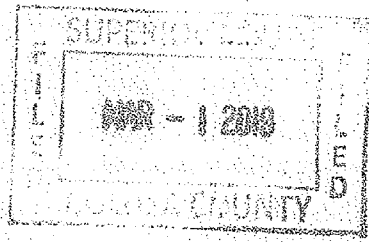


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13 **SUPERIOR COURT OF CALIFORNIA**
 14 **COUNTY OF COLUSA**

15 MARCUS RETANA, an individual, on behalf of
16 himself and all others similarly situated,

17 Plaintiffs,

18 v.

19 ADAMS TRUCKING, INC., a California
20 corporation, and DOES 1 to 10, Inclusive,

21 Defendants.
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CASE NO. CV24358

CLASS ACTION

FIRST AMENDED COMPLAINT
FOR :

1. FAILURE TO PROVIDE MEAL PERIODS;
2. FAILURE TO PROVIDE REST PERIODS;
3. FAILURE TO PAY ACCRUED TIME OFF;
4. FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS;
5. WAITING TIME PENALTIES;
6. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW; AND,
7. VIOLATION OF CALIFORNIA LABOR CODE §§ 2698, et seq.

1 6. At all relevant times herein, and with certain defined exceptions, Defendants’
2 compensation schemes did not fairly compensate Drivers for all hours worked. Defendants’
3 compensation schemes include pay packages based on either an hourly rate or percentage of the
4 load.

5 7. The failure to pay Drivers for each and every hour worked at designated rates
6 violates California *Labor Code* §§ 221 and 223; IWC Wage Order Nine; and the UCL.

7 8. As a matter of policy and/or practice, Defendants have regularly:

8 a. Failed to provide Drivers with a second meal period of not less than thirty (30)
9 minutes during which they are relieved of all duties before working more than ten
10 (10) hours per day; and

11 b. Failed to pay Drivers one hour of pay at their regular rate of compensation for
12 each workday that a meal period was not provided.

13 9. As a matter of policy and/or practice, Defendants have regularly:

14 a. Failed to provide third paid rest periods of ten (10) minutes during which Drivers
15 are relieved of all duty for each four (4) hours of work after working more than
16 eight (8) hours per day; and

17 b. Failed to pay Drivers and Plaintiff one (1) hour of pay at their regular rate of
18 compensation for each workday that a rest period was not permitted.

19 10. The failure to permit and provide meal periods and rest periods as described herein
20 violates California *Labor Code* §§ 226.7, 512 and 516; IWC Wage Order Nine, sections 11 and 12;
21 and the UCL.

22 11. As a matter of policy and/or practice, Defendants have regularly failed to provide
23 compensation for rest and recovery periods and non-productive time as defined in California *Labor*
24 *Code* § 226.2.

25 12. In this class action, Plaintiff seeks, for himself and for all others similarly situated,
26 damages and penalties for violations of the California *Labor Code* and applicable IWC Wage
27 Orders, and restitution of all sums wrongfully obtained by Defendants in violation of the UCL.

28 **II. PARTIES**

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A. Plaintiff

13. Plaintiff, MARCUS RETANA, is an individual over the age of eighteen (18) and is now, and/or at all relevant times mentioned in this Complaint was, a resident and domiciliary of the State of California. During the relevant time period, Plaintiff worked for Defendants beginning in 1998 through approximately April 2018 throughout the state of California, including Arbuckle, California where the acts complained of arose. Plaintiff currently resides in Woodland, California.

14. Plaintiff seeks damages including, but not limited to, wages, restitution for unpaid wages, penalties, and other compensation from Defendants because Defendants:

- a. Failed to provide Plaintiff and the members of the plaintiff class proper meal and rest periods or premium wages in lieu of the same;
- b. Failed to pay Plaintiff and the members of the plaintiff class for time spent on meal and rest periods;
- c. Failed to furnish Plaintiff with accurate itemized wage statements;
- d. Failed to timely pay Plaintiff all wages due to him at the time of his termination from employment;
- e. Failed to pay Plaintiff and the members of the plaintiff class for accrued time off; and/or
- f. Subjected Plaintiff and the members of the plaintiff class to unfair business practices within the meaning of the UCL.

B. Defendants

15. Plaintiff is informed and believes, and based thereon alleges, that Defendant Adams Trucking, Inc. is a California corporation. Plaintiff is further informed and believes that at all times relevant hereto, Defendant has transacted, and continues to transact, business throughout the State of California, and maintains a principal business office at 7301 John Galt Way, Arbuckle, California 95912.

16. Plaintiff is informed and believes, and based upon such information and belief alleges, that Defendants are, and each of them, now and/or at all times mentioned in this Complaint were in some manner legally responsible for the events, happenings and circumstances alleged in

1 this Complaint.

2 17. Plaintiff is further informed and believes, and based upon such information and
3 belief alleges, that at all times herein mentioned, Defendants proximately caused Plaintiff, all
4 others similarly situated, and the general public to be subjected to the unlawful practices, wrongs,
5 complaints, injuries and/or damages alleged in this Complaint.

