

CLASS LEGAL ACTION SETTLEMENT AGREEMENT

This Class Legal Action Settlement Agreement (“**Agreement**”) is made by and between plaintiff Dillon Geltz (“**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 Complaint to be filed in California state court, County of Merced and will be captioned as *Dillon Geltz. v Donaghy Sales, LLC*, (the “**Legal Action**”). A copy of the complaint is attached as **Exhibit D**.
- B. “Class” means all individuals who were California residents who formerly worked or currently work in non-exempt hourly positions at Defendant Donaghy Sales, LLC in California at any time between February 7, 2019 through the preliminary approval of the settlement (the “**Class Period**”), excluding Rodolfo Galarza.
- C. “Class Counsel” means Kenneth Yoon and Stephanie Yasuda, Yoon Law, APC.
- 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 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 February 7, 2019 through the preliminary approval of the settlement.
- 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. As part of applying for this payment, Plaintiff will provide 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 Merced 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 One Million Five Hundred Thousand Dollars (\$1,500,000.00) 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. “PAGA Period” means the period of time from February 7, 2019 through October 10, 2023. “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 June 5, 2020, Plaintiff filed a Representative Action Complaint for penalties against Defendant under the Private Attorneys General Act of 2004 (“**PAGA**”) for alleged violations of Labor Code Sections 201-204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1197, 1197.1, 1198, 2802 and Industrial Welfare Commission Wage Order 9-2001 in the Superior Court of the State of California, County of Fresno. The complaint specifically alleges the failure to pay minimum and overtime wages, the failure to provide meal and rest periods, the failure to reimburse necessary work-related expenses, the failure to timely pay wages upon termination, and the failure to provide complete and accurate wage statements.

- B. Plaintiff filed a First Amended Complaint on September 16, 2020 re-alleging similar and/or the same claims as set forth in the original complaint for alleged violations of Labor Code Sections 201-204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1197, 1197.1, 1198, 2802 and Industrial Welfare Commission Wage Order 9-2001 in the Superior Court of the State of California, County of Fresno. The complaint specifically alleges the failure to pay minimum and overtime wages, the failure to provide meal and rest periods, the failure to reimburse necessary work-related expenses, the failure to timely pay wages upon termination, and the failure to provide complete and accurate wage statements. The First Amended Complaint alleges that the plaintiff had provided written notice to the LWDA on February 7, 2020 of specific violations of the Labor Code and corresponding IWC Wage order by Defendant.
- C. On November 23, 2020 Defendant filed an Answer to the Complaint, and on December 3, 2020 Defendant filed an answer to the First Amended Complaint which alleges Forty-Six 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 paid all minimum and overtime wages due and owing; that Defendant provided all required meal and rest periods; that Defendant paid employees any and all wages allegedly due at the time of their termination; that Defendant provided accurate, itemized wage statements to members of the class; and that Defendant did not violate the California Labor Code, the IWC Wage Orders or California's wage and hour laws. Defendant further asserts that it 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, and all laws, regulations and case law interpreting the above.
- D. On August 10, 2023, the Parties participated in an all-day mediation presided over by the Hon. Howard Broadman (Ret'd), a respected mediator of wage and hour class actions lawsuits. During the mediation, each side, represented by its respective counsel, engaged in vigorous settlement negotiations and ultimately agreed to the terms of a settlement. This Agreement replaces and supersedes the Memorandum of Settlement entered into on August 10, 2023 and any other agreements, understandings, or representations between the Parties.
- E. 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.

- F. 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 One Million Five Hundred Thousand Dollars (\$1,500,000.00). 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 notice of entry of the final approval order if no objection to the Agreement is made, within 60 days of the final approval order if an objection is made but no appeal is filed, and within 60 days of the date the judgment is no longer subject to appeal if an appeal is filed, 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 \$15,000.00 as his Class Representative Service Payment. Defendant will not oppose a Class Representative Service Payment of no more than \$15,000.00 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 \$15,000.00 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 \$525,000.00 (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 \$525,000.00 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 \$525,000.00 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 Class Counsel 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 of \$100,000.00 out of the Gross Settlement Amount, 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. Both payroll periods and workweeks must be integers.

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 800 Class Members who collectively worked 80,000 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 12.5% through the Class Period, then the amount of the settlement will increase proportionately per class workweek added. Thus, for each workweek over 90,000 workweeks, the Gross Settlement Amount escalates by 0.00125% (i.e., 1/80,000, or \$18.75 per workweek over 90,000). For example, if the workweeks ultimately total 98,000, the Gross Settlement Amount will escalate to \$1,650,000.00, plus a corresponding amount of employer's share of payroll tax.

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 Settlement Administrator cannot locate a more current address, the Settlement Administrator will re-mail to the same address. 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 and employer's share of payroll tax.
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 within fourteen (14) days of service of Notice of Entry of Judgment. Defendant shall fund the Gross Settlement Amount as follows: Defendant shall pay out the total sum of \$1,500,000.00 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 full and complete payment by Defendant of the Gross Settlement Amount and employers' share of payroll taxes pursuant to Paragraph P, 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 all other wage and hour claims that could have been pled arising out of the same operative facts, that each Participating Class Member had, may have, 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**") which occurred, or may have 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:

Kenneth Yoon, Esq.
Stephanie Yasuda, Esq.
YOON LAW, APC County of Fresno
One Wilshire Blvd., Suite 2200
Los Angeles, California 90017
Telephone: (213) 612-0988
Facsimile: (213) 947-1211
kyoon@yoonlaw.com
syasuda@yoonlaw.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 Memorandum of Agreement (August 10, 2023) 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.

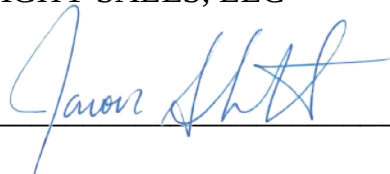
IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: November 27, 2023

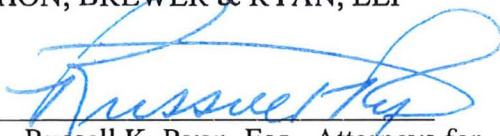
DONAGHY SALES, LLC

By: _____



Dated: 11/28, 2023

MOTSCHIEDLER, MICHAELIDES
WISHON, BREWER & RYAN, LLP

By: 
Russell K. Ryan, Esq., Attorneys for
Donaghy Sales, LLC

Dated: 11/27, 2023

YOON LAW APC

By: 
Kenneth Yoon, Esq.
Class Counsel

Dated: 11/9/2023 2023

By: 
Dillon Geltz (Nov 9, 2023 17:46 PST)
Dillon Geltz
Class Representative

EXHIBIT A

[NOTICE OF PROPOSED SETTLEMENT OF CLASS LEGAL ACTION, CONDITIONAL
CERTIFICATION OF SETTLEMENT CLASS, PRELIMINARY APPROVAL OF
SETTLEMENT, AND HEARING DATE FOR FINAL COURT APPROVAL]

**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT
AND HEARING DATE FOR COURT APPROVAL**
(*Geltz v. Donaghy Sales, LLC*; Merced County Superior Court Case No. _____)

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE
READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	If you are a member of the Class, you will automatically receive a payment if you do not exclude yourself. Your estimated Settlement Share amount is: \$<< [REDACTED] >>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below.
Exclude Yourself	To exclude yourself, you must send a letter to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. Instructions are set forth below.
Object	Write to the Court about why you do not like the settlement. Directions are provided below.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of the above-captioned action (the “Legal Action”) filed in the Superior Court of the State of California, in and for the County of Merced (the “Court”), has been reached by the parties and has been granted preliminary approval by the Court supervising the Legal Action.

You have received this Notice because you have been identified as a member of the Class, as defined below:

All non-exempt hourly employees who were California residents who worked for Defendant, Donaghy Sales, LLC in California at any time during the Class Period, excluding Rodolfo Galarza.

