

1 Anna Y. Park, SBN 164242
2 Sue J. Noh, SBN 192134
3 Natalie Nardecchia, SBN 246486
4 Gina Carrillo, AZ SBN 030579
5 Andrea E. Ringer, CA SBN 307315
6 U.S. EQUAL EMPLOYMENT
7 OPPORTUNITY COMMISSION
8 255 East Temple Street, Fourth Floor
9 Los Angeles, CA 90012
10 Telephone: (213) 894-1083
11 Facsimile: (213) 894-1301
12 E-Mail: lado.legal@eoc.gov

9 Sara Smolik, MA SBN 661341
10 U.S. EQUAL EMPLOYMENT
11 OPPORTUNITY COMMISSION
12 John F. Kennedy Federal Bldg.
13 Rm 475, Gov't Center
14 Boston, MA 02203
15 Telephone: (617) 565-3207
16 Facsimile: (617) 565-3196
17 E-Mail: sara.smolik@eoc.gov

15 Aimee L. McFerren, KY SBN 88912
16 U.S. EQUAL EMPLOYMENT
17 OPPORTUNITY COMMISSION
18 Louisville Area Office
19 600 Dr. Martin Luther King, Jr. Place, Suite 268
20 Louisville, KY 40202
21 Telephone: (502) 582-6308
22 Facsimile: (502) 582-5437
23 E-Mail: aimee.mcferren@eoc.gov

21 Attorneys for Plaintiff
22 U.S. EQUAL EMPLOYMENT
23 OPPORTUNITY COMMISSION

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

25 U.S. EQUAL EMPLOYMENT
26 OPPORTUNITY COMMISSION,

27 Plaintiff,

28 vs.

) Case No.: 1:17-cv-00044-AWI-EPG
)
) **CONSENT DECREE; ORDER**
)
)
)
)
)

1 MARQUEZ BROTHERS INTERNATIONAL,)
 2 INC., MARQUEZ BROTHERS)
 3 ENTERPRISES, INC.,)
 4 MARQUEZ BROTHERS FOODS, INC.,)
 5 MARQUEZ BROTHERS SOUTHERN)
 6 CALIFORNIA, INC., MARQUEZ)
 7 BROTHERS NEVADA, INC., MARQUEZ)
 8 BROTHERS TEXAS I, INC., AND DOES 1-)
 9 10, INCLUSIVE)
 10)
 11)
 12)
 13)
 14)
 15)
 16)
 17)
 18)
 19)
 20)
 21)
 22)
 23)
 24)
 25)
 26)
 27)
 28)
 Defendant(s).

CONSENT DECREE

On January 11, 2017, the U.S. Equal Employment Opportunity Commission (“Commission” or “EEOC”) commenced this action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 (“Title VII”) against Defendants Marquez Brothers International, Inc., Marquez Brothers Enterprises, Inc., Marquez Brothers Foods, Inc., Marquez Brothers Southern California, Inc., Marquez Brothers Nevada, Inc., and Marquez Brothers Texas I, Inc. (individually, “Defendant” and collectively, “Defendants”) to correct alleged unlawful employment practices in hiring on the basis of race and to provide appropriate relief to a class of individuals who were allegedly denied unskilled labor positions and adversely affected by such practices at each of Defendants’ facilities. EEOC also alleged that Defendants engaged in violations of Title VII’s record-keeping requirements by failing to make, keep, and preserve records relevant to the determination of whether unlawful employment practices have been or are being committed and failed to file Employer Information EEO-1 Reports (“EEO-1 Reports”). Defendants deny the allegations made by EEOC.

EEOC and Defendants enter into this Consent Decree to resolve this action and all claims asserted in EEOC’s Complaint and Second Amended Complaint and to promote and effectuate the purposes of Title VII. The parties agree that this Consent Decree may be entered into without Findings of Fact and Conclusions of Law being made and entered by the Court.

The Court finds that it has jurisdiction over the subject matter of this action and the parties for purposes of the action, entry of the Consent Decree, and all proceedings related to the Consent Decree.

1 The Court will retain jurisdiction to enforce this Consent Decree and its terms for all
2 purposes including, but not limited to, the entering of all orders, judgments, and decrees as
3 necessary to implement the relief provided herein for the duration of this Decree.

4 The Court, having examined the terms and provisions of the Consent Decree, further
5 finds that it is reasonable, just, and in accordance with the Federal Rules of Civil Procedure and
6 Title VII.

7 The Court further finds that entry of this Consent Decree will further the objectives of
8 Title VII and will be in the best interest of the parties, those for whom the EEOC seeks relief,
9 and the public.

10 **NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

11 **I. GENERAL PROVISIONS**

12 1. This Decree is final and binding between the Parties and resolves all
13 claims in EEOC's Complaint and Second Amended Complaint in this case and the underlying
14 charges of discrimination in EEOC Charge No. 485-2010-00462 and No. 846-2011-68245.

15 2. Nothing in this Decree shall be construed to preclude any party from
16 bringing suit to enforce this decree in the event that any party hereto fails to perform the
17 promises and representations herein.

18 3. No party shall contest the Court's jurisdiction to enforce this Decree and
19 its terms or the right of the EEOC to bring an enforcement suit upon breach of any term of this
20 Decree. The Court will retain jurisdiction over any such enforcement proceeding during the
21 duration of the Consent Decree.

22 4. Other than EEOC Charges Nos. 485-2010-00462 and 846-2011-68245,
23 this Decree does not resolve any charge of discrimination currently pending before EEOC, or
24 any charge that may be filed in the future. EEOC reserves all rights to proceed regarding matters
25 not covered in this Decree.

26 5. This Decree is being issued with the consent of the parties and represents
27 the compromise of disputed claims that the parties recognize would require protracted and
28 additional costly litigation to resolve. This Decree does not constitute an adjudication or finding

1 by this Court on the merits of the allegations of the Complaint or Second Amended Complaint.
2 Nothing contained in this Decree shall be construed as an admission of liability on the part of
3 Defendants, or any one of them, each one of which expressly and unequivocally denies that they
4 engaged in any pattern or practice of unlawful discrimination on the basis of race and/or national
5 origin or violated any recordkeeping requirements set forth in Title VII.