6 18. Plaintiff is informed and believes and based thereon alleges that at all times herein
7 mentioned Defendants and DOES 1 through 10, are and were corporations, business entities,
8 individuals, and partnerships, licensed to do business and actually doing business in the State of
9 California.

10 19. Plaintiff does not know the true names or capacities, whether individual, partner or
11 corporate, of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, said
12 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
13 complaint when the true names and capacities are known. Plaintiff is informed and believes and
14 based thereon alleges that each of said fictitious Defendants were responsible in some way for the
15 matters alleged herein and proximately caused Plaintiff and members of the general public and
16 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

17 20. At all times herein mentioned, each of said Defendants participated in the doing of
18 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
19 Defendants, and each of them, were the agents, servants and employees of each of the other
20 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
21 within the course and scope of said agency and employment.

22 21. Plaintiff is informed and believes and based thereon alleges that at all times material
23 hereto, each of the Defendants named herein were the agent, employee, alter ego and/or joint
24 venturer of, or working in concert with each of the other co-Defendants and were acting within the
25 course and scope of such agency, employment, joint venture, or concerted activity. To the extent
26 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
27 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

28 22. At all times herein mentioned, Defendants, and each of them, were members of, and

1 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
2 scope of, and in pursuance of, said joint venture, partnership and common enterprise

3 23. At all times herein mentioned, the acts and omissions of various Defendants, and
4 each of them, concurred and contributed to the various acts and omissions of each and all of the
5 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
6 herein mentioned, Defendants, and each of them, ratified each and every act or omission
7 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and
8 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
9 damages as herein alleged.

10 24. The members of the classes (as defined below), including the representative Plaintiff
11 named herein, have been employed during the Class Period in California. The practices and
12 policies which are complained of by way of this Complaint are enforced throughout the State of
13 California.

14 **III. JURISDICTION AND VENUE**

15 25. This Court has jurisdiction over this matter, and under California *Code of Civil*
16 *Procedure* § 395, venue is proper in that Colusa County is where the injury occurred to Plaintiff.

17 **IV. BACKGROUND**

18 **A. Working for Defendants**

19 26. Defendants provide transportation services throughout California and nationwide.
20 Defendants' Drivers are generally responsible for driving trucks and delivering freight from one
21 point to another. Their work tasks may include (among others): locating, inspecting, fueling, and
22 maintaining vehicles, verifying loads, planning routes and trips, completing daily logs and shipping
23 documents, completing other paperwork, waiting for customers, waiting on loading and unloading
24 of shipments, and waiting for dispatch.

25 27. Plaintiff worked as a "Driver" for Defendants in California. His last day of work for
26 Defendants was approximately April 2018. As a California-based employee, Plaintiff spent the
27 majority of his time working in California. He was not properly compensated for or given "duty
28 free" meal and rest breaks; and was not paid all compensation upon termination.

1 **B. Defendants’ Failure to Provide Meal Periods and Rest Breaks**

2 28. At all times relevant hereto, California *Labor Code* §§ 226.7 and 512 and IWC
3 Wage Order Nine, section 11 required employers to provide employees with a first meal period of
4 not less than thirty (30) minutes during which they are relieved of all duty before working more
5 than five (5) hours and a second meal period of not less than thirty (30) minutes during which they
6 are relieved of all duty before working more than ten (10) hours per day.

7 29. At all times relevant hereto, California *Labor Code* § 226.7(b) and IWC Wage
8 Order Nine, section 11 required employers to pay one hour of additional pay at the regular rate of
9 compensation for each employee and each workday that a proper meal period is not provided.

10 30. Defendants failed to schedule breaks, keep records of break times and did not
11 inform Drivers of their rights to a thirty (30) minute uninterrupted meal break under California
12 law.

13 31. Defendants further regularly failed to provide a second timely thirty (30) minute
14 meal period to Drivers who worked more than ten (10) hours in a day.

15 32. At all times relevant hereto, California *Labor Code* § 226.7 and IWC Wage Order
16 Nine, section 12 required employers to authorize, permit, and provide a ten (10) minute paid rest
17 for each four (4) hours of work, during which employees are relieved of all duty.

18 33. At all times relevant hereto, California *Labor Code* § 226.7(b) and IWC Wage
19 Order Nine, section 12 required employers to pay one hour of additional pay at the regular rate of
20 compensation for each employee and each workday that a proper rest period is not provided.

21 34. Defendants regularly failed to provide a ten (10) minute paid rest period for each
22 four (4) hours of work, during which Drivers were relieved of all duties.

23 35. Defendants’ business model was such that Drivers were assigned too much work
24 that could not be reasonably completed in their assigned shift, work, and/or route. The end result
25 is that Defendants’ Drivers routinely and regularly are forced to eat their meals while driving
26 and/or while working their routes.

