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Superior Court of California,
County of San Diego
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Attorneys for Plaintiff
**MATTHEW VACHON, individually
and in a representative capacity, on
behalf of other members of the
general public similarly situated**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

MATTHEW VACHON, individually and in a
representative capacity on behalf of other
members of the general public similarly situated,

Plaintiff,

v.

REMEDY ROOTER, LLC, an unknown business
entity; DAN ZASTROW, an individual; and
DOES 1 through 10, inclusive

Defendants.

Case No: 37-2023-00039351-CU-OE-CTL

COMPLAINT FOR:

1. MINIMUM WAGE VIOLATIONS
PURSUANT TO LABOR CODE §
2698 *et seq.*
2. OVERTIME VIOLATIONS
PURSUANT TO LABOR CODE §
2698 *et seq.*
3. WAGE STATEMENT
VIOLATIONS PURSUANT TO
LABOR CODE § 2698 *et seq.*
4. MEAL AND REST PERIOD
VIOLATIONS PURSUANT TO
LABOR CODE § 2698 *et seq.*
5. FAILURE TO REIMBURSE
PURSUANT TO LABOR CODE §
2698 *et seq.*
6. FAILURE TO TIMELY PAY
WAGES PURSUANT TO LABOR
CODE § 2698 *et seq.*
7. FAILURE TO PAY WAGES UPON
SEPARATION PURSUANT TO
LABOR CODE § 2698 *et seq.*

[JURY TRIAL DEMANDED]

COMES NOW Plaintiff MATTHEW VACHON (“Plaintiff”), in an Individual and Representative capacity on behalf of all aggrieved employees alleges for his complaint as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has recently held that, for purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”) may not be aggregated. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).
2. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiff injuries occurred in the County of San Diego, State of California.
3. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein, Defendant REMEDY ROOTER, LLC (“REMEDY ROOTER” or “Defendants” collectively) was and is an unknown business entity doing business throughout the state, including the County of San Diego, State of California.
4. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein, Defendant DAN ZASTROW (“ZASTROW” or “Defendants” collectively) was and is an individual residing and doing business in the state, including the County of San Diego, State of California.
5. Plaintiff is presently unaware of the true names, capacities and liability of Defendants named herein as DOES 1 through 10, inclusive. Accordingly, Plaintiff will seek leave of court to amend this complaint to allege their true names and capacities after the same have been ascertained.

- 1 6. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named
2 Defendant is responsible in some manner for the wrongs and damages as herein alleged,
3 and in so acting was functioning as the agent, servant, partner, and employee of the co-
4 Defendant, and in doing the actions mentioned below, was acting within the course and
5 scope of his or her authority as such agent, servant, partner, and employee with the
6 permission and consent of the co-Defendant. Plaintiff injuries as herein alleged were
7 proximately caused by said Defendant. Wherever it is alleged herein that any act or
8 omission was done or committed by any specially named Defendant or Defendants,
9 Plaintiff intends thereby to allege and does allege that the same act or omission was also
10 done and committed by each and every defendant named as a DOE, both separately and
11 in concert with the named Defendant or Defendants.
- 12 7. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
13 including DOES 1 through 10, are and at all times herein mentioned were either
14 individuals, sole proprietorships, partnerships, registered professionals, corporations, alter
15 egos or other legal entities which were licensed to do and/or were doing business in the
16 County of San Diego, State of California at all times relevant to the subject matter of this
17 action.

18 **FACTUAL BACKGROUND**

- 19 8. On or around April 2022, Plaintiff MATTHEW VACHON commenced working for
20 Defendants as a Plumber. Plaintiff employment with Defendants lasted until June 28,
21 2023. Throughout his employment with Defendants, Plaintiff performed his job in a
22 capable and competent manner and was commended for doing so.
- 23 9. Throughout the term of his employment, Plaintiff and all other aggrieved employees
24 were, and currently are, denied the benefits and protections of the Labor Code due to
25 Defendants' institutionalized pay practices, standard as to all of Defendants' California-
26 based employees.