6 6. Defendant Marquez Brothers Southern California, Inc. (“MBSC”) was
7 involved in a merger with Marquez Brothers Enterprises, Inc. (“MBE”), effective March 6, 2019,
8 in which MBE was the surviving corporation and MBSC ceased to exist under California law.

9 **II. DEFINITIONS**

10 7. “Effective Date” shall mean the date this Decree is entered by the Court.

11 8. “Staffing Agency” shall mean any third-party person or entity regularly
12 undertaking, for compensation, the procurement of workers for one or more of the Defendants in
13 Affected Positions or the procurement for workers opportunities to work for one or more of the
14 Defendants in Affected Positions.

15 9. “Affected Positions” shall mean the following positions: Cheese Molder,
16 Cheese Demolder, Cheese Cutter, Cooker, Dryer Operator, Finishing Tables, General Labor,
17 Hoop Washer, Janitor, Machine Operator, Packer/Packaging, Production, Sanitation/CIP
18 Operator, Warehouse Laborer. Affected Positions shall also include Merchandiser and/or Order
19 Picker if the Monitor, within the first 60 days of the Effective Date determines, based upon the
20 written job descriptions, information provided by the parties, observation, and/or evidence
21 received by the Monitor, that the position(s) constitute unskilled labor.

22 10. “Potential Claimant” is any individual who receives notice of the
23 settlement and claims process, including individual applicants identified by any of the
24 Defendants, individuals identified by the EEOC, or individuals who, upon receiving notice of the
25 settlement, believe they may have a right to make a claim.

26 11. The “Monitor” shall refer to the Decree Compliance Monitor described in
27 Paragraph 74, below.

1 12. “Best Efforts,” shall mean that each Defendant that has workers in the
2 Affected Positions in a Subject Facility has complied in good faith with the provisions of this
3 Decree concerning training, hiring practices, selection of Staffing Agencies, communications
4 with Staffing Agencies, and responsibilities with respect to the Monitor.

5 13. “Subject Facilities” shall include those Marquez Brothers International,
6 Inc. facilities located in California with individuals working in the Affected Positions. “Subject
7 Facilities” shall also include any other Defendant’s facility or facilities that has fifteen (15) or
8 more individuals working in the Affected Positions in any calendar year during the term of the
9 Decree.

10 **III. SCOPE AND DURATION**

11 14. The provisions and agreements contained herein are effective immediately
12 upon the date that this Decree is entered by the Court (“Effective Date”).

13 15. This Decree shall remain in effect for three (3) years after the Effective
14 Date.

15 16. This Decree will not expire while any enforcement action concerning this
16 Decree is pending before the Court.

17 17. The Court retains jurisdiction over this action during the duration of this
18 Decree and will have all available powers to enforce this Decree, including but not limited to
19 monetary sanctions, injunctive relief, and extension of the term of the Decree. The matter may
20 be administratively closed but will not be dismissed during the duration of the Decree

21 **IV. MODIFICATION AND SEVERABILITY**

22 18. This Decree constitutes the entire agreement and commitments of the
23 parties with respect to the matters contained herein. No waiver, modification, or amendment of
24 any provision of this Decree will be effective unless made in writing and signed by an authorized
25 representative of each of the Parties and approved by the Court.

26 19. If any provision(s) of this Decree are found to be unlawful, the Parties
27 shall make good faith efforts to agree upon appropriate amendments to this Decree in order to
28

1 effectuate the purposes of the Decree. In any event, only such provision(s) found to be unlawful
2 shall be severed, and the remainder of the Decree shall remain in full force an effect.

3 **V. INJUNCTION**

4 20. Each Defendant, its officers, agents, management (including all
5 supervisory personnel), successors, assigns, and all those in active concert or participation with
6 them, or any of them, are hereby enjoined from engaging in any employment practice that results
7 in the failure to hire and/or denial of employment opportunities in the Affected Positions at a
8 Subject Facility to any individual on the basis of race and/or national origin.

9 21. Each Defendant, its officers, agents, management (including all
10 supervisory personnel), successors, assigns, and all those in active concert or participation with
11 them, or any of them, are hereby enjoined from engaging in, implementing, or permitting any
12 action, policy, or practice with the purpose of retaliating against any applicant, current employee,
13 or former employee of any Defendant or its successors, or either of them, because he or she has
14 in the past, or during the term of this Decree, (a) opposed any practice made unlawful under Title
15 VII; (b) filed a charge of discrimination alleging such practice; (c) testified or participated in any
16 manner in any investigation (including, without limitation, any internal investigation undertaken
17 by Defendants or their successors) or proceeding in connection with this action, or relating to any
18 claim of a Title VII violation; (d) was identified as a possible witness or claimant in this action;
19 (e) asserted any rights under this Decree; or (f) sought and/or received any relief in accordance
20 with this Decree.

21 22. Each Defendant, its officers, agents, management (including all
22 supervisory personnel), successors, assigns, and all those in active concert or participation with
23 it, or any of them, are hereby enjoined from failing to keep, preserve, and retain all placement
24 and hiring related materials with respect to Affected Positions at Subject Facilities (e.g., all
25 applications, resumes, letters from prospective applicants, written inquiries concerning
26 opportunities for work, correspondence with potential applicants or Staffing Agencies
27 concerning opportunities for work, job postings, applicant evaluations, notes concerning
28 applications for employment, and information regarding individuals placed or referred for work

1 in Affected Positions at a Subject Facility with a Defendant by Staffing Agencies) for the
2 duration of this Decree. All such materials must be retained in their original form or in an
3 accessible electronic format.

4 23. Each Defendant, its officers, agents, management (including all
5 supervisory personnel), successors, assigns, and all those in active concert or participation with
6 it, or any of them, are hereby enjoined from failing to file annual Employer Information EEO-1
7 Reports (“EEO-1 Reports”) as required by law during the term of this Decree.