27 36. Throughout the statutory period, Defendants had a pattern and practice of assigning
28 too much work to be completed in too short of time frames, which resulted in Plaintiff and those

1 similarly situated not breaking route to take meal and rest breaks.

2 37. Throughout the statutory period, Defendants had a pattern and practice of
3 establishing and scheduling routes to be completed in overly demanding time frames which
4 resulted in Defendants pressuring their Drivers to complete their routes within the rigorous time
5 frames and not to take meal breaks.

6 38. Throughout the statutory period, Defendants had a pattern and practice of
7 establishing and scheduling routes to be completed in overly demanding time frames which
8 resulted in Defendants discouraging their Drivers from taking their meal periods.

9 39. Throughout the statutory period, Defendants had a pattern and practice of
10 establishing and scheduling routes to be completed in overly demanding time frames which
11 resulted in Defendants impeding their Drivers from taking their meal periods.

12 40. Throughout the statutory period, Defendants had a pattern and practice of
13 establishing and scheduling routes to be completed in overly demanding time frames which
14 resulted in Defendants' Drivers to forego taking meal periods.

15 41. Throughout the statutory period, Defendants valued productivity over providing
16 meal and rest breaks and, because of this, meal and rest breaks were not priorities to Defendants
17 and/or DOES.

18 42. Throughout the statutory period, Defendants' policies promoting productivity
19 subjugated Plaintiff's and those similarly situated's rights to meal and rest breaks.

20 43. Because of Defendants' demanding policies on route completion times, Plaintiff and
21 those similarly situated felt that breaking route to exercise their rights to take meal and/or rest
22 breaks would sacrifice their jobs.

23 44. Based on Defendants' demanding route completion time policies, Plaintiff and those
24 similarly situated routinely worked through their meal periods, which compromised the health and
25 welfare of, not only the Plaintiff and those similarly situated, but all members of the general
26 public.

27 45. Throughout the statutory period, Defendants had no policy that advised Plaintiff and
28 those similarly situated of their right to take a second meal period.

1 C. Defendants’ Failure to Compensate for Rest and Recovery
2 Periods and Nonproductive Time

3 46. California *Labor Code* § 226.2 went into effect on January 1, 2016 and includes
4 new requirements for employers who pay employees on a piece-rate basis.

5 47. Employees must be compensated for rest and recovery periods and nonproductive
6 time separate from the piece-rate compensation. California *Labor Code* § 226.2(a)(1).
7 “Nonproductive time” is defined as “time under the employer’s control, exclusive of rest and
8 recovery periods, that is not directly related to the activity being compensated on a piece-rate
9 basis.”

10 48. Drivers regularly spent time waiting for dispatch and other nonproductive tasks
11 while under the Defendants’ control.

12 49. The rate paid for rest and recovery periods must be no less than (1) the “average
13 hourly rate determined by dividing the total compensation for the workweek, exclusive of
14 compensation for rest and recovery periods and any premium compensation for overtime, by the
15 total hours worked during the workweek, exclusive of rest and recovery periods,” or (2) the
16 applicable minimum wage, whichever is higher. California *Labor Code* §226.2(a)(3)(A).
17 Nonproductive time must be paid at an hourly rate that is no less than the applicable minimum
18 wage. California *Labor Code* §226.2(a)(4).

19 50. The hours of compensation for rest and recovery periods and nonproductive time
20 must also be specified in the employee’s itemized wage statement. California *Labor Code*
21 §226.2(a)(2).

22 51. Defendants failed to provide compensation for rest and recovery periods and
23 nonproductive time, including but not limited to pre-trip and post-trip inspections, paperwork, and
24 wait time, and did not itemize these hours in Drivers’ wage statements.

25 **Plaintiff’s Exhaustion of Administrative Remedies**

26 52. Plaintiff has complied with the procedures for bringing suit specified in California
27 *Labor Code* § 2699.3.

28

1 53. By letter dated December 13, 2018, Plaintiff, on behalf of himself and the other
2 aggrieved employees, gave the required notice to the Labor and Workforce Development Agency
3 (“LWDA”) and Defendants of the specific provisions of the California *Labor Code* alleged to
4 have been violated, including the facts and theories to support the alleged violations.

5 54. More than sixty (60) days have passed since the date the notice was mailed to
6 Defendants and the LWDA, and no response from the LWDA has been received.

7 **V. CLASS ACTION ALLEGATIONS**

8 55. Pursuant to California *Code of Civil Procedure* §382, this action is brought and may
9 be properly maintained as a class action. This action satisfies the ascertainability, numerosity,
10 commonality, typicality, adequacy, predominance, and superiority requirements of those
11 provisions.

12 56. Plaintiff brings this suit as a class action on behalf of two classes of individuals
13 defined as follows:

14 a. **The Plaintiff Class:**

15 All current and former California-based truck drivers employed by Defendants
16 during the Class Period. As used herein, “California-based” refers to drivers:

17 i. who had a residential address in California at any time during the Class
18 Period; and/or

19 ii. who were assigned or associated with a location in California at any time
20 during the Class Period.

