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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

PAUL ZAVALA, individually, and on behalf of
other members of the general public similarly
situated,

Plaintiff,

vs.

DONAGHY SALES, LLC., a California
company; and DOES 1 through 100, inclusive,

Defendants.

Case No.: BCV-20-102005

**CLASS ACTION COMPLAINT FOR
DAMAGES**

- (1) Collection of Due and Unpaid
Wages per California Labor Code §
229;
- (2) Violation of California Labor Code
§§ 510 and 1198 (Unpaid
Overtime);
- (3) Violation of California Labor Code
§§ 226.7 and 512(a) (Unpaid Meal
Period Premiums);
- (4) Violation of California Labor Code
§ 226.7 (Unpaid Rest Period
Premiums);
- (5) Violation of California Labor Code
§§ 1194 and 1197 (Unpaid
Minimum Wages);
- (6) Violation of California Labor Code
§§ 201 and 202 (Final Wages Not
Timely Paid);
- (7) Violation of California Labor Code
§ 226(a) (Non-Compliant Wage
Statements);
- (8) Violation of California Labor Code
§§ 2698, *et seq.* (Private Attorneys
General Act of 2004);
- (9) Violation of California Business &
Professions Code § 17200, *et seq.*

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff PAUL ZAVALA (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated, and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court also has jurisdiction over this action pursuant to California Labor Code section 229, which allows actions for the collection of due and unpaid wages despite any private agreement to arbitrate.

4. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

5. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of Kern. The majority of the acts and omissions alleged herein relating to Plaintiff took place in the State of California. Defendants employed Plaintiff within the State of California.

PARTIES

6. Plaintiff PAUL ZAVALA is an individual residing in the State of California.

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1 7. Defendant DONAGHY SALES, LLC at all times herein mentioned, was and is,
2 upon information and belief, a California company, and at all times herein mentioned, was and
3 is, an employer whose employees are engaged throughout the State of California, including the
4 County of Kern.

5 8. At all times herein relevant, Defendants DONAGHY SALES, LLC and DOES 1
6 through 100, and each of them, were the agents, partners, joint venturers, joint employers,
7 representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each
8 of the other, and at all times relevant hereto were acting within the course and scope of their
9 authority as such agents, partners, joint venturers, joint employers, representatives, servants,
10 employees, successors, co-conspirators and assigns, and all acts or omissions alleged herein
11 were duly committed with the ratification, knowledge, permission, encouragement,
12 authorization, and consent of each defendant designated herein.

13 9. The true names and capacities, whether corporate, associate, individual or
14 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff, who sues
15 said defendants by such fictitious names. Plaintiff is informed and believes, and based on that
16 information and belief alleges, that each of the Defendants designated as a DOE is legally
17 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
18 the injuries and damages to Plaintiff and the other class members as alleged in this Complaint.
19 Plaintiff will seek leave of court to amend this Complaint to show the true names and
20 capacities when the same have been ascertained.

21 10. Defendants DONAGHY SALES, LLC and DOES 1 through 100 will hereinafter
22 collectively be referred to as "Defendants."

23 11. Plaintiff further alleges that Defendants directly or indirectly controlled or
24 affected the working conditions, wages, working hours, and conditions of employment of
25 Plaintiff and the other class members so as to make each of said Defendants employers and
26 employers liable under the statutory provisions set forth herein.

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1 **CLASS ACTION ALLEGATIONS**

2 12. Plaintiff brings this action on his own behalf and on behalf of all other members
3 of the general public similarly situated, and, thus, seeks class certification under Code of Civil
4 Procedure section 382.

5 13. The proposed class is defined as follows:

6 All individuals who were California residents who worked for Defendant in
7 California as truck drivers at any time between September 12, 2012 through
8 May 20, 2020.

9 14. Plaintiff reserves the right to establish subclasses as appropriate.

10 15. The class is ascertainable and there is a well-defined community of interest in
11 the litigation:

12 a. Numerosity: The class members are so numerous that joinder of all class
13 members is impracticable. The membership of the entire class is
14 unknown to Plaintiff at this time; however, the class is estimated to be
15 greater than fifty (50) individuals and the identity of such membership is
16 readily ascertainable by inspection of Defendants' employment records.

17 b. Typicality: Plaintiff's claims are typical of all other class members'
18 claims as demonstrated herein. Plaintiff will fairly and adequately
19 protect the interests of the other class members with whom he has a well-
20 defined community of interest.

