

IN THE AMERICAN ARBITRATION ASSOCIATION

STATEMENT OF CLAIM

On Behalf of

**Alan Colquhoun**, and members of his class; **Blaine Fontana**;  
**Aaron Hildebrandt**, and members of his class; **Russell Mullen**;  
**Ricky Navarre**, and members of his class; **Kristian Pedersen**;  
**John Raymond**, and members of his class; and **Curtis Sword**.

Respectfully submitted,

By: /s/ Michael J.D. Sweeney

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Plaintiffs Alan Colquhoun, and members of his class; Blaine Fontana, Aaron Hitebeitel, Russell Mullen, Ricky Navarre, Kristian Pedersen; John Raymond, and members of his class; and Curtis Sword file this statement of claim to arbitrate the employment-related matters set forth below. Attached as Exhibit A is an employment arbitration demand form.

Defendants Chemed Corporation and Roto-Rooter Services Company (collectively “Roto-Rooter”) employ Technicians throughout the country to provide plumbing repair and maintenance services to its customers. In this arbitration, Plaintiffs claim that Roto-Rooter violated federal and state wage and hour laws and breached its employment contract with Technicians throughout the United States. Plaintiffs bring these claims on behalf of Technicians nationwide who were employed by Roto-Rooter, who were paid by commission, and who signed an arbitration agreement compelling them to resolve claims arising from their employment in arbitration (“Technicians”).

Roto-Rooter pays Technicians on a commission basis, but reduces Technicians’ pay through paycheck deductions and by requiring Technicians to bear Company business expenses. It also fails to record all of Technicians’ work hours. The result is that Technicians are not paid the minimum wage for all the hours they work and they are not paid overtime wages for all the hours they work over forty in a workweek, as required by state and federal law. Moreover, Roto-Rooter does not reimburse Technicians for the Company expenses they bear despite its promise to do so. The failure to reimburse for business expenses violates state labor law and contract law.

All Technicians were subject to Roto-Rooter’s illegal policies. The illegal policies affected them all in the same way—by reducing the wages they are due under federal and state laws. Accordingly, Plaintiffs bring these claims on behalf of themselves and Technicians nationwide.

## I. FACTS

Technicians across the country perform the same job, providing plumbing repair and maintenance services to Roto-Rooter's customers. They are subject to the same employment policies. The policies are developed by Roto-Rooter's human resources department and laid out in a Company-wide Employee Handbook that applies to all Technicians. All Technicians are subject to the same wage-and-hour policies and receive the same Weekly Driver Report each week that details their pay.

Roto-Rooter requires Technicians to work scheduled hours. Technicians' job assignments are dispatched from a few central dispatch centers. Technicians throughout the Company record their work in the same fashion using a common, centralized electronic system. In addition to the scheduled workweek, Roto-Rooter requires all Technicians to attend regular meetings outside of their scheduled work time.

Technicians are required to provide and maintain vans to service Roto-Rooter clients. The vans must prominently display Roto-Rooter's logo and the Company's 1-800 number. Technicians are required to shoulder expenses related to their vans, including the purchase, maintenance, operating costs, and insurance. Roto-Rooter regularly inspects the vans and requires Technicians to secure and pay for any repairs noted at the inspections. Vans that do not meet Roto-Rooter standards are taken off the road until repairs are completed, at which time the Technician may return to work.

Roto-Rooter engaged in several practices that illegally reduced class members' wages. First, by making actual and de facto deductions to Technicians' wages, Roto-Rooter failed to pay Technicians the minimum wages required by state and federal law. Second, by failing to record

all the hours that Technicians worked, Roto-Rooter failed to pay them overtime wages required by law for all the hours they worked. The failure to record all hours worked also exacerbated Roto-Rooter's minimum wage violations. Third, Roto-Rooter illegally shifted its own business expenses to Technicians in violation of state laws. Fourth, Roto-Rooter breached its contract with Technicians to reimburse them for the business expenses they incurred.