8 **VI. MONETARY RELIEF**

9 24. Defendants will pay a total of \$2,000,000 (“Gross Sum”) into a Qualified
10 Settlement Fund (“QSF”) as part of the resolution of this litigation. The money paid into the
11 QSF shall be distributed to aggrieved individuals and paid into the fund on the schedule
12 described herein. The money in the QSF may be held in a high-yield, interest-bearing account
13 and any interest earned on such account shall be used to pay the costs of administration of the
14 QSF including the administrator’s fees.

15 25. Other than as required by the terms of this Decree, the EEOC retains
16 discretion to determine who is an aggrieved individual for purposes of making a claim on the
17 QSF and to determine the amount of any award issued from the QSF.

18 **VII. CLAIMS PROCESS**

19 26. Within thirty (30) days of the Effective Date, Defendants shall hire and
20 appoint a specific professional individual or organization (“Claims Administrator”), approved by
21 the EEOC, to oversee notice of the claims process and payments to claimants as designated by
22 the EEOC. If the Claims Administrator initially appointed by Defendants thereafter declines to
23 serve or to carry out its duties under this Decree, Defendants shall have fourteen (14) days to
24 notify the EEOC in writing of the need for a replacement Claims Administrator and shall provide
25 the EEOC with the name of a new Claims Administrator for approval by the EEOC.

26 27. Subject to the provisions of paragraph 24 above, Defendants shall pay all
27 costs associated with the selection and retention of the Claims Administrator as well as the
28 performance of the Claims Administrator’s duties under this Decree.

1 28. Within sixty (60) days of the Effective Date, each Defendant shall
2 provide, to the extent such information is available, the Claims Administrator and the EEOC an
3 Excel file containing the names of all individuals who sought employment for an Affected
4 Position with such Defendant, but was not hired, at any time between January 1, 2010 and the
5 Effective Date. For each individual identified, each Defendant shall provide, if known, the
6 individual's (a) last known address(es); (b) phone number(s); (c) email address(es); (d) Social
7 Security Number; and (e) date of application.

8 29. Within thirty (30) days of receipt of a list from EEOC identifying Potential
9 Claimants, the Claims Administrator shall send each identified individual a Notice informing
10 them of the settlement and providing information about submitting a claim on the Settlement
11 Fund. This Notice shall be drafted by the EEOC and provided to each Defendant in advance.

12 30. The Claims Administrator shall make diligent efforts to provide notice of
13 the settlement to any individual whose Notice is returned as undeliverable, including the use of
14 skip trace resources and additional mailing, to locate Potential Claimants and provide Notice.

15 31. Within sixty (60) days of the Effective Date, the Claims Administrator
16 shall place notifications in online and print media sources, identified by the EEOC, publicizing
17 the settlement and providing information about how to make a claim on the Settlement Fund.
18 Publication shall run for a period of not more than 300 days, excluding Publication on any
19 website established by the Claims Administrator for the purpose of publicizing and administering
20 the settlement. The Publication shall be approved by the EEOC and provided to each Defendant
21 in advance. With the exception of Publication on any website established by the Claims
22 Administrator, the notifications in online and print media sources shall include a statement to the
23 effect that Defendants denied all allegations in the EEOC's complaint.

24 32. Within sixty (60) days of the Effective Date, the Claims Administrator
25 shall establish a website for the purposes of advertising the settlement, informing Potential
26 Claimants of the process for making a claim on the settlement fund, and for submitting a claim
27 on the Settlement Fund.

1 33. The Claims Administrator shall work with the EEOC to develop a
2 Questionnaire for use by Potential Claimants for the purpose of submitting a claim on the QSF.
3 The EEOC shall use the information provided on Questionnaires submitted by Potential
4 Claimants, whose responses will be provided under oath and under penalty of perjury, to
5 determine (a) whether the Potential Claimant is eligible to participate in the settlement (“Eligible
6 Claimant”) because such individual was adversely affected by any Defendant’s recruiting and/or
7 hiring practices, as alleged in EEOC’s Second Amended Complaint and (b) the amount of any
8 settlement award, which shall be consistent with damages available under Title VII, as amended.
9 The EEOC shall have full and complete discretion under the terms of this Decree to determine
10 who is an Eligible Claimant and to determine the amount the settlement award, if any, to be
11 provided to an Eligible Claimant. All awards shall be designated solely as compensatory
12 damages.

13 34. EEOC shall provide the Claims Administrator and the Defendants with the
14 names of Eligible Claimants, the amount of each Eligible Claimant’s settlement award by means
15 of a “Distribution List.” All awards shall be designated as solely as compensatory damages.

16 35. Within 180 days of the Effective Date, Defendants shall make an initial
17 payment in the amount of \$500,000 to the Qualified Settlement Fund so that EEOC may
18 distribute payments to early identified claimants.

19 36. Within twelve (12) months of the Effective Date, Defendants shall make a
20 second payment of \$250,000 to the Qualified Settlement Fund.

21 37. Defendants shall have twenty-four (24) months from the Effective Date to
22 pay the remaining \$1,250,000 to the Qualified Settlement Fund.

23 38. Within fourteen (14) days of receipt of a Distribution List from EEOC, the
24 Claims Administrator shall issue a check or checks, via first class mail, in the amount(s)
25 designated by the EEOC to Eligible Claimants identified on the Distribution List who has
26 executed a release of claims asserted in the EEOC’s lawsuit. All awards shall be designated
27 solely as compensatory damages. This release is attached as Exhibit A. Copies of this
28 correspondence shall simultaneously be provided to Anna Y. Park, Regional Attorney, U.S.

1 Equal Employment Opportunity Commission, 255 East Temple Street, 4th Floor, Los Angeles,
2 California 90012 and to each applicable Defendant in care of Fred W. Alvarez, Esq., Coblentz,
3 Patch, Duffy & Bass, One Montgomery Street, Suite 300, San Francisco, CA 94104-5500. Each
4 check will remain valid for 180 days. To the extent any check may need to be reissued, the
5 EEOC will so notify the Claims Administrator.

