

1 John E. Hill, State Bar No. 45338
2 Enrique Martinez, State Bar No. 206884
3 LAW OFFICES OF JOHN E. HILL
4 333 Hegenberger Road, Ste. 500
5 Oakland, CA 94621
6 Telephone: (510) 588-1000
7 Facsimile: (510) 632-1445

8 Attorneys for PLAINTIFFS & CLASS

9 Anthony Raimondo, State Bar No. 200387
10 Steven R. Wainess, State Bar No. 106645
11 RAIMONDO & ASSOCIATES, A Law Corporation
12 7110 N. Marks Avenue, Suite 104
13 Fresno, CA 93711
14 Telephone: (559) 432-3000
15 Facsimile: (559) 432-2242

16 Attorneys for Defendants, VIEIRA CUSTOM CHOPPING, INC., V
17 & S COMMODITY, INC., CHRISTINA VIEIRA, and MATTHEW
18 SEPEDA

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

17 MARIO CORTEZ, MARIA CISNEROS,
18 ANTONIO TOSCANO, FRANCISCO JAVIER
19 GONZALEZ, JESUS RODRIGUEZ, CECILIA
20 GARCIA, JOSE LUIS RAYGOZA, and JOSE
21 GUZMAN, on behalf of themselves and all
22 others similarly situated,

23 Plaintiffs,

24 vs.

25 VIEIRA CUSTOM CHOPPING, INC., a
26 California Corporation; V & S COMMODITY,
27 INC., a California Corporation; CHRISTINA
28 VIEIRA; and MATTHEW SEPEDA,

Defendants.

Case No.: 1:17-CV-01647-DAD-SKO

**STIPULATION AND AGREEMENT
TO SETTLE CLASS AND
COLLECTIVE ACTION**

1 This Settlement Agreement is made and entered into by and between (1) VIEIRA CUSTOM
2 CHOPPING, INC., a California Corporation; V & S COMMODITY, INC., a California
3 Corporation; CHRISTINA VIEIRA; and MATTHEW SEPEDA (collectively “Defendants”), and
4 (2) MARIO CORTEZ, MARIA CISNEROS, ANTONIO TOSCANO, FRANCISCO JAVIER
5 GONZALEZ, JESUS RODRIGUEZ, CECILIA GARCIA, JOSE LUIS RAYGOZA, and JOSE
6 GUZMAN (“Named Plaintiffs”), individually and on behalf of all members of the Settlement Class
7 hereinafter defined, subject to final approval of the Court. This Settlement Agreement accurately
8 sets forth the Parties’ Class and Collective Action Settlement in the amount of four-hundred fifty-
9 thousand dollars (\$450,000) to resolve all claims of the Settlement Class for alleged failure to
10 provide meal and rest breaks and to pay wages, penalties, attorneys’ fees and costs, as detailed
11 below.

12 DEFINITIONS

13 As used herein, the following terms shall have the following meanings:

- 14 1. **“Agreement”** or **“Settlement Agreement”** means this Stipulation and Agreement to
15 Settle Class and Collective Action, including the attached Exhibits.
- 16 2. **“Claims Administrator”** means CPT Group Class Action Administrators.
- 17 3. **“The Action”** means the civil action styled *Cortez, Mario, et al. v. Vieira Custom*
18 *Chopping, Inc., et al.*, which was filed in the United States District Court for the Eastern District of
19 California, Case Number 1:17-CV-01647-DAD-SKO.
- 20 4. **“Class Counsel”** means the Law Offices of John E. Hill.
- 21 5. **“Class Notice”** and **“FLSA Notice”** means the notices of the proposed Settlement
22 Agreement to be directed to members of the Settlement Class and the FLSA collective action
23 pursuant to the terms of the Preliminary Approval Order. The Class Notice and FLSA Notice shall
24 be substantially in the form of Exhibit A hereto.
- 25 6. **“Class Period”** shall mean any time between December 7, 2013 and May 3, 2019.
- 26 7. **“Court”** means the United State District Court for the Eastern District of California.
- 27 8. **“Defendants”** means Vieira Custom Chopping, Inc. and V & S Commodity, Inc.,
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1 Christina Vieira and Matthew Sepeda.

2 9. **“Effective Date”** means the latter of: (i) if no appeal is filed, the expiration date of
3 the time for filing or noticing any appeal from the Order and Final Judgment; (ii) if there is an
4 appeal of the Order and Final Judgment, the day after the appeal is dismissed or denied or the Order
5 and Final Judgment are affirmed on appeal and the expiration date for filing an appeal or a petition
6 for writ of certiorari to the United States Supreme Court; (ii) if an appeal or a petition for writ of
7 certiorari has been filed with the United States Supreme Court, the day after the appeal or a petition
8 for writ of certiorari has been dismissed or denied by the Supreme Court; or (iv) if the United States
9 Supreme court grants review of any appeal or petition for writ of certiorari, the day after affirmance
10 of the Order and Final Judgment by the United States Supreme Court.

11 10. **“Eligible Settlement Class Member”** means a member of the Settlement Class who
12 is eligible to receive a Settlement Award pursuant to the Settlement Agreement.

13 11. **“Implementation Schedule”** means the dates for implementing the Settlement
14 Agreement to be agreed upon separately by the Parties. The Implementation Schedule shall be
15 substantially in the form of Exhibit D hereto.

16 12. **“Named Plaintiffs”** means MARIO CORTEZ, MARIA CISNEROS, ANTONIO
17 TOSCANO, FRANCISCO JAVIER GONZALEZ, JESUS RODRIGUEZ, CECILIA GARCIA,
18 JOSE LUIS RAYGOZA, and JOSE GUZMAN.

19 13. **“Net Settlement Fund”** means the amount remaining in the Settlement Fund after
20 service awards are made to the Named Plaintiffs and payments are made to the Claims
21 Administrator, the California Labor and Workforce Development Agency (“LWDA”) and Class
22 Counsel, as provided in this Settlement Agreement.

