

CLASS LEGAL ACTION SETTLEMENT AGREEMENT

This Class Legal Action Settlement Agreement (“**Agreement**”) is made by and between plaintiff Paul Zavala (“**Plaintiff**”) and defendant Donaghy Sales, LLC (“**Defendant**”). Plaintiff and Defendant will be collectively referred to in this Agreement as the “**Parties**.”

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. “Legal Action” means the Complaints that were filed in California state court, which is currently captioned as *Paul Zavala. v Donaghy Sales, LLC*, Kern County Superior Court Case No. BCV-20-102005 (the “**Legal Action**”).
- B. “Class” means all individuals who were California residents who worked for Defendant, Donaghy Sales, LLC in California as a truck driver at any time between September 12, 2012 through December 31, 2020 (the “**Class Period**”).
- C. “Class Counsel” means Douglas Han, Shunt Tatavos-Gharajeh and Daniel J. Park and the Justice Law Corporation.
- D. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts awarded to Class Counsel by the Court to compensate them for, respectively, their attorneys’ fees and litigation expenses billed in connection with the Legal Action, including their pre-filing investigation, their filing of the Legal Action and all related litigation activities, this Settlement, and all post-Settlement compliance procedures.
- E. “Class Data” means, for each Class Member, his or her name; last-known mailing address; Social Security number; Defendant’s employee identification number; and the number of workweeks that he or she worked for Defendant during the Class Period as a Class Member.
- F. “Class Member” is a member of the Class.
- G. “Class Notice” means the Notice of Proposed Settlement of Class Legal Action, Conditional Certification of Settlement Class, Preliminary Approval of Settlement, and Hearing Date for Final Court Approval as evidenced by Exhibit A to this Agreement and incorporated by reference into this Agreement.
- H. “Class Notice Packet” means the Class Notice to be provided to the Class Members by the Settlement Administrator appear as set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Settlement Administrator).
- I. “Class Period” means the period of time from September 12, 2012 through December 31, 2020.

- J. "Class Representative Service Payment" means the service payments made to the Plaintiff in his capacity as a Class Representative in order to compensate him for initiating the Legal Action, performing work in support of the Legal Action, undertaking the risk of liability for Defendant's expenses in the event he was unsuccessful in the prosecution of the Legal Action, and for the general release of all claims by the Plaintiff. This payment shall be conditioned upon the Plaintiff providing to the Court a declaration regarding the time, risks, and burdens carried by him in this Legal Action and the benefits he provided to counsel and the class throughout the litigation.
- K. "Court" means the Kern County Superior Court.
- L. "Effective Date" means the date by which all of the following have occurred:
1. This Agreement is approved by the Court; and
 2. The Judgment becomes Final as defined in Section I(N) of this Agreement.
- M. "Election Not to Participate in Settlement" means the written request by a Class Member to exclude himself or herself from the Settlement submitted in accordance with the instructions in the Class Notice.
- N. "Final" means the last of the following dates, as applicable:
1. If no objection to the Settlement is made, the date the Judgment is entered.
 2. If an objection to the Settlement is made and Judgment is entered, but no appeal is filed, the last date on which a notice of appeal from the Judgment may be filed, and none is filed.
 3. If Judgment is entered and a timely appeal from the Judgment is filed, the date on which all appeals are exhausted or dismissed with prejudice provided that the Judgment has not been reversed, vacated or modified in any material respect.
- O. "Final Approval Hearing" means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement.
- P. "Gross Settlement Amount" means Two Million Dollars (\$2,000,000) to be paid by Defendant as provided by this Agreement. This amount is all-inclusive of all payments contemplated in this resolution in this Agreement, excluding any employer payroll taxes due on the portion of the Settlement Shares allocated to wages including FICA/FUTA which Defendant's shall separately pay to the Settlement Administrator in addition to the Gross Settlement Amount.
- Q. "Judgment" means the Order Confirming Certification of Class Legal Action, Granting Final Approval of Class Legal Action Settlement and Entering Final

Judgment entered by the Court in the form evidenced by Exhibit C to this Agreement and incorporated by reference into this Agreement.

