may be pleaded by any Released
23 Party as a full and complete defense to, and may be used as the basis for an injunction against,
24 any action, suit, or other proceeding that has been or may be instituted, prosecuted or attempted,
25 asserting any Released Class Claim or PAGA Released Claim.

26 88. Parties' Authority. The signatories hereto represent that they are fully authorized
27 to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof. The
28 signatories hereto further represent that the Parties to this Agreement are represented by

competent counsel, and they have had an opportunity to consult with counsel prior to authorizing its execution.

89. No Publicity. The Parties will not publicize the Settlement or disclose it to third parties, except as required or necessary to effectuate its terms and comply with law, including the payment of taxes. Specifically, Plaintiff and Plaintiff's counsel shall not publicize the settlement on their websites or make any other public representation regarding the settlement, including posting any information pertaining to this Agreement on social media(Instagram, Facebook, Twitter, LinkedIn, YouTube, etc.), or in advertising/marketing materials. The Parties and their counsel agree that they will not issue any press releases or initiate any contact with the media about the fact, amount, or terms of the settlement. Nothing in this provision shall prevent Defendant from making any required disclosure.

90. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as practicable after execution of this Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval of the settlement, and the final entry of judgment. Class Counsel shall provide Defendant's Counsel with copies of the Preliminary Approval Motion and Final Approval Motion for review at least five (5) court days prior to the filing deadline.

91. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Agreement.

92. No Admission. Defendant denies any and all liability to Plaintiff, any Class Member, and/or any Aggrieved Employee in this Action, as to any and all causes of action that

1 were asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes to
2 settle and compromise the matters at issue in the Complaint to avoid further substantial expense
3 and the inconvenience and distraction of protracted and burdensome litigation. Defendant also
4 has taken into account the uncertainty and risks inherent in litigation, and without conceding any
5 infirmity in the defenses that they have asserted or could assert against Plaintiff, has determined
6 that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the
7 terms and conditions set forth in this Agreement.

8 93. Inadmissibility of Agreement. Whether or not the Court issues the Final
9 Approval Order, nothing contained herein, nor the consummation of this Agreement, is to be
10 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
11 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into
12 this Agreement with the intention of avoiding further disputes and litigation with the attendant
13 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
14 related documents such as the notices, and motions for preliminary and final approval, shall,
15 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
16 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
17 settlement, and/or interpret or enforce this Agreement. The stipulation for class certification as
18 part of this Agreement is for settlement purposes only and if, for any reason the settlement is not
19 approved, the stipulation will have no force or effect.

20 94. Notices. Unless otherwise specifically provided herein, all notices, demands, or
21 other communications pursuant to this Agreement shall be in writing and shall be deemed to
22 have been duly given as of the third business day after mailing by United States registered or
23 certified mail, return receipt requested, addressed:

24 To the Class Members and Aggrieved Employees:

25 Brian J. Mankin
26 *brian@LMLfirm.com*
27 LAUBY MANKIN LAUBY LLP
28 5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

To Defendant:

Ryan C. Bykerk
bykerkr@gtlaw.com
GREENBERG TRAURIG
1840 Century Park East, #100
Los Angeles, CA 90067-2121
Tel: (310) 586-7711| Fax: (310) 586-7800

95. Construction. The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

96. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.

97. Modification. This Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

98. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and Plaintiff and Defendant agree to seek the help of the mediator identified in this Agreement to resolve any dispute they are unable to resolve informally. During this period, the Parties shall bear their own attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding instituted by any person or entity other than Plaintiff or Defendant.

1 99. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of
2 dismissal pursuant to the terms of this Agreement, that, pursuant to California Code of Civil
3 Procedure Section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of
4 this Action over all Parties to interpret, enforce, and effectuate the terms, conditions, intents, and
5 obligations of this Agreement.

6 100. Enforceability. Pursuant to California Evidence Code §§ 1123(a) and (b), the
7 Parties intend that this Agreement shall be enforceable, binding, and admissible in a court of law.

8 101. Choice of Law. This Agreement shall be governed by and construed, enforced
9 and administered in accordance with the laws of the State of California.

10 102. Integration Clause. This Agreement contains the entire agreement between the
11 Parties relating to the settlement and transaction contemplated hereby, and all prior or
12 contemporaneous agreements, understandings, representations, and statements, whether oral or
13 written and whether by a Party or such Party's legal counsel, are merged herein. No rights
14 hereunder may be waived except in writing.