23 14. **“Order and Final Judgment”** means the final judgment and order of dismissal with
24 prejudice to be entered by the Court.

25 15. **“Parties”** means the Named Plaintiffs and Defendants.

26 16. **“Preliminary Approval Order”** means the order to be entered by the Court upon
27 the Named Plaintiffs’ motion, preliminarily approving the Settlement Agreement and authorizing
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1 the Class Notice.

2 17. **“Released Claims”** means any and all claims, debts, liabilities, demands, obligations,
3 penalties, guarantees, costs, expenses, attorneys’ fees, damages, action or causes of action, whether
4 known or unknown, during the Relevant Time Period, as defined below, and that were alleged in
5 the Complaint filed on December 7, 2017, on behalf of the Named Plaintiffs and the Settlement
6 Class Members, based on the facts stated in the Complaint, including, but not limited to allegations,
7 that: (1) Defendants failed to pay overtime compensation under the Fair Labor Standards Act
8 (FLSA); (2) Defendants failed to provide meal periods, or compensation in lieu thereof, in violation
9 of California Labor Code sections 226.7 and 512 and the applicable Industrial Welfare Commission
10 Wage Order; (3) Defendants failed to authorize and permit rest periods, or compensation in lieu
11 thereof, in violation of California Labor Code section 226.7 and the applicable Industrial Welfare
12 Commission Wage Order; (4) Defendants failed to provide accurate itemized employee wage
13 statements, in violation of California Labor Code section 226 and the applicable Industrial Welfare
14 Commission Wage Order; (5) Defendants failed to timely pay wages due at termination, in violation
15 of California Labor Code sections 201-203 and 205; (6) Defendants engaged in unlawful business
16 practices in violation of California Business and Professions Code section 17200, et seq; (7)
17 Settlement Class Members are entitled to PAGA penalties pursuant to California Labor Code
18 Sections 2698, et seq.; (8) Settlement Class Members are entitled to declaratory relief to determine
19 whether the practices alleged in the Complaint are unlawful; (9) Settlement Class Members are
20 entitled to injunctive relief to halt any practices alleged in the Complaint that are unlawful; (10)
21 Settlement Class Members are entitled to restitutionary damages under California Business &
22 Professions Code sections 17200, et seq.; (11) Defendants are liable for attorneys’ fees and/or costs
23 incurred to prosecute this action on behalf of Settlement Class Members, including fees incurred for
24 the services of Class Counsel; and (12) Defendants are liable for any other remedies, penalties, and
25 interest under California Labor Code sections 201, 202, 203, 205, 226, 226.7, 510, 512, 2699, and
26 the applicable Industrial Welfare Commission Wage Order. If a person opt-outs of the Class after
27 receiving the Class Notice, his or her California claims will not be released and will not be barred by
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1 res judicata in any future legal proceedings. If a person does not submit a consent to join/opt-in to
2 the FLSA action, that person's FLSA claim will not be released, regardless of whether he or she is
3 part of the Class Settlement.

4 18. **"Released Parties"** means Defendants and their past and present parents,
5 subsidiaries, related entities, and affiliates, and their respective present and former officers,
6 directors, stockholders, agents, employees, insurers, co-insurers, reinsurers, attorneys, accountants,
7 auditors, advisors, representatives, consultants, pension and welfare benefit plans, plan fiduciaries,
8 administrators, trustees, partners, predecessors, successors and assigns.

9 19. **"Relevant Time Period"** is December 7, 2013 to May 3, 2019.

10 20. **"Settlement Award"** means the gross payment that each Eligible Class Member
11 shall be entitled to receive under the terms of the Settlement Agreement.

12 21. **"Settlement Class"** or **"Settlement Class Members"** means all persons who are or
13 were employed in California by Defendants as non-exempt (i) shop workers, (ii) farm equipment
14 operators, (iii) truck drivers, and (iv) weighers at any point during the Class Period and who do not
15 properly and timely opt out of the Settlement Class by having requested exclusion. There are
16 approximately 111 Settlement Class Members.

17 22. **"Settlement Fairness Hearing"** means the hearing to follow appropriate notice to
18 the Settlement Class and an opportunity for members of the Settlement Class to object to the
19 settlement, at which time the Parties will request that the Court approve the fairness, reasonableness
20 and adequacy of the terms and conditions of the proposed settlement, enter the Order and Final
21 Judgment, and take other appropriate action.

22 23. **"Settlement Fund"** means the \$450,000.00 to be paid by Defendants Vieira Custom
23 Chopping, Inc., V & S Commodity, Inc., Christina Vieira and Matthew Sepeda under the terms of
24 this Settlement Agreement. The Parties understand and agree that this amount does not include the
25 employer's share of payroll taxes, but includes all other amounts that must be paid by Defendants
26 under this settlement.

RECITALS

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24. On December 7, 2017, the Named Plaintiffs, individually and on behalf of a purported class of similarly-situated individuals, commenced an action against Defendants in the United States District Court for the Eastern District of California, entitled *Cortez, Mario, et al. v. Vieira Custom Chopping, Inc., et al.*, Case Number 1:17-CV-01647-DAD-SKO. In this Action, the Named Plaintiffs alleged causes of action against Defendants based on alleged (i) violations of the FLSA, California Labor Code and California Industrial Welfare Commission wage orders; (ii) unfair and unlawful business practices in violation of the California Unfair Competition Law; and (iii) violations of the Private Attorney General Act (“PAGA”). In support of the causes of action set forth in the pleadings, the Named Plaintiffs allege that Defendants breached various statutory duties and obligations to the Named Plaintiffs and members of the Settlement Class in connection with services provided by those individuals to Defendants. Through the Action, the Named Plaintiffs seek to recover, on behalf of themselves and members of the Settlement Class, compensatory damages for unpaid wages, liquidated damages, statutory penalties, PAGA penalties, restitution, interest, attorneys’ fees and costs.