Technicians are not on notice of Roto-Rooter's illegal policies until they invest substantial resources into the job and cannot afford to leave. When they are hired, Technicians are paid on an hourly basis during a training period that typically lasts six weeks. Roto-Rooter does not require them to bear Company business expenses during training. Once Technicians successfully complete the training program, Roto-Rooter assigns them their routes and requires them to have a van that meets its specifications and equipment to service the route. After Technicians invest tens of thousands of dollars in the van and equipment with the belief that they will be earning a substantial income, Roto-Rooter reveals that it will not reimburse expenses or pay for all hours worked. At that point, the Technicians are saddled with debt and unable to leave Roto-Rooter's employment.

**A. Roto-Rooter Failed to Pay Technicians the Minimum Wages Required by Law.**

Roto-Rooter does not pay Technicians their wages free and clear. Instead, Roto-Rooter characterizes pay as "advances" to Technicians. Its policy is that these advances of pay can be taken back at anytime throughout the customer's warranty period, which typically lasts from six months to a year. Roto-Rooter reclaims pay to cover unpaid invoices, to pay refunds on work, for additional work performed under warranty; for customer discounts, for payment to other hourly help to complete a job, and for other employee compensation.

After adjusting these advances, Roto-Rooter further diminishes Technician pay through

pay deductions for business expenses. Roto-Rooter deducts certain business expenses directly from Technician pay checks. For example, it deducts the cost of certain equipment and tools, and van insurance under the Company-sponsored insurance program from paychecks. Roto-Rooter also makes de facto deductions from Technicians' pay by requiring them to shoulder Company business expenses. For example, Roto-Rooter requires Technicians to purchase and customize vans to meet specific Company-imposed criteria. It also requires Technicians to pay for tools, equipment, parts, gas, tolls, parking, and other expenses necessary to their work.

Roto-Rooters' actual and defacto deductions result in Technicians realizing less than the minimum wage. Where the deductions result in minimum wage violations, Roto-Rooter either ignores the deduction or shifts the accounting to a later pay period to avoid showing the violation. For example, Roto-Rooter requires Technicians to purchase and customize a van to use on their service route. Roto-Rooter requires that its logo and 1-800 phone number be prominently displayed on the van. It also inspects the vans regularly and requires Technicians to secure and pay for certain maintenance and repairs. Although Technicians invest tens of thousands of dollars in these company vans, Roto-Rooter does not recognize these business expenses. Accounting for the defacto deduction, Technicians are paid far below the minimum wage.

Even when it acknowledges defacto deductions, Roto-Rooter does so in a way that results in minimum wage violations. When accounting for the business expenses that Technicians bear, Roto-Rooter does not account for all the expenses incurred in the pay period if doing so would show a minimum wage violation. Instead, it carries over a balance on the expenses into later pay periods. The practice allows it to avoid pay stubs showing minimum wage violations, but in

reality Technicians earn less than the minimum wage once the full weekly expenses are accounted for.

Roto-Rooter's actual and defacto deduction policies are Company-wide, as are the accompanying minimum wage violations. *See* Cogan Order Doc. # 65 at 5-6, attached as Exhibit B. Roto-Rooter forces all Technicians to absorb the cost of the Roto-Rooter van they use to conduct Roto-Rooter business, resulting in minimum wage violations for all Technicians. The policy of carrying over expenses from one week to another to avoid showing minimum wage violations is a Company-wide policy, too. It is reflected in the Roto-Rooter Services Company Weekly Driver Reports, which are used for all Technicians employed by the Company. Every Roto-Rooter Weekly Driver Report includes a line for "Carry over Substantiated Expenses." *See e.g.*, Ex. C at 1-6.

Roto-Rooter's actual and defacto deductions from pay caused Technicians to suffer minimum wage violations under state and federal law.

**B. Roto-Rooter Failed to Pay Technicians for All the Hours They Worked.**

Roto-Rooter does not report all the hours that Technicians work. The result is that Technicians are not paid overtime wages for all the hours they work. The off-the-clock work also escalates Roto-Rooter's minimum wage violations by not accounting for all hours worked.

Technicians are not able to record all the time they work. For example, Technicians are required to attend regular, mandatory meetings and inventory during their time off. Although Roto-Rooter knows Technicians attend these meetings, the time spent at the meetings is not recorded. Technicians are also required to spend substantial amounts of time maintaining the vans they use for their work. They have to do the required maintenance work outside of their scheduled hours because they are required to be prepared to respond immediately to service

calls. Their vans cannot be out of commission. Although Roto-Rooter requires the maintenance and is aware that it takes place, it does not record the time. Technicians are also required to do administrative paper work each week. When Technicians complete the paperwork outside of their schedule work hours, the time is not recorded.

