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12 Attorneys for Plaintiff, MARCUS RETANA

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

15 MARCOS 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.  
22  
23

) **CASE NO. CV24358**  
) **(Assigned for All Purposes to the**  
) **Honorable Jeffrey A. Thompson**

) **CLASS ACTION**

) **JOINT STIPULATION OF CLASS**  
) **ACTION SETTLEMENT**

) Complaint Filed : December 13, 2018  
) Trial Date : None

**STIPULATION OF CLASS ACTION SETTLEMENT**

Plaintiff Marcus Retana and Defendant Adams Trucking, Inc., agree to settle this class and representative action subject to the terms and conditions below.

**DEFINITIONS**

1. “Agreement” means this Joint Stipulation of Class Action Settlement.

2. “Action” means *Retana v. Adams Trucking, Inc.*, filed on December 13, 2014, in the Colusa County Superior Court, Case No. CV24358.

3. “Class Counsel” means Bradley Grombacher, LLP and the Law Offices of Sahag Majarian II.

4. “Class Counsel Award” means attorneys’ fees for Class Counsel’s litigation and resolution of this Action and their expenses and costs incurred in connection with the Action, paid from the Gross Settlement Fund.

5. “Class Information” means information regarding Settlement Class Members that Defendant will in good faith compile from its records and provide to the Settlement Administrator. It will be formatted as a Microsoft Excel spreadsheet and will include: each Settlement Class Member’s employee number; full name; last known address; last known home telephone number; Social Security Number; start date of employment and end date of employment.

6. “Class Period” means the period from December 13, 2014 and March 2, 2020 or the date of preliminary approval, whichever is sooner.

7. “Class Representative Service Award” means the amount that the Court authorizes to be paid to Plaintiff, in addition to his Individual Settlement Payment, in recognition of his efforts and risks in assisting with the prosecution of the Action and in exchange for executing a General Release of Defendant.

8. “Compensable Workweeks” means the number of workweeks during which Settlement Class Members worked for Defendant during the Class Period. The Settlement Administrator will calculate the number of workweeks by calculating the number of days each

1 Settlement Class Member was employed during the Class Period, dividing by seven, and rounding  
2 up to the nearest whole number.

3 9. “Court” means the Colusa County Superior Court.

4 10. “Defendant” means Adams Trucking, Inc.

5 11. “Effective Date” means the date upon which the Court grants final approval of the  
6 Settlement if (a) no Settlement Class Members file objections to the Settlement, or (b) any  
7 Settlement Class Member files an objection but it is subsequently withdrawn. However, if an  
8 objection is filed and an appeal or other appellate proceeding is initiated, the Effective Date will be  
9 the date 30 days after the date upon which the Court grants final approval of the Settlement if  
10 within this time no notice of appeal is filed by an objector; or if a timely appeal is initiated by an  
11 objector, the Effective Date will be the date of final resolution of that appeal (including any  
12 requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the  
13 Settlement..

14 12. “Gross Settlement Fund” means a maximum payment amount of \$300,000.00  
15 inclusive of the Class Counsel Award, the Class Representative Service Award, and the PAGA  
16 Payment, Settlement Administration Costs.

17 13. “Individual Settlement Payment” means the amount payable from the Net  
18 Settlement Amount to each Settlement Class Member.

19 14. “Net Settlement Amount” means the Gross Settlement Fund, less Class Counsel  
20 Award, Class Representative Service Award, PAGA Payment, and Settlement Administration  
21 Costs.

22 15. “Notice of Class Action Settlement” means the Notice of Class Action Settlement  
23 (substantially in the form attached as **Exhibit 1**).

24 16. “Notice Packet” means the Notice of Class Action Settlement, Request for  
25 Exclusion, and postage-paid return envelope.

26 17. “PAGA Payment” means payment to the California Labor and Workforce  
27 Development Agency under the Private Attorneys General Act of 2004.

28

1           18.   “Parties” means Plaintiff and Defendant, collectively, and “Party” will mean either  
2 Plaintiff or Defendant, individually.

3           19.   “Payment Ratio” means the respective Compensable Workweeks for each  
4 Settlement Class Member divided by the total Compensable Workweeks for all Settlement Class  
5 Members.

6           20.   “Plaintiff” means Marcus Retana.

7           21.   “Released Claims” means all known and unknown causes of action that were  
8 pleaded, or could have been pleaded, in the operative complaint for the Class Period on the same  
9 set of facts, whether for economic damages, non-economic damages, liquidated damages, punitive  
10 damages, restitution, penalties, alleged unpaid wages, interest, other monies, or other relief,  
11 namely: (a) failure to provide meal periods, (b) failure to provide rest periods, (c) failure to provide  
12 compensation for rest and recovery periods and nonproductive time, (d) failure to reimburse for  
13 business expenses, (e) failure to timely furnish accurate itemized wage statements, (f) waiting time  
14 penalties, (g) unfair competition, (h) any other claims or penalties under the wage and hour laws  
15 pleaded in the action; (i) all damages, penalties, interest and other amounts recoverable under said  
16 causes of action under California and federal law, to the extent permissible, including but not  
17 limited to the California Labor Code, the applicable Wage Orders, California Unfair Competition  
18 Law, and Private Attorneys General Act of 2004. The Released Claims exclude claims for  
19 discrimination, harassment, wrongful termination, or remedies not addressed herein. The res  
20 judicata effect of the Judgment will be the same as that of the Released Claims obtained by this  
21 Agreement. The period of the Released Claims will extend from December 13, 2014 and March 2,  
22 2020 or the date of preliminary approval, whichever is sooner.