15 103. Binding On Assigns. This Agreement shall be binding upon and inure to the
16 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
17 successors, and assigns.

18 104. Signatures of All Class Members and Aggrieved Employees Unnecessary to be
19 Binding. It is agreed that, because the Class Members and Aggrieved Employees are numerous,
20 it is impossible or impractical to have each Class Member and Aggrieved Employee execute this
21 Agreement. The Notice will advise all Class Members and Aggrieved Employees of the binding
22 nature of the releases provided herein and such shall have the same force and effect as if this
23 Agreement were executed by each Class Member and Aggrieved Employee.

24 105. Invalidity of Any Provision. Before declaring any provision of this Agreement
25 invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible
26 consistent with applicable precedents so as to define all provisions of this Agreement valid and
27 enforceable.

28 106. Counterparts. This Agreement may be executed in counterparts, and when each

1 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
2 original, and, when taken together with other signed counterparts, shall constitute one fully
3 signed Agreement, which shall be binding upon and effective as to all Parties. Electronic
4 signatures shall have the same force and effect as an original.

5 107. Request for Dismissal of Beebe Enterprises, Inc. Within 10 days after the full
6 execution of this Agreement, Plaintiff will file a Request for Dismissal of defendant Beebe
7 Enterprises, without prejudice, pursuant to California Rules of Court, Rule 3.770.

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10 --- Signatures on Next Page ---
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1
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3 Dated: January 24, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:

4 
5 Brett Constant (Jan 24, 2023 14:48 PST)

6 Brett Constant

7 Dated: January 24, 2023

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP

8 
9 Brian J. Mankin
10 Attorneys for Plaintiff

11 Dated: January 24, 2023

DEFENDANT:
ROOTER RANGER, LLC

13 
14 Kurt Bratton

15 By: Kurt Bratton

16 Title: Chief Executive Officer

17
18 Dated: January 25, 2023

DEFENDANT'S COUNSEL:
GREENBERG TRAURIG, LLP

20 
21 Ryan C. Bykerk
22 Attorneys for Defendants

23
24 **END OF DOCUMENT**
25
26
27
28

EXHIBIT “2”

NOTICE OF SETTLEMENT OF CLASS AND REPRESENTATIVE ACTION

Brett Constant v. Rooter Ranger, LLC, et al.

Superior Court of the State of California, County of San Bernardino, Case No. CIVSB2206149

To: All current and former nonexempt employees who were employed by Rooter Ranger, LLC in California at any time between March 21, 2018, through January 9, 2023 (the “Class”):

THIS NOTICE is of a proposed settlement of the above-referenced class action and representative action lawsuit (the “Lawsuit”), and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this Lawsuit. The Court will conduct a hearing on [REDACTED], 2023, to address whether the proposed settlement should be approved (the “Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement contained in the Settlement Agreement.

[IDENTIFYING INFORMATION]

Plaintiff Brett Constant asserted certain wage and hour claims against Rooter Ranger, LLC (“Rooter Ranger”), described below. Rooter Ranger believes it complied with law, denies all liability, and denies Constant or anyone is entitled to any compensation of any kind. Despite this, the parties have reached a proposed class settlement. You have been identified as a Class Member and possible “Aggrieved Employee,” a term defined in the California Labor Code to mean an employee against whom a Labor Code violations has occurred, in the above Lawsuit. Under the terms of the proposed settlement, you are estimated to receive approximately \$INSERT AMOUNT as your share of the Settlement should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share may be more or less than this estimate. Your estimate is based on the number of eligible weeks that you worked for Rooter Ranger, LLC (“Rooter Ranger”) in California between March 21, 2018, and January 9, 2023 (the “Class Period”). Your options and eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives Final Approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the released class and PAGA claims described in Section IV under the provisions titled “Release of Class Claims” and “Release of PAGA Claims.”
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2023 (see Section V(B) for more details on how to opt-out). If you opt-out of the settlement of the Class Claims, you will no longer be a Class Member, and you will (1) neither receive any settlement payment for the Class Claims nor release any Class Claims as set forth in Section IV, and (2) be barred from filing an objection to the settlement. You still will receive a payment as part of the civil penalties paid pursuant to the California Private Attorneys General Act of 2004 (“PAGA”) and will release your claims for such civil penalties.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an objection by [REDACTED], 2023 (see Section V(C) for more details on how to object).
DISPUTE YOUR NUMBER OF WORKWEEKS CREDITED	If you believe that the number of weeks that you are credited with working during the Class Period is incorrect, you may submit a written dispute to the Settlement Administrator (see Section IV for more details on how to dispute your credited Weeks Worked). Defendant’s records will be presumed correct, but you may provide evidence to the Settlement Administrator showing that your workweek calculation is inaccurate.