Even when time is recorded, Roto-Rooter does not properly account for it all on Technicians' timesheets. Roto-Rooter bases Technician pay on a "Detail Listing of Time Sheet" that it presents to Technicians at weekly meetings and requires them to sign. But all the hours Plaintiffs work does not show up on these time sheets. Further, when Technicians' Detail Listing of Time Sheet shows overtime work, Roto-Rooter encourages them to consent to changing the hours on their timesheet before signing it, so that the overtime shown will be reduced or eliminated.

By not recording all the hours Technicians worked, Roto-Rooter denied them the minimum wages and overtime wages required under federal and state laws.

**C. Roto-Rooter Illegally Shifted Its Own Business Expenses to Technicians.**

Roto-Rooter requires Technicians to bear its business expenses. Technicians are required to shoulder a wide variety of Roto-Rooter business expenses, including the cost of the van, van customization and maintenance, van insurance, tools, parts, equipment, gas, tolls, and parking. Technicians pay these expenses by payroll deduction or out of their own pockets.

While Technicians can report expenses, Roto-Rooter does not reimburse for them. Technicians receive the same pay regardless of the expenses they report. If a Technician reports expenses, Roto-Rooter does not add money to his paycheck. Instead, it simply recharacterizes an amount of Technicians' commission pay as expense reimbursement. Similarly, if a Plaintiff does

not report expenses, Roto-Rooter does not take money away from his paycheck. It simply leaves the money characterized as commissions.

Both federal and state laws prohibit shifting of business expenses onto employees if they cut into the FLSA's minimum wage or overtime requirements. 29 C.F.R. §531.35; M.G.L. c. 151 § 19(5) (Massachusetts); N.C. Gen. Stat. § 95-25.8 (North Carolina); and Pa. Code 34 § 9.2.(Pennsylvania). Moreover, such kickbacks are flatly prohibited as illegal deductions under various state laws. M.G.L. c. 151 § 19(5) (Massachusetts); Ohio Rev. Code Ann. § 4113.19-20; Pa. Code 34 § 9.2.(Pennsylvania); and IC §§ 22-2-6-1 to 6-2 (Indiana).

By shifting its business expenses onto Technicians, Roto-Rooter caused them to suffer lost wages, and minimum wage and overtime wage violations.

**D. Roto-Rooter Breached Its Contract to Reimburse Technicians for Expenses.**

The Roto-Rooter Service Company Service Technician Compensation agreement ("TCA") guarantees that "Roto-Rooter pays the service technicians commission and reimbursements for substantiated expenses." The TCA provides that Roto-Rooter reimburses Technicians for depreciation of their vans; replacement parts and cables; small tools; insurance; other van expenses; health insurance and other types of expenses. *See* TCA attached as Exhibit D. Every Technician is required to execute the TCA before they begin working for Roto-Rooter.

Despite the agreement, Roto-Rooter does not reimburse Technicians for expenses. It simply refuses to acknowledge some expenses, like the cost of the service van. It acknowledges other expenses, but does not reimburse for them. Instead, it simply recharacterizes an amount of Technicians' commission pay as expense reimbursement. Technicians receive no additional pay for bearing these expenses, and their pay remains the same whether they incur expenses or not.



Basic contract law requires parties to abide by their contractual agreements. By not abiding by the TCA, Roto-Rooter violated contract law and caused Technicians to suffer lost wages.

**E. Roto-Rooter's Actions Were Willful.**

Roto-Rooter's unlawful conduct, as described above has been intentional, willful, and in bad faith, and has caused significant damages to Plaintiffs and Technicians nationwide. Roto-Rooter is aware that the law required them to pay Technicians minimum wages for all hours worked and overtime wages for all hours over 40 in a week. Roto-Rooter is also aware that the law and the TCA require it to reimburse Technicians for the business expenses they bear. The simple fact that Roto-Rooter created the carry over substantiated expense category on employee weekly reports in an attempt to obscure minimum wage violations reveals that Roto-Rooter's actions were in willful violation of the FLSA.

