

JAMES DAL BON, SBN #157942
LAW OFFICE OF JAMES DAL BON
606 N. 1ST St.
SAN JOSE, CA 95112
(408) 466-5845

VICTORIA L. BOOKE, SBN #142518
BOOKE & AJLOUNY
606 N. 1ST St.
SAN JOSE, CA 95112
(408)286-7000

Attorneys for Plaintiffs

STACEY A. ZARTLER, SBN #160859
TATYANA A. SHMYGOL, SBN # 267107
SV EMPLOYMENT LAW FIRM PC
160 Bovet Road, Suite 401
San Mateo, CA 94402
Tel: (650) 265-0222
Facsimile: (650) 265-0223

Attorneys for Defendants Vito Ozuna Food Corporation and Severo C. Ozuna

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RODRIGO CAMILO, ALVARO CAMILO,
RICARDO SANCHEZ, JOSE MANUEL
LOPEZ AND PUTATIVE PLAINTIFFS,

Plaintiffs,

vs.

DON VITO OZUNA FOOD CORPORATION
AND SEVERO OZUNA
Defendants.

Case No. 18:CV-02842

**AMENDED JOINT STIPULATION FOR
CLASS ACTION SETTLEMENT AND
RELEASE**

1 This Amended Joint Stipulation for Class Action Settlement and Release of Claims
2 (“Stipulation”) is entered into by and among Plaintiffs Rodrigo Camilo, Alvaro Camila, Ricardo Sanchez
3 and Jose Manuel Lopez (“Plaintiffs” or “Class Representative”), on their own behalf and as
4 representatives of the putative class described herein, on the one hand, and Defendants Don Vito Ozuna
5 Corporation and Severo Ozuna (“Defendants” or “Defendant”), on the other hand. Plaintiffs are
6 represented herein by the Law Offices of James Dal Bon and Victoria Boone of Boone & Ajlouny
7 (“Class Counsel”). Defendants are represented by Steven Friedlander, Stacey Zartler, and Tatyana
8 Shmygol of the SV Employment Law Firm PC (“Defendants’ Counsel”).

9 **I. STIPULATION AND AGREEMENT TO SETTLE**

10 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the Class
11 Representatives on the one hand, and Defendants on the other hand, with the assistance of their respective
12 counsel of record, that, among the Settling Parties, including all Settlement Class Members, the Lawsuit
13 and the Released Claims shall be finally and fully compromised, settled and released, subject to the terms
14 and conditions of this Stipulation and the Judgment.

15 **A. DEFINITIONS**

16 1. “Claim Form” means the Claim Form attached hereto as “**Exhibit B**” or as ultimately
17 approved by the Court.

18 2. “Claims Administrator” means the third-party administrator CPT Group or other Court
19 approved administrator that will administer the settlement as set forth below.

20 “Class Counsel” means the Law Offices of James Dal Bon and Boone & Ajlouny.

21 4. “Class Notice” means the Notice of Proposed Class Action Settlement attached hereto
22 as “**Exhibit A**” or as ultimately approved by the Court.

23 5. “Complaint” means the Complaint filed in the case entitled *Camilo et al. vs. Don Vito*
24 *Ozuna Food Corporation et al.*, currently pending in District Court for the Norther District of
25 California, Case No. 18-CV-02842-VKD (“the Class Action.”).

26 6. “Final Approval” means ten (10) days after the date of (i) the Court’s order granting final
27 approval of the settlement, if there are no objections to the settlement; (ii) if there are objections to the
28

1 settlement, then upon expiration of the time to appeal the Court's order granting final approval; or (iii) if
2 there is any appeal by any party or any objector, then upon final resolution of any appeal from the
3 Court's final approval order.

4 7. "FLSA Class Members" means: All individuals who are employed or have been
5 employed by Defendants as non-exempt hourly employees involved in the tortilla and chip
6 manufacturing process during FLSA Class Period who allege violations under the Fair Labor Standards
7 Act ("FLSA") as described in claim One of the Complaint.

8 8. "FLSA Opt-In Class Members" means: All FLSA Class Members who filed a valid and
9 timely Claim Form with the Claims Administrator to register their claim for recovery from the FLSA
10 Opt-In Settlement Amount pursuant to Section B, below.

11 9. "FLSA Class Period" is from May 14, 2015 through March 19, 2019.

12 10. "FLSA Carve Out Period" shall mean the time between November 22, 2014 and
13 November 19, 2016 for the FLSA Opt-In Class Members who already received payment for their FLSA
14 cause of action for that time period.

15 11. "FLSA Net Settlement Fund" means the 33% portion of the Net Settlement Fund
16 reserved for the FLSA Opt-In Class Member.

17 12. "Individual Settlement Amount" is the gross amount of money to which each Rule 23
18 Class Member and FLSA Opt-In Class Member may be entitled, including any taxes withheld.
19 Individual Settlement Amounts will be determined by the formula described more fully herein in Section
20 F below.

21 13. "Net Settlement Fund" shall mean the amount left over from the Settlement Sum from
22 which the Rule 23 Settlement Class Members and the FLSA Opt-In class Members will be paid their
23 Individual Settlement Amount after deduction from the Qualified Settlement Fund of the amounts paid
24 as (1) Settlement Administration Costs; (2) Attorneys' Fees and Costs; (3) and Service Awards to the
25 Class Representatives.

26 14. "Parties" or "Settling Parties" refers collectively to Plaintiffs and Defendants.

27 15. "Qualified Settlement Fund" refers to the settlement fund from which all amounts to be
28

1 paid by Defendant from the Settlement Sum shall be paid by the Claims Administrator pursuant to this
2 Stipulation.

3 16. "Qualifying Work Week" means any week in which an individual actively worked at least
4 one day of the week (i.e., was not on a leave of absence) as a non-exempt employee working in the
5 tortilla and chip manufacturing process during the Rule 23 Class Period and the FSLA Opt In Class
6 Period according to Defendants' records.

7 17. "Rule 23 Class Members" means: All individuals who are employed or have been
8 employed by Defendants as non-exempt hourly employees involved in the tortilla and chip
9 manufacturing process between May 14, 2014 and March 19, 2019 and who allege violations under
10 California law as described in claims Two through Seven of the Complaint.