- R. “Defendant’s Counsel” means Russell K. Ryan of Motschieder, Michaelides, Wishon, Brewer & Ryan LLP.
- S. “Net Settlement Amount” means the Gross Settlement Amount less the Court-approved amounts for the Class Representative Service Payment, the Class Counsel Fees and Expenses Payment, the payment to the California Labor Workforce Development Agency, and the Settlement Administrator’s fees and expenses.
- T. “Non-Participating Class Member” means a Class Member who submits a valid and timely Election Not to Participate in Settlement.
- U. “Participating Class Member” means a Class Member who does not submit a valid and timely Election Not to Participate in Settlement.
- V. “Preliminary Approval of the Settlement” means the Court’s preliminary approval of the Settlement without material change.
- W. “Settlement” means the disposition of the Legal Action and all related claims effectuated by this Agreement.
- X. “Settlement Administrator” means the administrator proposed by the Parties and appointed by the Court to administer the Settlement.
- Y. “Settlement Share” means each Participating Class Member’s share of the Net Settlement Amount as provided by this Agreement.

II. RECITALS

- A. On September 12, 2016 Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of Fresno Plaintiff asserted claims that Defendant:
 - 1. Violated the California Business and Professions Code §17200 *et seq.*;
 - 2. Failed to pay wages in violation of California Labor Code §229, *et seq.*
 - 3. Failed to timely pay all wages due in violation of California Labor Code §§201 and 202; and
- B. The Parties later stipulated to the filing of an amended complaint seeking wages and penalties for minimum wage violations, overtime violations, meal and rest break violations, wage statement violations, a cause of action under the Private Attorney General Act, Cal. Labor Code §§ 2689 *et seq.* (“PAGA”) and related claims in order to resolve all outstanding claims that could be asserted by the

Class against the Defendant during the Class Period relating in any way go violations of California's wage and hour laws and the California Labor Code.

- C. On October 28 2016 Defendant filed an Answer to the Complaint which alleges Thirty Five affirmative defenses and generally denied the Plaintiff's allegations. Specifically, Defendant contended (and continues to contend) that the Legal Action could not properly be maintained as a class action; that members of the class were properly compensated under state law; that Defendant did not fail to pay to any members of the class who are former Defendant employees any wages allegedly due at the time of their termination; that Defendant provided accurate, itemized wage statements to members of the class; that Defendant did not violate the California Labor Code or California's wage and hour laws; did not violate California Business and Professions Code section 17200 *et seq.*; Defendant is not liable for any of the penalties claimed or that could be claimed in the Legal Action. Defendant further contends, among other things, that it has complied at all times with the California Labor Code, the Industrial Welfare Commission Wage Orders, the California Business and Professions Code and all laws, regulations and case law interpreting the above.
- D. On February 11, 2020 the Parties participated in an all-day mediation presided over by mediator Lynn Frank, a respected mediator of wage and hour class actions lawsuits. During the mediation, each side, represented by its respective counsel, did not agree to the terms of a proposed settlement. After further negotiations spanning another ten (10) days, each side ultimately agreed to settle the Legal Action pursuant to the terms and conditions of this Agreement. This Agreement replaces and supersedes the Memorandum of Understanding entered into on February 27, 2020 and any other agreements, understandings, or representations between the Parties.
- E. Subsequently, the Parties agreed to file the Legal Action in Kern County Superior Court for purposes of seeking approval of the settlement.
- F. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Legal Action of Plaintiff or the Class have merit or that Defendant bears any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendant's defenses in the Legal Action have merit. Defendant specifically denies any liability for any claims alleged in this Legal Action and denies any violation of any order, law, statute, duty or contract on the part of Defendant or any officer, director, shareholder, agent, supervisor, employee, attorney or representative of Defendant.
- G. If for any reason the settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount that Defendant will pay under this Settlement is Two Million Dollars (\$2,000,000.00). This amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Settlement Shares allocated to wages which shall be paid by Defendant to the Settlement Administrator in addition to the Gross Settlement Amount. All of the Gross Settlement Amount and tax payment will be disbursed pursuant to this Agreement, and none of it will revert to Defendant.
- B. **Payments from the Gross Settlement Amount.** The Settlement Administrator will make the following payments out of the Gross Settlement Amount within 30 days of the entry of the Judgment by the Court if no appeal is filed, and if an objection is filed within 30 days of the date the judgment is no longer subject to appeal to the extent funds are available with priority being payment to Settlement Administrator, then LWDA, then to Participating Class Members, then Plaintiff, and the Class Counsel as follows:
1. **To Plaintiff:** In addition to his Settlement Share, the Plaintiff will apply to the Court for an award of not more than \$10,000.00 as his Class Representative Service Payment. Defendant will not oppose a Class Representative Service Payment of no more than \$10,000.00 for the Plaintiff. The Settlement Administrator will pay the Class Representative Service Payment approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Representative Service Payment of less than \$10,000.00 for the Plaintiff, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions will not be taken from the Class Representative Service Payments and instead a Form 1099 will be issued to the Plaintiff with respect to the payment. To receive these payments the Plaintiff must provide a 1542 waiver and a general release of all claims.
 2. **To Class Counsel:** Class Counsel will apply to the Court for an award of not more than \$700,000.00 (35% of the Gross Settlement Amount) as their Class Counsel Fees Payment and an amount not more than \$30,000.00 for all expenses incurred as documented in Class Counsel's billing records as their Class Counsel Litigation Expenses Payment. Defendant will not oppose their request for a Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment provided that documentation of all of Class Counsel's expenses is provided to Defendant's counsel and that the expenses are approved by the Court. The Settlement Administrator will pay the amounts approved by the Court (but not more than \$700,000.00 and \$30,000.00, respectively) out of the Gross Settlement Amount. If the Court approves a Class Counsel Fees Payment or a Class Counsel Litigation Expenses Payment of less than 700,000.00 and \$30,000.00,