I. Why should I read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Constant v. Rooter Ranger, LLC, et al.* San Bernardino County Superior Court Case No. CIVSB2206149 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

Rooter Ranger's records show that you were employed as a nonexempt employee (meaning you were paid hourly or eligible for overtime pay) in California at some point between March 21, 2018, and January 9, 2023 ("Class Period"). The Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you were employed by Rooter Ranger as a nonexempt employee in California at any time during the Class Period, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

On March 21, 2022, Plaintiff and Class Representative Brett Constant, through his attorneys ("Class Counsel"), filed a class action complaint against Rooter Ranger for alleged wage and hour violations on behalf of all current and former nonexempt employees employed by Rooter Ranger in California at any time since March 21, 2018. The Lawsuit alleges that Rooter Ranger violated various Labor Code sections by failing to pay all required minimum and overtime wages, failing to provide meal periods and rest breaks, failing to reimburse business expenses, failing to timely pay final wages, and failing to provide accurate and complete wage statements during the Class Period. The Lawsuit also sought equitable relief under the Unfair Competition Law. All these claims are called the "Class Claims." The Lawsuit also sought, on behalf of the California Labor Workforce Development Agency ("LWDA"), civil penalties pursuant to PAGA as a representative action. The civil penalty claims are called "PAGA Claims" and the relevant period for PAGA claims is March 21, 2021, through January 9, 2023 ("PAGA Period").

Rooter Ranger has denied, and continues to deny, the factual and legal allegations in the Lawsuit. Rooter Ranger believes that it complied with law, paid all compensation due, and has valid defenses to Plaintiff's claims. By agreeing to settle, Rooter Ranger is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action and/or a representative action. Rooter Ranger has agreed to settle the case as part of a compromise with Plaintiff and the Class Members.

The Court has not ruled on the merits of Plaintiff's claims. And, by approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, Rooter Ranger and Plaintiff have decided for themselves and on behalf of the Settlement Class to settle the Lawsuit on the terms summarized in this Notice. After Rooter Ranger provided extensive information to Class Counsel, the Settlement was reached following an arm's length mediation with a respected and experienced mediator. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Proposed Settlement was a good option to resolve the disputed claims.

The Class Representative and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to Rooter Ranger, the risk of denial of class certification or representative status, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by Rooter Ranger, this Settlement will not affect your employment. California law strictly prohibits unlawful retaliation. Further, Rooter Ranger will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member's participation or decision not to participate in this Settlement. If a Class Member does not participate as to the Class Claims, his/her share of the settlement of the Class Claims will be paid to those who do participate.

III. Who are the attorneys representing The Parties?

Attorneys for Plaintiff and Class Members:	Attorneys for Rooter Ranger:
Brian Mankin <i>brian@LMLfirm.com</i> Kristina Bui Carlson <i>kristina@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Avenue, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444	Ryan C. Bykerk <i>bykerkr@gtlaw.com</i> Rana Ayazi <i>rana.ayazi@gtlaw.com</i> Greenberg Traurig LLP 1840 Century Park East, #100 Los Angeles, CA 90067-2121 Tel: (310) 586-7711

IV. What are the terms of the Settlement?

On [PA DATE], the Court certified a class, for settlement purposes only, of all current and former nonexempt employees employed by Rooter Ranger in California at any time from March 21, 2018, through January 9, 2023 (the “Settlement Class” or “Class Members”) and approved a representative class comprised of all current and former nonexempt employees employed by Rooter Ranger in California at any time from March 21, 2021, through January 9, 2023 (“Aggrieved Employees”). Individuals who do not opt out of the Settlement Class, pursuant to the procedures set forth in this Notice, will become “Participating Class Members” and will be mailed Settlement checks, and in exchange will be bound by the Settlement and release of certain wage and penalty claims against Defendants.