21 c. Adequacy: Plaintiff will fairly and adequately protect the interests of
22 each class member, with whom he has a well-defined community of
23 interest and typicality of claims, as demonstrated herein. Plaintiff has no
24 interest that is antagonistic to the other class members. Plaintiff's
25 attorneys, the proposed class counsel, are versed in the rules governing
26 class action discovery, certification, and settlement. Plaintiff has
27 incurred, and during the pendency of this action will continue to incur,
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costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

d. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all class members is impractical.

e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights.

16. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to the members of the class:

- a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;
- b. Whether Defendants had a corporate policy and practice of failing to pay their Truck Drivers within the State of California for all hours worked, missed meal periods and rest breaks in violation of California law;
- c. Whether Defendants required Plaintiff and the other class members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Plaintiff and the other class members;
- d. Whether Defendants properly calculated the regular rate for Plaintiff and the other class members who worked overtime and earned incentive pay;

- 1 e. Whether Defendants deprived Plaintiff and the other class members of
2 meal and/or rest periods or required Plaintiff and the other class
3 members to work during meal and/or rest periods without compensation;
4 f. Whether Defendants failed to pay minimum wages to Plaintiff and the
5 other class members for all hours worked;
6 g. Whether Defendants failed to pay all wages due to Plaintiff and the other
7 class members within the required time upon their discharge or
8 resignation;
9 h. Whether Defendants failed to timely pay all wages due to Plaintiff and
10 the other class members during their employment;
11 i. Whether Defendants complied with wage reporting as required by the
12 California Labor Code, including, inter alia, section 226;
13 j. Whether Defendants' conduct was willful or reckless;
14 k. Whether Defendants engaged in unfair business practices in violation of
15 California Business & Professions Code sections 17200, *et seq.*;
16 l. The appropriate amount of damages, restitution, and/or monetary
17 penalties resulting from Defendants' violation of California law; and
18 m. Whether Plaintiff and the other class members are entitled to
19 compensatory damages pursuant to the California Labor Code.

20 **GENERAL ALLEGATIONS**

21 17. At all relevant times set forth herein, Defendants employed Plaintiff and other
22 persons as Truck Drivers within the State of California, including the County of Kern.

23 18. Defendants, jointly and severally, employed Plaintiff as a Truck Driver during
24 the statutory period in the State of California.

25 19. Defendants, jointly and severally, hired Plaintiff and the other class members as
26 Truck Drivers, and failed to compensate them for all hours worked, including minimum wage
27 and overtime.
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1 20. Defendants had the authority to hire and terminate Plaintiff and the other class
2 members; to set work rules and conditions governing Plaintiff's and the other class members'
3 employment; and to supervise their daily employment activities.

4 21. Defendants exercised sufficient authority over the terms and conditions of
5 Plaintiff and the other class members' employment for them to be joint employers of Plaintiff
6 and the other class members.

7 22. Defendants directly hired and paid wages and benefits to Plaintiff and the other
8 class members.

9 23. Defendants continue to employ Truck Drivers within the State of California.

10 24. Plaintiff and the other class members worked over eight (8) hours in a day,
11 and/or forty (40) hours in a week during their employment with Defendants.

12 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 engaged in a uniform policy and systematic scheme of wage abuse against their Truck Drivers
14 within the State of California. This scheme involved, inter alia, failing to pay them for all
15 hours worked, missed meal periods, and missed rest breaks in violation of California law.

16 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 knew or should have known that Plaintiff and the other class members were entitled to receive
18 certain due and unpaid wages for overtime compensation and that they were not receiving
19 wages for overtime compensation.

20 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 failed to provide Plaintiff and other class members the required rest and meal periods during
22 the relevant time period as required under the Industrial Welfare Commission Wage Orders
23 and thus they are entitled to any and all applicable penalties.

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1 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and other class members were entitled to receive all
3 timely and complete meal periods or payment of one additional hour of pay at Plaintiff's and
4 the other class members' regular rate of pay when a meal period was missed, late or
5 interrupted, and they did not receive all timely and proper meal periods or payment of one
6 additional hour of pay at Plaintiff's and other class members' regular rate of pay when a meal
7 period was missed.

