

STIPULATION OF CLASS AND PAGA SETTLEMENT

This Stipulation of Class and PAGA Settlement ("**Settlement Agreement**") is reached by and between Plaintiff Eliseo Ochoa ("**Plaintiff**"), individually and on behalf of all Aggrieved Employees and members of the Settlement Class, defined below, and Defendant Vieira Agricultural Enterprises, LLC ("**Vieira**" or "**Defendant**"), (Plaintiff and Defendant are referred to herein as the "**Parties**"). Plaintiff, Aggrieved Employees and the Settlement Class are represented by Daniel J. Brown of Stansbury Brown Law, PC ("**Class Counsel**"). Defendant Vieira is represented Carrie Bushman of Cook Brown LLP and Walter J. Schmidt of Crabtree Schmidt.

Plaintiff Ochoa filed a class action complaint against Defendant Vieira on July 14, 2021, in Merced County Superior Court, Case No. 21CV-02299, which alleges causes of action for: (1) minimum wage violations (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) failure to reimburse for necessary business expenses; (6) wage statement violations; (7) waiting time penalties; and, (8) unfair competition. Plaintiff Ochoa filed a First Amended Class and Representative Action Complaint ("**FAC**") on September 20, 2021, to add an additional cause of action for civil penalties under the Private Attorneys General Act ("**PAGA**") pursuant to Labor Code Sections 2698 *et seq.* based on claims asserted in the PAGA letter Ochoa submitted to the LWDA on July 14, 2021, in Case No. LWDA-CM-837903-21 ("**PAGA Letter**"). The Complaint and FAC are referred to herein as the "**Lawsuit**."

On November 30, 2022, and continuing thereafter in subsequent negotiations that occurred between then and the present, the Parties, represented by their respective counsel of record, privately mediated the Lawsuit, before Michael J. Loeb, Esq., of JAMS ADR. Prior to mediation, the Parties conducted significant investigation of the facts and law. This included review and analysis of Defendant's policies and putative class members' time records and payroll records. Counsel for the Parties have further investigated the applicable law as applied to the facts discovered regarding Plaintiff's claims, the defenses thereto, and the damages and penalties claimed by Plaintiff in the Lawsuit. As a result of the Parties' thorough investigation of the allegations and defenses thereto, they were able to reach an agreement at the mediation after extensive negotiations.

Given the risks and uncertainties of litigation, the Parties have agreed to settle this Lawsuit on the terms set forth herein and subject to the approval of Court. Nothing herein shall be construed as an admission of any wrongdoing or of liability as the Settlement Agreement is intended solely to allow the Parties to buy their peace and resolve the disputed claims asserted in this Lawsuit.

1. **Certification for Settlement Purposes.** For the purposes of this Settlement Agreement only, the Parties stipulate to certification of the following Settlement Class:

A. **Settlement Class** – The "**Class**" (or "**Class Members**") is defined as all current and former non-exempt employees of Defendant Vieira Agricultural Enterprises, LLC, who worked for Defendant Vieira Agricultural Enterprises, LLC in California from July 14,

2017, up to November 30, 2022 (the “**Class Period**”), unless amended per Paragraph 3.F. below.

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure or Federal Rule of Civil Procedure Rule 23.

If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. Releases.