Without admitting any wrongdoing, Rooter Ranger has agreed to pay \$400,000 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit. The Parties agreed to the following payments from the Gross Settlement Amount:

Settlement Administration Costs. The Court has approved XX to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, a maximum of \$XX will be paid from the Gross Settlement Amount to pay the Settlement Administration Costs.

Settlement Administrator
Name Address Telephone

Penalties to the California Labor Workforce and Development Agency. The Labor Code Private Attorneys General Act (“PAGA”) authorizes employees to file lawsuits to attempt to recover civil penalties on behalf of other Aggrieved Employees and the State of California for alleged Labor Code violations. Under the Settlement, \$40,000 of the Gross Settlement Amount will be allocated to Plaintiff’s PAGA Claims. Of this amount, \$30,000 will be paid to the California Labor Workforce and Development Agency (“LWDA”) in satisfaction of the claims for civil penalties under PAGA, and the remaining \$10,000 will be divided between all Aggrieved Employees based on the number of pay periods worked during the PAGA Period. Aggrieved Employees includes “all current and former nonexempt employees employed by Rooter Ranger in California at any time during the PAGA Period.” You do not have the right to opt-out or exclude yourself from receiving the civil penalties paid to pursuant to PAGA. Review the information below to determine if you are an Aggrieved Employee and eligible to receive a share of the \$10,000 allocation:

Do you Qualify as an Aggrieved Employee?	Weeks Worked as an Aggrieved Employee	Your Share of PAGA Penalties
YES/NO	INSERT	\$INSERT

Service Payment to Class Representative. Class Counsel will ask the Court to award the Class Representative a Service Payment in the amount of \$10,000 to compensate his for service and extra work provided on behalf of the Class Members and in exchange for a general release of claims. The Class Representative also will receive his individual share of the Settlement as a Class Member.

Attorneys' Fees and Costs. Class Counsel have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or costs. Class Counsel will ask for fees of one-third (\$133,333.33) of the common fund Gross Settlement Amount as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to \$20,000 for the costs Class Counsel incurred in connection with the Lawsuit.

Calculation of Individual Settlement Payments to Class Members. After deducting the amounts above from the Gross Settlement Amount, the balance will form the Net Settlement Amount for distribution to Participating Class Members (who are Class Members who do not opt-out). The Net Settlement Amount will total approximately \$ [REDACTED]. Individual Settlement Payments to Class Members will be calculated and apportioned from the Net Settlement Amount based on the number of calendar weeks during which a Settlement Class Member was employed by Rooter Ranger in California and worked at least one shift (the "Weeks Worked"). Specific calculations of Individual Settlement Payments will be made as follows: the Settlement Administrator will divide the total Weeks Worked by all Settlement Class Members into the Net Settlement Amount to determine a per "Workweek Value." The Workweek Value will be multiplied by the number Weeks Worked by each Settlement Class Member during the Class Period to determine the "Individual Settlement Payment," prior to legal deductions/withholdings, for each Settlement Class Member. If any Settlement Class Member opts-out of the Settlement, his/her Individual Settlement Payment will be distributed to all Participating Class Members (i.e., those who do not opt-out). Review the information below to determine your share as a Class Member:

Workweeks Worked as a Class Member During the Class Period	Your Share of the Net Settlement Amount
INSERT	INSERT

Disputes to Workweeks Credited. For each Settlement Class Member, the Weeks Worked during the Class Period will be calculated from Rooter Ranger's records. If you disagree with the numbers reported above, you may submit evidence to the Settlement Administrator on or before [REDACTED], 2023, with documentation to establish the number of Weeks Worked you claim to have actually worked for Rooter Ranger in California between March 21, 2018, and January 9, 2023. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Parties and Administrator will evaluate the evidence submitted by the Settlement Class member and discuss in good faith how many Weeks Worked should be credited to each Settlement Class member.