27 ///

REPRESENTATIVE ALLEGATIONS

10. As more specifically set forth below, Plaintiff brings this action in a representative capacity on behalf of all current and former nonexempt employees of Defendants. Code Civ. Proc. § 2699; *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 980-981. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were denied the protections and benefits of the Labor Code and Industrial Welfare Commission ("IWC") Wage Order(s) due to Defendants' standard practices. Throughout their employment, Plaintiff and all other aggrieved employees were and are denied full and accurate compensation, including overtime compensation, in violation of, *inter alia*, Labor Code §§ 510 and 1194. Plaintiff and the other aggrieved employees were and are denied meal and rest periods and meal and rest period payments, in violation of, *inter alia*, IWC Wage Order 16 (or any other applicable Wage Order) and Labor Code §§ 226.7 and 512. Defendants failed to furnish accurate itemized wage statements in violation of, *inter alia*, Labor Code § 226. Defendants failed to reimburse Plaintiff and other aggrieved employees for necessary business expenditures in violation of, *inter alia*, Labor Code § 2802. Defendants failed to provide all compensation due at termination of employment in violation of, *inter alia*, Labor Code §§ 201 through 203.
11. Plaintiff brings this action on the grounds that he and other similarly situated current and former employees of Defendants were and are improperly denied the mandated wages and reimbursements resulting from the above-referenced violations. Code Civ. Proc. § 2699; *Arias*, 46 Cal. 4th at 980-981. The number of current and former aggrieved employees is believed to exceed fifty (50) aggrieved employees.
12. The approximately fifty (50) aggrieved employees are comprised of all of Defendants' current and former California-based employees, designated as "nonexempt" by Defendants. Defendants' standard policies and practices which lead to Labor Code violations, as alleged herein, applied to all California nonexempt employees.
13. There are questions of fact and law common to all aggrieved employees arising from Defendants' actions include, among others, the following:

- a. Whether Defendants failed to pay its employees the proper straight-time, overtime, and double time wages due and owing to them;
 - b. Whether Defendants failed to provide its employees with statutorily-compliant Meal and/or Rest Periods, in violation of, inter alia, California Labor Code §§ 512 and 226.7, in that Defendants written policies are not compliant with California law, Defendants do not allow its employees duty-free Meal and/or Rest Periods, and Defendants improperly “round” employees recorded Meal Periods;
 - c. Whether Defendants failed to properly provide Meal and Rest Period premiums in accordance with law;
 - d. Whether Defendants failed to properly calculate and pay its employees Overtime compensation or Meal and Rest Period premiums in accordance with law by failing to properly calculate, into the Regular Rate of Pay, the value of employee benefits;
 - e. Whether Defendants failed to properly reimburse its employees for necessary business expenditures for, inter alia, cell phone costs and mileage, in violation of Labor Code § 2802;
 - f. Whether Defendants failed to provide all compensation upon termination of employment in violation of Labor Code §§ 201-203, due, in part, to the fact that Defendants failed to provide proper compensation for all hours worked, as discussed above; and
 - g. Whether Defendants failed to provide Plaintiff and all other aggrieved employees with accurate itemized wage statements in violation of, among other statutes, Labor Code § 266.
14. At all times mentioned herein, Defendants were subject to the Labor Code and Industrial Welfare Commission Wage Orders of the State of California, including, but not limited to, California Labor Code § 2698 et seq.
15. At all times mentioned herein, Defendants are and were “employers” as that term is used within the relevant sections of the California Labor Code and the applicable wage order. An employer-employee relationship existed between Plaintiff and Defendants.

16. Plaintiff has exhausted his administrative remedies and pre-filing requirements California Labor Code § 2699.3, and has also fulfilled all notice requirements under the statute. On July 5, 2023, counsel for Plaintiff prepared and electronically submitted a letter to the LWDA via the California Department of Industrial Relations’ “PAGA Filing” website. This letter concerned Remedy Rooter, Zastrow, and their Labor Code violations. A copy of this letter was also mailed to Defendants, via USPS Certified Mail. The letter contained the specific provisions of the California Labor Code violated by Defendants, as well as the facts and theories in support of Plaintiff’s claims. (Please see **Exhibit 1**, a true and correct copy of this letter.)
17. The statutory time period for the LWDA to investigate and/or respond, and for the employers to respond, has concluded.
18. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were denied the protections and benefits of the Labor Code and IWC Wage Order(s) due to Defendants’ standard practices. Said violations are set forth below.