respectively, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions will not be taken from the Class Counsel Fees and Expenses Payment and instead one or more Forms 1099 will be issued to Class Counsel with respect to those payments. The payment of Class Counsel's fees and costs shall be made to the Justice Law Corporation by the Settlement Administrator in accordance with this Agreement. The Settlement Administrator may purchase an annuity to utilize US treasuries and bonds or other attorney fee deferral vehicles for Class Counsel.

3. **To LWDA.** The Parties will seek approval from the Court for a PAGA payment out of the Gross Settlement Amount of \$100,000.00, which shall be allocated \$75,000.00 to the LWDA (the "**LWDA Payment**") as the LWDA's share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA and \$25,000.00 to the Net Settlement Amount for distribution to the Participating Class Members. If the Court approves a PAGA Payment of less than \$25,000.00 the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members.
4. **To the Settlement Administrator.** The Settlement Administrator will pay out of the Gross Settlement Amount to itself its reasonable fees and expenses that are documented and approved by the Court in an amount not to exceed \$30,000.00. To the extent the fees and expenses that are documented and approved by the Court are less than \$30,000.00 the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members.

C. **Payments From the Net Settlement Amount.** The Net Settlement Amount shall include the following payments after the deductions have been made from the Gross Settlement Amount as described in this Agreement. The Net Settlement Amount shall include the following:

1. **Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay a Settlement Share from the Net Settlement Amount to each Participating Class Member. The submission of a claim form is not required to be paid.
2. **Calculation.** The Settlement Share for each Participating Class Member will be calculated by (a) dividing the Net Settlement Amount by the total number of work weeks for all Participating Class Members that occurred during the Class Period and (b) multiplying the result by each individual Participating Class Member's work weeks that occurred during the Class Period. For purposes of this calculation, work weeks are defined as two work weeks per payroll period that occurred during the Class Period, based on the payroll periods included in Defendant's records. If a

Participating Class Member worked any time during a payroll period, then he or she will be credited for two weeks for the payroll period.

3. **Withholding.**

- a. One-half (50%) of each Participating Class Member's Settlement Share is in settlement of wage claims (the "**Wage Portion**"). Accordingly, the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2 and shall be paid for from the Gross Settlement Amount.
- b. One-half (50%) of each Participating Class Member's Settlement Share is in settlement of claims for interest and penalties allegedly due to employees (the "**Non-Wage Portion**"). Accordingly, the Non-Wage Portion shall not be subject to wage withholdings, and shall be reported on IRS Form 1099.

4. **Effect of Non-Participating Class Members.** Non-Participating Class Members will receive no Settlement Share, and their election not to participate will reduce neither the Gross Settlement Amount nor the Net Settlement Amount. Their respective Settlement Shares will remain a part of the Net Settlement Amount for distribution to Participating Class Members on a *pro rata* basis relative to their Settlement Shares.

5. **Class Size Modification** Defendant has represented that the class consists of a total of 250 Class Members who collectively worked 39,101 workweeks in California during the Class Period. Defendant will provide a declaration under oath as to the number of workweeks and members in the Class prior to the filing of the motion for preliminary approval. If the number of workweeks increases by more than 10% through the Class Period, then the amount of the settlement will increase proportionately per class workweek added.