8 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 knew or should have known that Plaintiff and other class members were entitled to receive all
10 timely rest periods without interruption or payment of one additional hour of pay at Plaintiff's
11 and the other class members' regular rate of pay when a rest period was missed, late or
12 interrupted, and they did not receive all rest periods or payment of one additional hour of pay
13 at Plaintiff's and the other class members' regular rate of pay when a rest period was missed.

14 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 knew or should have known that Plaintiff and the other class members were entitled to receive
16 at least minimum wages for compensation and that they were not receiving at least minimum
17 wages for all hours worked.

18 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 knew or should have known that Plaintiff and the other class members were entitled to receive
20 all wages owed to them upon discharge or resignation, including overtime and minimum wages
21 which were due and owed, and they did not, in fact, receive all such wages owed to them at the
22 time of their discharge or resignation.

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1 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and other class members were entitled to receive
3 complete and accurate wage statements in accordance with California law, but, in fact, they did
4 not receive complete and accurate wage statements from Defendants. The deficiencies
5 included, inter alia, the failure to include the total number of hours worked by Plaintiff and
6 other class members.

7 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knew or should have known that Defendants had to keep complete and accurate payroll records
9 for Plaintiff and other class members in accordance with California law, but, in fact, did not
10 keep complete and accurate payroll records.

11 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 knew or should have known that they had a duty to compensate Plaintiff and the other class
13 members pursuant to California law, and that Defendants had the financial ability to pay such
14 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
15 represented to Plaintiff and the other class members that they were properly denied wages, all
16 in order to increase Defendants' profits.

17 35. At all material times set forth herein, Defendants failed to pay overtime wages
18 to Plaintiff and the other class members for all hours worked. Plaintiff and the other class
19 members were required to work more than eight (8) hours per day and/or forty (40) hours per
20 week without overtime compensation.

21 36. At all material times set forth herein, Defendants failed to provide the requisite
22 uninterrupted and timely meal and rest periods to Plaintiff and other class members.

23 37. At all material times set forth herein, Defendants failed to pay Plaintiff and the
24 other class members at least minimum wages for all hours worked.

25 38. At all material times set forth herein, Defendants failed to pay Plaintiff and the
26 other class members all wages owed to them upon discharge or resignation.

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1 39. At all material times set forth herein, Defendants failed to provide complete or
2 accurate wage statements to Plaintiff and other class members.

3 40. At all material times set forth herein, Defendants failed to keep complete or
4 accurate payroll records for Plaintiff and other class members.

5 41. At all material times set forth herein, Defendants failed to properly compensate
6 Plaintiff and the other class members pursuant to California law in order to increase
7 Defendants' profits.

8 42. California Labor Code section 218 states that nothing in Article 1 of the Labor
9 Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty
10 due to him [or her] under this article."

11 **FIRST CAUSE OF ACTION**

12 **(Collection of Due and Unpaid Wages California Labor Code § 229)**

13 **(Against DONAGHY SALES, LLC and DOES 1 through 100)**

14 43. Plaintiff incorporates by reference the allegations contained in paragraphs 1
15 through 42, and each and every part thereof with the same force and effect as though fully set
16 forth herein.

17 44. California Labor Code section 1198 and the applicable Industrial Welfare
18 Commission ("IWC") Wage Order provide that it is unlawful to employ persons without
19 compensating them at a rate of pay either time-and-one-half or two-times that person's regular
20 rate of pay, depending on the number of hours worked by the person on a daily or weekly
21 basis.

22 45. Specifically, the applicable IWC Wage Order provides that Defendants are and
23 were required to pay Plaintiff and the other class members employed by Defendants, who
24 work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at
25 the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more
26 than forty (40) hours in a workweek.

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1 46. The applicable IWC Wage Order further provides that Defendants are and
2 were required to pay Plaintiff and the other class members overtime compensation at a rate of
3 two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

4 47. California Labor Code section 510 codifies the right to overtime compensation
5 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
6 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
7 of work, and no overtime compensation at twice the regular hourly rate for hours worked in
8 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
9 of work.

10 48. During the relevant time period, Plaintiff and the other class members worked in
11 excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

12 49. During the relevant time period, Defendants intentionally and willfully failed to
13 pay overtime wages owed to Plaintiff and the other class members.

14 50. During the relevant time period, Defendants had a policy of requiring Plaintiff
15 and the other class members to clock in and out for all time under Defendants' control;
16 however, Defendant did not pay for all time recorded and instead compensated only a set
17 number of hours per shift, which resulted in underpayment of minimum wage and overtime
18 wages.

