

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

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

Plaintiff,

vs.

ELITE ROOTER, INC., a California
Corporation; ELITE ROOTER ORANGE,
INC., a California Corporation; ELITE
ROOTER SDN, INC., a California
Corporation; ELITE ROOTER PENINSULA,
INC., a California Corporation; ELITE
ROOTER PHOENIX, INC., a California
Corporation; ELITE ROOTER SAN JOSE,
INC., a California Corporation; ELITE
ROOTER SFV, INC., a California
Corporation; ELITE ROOTER SOUTH BAY,
INC., a California Corporation; ELITE
ROOTER FRESNO, INC., a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: 23STCV25139
*[Assigned to Hon. Gregory Keosian, Dept 61,
for all purposes]*

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Provide Rest Breaks;
- (5) Failure to Reimburse Bus. Expenses;
- (6) Failure to Pay Vested Vacation;
- (7) Failure to Timely Pay Final Wages;
- (8) Failure to Provide Accurate Itemized Wage Statements;
- (9) Unfair and Unlawful Competition

PAGA CLAIMS

- (10) Failure to Pay Minimum Wages;
- (11) Failure to Pay Overtime Wages;
- (12) Failure to Provide Meal Periods;
- (13) Failure to Provide Rest Breaks;
- (14) Failure to Reimburse Bus. Expenses;
- (15) Failure to Pay Vested Vacation;
- (16) Failure to Timely Pay Wages;
- (17) Failure to Timely Pay Final Wages; and
- (18) Failure to Provide Accurate Itemized Wage Statements; and
- (19) Failure to Maintain Records

FILED
Superior Court of California
County of Los Angeles
04/25/2024

David W. Slayton, Executive Officer / Clerk of Court
By: P. Salcido Deputy

1 Plaintiffs David Delgado and Brett Constant (“Plaintiffs”), on behalf of themselves, on a
2 representative basis, and on behalf of others similarly situated, complain and allege as follows:

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff Constant brings this action against his former employer(s), Elite Rooter,
5 Inc., Elite Rooter Orange, Inc., Elite Rooter SDN, Inc., Elite Rooter Peninsula, Inc., Elite Rooter
6 Phoenix, Inc., Elite Rooter San Jose, Inc., Elite Rooter SFV, Inc., Elite Rooter South Bay, Inc.,
7 Elite Rooter Fresno, Inc., and DOES 1 through 20, inclusive, (collectively, “Defendants”) on
8 behalf of all current and former nonexempt employees employed by Defendants in California
9 (the “Class” or “Represented Employees”) for Labor Code violations stemming from
10 Defendants’ failure to pay all wages owed, including minimum, regular, and overtime wages,
11 failure to provide meal periods, failure to provide rest breaks, failure to reimburse business
12 expenses, failure to pay all vested vacation owed upon separation of employment, failure to
13 timely pay wages each period and upon separation of employment, and failure to provide
14 accurate itemized wage statements.

15 2. Plaintiffs Delgado and Constant also bring this action against their former
16 employer(s), Elite Rooter, Inc., Elite Rooter Orange, Inc., Elite Rooter SDN, Inc., Elite Rooter
17 Peninsula, Inc., Elite Rooter Phoenix, Inc., Elite Rooter San Jose, Inc., Elite Rooter SFV, Inc.,
18 Elite Rooter South Bay, Inc., Elite Rooter Fresno, Inc., and DOES 1 through 20, inclusive,
19 (collectively, “Defendants”) on behalf of the State of California, seeking civil penalties under
20 PAGA for Labor Code violations committed against all current and former nonexempt
21 employees employed by Defendants in California within the last one year and 65-days prior to
22 the filing of this action (hereinafter, the “Aggrieved Employees”). Such violations include, but
23 are not limited to, Defendants’ failure to pay all wages owed, including minimum, regular, and
24 overtime wages, failure to provide meal periods, failure to provide rest breaks, failure to
25 reimburse business expenses, failure to pay all vested vacation owed upon separation of
26 employment, failure to timely pay wages each period and upon separation of employment, and
27 failure to provide accurate itemized wage statements.

1 3. Plaintiff Delgado was employed by Defendants from approximately August 2021
2 through June 2023. Plaintiff Constant was employed by Defendants from approximately August
3 through October 2023.

4 4. Plaintiffs allege that the Represented Employees and Aggrieved Employees were
5 subjected to the same policies, working conditions, and corresponding wage and hour violations
6 to which Plaintiffs were subjected during employment.

7 5. Plaintiffs, the Represented Employees, and the Aggrieved Employees were not
8 provided all minimum, regular, and overtime wages due to Defendants' failure to accurately
9 record and compensate for all hours worked. As one specific example, Plaintiffs, the
10 Represented Employees, and the Aggrieved Employees were paid on a commission-only basis.
11 But, under this commission-only pay plan, Defendants failed to pay Plaintiffs, the Represented
12 Employees, and the Aggrieved Employees at no less than the minimum wage for unpaid, on-duty
13 time and tasks performed for Defendants (*i.e.*, the Represented Employees and Aggrieved
14 Employees did not receive any compensation for non-commission-generating tasks or mandated
15 paid rest breaks). And Defendants did not pay any overtime compensation despite that the the
16 Represented Employees and the Aggrieved Employees frequently worked in excess of 8 hours
17 per day and 40 hours per week.

18 6. Plaintiffs, the Represented Employees, and the Aggrieved Employees were also
19 denied 30-minute off-duty meal periods, as mandated by California law. As a result of
20 Defendants' policies and practices, the Represented Employees and the Aggrieved Employees
21 were subjected to meal period violations when they were: (1) unable to take a meal period due to
22 workload, (2) forced to take an on-duty meal period while under the control of the Company, (3)
23 forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of
24 work, and (5) not provided mandated second meal periods for shifts in excess of 10 hours.
25 Moreover, Defendants failed to record or keep accurate information regarding when the
26 Represented Employees and the Aggrieved Employees took mandated meal periods, in violation
27 of the applicable IWC Wage Order § 7(A)(3).
28

1 7. Defendants also failed to provide Plaintiffs, the Represented Employees, and the
2 Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major
3 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for
4 Plaintiffs, the Represented Employees, and the Aggrieved Employees, the Represented
5 Employees and Aggrieved Employees were unable to leave the premises for rest breaks, and the
6 Represented Employees and Aggrieved Employees were often not authorized and/or permitted to
7 take mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on
8 occasions when the Represented Employees and Aggrieved Employees worked longer shifts,
9 Defendants failed to authorize and/or permit additional mandated rest breaks. Furthermore, the
10 Represented Employees and Aggrieved Employees were denied paid rest breaks by virtue of
11 Defendants' policy that only paid on a commission basis. As the Represented Employees and
12 Aggrieved Employees could not generate commission compensation during a rest break, the
13 Represented Employees and Aggrieved Employees were illegally denied paid rest breaks.

14 8. Moreover, at all relevant times, Defendants required Plaintiffs, the Represented
15 Employees, and the Aggrieved Employees to incur necessary business-related expenses and costs
16 without reimbursement, including, but not limited to, acquiring and maintaining cellular phones
17 (including related data plans) and tools to perform their tasks for Defendants.

18 9. Also, at all relevant times, Defendants utilized a policy and practice through
19 which Plaintiffs, the Represented Employees, and the Aggrieved Employees accrued vacation
20 and/or paid time off hours (collectively, "vacation hours"). California law, specifically Labor
21 Code § 227.3, requires Defendants to pay all accrued and unused vacation hours upon separation
22 of employment at the final rate of pay. However, Defendants failed to pay all accrued and
23 unused vacation hours to the Represented Employees and Aggrieved Employees upon separation
24 of employment. And, for vacation hours that Defendants *did* pay, Defendants failed to calculate
25 and pay for said hours at the "final rate" of pay as required by Labor Code § 227.3 (the final rate
26 of pay for the Represented Employees and Aggrieved Employees was often higher than the base
27 rate due to other nondiscretionary compensation, yet Defendants failed to calculate the correct
28 rate to pay all vested vacation wages due and owing).