25. Defendants deny any liability or wrongdoing of any kind whatsoever associated with the Released Claims as alleged in the Action and further deny that the claims alleged by the Named Plaintiffs are appropriate for class or representative treatment for any purpose other than settling the Action. With respect to the Released Claims, Defendants contend, among other things, that they have complied at all times with the California Labor Code, FLSA, the California Business and Professions Code and all other laws, statutes and orders alleged in the Action.

26. No motion for conditional or class certification has yet been filed.

27. Since its initial filing, the Parties have engaged in discovery and investigation and made efforts to resolve the case. On May 30, 2018, Defendants and the Named Plaintiffs participated in a lengthy mediation before, Justice Steven M. Vartabedian, in Fresno, California. Because both sides were not able to reach an agreement, Defendants and Named Plaintiffs participated in another extensive mediation on May 3, 2019 with James M. Phillips, an experienced wage and hour and class action mediator. Both mediations included thorough discussion and

1 examination of the Parties' respective positions on the legal and factual issues raised by the Action.
2 The good faith mediations, during which Defendants were represented by counsel of record and the
3 Named Plaintiffs were present and represented by Class Counsel, resulted in a settlement one week
4 after the second mediation.

5 28. The Named Plaintiffs recognize the expense and length of proceedings necessary to
6 continue the litigation against Defendants through trial and through any possible appeals. The
7 Named Plaintiffs have also taken into account the uncertainty and risk of the outcome of further
8 litigation, the difficulties and delays inherent in such litigation and Defendants' financial condition.
9 The Named Plaintiffs have also taken into account the settlement negotiations conducted in the
10 Action to date, the substantial information provided through informal discovery, and the payroll and
11 time card information provided by Defendants. Based on the foregoing, the Named Plaintiffs have
12 determined that this Settlement Agreement is a fair, adequate and reasonable settlement, and that it
13 is in the best interests of the Settlement Class.

14 29. Defendants have concluded that any further defense of the Action would be
15 protracted and expensive. Substantial amounts of time, energy and resources of Defendants have
16 been and, unless this settlement is made, will continue to be devoted to the defense of the claims
17 asserted in the Action. Defendants have, therefore, agreed to settle in the manner and upon the
18 terms set forth in this Settlement Agreement in order to put to rest the claims as set forth in the
19 Action.

20 30. In consideration of the covenants and agreements set forth herein, Named Plaintiffs,
21 the Class, and Defendants, themselves and through their undersigned counsel, agree to the
22 settlement of this Action, subject to Court approval, under the following terms and conditions. This
23 settlement contemplates the (a) entry of an Order of Preliminary Approval of a Class Action
24 Settlement; (b) entry of a Final Order Approving Settlement of Class Action; and (c) dismissal of
25 the Action on the merits with prejudice upon receipt of all settlement payments in accordance with
26 this Settlement Agreement. The Judgment and Final Order will have the same effect for FLSA
27 claim purposes for Settlement Class Members who opt in to the FLSA collective action, pursuant to
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1 Paragraph 39.4 below.

2 NOW, THEREFORE, IT IS HEREBY AGREED, BY AND BETWEEN the undersigned,
3 that the Action shall be settled as to the Named Plaintiffs, the Settlement Class and Defendants,
4 subject to final approval of the Court, upon and subject to the following terms and conditions:
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6 **BASIC SETTLEMENT TERMS**

7 31. It is hereby agreed, by and between the Named Plaintiffs and Defendants, through
8 their respective counsel of record, and subject to the approval of the Court, in consideration of the
9 benefits inuring to the Parties hereto, and without admission of any liability or wrongdoing
10 whatsoever by Defendants, that on the Effective Date, each member of the Settlement Class shall be
11 deemed to have jointly and severally released and forever discharged Defendants from any and
12 Released Claims.

13 32. The Named Plaintiffs, individually and on behalf of themselves only, agree to release
14 Defendants from any and all claims they may have against Defendants based on any events
15 occurring up to the Effective Date of the Settlement, whether those claims are known or unknown,
16 except for claims that may not be released as a matter of law. The Named Plaintiffs represent and
17 agree that they have read and fully understand the statutory language of section 1542 of the Civil
18 Code of the State of California and on that basis expressly and specifically waive all rights under
19 said statute, which reads as follows:

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

25 The Named Plaintiffs waive and relinquish any right or benefit which they have had or may
26 have under Section 1542 of the Civil Code of the State of California or any similar provision of the
27 statutory or non-statutory law of any other jurisdiction, to the full extent that they may lawfully
28 waive all such rights and benefits pertaining to the subject matter of this Settlement Agreement.

1 33. If, notwithstanding this Settlement Agreement, a claim or cause of action is brought
2 or asserted by or on behalf of one or more of the Named Plaintiffs and/or any member of the
3 Settlement Class based on a Settled Claim, the Parties agree that the payment of a Settlement
4 Award to an Eligible Class Member shall constitute full satisfaction of Defendants' liability with
5 respect to any Settled Claim relating to that Eligible Class Member within the Class Period.

6 34. Subject to Court approval and the conditions specified herein, and in exchange for
7 the release of all Released Claims by members of the Settlement Class, a Qualified Settlement Fund
8 ("QSF") shall be established by the Claims Administrator for holding and payment of all settlement
9 amounts, subject to all legal requirements for a QSF and will be funded in the amount of Four-
10 Hundred Fifty Thousand Dollars (\$450,000.00). The Parties understand and agree that this amount
11 does not include the employer's share of payroll taxes, which Defendants will pay to the Claims
12 Administrator.

13 35. Before any Settlement Awards are paid to Eligible Class Members, deductions from
14 the common fund (as supplemented by Defendants for the employer share of payroll taxes) shall be
15 made for (i) the service awards to Named Plaintiffs specified in this Settlement Agreement, (ii) the
16 award of attorneys' fees and costs to Class Counsel specified in this Settlement Agreement, (iii) all
17 costs of settlement administration, and (iv) PAGA payment to the LWDA. The balance remaining
18 in the common fund after these deductions are made shall constitute the Net Settlement Fund.