The Class Period is the time period between February 7, 2019 through the date of preliminary approval of the settlement.

This Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On _____, Plaintiff filed a Representative Action Complaint for penalties against Defendant under the Private Attorneys General Act of 2004 (“PAGA”) for alleged violations of Labor Code Sections 201-204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1197, 1197.1, 1198, 2802 and Industrial Welfare Commission Wage Order 9-2001 in the Superior Court of the State of California, County of Merced. Defendant answered the Complaint with a general denial and affirmative defenses.

Defendant denies that it violated the law in any way, and further denies that the Legal Action is appropriate for class treatment for any purpose other than this settlement. Nothing in this Notice, or the Settlement itself, or any actions

to carry out the terms of the Settlement mean that the Defendant admits any fault, guilt, negligence, wrongdoing or liability whatsoever. The Court has made no findings regarding the above claims.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved Plaintiff to serve as the Class Representative, and Yoon Law, APC to serve as Class Counsel.

3. What are the terms of the Settlement?

Settlement Amount. Without admitting any wrongdoing, Defendant has agreed to pay One Million Five Hundred Thousand Dollars (\$1,500,000.00) (called the “Gross Settlement Amount”) to fully resolve the claims in the Legal Action. The Gross Settlement Amount includes all settlement payments to Participating Class Members; Class Counsel’s attorneys’ fees, litigation expenses, and costs; all Settlement Administration Expenses; payment to the Labor Workforce Development Agency (“LWDA”) for civil penalties; and the Class Representative Service Payment. All of the Gross Settlement Amount will be disbursed under the Settlement, and none of it will revert to Defendant.

Settlement Administration and Other Payments. The Court has tentatively approved certain payments to be made from the Gross Settlement Amount as follows, which will be subject to final Court approval:

- Settlement Administration. Payment to the Settlement Administrator, not to exceed \$30,000.00, for the expense of notifying the Class Members of the Settlement, processing opt outs submitted by Class Members, and distributing settlement payments. 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.
- Attorneys’ Fees, Expenses, and Costs. Payment to Class Counsel of reasonable attorneys’ fees not to exceed \$525,000.00 (35% of the Gross Settlement Amount) as approved by the Court for the work Class Counsel performed in this Legal Action, and will continue to perform through settlement finalization, together with reimbursement for litigation expenses and costs actually incurred in connection with the Legal Action not to exceed \$30,000. Class Counsel has been prosecuting the Legal Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.
- Class Representative Service Payment. A service award not to exceed \$15,000 to the Plaintiff to compensate him for services on behalf of the Class in initiating and prosecuting the Legal Action. This payment is in addition to whatever payments the Plaintiff is otherwise entitled to as a Participating Class Member.
- PAGA Penalty. A payment of \$100,000.00 for PAGA penalties, 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 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.
- Calculation of Settlement Class Member Awards. After the above payments are subtracted from the Gross Settlement Amount, the remaining amount will be used to make settlement payments to Participating Class Members (the “Net Settlement Amount”). The Settlement Administrator will pay a Settlement Share from the Net Settlement Amount to each Class Member who does not request exclusion (“Participating Class Member”). The submission of a claim form is not required to be paid. Here is how it works:

- **Allocation Formula:** 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.

Class Members who do **not** opt out of the Settlement as provided for below will be entitled to receive a payment pursuant to the Settlement. **If you do nothing, you will be deemed a Participating Class Member, a settlement check will be mailed to you, and you will release all claims you may have related to the allegations in the case,** as described below.

Tax Matters. For the Class, fifty percent (50%) of Claims shall be allocated to each Class Member's respective wage claims, and fifty percent (50%) of Claims shall be allocated to each Class Member's respective non-wage claims for penalties and interest. The wage portion shall be reported as such to each Participating Class Member on an IRS Form W-2. The non-wage portion shall be reported as such to each Participating Class Member via an IRS Form 1099. Class Members may wish to consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

Releases. Upon final approval by the Court of the Settlement, all 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. The Released Class Claims excludes all other claims, including claims for wrongful termination, unemployment insurance, disability, workers' compensation, and claims outside the Class Period.

In exchange for the settlement payment, all Class Members who do not timely and formally opt out of the settlement by requesting exclusion as described below shall be bound by this release.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following a final approval hearing on the Settlement.

4. How much will my payment be?

Defendant's records reflect that you have _____ weeks worked during the Class Period.

Based on this information, your estimated Settlement Share payment is calculated to be \$_____.

If you wish to challenge the weeks worked stated above, then you must submit a written, signed challenge along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than forty-five (45) calendar days after the postmark date of this Notice.

5. How can I get a payment?

To receive a payment under this Settlement, you **do not have to do anything**. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: _____, (800) _____.

The Court will hold a hearing on (date) to decide whether to approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, the first payments will be mailed within a few months of final approval, and the second and third payments mailed in the following years after the money is received. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient.

6. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive no money from the Settlement, and you will not be bound by its terms.** To opt out, you must submit a written request to the Settlement Administrator that states "I do not want to be part of the settlement class in the *Geltz v. Donaghy Sales* class action." This request for exclusion must be signed, state the Class Member's name and address, and be postmarked no later than _____, 2024. Written requests for exclusion that are postmarked after _____, 2024, or are unsigned by the Class Member, will be rejected, and those Class Members will remain bound by the Settlement and the Release described above.

7. How do I tell the Court that I don't like the Settlement?

Any Class Member, who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections must be in writing and state the Class Member's name, current address, telephone number, dates of employment with Defendant, last four digits of his or her social security number, and describe why the objector believes the Settlement is unfair and whether the objector intends to appear at the final approval hearing. The objections must be mailed to the Settlement Administrator and mailed or delivered to Class Counsel and counsel for Defendant at the below addresses on or before _____, 2020. All objections or other correspondence must also state the name and number of the case, which is *Geltz, et al. v. Donaghy Sales, LLC*, in the Superior Court of the State of California, in and for the County of Merced, Case No. _____. To object to the Settlement, you must remain a member of the Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object. Any Class Member who does not object in the manner provided in this Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Class Members who mail timely notices of objection, and which indicate the Class Member wishes to be heard at the final approval hearing, will have a right to appear, either in person or through their own attorney at their expense, at the final approval hearing and have their objections heard by the Court. Objections not previously filed in writing in a timely manner as described above will not be considered by the Court.

The address for the Settlement Administrator is

The addresses for Parties' counsel are as follows:

Class Counsel:

Kenneth Yoon, Esq.
Stephanie Yasuda, Esq.
YOON LAW, APC
751 N. Fair Oaks Avenue, Suite 102
Pasadena, California 91103

Counsel for Defendant:

Russell K. Ryan
Motschiedler, Michaelides, Wishon, Brewer &
Ryan LLP
1690 West Shaw Avenue, Suite 200
Fresno, CA 93711

8. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at 00:00 AM/PM on _____, at the Merced County Superior

Court in Department [REDACTED], located at Old Merced Courthouse, 627 W 21st Street, Merced, CA 95340. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

9. How do I get more information?

You may call the Settlement Administrator at [REDACTED] or write to [Settlement Administrator] at [REDACTED]; or contact Class Counsel at 1-818-230-7502.

You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to Yoon Law, APC, 751 North Fair Oaks Avenue, Suite 102, Pasadena, California 91103. You may also get more details by examining the documents in the court's file at <https://jpportal.mercedcourt.org/MERCEDPUBLIC/> and entering the Case No. _____.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must keep the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct such unclaimed funds to the California Department of Industrial Relations Unpaid Wage Fund with, if possible, an identification of the Class Member who failed to cash the check. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT B

[ORDER OF PRELIMINARY APPROVAL OF SETTLEMENT]

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF MERCED
12

13 DILLON GELTZ, individually, and on
14 behalf and on behalf of the general public
15 similarly situated,

16 Plaintiff,

17 v.