1 10. Plaintiffs further alleges that they and the Represented Employees and Aggrieved
2 Employees were not paid all wages due and owing each pay period (Labor Code § 204) and upon
3 separation of employment within the time required by Labor Code §§ 201 – 203. Plaintiffs
4 further alleges that Defendants engaged in the practice of failing to pay all wages due and owing
5 to the Represented Employees and Aggrieved Employees at the time their employment ended
6 with Defendants, including, but not limited to minimum, regular, and overtime wages, wage
7 premiums, vacation and sick wages, among others.

8 11. Plaintiffs further alleges that Defendants failed to provide accurate itemized wage
9 statements that fully complied with the requirements of Labor Code § 226(a).

10 12. Plaintiffs allege that Defendants’ violations of the wage and hour components of
11 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
12 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
13 its competitors.

14 13. At all material times, Defendants and DOES 1 through 20 were and/or are the
15 Represented Employees’ and Aggrieved Employees’ employers or persons acting on behalf of
16 the Represented Employees’ and Aggrieved Employees’ employer, within the meaning of
17 California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter
18 1 of the California Labor Code or any provision regulating hours and days of work in an IWC
19 Wage Order and, as such, are subject to penalties for each underpaid employee as set forth in
20 Labor Code § 558 and under California law.

21 14. Plaintiff Constant brings this lawsuit seeking declaratory, injunctive, equitable,
22 and monetary relief against Defendants and each of them, on behalf of himself and the
23 Represented Employees to recover, among other things, unpaid wages and benefits, interest,
24 attorneys’ fees, penalties, costs and expenses pursuant to California Labor Code §§ 200, 201,
25 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1174.5, 1194,
26 1194.2, 1197, 1197.1, 1198, 1199, and 2802, among possibly other sections inadvertently
27 omitted. Plaintiff also reserves the right to name additional representatives throughout the State
28 of California.

1 15. Plaintiffs Delgado and Constant also bring this lawsuit on behalf of the State of
2 California, as the real party in interest, to recover all applicable and available PAGA remedies
3 for violations of the California Labor Code committed against the Aggrieved Employees as
4 alleged herein, as well as attorneys' fees, costs, and/or other damages as permitted by PAGA.
5 Plaintiffs reserve the right to name additional representatives throughout the State of California.

6 **II. JURISDICTION**

7 16. This Court has jurisdiction over the claims for relief of Plaintiff, the Represented
8 Employees, and the Aggrieved Employees pursuant to the Labor Code and the IWC Wage
9 Orders.

10 **III. VENUE**

11 17. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
12 Procedure § 395(a) because: Defendants transact business in Los Angeles County, the unlawful
13 acts alleged herein have a direct effect on the Represented Employees and Aggrieved Employees
14 in Los Angeles County, Defendants employed or employ the Represented Employees and
15 Aggrieved Employees in Los Angeles County, and the alleged violations occurred in Los
16 Angeles County. *Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th
17 1069, 1075 (“venue is proper in any county in which an aggrieved employee worked and Labor
18 Code violations allegedly occurred.”).

19 **IV. PARTIES**

20 **Plaintiff**

21 18. Plaintiff and PAGA Representative David Delgado was employed by Defendants
22 from approximately August 2021 through June 2023.

23 19. Plaintiff, PAGA Representative, and Class Representative Brett Constant was
24 employed by Defendants from approximately August through October 2023.

25 **Defendants**

26 20. Plaintiffs are informed and believe and thereon allege that Defendant Elite Rooter,
27 Inc. is a California corporation authorized to and doing business in Los Angeles County and is or
28 was the legal employer of Plaintiffs, the Represented Employees, and the Aggrieved Employees

1 during the applicable periods.

2 21. Plaintiffs are informed and believe and thereon allege that Defendant Elite Rooter
3 Orange, Inc. is a California corporation authorized to and doing business in Los Angeles County
4 and is or was the legal employer of Plaintiffs, the Represented Employees, and the Aggrieved
5 Employees during the applicable periods.

6 22. Plaintiffs are informed and believe and thereon allege that Defendant Elite Rooter
7 SDN, Inc. is a California corporation authorized to and doing business in Los Angeles County
8 and is or was the legal employer of Plaintiffs, the Represented Employees, and the Aggrieved
9 Employees during the applicable periods.

10 23. Plaintiffs are informed and believe and thereon allege that Defendant Elite Rooter
11 Peninsula, Inc. is a California corporation authorized to and doing business in Los Angeles
12 County and is or was the legal employer of Plaintiffs, the Represented Employees, and the
13 Aggrieved Employees during the applicable periods.

14 24. Plaintiffs are informed and believe and thereon allege that Defendant Elite Rooter
15 Phoenix, Inc. is a California corporation authorized to and doing business in Los Angeles County
16 and is or was the legal employer of Plaintiffs, the Represented Employees, and the Aggrieved
17 Employees during the applicable periods.

18 25. Plaintiffs are informed and believe and thereon allege that Defendant Elite Rooter
19 San Jose, Inc. is a California corporation authorized to and doing business in Los Angeles
20 County and is or was the legal employer of Plaintiffs, the Represented Employees, and the
21 Aggrieved Employees during the applicable periods.

22 26. Plaintiffs are informed and believe and thereon allege that Defendant Elite Rooter
23 SFV, Inc. is a California corporation authorized to and doing business in Los Angeles County
24 and is or was the legal employer of Plaintiffs, the Represented Employees, and the Aggrieved
25 Employees during the applicable periods.

26 27. Plaintiffs are informed and believe and thereon allege that Defendant Elite Rooter
27 South Bay, Inc. is a California corporation authorized to and doing business in Los Angeles
28 County and is or was the legal employer of Plaintiffs, the Represented Employees, and the

1 Aggrieved Employees during the applicable periods.

2 28. Plaintiffs are informed and believe and thereon allege that Defendant Elite Rooter
3 Fresno, Inc. is a California corporation authorized to and doing business in Los Angeles County
4 and is or was the legal employer of Plaintiffs, the Represented Employees, and the Aggrieved
5 Employees during the applicable periods.

6 29. Plaintiffs are ignorant of the true names, capacities, relationships, and extent of
7 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
8 inclusive, but on information and belief allege that those Defendants are legally responsible for
9 the payment of penalties and damages to Plaintiffs, the Represented Employees, and all
10 Aggrieved Employees by virtue of Defendants' unlawful actions and practices and therefore sue
11 these Defendants by such fictitious names. Plaintiffs will amend this complaint to allege the true
12 names and capacities of the DOE Defendants when ascertained.

13 30. Plaintiffs are informed and believe and thereon allege that they, the Represented
14 Employees, and the Aggrieved Employees worked under the joint direction and control of
15 Defendants and that Defendants, and each of them, acted in all respects pertinent to this action as
16 the agent of the other Defendants, carried out a joint scheme, business plan or policy in all
17 respect pertinent hereto, and the acts of each Defendant are legally attributable to the other
18 Defendants. On information and belief, a unity of interest and ownership between each
19 Defendant exists such that all Defendants acted as a single employer of Plaintiff, the Represented
20 Employees, and the Aggrieved Employees.

21 31. Furthermore, Plaintiffs are informed and believe and thereon allege that
22 Defendants, and each of them, are an integrated enterprise and should be treated as a single
23 employer because these entities share an interrelation of operations, with common human
24 resources and personnel policies and shared common offices and facilities. Additionally,
25 Defendants also have a shared website, common management, a centralized control of labor
26 operations, and common ownership or financial control.