19 36. The Four-Hundred Fifty Thousand Dollars (\$450,000.00) common fund will include
20 but is not limited to all Eligible Class Member payments, class representative enhancement
21 awards, payment to the LWDA, attorneys' fees, costs, and Claims Administrator costs as
22 specified in the Implementation Schedule, attached hereto as Exhibit D. The settlement shall be
23 funded as follows: first payment of \$75,000 due by November 1, 2019 and monthly payments
24 thereafter of \$15,000 per month due on the first day of each month beginning on December 1, 2019,
25 for a total of 25 months. In the event Defendants fail to make these payments, the full balance of
26 the Settlement amount shall become immediately owed and due. Plaintiffs agree to give Defendants
27 written notice of any default by fax and mail, and Plaintiffs agree not to take other action to cause
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1 an order or judgment to be entered in connection with this lawsuit until after seven (7) days have
2 elapsed from the date of transmission of such notice of default by fax and email to Defendants'
3 attorney, Steven R. Wainess of Raimondo & Associates. During this seven (7) day period,
4 Defendants shall have the right to cure any default in their performance. If Defendants do not cure
5 their default in time, Defendants shall also pay to Class Counsel their attorney's fees and costs
6 incurred in enforcing this settlement agreement.

7 37. The Claims Administrator will make the first of three (3) distributions within
8 thirty (30) days from the date the Claims Administrator receives the first payment from
9 Defendants. This first payment will be used to pay the pro rata costs of claims administration,
10 full PAGA payment to the LWDA, and entire attorneys' costs. The Claims Administrator will hold
11 the remaining funds for the second distribution. The second distribution will be made within
12 thirty (30) days from the date the Claims Administrator receives the twelfth (12th) monthly
13 payment (November 1, 2020) from Defendants for payment of Settlement Awards to the Class.
14 The third distribution will be made within thirty (30) days from the date the Claims
15 Administrator receives the twenty-fifth (25th) and final monthly payment from Defendants for
16 payment of remaining Settlement Awards to the Class in proportionate shares, the Named
17 Plaintiffs' enhancement awards, and Class Counsel's attorneys' fees. Payments will be mailed
18 only to those Settlement Class Members who presumptively received the Class Notice and to
19 additional Settlement Class Members who have contacted Class Counsel and the Claims
20 Administrator. The Claims Administrator will consider requests by individuals to whom Class
21 Notices were not sent and mail them such notices and respective amounts to which they may be
22 entitled. Any unclaimed amounts from the first distribution to Settlement Class Members will
23 revert to the Net Settlement Fund and distributed to Settlement Class Members pro rata in the
24 second and final distribution. As described in paragraph 46 below, should there remain any
25 residual from the Net Settlement Fund after all payments are made under this Settlement
26 Agreement, for example, if any settlement checks are not cashed within 120 calendar days after the
27 last payment mailing, the residual amount shall be paid to Centro de los Derechos del Migrante,
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1 Inc., a nonprofit organization, as a *cy pres* recipient.

2 38. On the date or dates specified by the Implementation Schedule, and solely for
3 purposes of effectuating this Settlement Agreement, the Claims Administrator shall pay from the
4 common fund the following amounts:

5 38.1. Class Counsel. Subject to Court approval, the Claims Administrator shall pay
6 25% of the Settlement Fund, from the common fund the gross sum of One-Hundred Twelve
7 Thousand Five Hundred (\$112,500.00) to Class Counsel as attorneys' fees for prosecution of the
8 Action against Defendants, or such amount as ultimately approved by the Court. In addition, the
9 Claims Administrator shall pay from the common fund to Class Counsel the costs incurred in
10 connection with prosecution of the Action in an amount not to exceed Eight Thousand Nine
11 Hundred Dollars (\$8,900). If the Court does not approve payment of \$112,500 to Class Counsel for
12 attorneys' fees or \$8,900 in costs, then Class Counsel shall be paid from the common fund the
13 amount of attorneys' fees or costs ultimately approved by the Court.

14 38.2. Named Plaintiffs. The Claims Administrator shall pay from the common fund
15 service awards to the Named Plaintiffs in the amount of Seven-Thousand Five Hundred Dollars
16 (\$7,500.00) each, or such amount as is ultimately approved by the court, and shall cause an IRS
17 Form 1099 to be issued to each such individual in that amount. The service awards shall be paid to
18 Named Plaintiffs to compensate them for the additional efforts they undertook on behalf of the class
19 which have redounded to the benefit of the entire class. In addition, Named Plaintiffs shall be
20 eligible to receive their proportionate share of the Net Settlement Fund through their receipt of
21 Settlement Awards calculated in accordance with this Settlement Agreement.

22 39. On the date specified by the Implementation Schedule, and solely for purposes of
23 effectuating this Settlement Agreement, the Claims Administrator shall pay from the Net Settlement
24 Fund amounts calculated in accordance with the following allocations and eligibility and settlement
25 formula requirements:

26 39.1. Net Settlement Fund Allocations. The Parties agree that the Net
27 Settlement Fund shall be allocated in the following manner.

1 39.1(a). Twenty percent (20%) shall be allocated to the settlement of
2 class claims for unpaid wages.

3 39.1(b). Eighty percent (80%) shall be allocated to the settlement of class
4 claims for statutory penalties and interest.

5 39.1(c). Ten-Thousand Dollars (\$10,000) shall be allocated to the
6 settlement of PAGA claims, which will come from the penalties allocation.

7 39.2 Labor and Workforce Development Agency. Of the Net Settlement Fund, the
8 Claims Administrator shall pay Seven-Thousand and Five Hundred Dollars (\$7,500) to the
9 California Workforce Development Agency as the Agency's 75% share of PAGA penalties.