19 51. During the relevant time period, Defendants had a policy of compensating
20 Plaintiff and the other class members with the incentive pay without factoring the incentive
21 pay into the regular rate of pay, which resulted in underpayment of wages.

22 52. Defendants' failure to pay Plaintiff and the other class members the unpaid
23 balance of overtime compensation, as required by California laws, violates the provisions of
24 California Labor Code sections 510 and 1198, and is therefore unlawful.

25 53. Pursuant to California Labor Code section 1194, Plaintiff and the other class
26 members are entitled to recover unpaid minimum wage and overtime compensation, as well as
27 interest, costs, and attorneys' fees.

1 54. During the relevant time period, Defendants failed to pay minimum wages to
2 Plaintiff and the other class members as required, pursuant to California Labor Code sections
3 11194, 1197, and 1197.1.

4 55. Defendants' failure to pay Plaintiff and the other class members the minimum
5 wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to
6 those sections, Plaintiff and the other class members are entitled to recover the unpaid balance
7 of their minimum wage compensation as well as interest, costs, and attorney's fees, and
8 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

9 56. Plaintiff and the other class members seek these due and unpaid wages, which
10 includes minimum wage, underpayment of wages and overtime wages.

11 **SECOND CAUSE OF ACTION**

12 **(Violation of California Labor Code §§ 510 and 1198)**

13 **(Against DONAGHY SALES, LLC and DOES 1 through 100)**

14 57. Plaintiff incorporates by reference the allegations contained in Paragraphs 1
15 through 56, and each and every part thereof with the same force and effect as though fully set
16 forth herein.

17 58. California Labor Code section 1198 and the applicable Industrial Welfare
18 Commission ("IWC") Wage Order provide that it is unlawful to employ persons without
19 compensating them at a rate of pay either time-and-one-half or two-times that person's regular
20 rate of pay, depending on the number of hours worked by the person on a daily or weekly
21 basis.

22 59. Specifically, the applicable IWC Wage Order provides that Defendants are and
23 were required to pay Plaintiff and other class members employed by Defendants, who
24 work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at
25 the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more
26 than forty (40) hours in a workweek.

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1 60. The applicable IWC Wage Order further provides that Defendants are and were
2 required to pay Plaintiff and other class members overtime compensation at a rate of two times
3 their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

4 61. California Labor Code section 510 codifies the right to overtime compensation
5 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
6 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
7 of work, and overtime compensation at twice the regular hourly rate for hours worked in
8 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
9 of work.

10 62. During the relevant time period set forth herein, Plaintiff and other class
11 members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a
12 week.

13 63. As a pattern and practice, during the relevant time period set forth herein,
14 Defendants intentionally and willfully failed to pay and underpaid overtime wages owed to
15 Plaintiff and other class members by not compensating all time worked and failing to properly
16 calculate the regular rate of pay.

17 64. Defendants' pattern and practice of failing to pay Plaintiff and other class
18 members the unpaid balance of overtime compensation, as required by California laws,
19 violates the provisions of California Labor Code sections 510 and 1198, and is therefore
20 unlawful.

21 65. Pursuant to California Labor Code section 1194, Plaintiff and other class
22 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
23 attorneys' fees.

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THIRD CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

(Against DONAGHY SALES, LLC and DOES 1 through 100)

66. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 65, and each and every part thereof with the same force and effect as though fully set forth herein.

67. During the relevant time period set forth herein, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's and other class members' employment by Defendants.

68. During the relevant time period set forth herein, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

69. During the relevant time period set forth herein, the applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee.

70. During the relevant time period set forth herein, the applicable IWC Wage Order and California Labor Code section 512(a) further provide that an employer may not require, cause, or permit an employee to work for a work period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

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1 71. As a pattern and practice, during the relevant time period set forth herein,
2 Plaintiff and other class members who were scheduled to work for a period of time no longer
3 than six (6) hours, and who did not waive their legally-mandated meal periods by mutual
4 consent, were required to work for periods longer than five (5) hours without an uninterrupted
5 meal period of not less than thirty (30) minutes and/or without a rest period.

6 72. As a pattern and practice, during the relevant time period set forth herein,
7 Plaintiff and other class members who were scheduled to work for a period of time in excess of
8 six (6) hours were required to work for periods longer than five (5) hours without an
9 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

10 73. As a pattern and practice, during the relevant time period set forth herein,
11 Defendants intentionally and willfully required Plaintiff and other class members to work
12 during meal periods and failed to compensate Plaintiff and the other class members the full
13 meal period premium for work performed during meal periods.