27 32. Plaintiffs are informed and believe and thereon allege that, in conducting
28 themselves in the manner described herein, Defendants, and each of them, were acting in active

concert with one another such that the acts of each were and are fully attributable to the others in all material respects. Plaintiffs are further informed and believe that at all relevant times Defendants and each of them are now, and at all material times herein mentioned were, the agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining co-Defendants, 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 of their remaining co-Defendants.

33. Plaintiffs are further informed and believes that at all relevant times, Defendants have been inadequately capitalized to conduct business, have failed to follow appropriate corporate formalities, and have simply been a shell and instrumentality through which Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly, the corporate veil should be pierced, and any liability attached to Defendants should be imposed jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the separate existence of these corporate entities would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

V. CLASS ACTION ALLEGATIONS

34. Plaintiff Constant incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

35. Plaintiff Constant brings this action on behalf of himself and all others similarly situated as a class action, pursuant to Code of Civil Procedure § 382.

36. The relevant time period for this class action is defined as the period beginning four years prior to October 19, 2023 (the filing of Plaintiff Constant's initial complaint) until class certification (the "Relevant Time Period").

37. The Class, also referred to as the "Represented Employees," that Plaintiff Constant seeks to represent is defined as follows:

All current and former nonexempt employees employed by
Defendants in California during the Relevant Time Period.

38. Plaintiff Constant also seeks to represent the following subclasses:

1 **Meal Break Subclass**

2 All Represented Employees who worked a shift in excess of
3 5 hours during the Relevant Time Period.

4 **Rest Break Subclass**

5 All Represented Employees who worked a shift of at least
6 3.5 hours during the Relevant Time Period.

7 **Vested Vacation Subclass**

8 All Represented Employees who had accrued but unused
9 vacation upon separation of employment during the period
10 four years before the filing of this action and ending when
11 final judgment is entered.

12 **Unreimbursed Expense Subclass**

13 All Represented Employees who were required to incur
14 expenses to discharge their duties for Defendants without
15 reimbursement during the Relevant Time Period.

16 **Waiting Time Penalties Subclass**

17 All Represented Employees who separated from their
18 employment with Defendants during the period three years
19 before the filing of this action and ending when final
20 judgment is entered.

21 **Wage Statement Penalties Subclass**

22 All Represented Employees during the period one year
23 before the filing of this action and ending when final
24 judgment is entered.

25 39. Plaintiff Constant reserves the right to amend or modify the class description with
26 greater specificity or further division into subclasses or limitation to particular issues as
27 appropriate.
28

1 40. Plaintiff Constant, as Class Representative, is a member of the class and
2 subclasses that he seeks to represent.

3 41. This action has been brought and may properly be maintained as a class action
4 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
5 litigation and the proposed class is easily ascertainable from Defendants' records.

6 42. **Numerosity:** The potential members of the Class as defined are so numerous that
7 a joinder of all Represented Employees is impracticable. Although the exact number is currently
8 unknown to Plaintiff, this information is easily ascertainable from Defendants' records.

9 43. **Commonality:** There are questions of law and fact common to the class which
10 predominate over any questions affecting only individual members of the class, including
11 without limitation:

12 i. Whether Defendants violated the California Labor Code and applicable
13 IWC Wage Order by failing to pay wages to Plaintiff Constant and the Represented Employees
14 for all hours worked;

15 ii. Whether Defendants violated the California Labor Code and applicable
16 IWC Wage Order by failing to pay proper overtime wages to Plaintiff Constant and the
17 Represented Employees for hours above 8 and/or 12 per day and/or 40 per week;

18 iii. Whether Defendants violated the California Labor Code and applicable
19 IWC Wage Order by failing to provide compliant meal periods to Plaintiff Constant and the
20 Meal Break Subclass and whether Defendants failed to compensate Plaintiff Constant and the
21 Meal Break Subclass with one additional hour of wages at the regular rate of pay for each
22 instance when a compliant meal period was not provided;

23 iv. Whether Defendants violated the California Labor Code and applicable
24 IWC Wage Order by failing to provide compliant rest breaks to Plaintiff Constant and the Rest
25 Break Subclass and whether Defendants failed to compensate Plaintiff Constant and the Rest
26 Break Subclass with one additional hour of wages at the regular rate of pay for each instance
27 when a paid rest break was not provided;
28

1 v. Whether Defendants violated the Labor Code by failing to compensate
2 Plaintiff Constant and the Vested Vacation Subclass for all accrued but unused vacation hours
3 upon separation of employment;

4 vi. Whether Defendants violated the California Labor Code and applicable
5 IWC Wage Order by failing to reimburse Plaintiff Constant and the Unreimbursed Expense
6 Subclass for business expenses incurred while discharging their duties or in obedience to the
7 directions of their employer;

8 vii. Whether Defendants violated the California Labor Code by failing to
9 timely pay all wages due upon separation of employment between Defendants and Plaintiff
10 Constant and the Waiting Time Penalties Subclass, whether such separation was voluntary or
11 involuntary;

12 viii. Whether Defendants violated the California Labor Code by failing to
13 provide Plaintiff Constant and the Wage Statement Penalties Subclass with complete, accurate,
14 itemized wage statements;

15 ix. Whether Defendants violated California Business & Professions Code §§
16 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest
17 breaks, failure to provide mandated meal periods, failure to pay vested vacation, failure to
18 reimburse business expenses, and failure to timely pay final wages; and

19 x. Whether Plaintiff Constant and Represented Employees are entitled to
20 equitable relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

21 44. **Typicality:** Plaintiff Constant's claims, as the Class Representative, are typical of
22 the claims of The Class. Plaintiff Constant, like other members of the Class, was subjected to
23 Defendants' ongoing Labor Code and Wage Order violations including pertaining to the failure
24 to pay all wages owed, failure to provide mandated meal periods and rest breaks, failure to pay
25 vested vacation, failure to reimburse business expenses, failure to timely pay wages upon
26 separation of employment, and failure to provide accurate itemized wage statements.

27 45. **Adequacy of Representation.** Plaintiff Constant, as Class Representative, will
28 fairly and adequately represent and protect the interests of the Class. Plaintiff Constant's interests

1 are not in conflict with those of the Class. Class Representative's counsel are competent and
2 experienced in litigating employment class actions and other complex litigation matters similar
3 to this case.

4 46. **Superiority of Class Action.** Class certification is appropriate because a class
5 action is superior to other available means for the fair and efficient adjudication of this
6 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
7 law and fact common to the Class predominate over any questions affecting only individual
8 members of the Class. Each Represented Employee has been damaged and is entitled to
9 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
10 treatment will allow those similarly situated persons to litigate their claims in the manner that is
11 most efficient and economical for the parties and the judicial system.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY MINIMUM WAGES**

14 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

15 *Plaintiff Constant and the Represented Employees Against All Defendants*

16 47. Plaintiff Constant incorporates the preceding paragraphs of the First Amended
17 Complaint as if fully alleged herein.

18 48. Plaintiff Constant and the Represented Employees were not exempt from the
19 requirement to be paid at least the applicable California minimum wage throughout the statutory
20 period for each hour worked.

21 49. Plaintiff Constant and the Represented Employees were not provided proper
22 minimum and regular wages due to Defendants' failure to accurately record and compensate for
23 all hours worked. As a result of this policy and practice, Plaintiff Constant and the Represented
24 Employees were required to perform off-the-clock work that Defendants either knew or should
25 have known they were performing.

26 50. Consequently, Defendants violated California Labor Code laws and minimum
27 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
28 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

51. Plaintiff Constant is informed and believes and thereon alleges that Defendants intentionally, willfully, and improperly failed to pay wages to Plaintiff Constant and the Represented Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

52. Defendants' conduct was willful, as Defendants knew that Plaintiff Constant and the Represented Employees were entitled to be paid wages throughout the statutory period for each hour worked, including proper minimum and regular wages, yet Defendants chose not to pay them in accordance thereto.