11 18. "Rule 23 Settlement Class Members" mean all Rule 23 Class Members, as defined
12 herein, who do not submit a Request for Exclusion from the Rule 23 Class, or who submit a Request for
13 Exclusion but rescind it in a timely manner.

14 19. "Rule 23 Net Settlement Fund" means the 67% portion of the Net Settlement Fund
15 reserved for the Rule 23 Class Settlement Members.

16 20. "Rule 23 Class Period" is from May 14, 2014 through March 19, 2019.

17 21. "Settlement," "Settlement Agreement," or "Stipulation" means this Joint Stipulation for
18 Class Action Settlement and Release of Claims, including the attached Exhibits"

19 22. "Settlement Sum" means the maximum amount to be paid by Defendant in settlement
20 of the Class Action and all claims stated therein and shall be \$375,000.00.

21 23. "Released Claims" means any and all claims contained in the Complaint, and any
22 additional wage and hour claims that could have been brought by the Class Representatives, the Rule 23
23 Settlement Class Members or the FLSA Opt-In Class Members based on the facts alleged in the
24 Complaint, for the time period of May 14, 2014 to March 19, 2019. "Released Claims" includes any
25 and all claims for relief, whether suspected or unsuspected, which settlement class members have had,
26 now have, or may discover in the future against the Released Parties or any of them for any or all claims
27 alleged in the Complaint or which could have been alleged in the Complaint based on the allegations,

1 facts, matters, transactions or occurrences alleged therein, and shall specifically include without limiting
2 the generality thereof: claims for failure to pay wages (including without limitation, regular wages, the
3 regular rate of pay, minimum wage, overtime pay, double time pay, premium pay or otherwise properly calculate
4 overtime or the regular rate of pay, failure to pay employees for all hours worked, and/or off-the -clock claims),
5 failure to provide meal or rest periods compliant with California law, failure to properly pay all wages
6 upon termination or timely pay wages owed, waiting time penalties, failure to maintain or provide
7 accurate itemized wage statements, failure to maintain records, failure to reimburse expenses, and unfair
8 competition claims based on the foregoing. The Release of the foregoing claims extends to all theories
9 of relief regardless of whether the claim is, was, or could have been alleged as separate claims, causes of
10 action, lawsuits or based on other theories of relief, whether under California law, federal law, state law
11 or common law (including, without limitation, as violations of the California Labor Code, the California
12 Wage Orders, applicable regulations, California's Business and Professions Code section 17200, and,
13 with the exception for those FLSA Class Members who did not opt-in to that portion of the settlement,
14 the Fair Labor Standards Act). "Released Claims" includes all types of relief available for the above-
15 referenced claims, including, without limitation, any claims for damages, restitution, losses, penalties,
16 fines, liens, attorneys' fees, costs, expenses, debts, interest, injunctive relief, declaratory relief, or
17 liquidated damages. "Released Claims" also includes an express waiver of all benefits under section
18 1542 of the California Civil Code as to the Settled Claims only, as well as under any other federal or
19 state statutes or common law principles of similar effect. Section 1542 provides as follows:

20 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
21 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT
22 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING
23 THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD
24 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH
25 THE DEBTOR OR RELEASED PARTY.

26 The Final Judgment shall expressly provide that it covers and bars each and every Rule 23 Settlement
27 Class Member and FLSA Opt-In Class Member from asserting any Released Claims in the future. This

1 release shall not apply to the FLSA cause of action for those FLSA Class Members who did not opt-in to
2 that portion of the settlement.

3 24. "Released Parties" means Don Vito Ozuna Corporation and Servero Ozuna, and each
4 of their past, present and future employees, insurers, co-insurers, reinsurers, attorneys, accountants,
5 auditors, advisors, representatives, consultants, pension and welfare benefit plans, plan fiduciaries,
6 administrators, trustees, partners, successors, and assigns.

7 25. "Request for Exclusion" means a request by a Rule 23 Class Member to be excluded
8 from the Rule 23 Settlement Class.

9 **B. RECITALS**

10 26. Plaintiffs Rodrigo Camilo, Alvaro Camilo, Ricardo Sanchez and Jose Manuel Lopez filed
11 a class action Complaint in United States District Court for the Northern District of California on May 14,
12 2018 against Defendants Don Vito Ozuna Corporation and Severo Ozuna.

13 27. Plaintiffs alleged a total of seven causes of action on their behalf and on behalf of all
14 similarly situated current and former employees of Defendants working as non-exempt employees in the
15 tortilla and chip manufacturing process for (1) Failure to Pay All Wages In Violation of the Fair Labor
16 Standards Act; (2) Failure to Properly Pay Minimum and Overtime Wages under California State Law; (3)
17 Failure to Pay Wages Due at the End of Employment and "Waiting Time" Penalties; (4) Failure to
18 Provide Accurate California Itemized Employee Wage Statements; (5) Failure to Provide Meal Periods or
19 Compensation In Lieu Thereof; (6) Failure to Provide Rest Periods or Compensation In Lieu Thereof; and
20 (7) Violations of California Business & Professions Code Section 17200.

21 28. The Complaint alleges, *inter alia*, that Plaintiffs and the class members were not paid all
22 wages owed for time worked, including overtime wages, and were not provided with the required off-duty
23 rest and meal periods.

24 29. Defendants at all times denied Plaintiffs' and the Rule 23 Class Member's and FLSA
25 Class Member's claims and asserted that the case should not be certified as a class action. In settling this
26 Class Action, Defendants maintain these positions.

27 30. Class Counsel conducted a thorough investigation into the facts of the Class Action,
28

1 including extensive investigation, interviews, discovery and exchange of information and documents. The
2 investigation included review of thousands of pages relevant documents, including written policies and
3 procedures, time records, and payroll records. Class Counsel further investigated the facts alleged in the
4 Complaint by conducting multiple interviews of named plaintiffs and potential class members.

5 31. The Parties participated in a full-day mediation on December 12, 2018 before respected
6 mediator, Hon. George Hernandez (Ret). After a full day of arms-length negotiations assisted by Judge
7 Hernandez, the Parties agreed to the settlement in general terms memorialized in a Memorandum of
8 Understanding, which are now specified in detail in this Stipulation.