14 74. As a pattern and practice, during the relevant time period set forth herein,
15 Defendants failed to pay Plaintiff and other class members the full meal period premium due
16 pursuant to California Labor Code section 226.7.

17 75. Defendants' conduct violates applicable IWC Wage Order and California Labor
18 Code sections 226.7 and 512(a).

19 76. Pursuant to the applicable IWC Wage Order and California Labor Code section
20 226.7(b), Plaintiff and other class members are entitled to recover from Defendants one
21 additional hour of pay at the employee's regular rate of compensation for each workday that
22 the meal or rest period is not provided.

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1 **FOURTH CAUSE OF ACTION**

2 **(Violation of California Labor Code § 226.7)**

3 **(Against DONAGHY SALES, LLC and DOES 1 through 100)**

4 77. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 76, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 78. During the relevant time period set forth herein, the applicable IWC Wage
8 Order and California Labor Code section 226.7 were applicable to Plaintiff's and other class
9 members' employment by Defendants.

10 79. During the relevant time period set forth herein, California Labor Code section
11 226.7 provides that no employer shall require an employee to work during any rest period
12 mandated by an applicable order of the California IWC.

13 80. During the relevant time period set forth herein, the applicable IWC Wage
14 Order provides that "[e]very employer shall authorize and permit all employees to take rest
15 periods, which insofar as practicable shall be in the middle of each work period" and that the
16 "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes
17 net rest time per four (4) hours or major fraction thereof" unless the total daily work time is
18 less than three and one-half (3 ½) hours.

19 81. As a pattern and practice, during the relevant time period set forth herein,
20 Defendants required Plaintiff and other class members to work four (4) or more hours without
21 authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

22 82. As a pattern and practice, during the relevant time period set forth herein,
23 Defendants willfully required Plaintiff and other class members to work during rest periods
24 and failed to pay Plaintiff and the other class members the full rest period premium for work
25 performed during rest periods.

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83. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay Plaintiff and the other class members the full rest period premium due pursuant to California Labor Code section 226.7.

84. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

85. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period was not provided.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194 and 1197)

(Against DONAGHY SALES, LLC and DOES 1 through 100)

86. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 85 and each and every part thereof with the same force and effect as though fully set forth herein.

87. During the relevant time period set forth herein, California Labor Code sections 1194 and 1197 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed, is unlawful.

88. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay minimum wages to Plaintiff and other class members as required, pursuant to California Labor Code sections 1194 and 1197.

89. Defendants' failure to pay Plaintiff and other class members the minimum wage as required violates California Labor Code sections 1194 and 1197. Pursuant to those sections, Plaintiff and other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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90. Pursuant to California Labor Code section 1194.2, Plaintiff and other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(Against DONAGHY SALES, LLC and DOES 1 through 100)

91. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 90, and each and every part thereof with the same force and effect as though fully set forth herein.

92. At all relevant times herein set forth, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

93. During the relevant time period, Defendants intentionally and willfully failed to pay the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

94. Defendants' failure to pay the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

95. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days. Because Defendants failed to pay Plaintiff and other class members the due and unpaid wages including

1 minimum wage and overtime, they are entitled to recover from Defendants the statutory
2 penalty wages for each day they were not paid their due wages, up to a thirty (30) day
3 maximum pursuant to California Labor Code section 203.

4 **SEVENTH CAUSE OF ACTION**

5 **(Violation of California Labor Code § 226(a))**

6 **(Against DONAGHY SALES, LLC and DOES 1 through 100)**

7 96. Plaintiff incorporates by reference the allegations contained in paragraphs 1
8 through 95, and each and every part thereof with the same force and effect as though fully set
9 forth herein.

10 97. During the relevant time period set forth herein, California Labor Code section
11 226(a) provides that every employer shall furnish each of his or her employees an accurate
12 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
13 employee, (3) the number of piece-rate units earned and any applicable piece rate if the
14 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
15 written orders of the employee may be aggregated and shown as one item, (5) net wages
16 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
17 employee and his or her social security number, (8) the name and address of the legal entity
18 that is the employer, and (9) all applicable hourly rates in effect during the pay period and the
19 corresponding number of hours worked at each hourly rate by the employee. The deductions
20 made from payments of wages shall be recorded in ink or other indelible form, properly dated,
21 showing the month, day, and year, and a copy of the statement or a record of the deductions
22 shall be kept on file by the employer for at least three years at the place of employment or at a
23 central location within the State of California.