- A. **Released Parties.** As referenced herein, **Released Parties** shall collectively mean: Vieira Agricultural Enterprises, LLC, and all of its past or present owners, officers, directors, shareholders, members, executives, partners, employees, insurers, managers, agents, representatives, predecessors, and successors, including Manuel E. Vieira, Inc. and A.V. Thomas Produce, Inc., and each of their respective past or present owners, officers, directors, shareholders, members, executives, partners, employees, insurers, managers, agents, representatives, predecessors, and successors.
- B. **Released Class Claims.** All Class Members who do not opt out of the settlement (collectively, “**Settlement Class Members**”) release Released Parties, from all claims, both potential and actual, that were or may have been raised based on the facts pled in the FAC that arose during the Class Period (“**Released Class Claims**”), including claims under Labor Code §§ 118.12, 201, 202, 203, 204, 205, 226, 226.7, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698, 2699.3; Wage Order 14, §§ 3, 4, 7, 11, 12 and Business & Professions Code § 17200 *et seq.*; Civil Code §§ 3287 and 3289 and Code of Civil Procedure § 1021.5 and all claims both potential and actual, that were or may have been raised based on the facts pled in the FAC for minimum wage violations, overtime wage violations, meal period violations, rest period violations, failure to reimburse for necessary business expenses, wage statement violations, waiting time penalties and unfair competition.
- C. **Released PAGA Claims.** Plaintiff and all current and former non-exempt employees of Defendant Vieira Agricultural Enterprises, LLC who worked for Defendant Vieira Agricultural Enterprises, LLC in California at any time during the period of July 14, 2020 up to November 30, 2022 (the “**PAGA Period**”) (“**Aggrieved Employees**”) will release Released Parties from all PAGA claims, both potential and actual, that were or may have been raised based on the facts pled in the FAC or asserted in the PAGA Letter (“**Released PAGA Claims**”), including claims under Labor Code §§ 118.12, 201, 202, 203, 204, 205, 226, 226.7, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698, 2699.3; Wage Order 14, §§ 3, 4, 7, 11, 12 and all claims both potential and actual, that were or may have been raised based on the facts pled in the FAC or PAGA Letter for minimum wage violations, overtime wage violations, meal

period violations, rest period violations, failure to reimburse for necessary business expenses, wage statement violations and waiting time penalties.

D. Plaintiff's General Release of Unknown Claims. Plaintiff, on behalf of himself and his heirs, executors, administrators, and representatives, shall and does hereby forever release, discharge and agree to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorney fees and costs), known or unknown, at law or in equity, which he may now have or may have after the signing of this Settlement Agreement, arising out of or in any way connected with his employment with Vieira including, the Released Class and PAGA Claims, claims that were asserted or could have been asserted in the Lawsuit, and any and all transactions, occurrences, or matters between the Parties occurring prior to the date this Settlement Agreement is fully executed. Without limiting the generality of the foregoing, this release shall include, but not be limited to, any and all claims under the (a) Americans With Disabilities Act, as amended; (b) Title VII of the Civil Rights Act of 1964, as amended; (c) the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e) the Age Discrimination in Employment Act, as amended; (f) the Fair Labor Standards Act, as amended; (g) the Equal Pay Act; (h) the Employee Retirement Income Security Act, as amended; (i) the Consolidated Omnibus Budget Reconciliation Act; (j) the Rehabilitation Act of 1973; (k) the Family and Medical Leave Act; (l) the Civil Rights Act of 1966; (m) the California Fair Employment and Housing Act; (n) the California Constitution; (o) the California Labor Code; (p) the California Government Code; (q) the California Civil Code; (r) the California Wage Orders, and (s) any and all other federal, state and local statutes, ordinances, regulations, rules and other laws, and any and all claims based on constitutional, statutory, common law or regulatory grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of contract or implied contract, fraud, misrepresentation, promissory estoppel or intentional and/or negligent infliction of emotional distress, or damages under any other federal, state or local statutes, ordinances, regulations, rules or laws. This release is for any and all relief, no matter how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and attorney fees and costs, and Plaintiff hereby forever releases, discharges and agrees to hold harmless Vieira and the Released Parties from any and all claims for attorney fees and costs arising out of the matters released in this Agreement.

E. Plaintiff specifically acknowledges that he is aware of and familiar with the provisions of Section 1542, which provides as follows:

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

However, to the extent that Plaintiff has claims that cannot be released as a matter of law (i.e., workers' compensation claims), then those claims will not be released.