Payments to Class Members. After the Court grants Final Approval of the Settlement and judgment is entered, settlement checks will be mailed to Participating Class Members. For Aggrieved Employees who requested to be excluded from the Class Claims settlement, their settlement checks will only be for their share of PAGA civil penalties for release of their PAGA Claims. Participating Class Members and Aggrieved Employees will have 180 days from the issuance of the last check to cash all of the checks. In the event that any Participating Class Member or Aggrieved Employee fails to timely cash a settlement check, a stop payment will be placed on the check and the funds will be paid to the California State Controller's Office in the name of the Participating Class Member or Aggrieved Employee, so that the Participating Class Member or Aggrieved Employee can attempt to collect the funds at a later date through the California State Controller's Office.

Allocation and Taxes. Twenty percent (20%) of the Individual Settlement Payment distributed to each Participating Class Member will be considered and reported as wages (Form W-2 reporting). The remaining eighty percent (80%) will be considered and reported as interest and penalties (Form 1099 reporting). The Settlement Administrator shall take all usual and customary deductions from the Individual Settlement Payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest and penalty distribution; however, the payments will be reported on IRS Form 1099 as income. Payments for PAGA Claims shall be paid one hundred percent (100%) as civil penalties for which no taxes shall be withheld and for which payment will be reported on IRS Form 1099. Participating Class Members and Aggrieved Employees are responsible for the proper income tax treatment of the Individual Settlement Payments and their payments for PAGA Claims. The Settlement Administrator, Defendants and their counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments or payments for PAGA Claims. Participating Class Members and Aggrieved Employees will be solely responsible for the payment of any taxes and penalties assessed on their Individual Settlement Payments or payments for PAGA Claims. Accordingly,

Participating Class Members and Aggrieved Employees should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release of Class Claims. Upon the final approval of the Settlement by the Court and Defendants' funding of the Gross Settlement Amount, Plaintiff and all Class Members who do not submit a valid opt-out/request for exclusion will fully release and discharge Defendants and each of their former and present directors, officers, shareholders, owners, limited partners, attorneys, insurers, predecessors, successors, employees, assigns, parents, subsidiaries, and affiliates, and all persons acting by, through, under, or in concert with them, and each of these entities' present or past officers, directors, former and present directors, officers, shareholders, owners, limited partners, attorneys, insurers, predecessors, successors, employees, assigns, parents, subsidiaries, and affiliates (the "Released Parties") from all claims stated in the Complaint and those based solely upon the facts in the Complaint, including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to reimburse business expenses, (f) failure to timely pay wages, (g) failure to timely pay wages upon separation of employment, (h) failure to provide accurate itemized wage statements, (i) unfair and unlawful competition, and (j) all other claims that reasonably could have arisen out of the allegations made and based on the facts alleged in the Complaint. These released claims and damages are hereinafter referred to as "Released Class Claims." The time period governing these Released Class Claims shall be at any time from March 21, 2018, through January 9, 2023 ("Class Period").

Release of PAGA Claims. Also upon the Court's final approval of the Settlement and Defendants' funding of the Gross Settlement Amount, Plaintiff—in his individual capacity and on behalf of the State of California and the LWDA—and all Aggrieved Employees shall completely release and discharge the Released Parties of PAGA claims that Plaintiff alleged against the Released Parties, on behalf of the Aggrieved Employees and the State of California, based on the facts stated in the Complaint and in the relevant LWDA notice letter, including all PAGA claims seeking civil penalties premised upon: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to reimburse business expenses, (f) failure to timely pay wages each period, (g) failure to timely pay wages upon separation of employment, (h) failure to provide accurate itemized wage statements, and (i) all other claims for civil penalties recoverable under PAGA based on the facts or claims alleged in the Complaint. These released claims and damages are hereinafter referred to as "Released PAGA Claims." The time period governing the PAGA Released Claims shall be any time from March 21, 2020, through January 9, 2023 ("PAGA Period").

Waiver of Labor Code Sections 206.5(e) and 2804. Participating Class Members will be deemed to have acknowledged and agreed that their claims for wages and/or penalties and/or unreimbursed expenses in the Lawsuit are disputed, and that the Individual Settlement Payments constitute payment of all sums allegedly due to them. Participating Class Members will be deemed to have acknowledged and agreed that California Labor Code Sections 206.5 and 2804 are not applicable to the Individual Settlement Payments. Section 206.5 of the Labor Code provides in pertinent part as follows:

"An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made."