6 39. At least every thirty (30) days after the Claims Administrator issues
7 checks pursuant to the Distribution List(s) provided by the EEOC, the Claims Administrator
8 shall identify any check(s) not negotiated and/or returned non-negotiated to enable the tracking
9 of remaining funds. In the event there is a question regarding whether a check has been
10 negotiated, the Parties and the Claims Administrator will work together to determine when
11 payment was rendered, including obtaining a copy of the canceled check.

12 40. On a quarterly basis throughout the term of this Decree, the Claims
13 Administrator will notify the EEOC and the Defendants of the remaining amount available in the
14 Settlement Fund. The EEOC may issue additional Distribution Lists.

15 41. The Claims Administrator shall prepare and distribute 1099 reporting
16 forms to each Eligible Claimant and shall make any appropriate reports for each to the Internal
17 Revenue Service and other tax authorities. Defendants shall be solely responsible for any costs
18 associated with the issuing and distributing 1099s to the Eligible Claimants. No withholdings
19 shall be made as all payments to Eligible Claimants will be designated as compensatory
20 damages. Within seven (7) day of the issuance of any 1099 form, the Claims Administrator shall
21 provide a copy of the related correspondence to Anna Y. Park, Regional Attorney, U.S. Equal
22 Employment Opportunity Commission, 255 East Temple Street, 4th Floor, Los Angeles,
23 California 90012 and to the Defendants, through their counsel.

24 42. The EEOC shall issue a “Final Distribution List” that shall include the
25 names of any additional Eligible Claimants and the amounts to be paid to such individuals. All
26 amounts shall be designated compensatory damages. EEOC will issue the final Distribution List
27 no later than ninety (90) days prior to the expiration of the Decree.
28

1 43. The EEOC’s Final Distribution List shall detail the amount(s) to be paid to
2 each Eligible Claimant, and the name and address to which each Eligible Claimant’s portion and
3 amount of monetary relief shall be delivered. All amounts shall be designated as compensatory
4 damages.

5 44. Within sixty days (60) after issuance of payments according to the Final
6 Distribution List, any remaining monies in the Settlement Fund shall be donated, in equal share,
7 to the following organizations as *cy pres*: Asian Americans Advancing Justice, California Rural
8 Legal Assistance Foundation, and the James Irvine Foundation.

9 **VIII. RELATIONSHIP TO STAFFING AGENCIES**

10 45. Within thirty (30) days of the Effective Date, each Defendant shall provide
11 the Monitor with a complete list of all Staffing Agencies used by such Defendant to provide
12 workers for Affected Positions at any of such Defendant’s Subject Facilities. The list shall
13 contain the name of the Staffing Agency, the address of its headquarters, and the addresses of
14 any Subject Facility of a Defendant for which each Staffing Agency provides workers for
15 Affected Positions.

16 46. If, at any time during the duration of the Decree, any Defendant terminates
17 its relationship with any previously-identified Staffing Agency, such Defendant shall notify the
18 Monitor within thirty (30) days of the decision to terminate that relationship.

19 47. If, at any time during the duration of the Decree, any Defendant engages a
20 Staffing Agency not previously identified, or elects to use a Staffing Agency for a facility not
21 previously identified, such Defendant shall notify the Monitor within thirty (30) days, including
22 providing the name of the Staffing Agency, the business address of its headquarters, and the
23 location(s) for which the Staffing Agency has been engaged to provide workers for Affected
24 Positions at a Subject Facility.

25 48. Within forty-five (45) days of the Effective Date, each Defendant with
26 workers in the Affected Positions at Subject Facilities shall send a letter to each Staffing Agency
27 identified pursuant to Paragraph 45, above. This letter, which shall be signed by each
28 Defendant’s President, shall (a) state the Defendant’s commitment to a referral and selection

1 process free from unlawful discrimination and which encourages the referral of a racially and
2 ethnically diverse workforce; (b) express the Defendant's expectation that the Staffing Agency
3 will refer and place workers for Affected Positions at a Subject Facility of Such Defendant
4 without regard to race and/or national origin; (c) indicate that, if the Staffing Agency fails to
5 provide such Defendant with a pool of referrals that is at least 20% non-Hispanic, such
6 Defendant may terminate the relationship with that Staffing Agency; and (d) explain that, unless
7 a specific job description states that the ability to speak Spanish is a job requirement, the Staffing
8 Agency should not assume that that workers for Affected Positions at a Subject Facility need to
9 speak Spanish in order to work in such Defendant's Subject Facility. Each Defendant shall
10 enclose with the letter an acknowledgement form to be signed by the Staffing Agency and
11 returned to such Defendant within seven (7) days. If, at any time during the duration of the
12 Decree, any Defendant elects to use additional Staffing Agencies, such Defendant shall send
13 such a letter and acknowledgement form to each additional Staffing Agency upon
14 commencement of Defendant's relationship with the Staffing Agency.

15 49. For the duration of the Decree, each Defendant shall require, as a
16 condition of doing business at a Subject Facility, that every Staffing Agency with which it
17 contracts for Affected Positions maintain and provide a list to the Monitor of all individuals
18 referred or placed by the Staffing Agency at any Subject Facility of a Defendant, including the
19 individual's (a) name, (b) date of birth, (c) starting date with such Defendant, (d) ending date
20 with such Defendant, (e) position, (f) race (if known), and (g) national origin (if known).

21 50. For the duration of the Decree, each Defendant shall require, as a
22 condition of doing business at a Subject Facility, that every Staffing Agency with which it
23 contracts for Affected Positions maintain and provide data describing, for each such Defendant's
24 requests for workers for Affected Positions at a Subject Facility, the Staffing Agency's available
25 labor pool based on the Defendant's wage rates and the nature of the work to be performed
26 (including the total number of individuals available to perform that work) and the percentage of
27 that labor pool that identifies as non-Hispanic.