53. At all material times, Defendants DOES 1 through 20 were and/or are the employer of Plaintiff Constant and the Represented Employees or were persons acting on behalf of said employer(s), within the meaning of California Labor Code § 558, who violated or caused to be violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California Labor Code regulating hours and days of work respectively.

54. During employment of Plaintiff Constant and the Represented Employees, Defendants failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

55. As a result of the Defendants' wrongful conduct, Plaintiff Constant and the Represented Employees have been damaged in amounts to be proven at trial.

56. Plaintiff Constant, on behalf of himself and the Represented Employees, seeks recovery of all unpaid minimum wages, liquidated damages, penalties, interest, and attorneys' fees and costs, under Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven at trial.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

Plaintiff Constant and the Represented Employees Against All Defendants

57. Plaintiff Constant incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

1 58. Plaintiff Constant and the Represented Employees were employees of Defendants
2 who did not receive proper protections and benefits of the laws governing payment of overtime
3 wages.

4 59. Labor Code § 204 requires that the employer timely pay all overtime wages to its
5 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
6 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
7 any one workweek shall be compensated at the rate of no less than one and one-half times the
8 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
9 in one workday shall be compensated at twice the regular rate of pay for an employee.

10 60. At all relevant times, Plaintiff Constant and the Represented Employees were
11 required by Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week.
12 However, as a result of the policies and practices described in this Complaint, Defendants failed
13 to pay Plaintiff Constant and the Represented Employees for all overtime hours worked.

14 61. Additionally, Defendants paid Plaintiff Constant and the Represented Employees
15 on an hourly basis but also paid additional nondiscretionary compensation. However, during
16 workweeks where the Represented Employees worked overtime hours and earned additional
17 nondiscretionary compensation, Defendants failed to include that compensation in the
18 calculations for the regular rate of pay – violating the well-established rule that overtime must
19 always be paid at time and one-half the regular rate of pay.

20 62. As a result of these policies and practices, Defendants failed to pay Plaintiff
21 Constant and the Represented Employees for all overtime hours worked.

22 63. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
23 Order § 3(A) every pay period with respect to Plaintiff Constant and the Represented Employees
24 because Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or
25 40 per week without proper overtime compensation.

26 64. Plaintiff Constant is informed and believes and thereon alleges that Defendants
27 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff Constant
28 and the Represented Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and

1 1197.

2 65. Defendants' conduct was willful, as Defendants knew that Plaintiff Constant and
3 the Represented Employees were entitled to be paid proper overtime wages throughout the
4 statutory period, yet Defendants chose not to pay them in accordance thereto.

5 66. At all material times, Defendants DOES 1 through 20 were and/or are the
6 employer of Plaintiff Constant and the Represented Employees or were persons acting on behalf
7 of said employer(s), within the meaning of California Labor Code § 558, who violated or caused
8 to be violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the
9 California Labor Code regulating hours and days of work respectively.

10 67. During the employment of Plaintiff Constant and the Represented Employees,
11 Defendants failed to pay them all wages to which they were entitled, thereby receiving an
12 economic benefit.

13 68. As a result of Defendants' wrongful conduct, Plaintiff Constant and the
14 Represented Employees have been damaged in amounts to be proven at trial.

15 69. Plaintiff Constant, on behalf of himself and the Represented Employees, seeks
16 recovery of all unpaid overtime wages, penalties, interest, attorneys' fees, and costs of suit
17 against Defendants in an amount to be proven at trial.

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PROVIDE MEAL PERIODS**

20 (Labor Code §§ 226.7 and 512; IWC Wage Order § 11, 12)

21 *Plaintiff Constant and the Meal Break Subclass Against All Defendants*

22 70. Plaintiff Constant incorporates the preceding paragraphs of the First Amended
23 Complaint as if fully alleged herein.

24 71. Plaintiff Constant and the Represented Employees are and/or were employees of
25 Defendants who did not receive proper protections and benefits of laws governing mandatory
26 meal periods.

27 72. Labor Code § 226.7 requires employers, including Defendants, to provide
28 employees with meal periods as mandated by the Industrial Welfare Commission.

1 73. Labor Code § 512(a), in part, provides that employers, including Defendants, may
2 not employ an employee for a work period of more than five hours per day without providing an
3 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
4 except that if the total work period per day of the employee is no more than six hours, the meal
5 period may be waived by mutual consent of both the employer and the employee. Employers
6 may not employ an employee for a work period more than 10 hours per day without providing
7 the employee with a second meal period of not less than 30 minutes.

8 74. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
9 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
10 pay for each meal period that is missed.

11 75. At all relevant times, and as a result of the policies and practices described in this
12 Complaint, Plaintiff Constant and the Represented Employees were denied the 30-minute meal
13 periods to which they were entitled.

14 76. Moreover, Defendants failed to record or keep accurate information regarding
15 when Plaintiff Constant and the Represented Employees took mandated meal periods, in
16 violation of the applicable IWC Wage Order § 7(A)(3).

17 77. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
18 Order every pay period because Plaintiff Constant and the Represented Employees were not
19 provided with all mandatory meal periods and Defendants failed to pay Plaintiff Constant and the
20 Represented Employees one additional hour of compensation at the regular rate of pay in lieu
21 thereof.

22 78. On information and belief, Plaintiff Constant and the Represented Employees did
23 not voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
24 obtained from Plaintiff Constant and the Represented Employees were not willfully obtained,
25 were not voluntarily agreed to, were a condition of employment, or were a part of a contract of
26 an unlawful adhesion. Defendants did not permit or authorize Plaintiff Constant and the
27 Represented Employees to take meal periods in accordance with California law.
28

79. At all relevant times herein, Defendants failed to provide Plaintiff Constant and the Meal Break Subclass all mandated meal breaks and failed to pay wage premiums in lieu of mandated meal breaks, thereby receiving an economic benefit.

81. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512, and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiff Constant and the Meal Break Subclass for unpaid wage premiums, penalties, costs, and interest.

FAILURE TO PROVIDE REST BREAKS

Plaintiff Constant and the Rest Break Subclass Against All Defendants

83. Plaintiff Constant and the Represented Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

85. The IWC Wage Order § 12 states, in part, that 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. Employees shall receive a 10-minute rest period every four hours or major fraction thereof that they are required to work. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.

1 86. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
2 Order, Defendants shall pay Plaintiff Constant and the Represented Employees one additional
3 hour of pay at their regular rate of compensation for each day that the rest period is not provided.

4 87. At all relevant times, and as a result of the policies and practices described in this
5 Complaint, Plaintiff Constant and the Represented Employees were denied mandated rest breaks.

6 88. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
7 Order every pay period because Plaintiff Constant and the Represented Employees were not
8 provided with all mandatory rest periods and Defendants failed to pay Plaintiff Constant and the
9 Represented Employees one additional hour of compensation in lieu thereof.

10 89. At all relevant times herein, Defendants failed to provide Plaintiff Constant and
11 the Rest Break Subclass all mandated rest breaks and failed to pay wage premiums in lieu of
12 mandated rest periods, thereby receiving an economic benefit.

13 90. By their failure to provide Plaintiff Constant and the Rest Break Subclass with
14 rest breaks as required by California law, and failing to pay one hour of additional wages in lieu
15 of each rest break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and
16 IWC Wage Order § 12. Accordingly, Defendants are liable for one hour of additional wages at
17 the employee's regular rate of compensation for each workday that a paid rest break was not
18 lawfully provided in an amount to be proven at time of trial.

19 91. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
20 and IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiff Constant and the
21 Rest Break Subclass for unpaid wage premiums, penalties, costs, and interest.