18 DONAGHY SALES, LLC, a California
19 company, and DOES 1 through 50,
20 inclusive,

21 Defendants.
22

Case No.

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: _____, 2024

Hearing Time: _____

Judge: Hon. _____

Dept.: _____

Date Action Filed: _____

Trial Date: None Set

23 This matter, having come before the Superior Court of the State of California,
24 in and for the County of Merced, at ____ a.m./p.m. on [DATE], 2024, with Kenneth Yoon
25 and Stephanie Yasuda of Yoon Law APC appearing as counsel for Plaintiff Dillon Geltz
26 (“**Plaintiff**”), individually and on behalf of putative class, and Motschieder, Michaelides,
27
28

1 Wishon, Brewer & Ryan LLP appearing as counsel for defendant Donaghy Sales, LLC
2 (“**Defendant**”). The Court, having carefully considered the briefs, argument of counsel and
3 all matters presented to the Court and good cause appearing, hereby GRANTS Plaintiff’s
4 Motion for Preliminary Approval of Class Action Settlement.

5 **IT IS HEREBY ORDERED:**

6 1. The Court preliminarily approves the Class Action Settlement
7 Agreement (“Agreement”) attached as Exhibit #1 to the Declaration of Kenneth Yoon in
8 Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. This is
9 based on the Court’s determination that the Agreement is within the range of possible final
10 approval, pursuant to the provisions of Section 382 of the California Code of Civil Procedure
11 and Rule 3.769 of the California Rules of Court.

12 2. This Order incorporates by reference the definitions in the Agreement,
13 and all terms defined therein shall have the same meaning in this Order as set forth in the
14 Agreement.

15 3. It appears to the Court on a preliminary basis that the settlement amount
16 and terms are fair, adequate and reasonable as to all potential Class Members when balanced
17 against the probable outcome of further litigation relating to certification, liability and
18 damages issues. It further appears that investigation and research have been conducted such
19 that counsel for the Parties are able to reasonably evaluate their respective positions. It
20 further appears to the Court that settlement at this time will avoid substantial additional costs
21 by all Parties, as well as avoid the delay and risks that would be presented by the further
22 prosecution of the Action. It further appears that the Settlement has been reached as the
23 result of intensive, serious and non-collusive, arms-length negotiations.

24 4. The Court preliminarily finds that the Settlement appears to be within
25 the range of reasonableness of a settlement that could ultimately be given final approval by
26 this Court. The Court has reviewed the monetary recovery that is being granted as part of the
27 Settlement and preliminarily finds that the monetary settlement awards made available to
28

1 Class Members is fair, adequate, and reasonable when balanced against the probable
2 outcome of further litigation relating to certification, liability, and damages issues.

3 5. The Court recognizes that Plaintiffs and Defendant stipulate and agree
4 to certification of a class for settlement purposes only. This stipulation will not be deemed
5 admissible in this or any other proceeding should this Settlement not become final. For
6 settlement purposes only, the Court conditionally certifies the following Class: “All
7 individuals who were California residents who formerly worked or currently work in non-
8 exempt hourly positions at Defendant Donaghy Sales, LLC in California at any time between
9 February 7, 2019 through today’s date (the “**Class Period**”), excluding Rodolfo Galarza.”

10 6. The Court concludes that, for settlement purposes only, the Class meets
11 the requirements for certification under section 382 of the California Code of Civil
12 Procedure in that: (a) the Class is ascertainable and so numerous that joinder of all members
13 of the Class is impracticable; (b) common questions of law and fact predominate, and there is
14 a well-defined community of interest amongst the members of the Class with respect to the
15 subject matter of the litigation; (c) the claims of the named plaintiffs are typical of the claims
16 of the members of the Class; (d) the Class Representative will fairly and adequately protect
17 the interests of the members of the Class; (e) a class action is superior to other available
18 methods for the efficient adjudication of this controversy; and (f) counsel for the Class is
19 qualified to act as counsel for the Class.

20 7. The Court provisionally appoints Plaintiff Dillon Geltz as the
21 representative of the Class.

22 8. The Court provisionally appoints Yoon Law, APC as Class Counsel for
23 the Class.

24 9. The Court hereby approves, as to form and content, the Class Notice
25 attached to the Agreement as Exhibit A. The Court finds that the Class Notice appears to
26 fully and accurately inform the Class Members of all material elements of the proposed
27 Settlement, of the Class Members’ right to be excluded from the Class by submitting a
28

1 written opt-out request, and of each Class Members' right and opportunity to object to the
2 Settlement. The Court further finds that the distribution of the Class Notice substantially in
3 the manner and form set forth in the Agreement and this Order meets the requirements of due
4 process, is the best notice practicable under the circumstances, and shall constitute due and
5 sufficient notice to all persons entitled thereto. The Court orders the mailing of the Class
6 Notice by first class mail, pursuant to the terms set forth in the Agreement.

7 10. The Court hereby appoints *** as Claims Administrator.

8 11. The Court hereby preliminarily approves the proposed procedure for
9 exclusion from the Settlement. Any Class Member may choose to opt out of and be
10 excluded from the Class as provided in the Class Notice by following the instructions for
11 requesting exclusion from the Class that are set forth in the Class Notice. All requests for
12 exclusion must be postmarked or received by the deadline set forth in the Class Notice. Any
13 such person who chooses to opt out of and be excluded from the Class will not be entitled to
14 any recovery under the Settlement and will not be bound by the Settlement or have any right
15 to object, appeal or comment thereon. Class Members who have not requested exclusion
16 shall be bound by all determinations of the Court, the Agreement and Judgment.

17 12. A final approval hearing shall be held before this Court on
18 _____, at _____ in Department _____ of the Merced County
19 Superior Court, 627 W 21st Street, Merced, CA 95340, to determine all necessary matters
20 concerning the Settlement, including: whether the proposed settlement of the Action on the
21 terms and conditions provided for in the Agreement is fair, adequate and reasonable and
22 should be finally approved by the Court; whether an Order Granting Final Approval should
23 be entered herein; whether the plan of allocation contained in the Agreement should be
24 approved as fair, adequate and reasonable to the Class Members; and to finally approve
25 Class Counsel's fees and litigation costs, Plaintiff's service award, and the Settlement
26 Administrator's expenses.

1 13. No Class Member shall be entitled to be heard at the final approval
2 hearing (whether individually or through separate counsel) or to object to the Settlement, and
3 no written objections or briefs submitted by any Class Member shall be received or
4 considered by the Court at the final approval hearing, unless written notice of the Class
5 Member's intention to appear at the final approval hearing were timely submitted as provided
6 in the Notice. Class Members who fail to timely submit written objections in the manner
7 specified in the Notice shall be deemed to have waived any objections and shall be
8 foreclosed from making any written objection to the Settlement.

9 14. The Settlement is not a concession or admission, and shall not be used
10 against Defendant as an admission or indication with respect to any claim of any fault or
11 omission by Defendant. Whether or not the Settlement is finally approved, neither the
12 Settlement, nor any document, statement, proceeding or conduct related to the Settlement,
13 nor any reports or accounts thereof, shall in any event be construed as, offered or admitted in
14 evidence as, received as or deemed to be evidence for any purpose adverse to the Defendant,
15 including, but not limited to, evidence of a presumption, concession, indication or admission
16 by Defendant of any liability, fault, wrongdoing, omission, concession or damage.

17 15. In the event the Settlement does not become effective in accordance
18 with the terms of the Agreement, or the Settlement is not finally approved, or is terminated,
19 canceled or fails to become effective for any reason, this Order shall be rendered null and
20 void and shall be vacated, and the Parties shall revert to their respective positions as of
21 before entering into the Agreement.