3. **Settlement Payment.** In exchange for the releases set forth in this Settlement Agreement, Defendant agree to pay a common fund of One Million Five Hundred Thousand Dollars (\$1,500,000) ("**Maximum Settlement Amount**" or "**MSA**") in full and complete settlement of this matter, subject to Paragraphs (3)(E) - (F) below, as follows:

- A. **Funding of the Maximum Settlement Amount.** Defendant Vieira shall fund the Maximum Settlement Amount in five installments which the Settlement Administrator shall place in a Qualified Interest-Bearing Settlement Account established by the Settlement Administrator for this purpose as follows: (i) Defendant shall make the first installment of \$300,000 within five (5) business days of the court's entry of preliminary approval of class action/PAGA settlement ("Preliminary Approval"); (ii) Defendant shall make the second installment payment of \$300,000 within six (6) months after the first payment is deposited or within 30 days of final approval ("Final Approval"), whichever is later; (iii) Defendant shall make the remaining installment payments of \$300,000 each within six, twelve and eighteen months thereafter, respectively. Based on this installment schedule, the Settlement will be fully funded within twenty-four months of Final Approval.
- B. **Disbursement of Maximum Settlement Amount.** The Settlement Administrator shall disburse Plaintiff's Class Representative Enhancement Payment, Class Counsel's litigation costs and expenses, and twenty percent (20%) of Class Counsel's attorneys' fees within fifteen (15) days of Final Approval. The Settlement Administrator shall disburse an additional twenty-percent (20%) of Class Counsel's attorneys' fees within fifteen (15) days of receipt of the second installment payment. The Settlement Administrator shall disburse an additional twenty-percent (20%) of Class Counsel's attorneys' fees within fifteen (15) days of receipt of the third installment payment. The Settlement Administrator shall disburse an additional twenty-percent (20%) of Class Counsel's attorneys' fees within fifteen (15) days of receipt of the fourth installment payment. The Settlement Administrator shall disburse the remaining twenty-percent (20%) of Class Counsel's attorneys' fees within fifteen (15) days of receipt of the fifth and final installment payment. Disbursement of all other portions of the Maximum Settlement Amount, shall be made within fifteen (15) days of the final installment payment.
- C. **Releases Effective Upon Full Payment of the MSA.** The Releases identified in Paragraph 2 above will only become effective upon Defendant's payment of the entire Maximum Settlement Amount. If Defendant fails to fully fund the Settlement the Releases described above will be null and void.
- D. **Non-revisionary.** This is a non-reversionary settlement. The Maximum Settlement Amount Includes:

- i. All payments to the Settlement Class;

- ii. Settlement Administrator. All fees and expenses of the settlement administrator associated with the administration of the settlement, which are anticipated to be no greater than Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). The Parties agree to the appointment of Phoenix Settlement Administrators as the settlement administrator ("**Settlement Administrator**") and to Class Counsel seeking Court approval to pay up to Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) from the Maximum Settlement Amount for the Settlement Administrator's services. The Settlement Administrator shall be responsible for sending all required notices in both English and Spanish, providing written reports to Class Counsel and defense counsel that, among other things, tally the number of Notices mailed or re-mailed, Notices returned undelivered, Requests for Exclusion, objections and disputes received from Class Members, calculating the Net Settlement Amount, calculating each Class Member's and Aggrieved Employees' Participating Member Payment, defined below, amount, preparing all checks and mailings and disbursing all residuals resulting from uncashed settlement checks as set forth in Paragraph 4(C), withholding payroll taxes from the Settlement Class Member's individual settlement payments, calculating Defendant's share of employer payroll taxes, remitting payroll tax payments to the appropriate taxing authorities and providing declarations regarding the Settlement Administrator's background and services for Preliminary Approval, attesting to its due diligence and compliance with all of its obligations under this Agreement for Final Approval, and a final report detailing disbursement of the Maximum Settlement Amount in compliance with the Final Approval Order. The Settlement Administrator shall be authorized to pay itself from the Maximum Settlement Amount by Class Counsel only after checks have been mailed to all Aggrieved Employees and Settlement Class Members (collectively "**Participating Members**");
- iii. Enhancement Payment. Up to Seven Thousand Five Hundred Dollars (\$7,500) for an Enhancement Payment to Plaintiff subject to Court approval ("**Enhancement Payment**"). Defendant will not object to a request for a Class Representative Enhancement Payment for Plaintiff in exchange for the general release of his claims, his time and risks in prosecuting this case, and his service to the Settlement Class. These payments will be in addition to Plaintiff's Participating Member Payment (defined below) as a Participating Member and shall be reported on an IRS Form 1099 by the Settlement Administrator. It is the intent of the Parties that the Enhancement Payment to Plaintiff is for his service in connection with this Lawsuit and is not wages, therefore the Settlement Administrator shall not withhold any taxes from the Enhancement Payment and shall report it on an IRS Form 1099, which shall be provided to Plaintiff and to the pertinent taxing authorities as required by law. Although it is the contemplation of the Parties that the Enhancement Payment does not represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some other taxing authority may take the position that some or all of the Enhancement Payment constitute wages for income tax and withholding