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

V. What options do I have?

- A. Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive a Settlement Payment unless you exclude yourself from the settlement by following the exclusion procedure set forth below. If you disagree with the number of Work Weeks credited, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described below.
- B. Exclude Yourself from the Class Claims in the Settlement.** If you do not wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Settlement Administrator a "Request for Exclusion from the Class Claims in the Class Action Settlement" letter/card postmarked no later than [REDACTED], 2023 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE ROOTER RANGER LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT."

Send the Request for Exclusion directly to the Settlement Administrator, [ADDRESS], postmarked no later than [REDACTED], 2023. Any person who files a timely Request for Exclusion from the Class Action Settlement, upon receipt: (1) will not have any rights under this Settlement with respect to the Class Claims, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive any money for the Class Claims under this Settlement; and (3) will not be bound by this Settlement, or the Judgment, with respect to the Class Claims. You still will be bound by this Settlement with respect to the release of the PAGA Claims.

- C. **Object to Settlement.** You also have the right to object to the terms of the Settlement with respect to the Class Claims if you believe they are unfair or unreasonable. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Class Claims portion of the Settlement, you must submit a written objection stating your full name, your address, your telephone number, the last four digits of your social security number or your date of birth, your dates of employment with Rooter Ranger, the case name and number, the name and address of your attorney(s) if you are represented, your signature, and each specific reason in support of your objection. You must also include any documentation or evidence in support of the objection, if any. Objections must be in writing and mailed to the Settlement Administrator, [ADDRESS], by no later than [REDACTED], 2023. Objections that do not include all required information, or that are not submitted timely, may not be considered by the Court. You need not object to the Settlement if you only dispute the number of Weeks Worked. To dispute the number of Weeks Worked, please refer to the directions provided under the provision entitled “Calculation of Individual Settlement Payments to Class Members” in Section IV of this Notice.

If you choose to object to the Class Claims portion of the Settlement, you may also appear at the Final Approval Hearing scheduled for [REDACTED], 2023, at 10:00 a.m. in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before [REDACTED], 2023. All objections or other correspondence must state the name and number of the case. If you wish to appear at the Final Approval hearing, please contact Class Counsel or the Settlement Administrator in advance of the scheduled hearing to ensure that the hearing has not been continued by the Court.

If you object to the Settlement, you will remain a Class Member, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

- D. **Dispute Work Weeks Credited.** As discussed in Section IV, you may dispute the number of Weeks Worked if you believe the number credited is inaccurate.

VI. What is the effect of the settlement?

Released Rights and Claims. The Settlement is intended to settle all claims against the Released Parties that were asserted or could have been asserted in the Lawsuit regarding the alleged violations of wage and hour laws. If you were employed by Rooter Ranger in California at any time during the Class Period and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the class claims in this Lawsuit, described above in Section IV under the provision titled “Release of Class Claims.” All Aggrieved Employees will be deemed to have entered into a release of the PAGA Claims, described above in Section IV under the provision titled “Release of PAGA Claims.” If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue, and the releases will not take effect.

VII. What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement, the Class Counsel’s request for attorneys’ fees and reimbursement of documented litigation costs, and the Service Payment to the Class Representative on [REDACTED], 2023 at 10:00 a.m. in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

VIII. How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Class Action Settlement Agreement at the Office of the Clerk, San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415, during regular court hours. You may also contact the Settlement Administrator using the contact information listed above under Section IV for more information.

IX. Reminder as to time limits

Class Members do not have to take any further action to participate in the Settlement. The deadline for submitting a Request for Exclusion from the Class Claims is [REDACTED], 2023. The deadline for mailing an objection to the Settlement Administrator is [REDACTED], 2023.

These deadlines will be strictly enforced. To be considered timely, any Requests for Exclusion and objections to the Settlement must be postmarked by the above-stated deadlines. Any Requests for Exclusion and objections to the Settlement that are not postmarked on or before these deadlines will be deemed untimely and disregarded.