22 16. The Court reserves the right to adjourn or continue the date of the final
23 approval hearing and all dates provided for in the Agreement without further notice to Class
24 Members, and retains jurisdiction to consider all further applications arising out of or
25 connected with the proposed Settlement.
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3 Judge of the Superior Court
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EXHIBIT C

**[ORDER GRANTING FINAL APPROVAL OF CLASS LEGAL ACTION SETTLEMENT
AND JUDGMENT]**

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF MERCED
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13 DILLON GELTZ, individually, and on
14 behalf and on behalf of the general public
similarly situated,

15 Plaintiff,

16 v.

17 DONAGHY SALES, LLC, a California
18 company, and DOES 1 through 50,
19 inclusive,

20 Defendants.
21
22

Case No.

**[PROPOSED] FINAL APPROVAL
ORDER**

Hearing Date: _____, 2023

Hearing Time: _____

Judge: Hon. _____

Dept.: _____

Date Action Filed: _____

Trial Date: None Set

23 The motion of Plaintiff Dillon Geltz (“**Plaintiff**”) for an order finally
24 approving the Class Action Settlement Agreement (hereinafter the “**Agreement**”), Class
25 Counsel’s fees and costs, service awards, and settlement administration costs duly came on
26 for hearing on _____ before the above entitled Court. Kenneth Yoon and
27
28

Stephanie Yasuda of Yoon Law APC appeared on behalf of the Plaintiff and the Class. Russell K. Ryan and the law firm of Motschiedler, Michaelides, Wishon, Brewer & Ryan LLP appeared as counsel for defendant Donaghy Sales, LLC (“**Defendant**”).

I.

FINDINGS

Based on the oral and written argument and evidence presented in connection with the motion, the Court makes the following findings:

1. All terms used herein shall have the same meaning as defined in the Agreement.

2. This Court has jurisdiction over the subject matter of this litigation pending before the California Superior Court for the County of Merced, Case No. _____, entitled *Dillon Geltz, et al. v. Donaghy Sales, LLC*, and over all Parties to this litigation, including the Class.

3. Based on a review of the papers submitted by Plaintiff and a review of the applicable law, the Court finds that the Gross Settlement Amount of \$1,500,000.00 and the terms set forth in the Agreement are fair, reasonable, and adequate.

4. The Court further finds that the Settlement was the result of arm’s-length negotiations conducted after Class Counsel had thoroughly and adequately investigated the claims and became familiar with the strengths and weaknesses of those claims. In particular, the amount of monies allocated to the Participating Class Members, and the assistance of an experienced mediator in the settlement process, among other factors, support the Court’s conclusion that the Settlement is fair, reasonable, and adequate.

Preliminary Approval of the Settlement

5. On _____, 2023, the Court granted preliminary approval of a class-wide settlement. At this same time, the Court approved certification of a provisional Class for settlement purposes only.

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2 **Notice to the Class**

3 6. In compliance with the Preliminary Approval Order, class notice was
4 mailed by first class mail to Class Members at their last known addresses on or about
5 _____, 2023. Mailing of the Class Notice to their last known addresses was the
6 best notice practicable under the circumstances and was reasonably calculated to
7 communicate actual notice of the litigation and the proposed settlement to the Class. The
8 Class Notice given to the Class Members fully and accurately informed the Class Members
9 of all material elements of the proposed Settlement and of their opportunity to object to or
10 comment thereon or to seek exclusion from the Settlement; was the best notice practicable
11 under the circumstances; was valid, due and sufficient notice to all Class Members; and
12 complied fully with the laws of the State of California, the United States Constitution, due
13 process and other applicable law. The Class Notice fairly and adequately described the
14 Settlement and provided Class Members adequate instructions and a variety of means to
15 obtain additional information.

16 7. The deadline for opting out or objecting to the Settlement was
17 _____. There was an adequate interval between notice and the deadline to permit
18 Class Members to choose what to do and act on their decision. A full opportunity has been
19 afforded to the Class Members to participate in this hearing, and all Class Members and
20 other persons wishing to be heard have been heard. Class Members also have had a full and
21 fair opportunity to exclude themselves from the proposed Settlement and Class.
22 Accordingly, the Court determines that all Class Members who did not timely and properly
23 submit a request for exclusion are bound by the Settlement, this Final Approval Order, and
24 Judgment thereon.

25 **Fairness Of Settlement**

26 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford*
27 *Motor Co.* 48 Cal.App.4th 1794, 1801 (1996).
28

1 a. The settlement was reached through arm's-length bargaining
2 between the parties during a mediation before Hon. Howard Broadman (Ret'd), a respected
3 mediator of class actions. There has been no collusion between the parties in reaching the
4 proposed settlement.

5 b. Plaintiff's investigation and discovery have been sufficient to
6 allow the Court and counsel to act intelligently.

7 c. Counsel for both parties are experienced in similar employment
8 class action litigation. All counsel recommended approval of the Agreement.

9 d. The percentage of objectors and requests for exclusion is small.
10 ____ objections were received. ____ requests for exclusion were received.

11 e. The participation rate was high. ____ Participating Class
12 Members will be sent a settlement payment, representing ____% of the Class.

13 9. The consideration to be given to the Participating Class Members under
14 the terms of the Agreement is fair, reasonable and adequate considering the strengths and
15 weaknesses of the claims asserted in this action and is fair, reasonable and adequate
16 compensation for the release of the claims, given the uncertainties and risks of the litigation
17 and the delays which would ensue from continued prosecution of the action.

18 10. The proposed Agreement is approved as fair, adequate and reasonable
19 and in the best interests of the Participating Class Members.

20 **Attorneys' Fees**

21 11. An award of \$525,000.00 for attorneys' fees and \$30,000.00 for
22 litigation costs and expenses is reasonable, in light of the contingent nature of Class
23 Counsel's fee, the hours worked by Class Counsel, and the results achieved by Class
24 Counsel.

25 **Service Award**

26 12. The Agreement provides for a service award of up to \$15,000 for the
27 Plaintiff, subject to the Court's approval. The Court finds that a service award of \$15,000 to
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1 the Plaintiff is reasonable in light of the risks and burdens undertaken by the Plaintiff in this
2 litigation and for their time and effort in bringing and prosecuting this matter on behalf of the
3 Class.

4 **Settlement Administration Expenses**

5 13. The Settlement Administrator shall calculate and administer the
6 payment to be made to the Participating Class Members, transmit payment for attorneys' fees
7 and costs to Class Counsel, transmit the service award to the Plaintiff, and transmit the
8 PAGA Payment to the California Labor and Workforce Development Agency ("LWDA").
9 The Settlement Administrator has documented \$30,000.00 in expenses, and this amount is
10 reasonable in light of the work performed by the Settlement Administrator and is therefore
11 approved.

12 **PAGA Payment**

13 14. The Agreement provides for a PAGA Payment of \$75,000.00, which is
14 allocated 75% to the LWDA and 25% to the Class as part of the Net Common Fund, which
15 the Court finds to be reasonable.

16 **II**

17 **ORDERS**

18 Based on the foregoing findings, and good cause appearing, IT IS HEREBY
19 ORDERED, ADJUDGED AND DECREED:

20 1. The Class is certified for the purposes of settlement only. The Class is
21 hereby defined as follows:

22 "All individuals who were California residents who formerly worked or
23 currently work in non-exempt hourly positions at Defendant Donaghy Sales, LLC in
24 California at any time between February 7, 2019 through the date of preliminary approval of
25 the settlement, excluding Rodolfo Galarza."
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2. All persons who meet the foregoing definition are members of the Class, except for those individuals who filed a timely request for exclusion from the Class.

[Describe any opt outs].

3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the best interest of the Class.