FIRST CAUSE OF ACTION

Minimum Wage Violations Pursuant to Labor Code § 2698 *et seq.*

Representative Action

(By Plaintiff Representative against Defendants and DOES 1 through 10)

19. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
20. Defendants failed to pay its employees all compensation due in violation of, among other statutes, Labor Code § 1197. California law holds that the failure to pay for any work time constitutes a violation of minimum wage laws. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 323. These violations were caused by and through Defendants’ failure to maintain accurate Time Records (as required by California law), to the detriment of the employees. Specifically, Defendants recorded only scheduled work time as opposed to actual work time, and would frequently falsify, or edit, employees’ recorded time. Additionally, the right to receive the proper minimum wage compensation was impacted by Defendants knowingly failing to consider other work performed by the employees, including all time employees were under Defendants’ control. These actions, and

1 instructions, caused the employees to lose compensation, including proper minimum
2 wage compensation and overtime compensation.

3 21. As a direct result of Defendants' failure to comply with the foregoing provisions of the
4 Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
5 amount to be proven at trial.

6 22. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
7 behalf of himself and all other aggrieved employees by and through Labor Code §
8 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may
9 recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in
10 the below Prayer For Relief.

11 23. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of
12 Defendants pursuant to Labor Code § 2699(a) for each of these employees.

13 24. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor
14 Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

15 **SECOND CAUSE OF ACTION**

16 **Overtime Violations Pursuant to Labor Code § 119.510**

17 **Representative Action**

18 **(By Plaintiff Representative against Defendants and DOES 1 through 10)**

19 25. Plaintiff hereby incorporates by reference each and every allegation contained in the
20 preceding paragraphs as though fully set forth herein.

21 26. Defendants willfully failed to pay Plaintiff and all other aggrieved employees all
22 compensation, including Overtime Compensation, due in violation of, among other
23 statutes, Labor Code § 510. These violations occurred due to Defendants' illegal policies,
24 referenced above, whereby employees experienced monetary under-compensation. Given
25 the length of Plaintiff's (and other employees') shifts, the unpaid work time often would
26 have been owed at the overtime rate of pay. Additionally, Plaintiff and other employees
27 frequently worked in excess of eight hours per shift without receiving overtime pay.
28 These systematic failures to provide proper overtime compensation are in violation of
California law.

1 27. As a direct result of Defendants' failure to comply with the foregoing provisions of the
2 Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
3 amount to be proven at trial.

4 28. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
5 behalf of himself and all other aggrieved employees by and through Labor Code §
6 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may
7 recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in
8 the below Prayer For Relief.

9 29. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of
10 Defendants pursuant to Labor Code § 2699(a) for each of these employees.

11 30. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor
12 Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

THIRD CAUSE OF ACTION

Wage Statement Violations Pursuant to Labor Code § 226

Representative Action

(By Plaintiff Representative against Defendants and DOES 1 through 10)

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14
15 31. Plaintiff hereby incorporates by reference each and every allegation contained in the
16 preceding paragraphs as though fully set forth herein.

17 32. Defendants willfully failed to provide Plaintiff and all other aggrieved employees with
18 accurate itemized wage statements in violation of, among other statutes, Labor Code §
19 226. These violations include, but are not limited to, Defendants' failure to accurately
20 identify all applicable regular and overtime rates of pay in violation of section 226(a)(9),
21 and providing inaccurate representations of both "gross" and "net wages." Defendants
22 also failed to provide an accurate showing of the "total hours worked," in violation of
23 Labor Code § 226(a)(2).

24 33. As a direct result of Defendants' failure to comply with the foregoing provisions of the
25 Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
26 amount to be proven at trial.

27 34. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
28 behalf of himself and all other aggrieved employees by and through Labor Code §

2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

35. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.

36. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

FOURTH CAUSE OF ACTION

Meal and Rest Period Violations Pursuant to Labor Code §§ 226.7 and 512

Representative Action

(By Plaintiff Representative against Defendants and DOES 1 through 10)

37. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

38. Labor Code § 1198 states:

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

Defendants violated this section by establishing working conditions below the standard of the applicable Wage Order.