22 **FIFTH CAUSE OF ACTION**

23 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

24 (Labor Code § 2802)

25 *Plaintiff Constant and the Unreimbursed Expense Subclass Against All Defendants*

26 92. Plaintiff Constant incorporates the preceding paragraphs of the First Amended
27 Complaint as if fully alleged herein.
28

1 93. Plaintiff Constant and the Represented Employees are and/or were employees of
2 Defendants who did not receive proper protections and benefits of the laws governing
3 reimbursement of business expenses.

4 94. Labor Code § 2802(a) requires that the employer indemnify its employees for
5 expenses and losses incurred while discharging their duties or in obedience to the directions of
6 their employer.

7 95. At all relevant times herein mentioned, Defendants violated Labor Code § 2802(a)
8 when they failed to reimburse Plaintiff Constant and the Represented Employees for expenses
9 incurred as a direct consequence of employment with Defendants and/or under the direction of
10 Defendants.

11 96. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
12 Order § 9(B), Plaintiff Constant and the Unreimbursed Expense Subclass have suffered, and
13 continue to suffer, substantial losses related to such incurred expenses, expenses, and attorney's
14 fees in seeking to compel Defendants to fully perform their obligations under the law, all in an
15 amount to be proved at time of trial.

16 97. Pursuant to Labor Code § 2802, Plaintiff Constant and the Represented
17 Employees seek to recover the unreimbursed expenses, interest on the unreimbursed expenses,
18 and the costs and attorney's fees necessarily incurred in pursuing same. The exact amount of
19 reimbursements, interest, costs, and attorney's fees will be in an amount to be proved at the time
20 of trial.

21 **SIXTH CAUSE OF ACTION**

22 **FAILURE TO PAY VESTED VACATION**

23 (Labor Code § 227.3)

24 *Plaintiff and the Vested Vacation Subclass Against All Defendants*

25 98. Plaintiff Constant incorporates the preceding paragraphs of the First Amended
26 Complaint as if fully alleged herein.

27 99. Plaintiff Constant and the Represented Employees were employees of Defendants
28 who did not receive proper protections and benefits of the laws governing the payment of vested

1 vacation time and/or paid time off upon separation of employment.

2 100. Pursuant to Labor Code § 227.3, an employer that has implemented a paid
3 vacation, paid time off, or compensated time off policy must, upon an employee's separation
4 from employment, pay to the employee all vested but unused vacation and/or paid time off at her
5 final rate of pay.

6 101. At all relevant times, and as a result of the policies and practices described in this
7 Complaint, Defendants violated Labor Code § 227.3 when they failed to pay the Represented
8 Employees for all accrued and unused vacation hours to the Represented Employees upon
9 separation of employment and, moreover, failed to calculate and pay for said hours at the "final
10 rate" of pay as required by Labor Code § 227.3.

11 102. As a result, Plaintiff Constant and the Vested Vacation Subclass did not receive
12 compensation for all accrued but unused vacation hours as required by Labor Code § 227.3.

13 103. At all relevant times herein, Defendants failed to pay the Vested Vacation
14 Subclass, including Plaintiff Constant, all vested but unused vacation time and/or paid time off
15 upon separation from employment, thereby receiving an economic benefit.

16 104. Plaintiff Constant is informed and believes and thereon alleges that Defendants,
17 and each of them, knowingly refused to perform their obligations to compensate the Vested
18 Vacation Subclass for all vested but unused vacation time and/or paid time off upon separation
19 from employment.

20 105. As a result of Defendants' violations of Labor Code § 227.3, Plaintiff Constant
21 and the Vested Vacation Subclass seek to recover the unpaid vacation hours, as well as penalties,
22 interest, attorneys' fees, and costs as permitted under California law.

23 **SEVENTH CAUSE OF ACTION**

24 **FAILURE TO TIMELY PAY FINAL WAGES**

25 (Labor Code §§ 201 – 203)

26 *Plaintiff Constant and the Waiting Time Penalties Subclass Against All Defendants*

27 106. Plaintiff Constant incorporates the preceding paragraphs of the First Amended
28 Complaint as if fully alleged herein.

1 107. Plaintiff Constant and the Represented Employees are and/or were employees of
2 Defendants who did not receive proper protections and benefits of the laws governing the timing
3 and payment of wages.

4 108. Labor Code § 201 requires that the employer immediately pay any wages, without
5 abatement or reduction, to any employee who is discharged.

6 109. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
7 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
8 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

9 110. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
10 penalty from the due date thereof at the same rate until paid or until an action therefore is
11 commenced, but the wages shall not continue for more than thirty (30) days.

12 111. At all relevant times, Defendants employed a policy and practice whereby
13 Plaintiff Constant and the Represented Employees were not paid all wages due and owing upon
14 separation of employment within the time required by Labor Code §§ 201 and 202.

15 112. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
16 wages due and owing to Plaintiff Constant and the Represented Employees upon separation of
17 employment, including, but not limited to, minimum, regular, and overtime wages, meal and rest
18 period premiums, and vested vacation wages.

19 113. Additionally, at all relevant times, Defendants failed to pay all mandated sick
20 wages owed to the Represented Employees at the proper rate of pay under Labor Code § 246(l).

21 114. Plaintiff Constant alleges that, at all times material to this action, Defendants had
22 a planned pattern and practice of failing to timely pay the Waiting Time Penalties Subclass all
23 wages due and owing upon separation of employment as required by Labor Code §§ 201 and
24 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff Constant and the
25 Waiting Time Penalties Subclass the above-described waiting time penalty, all in an amount to
26 be shown according to proof at trial and within the jurisdiction of this Court.

27 ///

28 ///

1 **EIGHTH CAUSE OF ACTION**

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

3 (Labor Code § 226)

4 *Plaintiff Constant and the Wage Statement Penalties Subclass Against All Defendants*

5 115. Plaintiff Constant incorporates the preceding paragraphs of the First Amended
6 Complaint as if fully alleged herein.

7 116. Plaintiff Constant and the Represented Employees are and/or were employees of
8 Defendants who did not receive proper protections and benefits of the laws governing the
9 provision of accurate itemized wage statements.

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

16 118. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
17 Constant and the Represented Employees due to violations including: failure to accurately state
18 total hours worked (for example, the wage statements failed to accurately state total hours
19 worked and/or reflect the correct compensable hours); failure to accurately state gross wages
20 earned, all deductions, and net wages earned (due to, for example, the failure to pay all required
21 minimum and overtime wages); failure to state the applicable hourly rates (including the accurate
22 overtime rate of pay); failure to state the inclusive dates of the pay period; failure to accurately
23 state the name and address of the legal entity of the employer; and failure to accurately state the
24 corresponding number of hours worked at each hourly rate.

25 119. Moreover, Defendants' wage statements directly violated Labor Code § 226(a)
26 each period due to the failure to pay and report premium wages for denied meal periods and rest
27 breaks under § 226.7.
28

1 120. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
2 to Plaintiff Constant and the Wage Statement Penalties Subclass because Defendants failed to
3 provide a wage statement to Plaintiff Constant and the Wage Statement Penalties Subclass that
4 complied with the requirements of Labor Code § 226(a).

5 121. Defendants' failure to provide the required writing deprived Plaintiff Constant
6 and the Wage Statement Penalties Subclass of the ability to know, understand, and question the
7 rate of pay and hours used to calculate the wages paid by Defendants. Therefore, Plaintiff
8 Constant and the Wage Statement Penalties Subclass had no way to dispute the resulting
9 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said
10 Defendants. As a direct result, Plaintiff Constant and the Wage Statement Penalties Subclass
11 have suffered and continue to suffer, substantial losses related to the use and enjoyment of such
12 wages, lost interest on such wages and expenses and attorney's fees in seeking to compel
13 Defendants to fully perform its obligation under state law, all to their respective damages in
14 amounts according to proof at trial.