9 32. After careful consideration, investigation, and mediation, the Class Representatives and
10 Class Counsel have concluded that it is desirable that this Class Action be settled in the manner and upon
11 the terms and conditions set forth in this Stipulation. Both the Class Representatives and Class Counsel
12 believe that the settlement set forth in this Stipulation is fair, reasonable, and adequate, and confers
13 substantial benefits upon the Rule 23 Settlement Class Members and the FLSA Opt-In Class Members.

14 33. It is the desire of the Parties to settle the Released Claims against the Released Parties.

15 34. Defendants deny all the claims and contentions alleged by the Class Representatives in
16 the Complaint. Nonetheless, Defendants have concluded that further litigation of the Class
17 Representatives' and the Rule 23 and FLSA Class Members' claims encompassed by this Stipulation
18 would be protracted and expensive and would also divert management and employee time. Defendants
19 have taken into account the uncertainty and risks inherent in litigation and have, therefore, concluded that
20 it is desirable that the Class Action be settled in the manner and upon the terms and conditions set forth in
21 this Stipulation.

22 35. The Class Representatives and Class Counsel believe that the claims asserted in this
23 Class Action have merit. The Class Representatives and Class Counsel, however, recognize and
24 acknowledge the significant expense and length of continued proceedings necessary to prosecute the
25 litigation of the claims against Defendants through trial and through appeal. The Class Representatives
26 and Class Counsel are also mindful of the inherent problems of proof and possible defenses to the claims
27 and to class certification.

1 36. Class Counsel are knowledgeable about, and have done extensive research with respect
2 to, the applicable law and potential defenses to the claims of the Rule 23 Class Members and FSLA Class
3 Members. Class Counsel have diligently pursued an investigation of the Rule 23 Class Members' and
4 FSLA Class Members'. claims against Defendants. The Parties recognize the inherent risk in proceeding
5 with wage and hour class action litigation based on the current uncertainty of California jurisprudence in
6 wage and hour law. The Parties agree that the settlement set forth herein adequately balances the risk of
7 proceeding with the Class Action against any potential recovery for the Rule 23 Class Members and FSLA
8 Class Members, and, therefore, the Stipulation represents a fair and just compromise of the Released
9 Claims.

10 37. The Parties and their respective counsel of record deem the Stipulation to be fair and
11 reasonable and have arrived at the Stipulation in arms-length negotiations taking into account all relevant
12 factors, present or potential.

13 38. The Parties enter into this Stipulation on a conditional basis. This Stipulation will become
14 final and effective only upon the occurrence of both of the following events: (i) the Court enters an order
15 granting preliminary approval of the settlement reflected in the Stipulation and (ii) the Court enters an
16 order granting final approval of the settlement reflected in the Stipulation. Unless the Court orders
17 otherwise, this Stipulation shall be deemed null and void ab initio upon the failure of any of these
18 conditions to occur.

19 39. The Parties stipulate to class certification for purposes of this Stipulation only. The Class
20 Representatives and Class Counsel shall apply to the Court for approval of the Stipulation and for class
21 certification of the Rule 23 Settlement Class and the FLSA Opt-In Class only for purposes of effectuating
22 this Stipulation. If the Court does not grant preliminary approval or final approval of the Settlement
23 reflected in this Stipulation, the Parties agree that class certification will automatically be deemed not to
24 have been granted. Defendants expressly reserve their right to oppose certification of any purported class
25 or collective should this Stipulation not become final and effective.

1 **II. SETTLEMENT CALCULATIONS AND PAYMENTS**

2 **A. SETTLEMENT SUM**

3 40. The Parties agree to settle this Class Action for a maximum and all-inclusive amount of
4 Three Hundred and Seventy-Five Thousand Dollars (\$375,000.00) (the "Settlement Sum") to be paid by
5 Defendants. The Settlement Sum includes attorney's fees, costs and expenses directly related to the Class
6 Action, which includes all such fees and costs incurred to date, as well as all such fees and costs incurred in
7 documenting the settlement, securing court approval of the settlement, administering the settlement, and
8 obtaining a dismissal of the action, the service payments to the Class Representatives, and the employer's
9 portion of all state and federal payroll taxes.

10 41. All amounts to be paid by Defendant from the Settlement Sum shall be paid to a Qualified
11 Settlement Fund which shall be administered by the Claims Administrator. All amounts to be paid to anyone
12 pursuant to this Stipulation shall be paid out of the Qualified Settlement Fund.

13 **B. SETTLEMENT ADMINISTRATION COSTS**

14 42. The Settlement Administration costs are estimated to be between Ten Thousand Dollars
15 and Fifteen Thousand Dollars (\$10,000 - \$15,000). All Settlement Administration Costs shall also be paid
16 out of the Qualified Settlement Fund.

17 **C. SERVICE AWARD PAYABLE TO CLASS REPRESENTATIVE**

18 43. Subject to Court approval, Class Representatives Plaintiffs Rodrigo Camilo, Alvaro
19 Camilo, Ricardo Sanchez and Jose Manuel Lopez shall receive Service Awards of five thousand dollars
20 (5,000) each.

21 44. The Service Awards to the Class Representatives shall be paid by the Claims
22 Administrator out of the Qualified Settlement Fund no later than fifteen (15) days after Final Approval.

23 45. The Claims Administrator will report the Service Awards on Forms 1099, which it will
24 provide to the Class Representatives and to the pertinent taxing authorities as required by law.

25 **D. ATTORNEY'S FEES AND COSTS**

26 46. Subject to Court approval, Class Counsel will be paid up to \$112,500 for attorney's fees,
27 and an additional amount for reasonable litigation costs not to exceed \$10,000. Defendants will not oppose
28

1 Class Counsel's application to the Court for such attorney's fees and litigation costs.

2 47. Subject to Court approval, any court-ordered attorney's fees and costs shall be paid out of
3 the Qualified Settlement Fund within fifteen (15) days of Final Approval.