10 39.3 Eligible Members of the Settlement Class and FLSA Collective Action &
11 Method to Calculate Settlement Shares. The Claims Administrator shall pay Settlement
12 Awards from the remainder of the Net Settlement Fund to members of the Settlement Class
13 and the FLSA collective action as set forth in Exhibit A attached hereto. In the event the
14 Court's final approval of any of the above sums is different than the figures used by the
15 Settlement Administrator in computing the Settlement Shares prior to sending the Notices,
16 the Settlement Administrator shall use the finally approved sums for re-computing the Net
17 Settlement Amount and the Settlement Shares. Defendants have provided Plaintiffs'
18 counsel with time cards and payroll data for each member of the Settlement Class and the
19 FLSA collective action from December 7, 2013 to May 3, 2019. Utilizing the dates worked
20 by each member of the Settlement Class and the FLSA collective action, Plaintiffs' counsel
21 determined the number of payroll periods worked by each person, as well as the combined
22 number of payroll periods for the entire Class. Plaintiffs' counsel used the hours worked
23 and hourly rate of each member of the Settlement Class and the FLSA collective action to
24 calculate damages and the percentage that each worker would be entitled to from the
25 collective total amount allegedly owed. Plaintiffs' counsel will transmit the percentages for
26 each member of the Settlement Class and the FLSA collective action to the Claims
27 Administrator. The Claims Administrator shall use these same percentages in computing
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1 each member of the Settlement Class and the FLSA collective action respective portion of
2 the Net Settlement Amount. This amount for each member of the Settlement Class and the
3 FLSA collective action is known as the Settlement Claim Share. The calculation of
4 Settlement Shares for all Settlement Class Members by formula does not imply that the
5 factors included in the formula comprise all of the elements of damages, penalties,
6 restitution, interest and other monetary items alleged in the Action. Inaccurate wage
7 statement and waiting time penalties were not utilized to calculate the distribution amounts.
8 The formula was devised as a logistical tool to simplify the Settlement process and as part of
9 the compromise entered into between the Parties relative to the Settlement. A specific
10 portion of the Net Settlement Fund will be allocated to FLSA overtime wages. Any
11 unclaimed FLSA wages will remain in the Net Settlement Fund and re-distributed among
12 the Settlement Class Members with FLSA claims.

13 39.4 Opt-In for FLSA Claims

14 Only workers who consent to join/opt-in to the FLSA action will be releasing their FLSA
15 claims. If a person does not submit a consent to join/opt-in to the FLSA action, that person's FLSA
16 claim will not be released, regardless of whether he or she is part of the Class Settlement.

17 40. The portion of any Settlement Award that is allocable to the settlement of claims for
18 unpaid wages under the terms of this Settlement Agreement shall be paid through the Claims
19 Administrator in a net amount after applicable state and federal tax withholdings, and any other
20 deductions required by state and local law. The Claims Administrator shall cause an IRS Form W-2
21 to be issued with respect to the portion of any Settlement Award that is allocable to the settlement
22 of claims for unpaid wages under the terms of this Settlement Agreement and based on the personal
23 information provided by Eligible Class Members on their dispute forms. In addition, the Claims
24 Administrator shall cause IRS Forms 1099 to be issued with respect to the portion of any Settlement
25 Award that is allocable to the settlement of claims for statutory penalties and interest under the
26 terms of this Settlement Agreement and based on the personal information provided by Eligible
27 Class Members on their dispute forms.

1 41. The Claims Administrator shall have the responsibility for determining eligibility for
2 and the gross and net amounts of any Settlement Awards of Eligible Class Members, and the gross
3 and net amounts of the special payments to Named Plaintiffs. All eligibility and Settlement Award
4 determinations shall be based on data to be provided to the Claims Administrator through dispute
5 forms submitted by members of the Settlement Class pursuant to the terms of this Settlement
6 Agreement.

7 42. On the date specified by the Implementation Schedule, the Claims Administrator
8 shall provide Defendants' counsel and Class Counsel with (i) a list of the names and the last four
9 digits of the social security or individual taxpayer identification numbers of all Eligible Class
10 Members who the Claims Administrator has determined shall receive Settlement Awards and, for
11 each such Eligible Class Member (ii) the gross and net amount of that portion of his or her
12 Settlement Award allocable to the settlement of claims for unpaid wages under this Settlement
13 Agreement, and (iii) the gross and net amount of that portion of his or her Settlement Award
14 allocable to the settlement of claims for statutory penalties and interest under this Settlement
15 Agreement. This information shall be used to manage the notice and claims process and shall
16 remain confidential, except for the Parties, counsel for the Parties and applicable taxing authorities,
17 or pursuant to express written authorization of the individual in question, or by order of the Court.

18 43. Defendants and their attorneys agree not to oppose any application for attorneys'
19 fees or costs by Class Counsel, so long as any such application is consistent with the provisions of
20 this Settlement Agreement. Any attorneys' fees or costs incurred in connection with prosecution of
21 the Action against Defendants payable under this Settlement Agreement shall be paid to Class
22 Counsel by the Claims Administrator from the common fund no later than the date or dates
23 specified in the Implementation Schedule.

24 44. The Parties agree that the Claims Administrator shall arrange for the opening of an
25 QSF to and from which the Settlement Fund will be paid. The Claims Administrator shall have
26 exclusive control over the QSF subject to and consistent with the terms of this Settlement
27 Agreement. All interest earnings on the QSF shall accrue to the common fund, and all taxes owed
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1 on such interest earnings shall be paid by the Claims Administrator from the common fund. Any
2 and all common fund amounts to be paid by Defendants under the terms of this Settlement
3 Agreement shall be wire transferred to the QSF by the dates specified in the Implementation
4 Schedule. The Claims Administrator shall be responsible for providing Defendants the QSF
5 information necessary to effectuate any wire transfer of funds required by this Settlement
6 Agreement.