15 122. As a result of Defendants' knowing and intentional failure to comply with Labor
16 Code § 226(a), Plaintiff Constant and the Wage Statement Penalties Subclass have suffered an
17 injury in that each was prevented from knowing, understanding and disputing the wage payments
18 paid to them. Furthermore, Plaintiff Constant and the Wage Statement Penalties Subclass have
19 each suffered an injury in that the failure to show all wages earned on the itemized wage
20 statements resulted in Plaintiff Constant and the Represented Employees being denied all
21 necessary deductions, payments, and withholdings owed by the employer, including, but not
22 limited to, the failure to make all necessary contributions for unemployment benefits, social
23 security benefits, proper payment of taxes and withholdings, and other mandated state and
24 federal benefits.

25 123. Plaintiff Constant has also been injured as a result of having to bring this action to
26 attempt to obtain correct wage information following Defendants' refusal to comply with many
27 of the mandates of California's Labor Code and related laws and regulations.
28

1 124. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
2 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
3 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
4 attorney's fees and costs, to Plaintiff Constant and the Wage Statement Penalties Subclass who
5 were injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of
6 the applicable penalty is all in an amount to be shown according to proof at trial.

7 **NINTH CAUSE OF ACTION**

8 **UNFAIR AND UNLAWFUL COMPETITION**

9 (Business and Professions Code § 17200, *et seq.*)

10 *Plaintiff Constant and the Represented Employees Against All Defendants*

11 125. Plaintiff Constant incorporates the preceding paragraphs of the First Amended
12 Complaint as if fully alleged herein.

13 126. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
14 competition, which includes any "unlawful, unfair or fraudulent business act or practice." The
15 Represented Employees, including Plaintiff Constant, have suffered and continue to suffer
16 injuries in fact, due to the unfair and unlawful business practices of Defendants as alleged herein.

17 127. Defendants, and each of them, are "persons" as defined under Business &
18 Professions Code § 17021.

19 128. As alleged herein, Defendants engaged in conduct that violated California's wage
20 and hour laws, including failure to pay minimum, regular, and overtime wages, failure to provide
21 mandated meal periods and rest breaks, failure to pay vested vacation, failure to reimburse
22 business expenses, and failure to timely pay wages upon separation of employment, all to
23 decrease their costs and increase profits.

24 129. At all times relevant herein, Defendants did not pay Plaintiff Constant and the
25 Represented Employees wages and monies and other financial obligations to which they were
26 entitled.

27 130. As a result of Defendants' failure to comply with the Labor Code and IWC
28 Orders, Represented Employees, including Plaintiff Constant, suffered a loss of wages and

monies, all in an amount to be shown according to proof at trial. Defendants' ongoing violations of the foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

131. Defendants' violations of the California Labor Code and IWC Wage Orders and its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business practices because it was done in a systematic manner over a period of time to the detriment of the Plaintiff Constant and all others similarly-situated.

132. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff Constant, other Represented Employees, and to the general public. Plaintiff Constant seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

133. A violation of California Business & Professions Code § 17200, *et seq.* may be predicated on the violation of any state or federal law. All of the acts described herein as violations of, among other things, the California Labor Code and IWC Wage Orders, are unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of California Business and Professions Code §§ 17200, *et seq.*

134. Plaintiff Constant, individually, and on behalf of the Represented Employees, has no plain, speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of the unfair, unlawful and/or fraudulent business practices described above, Plaintiff Constant, individually, and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable harm unless Defendants, and each of them, are restrained from continuing to engage in said unfair, unlawful and/or fraudulent business practices.

135. Plaintiff Constant, individually, and on behalf of the Represented Employees, is entitled to, and does, seek such relief as may be necessary to disgorge the profits which Defendants have acquired, or of which Plaintiff Constant and Represented Employees have been deprived, by means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff Constant and the Represented Employees are not obligated to establish individual

1 knowledge of the unfair practices of Defendants in order to recover restitution.

2 136. Plaintiff Constant, individually, and on behalf of the Represented Employees, is
3 further entitled to and do seek a declaration that the above described business practices are
4 unfair, unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of
5 them, from engaging in any of the above-described unfair, unlawful and/or fraudulent business
6 practices in the future.

7 137. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff Constant and
8 Represented Employees are entitled to restitution of the wages withheld and retained by
9 Defendants during a period that commences four years prior to the filing of this complaint; a
10 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff Constant
11 and Represented Employees; an award of attorneys' fees pursuant to California Code of Civil
12 Procedure § 1021.5 and other applicable laws; and an award of costs.

13 **VI. PAGA CAUSES OF ACTION (Labor Code §§ 2698 – 2699.5)**

14 138. Plaintiffs are “aggrieved employee(s)” under the PAGA as they were employed
15 by Defendants during the applicable statutory period and suffered one or more of the Labor Code
16 violations alleged herein. As such, Plaintiffs may recover the remedies described herein in a civil
17 action filed on behalf of the State of California and for violations committed against the
18 Aggrieved Employees.

19 139. Plaintiffs seek to recover all applicable and available PAGA remedies pursuant to
20 Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by
21 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
22 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiffs are not required to, nor
23 do they, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

24 140. Pursuant to Labor Code § 2699.3(a), Plaintiffs gave written notice by online filing
25 to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to
26 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
27 the facts and theories to support the alleged violations. Sixty-five (65) days have elapsed since
28 Plaintiffs provided notice of the claims alleged herein without the LWDA assuming jurisdiction,

1 so Plaintiffs have fully satisfied the administrative prerequisites for bringing suit under PAGA.

2 **TENTH CAUSE OF ACTION**

3 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

4 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

5 *Plaintiffs and the Aggrieved Employees Against All Defendants*

6 141. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
7 as if fully alleged herein.

8 142. Plaintiffs and the Aggrieved Employees were not exempt from the requirement to
9 be paid at least the applicable California minimum wage throughout the statutory period for each
10 hour worked.

11 143. Plaintiffs and the Aggrieved Employees were not provided proper minimum and
12 regular wages due to Defendants' failure to accurately record and compensate for all hours
13 worked. As a result of this policy and practice, Plaintiffs and the Aggrieved Employees were
14 required to perform off-the-clock work that Defendants either knew or should have known they
15 were performing.

16 144. Consequently, Defendants violated California Labor Code laws and minimum
17 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
18 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

19 145. Plaintiffs are informed and believe and thereon allege that Defendants
20 intentionally, willfully, and improperly failed to pay wages to Plaintiffs and the Aggrieved
21 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

22 146. Defendants' conduct was willful, as Defendants knew that Plaintiffs and the
23 Aggrieved Employees were entitled to be paid wages throughout the statutory period for each
24 hour worked, including proper minimum and regular wages, yet Defendants chose not to pay
25 them in accordance thereto.

26 147. As a result of the unlawful employment practices alleged herein, Plaintiffs, on
27 behalf of the State of California, seeks the assessment of all applicable and available PAGA
28 remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or

any other damages permitted under PAGA.

ELEVENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES

(Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

Plaintiffs and the Aggrieved Employees Against All Defendants

148. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

149. Plaintiffs and the Aggrieved Employees were employees of Defendants who did not receive proper protections and benefits of the laws governing payment of overtime wages.

150. Labor Code § 204 requires that the employer timely pay all overtime wages to its employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12) in one workday shall be compensated at twice the regular rate of pay for an employee.

151. At all relevant times, Plaintiffs and the Aggrieved Employees were required by Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, as a result of the policies and practices described in this Complaint, Defendants failed to pay Plaintiffs and the Aggrieved Employees for all overtime hours worked.