39. Under applicable California law, “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a Meal Period of not less than 30 minutes [...] An 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” Lab. Code § 512(a); see also 8 Cal. Code Regs. § 11160 (11)(A).

40. Unless the employee is relieved of all duty during a thirty (30) minute Meal Period, the Meal Period shall be considered an “on duty” Meal Period and counted as time worked. 8 Cal. Code Regs. § 11160 (11).

- 1 41. California law requires employers to provide nonexempt employees with a 10-minute
2 Rest Period for every four hours worked, or “major fraction thereof.” 8 Cal. Code Regs.
3 § 11160 (12).
- 4 42. An employer who fails to provide Meal or Rest Periods as required by an applicable
5 Wage Order must pay the employee one additional hour of pay at the employee’s regular
6 rate of pay for each workday that the Meal or Rest Period was not provided. Lab. Code §
7 226.7(b); 8 Cal. Code Regs. § 11160 (11), (12).
- 8 43. Within the operative time period, Defendants failed to possess compliant Meal and Rest
9 Period policies or practices.
- 10 44. For example, Defendants’ Rest Period policy and practice does not provide the right for
11 employees to “leave the premises,” by requiring employees to remain on the job site
12 during Rest Periods. Additionally, employees often do not have time to take a break due
13 to the volume of orders that must be completed before the end of the employee’s shift.
- 14 45. Defendants’ Meal and Rest Period policy also assumes that employees have “waived” the
15 right to a legally-compliant Meal or Rest Period, or a Meal or Rest Period penalty
16 payment, unless the employees complete a very specific process of formal notification to
17 the Defendants.
- 18 46. Moreover, Defendants’ policies and practices preclude “duty-free” Meal and Rest
19 Periods. These institutional and established practices of Defendants are illegal, in that
20 Plaintiff and all other employees were denied proper and/or timely Meal and Rest
21 Periods.
- 22 47. These violations are due, in part, to the fact that Defendants do not possess a legal Rest
23 Period policy or practice, as its Rest Period policy lacks required language, resulting in
24 employees failing to receive all Rest Periods legally due. Defendants do not provide Rest
25 Periods, as defined by California law. Further, Defendants have never provided a Rest
26 Period penalty payment to any employee.
- 27 48. Defendants also do not possess a legal Meal Period policy, and make no attempt to ensure
28 that its employees are either timely or wholly provided Meal Periods. The employees

1 would often either miss a Meal Period entirely, be provided a short or late Meal Period,
2 or be provided only one Meal Period, even when they were working in excess of 10 hours
3 a day. Additionally, Defendants failed to accurately record its employees' actual start and
4 stop times of Meal Periods (and would frequently edit or falsify time records with respect
5 to Meal Periods), in violation of the IWC Wage Orders. 8 Cal. Code Regs. § 11160
6 (7)(A)(3).

7 49. Moreover, Defendants' policies and practices preclude "duty-free" Meal and Rest
8 Periods, in that the employees are required to remain "On Call" at all times, including
9 during the Meal and Rest Periods, in order to (among other reasons) attend to the large
10 volume of customers/orders in a timely manner before the end of the shift. These
11 institutional and established practices of Defendants are illegal, in that Plaintiff and all
12 other aggrieved employees were denied proper and/or timely Meal and Rest Periods.

13 50. Defendants willfully failed and refused to pay Plaintiff and all other aggrieved employees
14 one additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest
15 Period was not provided, as required by Labor Code § 226.7 and IWC Wage Order 16
16 (11), (12).

17 51. Any payments made by Defendants for missed or late Meal Periods were not paid at an
18 employee's regular rate in violation of Labor Code § 226.7 and the operative IWC Wage
19 Orders. Instead, these payments were made at an employee's base rate and did not
20 include the value of, inter alia, additional compensation and/or employee benefits.

21 52. As a direct result of Defendants' failure to comply with the foregoing provisions of the
22 Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
23 amount to be proven at trial.

24 53. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
25 behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3,
26 and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these
27 penalties pursuant to Labor Code § 2699, as more specifically set forth in the below
28 Prayer For Relief.

54. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.

55. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

FIFTH CAUSE OF ACTION

Failure to Reimburse Pursuant to Labor Code § 2802

Representative Action

(By Plaintiff Representative against Defendants and DOES 1 through 10)

56. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

57. Defendants failed to reimburse their nonexempt employees for all necessary business expenditures incurred in direct consequence of the discharge of their duties in violation of, among other statutes, Labor Code § 2802. These expenditures are the result of, inter alia, Defendants' standard policies which require its employees to incur equipment costs without reimbursement.

58. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

59. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

60. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.

61. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

SIXTH CAUSE OF ACTION

Failure to Timely Pay Wages Pursuant to Labor Code § 2698 *et seq.*

Representative Action

(By Plaintiff Representative against Defendants and DOES 1 through 10)

- 1 62. Plaintiff hereby incorporates by reference each and every allegation contained in the
2 preceding paragraphs as though fully set forth herein.
- 3 63. Plaintiff and all other aggrieved employees performed work for Defendants, as an
4 employee of Defendants, as stated herein. Throughout Plaintiff's and all other aggrieved
5 employees' employment, they earned wages that were not paid to them, as stated herein,
6 in an amount according to proof at trial.
- 7 64. California Labor Code § 204, applicable at all times relevant herein to Plaintiff's and all
8 other aggrieved employees' employment by Defendants, provides that all wages earned
9 by any person in any employment are due and payable twice during each calendar month.
10 Defendants failed to pay Plaintiff and all other aggrieved employees the wages they were
11 entitled to under the Code.
- 12 65. During his employment, Plaintiff and all other aggrieved employees were denied proper
13 wages due, in part, to Defendants' uniform policies and procedures of editing time records
14 resulting in an underpayment to employees.
- 15 66. As a direct result of Defendants' failure to comply with the foregoing provisions of the
16 Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
17 amount to be proven at trial.
- 18 67. As a result of Defendants' willful failure to pay wages, in addition to such other damages
19 and penalties as may properly be recovered herein, Plaintiff and all other aggrieved
20 employees are entitled to back pay, waiting time penalties, interest, costs, and attorneys'
21 fees pursuant to Labor Code §§ 206, 218.5, 218.6, 558, 1194.2, and 1197.1.
- 22 68. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
23 behalf of himself and all other aggrieved employees by and through Labor Code §
24 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may
25 recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in
26 the below Prayer For Relief.
- 27 69. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of
28 Defendants pursuant to Labor Code § 2699(a) for each of these employees.

70. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

SEVENTH CAUSE OF ACTION

**Failure to Pay Wages Upon Separation Pursuant to Labor Code § 2698 *et seq.*
Representative Action**

(By Plaintiff Representative against Defendants and DOES 1 through 10)

71. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

72. Defendants willfully failed to provide Plaintiff and other aggrieved employees with all wages earned and unpaid at termination in violation of, among other statutes, Labor Code §§ 201 through 203. These violations resulted from, among other unlawful actions, Defendants willful failure to provide accurate and complete compensation to aggrieved employees under Labor Code §§ 226.7, 510, 512, and 1197.

73. Defendants failed to provide all compensation upon termination of employment in violation of Labor Code §§ 201-203 due, in part, to the fact that Defendants failed to provide proper compensation for all hours worked, and failed to pay meal and/or rest period penalties.

74. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

75. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

76. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.

77. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on his own behalf and on behalf of all other aggrieved employees, prays for judgment as follows:

1. For compensatory damages according to proof, as set forth under Labor Code §§ 510, 1194, and 2802, among other statutes;
2. For penalties and restitution of wages according to proof, as set forth under Labor Code §§ 221, 226, 226.7, 450 and 1197.1, among other statutes;
3. For penalties pursuant to Title 8, California Code of Regulations, Wage Order 16 (or any applicable Wage Order);
4. For lost back pay in an amount to be proven;
5. Where available, for liquidated damages pursuant to Labor Code § 1194.2;
6. Where available, for an award of interest, including prejudgment interest, pursuant to Labor Code § 218.6;
7. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code §§ 218.5, 226, 1194, 2802 and Code of Civil Procedure § 1021.5; and
8. For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests that this matter be heard and decided by trial by jury.