24 98. As a pattern and practice, Defendants have intentionally and willfully failed to
25 provide Plaintiff and other class members with complete and accurate wage statements. The
26 deficiencies include but are not limited to: the failure to include the total number of hours
27 worked by Plaintiff and other class members.

99. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff and other class members have suffered injury and damage to their statutorily protected rights.

100. More specifically, Plaintiff and other class members (but not all) have been injured by Defendants' intentional and willful violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate and itemized wage statements pursuant to California Labor Code section 226(a).

101. Plaintiff and other class members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

102. Plaintiff and other class members are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(g).

EIGHTH CAUSE OF ACTION

(Violation of California Labor Code § 2698, *et seq.*)

(Against DONAGHY SALES, LLC and DOES 1 through 100)

103. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 102, and each and every part thereof with the same force and effect as though fully set forth herein.

104. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

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1 105. Written notice was provided to the LWDA and Defendants of the specific
2 provisions of the Labor Code contended to be violated, and the theories supporting these
3 contentions. The sixty-five (65) days' notice period expired as to all Defendants, and the
4 LWDA did not take any action to investigate or prosecute the matter. Therefore, the statutory
5 time period to bring this action has been exhausted.

6 106. The hourly-paid or non-exempt employees are "aggrieved employees" as
7 defined by California Labor Code § 2699(c) in that they are all current and former employees
8 of Defendants and one or more of the alleged violations was committed against them.

9 **Failure to Pay Minimum and Overtime Wages**

10 107. At all times relevant herein, Defendants were required to compensate their non-
11 exempt employees minimum wages for all hours worked and overtime wages for all hours
12 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
13 mandate of Labor Code §§ 510, 1194, 1197, and 1198.

14 108. As a pattern and practice, Defendants failed to compensate the aggrieved current
15 and former employees for all hours worked, resulting in a failure to pay all minimum wages
16 and overtime wages, where applicable.

17 **Failure to Provide Meal Periods and Rest Breaks**

18 109. In accordance with the mandates of Labor Code §§ 226.7 and 512, Defendants
19 were required to authorize and permit their non-exempt employees to take a 10-minute rest
20 break for every four (4) hours worked or major fraction thereof, and were further required to
21 provide their non-exempt employees with a 30-minute meal period for every five (5) hours
22 worked.

23 110. As a pattern and practice, Defendants failed to provide the aggrieved current and
24 former employees with legally-mandated meal periods and rest breaks and failed to pay proper
25 compensation for this failure.

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1 **Failure to Timely Pay Wages During Employment**

2 111. At all times relevant herein, Defendants were required to pay their employees
3 within a specified time period pursuant to the mandate of Labor Code § 204.

4 112. As a pattern and practice, Defendants failed to pay the aggrieved current and
5 former employees all wages due and owing them within the required time period.

6 **Failure to Timely Pay Wages Upon Termination**

7 113. At all times relevant herein, Defendants were required to pay their employees all
8 wages owed in a timely fashion at the end of employment pursuant to California Labor Code
9 §§ 201 to 204.

10 114. As a result of Defendants' Labor Code violations alleged above, Defendants
11 failed to pay the aggrieved former employees their final wages pursuant to Labor Code §§ 201
12 to 204 and accordingly owe waiting time penalties pursuant to Labor Code § 203.

13 **Failure to Provide Complete and Accurate Wage Statements**

14 115. At all times relevant herein, Defendants were required to keep *accurate* records
15 regarding their California employees pursuant to the mandate of Labor Code §§ 226 and 1174.

16 116. As a result of Defendants' various Labor Code violations, Defendants failed to
17 keep accurate records regarding the aggrieved current and former employees. For example,
18 Defendants failed in their affirmative obligation to keep accurate records regarding the
19 aggrieved current and former employees' gross wages earned, total hours worked, all
20 deductions, net wages earned, and all applicable hourly rates and the number of hours worked
21 at each hourly rate.