152. Additionally, Defendants paid Plaintiffs and the Aggrieved Employees on an hourly basis but also paid additional nondiscretionary compensation. However, during workweeks where the Aggrieved Employees worked overtime hours and earned additional nondiscretionary compensation, Defendants failed to include that compensation in the calculations for the regular rate of pay – violating the well-established rule that overtime must always be paid at time and one-half the regular rate of pay.

153. As a result of these policies and practices, Defendants failed to pay Plaintiffs and the Aggrieved Employees for all overtime hours worked.

154. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage Order § 3(A) every pay period with respect to Plaintiffs and the Aggrieved Employees because Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per week without proper overtime compensation.

155. Plaintiff is informed and believes and thereon alleges that Defendants intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiffs and the Aggrieved Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

156. Defendants' conduct was willful, as Defendants knew that Plaintiffs and the Aggrieved Employees were entitled to be paid proper overtime wages throughout the statutory period, yet Defendants chose not to pay them in accordance thereto.

157. As a result of the unlawful employment practices alleged herein, Plaintiffs, on behalf of the State of California, seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

TWELFTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PROVIDE MEAL PERIODS

(Labor Code §§ 226.7 and 512; IWC Wage Order § 11, 12)

Plaintiffs and the Aggrieved Employees Against All Defendants

158. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

159. Plaintiffs and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of laws governing mandatory meal periods.

160. Labor Code § 226.7 requires employers, including Defendants, to provide employees with meal periods as mandated by the Industrial Welfare Commission.

161. Labor Code § 512(a), in part, provides that employers, including Defendants, may not employ an employee for a work period of more than five hours per day without providing an employee the opportunity to take an uninterrupted meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal

1 period may be waived by mutual consent of both the employer and the employee. Employers
2 may not employ an employee for a work period more than 10 hours per day without providing
3 the employee with a second meal period of not less than 30 minutes.

4 162. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
5 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
6 pay for each meal period that is missed.

7 163. At all relevant times, and as a result of the policies and practices described in this
8 Complaint, Plaintiffs and the Aggrieved Employees were denied the 30-minute meal periods to
9 which they were entitled.

10 164. Moreover, Defendants failed to record or keep accurate information regarding
11 when Plaintiffs and the Aggrieved Employees took mandated meal periods, in violation of the
12 applicable IWC Wage Order § 7(A)(3).

13 165. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
14 Order every pay period because Plaintiffs and the Aggrieved Employees were not provided with
15 all mandatory meal periods and Defendants failed to pay Plaintiffs and the Aggrieved Employees
16 one additional hour of compensation at the regular rate of pay in lieu thereof.

17 166. On information and belief, Plaintiffs and the Aggrieved Employees did not
18 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
19 obtained from Plaintiffs and the Aggrieved Employees were not willfully obtained, were not
20 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
21 unlawful adhesion. Defendants did not permit or authorize Plaintiffs and the Aggrieved
22 Employees to take meal periods in accordance with California law.

23 167. As a result of the unlawful employment practices alleged herein, Plaintiffs, on
24 behalf of the State of California, seeks the assessment of all applicable and available PAGA
25 remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or
26 any other damages permitted under PAGA.

27 ///

28 ///

1 **THIRTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS**

3 (Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

4 *Plaintiffs and the Aggrieved Employees Against All Defendants*

5 168. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 169. Plaintiffs and the Aggrieved Employees are and/or were employees of Defendants
8 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

9 170. Labor Code § 226.7 requires employers, including Defendants, to provide rest
10 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

11 171. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
12 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
13 each work period. Employees shall receive a 10-minute rest period every four hours or major
14 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
15 hours worked, for which there shall be no deduction from wages.

16 172. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
17 Order, Defendants shall pay Plaintiffs and the Aggrieved Employees one additional hour of pay
18 at their regular rate of compensation for each day that the rest period is not provided.

19 173. At all relevant times, and as a result of the policies and practices described in this
20 Complaint, Plaintiffs and the Aggrieved Employees were denied mandated rest breaks.

21 174. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
22 Order every pay period because Plaintiffs and the Aggrieved Employees were not provided with
23 all mandatory rest periods and Defendants failed to pay Plaintiffs and the Aggrieved Employees
24 one additional hour of compensation in lieu thereof.

25 175. As a result of the unlawful employment practices alleged herein, Plaintiffs, on
26 behalf of the State of California, seeks the assessment of all applicable and available PAGA
27 remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or
28 any other damages permitted under PAGA.

1 **FOURTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 (Labor Code § 2802)

4 *Plaintiff and the Aggrieved Employees Against All Defendants*

5 176. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 177. Plaintiffs and the Aggrieved Employees are and/or were employees of Defendants
8 who did not receive proper protections and benefits of the laws governing reimbursement of
9 business expenses.

10 178. Labor Code § 2802(a) requires that the employer indemnify its employees for
11 expenses and losses incurred while discharging their duties or in obedience to the directions of
12 their employer.

13 179. At all relevant times herein mentioned, Defendants violated Labor Code § 2802(a)
14 when they failed to reimburse Plaintiffs and the Aggrieved Employees for expenses incurred as a
15 direct consequence of employment with Defendants and/or under the direction of Defendants.

16 180. As a result of the unlawful employment practices alleged herein, Plaintiffs, on
17 behalf of the State of California, seeks the assessment of all applicable and available PAGA
18 remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or
19 any other damages permitted under PAGA.

20 **FIFTEENTH CAUSE OF ACTION**

21 **PAGA ASSESSMENT FOR FAILURE TO PAY VESTED VACATION**

22 (Labor Code § 227.3)

23 *Plaintiffs and the Aggrieved Employees Against All Defendants*

24 181. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
25 as if fully alleged herein.

26 182. Plaintiffs and the Aggrieved Employees were employees of Defendants who did
27 not receive proper protections and benefits of the laws governing the payment of vested vacation
28 time and/or paid time off upon separation of employment.

1 183. Pursuant to Labor Code § 227.3, an employer that has implemented a paid
2 vacation, paid time off, or compensated time off policy must, upon an employee's separation
3 from employment, pay to the employee all vested but unused vacation and/or paid time off at her
4 final rate of pay.

5 184. At all relevant times, and as a result of the policies and practices described in this
6 Complaint, Defendants violated Labor Code § 227.3 when they failed to pay the Aggrieved
7 Employees for all accrued and unused vacation hours to the Aggrieved Employees upon
8 separation of employment and, moreover, failed to calculate and pay for said hours at the "final
9 rate" of pay as required by Labor Code § 227.3.

10 185. As a result of the unlawful employment practices alleged herein, Plaintiffs, on
11 behalf of the State of California, seeks the assessment of all applicable and available PAGA
12 remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or
13 any other damages permitted under PAGA.

14 **SIXTEENTH CAUSE OF ACTION**

15 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

16 (Labor Code § 204)

17 *Plaintiff and the Aggrieved Employees Against All Defendants*

18 186. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
19 as if fully alleged herein.

20 187. Plaintiffs and the Aggrieved Employees are and/or were "non-exempt" employees
21 of Defendants who did not receive proper protections and benefits of the laws regarding the
22 timing of payment of wages each period.

23 188. Labor Code § 204(a) states that all wages earned by a person are due and payable
24 twice during each calendar month, and further states that wages earned during the first through
25 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
26 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
27 the following month.
28

189. Furthermore, 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.”

190. At all relevant times herein, Defendants did not provide Plaintiffs and the Aggrieved Employees with all wages due and owing each pay period, including, but not limited to, minimum, regular, and overtime wages, as well as meal and rest period premiums, within the time specified by Labor Code § 204.

191. As a result of the unlawful employment practices alleged herein, Plaintiffs, on behalf of the State of California, seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

SEVENTEENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201 – 203)

Plaintiff and the Aggrieved Employees Against All Defendants

192. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

193. Plaintiffs and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing the timing and payment of wages.

194. Labor Code § 201 requires that the employer immediately pay any wages, without abatement or reduction, to any employee who is discharged.