purposes. Plaintiff agrees to assume all responsibility for remitting to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant taxing authority the amounts required by law, if any, to be withheld by Defendant from the Enhancement Payment paid under this Settlement Agreement, and all liability associated therewith. In the event that the Court reduces or does not approve the requested Enhancement Payment, the Settlement Agreement remains in full force and effect, Plaintiff shall not have the right to revoke the settlement for that reason, and it shall remain binding;

- iv. Class Counsel Fees and Costs. Up to thirty-five percent (35%) of the Maximum Settlement Amount in attorneys' fees, which is currently estimated to be Five Hundred Twenty-Five Thousand Dollars (\$525,000.00), plus up to Twenty Thousand Dollars (\$20,000.00) in verified costs and expenses related to the Lawsuit as supported by declaration. In the event that the Court reduces or does not approve Class Counsel's requested fees and costs, the Settlement Agreement remains in full force and effect, Plaintiff shall not have the right to revoke the settlement for that reason, and it shall remain binding. If the Maximum Settlement Amount increases at Defendant's election pursuant to Paragraph 3(F), the amount of fees requested by Class Counsel will increase proportionally such that the requested award is 35% of the MSA. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised, responses to any intervenors and any appeals necessitated by those objections or intervenors. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when it pays the fee award as approved by the Court; and
- v. PAGA Amount. Twenty Thousand Dollars (\$20,000.00) of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Fifteen Thousand Dollars (\$15,000.00) will be payable to the Labor & Workforce Development Agency ("**LWDA Payment**"), and the remaining twenty-five percent (25%), or Five Thousand Dollars (\$5,000.00) will be payable to the Aggrieved Employees as the "**PAGA Amount.**" The LWDA Payment and PAGA Amount are collectively referred to herein as the "**PAGA Payment.**"

- E. **Payroll Tax Payments.** Defendant's share of employer payroll taxes shall be paid by Defendant in addition to the Maximum Settlement Amount.
- F. **Settlement Class Escalator Clause.** Defendant represents that as of October 9, 2022, 2,480 Class Members worked a combined 82,579 Class Workweeks during the Class Period. A "**Class Workweek**" is any calendar week in which a Class Member worked at least one shift performing work for Vieira during the Class Period. The number of

Class Workweeks in the Class Period shall not exceed 88,772, which represents a 7.5% increase above 82,579 workweeks. If the actual number of Class Workweeks worked during the Class Period increases above 88,772, Defendant may elect at its discretion either (1) to increase the Maximum Settlement Amount on a pro-rata basis equal to the increase in the number of Class Workweeks over 7.5% (e.g., if the number of Class Workweeks increases by 25%, Defendant may elect to increase the Maximum Settlement Amount by 17.5%%) or (2) to cut off the Class Period at October 31, 2022 or an earlier date to avoid an increase in Class Workweeks over 7.5%.