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Penalties

117. Pursuant to California Labor Code § 2699, Plaintiff, on behalf of the current and former aggrieved employees, requests and is entitled to recover from Defendants, and each of them, civil penalties, interest, attorneys' fees and costs, including but not limited to:

- a. Penalties under California Labor Code § 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8 § 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code § 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- d. Penalties under Labor Code § 1197.1 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;
- e. Any and all additional penalties as provided by the Labor Code and/or other statutes; and
- f. Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, and 2699, and any other applicable statute.

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1 **NINTH CAUSE OF ACTION**

2 (Violation of California Business & Professions Code §§ 17200, et seq.)

3 (Against DONAGHY SALES, LLC and DOES 1 through 100)

4 118. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 117, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 119. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
8 unlawful, and harmful to Plaintiff, other class members, the general public, and Defendants'
9 competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public
10 interest within the meaning of Code of Civil Procedure section 1021.5.

11 120. Defendants' activities as alleged herein are violations of California law, and
12 constitute unlawful business acts and practices in violation of California Business &
13 Professions Code sections 17200, *et seq.*.

14 121. A violation of California Business & Professions Code sections 17200, *et seq.*
15 may be predicated on the violation of any state or federal law. In this instant case, Defendants'
16 policies and practices of requiring employees, including Plaintiff and the other class members,
17 to work overtime hours without paying them due wages in violation of California Labor Codes
18 including but not limited to Labor Code sections 510 and 1198. Additionally, Defendants'
19 pattern and practice of requiring Plaintiff and other class members to work through their meal
20 and rest periods without paying them proper compensation violate California Labor Code
21 sections 226.7 and 512(a). Moreover, Defendants' policies and practices of failing to timely
22 pay due wages to Plaintiff and the other class members violate California Labor Code sections
23 201 and 202. These violations of California law for due and unpaid wages can be maintained
24 pursuant to California Labor Code section 229. Defendants also violated California Labor
25 Code sections 226(a), 1194, and 1197.

26 122. As a result of the herein described violations of California law, Defendants
27 unlawfully gained an unfair advantage over other businesses.

1 123. Plaintiff and the other class members have been personally injured by
2 Defendants' unlawful business acts and practices as alleged herein, including but not
3 necessarily limited to the loss of money and/or property.

4 124. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
5 Plaintiff and the other class members are entitled to restitution of the wages withheld and
6 retained by Defendants during a period that commences four years prior to the filing of this
7 Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section
8 1021.5 and other applicable laws; and an award of costs.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff, individually, and on behalf of other members of the general public similarly
11 situated, requests a trial by jury.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, individually and on behalf of all other members of the general
14 public similarly situated, prays for relief and judgment against Defendants, jointly and
15 severally, as follows:

16 **Class Certification**

- 17 1. That this action be certified as a class action;
18 2. That Plaintiff be appointed as representative of the Class;
19 3. That counsel for Plaintiff be appointed as Class Counsel; and
20 4. That Defendants provide to Class Counsel immediately the names and
21 most current contact information (address, e-mail and telephone numbers) of all
22 class members.

23 **As to the First Cause of Action**

24 5. That the Court declare, adjudge and decree that Defendants violated California
25 Labor Code sections 510, 1194, and 1198 and applicable IWC Wage Orders by willfully
26 failing to pay all wages due and owing to Plaintiff and the other class members;

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1 6. For general unpaid wages at minimum wage rates, or overtime wage rates and
2 such general and special damages as may be appropriate;

3 7. For pre-judgment interest on any unpaid overtime compensation commencing
4 from the date such amounts were due;

5 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
6 California Labor Code sections 218.5 and 1194; and

7 9. For such other and further relief as the court may deem just and proper.

8 **As to the Second Cause of Action**

9 10. That the Court declare, adjudge and decree that Defendants violated California
10 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay
11 all overtime wages due to Plaintiff and other class members;

12 11. For general unpaid wages at overtime wage rates and such general and special
13 damages as may be appropriate;

14 12. For pre-judgment interest on any unpaid overtime compensation commencing
15 from the date such amounts were due;

16 13. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
17 California Labor Code section 1194; and

18 14. For such other and further relief as the court may deem just and proper.