1 51. Each Defendant shall require, as a condition of doing business at a Subject
2 Facility, that the Staffing Agency(ies) provide the information described in Paragraphs 49 and
3 50, above, to the Monitor on a quarterly basis for the duration of the Decree.

4 52. No Defendant shall do business at a Subject Facility with any Staffing
5 Agency that fails to comply with the requirements of Paragraphs 49-51, above, during the
6 duration of the Decree.

7 53. For the duration of the Decree, all requests to Staffing Agencies for
8 workers in the Affected Positions at Subject Facilities shall be made in writing and shall include
9 (a) job title; (b) a written description of duties for the available position(s); (c) a statement
10 reminding the Staffing Agency of the Defendant's commitment to a referral and selection
11 process free from unlawful discrimination and which encourages the referral of a racially and
12 ethnically diverse workforce; and (d) the name and job title of the individual submitting the
13 request. These requests, and all subsequent correspondence between a Defendant and the
14 Staffing Agency concerning each such request, shall be maintained for the duration of the Decree
15 and provided to the Monitor on a quarterly basis.

16 54. Each Defendant shall require its employees and agents with responsibility
17 for communicating with Staffing Agencies to sign a written verification, confirming their
18 understanding of the requirements of Paragraph 53, above. These verifications shall be signed
19 within ninety (90) days of the Effective Date, or within ten (10) days of the date of hire in the
20 case of new employees. Copies of these verifications shall be provided to the Monitor on a
21 quarterly basis.

22 55. Should the Monitor, pursuant to Paragraph 8, above, determine that
23 Merchandisers and/or Order Pickers are among the Affected Positions, any Defendant with
24 Merchandisers and/or Order Pickers working at or out of a Subject Facility shall have an
25 additional thirty (30) days to comply with any obligation related solely to that determination,
26 including but not limited to the obligations described in Paragraphs 28, 45 and 48, above.
27
28

1 **IX. HIRING GOALS**

2 56. Each Defendant shall use Best Efforts to obtain workers such that the
3 percentage of non-Hispanic workers in the Affected Positions in the Subject Facilities placed by
4 Staffing Agencies or hired by a Defendant equals 20% (“Hiring Goals”).

5 57. If, after the first year of the Decree, the Monitor concludes that any
6 Defendant has used Best Efforts to obtain the Hiring Goals, the Monitor may modify the Hiring
7 Goal for that remainder of the term of the Decree for that Defendant such that the Defendant will
8 be required to use Best Efforts to obtain workers in the Affected Positions in the Subject
9 Facilities such that the percentage of non-Hispanic workers placed or hired into those positions
10 equals the percentage of non-Hispanic workers available for such positions at the Subject
11 Facilities as indicated by the Staffing Agencies. The Monitor shall notify EEOC of any
12 modification of the Hiring Goal, for any Defendant, within fourteen (14) months of the Effective
13 Date.

14 58. The Hiring Goals described herein shall be communicated by each
15 Defendant to all of its employees and agents with responsibility for hiring for the Affected
16 Positions at Subject Facilities and/or communicating with Staffing Agencies regarding the
17 Affected Positions at Subject Facilities, including the highest-ranking manager in each Subject
18 Facility.

19 **X. TRACKING OF APPLICANT INQUIRIES, PLACEMENTS BY STAFFING**
20 **AGENCIES & HIRING FOR AFFECTED POSITIONS**

21 59. Defendants have stated that they intend to hire for the Affected Positions
22 at the Subject Facilities solely through Staffing Agencies. For the duration of the Decree, and
23 except in unusual, urgent circumstances, all Defendants’ sole source of workers for the Affected
24 Positions at any Subject Facility shall be the Staffing Agencies identified to the Monitor pursuant
25 to the procedures described in Paragraphs 45-47, above. A Defendant shall report any unusual,
26 urgent circumstances that cause it to deviate from this procedure to the Monitor within seven (7)
27 days.

1 60. Each Defendant shall adopt a policy prohibiting word-of-mouth hiring for
2 Affected Positions at the Subject Facilities and shall inform its employees that individuals
3 interested in work with that Defendant for such positions shall register with the appropriate
4 Staffing Agency(ies).

5 61. In the event that individuals come to the place(s) of business of any
6 Defendant to seek employment opportunities in the Affected Positions at the Subject Facilities
7 during the term of the Decree, such Defendant shall inform the individual that such Defendant
8 hires for such positions exclusively through Staffing Agencies and direct the individual to the
9 appropriate Staffing Agency.

10 62. Each Defendant shall maintain a record of every individual who is referred
11 to or placed by a Staffing Agency for work in an Affected Position in a Subject Facility of such
12 Defendant. This record shall be maintained in electronic format using a program capable of
13 export to an Excel file. For every individual, this record shall include: (a) the individual's name,
14 (b) the individual's date of birth, (c) the individual's apparent national origin, (d) the individuals'
15 apparent race, (e) the individual's address, (f) the position for which the individual was placed,
16 (g) the facility at which the individual worked, (h) the Staffing Agency that placed or referred the
17 worker, (i) the individual's start date, (j) the individual's end date (if applicable), and (k) the date
18 on which the individual was transferred to such Defendant's own payroll (if applicable).

19 63. Each Defendant shall maintain a record of every individual who is hired
20 for Affected Position work in such Defendant's Subject Facilities for the duration of the Decree.
21 This record shall be maintained in electronic format using a program capable of export to an
22 Excel file. For every individual, this record shall include: (a) the individual's name, (b) the
23 individual's date of birth, (c) the individual's national origin, (d) the individual's race, (e) the
24 individual's address, (f) the position for which the individual was hired, (g) the Subject Facility
25 at which the individual was hired, (h) the Staffing Agency that originally placed or referred the
26 worker, (i) the individual's start date on the Defendant's payroll, and (j) the individual's end date
27 (if applicable).