4. Class Counsel are awarded attorneys' fees in the amount of \$525,000.00 and litigation costs in the amount of \$_____. Class Counsel shall not seek or obtain any other compensation or reimbursement from Defendant, Plaintiff or members of the Class.

5. The payment of a service award in the amount of \$15,000 for the Plaintiff is approved.

6. The payment of \$_____ to the Settlement Administrator for settlement administration services is approved.

7. The PAGA Payment of \$75,000.00 to the LWDA is approved.

8. A Final Judgment in this action shall be entered. The Final Judgment shall bind each Participating Class Member. The Final Judgment shall operate as a full release and discharge of the Released Class Claims against the Released Parties. All rights to appeal the Final Judgment have been waived. The Final Judgment and this Final Approval Order shall have res judicata effect and bar all Participating Class Members from bringing any action asserting "Released Class Claims" as that term is defined in the Agreement.

9. The Agreement and Settlement are not an admission by Defendant, nor is this Final Approval Order a finding, of the validity of any claims in the Action or of any wrongdoing by Defendant. Neither this Final Approval Order, the Final Judgment, the Agreement, nor any document referred to herein, nor any action taken to carry out the Agreement is, may be construed as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability whatsoever. The entering into or carrying out of the Agreement, and any negotiations or proceedings related thereto, shall not in any event be

1 construed as, or deemed to be evidence of, an admission or concession with regard to the
2 denials or defenses by Defendant and shall not be offered in evidence in any action or
3 proceeding against Defendant in any court, administrative agency or other tribunal for any
4 purpose whatsoever other than to enforce the provisions of this Final Approval Order, the
5 Final Judgment, the Agreement, or any related agreement or release. Notwithstanding these
6 restrictions, any of the Released Parties may file in the Action or in any other proceeding this
7 Final Approval Order, the Final Judgment, the Agreement, or any other papers and records
8 on file in the Action as evidence of the Settlement to support a defense of res judicata,
9 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as
10 to the Released Class Claims.

11 10. Notice of entry of this Final Approval Order and the ensuing Final
12 Judgment shall be given to Class Counsel on behalf of Plaintiff and all Settlement Class
13 Members. It shall not be necessary to send notice of entry of this Final Approval Order or
14 the ensuing Final Judgment to individual Class Members. The time for any appeal shall run
15 from the Court's entry of the Final Approval Order and Final Judgment.

16 11. After entry of Final Judgment, the Court shall retain jurisdiction to
17 construe, interpret, implement, and enforce the Agreement, to hear and resolve any contested
18 challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute
19 arising from or in connection with the distribution of settlement benefits.

20 12. If the Agreement does not become final and effective in accordance
21 with the terms of the Agreement, then this Final Approval Order, the Final Judgment, and all
22 orders entered in connection herewith, shall be rendered null and void and shall be vacated.
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24 **IT IS SO ORDERED.**

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26 Dated: _____
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Judge of the Superior Court

EXHIBIT D
[COMPLAINT]

KENNETH H. YOON (State Bar No. 198443)
STEPHANIE E. YASUDA (State Bar No. 265480)
YOON LAW, APC
751 N. Fair Oaks Ave., Suite 102
Pasadena, California 91103
Telephone: (213) 612-0988
Facsimile: (213) 947-1211

Attorneys for Plaintiff Dillon Geltz

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

DILLON GELTZ, an aggrieved employee, on
behalf of himself and other current and former
employees,

Plaintiff,

v.

DONAGHY SALES, LLC, an entity unknown,
and DOES 1 through 50, inclusive,

Defendants.

Case No.:

**CLASS ACTION AND
REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES AND
PENALTIES FOR:**

**(1) VIOLATION OF LABOR CODE
SECTIONS 226.7 AND 512;**

**(2) VIOLATION OF LABOR CODE
SECTIONS 1194 and 510;**

**(3) VIOLATION OF LABOR CODE
SECTION 2802;**

**(4) VIOLATION OF LABOR CODE
SECTION 226;**

**(5) VIOLATION OF LABOR CODE
SECTIONS 201-204;**

**(6) VIOLATION OF LABOR CODE
SECTION 2698 *et. seq.*;**

**(7) BUSINESS AND PROFESSIONS
CODE SECTION 17200 *et seq.***

DEMAND FOR JURY TRIAL

1 Plaintiff Dillon Geltz (“Plaintiff”) hereby submits his Class Action and Representative
2 Action Complaint for Penalties against Defendants Donaghy Sales, LLC, and DOES 1 through
3 50, inclusive (collectively, “Defendants”), on behalf of himself and other current and former
4 employees of Defendants for meal period and rest break wages, minimum and overtime wages,
5 reimbursements, and penalties as follows:

6 **INTRODUCTION**

7 **1.** This class action and representative action is brought pursuant to Labor Code §§
8 201 to 204, 226, 226.7, 510, 512, 1194, 2802, 2698 *et seq.* (the Private Attorneys General Act
9 of 2004 (“PAGA”)); Industrial Welfare Commission (“IWC”) Wage Order 9-2001 (codified as
10 California Code of Regulations Title 8 § 11090), and Business and Professions Code § 17200
11 *et seq.* (Unfair Competition Law (“UCL”)).

12 **2.** This Complaint challenges Defendants’ systemic illegal employment practices
13 resulting in violations of the stated provisions of the Labor Code and corresponding IWC
14 Wage Order against the identified class of employees and group of aggrieved employees.

15 **3.** Plaintiff is informed and believes and thereon alleges Defendants joint and
16 severally acted intentionally and with deliberate indifference and conscious disregard to the
17 rights of all employees in (1) failing to provide all meal periods and rest breaks, (2) failing to
18 pay all minimum and overtime wages, (3) failing to reimburse for all necessary business-
19 related costs and expenses, (4) failing to provide accurate wage statements, and (5) failing to
20 pay all wages due and owing upon termination of employment.

21 **4.** This Complaint is timely filed, in accordance with the limitations period
22 provided by Code of Civ. Pro. section 340(a). On February 7, 2020, Plaintiff provided written
23 notice to the LWDA and Defendants of the specific provisions of the Labor Code he contends
24 were violated, and the theories supporting his contentions. To date, he has not received a
25 response. While awaiting a potential response from the LWDA to the February 7, 2020 notice
26 pursuant to Labor Code § 2699.3(a)(2)(A), the Judicial Council of California issued emergency
27 rules related to the COVID-19 pandemic. Specifically, Emergency Rule 9 states
28 “[n]otwithstanding any other law, the statutes of limitation for civil causes of action are tolled

1 from April 6, 2020, until 90 days after the Governor declares that the state of emergency
2 related to the COVID-19 pandemic is lifted.” Accordingly, per the emergency tolling rule
3 adopted by the Judicial Council, the limitations period for Plaintiff’s cause of action was tolled,
4 and the instant complaint is thus timely filed.

5 **JURISDICTION AND VENUE**

6 **5.** This class action is brought pursuant to California Code of Civil Procedure §
7 382. This representative action is brought pursuant to PAGA. The monetary damages sought
8 by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be
9 established according to proof at trial.

10 **6.** This Court has jurisdiction over this action pursuant to California Constitution,
11 Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes
12 except those given by statute to other courts. The statutes under which this action is brought
13 do not specify any other basis for jurisdiction.

14 **7.** This Court has jurisdiction over the violations of PAGA and Labor Code §§ 201
15 to 204, 226, 226.7, 510, 512, 1194, 2802, and the IWC Wage Order.

16 **8.** This Court has jurisdiction over all Defendants because, upon information and
17 belief, each party has sufficient minimum contacts in California, or otherwise intentionally
18 avails itself of California law so as to render the exercise of jurisdiction over it by the
19 California courts consistent with traditional notions of fair play and substantial justice.

20 **9.** Venue is proper in this Court because, upon information and belief, the named
21 Defendants transact business and/or have offices in this county, and the acts and omissions
22 alleged herein took place in this county.