4 **E. ALLOCATION OF THE NET SETTLEMENT FUND**

5 48. Rule 23 Settlement Class Members shall be paid their Individual Settlement Amounts
6 from the Rule 23 Net Settlement Fund.

7 49. FLSA Opt-In Class Members shall be paid their Individual Settlement Amounts from the
8 FLSA Opt-In Net Settlement Fund.

9 50. Each portion of the Net Settlement Fund shall be allocated among the Rule 23 Settlement
10 Class Members and FLSA Opt-In Class Members based on the value of the claims alleged in the Class
11 Action on a workweek basis.

12 **F. DISTRIBUTION AND CALCULATION OF THE INDIVIDUAL SETTLEMENT**
13 **AMOUNTS**

14 51. The Individual Settlement Amounts for each Rule 23 Settlement Class Member will be
15 calculated by the Claims Administrator as follows: Each Rule 23 Settlement Class Member shall be entitled
16 to receive a *pro rata* portion of the Rule 23 Net Settlement Fund based upon his or her respective number
17 of Qualifying Work Weeks during the Rule 23 Class Period. This amount shall be determined by dividing
18 the Rule 23 Net Settlement Fund by the total number of Qualifying Work Weeks worked by each Rule 23
19 Settlement Class Member during the Rule 23 Class Period. The resulting amount will be the dollar amount
20 per Qualifying Work Week to which each Rule 23 Settlement Class Members will be entitled.

21 52. The Individual Settlement Amounts for each FLSA Opt-In Class Member will be
22 calculated by the Claims Administrator as follows: Each FLSA Opt-In Class Member shall be entitled to
23 receive a *pro rata* portion of the FLSA Opt-In Net Settlement Fund based upon his or her respective
24 number of Qualifying Work Weeks during the FLSA Opt-In Class Period. This amount shall be determined
25 by dividing the FLSA Opt-In Net Settlement Fund by the total number of Qualifying Work Weeks worked
26 by each FLSA Opt-In Class Members during the FLSA Opt-In Class Period. The resulting amount will be
27 the dollar amount per Qualifying Work Week to which each FLSA Opt-In Class Members will be entitled.

Any money already received by a FLSA Opt-In Class Member from the Department of Labor for the FLSA Opt-In Carve Out Period shall be deducted from that member's payment.

G. FUNDING OF THE QUALIFIED SETTLEMENT FUND

53. The Qualified Settlement Fund shall be funded by two installments. Defendants' first payment of Two hundred thousand dollars, (\$200,000.00) shall be due thirty days after final approval of the settlement, assuming no objection has been made and no appeal has been filed, whichever is later. Defendants' second payment of one hundred thousand seventy-five dollars (\$175,000.00) shall be due on May 1, 2020. The claims administrator will distribute the settlement funds following the payment of each installment.

H. TIMING OF THE PAYMENTS TO THE PARTICIPATING CLASS MEMBERS

54. The Individual Settlement Amounts of Rule 23 Settlement Class Members and FLSA Opt-In Class Members, shall be paid no later than thirty (30) days after Defendants make each installment payment.

I. ALLOCATION OF REMAINDER

55. Any Remainder of the Settlement Sum, unclaimed funds, available after the first payment is to be redistributed to the Rule 23 Settlement Class Members and the FLSA Opt-In Class Members in the second payment. If fewer than all of the Rule 23 Settlement Class Members and the FLSA Opt-In Class Members fail to cash their second checks within one hundred and eighty (180) days after the checks were mailed to their last known address, the remainder of the second payment, will be redistributed to the Katharine & George Alexander Community Law Center.

J. TREATMENT OF THE CLASS MEMBERS' PAYMENTS

56. Thirty-three percent (33%) of the portion of the Net Settlement Fund will be allocated to the FLSA Opt-In Class Members and sixty-seven percent (67%) of the Net Settlement Fund will be allocated to the Rule 23 Settlement Class Members. Payments to the FLSA Opt-In Class Members shall be construed as wages while payments to the Rule 23 Settlement Class Members will be allocated as 20% wages and 40% penalties and 40% interest. For both the Rule 23 Settlement Class Members and the FLSA Opt-In Class members the Individual Settlement Amount shall be calculated based on the number of

workweeks within each respective class period. The portion of each Individual Settlement Amount representing wages will be subject to tax withholding and this portion will be reported on an IRS Form W-2, with the Claims Administrator remitting all such employment tax withholdings directly to the pertinent state and federal taxing authorities. The portion of each Individual Settlement Amount constituting interest or penalties will be reported on a Form 1099 provided to each the FLSA Opt-In Class Member who submits a Claim Form, with the required copies of the Form 1099's provided to the pertinent taxing authorities.

57. The named Plaintiffs will receive an enhancement of \$5,000.

58. Any and all employer tax obligations on any amounts paid to Plaintiffs, the Rule 23 Settlement Class Members and the FLSA Opt-In Class Members (including any employer FICA or FUTA taxes owed by Defendants or by the Qualified Settlement Fund), and all costs of reporting tax information arising from this settlement, are to be paid entirely from the Settlement Sum. The Claims Administrator shall be responsible for paying any such taxes owed by Defendants and/or by the Qualified Settlement Fund (including any employer FICA or FUTA taxes) which in all cases shall be paid from the Qualified Settlement Fund in the manner and within the time prescribed by law.

K. NO ADDITIONAL CONTRIBUTION BY DEFENDANT

59. Defendants' monetary obligation under this Stipulation is limited to the amount defined as the Settlement Sum. Defendants cannot be called upon or required to contribute additional monies to pay for costs or any other matter related to this action and the settlement thereof, above the Settlement Sum under any circumstances whatsoever.

60. All costs and expenses arising out of or in connection with the performance of this Agreement shall be paid from the Settlement Sum amounts paid by Defendants into the Qualified Settlement Fund, unless expressly provided otherwise herein.