4. **Participating Member Payment Procedures.** Participating Members are not required to submit a claim form to receive their share of the Settlement ("**Participating Member Payment**"). Participating Member Payments will be determined and paid as follows:
 - A. **Disbursement of PAGA Amount.** Each Aggrieved Employee who was employed by Vieira at any time during the PAGA Period, shall receive a portion of the Five Thousand Dollars (\$5,000.00) that has been designated as the PAGA Amount based on their proportionate share of PAGA Workweeks worked during the PAGA Period, by multiplying the PAGA Amount by a fraction, the numerator of which is the Aggrieved Employee's PAGA Workweeks during the PAGA Period, and the denominator of which is the total PAGA Workweeks of all Aggrieved Employees during the PAGA Period. A "**PAGA Workweek**" is any calendar week in which an Aggrieved Employee worked at least one shift for Vieira during the PAGA Period.
 - B. **Disbursement of Net Settlement Amount.** The Net Settlement Amount is the Maximum Settlement Amount after the following deductions are made: (a) all costs of settlement administration; (b) Enhancement Payment to Plaintiff; (c) the PAGA Payment; and (d) costs and attorneys' fees for Class Counsel. The Net Settlement Amount shall be distributed to each Settlement Class Member based on their proportionate share of Class Workweeks worked during the Class Period, by multiplying the Net Settlement Amount by a fraction, the numerator of which is the Settlement Class Member's Class Workweeks during the Class Period, and the denominator of which is the total Class Workweeks of all Settlement Class Members during the Class Period.
 - C. **Participating Member Payment Tax Treatment.** For purposes of calculating applicable taxes and withholdings for the payment to Participating Class Members described in Paragraph 4(B), twenty percent (20%) of each such payment shall be designated as wages subject to W-2 reporting and normal payroll withholdings; the remaining eighty percent (80%) of each such payment shall be designated as penalties and interest subject to IRS Form 1099 reporting with no withholdings. Additionally, 100% of the PAGA Amount paid to Aggrieved Employees shall be designated as penalties and interest subject to IRS Form 1099 reporting with no withholdings. Notwithstanding the treatment of these payments to each Participating Member above, none of the Participating Member Payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation

for any purpose of any applicable benefit or retirement plan, unless required by such plans.

- D. **Deadline to Negotiate Participating Member Payment.** Each Participating Member who receives a Participating Member Payment must negotiate the settlement check within one hundred eighty (180) days from the date of issuance. The one hundred eighty (180) day expiration of the settlement checks will be pre-printed on the front of the settlement check. Any funds payable to Participating Members whose checks are not negotiated within one hundred eighty (180) days period will not be reissued and will be transferred by the Settlement Administrator to Boys & Girls Clubs of Merced County. Settlement checks will not be sent out to any Participating Members whose Notice Packets are returned as undeliverable unless the Participating Member submitted an approved claim form in response to a notice of this lawsuit posted in a local newspaper.
- E. Vieira shall fully discharge its obligations to those Participating Members to whom it will pay a settlement payment through the Settlement Administrator's mailing of a settlement check, regardless of whether such checks are actually received and/or negotiated by Participating Members.
- F. Neither Plaintiff nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by his, her, or its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Preliminary Approval.** Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Daniel J. Brown of Stansbury Brown Law, PC as Class Counsel;
- C. Appointing Eliseo Ochoa as the Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Class Notice Packet (which is comprised of the Class Notice and Request for Exclusion Form), and directing the mailing of same in English and Spanish;
- G. Scheduling a Final Approval hearing;

- H. Plaintiff shall submit the proposed settlement to the Labor Workforce Development Agency ("LWDA") pursuant to Labor Code § 2699(l)(2). Proof of this submission will be provided to the Court and to Defendant's counsel; and
 - I. If Final Approval is granted, Plaintiff shall submit a copy of the Superior Court's judgement to the LWDA after entry of the judgement or order, pursuant to Labor Code § 2699(l)(3).
6. **Notice Procedures.** Following preliminary approval, the Settlement Class and Aggrieved Employees shall be notified as follows:
- A. Within thirty (30) days after entry of an order preliminarily approving this Settlement Agreement, Defendant will provide the Settlement Administrator with a class list including the names, last known addresses, and social security numbers (in electronic format) of Aggrieved Employees and Class Members, as well as the Class and PAGA Workweeks worked by each Aggrieved Employee and Class Member during the Class Period.
 - B. Within seven (7) days from receipt of the class list information, the Settlement Administrator shall: (i) run the names of all Class Members and Aggrieved Employees through the National Change of Address ("NCOA") database to determine any updated addresses for Class Members and Aggrieved Employees; (ii) update the addresses of any Class Member or Aggrieved Employee for whom an updated address was found through the NCOA search; and (iii) mail the Notice Packet to each Class Member or Aggrieved Employee in English and Spanish at their last known address or at the updated address found through the NCOA search, and retain proof of mailing.
 - C. The Settlement Administrator shall use its best professional efforts, including utilizing a "skip trace," to track any Class Member's and Aggrieved Employee's mailing returned as undeliverable, and will re-send the Notice Packet promptly upon identifying updated mailing addresses through such efforts. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member and Aggrieved Employee.
 - D. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline (defined below) shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Class Member or Aggrieved Employee immediately, and in any event within three (3) business days of obtaining the updated address.
 - E. **Opt-Out/Request for Exclusion Procedures.** Any Class Member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below)

to the Settlement Administrator within Sixty (60) days of the date of the initial mailing of the Notice Packets (the "Response Deadline").