DATED: _____

GRUENBERG LAW

JOSHUA D. GRUENBERG, ESQ.
KATHERINE DISHONGH, ESQ.
Attorneys for Plaintiff
**MATTHEW VACHON in an individual and
representative capacity, and on behalf of other
members of the general public similarly situated**

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EXHIBIT 1

(1) PLAINTIFF’S LETTER FILED WITH THE LABOR AND WORKFORCE
DEVELOPMENT AGENCY



July 5, 2023

Labor and Workforce Development Agency
Attn. PAGA Administrator

Re: Matthew Vachon v. Remedy Rooter LLC

Dear Administrator:

Please allow this correspondence to serve as “written notice,” as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Remedy Rooter LLC, and Dan Zastrow (hereinafter collectively “Remedy Rooter”), in the above-referenced matter.

This “written notice” is filed on behalf of Matthew Vachon and all current and former non-exempt employees employed by Remedy Rooter. Thank you for your assistance and instruction on this issue.

The specific provisions alleged to have been violated by Remedy Rooter are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-203, 223, 226, 226.7, 246, 510, and, 512, as well as IWC Wage Order 16, and any other applicable wage orders, codified as Title 8, California Code of Regulations, section 11160 et seq.

Facts and theories supporting the allegations: Our client, Matthew Vachon, worked as a non-exempt employee employed by Remedy Rooter from approximately April 2022 until approximately June 28, 2023. Matthew Vachon was a plumber for Remedy Rooter.

Throughout the term of Mr. Vachon’s employment, Remedy Rooter required Mr. Vachon and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

Minimum Wage and Overtime Violations

Remedy Rooter failed to provide all compensation, including Minimum Wage and Overtime compensation, as well as compensation for work performed inside of Meal and Rest Periods, to its employees in violation of, inter alia, Labor Code sections 223, 1194, 510, IWC Wage Order 16, and any other applicable wage

orders. This illegal action is due, in part, to Remedy Rooter's policies of **(1)** failing to properly retain accurate Time Records, in violation of California law, and **(2)** failing to provide compensation (including both Minimum and Overtime compensation) for all time worked by the employees, or in control of the employer. For instance, Mr. Vachon did not receive compensation for working beyond his scheduled (as opposed to *actual*) work hours, resulting in a loss of compensation. Moreover, Remedy Rooter would often require Mr. Vachon to work extended hours (beyond his scheduled hours) without compensation. Further, Remedy Rooters would regularly contact Mr. Vachon outside of normal work hours (i.e., "after hours" or during lunch) without compensation.

Additionally, among other issues, Remedy Rooter had notice of Mr. Vachon, and others, working outside of their scheduled and/or reported hours, as well as *within* Meal and Rest Period, but failed to provide any compensation for this work time.

Finally, Remedy Rooters failed to properly calculate and pay overtime at the actual overtime rate of pay, as Remedy Rooters ignores certain compensation when calculating the regular rate of pay. Additionally, Remedy Rooters would improperly classify overtime, or double time, as regular time, resulting in an underpayment to employees.

Failure to Provide Compliant Meal Periods

Remedy Rooter failed to provide compliant Meal Periods in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 16, or any other applicable wage orders. For example, Remedy Rooter does not possess a legal Meal Period policy and makes no attempt to ensure its employees are either timely or wholly provided Meal Periods. The employees would often either miss a Meal Period entirely or be provided a short or untimely Meal Period. Over the course of his employment, Mr. Vachon was instructed on numerous occasions to remain available during his Meal Periods.

Remedy Rooter would pressure its employees to either skip or cut short a Meal Period as employees were expected to respond to supervisors at all times. On the rare occasions when employees *were* paid Meal Period penalties (i.e. California Meal Period Premiums), such payments do not "cure" the stated Labor Code violation under section 226.7. The California Supreme Court held that "An employer's failure to provide an additional hour of pay does not form part of a section 226.7 violation, and an employer's provision of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of 226.7." (*Kirby v. Immoos Fire Protection, Inc.*

(2012) 53 Cal.4th 1244, 1256.) Even more recently, a 2020 California Supreme Court ruling stated that “The remedy for a Labor Code violation, through settlement or other means, is distinct from the fact of the violation itself. For example, employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not excuse a 226.7 violation.’” (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73.) To be clear, payment of a Meal Period penalty to employees does not rectify the violation, it is in fact an admission of a Labor Code violation. Remedy Rooter failed to pay Meal Period Premiums at the proper rate, as Remedy Rooter fails to either **(1)** pay a full hour’s worth of pay, or **(2)** properly calculate the Regular Rate of Pay for purposes of determining the premium rate owed. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 864.)