III. SETTLEMENT ADMINISTRATION

61. The Claims Administrator will administer disbursements from the Settlement Sum amounts paid by Defendant into the Qualified Settlement Fund, including, but not limited to, distributing the Class Notice and Claim Forms, calculating claims against the Qualified Settlement Fund, preparing

1 and issuing all disbursements to be paid to the Rule 23 Settlement Class Members, the FLSA Opt-In Class
2 Members, Class Counsel, Class Representative, and the local state and federal payroll tax authorities, and
3 handling inquiries about the calculation of the Individual Settlement Amounts. Class Notice and FLSA
4 Opt-In Claim Forms must be in both English and Spanish

5 62. The Claims Administrator shall establish an address and toll-free telephone number to
6 direct inquiries regarding the Class Notice, Claim Form and determination of Individual Settlement
7 Amounts.

8 63. The Claims Administrator shall also be responsible for the timely filing of all federal,
9 state and local tax returns of the Qualified Settlement Fund and making the timely payment of any and all
10 taxes and withholdings required with such returns.

11 **IV. CLASS NOTICE AND CLAIMS PROCEDURES**

12 **A. CONTENT OF THE CLASS NOTICE AND NOTICE PROCEDURE**

13 64. The Claims Administrator shall disseminate the Class Notice, which the Parties will ask
14 the Court to approve in the form attached hereto as Exhibit A, by giving notice by first-class United States
15 mail.

16 65. The Class Notice and Claim Form shall be provided to the Rule 23 Class Members and
17 the FLSA Class Members in the following manner:

- 18 a. No later than twenty (20) calendar days after Defendants receive the order granting
19 preliminary approval of the settlement reflected in this Stipulation, Defendants will provide
20 the Claims Administrator and Class Counsel with a spreadsheet including the following
21 information for each member of the Rule 23 and the FLSA Classes: (1) last known
22 addresses and telephone number; (2) Social Security number; (3) data pertaining to the
23 number of Qualifying Work Weeks that each class member worked during the Rule 23
24 Class Period and FLSA Class Period (the "Class List"). The Claims Administrator will
25 keep the Class List confidential, use it only for the purposes described herein, and return it
26 to Defendants upon final approval of the Settlement, or otherwise certify that it has been
27 permanently and irreversibly destroyed.

- b. Within ten (10) calendar days of receipt of the Class List from Defendants, the Claims Administrator shall mail the Class Notice and the Claim Form by first-class United States mail, postage prepaid, to the last known address of each member of the Rule 23 Class and the FLSA Class. The outside of envelope containing the Class Notice and Claim Form shall bear the following phrase, in English and Spanish in bold type, 1/4 inch below the return address or 1/4 inch above the addressee's address: RETURN SERVICE REQUESTED & OZUNA LAWSUIT.
- c. With respect to the Rule 23 Class Members and the FSLA Class Members who are not current employees of the Defendant, prior to mailing the Class Notice and the Claim Form, the Claims Administrator shall perform a pre-mailing address search using Accurant to locate the most accurate address for each former Class Member.
- d. With respect to those Rule 23 Class Members and FSLA Class Members whose envelope containing the Class Notice and Claim Form is returned to the Claims Administrator as undeliverable, the Claims Administrator shall promptly attempt to obtain a valid mailing address by use of the "National Change of Address ("NCOA") database search and Experian (or substantially similar) skip trace. If another address is identified, the Claims Administrator shall immediately thereafter send the Class Notice to the new address.
- e. On the 30th day after it mails the Class Notices and Claim Forms, the Claims Administrator shall send a reminder notice card to each FLSA Class Member reminding him or her of the deadline to return Claim Forms.

66. All costs of preparing and sending the Class Notice and Claim Forms, whether foreseen or not, shall be paid from the Settlement Sum.

67. The Class Notice and Claim Forms provided to each individual Rule 23 Class Member and FLSA Class Member, respectively shall set forth the dates of employment and the total number of Qualifying Work Weeks for each Class (as applicable), according to Defendants' records, and the estimated payment the class member shall be entitled to receive.

B. RESPONSE TO CLASS NOTICE AND FILING OF A CLAIM FORM

68. For an FLSA Class Member to receive his or her Individual Settlement Amount from the applicable FLSA Net Settlement Fund, his or her Claim Form must be signed by the Class Member or his or her authorized representative attesting that he or she is a bona fide member of the Class.

69. The Claim Form must be completed, signed and returned by mail, fax, or the designated website to the Claims Administrator post-marked no later than sixty (60) calendar days after the date the Claims Administrator mails the blank Claim Form to the FLSA Class Members.

70. Claim Forms re-mailed by the Claims Administrator must be completed, signed and returned to the Claims Administrator post-marked within sixty (60) calendar days of the initial mailing of the Claim Forms or fifteen (15) days of the re-mailing, whichever is later.

71. Any completed Claim Form that is returned to the Claims Administrator and is postmarked or faxed more than sixty (60) calendar days after the date of the initial mailing of the blank Claim Forms to FLSA Class Members, or fifteen (15) calendar days, if later, for Claim Forms re-mailed pursuant to this Stipulation, shall not be accepted and processed except for any claim form returned within five (5) calendar days of these respective deadlines shall be extended a grace period and shall be accepted as if timely.

72. If an FLSA Class Member can establish that a bona fide hardship prevented him or her from timely returning the completed and signed Claim Form to the Claims Administrator, said FLSA Class Member shall not be barred from sharing in the Net Settlement Fund, if Claims Administrator receives his or her valid Claim Form at least ten (10) calendar days before the date of the final approval hearing. Class Counsel and Defense Counsel shall be the sole arbiters of whether a bona fide hardship existed.

73. If any FLSA Class Member submits a timely but deficient or incomplete Claim Form which deviates from the instructions embodied in the Class Notice and/or Claim Form, then the Claims Administrator shall promptly mail a notice to such Class Member informing him or her of the deficiencies and that he or she has until the expiration of the claims period or fifteen (15) calendar days from the date of the mailing of the deficiency notice, whichever is later, to cure the deficiency. If the deficiency is not cured within this period, then the FLSA Claim Form will not be deemed valid and the FLSA Class

1 Member will not participate in the FLSA Net Settlement and will not receive his or her Individual
2 Settlement Amount from the FLSA Net Settlement

3 74. Unless a Rule 23 Class Member submits a timely Request for Exclusion, as described in
4 Section D below, the Rule 23 Class Member shall automatically be deemed a Rule 23 Settlement Class
5 Member whose rights and claims with respect to the issues raised in the Class Action are determined by
6 the Court's Final Order, and said Rule 23 Settlement Class Member's rights to pursue any of the Released
7 Claims shall be. However any Rule 23 Class Member that files a timely Request for Exclusion and does
8 not opt-in to the FSLA Class will not participate in this Settlement.