**PLEASE DO NOT CALL OR WRITE THE COURT
FOR INFORMATION ABOUT THIS SETTLEMENT**

EXHIBIT “3”



March 30, 2022

Submitted Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Beebe Enterprises, Inc.
35805 N. 27th Ave.
Phoenix, AZ 85086

Rooter Ranger, LLC
7362 East Adobe Dr., Suite 101
Scottsdale, AZ 85255

Jordan L. Beebe
35805 N. 27th Ave.
Phoenix, AZ 85086

Kurt Bratton
3416 Robards Court
Louisville, KY 40218

Beebe Plumbing and Rooter LLC
7363 E. Adobe Dr., Suite 101
Scottsdale, AZ 85255

Beebe Plumbing Services LLC
19155 N. 83rd Ave.
Peoria, AZ 85382

**Re: PAGA Civil Penalty Claim
*Brett Constant v. Beebe Enterprises, Inc., Rooter Ranger, LLC; et al.***

To the Labor and Workforce Development Agency; Beebe Enterprises, Inc.; Rooter Ranger, LLC; Beebe Plumbing and Rooter LLC; Beebe Plumbing Services LLC; Jordan L. Beebe; and Kurt Bratton:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as the amended notification of the PAGA civil penalty claim of aggrieved employee Brett Constant (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), Beebe Enterprises, Inc., Rooter Ranger, LLC, Beebe Plumbing and Rooter LLC, Beebe Plumbing Services LLC, and/or any affiliated entities (collectively, the “Company”), as well as its owners / members Jordan L. Beebe, Kurt Bratton, and others (the “Owners”) for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198,

1199, and 2802 among possibly other sections inadvertently omitted, and/or sections of the applicable IWC Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately November 2021 through February 2022. Claimant alleges that, at all relevant times, he and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations that Claimant was subjected during his employment.

At all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. For instance, although Claimant and the Aggrieved Employees routinely worked more than 8 hours per day, the Company only provided compensation for 8 hours per day, regardless of the actual time worked. See *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575 (employees must be paid for all time that the employer either knew, or reasonably should have known, that its employees are subject to its control or otherwise working). Furthermore, the Company required Claimant and the Aggrieved Employees to clock out for meal periods but continue performing work for the Company. As a result of these practices, the Company failed to pay proper minimum, regular, and overtime wages each time it paid only 8 hours per day, regardless of how many hours were worked, as well as for each occasion that the Company failed to pay for all hours worked when an off-duty meal period was not taken. As a result, the Company failed to pay Claimant and the Aggrieved Employees for all hours worked, including minimum and overtime wages for all hours worked in excess of 8 and/or 12 per day and/or 40 per week.

Also, at all relevant times, Claimant and the Aggrieved Employees frequently worked in excess of 8 and/or 12 hours per day and/or 40 hours per week. However, on such occasions, the Company failed to provide any overtime compensation and, instead, only paid at the base rate for 8 hours per day and/or 40 hours per week. Additionally, Claimant and the Aggrieved Employees were paid on an hourly basis but were entitled to and did receive additional nondiscretionary compensation in the form of commissions and/or bonuses. But, during workweeks where the Aggrieved Employees worked overtime hours and earned additional nondiscretionary compensation, the Company failed to include the additional compensation in the calculations for overtime, as required by law.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company’s policies and practices, as well as the hectic and demanding workload, Claimant was subjected to meal period violations when he was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company (such as while driving), (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided mandated second or third meal periods for shifts in excess of 10 hours and 15 hours, respectively.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant’s rest breaks and Claimant was often not authorized and/or permitted to take mandated rest breaks due to the lack of adequate staffing and coverage and being overwhelmed by the hectic workload.



Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

Moreover, at all relevant times, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement. For example, Claimant was required to incur substantial expenses without reimbursement during employment, including but not limited to acquiring and maintaining a smart phone and related monthly data plan to communicate with the Company via phone, text message, and e-mail.

The Company also failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201–203 regarding timing of payment of final wages and failed to pay all wages due and owing upon separation of employment including minimum wages, overtime, and vacation wages. Finally, during his employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that he worked under the joint direction and control of the Company and the Owners and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that of the Company and the Owners acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, the Company and the Owners are an integrated enterprise and should be treated as a single employer because of the Company and the Owners share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, the Company and the Owners share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that the Owners are now and at all relevant times were the owners of The Company and were Claimant's and the Aggrieved Employees' actual employer or, in the alternative, were individuals employed by the Company as managerial and/or supervisory employees and/or agents. In addition, Claimant alleges that at all relevant times the Owners had the authority, in the interest of The Company to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that of the Company and the Owners are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, of the Company and the Owners were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges of the Company and the Owners were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others. Claimant further alleges that, at all relevant times, The Company has been inadequately capitalized to conduct business, has failed to follow appropriate corporate formalities, and has simply been a shell and instrumentality through



which the Owners have conducted their personal affairs. Adherence to the fiction of the separate existence of the Company would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice. Accordingly, the corporate veil should be pierced, and any liability attached to the Company should be imposed jointly and severally against the Owners.