21 b. **Former Driver Sub Class:**

22 All members of the Plaintiff Class who are no longer employed by Defendants.
23 (collectively, “Plaintiff Class” the “Class Members” “Classes”)

24 **A. Numerosity**

25 57. Plaintiff is informed and believes, and based on such information and belief alleges,
26 that during the Class Period, hundreds of class members have worked for Defendants as Drivers.
27 Because so many persons have worked for Defendants in this capacity, the members of the
28 Classes are so numerous that joinder of all members is impossible and/or impracticable. While the

1 exact number and specific identities of the member class is presently unknown to Plaintiff, this
2 information may readily be ascertained through inspection of Defendants' business records.

3 **B. Commonality**

4 58. Plaintiff is informed and believes, and based on such information and belief alleges,
5 that numerous questions of law and/or fact are common to all members of the Classes including,
6 without limitation:

- 7 a. Whether Plaintiff and members of the proposed class are subject to and entitled to
8 the benefits of California wage and hour statutes;
- 9 b. Whether Defendants failed to provide adequate off-duty meal periods and meal
10 period compensation, in violation of California *Labor Code* §§ 226.7, 512 and 516
11 and IWC Wage Order Nine section 11;
- 12 c. Whether Defendants failed to provide rest periods and rest period compensation, in
13 violation of California *Labor Code* §§ 226.7, 512 and 516 and IWC Wage Order
14 Nine section 12;
- 15 d. Whether Defendants failed to pay all accrued wages in violation of California *Labor*
16 *Code* § 227.3;
- 17 e. Whether Defendants violated California *Labor Code* § 1174 and IWC Wage Order
18 Nine section 7 by failing to maintain documentation of the actual hours worked each
19 day by Drivers;
- 20 f. Whether Defendants violated California *Labor Code* § 1174 and IWC Wage Order
21 Nine, section 7 by failing to document meal periods;
- 22 g. Whether Defendants violated California *Labor Code* §§ 201 and 202, by failing,
23 upon termination, to timely pay Drivers all wages due;
- 24 h. Whether Defendants' conduct constitutes unlawful, unfair and/or fraudulent
25 business practices under the UCL;
- 26 i. Whether members of the Classes are entitled to meal period wages;
- 27 j. Whether members of the Classes are entitled to restitution of meal period wages;
- 28 k. Whether members of the Classes are entitled to rest period wages;

- 1 l. Whether members of the Classes are entitled to restitution for rest period wages;
2 m. Whether Defendants are liable for prejudgment interest;
3 n. Whether Defendants are liable for attorneys' fees and costs; and
4 o. Whether Defendants are liable to the members of the Classes for statutory penalties
5 for unpaid wages.

6 **C. Typicality**

7 59. Plaintiff is informed and believes, and based on such information and belief alleges,
8 that his claims are typical of the claims of all members of the Classes whom he seeks to represent.
9 Defendants treated both Plaintiff and all members of the Classes in a virtually identical manner
10 with respect to the violations of law asserted herein. These violations of law arise out of
11 Defendants' common course of conduct in, *inter alia* (requiring members of the Classes to forego
12 duty free meal breaks and paid rest breaks to which they were entitled; and, (c) endure unfair
13 business practices within the meaning of the UCL.

14 **D. Adequacy of Representation**

15 60. Plaintiff is informed and believes, and based on such information and belief alleges,
16 that Plaintiff will fairly and adequately protect the interests of the members of the Classes he seeks
17 to represent. Plaintiff is an adequate representative of the Classes because Plaintiff is also a
18 member of the Subclass and because Plaintiff's interests do not conflict with the interests of the
19 members of the Classes and Subclass he seeks to represent. Plaintiff has retained counsel
20 competent and experienced in the prosecution of complex class actions and Plaintiff and his
21 counsel intend to prosecute this action vigorously for the benefit of the Classes. Plaintiff and his
22 counsel will fairly and adequately protect the interests of the members of the Classes.

23 **E. Superiority**

24 61. Plaintiff is informed and believes, and based on such information and belief alleges,
25 that this action is properly brought as a class action, not only because the prerequisites of
26 California *Code of Civil Procedure* §382 and common law related thereto are satisfied (as outlined
27 above), but also because of the following:

- 28 a. The prosecution of separate actions by or against individual members of the Classes

1 would create risk if inconsistent or varying adjudications with respect to individual
2 members of the Class which would establish incompatible standards for conduct for
3 the party opposing the Class;

4 b. Adjudications with respect to individual members of the Classes would, as a
5 practical matter, be dispositive of the interests of the other members and the
6 applicable parties to the adjudications or substantially impair or impede their ability
7 to protect their interests;

8 c. Defendants have acted or refused to act on grounds generally applicable to all
9 members of the Classes, making declaratory relief appropriate with respect to all of
10 the Class;

11 d. Questions of law or fact common to the members of the Classes predominate over
12 any questions affecting only individual members; and,

13 e. Class treatment is superior to other available methods for the fair and efficient
14 adjudication of the controversy.