9 **C. DISPUTE PROCESS**

10 75. Any Rule 23 Class Member or FSLA Class Member who disputes the information shown
11 on his or her Class Notice regarding the dates of employment and/or number of work weeks worked during
12 the Class Period may indicate and explain such disagreement under penalty of perjury within forty-five (45)
13 calendar days of the mailing of the Class Notice and Claim Form by notifying the Claims Administrator
14 pursuant to the procedures set forth herein and in the Class Notice.

15 76. Any such Rule 23 Class Member or FLSA Class Member must submit documentation
16 relating to his or her dispute. The Claims Administrator shall notify Defendants' Counsel and Class Counsel
17 of any such dispute no later than ten (10) calendar days after receiving notice of the dispute. In the case of
18 a dispute, Defendants' records shall control and will have a rebuttable presumption of correctness. The
19 Claims Administrator shall work with Class Counsel and counsel for Defendants and then make a
20 determination regarding the Rule 23 Class Member's or FLSA Class Member's dates of employment and
21 eligible workweeks.

22 77. If a Rule 23 Class Member or an FLSA Class Member disagrees with the Claims
23 Administrator's determination regarding the his or her dates of employment and / or eligible workweeks, he
24 or she may request that the dispute be resolved through arbitration by Honorable George Hernandez (Ret.)
25 of ADR Services ("the Arbitrator") as follows: The class member must file a petition to finally determine the
26 validity of the Settlement Administrator's determination. Any such petition must be initially submitted to
27 Class Counsel by mail. Any such petition must be mailed sufficiently in advance to be received by Class
28

1 Counsel within fifteen (15) days of the date of notice of the determination by the Settlement Administrator.
2 Class Counsel shall then promptly submit such petitions to Judge Hernandez for final resolution. Any such
3 petition must: (a) contain a caption or title that identifies it as "Dispute Regarding Settlement Administrator
4 Determination in *Camilo vs. Don Vito Ozuna Corporation et al.* (b) include the class member's name, mailing
5 and email address and contact telephone number; (c) set forth the specific reasons the class member believes
6 he or she is due a different amount pursuant to this Stipulation For Settlement, including all legal support
7 and factual evidence the he or she wishes to introduce in support of his or her dispute. A Rule 23 Class
8 Member's and/or FLSA Class Member's failure to timely submit such petition shall constitute a release and
9 waiver of any rights to challenge the validity of the Settlement Administrator's Determination. The Parties'
10 responses, if any, must be submitted to the Arbitrator no later than fifteen (15) days following the
11 submission to the Arbitrator of the class member's petition. The determination by the Arbitrator of the validity
12 of the Claims Administrator's determination shall be based solely on the written terms of this Settlement and
13 any Orders of the Court approving it, along with the written documentation submitted by the class member
14 and the Parties, without a hearing. The Arbitrator shall not have jurisdiction to consider any other form of
15 relief other than to determine the dates of employment for the class member and the proper workweek
16 calculation for the class member as expressly defined in the Settlement. The Arbitrator's resolution of the
17 dispute shall be final, binding and non-appealable by the class member and the Parties. The class member
18 submitting such a dispute shall at all times bear the burden of proof by a preponderance of the evidence to
19 show: why and how the Settlement Administrator's determination is incorrect under the written terms of
20 the Settlement. The fee for the Arbitrator's time shall be paid from the Settlement Sum.

21 **D. REQUEST FOR EXCLUSION FROM THE RULE 23 CLASS**

22 78. Any Rule 23 Class Member who receives a Class Notice may request to be excluded from
23 the Class by submitting a Request for Exclusion.

24 79. Any such request must be made in accordance with the terms set forth in the Class Notice
25 and will be timely only if postmarked no later than forty-five (45) calendar days after the mailing of the
26 Class Notice by the Claims Administrator, or if otherwise agreed by the Parties, through Class Counsel and
27 Defendants' Counsel, in writing.

1 80. Requests for Exclusion that do not include all required information, or that are not
2 submitted on a timely basis, will be deemed null, void and ineffective.

3 81. Persons who are eligible to and do submit a valid and timely Request for Exclusion from
4 the settlement will not participate in the settlement, nor will they be bound by the terms of the settlement or
5 any final judgment.

6 **E. OBJECTIONS TO THE SETTLEMENT**

7 82. Any Rule 23 Settlement Class Member and/or FSLA Opt-In Class Member wishing to
8 object to the approval of this settlement may inform the Court and the Parties in writing of his or her intent
9 to object by following the procedure set forth in the Class Notice forty-five calendar days, or such number
10 of days as the Court shall specify, following the date of the mailing of the Class Notice. Rule 23 Settlement
11 Class Members and FSLA Opt-In Class Members shall also have the right to object at the final fairness and
12 approval hearing. Counsel for the Parties shall file any response to any objections to this Settlement
13 submitted by any objecting Rule 23 Settlement Class Members and FSLA Opt-In Class Members at least five
14 (5) court days before the date of the final fairness and approval hearing.

15 **F. FAILURE TO SUBMIT A CLAIM FORM**

16 83. Any FLSA Class Member who fails to submit a timely Claim Form to the Claims
17 Administrator by following the procedure set forth in the Class Notice, and who also fails to submit a
18 timely Request for Exclusion from the Rule 23 Settlement Class automatically shall be deemed a member of
19 the Rule 23 Settlement Class whose rights and claims with respect to the issues raised in the Complaint are
20 determined by the Court's Final Order, and by the other rulings in the Class Action. Said Rule 23
21 Settlement Class Member will receive his or her portion of the settlement under the California State
22 claims. Thus, said Rule 23 Settlement Class Member's rights to pursue any Released Claims in this
23 Stipulation shall be extinguished. However, said Class Member will not receive FLSA-related payments
24 and will not release their rights to bring an FSLA cause of action under federal law.