1 64. All Defendants shall request that direct hires into Affected Positions at
2 Subject Facilities self-identify their race and national origin. If an individual declines to self-
3 identify, a Defendant shall, through reasonable efforts, identify the individual's race and/or
4 national origin and note the method used to make the identification (e.g., visual observation).

5 65. The records created pursuant to Paragraphs 62 and 63, above, shall be
6 maintained for the duration of the Decree and provided on a quarterly basis to the Monitor.

7 66. Each Defendant shall require all its employees and agents with
8 responsibility for effectuating any or all of the provisions of the Decree described in Paragraphs
9 59 – 64, above, to acknowledge their understanding of these requirements and their commitment
10 to compliance.

11 **XI. COMPLAINTS CONCERNING DISCRIMINATION ON THE BASIS OF RACE**
12 **AND/OR NATIONAL ORIGIN**

13 67. For the duration of the Decree, each Defendant shall maintain a
14 centralized, written record of any and all complaints regarding hiring discrimination into
15 Affected Positions at a Subject Facility on the basis of race and/or national origin. This written
16 record shall contain, for each complaint, (a) the name of the individual making the complaint;
17 (b) the individual's contact information; (c) the individual's relationship to any Defendant (e.g.,
18 applicant); (d) the date on which the complaint was made; (e) the location where the complained-
19 of conduct occurred; (f) a summary of the complaint (including the identify of all individuals
20 involved); (g) the name and title of the employee receiving the complaint; (h) a summary of any
21 investigation undertaken by any Defendant into the complaint; and (i) a summary of the outcome
22 of the complaint.

23 68. Each Defendant shall retain any non-privileged documents or other
24 materials created as part of such Defendant's receipt, investigation, and/or resolution of all such
25 complaints concerning race and/or national origin discrimination for the duration of the Decree.

26 69. The non-privileged documents described in Paragraphs 67 and 68, above,
27 shall be provided to the Monitor on a quarterly basis.

1 **XII. TRAINING**

2 70. Within ninety (90) days of the Effective Date, each Defendant shall
3 provide live training to all of its employees who have any responsibility for hiring for the
4 Affected Positions at Subject Facilities, managing and/or supervising individuals in the Affected
5 Positions at Subject Facilities, for communicating with Staffing Agencies regarding acquiring
6 workers in the Affected Positions at Subject Facilities, or regarding any matter subject to this
7 Decree, or for compliance with any of the terms of this Decree. The training shall cover:
8 (a) Title VII's prohibition of race and national origin discrimination in hiring and retaliation;
9 (b) ensuring that recruitment, hiring and worker selection is done without discrimination on the
10 basis of race or national origin; (c) communicating with Staffing Agencies regarding its
11 commitment to non-discriminatory hiring and to providing clear and accurate information about
12 Affected Position job requirements and qualifications at its Subject Facilities; (d) Defendant's
13 record-keeping obligations under Title VII and the terms of the Decree; (e) proper handling of
14 complaints of race and national origin discrimination from applicants, workers, and employees;
15 (f) how to prevent race and national origin discrimination and retaliation and (g) effectuating the
16 provisions of the Consent Decree. Each Defendant's President shall be present for this training
17 and will emphasize the Defendant's commitment to providing equal employment opportunity to
18 all individuals regardless of race or national origin. This training may be recorded for future use.
19 The training shall be provided at each Defendant's expense by a third-party trainer approved by
20 EEOC.

21 71. Within ninety (90) days of the Effective Date, and annually, for the
22 duration of the Decree, each Defendant shall provide a live and interactive training of not less
23 than one (1) hour in duration to all employees. The training shall cover: (a) Title VII's
24 prohibition of race and national origin discrimination and retaliation; (b) ensuring that
25 recruitment, hiring and worker selection is done without discrimination on the basis of race or
26 national origin; (c) how to prevent race and national origin discrimination (including how to
27 prevent harassment); and (d) Defendant's employment policies and procedures. This training
28

1 may be recorded for future use. In any facility with fewer than fifteen (15) employees, a
2 Defendant may use previously-recorded training to fulfill its obligation under this paragraph.

3 72. Should any Defendant hire any individual with primary responsibility for
4 hiring for Affected Positions at a Subject Facility, communicating with Staffing Agencies,
5 supervising individuals in the Affected Positions at a Subject Facility, or compliance with this
6 Decree during the term of the Decree, or newly assign any employee those such responsibilities,
7 such Defendant shall provide the training described in Paragraph 70, above, to that individual
8 within thirty (30) days of the date of the individual’s hire or assignment. Each Defendant may
9 provide live training or show the recorded training to fulfill its obligations under this section of
10 the Decree.

11 73. All persons required to attend the trainings described in Paragraphs 70 and
12 71, above, shall verify their attendance in writing. Within fifteen (15) days of all training
13 required under this Decree, each Defendant shall provide the Monitor with a document
14 identifying (a) the nature of the training; (b) the date and location of the training; (c) the
15 individual(s) who provided the training; (d) the names of all persons who attended the training;
16 and (e) copies of the written verifications signed by the training’s attendants.

17 **XIII. DECREE COMPLIANCE MONITOR**

18 74. Within thirty (30) days of the Effective Date, the Defendants, collectively,
19 shall retain Patricia K. Gillette, Esq. as a third-party Decree Compliance Monitor (“the
20 Monitor”). The Monitor shall monitor each Defendants’ compliance with the provisions of this
21 Decree.