Finally, Remedy Rooter illegally retained control over its employees during Meal Periods. For example, Remedy Rooter required its employees to “remain on the premises” (i.e. remain at their office and/or work site) and to remain “on call” (i.e. monitor their telephones) at all times, including during Meal Periods.

Failure to Provide Compliant Rest Periods

Remedy Rooter failed to provide compliant Rest Periods or requisite Rest Period Penalty Payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, IWC Wage Order 16, and any other applicable wage orders. For example, Remedy Rooter does not possess a legal Rest Period policy, as its Rest Period policy lacks required language under California law. Remedy Rooter makes no attempt to ensure that its employees are either timely or wholly provided Rest Periods. The employees would often either miss a Rest Period entirely, be provided a short or untimely Rest Period, or be provided only one Rest Period, even when they were working in excess of 6.5 hours a day. Remedy Rooter would pressure its employees to either skip or cut short a Rest Period as employees were expected to respond to residents at all times. Remedy Rooter has never provided a compliant Rest Period Penalty Payment to any employee as to the above-referenced issues. Finally, on the rare occasions in which Remedy Rooter would provide a Rest Period penalty, it would pay said penalty at an improper (and *lesser*) rate, due to the failure to properly calculate the Regular Rate of Pay.

Finally, Remedy Rooter illegally retained control over its employees during Rest Periods. For example, Remedy Rooter required its employees to “remain on the premises,” (i.e. remain at their office and/or work site) and to remain “On Call” (i.e. monitor their telephones) at all times, including during Rest Periods.

Wage Statement Violations

Remedy Rooter violated Labor Code section 226(a)(1) by failing to furnish an accurate showing of the gross wages earned by its employees. For example, Remedy Rooter **(a)** would not provide compensation for all hours and minutes worked, **(b)** would use an improper (and *lesser*) Overtime Rate of Pay, and **(c)** would fail to pay Meal and/or Rest Period Penalties when due.

Remedy Rooter violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. The wage statements do not list the actual hours worked at any rate, for any pay period, due in part, to Remedy Rooter's practice of rounding to the nearest quarter of an hour. Additionally, Mr. Vachon and other employees were not compensated for all hours worked (due in part to Remedy Rooter's practice of rounding to the nearest quarter of an hour). Furthermore, Remedy Rooter failed to state the Overtime Rate of Pay on its earning records.

Remedy Rooter violated Labor Code section 226 (a)(9) by failing to furnish an accurate showing of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Remedy Rooter's wage statements do not list the accurate hourly rate for either Overtime or Doubletime Rates of pay, for any Pay Period. Additionally, Mr. Vachon, and the other employees, were not compensated for all hours worked (due in part to Remedy Rooter requiring employees to list only *Scheduled* work time, not actual work time to include "on-call" hours). Therefore, Remedy Rooter failed to provide a showing of the "total hours worked" by its employees pursuant to section 226(a)(2).

Willful Failure to Provide All Compensation to Ex-Employees

Remedy Rooter failed to provide all compensation upon termination of employment in violation of Labor Code sections 201-203, due in part, to the fact that Remedy Rooter failed to provide proper compensation for all hours worked, and failed to pay full Rest Period penalties, as discussed above. Mr. Vachon ceased employment with Remedy Rooter in or around June 2023 and did not receive all wages due and owed to him, including all accrued vacation and sick leave

To confirm, Remedy Rooter is a "person" as defined within California Labor Code section 18.

To confirm, Daniel Zastrow is a "person" as defined within California Labor Code section 18.

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GRUENBERG LAW

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Again, thank you for your assistance and instruction with this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,



Katherine A Dishongh

Cc: Via Certified U.S. Mail

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