**F. Roto-Rooter Has Compelled Technicians to Arbitrate their Claims**

The Named Plaintiffs brought their claims in U.S. District Court for the Eastern District of New York. *Morangelli, et al., v. Chemed Corp., et al.*, 1:10-cv-00876-BMC (E.D. N.Y. 2010). Roto-Rooter moved the Court to compel Technicians to bring their claims in arbitration based on an employer-promulgated arbitration agreement. Roto-Rooter later disclosed that Technicians signed one of two version of an Arbitration Agreement. The Court found that one version, Arbitration Agreement A, compels arbitration and granted Roto-Rooter's motion to compel with respect to Technicians who had signed Arbitration Agreement A. *See* July 9, 2010 Order, attached as Ex. E. (no docket number). It is those Technicians who bring these claims. A copy of Arbitration Agreement A is attached as Ex. F.

**II. PARTIES**

## **A. Plaintiffs**

All the Plaintiffs listed in the caption were employed by Roto-Rooter as Technicians within three years of filing their consent to arbitrate, were paid by commission, and signed Arbitration Agreement A. A "Consent to Arbitrate" for each Opt-in Plaintiff is attached as Exhibit F. These Plaintiffs bring claims under the collective action provision of the FLSA, as set forth in 29 U.S.C. §216(b), on behalf of all current and former Technicians who have worked for any Defendant within the past three years preceding the filing of a consent to sue by such Technician and the date of final judgment in this matter. This Statement of Claim uses the term "FLSA Plaintiffs" to refer to the Plaintiffs listed in the caption and any additional represented class members pursuant to the collective action provision of 29 U.S.C. §216(b).

Plaintiffs Ricky Navarre, Alan Colquhoun, and John Raymond bring claims for breach of contract under Rule 4 of the American Arbitration Association's Supplementary Class Actions Rules on behalf of themselves and as representatives of a class of persons consisting of all Technicians who have worked for Roto-Rooter between the period commencing six years preceding the filing of this Statement of Claim and the date of final judgment in this matter. This Statement of Claim uses the terms "Nationwide Class Rep" for representative Plaintiffs Ricky Navarre, Alan Colquhoun, and John Raymond, and "Nationwide Class Members" to refer to these Technicians.

Plaintiffs Russell Mullen and Kristian Pederson worked for Roto-Rooter in Massachusetts. They bring claims for violations of Massachusetts State Wage and Hour Law, M.G.L. c. 151 § 1 et seq. and 455 CMR 2.1 et seq. and supporting regulations under Rule 4 of the American Arbitration Association's Supplementary Class Actions Rules.

Plaintiff Alan Colquhoun is employed at Roto-Rooter in Ohio. He brings claims for violations of Ohio State Wage and Hour Law and Labor Provisions, Ohio Rev. Code Ann. §§ 4111.01 et seq., and 4113.01 et seq., and supporting regulations under Rule 4 of the American Arbitration Association's Supplementary Class Actions Rules on behalf of himself and as a representative of a class of persons consisting of all Technicians who have worked for Roto-Rooter in Ohio between the period commencing three years preceding the filing of this Statement of Claim and the date of final judgment in this matter. This Statement of Claim uses the terms "OH Class Rep" for representative Plaintiff Alan Colquhoun, and "OH Class Members" to refer to these Technicians.

Plaintiff Aaron Hildebeitel worked for Roto-Rooter in Pennsylvania. He bring claims for violations of Pennsylvania State Wage and Hour Law, 43 Pa. Stat. § 333.101 *et seq.*, and supporting regulations under Rule 4 of the American Arbitration Association's Supplementary Class Actions Rules on behalf of himself and a class of persons consisting of all Technicians who have worked for Roto-Rooter in Pennsylvania between the period commencing three years preceding the filing of this Statement of Claim and the date of final judgment in this matter. This Statement of Claim uses the terms "PA Class Rep" for representative Plaintiff Aaron Hildebeitel, and "PA Class Members" to refer to these Technicians.