25 **G. DECLARATION OF COMPLIANCE**

26 84. No later than fourteen (14) calendar days prior to the hearing regarding final approval of
27 the settlement, the Claims Administrator shall provide Defendants' Counsel and Settlement Class Counsel
28

1 with a declaration attesting to completion of the notice process (except for any ongoing attempt to obtain
2 valid mailing addresses for, and the resending of, any returned Class Notice) ("Declaration of Compliance").
3 Compliance with the notice procedures described in this Stipulation shall constitute due and sufficient notice
4 to the Rule 23 Class Members and the FLSA Class Members of this proposed settlement and the hearing
5 regarding final approval of the settlement, shall not be subject to objection or collateral attack by any person
6 or entity and shall satisfy the requirement of due process. Nothing else shall be required of, or done by, the
7 Parties, Class Counsel, Defendants' Counsel, or the Claims Administrator to provide notice of the proposed
8 settlement and the final approval hearing.

9 **V. RELEASE OF CLAIMS**

10 85. Upon Final Approval, the Rule23 Settlement Class Members and the FLSA Opt-In Class
11 Members (including the Class Representatives) and their respective successors, assigns, and/or agents,
12 hereby release and forever discharge the Released Parties from the Released Claims.

13 86. The Class Representatives and each Rule 23 Settlement Class Member and FLSA Opt-In
14 Class Member may hereafter discover facts in addition to or different from those which they now know or
15 believe to be true with respect to the subject matter of the Released Claims, but the Class Representative
16 and each Rule 23 Settlement Class Member and FLSA Opt-In Class Member, upon the Final Approval,
17 shall be deemed to have, and by operation of the Final Approval shall have, fully, finally, and forever settled
18 and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-
19 contingent, whether or not concealed or hidden, which then exist, or heretofore have existed upon any theory
20 of law or equity now existing or coming into existence in the future, including, but not limited to, conduct
21 which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard
22 to the subsequent discovery or existence of such different or additional facts relating to the claims as alleged
23 in the Class Action. The Class Representative acknowledges and shall be deemed by operation of the Final
24 Approval to have acknowledged, that the foregoing waiver was separately bargained for and a key element
25 of the Settlement of which this release is a part.

26 **VI. SETTLEMENT APPROVAL PROCEDURE**

27 87. The Parties agree to fully cooperate with each other to accomplish the terms of this
28

1 Stipulation, including but not limited to, execution of such documents and to take such other actions as may
2 reasonably be necessary to implement the terms of this Stipulation.

3 88. The Parties to this Stipulation shall use their best efforts, including all efforts
4 contemplated by this Stipulation and any other efforts that may become necessary by order of the Court, or
5 otherwise, to effectuate this Stipulation and the terms set forth herein.

6 89. Class Counsel shall, with the assistance and cooperation of Defendants and its counsel,
7 take all necessary steps to secure the Court's preliminary and final approval of the Settlement. The procedure
8 for obtaining Court approval shall be as set forth below.

9 **A. DUTIES OF THE PARTIES PRIOR TO FINAL COURT APPROVAL**

10 90. The Parties shall submit this Stipulation to the Court in support of Plaintiff's Motion for
11 Preliminary Approval for determination by the Court as to its fairness, adequacy, and reasonableness, and
12 apply for the entry of a preliminary order substantially in the following form:

- 13
- 14 a. scheduling a fairness hearing on the question of whether the proposed settlement should
15 be finally approved as fair, reasonable and adequate;
- 16 b. approving as to form and content the proposed Class Notice (attached as Exhibit A);
- 17 c. approving as to form and content the proposed Claim Form (attached as Exhibit B);
- 18 d. directing the mailing of the Class Notice and Claim Form by first class mail to the Class
19 Members;
- 20 e. preliminarily approving this Joint Stipulation for Class Action Settlement;
- 21 f. preliminarily certifying the Class for purposes of this Settlement;
- 22 g. preliminarily setting the attorney's fees and costs payable to Class Counsel;
- 23 h. preliminarily setting the service award to the Class Representative, and
- 24 i. preliminarily approving the appointment of the Claims Administrator and its fees and
25 costs.

26 **B. DUTIES OF THE PARTIES IN CONNECTION WITH AND FOLLOWING FINAL
27 COURT APPROVAL**

1 91. In connection with the hearing on final approval of the settlement provided for in this
2 Stipulation, the Parties will submit a proposed final order:

- 3
- 4 a. approving the settlement, adjudging the terms thereof to be fair, reasonable and adequate,
5 and directing consummation of its terms and provisions;
- 6 b. approving Class Counsel's application for an award of attorney's fees and costs;
- 7 c. approving the service awards to Class Representative;
- 8 d. approving the payment of the costs of administering the settlement.

9 **VII. VOIDING THE AGREEMENT**

10 92. If the Court does not grant final approval of the Settlement, then this Settlement will
11 become null and void.

12 93. Defendant will also have the option to void this Settlement if 5% or more of the Rule 23
13 Class Members (SEE MEMO OF UNDERSTANDING) submit a valid Request for Exclusion from the
14 Settlement. Defendant must exercise this right within ten (10) calendar days after the Claims Administrator
15 notifies the parties of the valid Requests for Exclusion received, which the Claims Administrator will do
16 within five (5) calendar days after the deadline for submission of a Request for Exclusion.

17 **VIII. MISCELLANEOUS PROVISIONS**

18 **A. AUTHORITY TO ENTER INTO STIPULATION**

19 94. Each individual signing this Stipulation warrants that he or she has the authority and is
20 expressly authorized to enter into this Stipulation on behalf of the party for which that individual signs and
21 bind the Parties hereto to the terms and conditions hereof.

22 **B. MUTUAL COOPERATION**

23 95. No Party to this Stipulation shall seek to evade his, her or its good faith obligations to
24 seek approval and implementation of the Stipulation by virtue of any ruling, order, or other development,
25 whether in the Class Action, in any other litigation or otherwise that hereafter might occur and might be
26 deemed to alter the relative strengths of the Parties with respect to any claims or defenses of their relative
27 bargaining power with respect to negotiating.