D. **Appointment of Settlement Administrator.** The Parties will ask the Court to appoint a mutually-agreed claims administrator which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search on any Class Notice Packet returned by the U.S. Postal Service as non-deliverable, and re-mailing the Class Notice Packet to the Class Member's new address; setting up a toll-free telephone number to receive calls from Class Members; receiving and reviewing for validity completed Elections Not to Participate in Settlement; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of completed Elections Not to Participate in Settlement; calculating Settlement Shares; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; and

otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the final authority to resolve all disputes concerning the calculation of a Participating Class Member's Settlement Share, subject to the dollar limitations and calculations set forth in this Agreement. The Settlement Administrator's reasonable fees and expenses, including the cost of printing and mailing the Class Notice Packet, will be paid out of the Gross Settlement Amount.

The Settlement Administrator shall have its own Employer Identification Number under Internal Revenue Service Form W-9 and shall use its own Employer Identification Number in calculating payroll withholdings for taxes and shall transmit the required employers' and employees' share of the withholdings to the appropriate state and federal tax authorities. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

E. Procedure for Approving Settlement.

1. Motion for Preliminary Approval of Settlement by the Court.

- a. After Execution of this Settlement Agreement, Plaintiff will file a Preliminary Approval Motion with the Court for an order giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the "Motion for Preliminary Approval"). Any disagreement among the Parties concerning the Class Notice, or other documents necessary to implement the Settlement will be referred to the Court as part of the motion.
- b. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit an Order Granting Conditional Certification of Class and Preliminary Approval of Settlement; Approving Class Notice; Appointing Settlement Administrator; and Scheduling Final Approval Hearing substantially in the form evidenced by Exhibit B to this Agreement and incorporated by reference into this Agreement.
- c. Should the Court decline to preliminarily approve all material aspects of the Settlement (including but not limited to the scope of release to be granted by Participating Class Members or the binding effect of the Settlement on Participating Class Members), the Parties will endeavor in good faith to obtain preliminary approval pursuant the Court's guidelines and resubmit for preliminary approval.

2. **Notice to Class Members.** After the Court enters its order granting Preliminary Approval of the Settlement, every Class Member will be provided with the Class Notice Packet (which will include the Class Notice completed to reflect the order granting Preliminary Approval of the Settlement and showing the Class Member's Class) as follows:
 - a. No later than 14 days after the Court enters its order granting Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator an electronic database containing each Class Member's Class Data. If any or all of the Class Data is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties and will make their best efforts to reconstruct or otherwise agree upon the Class Data prior to when it must be submitted to the Settlement Administrator. This information will otherwise remain confidential and will not be disclosed to anyone, except as required to applicable taxing authorities, in order to carry out the reasonable efforts described in section III.E.2.c., or pursuant to Defendant's express written authorization or by order of the Court. All Class Data will be used for settlement notification and settlement administration, and shall not be used for any other purpose by Class Counsel.
 - b. Using best efforts to mail it as soon as possible, and in no event later than 14 days after receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.
 - c. If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not longer than ten (10) days from receipt of the returned packet, search for a more current address for the Class Member and re-mail the Class Notice Packet to the Class Member. The Settlement Administrator will use the Class Data and otherwise work with Defendant to find that more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, Court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice Packet is re-mailed, the Settlement

Administrator will note for its own records and notify Class Counsel and Defendant's Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.

- d. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Elections Not to Participate in Settlement it receives (including the numbers of valid and deficient), and number of objections received.
- e. Not later than 10 days before the date by which the Plaintiff file his motion for final approval of the Settlement, the Settlement Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement and detailing the Elections Not to Participate in Settlement it received (including the numbers of valid and deficient Elections) and objections received. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

3. **Objections to Settlement; Disputes as to Pay Periods allocated to Class Members; Objections to Class Counsel Fees and Expenses Payment; Elections Not to Participate in Settlement.** Participating Class Members may submit objections to the Settlement and objections to Class Counsels' Fees and Expenses Payment. Class Members may also submit Elections Not to Participate in Settlement pursuant to the following procedures:

- a. **Objections to Settlement and Disputes as to Pay Periods.** The Class Notice will provide that only Participating Class Members who wish to object to the Settlement must submit to the Claims Administrator with copies to the Parties Counsel, not later than 45 days after the Settlement Administrator mails the Class Notice Packets, written objections to the Settlement setting forth the grounds for the objection. A Participating Class Member who does not submit a written objection in the manner and by the deadline specified above will be deemed to have waived any objection and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. Non-Participating Class Members shall have no ability to comment on or object to the Settlement.