7 45. No person or entity shall have any claim against Defendants, Defendants' Counsel,
8 the Named Plaintiffs, the Settlement Class, or Class Counsel based on distributions or payments
9 made in accordance with this Settlement Agreement.

10 46. Should any portion of the common fund remain in the trust account after the
11 payment of all Settlement Awards to Eligible Class Members, service awards to Named Plaintiffs,
12 and attorneys' fees and costs to Class Counsel, including all fees, costs and expenses charged or
13 incurred by the Claims Administrator, and the California Labor and Workforce Development
14 Agency, said amount shall be paid to Centro de los Derechos del Migrante, Inc., a nonprofit
15 organization, as a *cy pres* recipient.

16 47. If the proposed Settlement is not approved by the Court and the basis for the Court's
17 disapproval of the proposed Settlement does not involve a material term of this Settlement
18 Agreement, then the Parties shall make good faith efforts to modify the settlement so as to gain the
19 Court's approval. If the Parties are unable to modify the settlement so as to gain the Court's
20 approval, then the Action shall proceed with respect to the Parties as if there had been no
21 settlement.

22 48. The Named Plaintiffs and Defendants agree that the Implementation Schedule shall
23 govern implementation of this Settlement Agreement, and that the dates set forth in the
24 Implementation Schedule shall only be continued based on (i) the mutual consent of counsel for the
25 Parties, or (ii) unavoidable delays due to the Court's schedule, and, then, only to the extent of those
26 delays, or (iii) by order of the Court on its own motion or on the application or motion of any of the
27 Parties.

CLASS NOTICE, FLSA NOTICE AND SETTLEMENT FAIRNESS HEARING

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2 49. As part of this Settlement Agreement, the Parties agree to the following procedures
3 for obtaining the Court's preliminary approval of this Settlement Agreement, notifying the
4 Settlement Class and members of the FLSA collective action, obtaining final Court approval of this
5 Settlement Agreement, and processing the Settlement Awards.

6 49.1. The Named Plaintiffs shall request a hearing date from the Court for
7 preliminary approval of this Settlement Agreement. In conjunction with that request, the Named
8 Plaintiffs shall submit this Settlement Agreement and supporting papers, which shall set forth the
9 terms of this Settlement Agreement, and shall include the proposed forms of all notices and other
10 documents that are necessary to implement this Settlement Agreement.

11 49.2. Solely for purposes of this Settlement Agreement, and within the time specified
12 by the Implementation Schedule, the Named Plaintiffs shall request the Court to enter an order
13 preliminarily approving the proposed settlement and setting a date for the Settlement Fairness
14 Hearing. The Preliminary Order shall provide for notice of this Settlement Agreement and related
15 matters to be sent to Eligible Class Members as specified herein.

16 49.3. Notice of the settlement shall be provided to the Settlement Class, and
17 members of the Settlement Class shall submit any objections to the settlement, using the following
18 procedures:

19 49.3(a). On the date specified in the Implementation Schedule, Defendants' counsel
20 shall provide to the Claims Administrator and Class Counsel a list of all members of the Settlement
21 Class, their last known addresses, telephone numbers, and the last four digits of their social security
22 or individual taxpayer identification numbers. The Claims Administrator shall be responsible for
23 preparing, printing and mailing to members of the Settlement Class the Class Notice attached hereto
24 as Exhibit A and the dispute forms attached hereto as Exhibit B. A Spanish language translation
25 (prepared by the Claims Administrator) of all materials mailed to members of the Settlement Class
26 by the Claims Administrator shall be included as a part of the same mailing.

27 49.3(b). No later than the date specified in the Implementation Schedule, the Claims
28 Administrator shall send a copy of the Class Notice and FLSA Notice in the form attached hereto as

1 Exhibit A (including a dispute form in the form attached hereto as Exhibit B), to members of the
2 Settlement Class and the FLSA collective action via First Class regular U.S. mail, postage prepaid,
3 using the most current mailing address information available. The Claims Administrator shall also
4 send a copy of the FLSA Consent to Join/Opt-In form attached hereto as Exhibit C to members of
5 the FLSA collective action. For any Class Notice and FLSA Notice returned to the Claims
6 Administrator as non-deliverable within 45 days of the original mailing date, the Claims
7 Administrator shall make prompt and reasonable efforts to locate the person involved, using
8 appropriate search methods. If new address information is obtained, the Claims Administrator shall
9 promptly re-mail the Class Notice to the addressee via First Class regular U.S. mail, postage
10 prepaid, using the new address. If the Claims Administrator is unable to obtain new address
11 information with regard to any Class Notice returned as non-deliverable within 30 days following
12 the original mailing date, or if a Class Notice is returned as non-deliverable more than 45 days
13 following the original mailing date, the Claims Administrator shall be deemed to have satisfied its
14 obligation to provide the Class Notice to the affected member of the Settlement Class through the
15 original mailing. In the event the procedures in this paragraph are followed and the intended
16 recipient of the Class Notice does not receive the Class Notice, the intended recipient shall
17 nevertheless remain a member of the Settlement Class and shall be bound by all the terms of this
18 Settlement Agreement and the Order and Final Judgment. The Claims Administrator will provide
19 all returned and signed FLSA Consent to Join/Opt-In forms to Plaintiffs' Counsel to file them with
20 the Court.