22 75. The Monitor’s specific duties shall include:

- 23 a. Conducting an initial review of each Defendant’s operations and
24 hiring practices with respect to the Affected Positions for the
25 purpose of fulfilling the Monitor’s responsibilities under the
26 Decree, as described in Paragraph 76, below.
- 27 b. Compiling data for and preparing Annual Reports as described in
28 Paragraph 83, below;

- 1 c. Quarterly review and monitoring of each Defendants’
2 communications with Staffing Agencies regarding Affected
3 Positions at the Subject Facilities;
- 4 d. Quarterly review and monitoring of each Defendant’s hiring
5 practices as required by this Decree, including placement by
6 Staffing Agencies of individuals into the Affected Positions at
7 Subject Facilities; the conversion of individuals in the Affected
8 Positions at a Subject Facility onto a Defendant’s payroll;
9 compliance with the hiring and recordkeeping policies described in
10 this Decree;
- 11 e. Review and evaluation of each Defendant’s use of Best Efforts (as
12 defined in Paragraph 12 above) to achieve the Hiring Goals
13 described in the Decree;
- 14 f. Review of data from Staffing Agencies regarding available
15 workers for the Affected Positions at Subject Facilities;
- 16 g. Determination of which facilities, pursuant to Paragraph 13, above,
17 shall be included among the Subject Facilities; and
- 18 h. Review of any and all complaints received by any Defendant or
19 any Staffing Agency concerning any Defendant’s hiring practices
20 for Affected Positions at a Subject Facility.

21 76. Within sixty (60) days of the Effective Date, the Monitor shall complete
22 an initial review of the operations and hiring practices as related to the Affected Positions of each
23 Defendant that employs workers in the Affected Positions. This review shall provide the
24 Monitor an understanding of each such Defendant’s policies and practices as they relate to
25 recruitment and hiring for individuals in Affected Positions (including identifying the individual
26 employees responsible for such tasks); policies and practices as they relate to communications
27 with Staffing Agencies that supply workers for Affected Positions (including identifying the
28 individual employees responsible for such tasks); the Staffing Agencies used for supplying

1 workers for Affected Positions; current staffing levels in Affected Positions (including workers
2 on a Defendant’s payroll and workers on a Staffing Agency’s payroll); workforce demographics
3 with respect to Affected Positions; and the information needed to determine whether
4 Merchandisers and/or Order Pickers constitute Affected Positions as described in Paragraph 9.

5 77. Defendants shall bear all costs associated with the selection and retention
6 of the Monitor and the performance of his/her duties.

7 78. Each Defendant shall permit the Monitor full and complete access to all
8 employment records; communications with applicants; communications with Staffing Agencies
9 and other third-party labor sources (including requests for labor and billing records); payroll
10 records; tracking information as described in Paragraphs 62 – 63, above; EEO-1 Reports; worker
11 and applicant race-identification data; equal employment opportunity training records and
12 materials; Defendants’ personnel; and Defendants’ facilities, all of the foregoing as needed, to
13 effectuate the Monitor’s responsibilities as described by this Decree.

14 79. If, at any time during the duration of the Decree, the Monitor becomes
15 unable or unwilling to continue as Monitor, Defendants shall have sixty (60) days to select a new
16 monitor. The Monitor shall have demonstrated experience in the areas of race and national
17 origin discrimination, including issues related to recruitment and hiring. Selection of the
18 Monitor shall be subject to EEOC’s approval.

19 **XIV. REPORTING REQUIREMENTS**

20 80. Annually, for the duration of the Decree, each non-MBI Defendant shall
21 provide EEOC with a report identifying for each facility operated by that Defendant the total
22 number of individuals working in that facility and the total number of individuals, by sex and
23 race, employed in each of the following job categories: (a) executive/senior officials and
24 managers; (b) first/mid officials and managers; (c) professionals; (d) technicians; (e) sales
25 workers; (f) administrative support; (g) craft workers; (h) operatives; (i) laborers and helpers;
26 and (j) service workers. For purposes of this report, each Defendant shall use the job and race
27 categories used in Employer Information (“EEO-1”) Reports. Reports required pursuant to this
28 paragraph shall be submitted directly to Anna Y. Park, Regional Attorney, Equal Employment

1 Opportunity Commission, 255 East Temple Street, 4th Floor, Los Angeles, California 90012 and
2 anna.park@eeoc.gov.

3 81. Defendants, through the Monitor, shall provide an Annual Report to
4 EEOC throughout the duration of the Decree.

5 82. The first Annual Report shall be due twelve months from the Effective
6 Date of the Decree.

7 83. Each Annual Report shall contain the following:

- 8 a. Verification that all training required under the Decree in the
9 previous twelve months has occurred, including copies of the
10 materials referenced in Paragraph 73, above, and copies of any
11 materials used (including, for example, presentation slides) or
12 distributed during the training;
- 13 b. Copies of any EEO-1 Reports filed by any Defendant during the
14 previous twelve months;
- 15 c. Confirmation that the Notice described in Paragraph 92 has been
16 posted in conspicuous locations during the previous year;
- 17 d. Copies of all verifications required by this Decree (Paragraphs 48,
18 54, 66, and 73);
- 19 e. A list of all Staffing Agencies used by each Defendant for Affected
20 Positions at Subject Facilities, including the business address for
21 each Staffing Agency's headquarters and the specific facilities of
22 each Defendant that each Staffing Agency serves;
- 23 f. A copy of the letter sent by each Defendant to all Staffing
24 Agencies as described in Paragraph 48;
- 25 g. A copy of all acknowledgments provided by Staffing Agencies in
26 response to the letter described in Paragraph 48;
- 27 h. A list of any Staffing Agencies whose services were terminated by
28 a Defendant pursuant to the provisions of this Decree;

- 1 i. An analysis of each Defendant's Best Efforts (as defined in
2 Paragraph 12) to achieve the Hiring Goals including a summary of
3 good faith efforts undertaken by a Defendant to achieve the Hiring
4 Goal; a reporting of the total number of individuals placed by
5 Staffing Agencies in the previous year for work in the Affected
6 Positions at a Subject Facility with each Defendant and the
7 percentage of those individuals who are non-Hispanic; a reporting
8 of the Staffing Agencies' available workforce for the Affected
9 Positions at the Subject Facilities and the percentage that is non-
10 Hispanic; and a reporting of the total number of individuals hired
11 into the Affected Positions at Subject Facilities by each Defendant
12 and the percentage of those individuals who are non-Hispanic;
- 13 j. The total number of workers, by facility, who were either placed
14 by a Staffing Agency or hired directly by any Defendant into the
15 Affected Positions in any Subject Facility in the previous year and
16 the race of those individuals; and
- 17 k. A summary of any and all complaints concerning hiring
18 discrimination in Affected Positions at a Subject Facility on the
19 basis of race and/or national origin and the response by any
20 Defendant to those complaints;

21 84. The Annual Report shall be signed, and its contents verified, by the
22 Monitor and a representative of each Defendant, as to information provided by that Defendant.