Plaintiff Ricky Navarre worked for Roto-Rooter in Indiana. He brings claims for violations of Indiana State Wage and Hour Law, Indiana Code §§ 22-2-2-1 et seq., and supporting regulations under Rule 4 of the American Arbitration Association's Supplementary Class Actions Rules on behalf of himself and a class of persons consisting of all Technicians who have worked for Roto-Rooter in Indiana between the period commencing three years preceding the filing of this Statement of Claim and the date of final judgment in this matter.

This Statement of Claim uses the terms “IN Class Rep” for representative Plaintiff Ricky Navarre, and “IN Class Members” to refer to these Technicians.

Plaintiff John Raymond worked for Roto-Rooter in North Carolina. He brings claims for violations of North Carolina State Wage and Hour Law, N.C. Gen. Stat. § 95-25 *et seq.* and supporting regulations under Rule 4 of the American Arbitration Association’s Supplementary Class Actions Rules on behalf of himself and a class of persons consisting of all Technicians who have worked for Roto-Rooter in North Carolina between the period commencing two years preceding the filing of this Statement of Claim and the date of final judgment in this matter. This Statement of Claim uses the terms “NC Class Rep” for representative Plaintiff John Raymond, and “NC Class Members” to refer to these Technicians.

This Statement of Claim uses the terms “Named Plaintiffs” to refer to [all the representative plaintiffs] collectively.

#### **B. Defendants**

Defendant Chemed Corporation (“CHEMED”) is a Delaware corporation that lists its principle place of business as 2600 Chemed Center, 255 E. 5<sup>th</sup> Street, Cincinnati, Ohio. It is a publicly traded company on the New York Stock Exchange. CHEMED owns and operates Roto-Rooter Services Company.

Defendant Roto-Rooter Services Company. (“RRSC”) is an Iowa corporation that lists its principal office address as 2600 Chemed Center, 255 East 5<sup>th</sup> Street, Cincinnati, OH. RRSC operates approximately 110 company-owned service locations, including the locations where the Named Plaintiffs worked, which provide plumbing repair and maintenance services.

CHEMED and RRSC each grossed more than \$500,000 in each of the last five calendar years. They are enterprises engaged in interstate commerce for purposes of the FLSA. Both

CHEMED and RRSC employed Plaintiffs and participated directly in employment decisions regarding the Plaintiffs' rights for which they seek redress in this case. CHEMED and RRSC are individually and collectively an enterprise engaged in interstate commerce for purposes of the FLSA. All actions and omissions described in this complaint were made by CHEMED and RRSC directly or through their supervisory employees and agents.

This Statement of Claim uses the term Roto-Rooter to refer CHEMED and RRSC collectively. All actions and omissions described in this Statement of Claim were made by Roto-Rooter directly or through its supervisory employees and agents.

### **III. CLASS ACTION ALLEGATIONS**

#### **A. Fair Labor Standards Act Class**

Plaintiffs and the class of Technicians are similarly situated because they are all subject to Defendants' common illegal pay practices. The U.S. District Court for the Eastern District of New York has already found that the class of Roto-Rooter Technicians are similarly situated and entitled to conditional certification and notice under 29 U.S.C. §216(b). *Morangelli, et al., v. Chemed Corp., et al.*, 1:10-cv-00876-BMC, Order, Doc. # 65 (E.D.N.Y June 17, 2010) Accordingly, it is appropriate for all Technicians to receive notice of the opportunity to bring their claims in this arbitration.

#### **B. Rule 23 Class Actions**

The individual state law class actions and the nationwide contract class action all meet the criteria for maintaining a class action under Rule 4 of the American Arbitration Association's Supplementary Class Actions Rules. In each case the class is so numerous that joinder of separate arbitrations on behalf of all members is impracticable.