- i. The Request for Exclusion Form must: (1) contain the name, address, telephone number of the Class Member; (2) contain a statement that the Class Member wishes to be excluded from the class settlement; (3) be signed by the Class Member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion Form fails to comply with items (1), (2), (3) or (4), it will not be deemed a valid Request for Exclusion from this settlement, except a Request for Exclusion Form not containing a Class Member's telephone number will be deemed valid. The date of the postmark on the Request for Exclusion Form, shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the settlement (although the PAGA settlement and release provisions will apply to each such individual, and such individual shall be entitled to their share of the PAGA Amount) or have any right to object, intervene, appeal, or comment thereon. Any Class Member who does not submit a Request for Exclusion Form is automatically deemed a Settlement Class Member.
- ii. Defendant's Right to Void. If 10% or more members of the Class timely submit opt-out requests, Defendant shall have the right (but not the obligation) to void this Settlement. Defendant must exercise this right to void the settlement, if at all, within 10 calendar days before the final approval hearing. The Parties shall not encourage anyone to opt-out of the Settlement. If Defendant exercises this right and if any settlement administration costs are due and payable, Defendant agrees that it will be solely responsible for paying the outstanding settlement administration costs.

F. Objections. Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel as well as filing them with the Court). Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendant's counsel and Class Counsel shall have ten (10) days to respond. To be valid, any objection must: (1) contain the objecting Class Member's full name and current address; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) objections must be postmarked on or before the Response Deadline.

G. Challenges to Participating Member Payment Calculations. Each Notice Packet mailed to a Class Member or Aggrieved Employee shall disclose the amount of the

Class Member's or Aggrieved Employee's estimated Participation Payment as well as all of the information that was used from Defendant's records in order to calculate the Participating Member Payment, including the number of Class Workweeks during the Class Period and PAGA Workweeks during the PAGA Period. Class Members and Aggrieved Employees will have the opportunity, should they disagree with Defendant's records regarding the number of Class Workweeks or PAGA Workweeks stated in their Notice Packet to challenge the data provided. In order to challenge Defendant's data, the Class Member or Aggrieved Employee must provide documentation and/or an explanation demonstrating that Defendant's data is incorrect and evidencing the correct number of Class Workweeks or PAGA Workweeks that the Class Member or Aggrieved Employee believes they should have been credited with and/or evidence of the correct date their employment ended. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. The Settlement Administrator shall provide a copy of the challenge, with the Participating Member's name and contact information redacted, and any supporting documentation to counsel for the Parties within five (5) days of receipt.

H. **Dispute Resolution.** The Settlement Administrator shall have the responsibility of resolving all disputes that arise during the settlement administration process, including, without limitation, disputes (if any) regarding the calculation of Class Member's or Aggrieved Employee's Participating Member Payment, the allocation of W-2 wages, and the number of Class Workweeks and PAGA Workweeks. Where the information submitted by Defendant from its records differ from the information submitted by the Class Member or Aggrieved Employee, the Settlement Administrator shall request a conference call between the Settlement Administrator, Class Counsel, and defense counsel to discuss and resolve the dispute. In advance of the conference call, the Settlement Administrator shall email copies of all available information, with the Participating Member's name and contact information redacted, to all counsel. After consulting with the Parties to determine whether an adjustment is warranted, the Settlement Administrator will finally determine the eligibility for and amount of any Participating Member Payment. Such determination shall be binding upon the Class Member, Aggrieved Employee, and the Parties.