15 **FIRST CAUSE OF ACTION**

16 **FAILURE TO PROVIDE MEAL PERIODS**

17 **(By Plaintiff and Members of The Classes Against All Defendants)**

18 62. Plaintiff hereby incorporates by reference each and every one of the allegations
19 contained in the preceding paragraphs as if the same were fully set forth herein.

20 63. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and the
21 members of the Classes regularly worked more than five (5) hours per shift and were entitled to a
22 meal period of not less than thirty (30) minutes without duty. Plaintiff is further informed and
23 believes, and thereon alleges, that Plaintiff and the members of the Classes regularly worked more
24 than ten (10) hours per shift and were entitled to a second meal period of not less than thirty (30)
25 minutes without duty.

26 64. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that
27 Defendants routinely failed to provide Plaintiff and the members of the Classes with such meal
28 periods without duty, notwithstanding the fact that Plaintiff and the members of the Classes had

1 not waived their right to the same. Thus, Defendants failed to provide Plaintiff and the members
2 of the Classes with meal periods required by California *Labor Code* §§ 226.7, 512, 516 and IWC
3 Wage Order Nine, section 11 and categorically failed to pay any and all meal period wages due.

4 65. Plaintiff and the members of the Classes seek damages pursuant to California *Labor*
5 *Code* § 226.7(b) and IWC Wage Order Nine section 11(D), in the amount of one additional hour
6 of pay at the regular rate for each work day that the meal period is/was not provided to Plaintiff
7 and any member of members of the Classes, the cumulative sum of which is to be determined at
8 trial.

9 66. Plaintiff and the members of the Classes seek prejudgment interest on all amounts
10 recovered herein pursuant to California *Labor Code* §§ 218.6, 1194(a) and the California *Civil*
11 *Code* §§ 3287(b) and 3289.

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PROVIDE REST PERIODS**

14 **(By Plaintiff, Members of The Classes Against All Defendants)**

15 67. Plaintiff hereby incorporates by reference each and every one of the allegations
16 contained in the preceding paragraphs as if the same were fully set forth herein.

17 68. Plaintiff is informed and believes, and thereon allege, that Plaintiff and members of
18 the Classes were entitled to a paid rest period of not less than ten (10) minutes without duty for
19 each and every four (4) hours worked during the workday.

20 69. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that
21 Defendants routinely failed to provide Plaintiff and the members of the Classes with such paid rest
22 periods without duty, notwithstanding the fact that Plaintiff and the members of the Classes had
23 not waived their right to the same. Thus, Defendants failed to provide Plaintiff and the members
24 of the Classes with rest periods required by California *Labor Code* §§ 226.7, 512, and 516, IWC
25 Wage Order Nine, section 12 and categorically failed to pay any and all meal period wages due.

26 70. Plaintiff and the members of the Classes seek damages pursuant to California *Labor*
27 *Code* § 226.7(b) and IWC Wage Order Nine section 12(B), in the amount of one additional hour
28 of pay at the regular rate for each work day that the rest period is/was not provided to Plaintiff and

1 any member of the Classes, the cumulative sum of which is to be determined at trial.

2 71. Plaintiff and the members of the Classes seek prejudgment interest on all amounts
3 recovered herein pursuant to California *Labor Code* §§218.6 and 1194(a) and the California *Civil*
4 *Code* §§ 3287(b) and 3289.

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO PAY ACCRUED “TIME OFF”**

7 **(By Plaintiff and the Members of The Classes Against All Defendants)**

8 72. Plaintiff hereby incorporates by reference each and every one of the allegations
9 contained in the preceding paragraphs as if the same were fully set forth herein.

10 73. California *Labor Code* § 227.3 requires that employers who provide employees with
11 vacation time must pay employees for all unused vacation at the time of termination of
12 employment.

13 74. Defendants violated California *Labor Code* § 227.3 by failing to pay Plaintiff and
14 members of the Classes all vacation time (including any and all forms of “paid time off” wages)
15 due and owing to them at the time of the termination of their employment.

16 75. As a result of Defendants’ violation of law, Plaintiff and the members of the Classes
17 have suffered damages, including loss of earnings for unpaid vacation time in an amount to be
18 established at trial, as well as attorneys’ fees and costs under California *Labor Code* § 218.5.

19 **FOURTH CAUSE OF ACTION**

20 **FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

21 **(By Plaintiff and Members of The Classes Against All Defendants)**

22 76. Plaintiff hereby incorporates by reference each and every one of the allegations
23 contained in the preceding paragraphs as if the same were fully set forth herein.

24 77. California *Labor Code* § 226(a) and IWC Wage Order Nine, section 7(B) require
25 employers to furnish each employee with a statement itemizing, among other things, the total hours
26 worked by the employee, on a semi-monthly basis or at the time of each payment of wages.