Finally, in an additional separate, but not necessarily mutually exclusive, alternative theory of liability, the Owners are liable for PAGA civil penalties under Labor Code § 558 as “other person(s)” who caused the violations regarding minimum wage among other claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 (“if there is evidence and a finding that a party other than the employer ‘violates, or causes to be violated’ the overtime laws (§ 558(a)) or ‘pays or causes to be paid to any employee’ less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer”); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (same)

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 210, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company’s failure to accurately record and compensate for all hours worked and the failure to pay overtime and/or properly calculate the regular rate of pay for Claimant and other Aggrieved Employees. This resulted in earned, but unpaid, wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages.

Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”



Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums and did not do so at the proper rate. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” IWC Wage Order § 9(b) states “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties without reimbursement. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 210, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

Here, the Company frequently paid wages beyond the timing requirements specified in Labor Code § 204 and, thus, violated the statute. Additionally, as a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

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PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code § 203.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees due to violations including: failure to accurately state total hours worked (the wage statements failed to accurately reflect total compensable hours due to the failure to accurately record all hours worked); failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates; and failure to accurately state the corresponding number of hours worked at each hourly rate (including the failure to state the accurate overtime rate of pay). Accordingly, Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a



section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

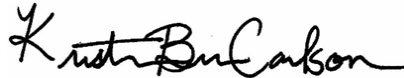
(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees. Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by supplementing this notice letter. Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Kristina Bui Carlson, Esq.

E-mail: kristina@lmlfirm.com



EXHIBIT “4”



CASE ASSUMPTIONS

Class Members	150
Opt Out Rate	1%
Opt Outs Received	1
Total Class Claimants	149
Subtotal Admin Only	\$7,162.45

Flat Fee Total **\$6,500.00**

For 150 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

November 23, 2022

Case: Constant v. Rooter, Opt-Out Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Brian J. Mankin
Firm: Lauby, Mankin & Lauby, LLP
Contact Number: (951) 320-1444
Email: brian@lmlfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on **150** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	1		\$100.00
Toll Free Setup*	\$150.00	1		\$150.00
Call Center & Long Distance	\$2.00	20		\$40.00
NCOA (USPS)	\$37.50	1		\$37.50
Total				\$527.50

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Reminder Postcard / Website

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Data Merge & Duplication Scrub	\$0.10	150		\$15.00
Notice Packet & Opt-Out Form	\$1.35	150		\$202.50
Estimated Postage (up to 2 oz.)*	\$0.61	150		\$91.50
Check Cashing Reminder Postcard Postage Included	\$0.60	31		\$18.77
Total				\$527.77

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	4		\$220.00
Skip Tracing Undeliverables	\$0.85	38		\$31.88
Remail Notice Packets	\$0.75	35		\$25.88
Estimated Postage	\$0.84	35		\$28.98
Programming Undeliverables	\$50.00	1		\$50.00
Total				\$356.73

Database Programming / Processing Opt-Outs, Deficiencies or Disputes				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	2		\$300.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	3		\$165.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	7		\$70.00
Case Manager	\$85.00	3		\$255.00
Total				\$990.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$135.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	2		\$190.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	4		\$540.00
Mail Class Checks *	\$1.10	149		\$163.90
Estimated Postage	\$0.61	149		\$90.89
Total				\$1,389.79

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	3		\$345.00
Remail Checks & Tax Forms (Postage Included)	\$1.70	30		\$50.66
Case Associate	\$55.00	4		\$220.00
Reconcile Uncashed Checks	\$85.00	5		\$425.00
Conclusion Reports	\$115.00	3		\$345.00
Case Manager Conclusion	\$85.00	4		\$340.00
Final Reporting & Declarations	\$115.00	3		\$345.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$1,000.00	1		\$1,000.00
Check to Cy-Pres	\$150.00	1		Included
Uncashed Checks to the State of California Controllers Office	\$300.00	1		\$300.00
Estimated <u>19</u> Total Class Members				
Total				\$3,370.66

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$7,162.45



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT “5”