21 49.3(c). The Class Notice shall provide that those members of the Settlement Class
22 who wish to object to the settlement must serve on the Claims Administrator a written statement
23 objecting to the settlement. Such written statement must be served on the Claims Administrator no
24 later than the date specified in the Implementation Schedule. The Claims Administrator will file
25 any objections with the Court. No member of the Settlement Class shall be entitled to be heard at
26 the Settlement Fairness Hearing (whether individually or through separate counsel) or to object to
27 this Settlement Agreement, and no written objections or briefs submitted by any member of the
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1 Settlement Class shall be received or considered by the Court at the Settlement Fairness Hearing,
2 unless written notice of the class member's intention to appear at the Settlement Fairness Hearing,
3 and copies of any written objections or briefs, shall have been served on the Claims Administrator
4 on or before the date specified in the Implementation Schedule. Members of the Settlement Class
5 who fail to serve timely written objections in the manner specified above shall be deemed to have
6 waived any objections and shall be foreclosed from making any objection (whether by appeal or
7 otherwise) to this Settlement Agreement. The Claims Administrator shall provide a weekly status
8 report to the Parties. As part of its weekly status report, the Claims Administrator will inform Class
9 Counsel and Defendant's Counsel of the number of Notices mailed, the number of Notices returned
10 as undeliverable, the number of Notices re-mailed, and the number of requests for exclusion
11 received.

12 49.3(d). At no time shall any of the Parties or their counsel seek, solicit or otherwise
13 encourage, directly or indirectly, members of the Settlement Class to submit written objections to
14 the settlement, or to appeal from the Order and Final Judgment.

15 49.3(e). A Settlement Fairness Hearing shall be conducted on the date specified in
16 the Implementation Schedule to determine final approval of the settlement along with the amounts
17 properly payable for (i) attorneys' fees and costs, including all costs of claims administration, and
18 (ii) the service awards to Named Plaintiffs. Upon final approval of the settlement by the Court at or
19 after the Settlement Fairness Hearing, the Parties shall present the Order and Final Judgment to the
20 Court for its approval and entry. After entry of the Order and Final Judgment, the Court shall have
21 continuing jurisdiction solely for purposes of addressing settlement administration matters and such
22 post-final judgment matters as may be appropriate under court rules or as set forth in this Settlement
23 Agreement.

24 49.3(f). All members of the Settlement Class and the FLSA collective action who
25 opt-in shall be eligible to receive a Settlement Award. Settlement Awards shall be paid pursuant to
26 the settlement formula set forth herein no later than the date specified in the Implementation
27 Schedule. The Claims Administrator shall initially determine the eligibility for, and the amounts of,
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1 any Settlement Awards under the terms of this Settlement Agreement, which shall be conclusive,
2 final and binding on all Parties, including all members of the Settlement Class, subject to review by
3 Counsel for the Parties and approval by the Court. Administration of the settlement shall be
4 completed on or before the date specified in the Implementation Schedule. Upon completion of the
5 administration of the settlement, the Claims Administrator shall provide written certification of such
6 completion to the Court and Counsel for the Parties. Any checks reflecting Settlement Awards shall
7 remain valid and negotiable for 120 days from the date of their issuance and may thereafter
8 automatically be canceled if not cashed by an Eligible Class Member within that time, at which
9 time the Eligible Class Member's claim shall be deemed void and of no further force and effect.

10 49.3(g). The Parties agree to cooperate in the settlement administration process and
11 to make all reasonable efforts to facilitate the administration of the settlement.

12 49.3(h). In the event (i) the Court does not enter the Preliminary Order specified
13 herein, (ii) the Court does not finally approve the settlement terms as provided herein, (iii) the Court
14 does not enter the Order and Final Judgment as provided herein, or (iv) the settlement does not
15 become final for any other reason, this Settlement Agreement shall be null and void and any order
16 or judgment entered by the Court in furtherance of this settlement shall be treated as void *nunc pro*
17 *tunc*. In such a case, any and all unexpended funds in the trust account, including any and all
18 interest earnings, shall be returned immediately to Defendants by the Claims Administrator, and the
19 Parties shall proceed in all respects as if this Settlement Agreement had not been executed.

20 49.3(i). In the event an appeal is filed from the Court's Order and Final Judgment,
21 or any other appellate review is sought prior to the Effective Date, administration of the settlement
22 shall be stayed pending final resolution of the appeal or other appellate review.

23 49.3(j). The Claims Administrator shall keep Class Counsel apprised of all
24 distributions from the trust account and, upon completion of the administration of the settlement the
25 Claims Administrator shall provide written notice of such completion to Counsel for the Parties.

26 50. The terms of this Settlement Agreement include the terms set forth in any of the
27 attached Exhibits, which are incorporated by this reference as though fully set forth herein. The
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1 Exhibits to this Settlement Agreement are an integral part of this Settlement Agreement. Except as
2 set forth in the Exhibits to this Settlement Agreement, in the event of any conflict between this
3 Settlement Agreement and the Exhibits, the terms of this Settlement Agreement shall control.

4 51. The Parties agree to hold all proceedings in the Action, except such proceedings as
5 may be necessary to implement and complete this Settlement Agreement, in abeyance pending the
6 Settlement Fairness Hearing to be conducted by the Court.

7 52. This Settlement Agreement, as approved by the Court, may be amended or modified
8 only by a written instrument signed by Class Counsel on behalf of the Settlement Class, and
9 Defendant or its successors-in-interest, and as approved by the Court.

10 53. This Settlement Agreement constitutes the entire agreement among these Parties, and
11 no oral or written representations, warranties or inducements have been made to any Party
12 concerning this Settlement Agreement or its Exhibits other than the representations, warranties and
13 covenants contained and memorialized in such documents.

14 54. Counsel for all Parties warrant and represent that they are expressly authorized by
15 the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate
16 action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to
17 effectuate the terms hereof, and to execute any other documents required to effectuate the terms of
18 this Settlement Agreement. The Parties and their respective counsel shall cooperate with each other
19 and use their best efforts to effect the implementation of this Settlement Agreement. In the event
20 the Parties are unable to reach agreement on the form or content of any document needed to
21 implement this Settlement Agreement, or on any supplemental provisions that may become
22 necessary to effectuate the terms of this Settlement Agreement, the Parties agree to seek the
23 assistance of the Court to resolve such disagreement. The person signing this Settlement
24 Agreement on behalf of each of the Defendants represents and warrants that he or she is authorized
25 to sign this Settlement Agreement on behalf of such Defendant.