23 **PARTIES**

24 **10.** Plaintiff Dillon Geltz is an individual residing in the State of California.
25 Plaintiff was formerly employed by Defendants in a non-exempt, hourly-paid position during
26 the relevant time period.

27 **11.** Defendant Donaghy Sales, LCC is an unknown business entity organized and
28 existing under the laws of California, licensed to do business and actually doing business in the

1 State of California, including the County of Merced.

2 **12.** Plaintiff does not know the true names or capacities, whether individual, partner
3 or corporate, of Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
4 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend
5 this complaint when the true names and capacities are known. Plaintiff is informed and
6 believes and thereon alleges that each of Defendants designated as a DOE was responsible in
7 some way for the matters alleged herein and proximately caused Plaintiff and members of the
8 general public and the group of aggrieved employees to be subject to the illegal employment
9 practices, wrongs and injuries complained of herein.

10 **13.** At all times herein mentioned, Defendants, and each of them, were agents,
11 partners, joint venturers, representatives, servants, employees, successors-in-interest, co-
12 conspirators and assigns, each of the other, and at all times relevant hereto were acting within
13 the course and scope of their authority as such agents, partners, joint venturers, representatives,
14 servants, employees, successors, co-conspirators and assigns, and that all acts or omissions
15 alleged herein were duly committed with ratification, knowledge, permission, encouragement,
16 authorization and consent of each Defendant designated herein.

17 **14.** As such, and based upon all the facts and circumstances incident to Defendants’
18 business in California, Defendants are subject to Labor Code §§ 201 to 204, 226, 226.7, 510,
19 512, 1194, 2802, PAGA, and the IWC Wage Order.

20 **CLASS ACTION ALLEGATIONS**

21 **15. Definition:** Plaintiff seeks class certification pursuant to California Code of
22 Civil Procedure § 382 of a class of all non-exempt employees of Defendants who worked in
23 California during the period from February 7, 2019¹ to the present, including the following
24 Subclasses:

- 25 a) **Meal Period Subclass:** all non-exempt employees of Defendants who
26 worked one or more shifts in excess of six (6) hours in California during

27 ¹ Pursuant to Emergency Rule 9 of the Judicial Council of California’s emergency rules
28 related to the COVID-19 pandemic, “[n]otwithstanding any other law, the statutes of
limitations and repose for civil causes of action that exceed 180 days are tolled from April 6,
2020, until October 1, 2020.”

the period from February 7, 2019 to the present;

As an alternative to Subclass (a): all non-exempt employees of Defendants who worked one or more shifts in excess of six (6) hours in California without receiving a 30-minute break during which they were relieved of all duties, during the period from February 7, 2019 to the present;

b) **Rest Break Subclass:** all non-exempt employees of Defendants who worked one or more shifts of three and one-half (3.5) hours or more in California during the period from February 7, 2019 to the present;

As an alternative to Subclass (b): all non-exempt employees of Defendants who worked one or more shifts of three and one-half (3.5) hours or more in California without receiving all required paid 10-minute breaks during which they were relieved of all duties, during the period February 7, 2019 to the present;

c) **Overtime Subclass:** all non-exempt employees of Defendants who worked one or more shifts in excess of eight (8) hours in a day or forty (40) hours in a workweek in California during the period from February 7, 2019 to the present;

As an alternative to Subclass (c): all non-exempt employees of Defendants who worked one or more shifts in excess of eight (8) hours in a day or forty (40) hours in a workweek in California and were not properly paid all overtime wages during the period from February 7, 2019 to the present;

d) **Minimum Wage Subclass** all Defendants' non-exempt employees who worked in California and were not properly paid all minimum wages during the period from February 7, 2019 to the present;

e) **Reimbursement Subclass:** all Defendants' non-exempt employees who worked in California and who were not reimbursed all necessary work-related expenses during the period from February 7, 2019 to the present;

f) **Wage Statement Subclass:** all Defendants' non-exempt employees who worked in California and received an itemized wage statement during the period of February 7, 2020 to the present;

g) **Terminated Employee Subclass:** all Defendants' non-exempt employees who worked in California and who were not properly paid all wages on termination or within 72 hours thereof during the period of February 7, 2020 to the present;

16. Numerosity: The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identities of the members of the Class are readily ascertainable by objective, easily understood terms contained within the Class and Subclass definitions, and by review of Defendants' records, including payroll records.

17. Adequacy of Representation: Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiff's attorneys are ready, willing and able to fully and adequately represent the Class and Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California courts.

18. Defendants administered a corporate policy, practice and/or procedure of (1) failing to pay all minimum and overtime wages; (2) failing to reimburse all necessary work-related expenses; (3) failing to provide meal periods and rest breaks; (4) failing to provide accurate wage statements; (5) failing to timely pay all wages due and owing upon termination of employment; and (6) engaging in unfair business practices. Plaintiff alleges this corporate conduct is accomplished with the advance knowledge and designed intent to willfully withhold appropriate wages for work performed members of the Class.

19. Common Question of Law and Fact: There are predominant common questions of law and fact and a community of interest amongst Plaintiff and the claims of the Class concerning whether Defendants' policies and practices regularly denied Class Members minimum and overtime wages, meal periods and rest breaks, reimbursements, accurate wage statements, and wages upon termination of employment.

1 **20. Typicality:** The claims of Plaintiff are typical of the claims of all members of
2 the Class. Plaintiff is a member of the Class and have suffered the alleged violations of Labor
3 Code §§ 201 to 204, 226, 226.7, 510, 512, 1194, 2802, IWC Wage Order 9-2001, and the UCL.
4 Plaintiff worked at least one shift in excess of six hours during which he was not provided all
5 duty-free, legally mandated meal periods. Plaintiff worked at least one shift of 3.5 hours or
6 greater during which he was not authorized and permitted all duty-free, legally mandated rest
7 breaks. Plaintiff worked at least one shift in excess of eight hours and one workweek in excess
8 of 40 hours during which he was not paid all minimum and overtime wages. Plaintiff received
9 wage statements during his employment. Plaintiff incurred business expenses for which he was
10 not reimbursed. Plaintiff's employment terminated during the statutory period and Plaintiff was
11 not timely paid all wages due and owing him upon termination.

12 **21.** The Labor Code upon which Plaintiff bases his claims is broadly remedial in
13 nature. These laws and labor standards serve an important public interest in establishing
14 minimum working conditions and standards in California. These laws and labor standards
15 protect the average working employee from exploitation by employers who may seek to take
16 advantage of superior economic and bargaining power in setting onerous terms and conditions
17 of employment.

18 **22.** The nature of this action and the format of laws available to Plaintiff and
19 members of the Class identified herein make the class action format a particularly efficient and
20 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
21 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
22 advantage since it would be able to exploit and overwhelm the limited resources of each
23 individual plaintiff with their vastly superior financial and legal resources. Requiring each
24 Class Member to pursue an individual remedy would also discourage the assertion of lawful
25 claims by employees who would be disinclined to file an action against their former and/or
26 current employer for real and justifiable fear of retaliation and permanent damage to their
27 careers at subsequent employment.

28 **23.** The prosecution of separate actions by the individual Class Members, even if

possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual Class Members against the Defendants and which would establish potentially incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to individual Class Members which would, as a practical matter, be dispositive of the interest of the other Class Members not parties to the adjudications or which would substantially impair or impede the ability of the Class Members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

24. Such a pattern, practice and administration of corporate policy regarding illegal employee compensation described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class identified herein, in a civil action, for the unpaid balance of the full amount of minimum and overtime wages, reimbursements, meal period and rest break premiums, and penalties, including interest thereon, attorneys' fees and costs of suit, as well as consequential damages.

25. Proof of a common business practice or factual pattern, which Plaintiff experienced and is representative of, will establish the right of each Class Member to recovery on the causes of action alleged herein.