Questions of law and fact are common to the class. They include:

- a. whether Roto-Rooter failed to pay Class Members the minimum wages required by state law in each pay period;
- b. whether Roto-Rooter failed to pay Class Members the overtime wages required by state law in each pay period;
- c. whether Roto-Rooter paid Class Members their wages free and clear;
- d. whether Roto-Rooter failed and/or refused to pay the Class Members overtime pay for all hours worked in excess of 40 hours per workweek;
- e. whether Roto-Rooter 's policy of failing to pay overtime was instituted willfully or with reckless disregard of the law;
- f. whether Roto-Rooter correctly calculated and compensated the Class Members for hours worked in excess of 40 per workweek;
- g. whether Roto-Rooter failed to keep true and accurate time records for all hours worked by the Class Members;
- h. what proof of hours worked is sufficient where an employer fails in its duty to maintain true and accurate time records;
- i. whether Roto-Rooter violated its contractual obligations to Class Members;
- j. whether Roto-Rooter wrongfully shifted its business expenses to the Class Members by demanding that they bear business expenses of the employer;
- k. whether Roto-Rooter wrongfully deducted money from Class Members paychecks for impermissible purposes and without permission;
- l. whether Roto-Rooter required kickbacks from Class Members as a requirement for employment; and
- m. the nature and extent of the Class-wide injury and the appropriate

measure of damages for the Class Members.

The claims of the Named Plaintiffs are typical of the claims of the Class Members they seek to represent. The Named Plaintiffs and the Class Members work or have worked for Roto-Rooter and have been subjected to their policy and pattern or practice of failing to pay minimum and overtime wages for hours worked in excess of 40 hours per week, failing to pay wages free and clear, making impermissible deductions from wages, requiring kickbacks as a condition of employment, and failing to abide by the TCA. Roto-Rooter acted and refused to act on grounds generally applicable to the Class Members, thereby making declaratory relief with respect to the Class Members appropriate.

The Named Plaintiffs will fairly and adequately represent and protect the interests of the Class Members. The Named Plaintiffs understand that, as class representatives, they assume a fiduciary responsibility to the Class Members to represent their interests fairly and adequately. They recognize that as class representatives, they must represent and consider the interests of the Class Members just as they would represent and consider their own interests. The Named Plaintiffs understand that in decisions regarding the conduct of the litigation and its possible settlement, they must not favor their own interests over those of the Class Members. They recognize that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the best interests of the Class Members. And the Named Plaintiffs understand that in order to provide adequate representation, they must remain informed of developments in the litigation, cooperate with class counsel by providing them with information and any relevant documentary material in their possession, and testify, if required, in a deposition and in trial. They have retained counsel competent and experienced in complex class action employment litigation.

A class action is superior to other available methods for the fair and efficient adjudication of this controversy - particularly in the context of wage litigation like the present action, where individual plaintiffs may lack the financial resources to vigorously prosecute an arbitration against a corporate defendant. The Class Members have been damaged and are entitled to recovery as a result of Roto-Rooter's common and uniform policies, practices, and procedures. Although the relative damages suffered by individual members of the Class are not de minimis, such damages are small compared to the expense and burden of individual arbitrations. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Roto-Rooter's practices. Roto-Rooter's employer-promulgated arbitration plan purportedly requires all the class members to arbitrate these claims. Finally, these claims do not present any extraordinary difficulties in managing a class arbitration.

#### **IV. Causes of Action**

##### **A. Fair Labor Standards Act—Minimum and Overtime Wages**

Based on the facts alleged above, FLSA Plaintiffs claim that Roto-Rooter failed to pay minimum and overtime wages to Technicians as required by the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* and its implementing regulations. Roto-Rooter's failure to pay the required overtime wages was willful and caused Technicians to lose wages and interest on those wages.

##### **B. Contract Law**

Based on the facts alleged above, the Nationwide Class Reps claim that Roto-Rooter promised to reimburse Nationwide Class Members for expenses but failed to do so in violation of contract law. Roto-Rooter's violation of their contractual obligations was willful and caused Nationwide Class Members to lose wages and interest on those wages.



### **C. Massachusetts Labor Law**

Based on the facts alleged above, MA Plaintiffs claim that Roto-Rooter failed to pay minimum and overtime wages as required by M.G.L. c. 151 § 1 *et seq.* and 455 CMR 2.1 *et seq.*; and Roto-Rooter made unlawful charge backs and pay deductions in violation of M.G.L. c. 151 § 19(5). Roto-Rooter acted willfully with respect to each of these violations and each violation caused MA Plaintiffs to lose wages and interest on those wages.