Each Class Member shall also have 45 days from the date of mailing the Class Notice Packet in which to dispute the number or pay periods the Notice of Settlement allocates to them during the Class Period. Any dispute as to this allocation shall be resolved by

the Settlement Administrator. Notice of Dispute shall be directed to the Settlement Administrator.

- b. **Objections to Class Counsel Fees and Expense Payment.** Unless otherwise ordered by the Court, Class Counsel shall file their application for the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment no later than the date the motion for final approval is to be filed, and the application will be scheduled to be heard by the Court at the Final Approval Hearing. The Class Notice will provide that Participating Class Members who wish to object to the Class Counsel's Fees and Expense Payment must submit to the Claims Administrator with copies to Parties Counsel not later than 45 days after the Settlement Administrator mails the Class Notice Packets, written objection to the fees and costs setting forth the grounds for the objection. A Participating Class Member who does not submit a written statement of objection in the manner and by the deadline specified above will be deemed to have waived any objections and will be foreclosed from making any objections (whether by appeal or otherwise) to the Class Counsel Fees and Expense Payment. Non-Participating Class Members shall have no ability to object to Class Counsel Fees and Expense Payment.
- c. **Election Not to Participate in Settlement.** The Class Notice also will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator not later than 45 days after the Settlement Administrator mails the Class Notice Packets, a signed Election Not to Participate in Settlement. If a question is raised about the authenticity of a signed Election Not to Participate in Settlement, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. A Non-Participating Class Member will not participate in or be bound by the Settlement and the Judgment. Defendant will remain free to contest any claim brought by the Class Member that would have been barred by this Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense Defendant has or could assert against such a claim. A Class Member who does not complete and mail a timely Election Not to Participate in Settlement in the manner and by the deadline specified above will automatically become a Participating Class Member and be bound by all terms and conditions of the Settlement, including the Released Class Claims by the Class, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement. Persons who submit an Election Not to Participate in the Settlement shall not be permitted to file objections to the

Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement.

All Participating Class Members who do not submit a valid and timely Election Not to Participate in Settlement will receive a Settlement Share, without the need to file a claim form, and will be bound by all of the terms of the Settlement, including without limitation, the release of the Released Class Claims by the Class set forth in this Agreement.

- d. **Report.** Not later than 10 days after the deadline for submission of Elections Not to Participate in Settlement, the Settlement Administration will provide the Parties with a complete and accurate list of all Participating Class Members and all Non-Participating Class Members.
4. **Right of Defendant to Reject Settlement.** If ten percent (10%) or more Class Members timely submit valid Elections Not to Participate in Settlement, Defendant will have the right, but not the obligation, to void the Settlement and the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Agreement, except that Defendant will pay the Settlement Administrator's reasonable fees and expenses incurred as of the date that Defendant exercises its right to void the Settlement. Defendant will notify Class Counsel and the Court whether it is exercising this right to void not later than seven (7) days after the Settlement Administrator notifies the Parties of the number of valid Elections Not to Participate in Settlement it has received.
5. **No Solicitation of Objection or Election Not to Participate.** Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement.
6. **Additional Briefing and Final Approval.**
 - a. Class Counsel will file with the Court their application for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment no later than the date Plaintiff files his Motion for Final Approval, and the application will be scheduled to be heard by the Court at the Final Approval Hearing.
 - b. Not later than 28 days before the Final Approval Hearing, the Plaintiff will file with the Court a motion for final approval of the

Settlement, the PAGA Payment, and payment of the Settlement Administrator's reasonable fees and expenses.

- c. If any opposition is filed, then not later than seven days before the Final Approval Hearing, both Parties may file a reply in support of the motion for final approval of the Settlement, the PAGA Payment, and payment of the Settlement Administrator's reasonable fees and expenses; and Plaintiff and Class Counsel may also file a reply in support of their motions for the Class Representative Service Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.
 - d. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), then the settlement at Defendant's option will be null and void and the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement, except that the Defendant will pay the Settlement Administrator's reasonable fees and expenses incurred as of the date that the Settlement becomes null and void under this paragraph. However, an award by the Court of a lesser amount than that sought by Plaintiff and Class Counsel for the PAGA Payment, Class Representative Service Payment, the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not constitute a material modification to the Settlement within the meaning of this paragraph.
 - e. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present for the Court's approval and entry the Judgment in the form attached hereto as Exhibit C. After entry of the Judgment, the Court will have continuing jurisdiction over the Legal Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.
7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiff and Participating Class Members who did not timely submit an objection to the Settlement, Defendant, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, and any extraordinary

writ. The Judgment therefore will become nonappealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making payments under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment becomes Final.

8. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), and that Court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher Court, then either Plaintiff or Defendant will have the right to void the Settlement, which the Party must do by giving written notice to the other Parties, the reviewing Court, and the Court not later than fourteen days after the reviewing Court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's award of the Class Representative Service Payment or the Class Counsel Fees Payment or Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, provided that Defendant's obligation to make payments under this Settlement will remain limited by the Gross Settlement Amount.
9. **Timing of Payment of Settlement Shares and Other Payments.** Defendant will fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. Defendant shall fund the Gross Settlement Amount as follows: Defendant shall pay out the total sum of \$2,000,000.00 for payment of all claims, payment of Claim Administration, Attorneys' Fees, Attorneys' Expenses, Service Award, and PAGA payment. The Settlement Amount shall be all-in with no reversion to Defendant. The employer's share of payroll taxes shall not be paid from the Settlement Amount and payment shall remain the responsibility of Defendant.
10. **Uncashed Settlement Share Checks.** A Participating Class Member must cash his or her Settlement Share check within 180 days after it is mailed to him or her. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the Participating Class Member at his or her correct address. If Participating Class Member's Settlement Share check is not cashed within 120 days after its last mailing to the Participating Class Member's the Settlement Administrator will send the Participating Class Member a letter informing him or her that unless the check is cashed in the

next 60 days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If the check remains uncashed by the expiration of the 60 day period after this notice, the funds from such uncashed checks will be paid to the California State Controller Unpaid Wage Fund in the name of the Participating Class Member and the Participating Class Member will remain bound by the Settlement.

11. **Final Report by Settlement Administrator to Court.** Within ten days after final disbursement of all funds from the Gross Settlement Amount, the Settlement Administrator will serve on the Parties and file with the Court a declaration proving a final report on the disbursements of all funds from the Gross Settlement Amount.

F. Release of Claims.

1. **Participating Class Members.** Upon entry of final judgment, Plaintiff and the Participating Class Members release all Released Class Claims that occurred during the Class Period. The "**Released Class Claims**" are all alleged claims in the Legal Action and claims that could have been pled arising out of the same operative facts, as well as claims for meal and rest breaks, wage statement violations, and off the clock work, that each Participating Class Member had, now has, or may hereafter claim to have against Defendant, its predecessors, successors, assigns, heirs, executors, administrators, personal representatives, officers, directors, shareholders, employees, agents, attorneys, accountants (collectively "**Released Parties**") that were alleged in the Legal Action which occurred during the Class Period ("**Released Class Claims**"). The Released Class Claims excludes all other claims, including claims for wrongful termination, unemployment insurance, disability, workers' compensation, and claims outside the Class Period.
2. **Plaintiff.** As of the date the Settlement becomes Final, Plaintiff hereby fully and finally releases Defendant and the other Released Parties from any and all claims, demands, rights, liabilities and causes of Legal Action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any local, state, or federal statute, rule, regulation, ordinance or common law including but not limited to those claims raised in the Legal Action and/or that could have been raised in the Legal Action, and those arising from or related to his employment with Defendant ("**Plaintiff's Released Claims**"). This release excludes only the release of claims not permitted by law.
3. **Plaintiff's Waiver of Rights Under California Civil Code Section 1542.** As partial consideration for the Class Representative Service Payment, the Plaintiff's Released Claims shall include all such claims, whether known

or unknown by the releasing party. Thus, even if Plaintiff discover facts and/or claims in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Plaintiff's Released Claims, those claims will remain released and forever barred. Therefore, with respect to those Released Class Claims, Plaintiff's expressly waives and relinquishes the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her, would have materially affected his or her settlement with the debtor or released party.