23 **XVI. DISPUTE RESOLUTION & COMPLIANCE REVIEW**

24 85. The Parties agree that if the Commission has reason to believe that any
25 Defendant has failed to comply with any provision of this Decree, the Commission may bring an
26 action in court to enforce the Decree. Nothing in this Decree prevents a Defendant from
27 petitioning the court to enforce the terms of this Decree, provided it provides thirty (30) days'
28

1 prior written notice to EEOC, including twenty-one (21) days from the date of the written notice
2 to attempt to resolve the issue.

3 86. EEOC agrees that, prior to initiating any such action, it will attempt to
4 obtain voluntary compliance with the Decree. Any such attempt shall be made by notifying the
5 Defendant, through its counsel of record, in writing, of the nature of the dispute. This notice
6 shall specify the particular provision(s) that the EEOC believes has been breached. That
7 Defendant shall have twenty-one (21) days from the date of the written notice to attempt to
8 resolve or cure the breach. The Parties may extend this period upon mutual consent.

9 87. After thirty (30) days, inclusive of the twenty-one (21) days referenced in
10 the preceding paragraph, have passed from the written notice described above with no resolution
11 or agreement to extend the time, EEOC may petition the court for resolution of the dispute,
12 seeking all available relief, including an extension of the term of the Decree, and/or any other
13 relief that the Court may deem appropriate.

14 88. In the event of non-payment of any of the amounts required under the
15 Decree, EEOC may, after giving ten (10) days' notice to Defendants, petition the Court for
16 resolution of the dispute without adhering the provisions described in Paragraphs 86 – 87, above.

17 89. Jurisdiction to resolve any dispute arising under this Decree resides in the
18 United States District Court for the Eastern District of California.

19 90. EEOC may request, from the Monitor, a copy of any document received or
20 created by the Monitor as a result of the Monitor's duties as described in this Decree, with the
21 exception of correspondence between the Monitor and any Defendant.

22 91. No provision of this Decree shall be construed to limit or impair, in any
23 manner, any other authority granted by law or regulation to the Commission to conduct
24 investigations of a Defendant, including, but not limited to, investigating charge of
25 discrimination filed under Title VII of the Civil Rights Act of 1964, the Equal Pay Act ("EPA"),
26 the Age Discrimination in Employment Act ("ADEA"), Title I or V of the Americans with
27 Disabilities Act, the Genetic Information Nondiscrimination Act of 2008, and any statute over
28 which the Commission is given jurisdiction in the future, and conducting directed investigations

1 authorized under the EPA, the ADEA, and any future statute that authorizes directed
2 investigations.

3 **XVII. NOTICE**

4 92. Within ten (10) days of the Effective Date and throughout the term of the
5 Decree, each Defendant shall post the notice attached to this Decree as Exhibit B, in a clearly
6 visible location frequented by employees at each Defendant's location(s) with Affected
7 Positions.

8 93. Within ten (10) days of the Effective Date and throughout the term of the
9 Decree, each Defendant shall post a statement on its website, to the extent it maintains one
10 (including, without limitation, www.marquezbros.com and elmexicano.net), confirming its
11 commitment to equal employment opportunity and to hiring without regard to race or national
12 origin.

13 **XVIII. MISCELLANEOUS**

14 94. Each Party shall bear its own attorneys' fees and costs incurred in
15 connection with this action.

16 95. During the duration of the Decree, a Defendant shall provide any potential
17 successor-in-interest with a copy of this Decree within a reasonable time of not less than thirty
18 (30) days prior to the execution of any agreement for acquisition or assumption of control of any
19 or all of that Defendants' facilities and/or business, or any other material change in corporate
20 structure. A Defendant shall simultaneously inform the EEOC of any such agreement for
21 acquisition, assumption of control, or other material change in corporate structure.

22 96. Unless otherwise stated, all notices, reports and correspondence required
23 under this Decree shall be delivered to the attention of Anna Y. Park, Regional Attorney, U.S.
24 Equal Employment Opportunity Commission, 255 East Temple Street, 4th Floor, Los Angeles,
25 California, 90012 and anna.park@eeoc.gov.

26 ///

27 ///

28 ///

1 All Parties, through the undersigned, respectfully apply for and consent to the entry of
2 this Consent Decree Order.

3 Respectfully Submitted,

4 U.S. EQUAL EMPLOYMENT
5 OPPORTUNITY COMMISSION

6
7 Date: _____

8 By: _____
9 Anna Y. Park
10 Regional Attorney
11 For Plaintiff EEOC

12
13 Date: _____

14 By: _____
15 Fred W. Alvarez, Esq.
16 Coblenz, Patch, Duffy & Bass
17 One Montgomery Street, Suite 300
18 San Francisco, CA 94104-5500
19 Attorneys for Defendants
20 Marquez Brothers International, Inc.
21 Marquez Brothers Enterprises, Inc.
22 Marquez Brothers Foods, Inc.
23 Marquez Brothers Nevada, Inc. and
24 Marquez Brothers Texas I, Inc.

25
26
27 **ORDER¹**

28 The provisions of the foregoing Consent Decree are hereby approved and compliance
with all provisions thereof is HEREBY ORDERED. The Court hereby retains jurisdiction over
this Consent Decree until its termination, as determined by this Court.

IT IS SO ORDERED.

Dated: September 17, 2019



SENIOR DISTRICT JUDGE

¹ The Court notes that the parties submitted a signed proposed consent decree at Doc. No. 143-1. Further, the Exhibit A referenced in Paragraph 38 and Exhibit B referenced in Paragraph 92 are found in the docket at Doc. Nos. 143-2 and 143-3, respectively.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28