195. Labor Code § 202 requires that the employer pay all wages earned and unpaid, without abatement or reduction, no later than 72 hours of receiving an employee's notice of intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

196. Labor Code §§ 201-203 cause the unpaid wages of the employee to 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 thirty (30) days.

1 197. At all relevant times, Defendants employed a policy and practice whereby
2 Plaintiffs and the Aggrieved Employees were not paid all wages due and owing upon separation
3 of employment within the time required by Labor Code §§ 201 and 202.

4 198. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
5 wages due and owing to Plaintiffs and the Aggrieved Employees upon separation of
6 employment, including, but not limited to, minimum, regular, and overtime wages, meal and rest
7 period premiums, and vested vacation wages.

8 199. Additionally, at all relevant times, Defendants failed to pay all mandated sick
9 wages owed to the Aggrieved Employees at the proper rate of pay under Labor Code § 246(1).

10 200. Plaintiffs allege that, at all times material to this action, Defendants had a planned
11 pattern and practice of failing to timely pay Plaintiffs and the Aggrieved Employees all wages
12 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

13 201. As a result of the unlawful employment practices alleged herein, Plaintiffs, on
14 behalf of the State of California, seeks the assessment of all applicable and available PAGA
15 remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or
16 any other damages permitted under PAGA.

17 **EIGHTEENTH CAUSE OF ACTION**

18 **PAGA ASSESSMENT FOR**

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

20 (Labor Code § 226)

21 *Plaintiff and the Aggrieved Employees Against All Defendants*

22 202. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
23 as if fully alleged herein.

24 203. Plaintiffs and the Aggrieved Employees are and/or were employees of Defendants
25 who did not receive proper protections and benefits of the laws governing the provision of
26 accurate itemized wage statements.

27 204. Labor Code § 226(a) requires an employer to provide its employees with itemized
28 wage statements accurately stating gross wages earned, all deductions, net wages earned, the

1 inclusive dates of the pay period, the employee’s name and the last four digits of his or her
2 Social Security number (or employee identification number), the name and address of the legal
3 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate by the employee.

5 205. Defendants violate Labor Code § 226(a) every pay period with respect to
6 Plaintiffs and the Aggrieved Employees due to violations including: failure to accurately state
7 total hours worked (for example, the wage statements failed to accurately state total hours
8 worked and/or reflect the correct compensable hours); failure to accurately state gross wages
9 earned, all deductions, and net wages earned (due to, for example, the failure to pay all required
10 minimum and overtime wages); failure to state the applicable hourly rates (including the accurate
11 overtime rate of pay); failure to state the inclusive dates of the pay period; failure to accurately
12 state the name and address of the legal entity of the employer; and failure to accurately state the
13 corresponding number of hours worked at each hourly rate.

14 206. Moreover, Defendants’ wage statements directly violated Labor Code § 226(a)
15 each period due to the failure to pay and report premium wages for denied meal periods and rest
16 breaks under § 226.7.

17 207. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
18 to Plaintiff sand the Aggrieved Employees because Defendants failed to provide a wage
19 statement to Plaintiffs and the Aggrieved Employees that complied with the requirements of §
20 226(a).

21 208. Unlike class action claims, a PAGA plaintiff need not meet the “injury” and
22 “knowing and intentional” violation requirements of Labor Code § 226(e). See *Lopez v. Friant*
23 *& Associates, LLC* (2017) 15 Cal.App.5th 773, 788 (“a plaintiff seeking civil penalties under
24 PAGA for a violation of section 226(a) does not have to satisfy the “injury” and “knowing and
25 intentional” requirements of section 226(e)(1)”); See also *Lawson v. ZB, N.A.* (2017) 18
26 Cal.App.5th 705, 722 (“the scienter requirement [of § 226(e)] has no application in a PAGA
27 claim for violation of [§ 226(a)]”).
28

1 209. As a result of the unlawful employment practices alleged herein, Plaintiffs, on
2 behalf of the State of California, seeks the assessment of all applicable and available PAGA
3 remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or
4 any other damages permitted under PAGA.

5 **NINETEENTH CAUSE OF ACTION**

6 **PAGA ASSESSMENT FOR FAILURE TO MAINTAIN RECORDS**

7 (Labor Code § 1174, *et seq.*; IWC Wage Order § 6(A) or § 7(A))

8 *Plaintiff and the Aggrieved Employees against All Defendants*

9 210. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
10 as if fully alleged herein.

11 211. Labor Code § 1174 requires employers to keep payroll records showing the hours
12 worked daily by and the wages paid to each employee "for not less than three years."

13 212. The applicable IWC Wage Order, at either § 6(A) or § 7(A) [depending on which
14 IWC Wage Order applies], requires that an employer keep "accurate information with respect to
15 each employee" including, but not limited to: time records showing when the employee begins
16 and ends each work period, whether an employee took a meal period and when it occurred, daily
17 hours worked, total wages paid each payroll period, and total hours worked during the payroll
18 period and the applicable rates of pay.

19 213. Here, Defendants failed to maintain records for each Aggrieved Employee as
20 required by Labor Code § 1174 and the applicable IWC Wage Order. Notably, Defendants did
21 not maintain the records as required, did not maintain them for the required 3-year period, and
22 failed to keep accurate records due to the wage and timekeeping violations discussed above.

23 214. As a result of the unlawful employment practices alleged herein, Plaintiffs seek
24 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
25 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

26 **VI. PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs, on behalf of themselves, on a representative basis, and all
28 others similarly situated, prays for judgment and relief against Defendants, jointly and severally,

as follows:

1. As to the Tenth through Nineteenth Causes of Action, the assessment of all remedies and/or penalties available under the PAGA;
2. For reasonable attorneys' fees and costs as permitted under PAGA;
3. That the First through Ninth Causes of Action be certified as a class action;
4. That Plaintiff Constant be appointed as Class Representative;
5. That counsel for Plaintiff Constant be appointed Class Counsel;
6. For all applicable statutory penalties recoverable under the First through Ninth Causes of Action to the extent permitted by law, including those pursuant to Labor Code and Orders of the Industrial Welfare Commission;
7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including those pursuant to the Labor Code;
8. For injunctive relief and/or restitution as provided by the Labor Code and Business and Professions Code § 17200, *et seq.*;
9. For a declaratory judgment that Defendants have violated Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 1199, and 2802, among other sections inadvertently omitted;
10. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties according to proof, including interest thereon;
11. For pre- and post-judgment interest; and
12. For such other relief as the Court deems just and proper.

Dated: April 2, 2024

LAUBY, MANKIN & LAUBY LLP

BY: 
Brian J. Mankin, Esq.
Peter J. Carlson, Esq.
Attorneys for Plaintiff

PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, CA 92504.

On April 25, 2024, I caused to be served the foregoing document(s) described as follows:

FIRST AMENDED COMPLAINT

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

☐ **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

☐ **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California

☐ **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list.

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 25, 2024, Riverside, California.

☐ **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Tracie Chiarito, Declarant

SERVICE LIST

Charlie P. Hamamjian, Esq.

charles@sw2law.com

Megan K. Dutra, Esq.

megan@sw2law.com

SAGASER, WATKINS & WIELAND PC

5260 North Palm Avenue, #400

Fresno, CA 93704

Tel: (559) 421-7000 | Fax: (559) 473-1483

Attorneys for Defendants, ELITE ROOTER, INC., ELITE ROOTER ORANGE, INC., ELITE ROOTER SDN, INC., ELITE ROOTER PENINSULA, INC., ELITE ROOTER PHOENIX, INC., ELITE ROOTER SAN JOSE, INC., ELITE ROOTER SFV, INC., ELITE ROOTER SOUTH BAY, INC., AND ELITE ROOTER FRESNO, INC.