### **D. Ohio Labor Law**

Based on the facts alleged above, the OH Class Rep claims that Roto-Rooter failed to pay minimum and overtime wages to OH Class Members as required by Ohio Rev. Code Ann. §§ 4111.01 *et seq.*, and 4113.01 *et seq.*, and Roto-Rooter made unlawful charge backs and deductions from OH Class Members' pay in violation of Ohio Rev. Code Ann. § 4113.19 and 20. Roto-Rooter acted willfully with respect to each of these violations and each violation caused OH Class Members to lose wages and interest on those wages.

### **E. Pennsylvania Labor Law**

Based on the facts alleged above, the PA Class Rep claims claim that Roto-Rooter failed to pay minimum and overtime wages to PA Class Members as required by 43 Pa. Stat. § 333.101 *et seq.*; and Roto-Rooter made unlawful charge backs and deductions from PA Class Members' pay in violation of Pa. Code 34 § 9.2. Roto-Rooter acted willfully with respect to each of these violations and each violation caused PA Class Members to lose wages and interest on those wages.

### **F. Indiana Labor Law**

Based on the facts alleged above, the IN Class Rep claims that Roto-Rooter failed to pay minimum and overtime wages to IN Class Members as required by Indiana Code §§ 22-2-2-1 *et seq.*, and Roto-Rooter made unlawful charge backs and deductions from IN Class Members' pay

in violation of IC §§ 22-2-6-1 to 6-2. Roto-Rooter acted willfully with respect to each of these violations and each violation caused IN Class Members to lose wages and interest on those wages.

**G. North Carolina Labor Law**

Based on the facts alleged above, the NC Class Rep claims that Roto-Rooter failed to pay minimum and overtime wages to NC Class Members as required by N.C. Gen. Stat. § 95-25 *et seq.*, and Roto-Rooter made unlawful charge backs and deductions from NC Class Members' pay in violation of N.C. Gen. Stat. § 95-25.8. Roto-Rooter acted willfully with respect to each of these violations and each violation caused NC Class Members to lose wages and interest on those wages.

**V. Requested Relief**

With respect to the FLSA Claims, the Named Plaintiffs request that the Arbitrator enter an Order:

1. Declaring that the Roto-Rooter violated the Fair Labor Standards Act;
2. Declaring that the Roto-Rooter ' violations of the FLSA were willful;
3. Granting judgment to Plaintiffs for their claims of unpaid minimum and overtime wages as secured by the FLSA, as well as an equal amount in liquidated damages; and
4. Awarding Plaintiffs interest and their costs and reasonable attorneys' fees.

With respect to the Nationwide Contract Claims, the Named Plaintiffs request that the Arbitrator enter an Order:

1. Certifying this action as a class action;
2. Designating Plaintiffs as Class Representatives;
3. Declaring that the practices complained of herein violate contract law;

4. Ordering appropriate equitable and injunctive relief to remedy Roto-Rooters' contract law violations, including but not necessarily limited to an order enjoining Roto-Rooter from continuing its unlawful practices;
5. Awarding damages and interest to be paid by Roto-Rooter according to proof;
6. Awarding pre-judgment and post-judgment interest, as provided by law;
7. Ordering such other injunctive and equitable relief as the Court may deem just and proper; and
8. Awarding Plaintiffs attorneys' fees and costs of suit, including expert fees and costs.

With respect to the state law class actions, the Named Plaintiffs request that the Arbitrator enter an Order:

1. Certifying these actions as class actions;
2. Designating Plaintiffs as Class Representatives;
3. Declaring that the practices complained of herein are unlawful under appropriate state law;
4. Ordering appropriate equitable and injunctive relief to remedy Roto-Rooter's violations of state law, including but not necessarily limited to an order enjoining Roto-Rooter from continuing its unlawful practices;
5. Awarding damages, liquidated damages, appropriate statutory penalties, and restitution to be paid by Roto-Rooter according to proof;
6. Awarding pre-judgment and post-judgment interest, as provided by law;
7. Ordering such other injunctive and equitable relief as the Court may deem just and proper; and
8. Awarding Plaintiffs attorneys' fees and costs of suit, including expert fees and costs.

Dated: August 9, 2010

Respectfully Submitted,  
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