26. The Class is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendants. This action is brought for the benefit of the entirety of all Class and will result in the creation of a common fund.

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTION 226.7

REGARDING MEAL PERIOD AND REST BREAK WAGES

(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF THE CLASS AND SUBCLASSES (a), (b), (f), and (g))

27. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 26 as though fully set forth herein.

28. In accordance with the mandates of the California Labor Code and the

1 applicable IWC Wage Order, Plaintiff and the Class and Subclasses (a), (b), (f), and (g) had the
2 right to take a 10-minute rest break for every four (4) hours worked or major fraction thereof,
3 and a 30-minute meal period for every five (5) hours worked.

4 **29.** As a pattern and practice, Defendants regularly did not provide employees with
5 all their meal periods and rest breaks and did not provide proper compensation for this failure.

6 **30.** Defendants' policy of failing to provide Plaintiff and the Class and Subclasses
7 (a), (b), (f), and (g) with all legally-mandated meal periods and rest breaks is a violation of
8 California law.

9 **31.** Defendants willfully failed to pay employees whom they did provide the
10 opportunity to take meal periods and rest breaks the premium compensation set out in Labor
11 Code § 226.7 and the applicable IWC Wage Order, and Plaintiff and the Class and Subclasses
12 (a), (b), (f), and (g) are owed wages for meal period and rest break premiums as set forth
13 above.

14 **32.** Such a pattern, practice and administration of corporate policy as described
15 herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class and
16 Subclasses (a), (b), (f), and (g) identified herein, in a civil action, for the balance of the unpaid
17 premium compensation pursuant to Labor Code § 226.7 and the applicable IWC Wage Order,
18 including interest, attorneys' fees, and costs of suit.

19 **SECOND CAUSE OF ACTION**

20 **VIOLATION OF LABOR CODE SECTION 1194**

21 **REGARDING OVERTIME AND MINIMUM WAGES**

22 **(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF THE CLASS AND**
23 **SUBCLASSES (c), (d), (f), and (g))**

24 **33.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 32 as
25 though fully set forth herein.

26 **34.** At all times relevant herein, Defendants were required to compensate their non-
27 exempt employees' minimum wages for all hours worked and overtime wages for all hours
28 worked over eight (8) hours in a day or forty (40) hours in a workweek.

1 **35.** As a pattern and practice, Defendants regularly failed to compensate its
2 employees for all hours worked, resulting in a failure to pay all minimum wages and, where
3 applicable, overtime wages. Additionally, Defendants failed to calculate overtime wages at the
4 correct rate of pay.

5 **36.** This resulted in Plaintiff and the Class and Subclasses (c), (d), (f), and (g)
6 receiving total wages in an amount less than minimum wage and, when applicable, deprived
7 Plaintiff and the Class and Subclasses (c), (d), (f), and (g) of overtime wages.

8 **37.** Such a pattern, practice and administration of corporate policy regarding illegal
9 employee compensation as described herein is unlawful and creates an entitlement to recovery
10 by Plaintiff and the Class and Subclasses (c), (d), (f), and (g) in a civil action, for the unpaid
11 balance of the full amount of minimum and overtime wages owing, including liquidated
12 damages, interest, attorneys' fees, and costs of suit according to the mandate of California
13 Labor Code § 1194.

14 **THIRD CAUSE OF ACTION**

15 **VIOLATION OF LABOR CODE SECTION 2802**

16 **REGARDING BUSINESS EXPENSES**

17 **(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF**

18 **THE CLASS AND SUBCLASSES (e), (f), and (g))**

19 **38.** Plaintiff re-alleges and incorporate by reference paragraphs 1 through 37 as
20 though fully set forth herein.

21 **39.** At all times relevant herein, Defendants were required to indemnify their
22 employees for all necessary expenditures or losses incurred in direct consequence of the
23 discharge of the employees' duties, or of the employees' obedience to the directions of the
24 employer pursuant to California Labor Code § 2802.

25 **40.** In violation of Labor Code § 2802, Defendants failed to reimburse Plaintiff's
26 and the Class and Subclasses (e), (f), and (g) for necessary work-related expenses, including
27 expenses incurred by Plaintiff and the Class and Subclasses (e), (f), and (g) in the use of their
28 personal vehicles and mobile telephones.

1 **41.** Such a pattern, practice and uniform administration of corporate policy as
2 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the
3 Class and Subclasses (e), (f), and (g) in a civil action, for all damages and/or penalties pursuant
4 to Labor Code § 2802, including interest thereon, penalties, reasonable attorneys' fees, and
5 costs of suit according to the mandate of California Labor Code § 2802.

6 **FOURTH CAUSE OF ACTION**

7 **VIOLATION OF LABOR CODE SECTION 226**

8 **REGARDING RECORD KEEPING**

9 **(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF**

10 **THE CLASS AND SUBCLASSES (a), (b), (c), (d) (e), and (f))**

11 **42.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 40 as
12 though fully set forth herein.

13 **43.** At all times relevant herein, Defendants were required to maintain accurate
14 records pursuant to the mandate of Labor Code § 226.

15 **44.** In violation of Labor Code § 226, Defendants failed in their affirmative
16 obligation to keep *accurate* records for their California employees. For example, as a result of
17 Defendants' various Labor Code violations, Defendants failed to keep accurate records of
18 Plaintiff and the Class and Subclasses (a), (b), (c), (d), (e), and (f)'s gross wages earned, total
19 hours worked, net wages earned, and all applicable hourly rates and the number of hours
20 worked at each hourly rate. Plaintiff received at least one such wage statement during his
21 employment with Defendants.

22 **45.** Such a pattern, practice and uniform administration of corporate policy as
23 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the
24 Class and Subclasses (a), (b), (c), (d), (e), and (f) identified herein, in a civil action, for all
25 damages and/or penalties pursuant to Labor Code § 226, including interest thereon, penalties,
26 reasonable attorneys' fees, and costs of suit.

1 **FIFTH CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE SECTIONS 201 to 204**

3 **REGARDING WAITING TIME PENALTIES**

4 **(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF**

5 **THE CLASS AND ALL SUBCLASSES)**

6 **46.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 45 as
7 though fully set for herein.

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

11 **48.** As a result of Defendants' alleged Labor Code violations alleged above,
12 Defendants regularly failed to pay Plaintiff and the Class and all Subclasses their final wages
13 pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to
14 Labor Code § 203.

15 **49.** The conduct of Defendants and their agents and employees as described herein
16 was willfully done in violation of Plaintiff and the Class and all Subclasses' rights, and done by
17 managerial employees of Defendants.

18 **50.** Defendants' willful failure to provide Plaintiff and the Class and all Subclasses
19 the wages due and owing them upon separation from employment results in a continuation of
20 wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and Class
21 Members who have separated from employment are entitled to compensation pursuant to
22 Labor Code § 203.

23 **SIXTH CAUSE OF ACTION**

24 **FOR VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200 *et seq.***

25 **(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF**

26 **THE CLASS AND ALL SUBCLASSES)**

27 **51.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 50 as
28 though fully set for herein.

1 **52.** Defendants, and each of them, have engaged and continue to engage in unfair
2 and unlawful business practices in California by practicing, employing and utilizing the
3 employment practices outlined above, inclusive, to wit, by knowingly denying employees: (1)
4 all overtime and minimum wages, (2) all meal period and rest break wages, (3) all
5 reimbursements, (4) accurate wage statements, and (5) all wages due and owing upon
6 termination of employment.

7 **53.** Defendants' utilization of such business practices constitutes unfair, unlawful
8 competition and provides an unfair advantage over Defendants' competitors.

9 **54.** The acts complained of herein occurred within the last four years preceding the
10 filing of the complaint in this action.