26 55. This Settlement Agreement shall be binding upon, and inure to the benefit of, the
27 successors or assigns of the Parties hereto, as previously defined.

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1 56. All terms of this Settlement Agreement and the Exhibits hereto shall be governed by
2 and interpreted according to the laws of the State of California.

3 57. All notices and other communications to be provided or made to the Parties and/or
4 Counsel for the Parties by the Claims Administrator under the terms of this Settlement Agreement
5 shall be delivered personally, e-mailed or mailed via guaranteed next business day delivery, postage
6 prepaid, addressed as follows:

7 **Class Counsel**

8 Enrique Martínez
9 Law Offices of John E. Hill
10 333 Hegenberger Road, Ste. 500
11 Oakland, CA 94621
12 Telephone: (510) 588-1000
13 Facsimile: (510) 633-2504

14 **Counsel for All Defendants**

15 Steven R. Wainess
16 Raimondo & Associates
17 7110 N. Marks Ave., Suite 104
18 Fresno, CA 93711
19 Telephone: (559) 432-3000
20 Facsimile: (559) 432-2242

21 58. This Settlement Agreement may be executed in one or more counterparts and by
22 facsimile signatures (which shall be deemed originals). All executed counterparts and each of them
23 shall be deemed to be one and the same instrument provided that counsel for the Parties to this
24 Settlement Agreement shall exchange among themselves signed counterparts.

25 59. The Parties believe this Settlement Agreement is a fair, adequate and reasonable
26 settlement of the Action and have arrived at this Settlement Agreement through good faith
27 negotiations, taking into account all relevant factors, present and potential.

28 60. The Court shall retain jurisdiction with respect to the interpretation, implementation
and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in
connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court
for purposes of the Court's interpreting, implementing and enforcing the settlement embodied in

1 this Settlement Agreement and all orders and judgments entered in connection therewith.


2 61. Each of the Parties has cooperated in the drafting and preparation of this Settlement
3 Agreement. Hence, in any construction made of this Settlement Agreement, the same shall not be
4 construed against any of the Parties.

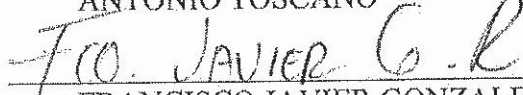
5 62. The Named Plaintiffs agree to sign this Settlement Agreement and by signing this
6 Settlement Agreement are bound by the terms herein stated and further agree not to object to any of
7 the terms of this Settlement Agreement.

8
9 **NAMED PLAINTIFFS**

10 Dated: 6/29/19 
11 MARIO CORTEZ

12 Dated: 6/29/19 
13 MARIA CISNEROS

14 Dated: 6-28-19 
15 ANTONIO TOSCANO

16 Dated: 6/29/19 
17 FRANCISCO JAVIER GONZALEZ

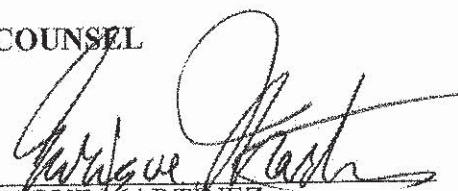
18 Dated: _____
19 JESUS RODRIGUEZ

20 Dated: 6-29-2019 
21 CECILIA GARCIA

22 Dated: _____
23 JOSE LUIS RAYGOZA

24 Dated: 6-29-19 
25 JOSE GUZMAN

26 **CLASS COUNSEL**

27 Dated: 6/28/19 
28 ENRIQUE MARTINEZ
LAW OFFICES OF JOHN E. HILL

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11 Dated: _____ MARIO CORTEZ

12 Dated: _____ MARIA CISNEROS

13 Dated: _____ ANTONIO TOSCANO

14 Dated: _____ FRANCISCO JAVIER GONZALEZ

15
16 Dated: 07-09-2019 *Jesus Rodriguez*
17 JESUS RODRIGUEZ

18 Dated: _____ CECILIA GARCIA

19 Dated: _____ JOSE LUIS RAYGOZA

20 Dated: _____ JOSE GUZMAN

21
22 **CLASS COUNSEL**

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27 Dated: _____ ENRIQUE MARTINEZ
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13 Dated: _____ MARIA CISNEROS

14
15 Dated: _____ ANTONIO TOSCANO

16
17 Dated: _____ FRANCISCO JAVIER GONZALEZ

18
19 Dated: _____ JESUS RODRIGUEZ

20
21 Dated: _____ CECILIA GARCIA

22
23 Dated: 07-01-2019 Jose Luis Raygoza
JOSE LUIS RAYGOZA

24
25 Dated: _____ JOSE GUZMAN

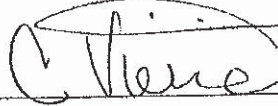
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27 **CLASS COUNSEL**

28 Dated: _____ ENRIQUE MARTINEZ
LAW OFFICES OF JOHN E. HILL

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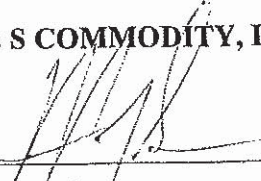
VIEIRA CUSTOM CHOPPING, INC.

Dated: 7-2-19


By: 
Its: Corp. Sec

V & S COMMODITY, INC.

Dated: 7-2-19

By: 
Its:

Dated: 7-2-19

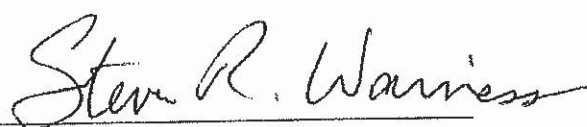

MATTHEW SEPEDA

Dated: 7-2-19


CHRISTINA VIEIRA

COUNSEL FOR DEFENDANTS

Dated: 7/8/2019


STEVEN R. WAINESS
RAIMONDO & ASSOCIATES