4. **Class Counsel.** As of the date the Settlement becomes Final, and except as otherwise provided by this Agreement, Class Counsel and any counsel associated with Class Counsel waive any claim to costs and attorneys' fees and expenses against Defendant arising from or related to the Legal Action.
- G. **No Effect on Other Benefits.** The Settlement Shares will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by this Agreement to Plaintiff or Participating Class Members, and Plaintiff and Participating Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.
- H. **Limitation on Public Statements About Settlement.** Plaintiff and Class Counsel represent that they have not and will not issue any press or other media releases about the Settlement (including, but not necessarily limited to advertising or marketing materials or on social media) or have any communication with the press or media or anyone else regarding the Settlement. This provision shall not prohibit Class Counsel from communicating with Class Members after preliminary approval is granted for the sole purpose of administering the Settlement. This provision does not limit Class Counsel from complying with ethical obligations or from posting court-filed documents on their website for viewing by Class Members.
- I. **Miscellaneous Terms.**
 1. **No Admission of Liability or Class Certification for Other Purposes.**
 - a. Defendant denies that they have: (i) engaged in any unlawful activity, (ii) failed to comply with the law in any respect, and (iii) any liability to anyone under the claims asserted in the Legal Action, or that but for the Settlement a class should be certified in the Legal Action. This Agreement is entered into solely for the

purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendant, or an admission by Plaintiff that any of the claims was non-meritorious or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Legal Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Settlement).

- b. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any other beneficiary of the releases granted under this Agreement (the “**Released Parties**”), including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Legal Action, or any other civil, criminal or administrative Legal Action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.
 - c. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings to enforce any or all terms of this Agreement or in defense of any claims released or barred by this Agreement.
2. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits. No rights hereunder may be waived except in writing signed by parties and legal counsel, as may be appropriate.
3. **Attorney Authorization.** Class Counsel and Defendant’s Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate Legal Action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement including any amendments to this Agreement. The Parties and

their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court for resolution.

4. **No Prior Assignments:** The Parties represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, Legal Action, cause of Legal Action, or right released and discharged in this Settlement.
5. **No Tax Advice:** Neither Class Counsel nor Defendant's Counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
6. **Modification of Agreement.** Except as set forth in III.I.3 hereinabove this Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives.
7. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
8. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the substantive laws of the State of California and procedural laws of the United States of America, without giving effect to any conflict of law principles or choice of law principles.
9. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
10. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Legal Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
11. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendant in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this

Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within thirty days after the Judgment becomes Final, Class Counsel will return or destroy and confirm in writing to Defendant the destruction of all such documents and data.

12. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
13. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiffs and the Class:

Douglas Han, Esq.
Shunt Tatavos-Gharajeh, Esq.
Daniel J. Park, Esq.
JUSTICE LAW CORPORATION
751 North Fair Oaks Avenue, Suite 101
Pasadena, CA 91103
Tel.: (818) 230-7502
Fax: (818) 230-7502
E-Mail: ghan@justicelawcorp.com
statavos@justicelawcorp.com

To Defendant:

Russell K. Ryan
MOTSCHIEDLER, MICHAELIDES, WISHON,
BREWER & RYAN LLP
1690 West Shaw Avenue, Suite 200
Fresno, CA 93711
Telephone (559) 439-4000
Facsimile: (559) 439-5654
E-mail: rkr@mmwbr.com

14. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

15. **Continuing Jurisdiction.** The parties agree that the Court shall retain continuing jurisdiction over this case under CCP Section 664.6 to ensure the continuing implementation of the provisions of this settlement and that the time within which to bring this action to trial under CCP Section 583.310 shall be extended from the date of the signing of the MOU (February 27, 2020) by all parties until the entry of the final approval order and judgment or if not entered the date this agreement shall no longer be of any force or effect.
16. The Parties agree to hold in abeyance all proceedings in this Legal Action except such proceedings necessary to implement and complete the Settlement, pending the final approval hearing to be conducted by the Court.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: 12/28, 2020

DONAGHY SALES, LLC
By: [Signature]

Dated: 12/28, 2020

MOTSCHIEDLER, MICHAELIDES
WISHON, BREWER & RYAN, LLP
By: [Signature]
Russell K. Ryan, Esq., Attorneys for
Donaghy Sales, LLC

Dated: 12/29, 2020

JUSTICE LAW CORPORATION
By: [Signature]
Douglas Han, Esq.
Class Counsel

Dated: 12/29/2020 2020

By: [Signature]
Paul Zavala
Class Representative

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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 arivera@justicelawcorp.com

On January 5, 2021, I served the foregoing document described as

CLASS LEGAL ACTION SETTLEMENT AGREEMENT

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 January 5, 2021, at Pasadena, California.



Allana Rivera