7. **Final Approval Process.** Following preliminary approval and the close of Response Deadline under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's application for Settlement Administrator's fees and expenses, Plaintiff's Enhancement Payment, Class Counsel's attorneys' fees, Class Counsel's costs and expenses, and the PAGA Payment; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

- D. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
- E. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Enhancement Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Maximum Settlement Amount remains unchanged.
8. **Non-Admission.** Defendant denies that it has engaged in any unlawful activity, that it has failed to comply with the law in any respect, that it has any liability to anyone under the claims asserted in the Lawsuit, and that but for this settlement a class should not be certified in this Lawsuit. Nothing in this Settlement Agreement is intended or shall be construed as an admission of liability or wrongdoing by Defendant. Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this settlement. The Parties have entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.
9. **Confidentiality.** Plaintiff and his counsel agree to maintain the confidentiality of this settlement, this Settlement Agreement and the terms set forth herein, until a motion for preliminary approval is filed. Plaintiff and his counsel further agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communication with the press about this case, and or the fact, amount or terms of the settlement.
10. **No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Settlement Agreement, and that Plaintiff and Participating Members will assume any such tax obligations or consequences that may arise from any disbursements made under this Settlement Agreement, and Plaintiff and Participating Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any recipient of a disbursement under this agreement, such recipient assumes all responsibility for the payment of such taxes.

11. **Amendments or Modifications.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by the Parties or their representatives, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.
12. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery or by e-mail at the addresses of the Parties' representatives set forth below, or such other addresses as the Parties may designate in writing from time to time:

if to Defendant Vieira: Carrie E. Bushman, Esq.
COOK BROWN LLP
2407 J Street, Second Floor
Sacramento, CA 95816
cbushman@cookbrown.com

Walter Schmidt, Esq.
CRABTREE SCHMIDT
PO Box 3307
Modesto, CA 95353
walter@crabtreeschmidt.com

if to Plaintiff: Daniel J. Brown, Esq.
STANSBURY BROWN LAW, PC
2610 ½ Abbot Kinney Blvd.
Venice, CA 90291
dbrown@stansburybrownlaw.com

13. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.
14. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.
15. **Invalidity of Any Provision.** Before declaring any provision of this Settlement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement valid and enforceable.
16. **Failure to Obtain Final Approval.** If the court fails to grant either preliminary or final approval, the Parties shall be restored to their positions at the time of the execution of this memorandum, which shall include but not be limited to, all funds paid by Vieira into the

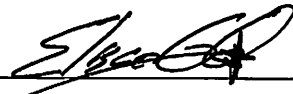
Qualified Interest-Bearing Settlement Account shall be returned to Vieira, with the exception that if any settlement administration costs are due and payable, Plaintiff and Defendant agree to split those costs evenly (50% from Plaintiff; 50% from Vieira).

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

[SIGNATURES ON FOLLOWING PAGE]

EXECUTION BY PARTIES AND COUNSEL

Date: 3/6/2023



Eliseo Ochoa, Plaintiff

Date: _____

_____, on behalf of
Vieira Agricultural Enterprises, LLC

Approved as to form:

Date: _____

COOK BROWN LLP

Carrie E. Bushman
Counsel for Defendant Vieira Agricultural
Enterprises, LLC

Date: _____

CRABTREE SCHMIDT

Walter J. Schmidt
Counsel for Defendant Vieira Agricultural
Enterprises, LLC

Date: March 6, 2023

STANSBURY BROWN LAW, PC



Daniel J. Brown
Counsel for Plaintiff and the Class

EXECUTION BY PARTIES AND COUNSEL

Date: _____

Date: 3/14/23

Approved as to form:

Date: 3/15/23

Date: 3/15/23

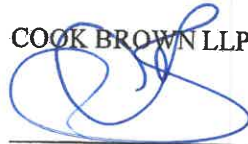
Date: _____

Eliseo Ochoa, Plaintiff



Carlos Vieira, on behalf of
Vieira Agricultural Enterprises, LLC

COOK BROWN LLP



Carrie E. Bushman
Counsel for Defendant Vieira Agricultural
Enterprises, LLC

CRABTREE SCHMIDT



Walter J. Schmidt
Counsel for Defendant Vieira Agricultural
Enterprises, LLC

STANSBURY BROWN LAW, PC

Daniel J. Brown
Counsel for Plaintiff and the Class