19 **As to the Third Cause of Action**

20 15. That the Court declare, adjudge and decree that Defendants violated California
21 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to
22 provide all meal periods to Plaintiff and other class members;

23 16. That the Court make an award to Plaintiff and other class members of one (1)
24 hour of pay at each employee's regular rate of compensation for each workday that a meal
25 period was not provided;

26 17. For all actual, consequential, and incidental losses and damages, according to
27 proof;

- 1 18. For premium wages pursuant to California Labor Code section 226.7(b);
2 19. For pre-judgment interest on any unpaid wages from the date such amounts
3 were due;
4 20. For reasonable attorneys' fees and costs of suit incurred herein; and
5 21. For such other and further relief as the court may deem just and proper.

6 **As to the Fourth Cause of Action**

7 22. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all
9 rest periods to Plaintiff and the other class members;

10 23. That the Court make an award to Plaintiff and other class members of one (1)
11 hour of pay at each employee's regular rate of compensation for each workday that a rest
12 period was not provided;

13 24. For all actual, consequential, and incidental losses and damages, according to
14 proof;

15 25. For premium wages pursuant to California Labor Code section 226.7(b);

16 26. For pre-judgment interest on any unpaid wages from the date such amounts
17 were due; and

18 27. For such other and further relief as the court may deem just and proper.

19 **As to the Fifth Cause Action**

20 28. That the Court declare, adjudge and decree that Defendants violated California
21 Labor Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiff and
22 other class members;

23 29. For general unpaid wages and such general and special damages as may be
24 appropriate;

25 30. For pre-judgment interest on any unpaid compensation from the date such
26 amounts were due;

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1 31. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
2 California Labor Code section 1194(a);

3 32. For liquidated damages pursuant to California Labor Code section 1194.2; and

4 33. For such other and further relief as the court may deem just and proper.

5 **As to the Sixth Cause of Action**

6 34. That the Court declare, adjudge and decree that Defendants violated California
7 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the
8 time of termination of the employment of the other class members no longer employed by
9 Defendants;

10 35. For all actual, consequential, and incidental losses and damages, according to
11 proof;

12 36. For statutory wage penalties pursuant to California Labor Code section 203 for
13 the other class members who have left Defendants' employ;

14 37. For pre-judgment interest on any unpaid compensation from the date such
15 amounts were due; and

16 38. For such other and further relief as the court may deem just and proper.

17 **As to the Seventh Cause of Action**

18 39. That the Court declare, adjudge and decree that Defendants violated the record
19 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders
20 as to Plaintiff and other class members, and willfully failed to provide accurate itemized wage
21 statements thereto;

22 40. For actual, consequential and incidental losses and damages, according to proof;

23 41. For statutory penalties pursuant to California Labor Code section 226(e);

24 42. For injunctive relief to ensure compliance with this section, pursuant to
25 California Labor Code section 226(g); and

26 43. For such other and further relief as the court may deem just and proper.

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As to the Eighth Cause of Action

44. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 2698, *et seq.*, the PAGA, for civil penalties pursuant to Defendants' violations of Labor Code §§ 201, 202, 203, 204, 218.5, 226(a), 226.7, 229, 510, 512(a), 1174, 1194, 1197, 1197.1, and 1198;

45. Upon the Cause of Action, for costs and attorneys' fees pursuant to Labor Code sections 210, 1194, and 2699, and any other applicable statute; and

46. For such other and further relief as the Court may deem just and proper.

As to the Ninth Cause of Action

47. That the Court decree, adjudge and decree that Defendants violated California Business and Professions Code section 17200, *et seq.* by failing to provide Plaintiff and the other class members all overtime and minimum wage compensation due to them and failing to pay Plaintiff's and the other class members' wages timely as required by California Labor Code sections 201 and 202.

48. For restitution of unpaid wages to Plaintiff and all the other class members and all pre-judgment interest from the day such amounts were due and payable;

49. For the appointment of a receiver to receive, manage, and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of California Business and Professions Code sections 17200, *et seq.*;

50. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

51. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, *et seq.*; and

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1 52. For such other and further relief as the court may deem just and proper.
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3 Dated: August 27, 2020
4

JUSTICE LAW CORPORATION

5
6 By:  _____

Douglas Han
Shunt Tatavos-Gharajeh
Attorneys for Plaintiff
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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is danny@justicelawcorp.com

On September 17, 2020, I served the foregoing document described as

CLASS ACTION COMPLAINT FOR DAMAGES

for the following case: **ZAVALA V. DONAGHY SALES, LLC**
LWDA/Court Case No.: **LWDA Case No.: CM 771370-20**
Court Case No.: BCV-20-102005
Kern County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 17, 2020, at Pasadena, California.



Danny Park