11 **55.** Defendants have engaged in unlawful, deceptive and unfair business practices,
12 as proscribed by California Business and Professions Code § 17200 *et seq.*, including those set
13 forth above, thereby depriving Plaintiff and the Class and Subclasses the minimum working
14 condition standards and conditions due to them under the California laws and IWC Wage
15 Orders as specifically described therein.

16 **56.** Plaintiff seeks, on his own behalf, and on behalf of other members of the Class
17 and Subclasses who are similarly situated, full restitution of monies, as necessary and
18 according to proof, to restore any and all monies withheld, acquired and/or converted by the
19 Defendants by means of the unfair practices complained of herein.

20 **SEVENTH CAUSE OF ACTION**

21 **FOR VIOLATION OF PAGA**

22 **(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF ALL AGGRIEVED**
23 **EMPLOYEES)**

24 **57.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 56 as
25 though fully set forth herein.

26 **58.** PAGA expressly establishes that any provision of the California Labor Code
27 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
28 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.

59. On February 7, 2020, Plaintiff provided written notice to the LWDA and Defendants of the specific provisions of the Labor Code he contends were violated, and the theories supporting his contentions. To date, he has not received a response.

60. Plaintiff and the other non-exempt employees are “aggrieved employees” as defined by California Labor Code § 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

Failure to Pay Minimum and Overtime Wages

61. At all times relevant herein, Defendants were required to compensate their non-exempt employees minimum wages for all hours worked and overtime wages for all hours worked in excess of eight (8) hours in a workday and forty (40) hours in a workweek, pursuant to the mandate of Labor Code §§ 510, 1194, 1197, 1197.1, and 1198.

62. During the relevant time period, Plaintiff and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. Defendants failed to compensate Plaintiff and other aggrieved employees for work performed off-the-clock, including pre- and post-shift work. Further, Plaintiff and other aggrieved employees were paid a fixed daily rate that failed to compensate them for all hours worked in excess of 8 in a day. Plaintiff also alleges Defendants failed to include non-discretionary bonuses and incentives in the regular rate of pay for Plaintiff and other aggrieved employees, and also automatically deducted 30 minutes of working time regardless of whether Defendants provided a meal break or not.

Failure to Provide Meal Periods and Rest Breaks

63. In accordance with the mandates of the California Labor Code and the applicable IWC Wage Order, Plaintiff and other aggrieved employees had the right to take a 10-minute rest break for every four (4) hours worked or major fraction thereof, and a 30-minute meal period for every five (5) hours worked.

64. As a pattern and practice, Defendants failed to authorize and permit Plaintiff

1 and other aggrieved employees all required off-duty, net-10-minute rest breaks during which
2 the employees were free to leave Defendants' premises.

3 **65.** Additionally, during the relevant time period, Defendants routinely required
4 Plaintiff and other aggrieved employees to work through, interrupt, cut short, and/or delay their
5 meal and rest breaks to comply with Defendants' policies and expectations, meet production
6 goals, and complete their routes in a timely manner.

7 **66.** Further, Defendants failed to authorize and permit Plaintiff and other aggrieved
8 employees the requisite number of meal and rest breaks when working shifts exceeding 10
9 hours, including second meal breaks and third rest breaks. Despite these facts, Defendants
10 never compensated premium wages to Plaintiff and other aggrieved employees.

11 **Failure to Reimburse Necessary Work-Related Expenses**

12 **67.** At all times relevant herein, Defendants were required to reimburse their
13 employees for necessary work-related expenses pursuant to the mandate of Labor Code §§
14 2800 and 2802.

15 **68.** As a pattern and practice, Defendants failed in their obligation to reimburse its
16 employees for business expenses incurred. For examples, Defendants failed to reimburse their
17 employees for expenses associated with the regular use of personal mobile phones (and phone
18 plans) for work. Plaintiff and other class members were contacted and communicated with on
19 their personal cell phones for work-related purposes, and were personally responsible for all of
20 the costs incurred related to their cell phones and cell phone plans from their mobile service
21 providers despite their required use for work-related purposes.

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

23 **69.** At all times relevant herein, Defendants were required to pay their employees
24 all wages owed in a timely fashion at the end of employment pursuant to California Labor
25 Code §§ 201 to 204.

26 **70.** As a result of Defendants' Labor Code violations alleged above, Defendants
27 failed to pay Plaintiff and the other similarly-situated former employees their final wages
28 pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to

1 Labor Code § 203.

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

3 **71.** At all times relevant herein, Defendants were required to keep *accurate* records
4 regarding their California employees pursuant to the mandate of Labor Code §§ 226 and
5 1174(d).

6 **72.** As a result of Defendants' various Labor Code violations, Defendants failed to
7 keep accurate records regarding Plaintiff and other similarly-situated current and former
8 employees. For example, Defendants failed in their affirmative obligation to keep accurate
9 records regarding Plaintiff and other similarly-situated current and former employees' gross
10 wages earned, total hours worked, net wages earned, and all applicable hourly rates and the
11 number of hours worked at each hourly rate.

12 **Damages**

13 **73.** Pursuant to California Labor Code § 2699, Plaintiff, individually and on behalf
14 of other current and former aggrieved employees, requests and is entitled to recover from
15 Defendants, and each of them, civil penalties, interest, attorneys' fees and costs pursuant, as
16 well as all statutory penalties against Defendants, and each of them, including but not limited
17 to:

18 **74.** Penalties under California Labor Code § 2699 in the amount of a hundred
19 dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two
20 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
21 violation;

22 **75.** Penalties under California Labor Code § 210 in the amount of a hundred dollars
23 (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred
24 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, plus
25 25% of the amount unlawfully withheld;

26 **76.** Penalties under Labor Code § 226.3 in the amount of two hundred fifty dollars
27 (\$250) per employee per initial violation and one thousand dollars (\$1,000) per employee for
28 each subsequent violation;

77. Penalties under Labor Code § 558 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;

79. Any and all additional penalties and sums as provided by the Labor Code and/or other statutes; and

PRAYER FOR RELIEF

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class as described herein;
3. For an order appointing counsel for Plaintiff as counsel for the Class;
4. Upon the First Cause of Action, for all meal period and rest break wages owed, and for costs;
5. Upon the Second Cause of Action, for all minimum wages owed and overtime wages owed, and for costs and attorney's fees;
6. Upon the Third Cause of Action, for damages or penalties pursuant to statute as set forth in California Labor Code § 2802, and for costs and attorneys' fees;
7. Upon the Fourth Cause of Action, for damages or penalties pursuant to statute as set forth in California Labor Code § 226, and for costs and attorneys' fees;
8. Upon the Fifth Cause of Action, for all minimum wages owed, for waiting time wages according to proof pursuant to California Labor Code §203;
9. Upon the Sixth Cause of Action, for restitution to Plaintiff and other similarly affected members of the general public of all funds unlawfully acquired by

Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*; for an injunction to prohibit Defendants to engage in the unfair business practices complained of herein, for an injunction requiring Defendants to give notice to persons to whom restitution is owing of the means by which to file for restitution; and

10. Upon the Seventh Cause of Action, for civil penalties pursuant to statute as set forth in Labor Code § 2698 *et seq.*, for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, and 2802;

11. On all causes of action for attorneys' fees, interest, and costs as provided by California Labor Code §§ 210, 218.6, 226, 1194, 2699, 2802, and Code of Civil Procedure § 1021.5, and for such other and further relief the Court may deem just and proper.

DATED: November 8, 2023

YOON LAW, APC

Stephanie E. Yasuda
Attorneys for Plaintiff Dillon Geltz

DEMAND FOR JURY TRIAL

Plaintiff, for himself and the class and aggrieved employees, hereby demands a jury trial as provided by California law.

DATED: November 8, 2023

YOON LAW, APC

Stephanie E. Yasuda
Attorneys for Plaintiff Dillon Geltz