27 78. Defendants knowingly and intentionally failed to furnish Plaintiff and the members
28 of the Classes with timely, itemized statements in compliance with California *Labor Code* § 226(a)

1 and IWC Wage Order Nine section 7(B).

2 79. Plaintiff is informed and believes, and thereon alleges, that Defendants knowingly
3 and intentionally failed to furnish Plaintiff and the members of the Classes with timely, itemized
4 statements showing (a) gross wages earned and/or (d) all applicable hourly rates in effect during
5 each respective pay period.

6 80. Plaintiff is informed and believes, and thereon alleges, that Defendants did not
7 maintain accurate business records pertaining to the total hours for Defendants by Plaintiff and the
8 members of the Classes as required under California *Labor Code* § 1174.5.

9 81. As a result of not having kept accurate records, Plaintiff and the members of the
10 Classes suffered injuries in the form of confusion over whether they received all wages owed to
11 them, and difficulty and expense in reconstructing pay records in addition to other injuries which
12 may come to light during the discovery process.

13 82. Plaintiff and the members of the Classes herein seek damages and penalties pursuant
14 to California *Labor Code* § 226(e) for Defendants' violations of California *Labor Code* § 226(a).

15 83. Plaintiff and the members of the Classes also seek preliminary and permanent
16 injunctive relief and an award of reasonable attorneys' fees and costs pursuant to California *Labor*
17 *Code* §226(h).

18 84. Plaintiff and the members of members of the Classes also request relief as described
19 below.

20 **FIFTH CAUSE OF ACTION**

21 **FOR WAITING TIME PENALTIES**

22 **(By Plaintiff and Former Driver Sub Class Against All Defendants)**

23 85. Plaintiff hereby incorporates by reference each and every one of the allegations
24 contained in the preceding paragraphs as if the same were fully set forth herein.

25 86. California *Labor Code* §203 provides that if an employer willfully fails to pay
26 compensation promptly upon discharge, as required by California *Labor Code* § 201 or 202, then
27 the employer is liable for waiting time penalties in the form of continued compensation of up to
28 thirty (30) work days.

1 Defendants' unlawful business practices, Plaintiff and members of the Classes have suffered
2 economic injuries including, but not limited to, loss of minimum wage/designated rate
3 compensation, compensation for missed meal and rest periods, and waiting time penalties.

4 92. Through Defendants' use of such unlawful, unfair, and/or fraudulent acts and
5 practices, Defendants have gained an unfair advantage over Defendants' competitors.

6 93. Plaintiff and the members of the Classes seek full restitution on account of the
7 economic injuries they have suffered, along with disgorgement of ill-gotten gains from Defendants
8 as necessary and according to proof, to restore any and all monies withheld, acquired and/or
9 converted by Defendants by means of the unlawful, unfair and fraudulent business practices
10 complained of herein.

11 94. Plaintiff and the members of the Classes seek appointment of a receiver, as
12 necessary, to oversee said restitution, including all wages earned and unpaid, including interest
13 thereon.

14 95. Further, if Defendants are not enjoined from engaging of the unlawful, unfair and
15 fraudulent conduct described above, Defendants will continue unabated in their conduct, which
16 will result in continued irreparable injury to Defendants' competitors and members of the public
17 including, but not limited to, members of the Classes who currently work for Defendants, and for
18 which there is no adequate remedy at law. Thus, Plaintiff and the members of the Classes request
19 that the Court issue a preliminary and permanent injunction prohibiting Defendants from engaging
20 in the foregoing conduct.

21 96. Plaintiff and the members of the Classes also request relief as described below.

22 97. The acts complained of herein occurred within the last four years preceding the
23 filing of the complaint in this action. Plaintiff is informed and believes and on that basis alleges
24 that at all times herein mentioned Defendants have engaged in unlawful, deceptive and unfair
25 business practices, as proscribed by *California Business and Professions Code* § 17200 et seq.,
26 including those set forth herein above, thereby depriving Plaintiff and the members of the Classes
27 the minimum working condition standards and conditions due to them under the California laws
28 and Industrial Welfare Commission wage orders as specifically described herein.

1 **SEVENTH CAUSE OF ACTION**

2 **VIOLATION OF CALIFORNIA LABOR CODE §§ 2698, et seq. (PAGA)**

3 **(Against Defendants on behalf of Plaintiff and the Members of the Plaintiff Class)**

4 98. Plaintiff incorporates all preceding paragraphs as though fully set for herein.

5 99. PAGA permits Plaintiff to recover civil penalties for the violation(s) of the *Labor*
6 *Code* §§ enumerated in California *Labor Code* § 2699.5.

7 100. PAGA provides as follows: “[n]otwithstanding any other provision of law, a
8 Plaintiff may as a matter of right amend an existing complaint to add a cause of action arising
9 under this part at any time within 60 days of the time periods specified in this part.”