C. NO ADMISSION

96. Neither the acceptance nor the performance by Defendants of the terms of this Stipulation nor any of the related negotiations or proceedings is or shall be claimed to be construed as, or deemed to be an admission by Defendants of the truth of any of the claims alleged in the Class Action, the representative character of the Class Action, the validity of any of the claims that were or could have been asserted by Plaintiffs and/or Rule 23 or FLSA Class Members in the Class Action, or any liability or guilt of Defendants in the Class Action.

D. SEVERABILITY

97. If any of the above provisions are found null, void, or inoperative, for any reason, the remaining provisions will remain in full force and effect. Notwithstanding, the invalidation of any material term of this Stipulation, including but not limited to all the terms and provisions specified in the Release of Claims or the corresponding Definitions, will invalidate this Stipulation in its entirety unless the Parties subsequently agree in writing that the remaining provisions will remain in force and effect.

E. HEADINGS AND INTERPRETATIONS

98. The descriptive headings of any paragraphs or sections of this Stipulation are inserted for convenience and for reference only and do not constitute any part of this Stipulation. Paragraphs titles, headings or captions contained herein do not define, limit, extend or describe the scope of this Stipulation or any provision herein.

F. NON-EVIDENTIARY USE

99. Neither the existence of this Stipulation, the terms of this Stipulation, nor any order or action pursuant thereto may be referred to, relied upon, cited, or used as evidence by any of the Parties, the Rule 23 Class Members or FLSA Class Members, or their respective counsel in the Class Action or in any other action or proceeding; provided, however, that nothing contained in this section shall prevent this Stipulation from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Stipulation.

G. NO COLLATERAL ATTACK

100. This Agreement shall not be subject to collateral attack by any Rule 23 or FLSA class

1 member or any recipient of the Class Notice and Claim Form after the Judgment and Final Order is entered.
2 Such prohibited collateral attacks shall include but not be limited to claims that the Qualifying Weeks
3 Worked attributed to the Rule 23 Class Members or the FSLA Class Members was erroneous or that the Rule
4 23 Class Members or the FSLA Class Members failed for any reason to receive timely notice of the procedure
5 for disputing the calculation of his or her Individual Payment Amount.

6 **H. ENTIRE AGREEMENT**

7 101. This Stipulation contains the entire agreement between Plaintiffs and the Rule 23
8 Settlement Class and FSLA Opt-In Class, on one hand, and Defendants on the other, relating to the settlement
9 and transactions contemplated hereby, and no oral or written representations, warranties or inducements
10 have been made to any Party concerning this Stipulation other than the representations, warranties, and
11 covenants contained and memorialized herein.

12 102. This Agreement, once it is fully executed, supersedes, any and all prior agreements
13 between the Parties, whether written or verbal, including the Parties' "Memorandum of Understanding" and
14 the previously filed "Stipulation for Class Action Settlement and Release."

15 **I. MODIFICATION**

16 103. Unless otherwise provided herein, this Stipulation may be amended or modified only by
17 a written instrument signed by counsel for all Parties or their successors-in-interest.

18 **J. ASSIGNMENT**

19 104. None of the rights, commitments, or obligations recognized under this Stipulation may
20 be assigned by any Party, the Rule 23 Settlement Class Members or the FSLA Opt-In Class Members, Class
21 Counsel or Defendants' Counsel without the express written consent of each Party and their respective
22 counsel hereto.

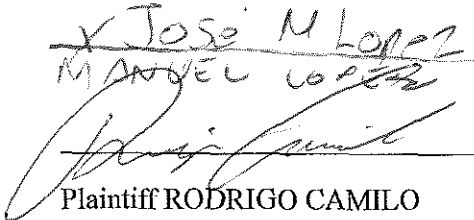
23 **K. COUNTERPARTS**

24 105. This Stipulation, and any amendments hereto, may be executed in any number of
25 counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of
26 which when executed and delivered shall be deemed to be an original and all of which counterparts taken
27 together shall constitute but one and the same instrument. It shall not be necessary in making proof of this
28

1 Stipulation or any counterpart hereof to produce or account for any of the other counterparts.

2 **IT IS SO STIPULATED.**

3
4 6/18/2019
5 Dated: 6/18/2019

6
7 
Plaintiff RODRIGO CAMILO

8
9 Dated: 6.18.2019

10
11 
Plaintiff ALVARO CAMILO

12
13 Dated: 6-18-19

14
15 
Plaintiff RICARDO SANCHEZ

16
17 Dated: _____

18
19 Defendant SERVERO OZUNA

20
21 Dated: _____

22
23 Defendant DON VITO OZUNA FOOD CORPORATON

24 By: _____

25 Title: _____

1
2 Dated: 6/17/2019

LAW OFFICES OF JAMES DAL BON

3
4 By: James Dal Bon
5 James Dal Bon
6 Attorneys for Plaintiffs,
7
8
9

10
11 Dated: 6/17/2019

SV EMPLOYMENT LAW PC

12
13 By: Tatyana A. Shmygol
14 TATYANA A. SHMYGOL
15 Attorneys for Defendants
16
17
18
19
20
21
22
23
24
25
26
27

1 Stipulation or any counterpart hereof to produce or account for any of the other counterparts.

2 **IT IS SO STIPULATED.**

3
4
5 Dated: _____

6 Plaintiff RODRIGO CAMILO

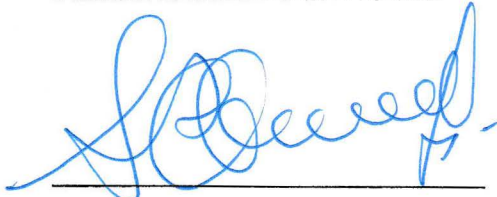
7
8
9 Dated: _____

10 Plaintiff ALVARO CAMILO

11
12
13 Dated: _____

14 Plaintiff RICARDO SANCHEZ

15
16
17 Dated: 6-21-19

18 

19 Defendant SERVERO OZUNA

20
21
22 Dated: 6-21-19

23 

24 Defendant DON VITO OZUNA FOOD CORPORATON

25 By: SEVERO OZUNA

26 Title: PRESIDENT