10 101. Defendants’ conduct, as alleged herein, violates numerous sections of the California
11 *Labor Code* including, but not limited to, the following:

- 12 a. Defendants failed to provide Plaintiff and other aggrieved employees proper meal
13 and rest periods or premium wages in lieu of the same;
- 14 b. Defendants failed to pay Plaintiff and other aggrieved employees for time spent
15 on meal and rest periods;
- 16 c. Defendants failed to furnish Plaintiff and other aggrieved employees with
17 accurate itemized wage statements;
- 18 d. Defendants failed to timely pay Plaintiff and other aggrieved employees all
19 wages due to her at the time of his termination from employment;
- 20 e. Defendants failed to pay Plaintiff and other aggrieved employees for accrued
21 time off; and/or
- 22 f. Defendants failed to maintain accurate records of work performed by Plaintiff
23 and all other aggrieved employees (California *Labor Code* §1174).

24 102. California *Labor Code* § 1198 makes it illegal to employ an employee under
25 conditions of labor that are prohibited by the applicable wage order. California *Labor Code* § 1198
26 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard
27 conditions of labor for employees. The employment of any employee . . . under conditions of labor
28 prohibited by the order is unlawful.”

103. California *Labor Code* § 226(a) sets forth reporting requirements for employers

1 when they pay wages, as follows:

2 "Every employer shall . . . at the time of each payment of wages, furnish his or her
3 employees . . . an itemized statement in writing showing (1) gross wages earned; (2)
4 total hours worked by the employee . . . (3) the number of piece-rate units earned
5 and any applicable piece rate if the employee is paid on a piece-rate basis. . . (8) the
6 name and address of the legal entity that is the employer and, if the employer is a
7 farm labor contractor, as defined in subdivision (b) of Section 1682, the name and
8 address of the legal entity that secured the services of the employer."

9 Section (e) provides:

10 "An employee suffering injury as a result of a knowing and intentional failure by an
11 employer to comply with subdivision (a) shall be entitled to recover the greater of
12 all actual damages or fifty dollars (\$50) for the initial pay period in which a
13 violation occurs and one hundred dollars (\$100) per employee for each violation in
14 a subsequent pay period, not exceeding an aggregate penalty of four thousand
15 dollars (\$4000), and shall be entitled to an award of costs and reasonable attorneys'
16 fees."

17 104. California *Labor Code* § 1174 provides that "[e]very person employing labor in this
18 state shall . . . [k]eep a record showing the names and addresses of all employees employed and the
19 ages of all minors" and "[keep, at a central location in the state or at the plants or establishments at
20 which employees are employed, payroll records showing the hours worked daily by and the wages
21 paid to, and the number of piece-rate units earned by and any applicable piece rate paid to,
22 employees employed at the respective plants or establishments..."

23 105. California *Labor Code* §204 requires that all wages earned by any person in any
24 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
25 wages due upon termination of an employee, are due and payable between the 16th and the 26th
26 day of the month during which the labor was performed, and that all wages earned by any person in
27 any employment between the 16th and the last day, inclusive, of any calendar month, other than
28 those wages due upon termination of an employee, are due and payable between the 1st and the
10th day of the following month. California *Labor Code* § 204 also requires that all wages earned

1 for labor in excess of the normal work period shall be paid no later than the payday for the next
2 regular payroll period.

3 106. California *Labor Code* § 558(a) provides “[a]ny employer or other person acting on
4 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
5 provision regulating hours and days of work in any order of the Industrial Welfare Commission
6 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
7 each underpaid employee for each pay period for which the employee was underpaid in addition to
8 an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred
9 dollars (\$100) for each underpaid employee for each pay period for which the employee was
10 underpaid in addition to an amount sufficient to recover underpaid wages. (3)

11 Wages recovered pursuant to this section shall be paid to the affected employee.” *Labor Code* §
12 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil
13 or criminal penalty provided by law.”

14 107. Defendants, at all times relevant to this complaint, was employers or persons acting
15 on behalf of an employer(s) who violated Plaintiff and other aggrieved employees’ rights by
16 violating various sections of the California *Labor Code* as set forth above.

17 108. As set forth above, Defendants have violated numerous provisions of both the *Labor*
18 *Code* sections regulating hours and days of work as well as the applicable order of the IWC.
19 Accordingly, Plaintiff seeks the remedies set forth in California *Labor Code* § 558 for himself, the
20 State of California, and all other aggrieved employees.

21 109. Pursuant to PAGA, and in particular California *Labor Code* §§ 2699(a), 2699.3,
22 2699.5 and 558, Plaintiff, acting in the public interest as a private attorney general, seeks
23 assessment and collection of unpaid wages and civil penalties for Plaintiff, all other aggrieved
24 employees, and the State of California against Defendants, in addition to other remedies, for
25 violations of California *Labor Code* §§ 201, 202, 203, 226, 510, 1174, 1194, 1198.

26 110. California *Labor Code* § 1198 makes it illegal to employ an employee under
27 conditions of labor that are prohibited by the applicable wage order. California *Labor Code* § 1198
28 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard
conditions of labor for employees. The employment of any employee . . . under conditions of labor

1 prohibited by the order is unlawful.”

2 111. California *Labor Code* § 204 requires that all wages earned by any person in any
3 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
4 wages due upon termination of an employee, are due and payable between the 16th and the 26th
5 day of the month during which the labor was performed, and that all wages earned by any person in
6 any employment between the 16th and the last day, inclusive, of any calendar month, other than
7 those wages due upon termination of an employee, are due and payable between the 1st and the
8 10th day of the following month. California *Labor Code* § 204 also requires that all wages earned
9 for labor in excess of the normal work period shall be paid no later than the payday for the next
10 regular payroll period.

11 112. During the relevant time period, Defendants failed to pay Plaintiff and the aggrieved
12 employees all wages due to them including, but not limited to, overtime wages, all wages due, and
13 meal and rest period premium wages, within any time period specified by California *Labor Code* §
14 204. During the relevant time period, Defendants failed to pay Plaintiff and other aggrieved
15 employees all wages due to them including, but not limited to, overtime wages, minimum wages,
16 meal and rest period premium wages, within any time period specified by California *Labor Code* §
204.

17 113. Plaintiff has complied with the procedures for bringing suit specified in California
18 *Labor Code* § 2699.3 and SB 836. By letter dated December 13, 2018, Plaintiff, on behalf of
19 himself and the other aggrieved employees, pursuant to California *Labor Code* § 2699.3 and SB
20 836, gave written notice by electronic submission to the Labor and Workforce Development
21 Agency (“LWDA”) and certified mail to Defendant of the specific provisions of the California
22 *Labor Code* alleged to have been violated, including the facts and theories to support the alleged
23 violations.

24 114. More than 60 days has passed since the December 13, 2018 Notice to the LWDA
25 and no response has been received.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff and members of the Classes pray as follows:

- 28 1. An order certifying the Plaintiff Class and Sub Class identified herein;

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- 2. An order appointing Plaintiff as representative of the class and sub class identified herein;
- 3. An order appointing Plaintiff's counsel as class counsel;
- 4. Damages;
- 5. Restitution;
- 6. Statutory and civil penalties;
- 7. Pre-judgment and post-judgment interest;
- 8. Costs of suit;
- 9. Reasonable attorneys' fees; and,
- 10. Such other and further relief as the Court may deem necessary or appropriate.

DATED: February 28, 2019

**BRADLEY/GROMBACHER, LLP
LAW OFFICES OF SAHAG MAJARIAN II**

By: _____

Marcus Bradley, Esq.
 Kiley Grombacher, Esq.
 Taylor L. Emerson, Esq.
 Sahag Majarian II, Esq.
 Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of Plaintiff's and the members of the Classes' claims by jury to the extent authorized by law.

DATED: February 28, 2019

**BRADLEY/GROMBACHER, LLP
LAW OFFICES OF SAHAG MAJARIAN II**

By: _____

Marcus Bradley, Esq.
 Kiley Grombacher, Esq.
 Taylor L. Emerson, Esq.
 Sahag Majarian II, Esq.
 Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF VENTURA)

I am employed in the County of Ventura, State of California. I am over the age of eighteen and not a party to the within action; my business address 2815 Townsgate Rd., #130, Westlake Village, CA 91361.

On February 28, 2019, I served the foregoing documents described **FIRST AMENDED COMPLAINT** on all interested parties in this action as follows: **SEE ATTACHED SERVICE LIST**

(VIA US MAIL) I caused such envelope(s) to be deposited in the mail at Westlake Village, California with postage thereon fully prepaid.
I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(VIA FEDERAL EXPRESS) I caused to have served such document(s) by depositing them in the drop box at Westlake Village, California, for priority overnight next day delivery.

(VIA FACSIMILE) I caused such document to be faxed to the persons identified with fax numbers on the attached Mailing List.


(VIA PERSONAL SERVICE) I delivered such envelope(s) by hand to the offices of the addressee.

(BY ELECTRONIC FILING SERVICE PROVIDER) I electronically filed the document(s) with the Clerk of the Court by using one of the court's approved electronic filing service providers (EFSP). Participants in the case will be electronically served by the court's electronic filing service provider. Participants in the case, who are required by statute or rule, will be served by mail or by other means permitted by the court rules. My email address is tamoke@bradleygrombacher.com. Said document(s) were served by email on _____. The names and email addresses of the persons served are set forth in the service list.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed February 28, 2019, at Westlake Village, California.



Tina Amoke

RETANA v. ADAMS TRUCKING, INC.
COLUSA COUNTY SUPERIOR COURT CASE NO. CV24358

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Service List

Hanson Bridgett LLP Paul Mello, Esq. 1676 N. California Blvd. Suite 620 Walnut Creek, CA 94596 Tel: (925) 746-8480 Fax: (925) 746-8492 pmello@hansonbridgett.com	Attorney for the Defendant
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