23           22.   “Released Parties” means Defendant and its past, present and/or future, direct and/or  
24 indirect, parent companies, subsidiaries, affiliates, divisions, officers, directors, managers, owners,  
25 members, heirs, employees, agents, representatives, attorneys, insurers, partners, investors,  
26 shareholders, predecessors, successors, and/or assigns.

27           23.   “Request for Exclusion” means the Request for Exclusion (substantially in the form  
28 attached as **Exhibit 2**).

1 24. "Response Deadline" means the date 45 days after the Settlement Administrator  
2 mails Notice Packets to Settlement Class Members and the last date on which Settlement Class  
3 Members may submit a Request for Exclusion, and/or objection to the Settlement.

4 25. "Settlement" means the disposition of the Action pursuant to this Agreement.

5 26. "Settlement Administration Costs" means the amount to be paid to the Settlement  
6 Administrator from the Gross Settlement Fund for administration of this Settlement.

7 27. "Settlement Administrator" means ILYM Group, Inc.

8 28. "Settlement Class Members" all non-exempt employees who worked for Defendant  
9 as Drivers at any time between December 13, 2014 and March 2, 2020 or the date of preliminary  
10 approval, whichever is sooner. Settlement Class Members" will not include any person who  
11 submits a timely and valid Request for Exclusion as provided in this Agreement.

12 **RECITALS**

13 29. Class Certification. The Parties stipulate and agree to the certification of this Action  
14 for purposes of this Settlement only. Should the Settlement not become final and effective, class  
15 certification will immediately be set aside and the Settlement Class immediately decertified  
16 (subject to further proceedings on motion of any party to certify or deny certification thereafter).  
17 The Parties' willingness to stipulate to class certification as part of the Settlement will have no  
18 bearing on, and will not be admissible in or considered in connection with, the issue of whether a  
19 class should be certified in a non-settlement context in this Action or in any context in any other  
20 lawsuit. If for any reason this Settlement Agreement is not approved or is terminated, in whole or  
21 in part, the Parties' stipulation to conditional certification as part of the Settlement shall become  
22 null and void, and the Parties shall revert to the respective positions they held prior to entering into  
23 the Settlement Agreement. Defendant expressly reserves its rights and declares that it intends to  
24 oppose class certification vigorously should this Settlement not be granted final approval.

25 30. Procedural History. On December 13, 2018, Plaintiff filed a putative class action  
26 Complaint alleging claims for Defendant's failure to provide meal periods, failure to provide rest  
27 periods, failure to pay accrued time off, along with derivative claims under Labor Code sections  
28 203 and 226, unfair competition and restitution under California Business & Professions Code

1 sections 17200, *et seq.*, penalties under the Private Attorneys General Act of 2004, and claims for  
2 interest, attorneys' fees and costs. On December 2, 2019, the Parties participated in a private  
3 mediation after they engaged in formal and informal discovery, including Defendant providing to  
4 Plaintiff information regarding the putative class (*e.g.*, the number of putative class members,  
5 average number of shifts, average hourly rate, etc.), wage statements, time records, and company  
6 policies and procedures affecting putative class members. Defendant also deposed Plaintiff over  
7 the course of two days, during which it obtained testimony that Defendant believes would be  
8 favorable to defeat potential class certification, and the merits of Plaintiff's claims. As a result, the  
9 Parties reached an agreement on all material terms to resolve this Action in its entirety.

10 31. Benefits of Settlement to Class Members. Plaintiff and Class Counsel recognize the  
11 expense and length of continued proceedings necessary to litigate their disputes through trial and  
12 through any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the  
13 outcome of further litigation, including the risk of preemption of some or all of the Settlement  
14 Class Members' claims, as well as the difficulties and delays inherent in such litigation. Plaintiff  
15 and Class Counsel are also aware of the burdens of proof necessary to establish liability for the  
16 claims asserted in the Action, both generally and in response to Defendant's defenses thereto, and  
17 the difficulties in establishing damages for the Settlement Class Members. Plaintiff and Class  
18 Counsel have also taken into account the extensive settlement negotiations conducted. Based on the  
19 foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth in this  
20 Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the  
21 Settlement Class Members.

22 32. Defendant's Reasons for Settlement. Defendant has concluded that any further  
23 defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of  
24 time and resources of Defendant have been and, unless this Settlement is approved, will continue to  
25 be devoted to the defense of the claims asserted by Plaintiff and Settlement Class Members.  
26 Defendant has also taken into account the risks of further litigation in reaching its decision to enter  
27 into this Settlement. Despite continuing to contend that it is not liable for any of the claims set forth  
28 by Plaintiff, Defendant has, nonetheless, agreed to settle in the manner and upon the terms set forth

1 in this Agreement to put to rest the claims as set forth in the Action. Defendant has claimed and  
2 continues to claim that the Released Claims have no merit and do not give rise to liability. This  
3 Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no  
4 documents referred to herein and no action taken to carry out this Agreement may be construed or  
5 used as an admission by or against Defendant as to the merits or lack thereof of the claims asserted.  
6 The monies being paid as part of the settlement are genuinely disputed and the Parties agree that  
7 the provisions of Labor Code section 206.5 are not applicable to this Settlement.

8 33. Settlement Class Members' Claims. Settlement Class Members have claimed and  
9 continue to claim that the Released Claims have merit and give rise to liability on the part of  
10 Defendant. This Agreement is a compromise of disputed claims. Nothing contained in this  
11 Agreement and no documents referred to herein and no action taken to carry out this Agreement  
12 may be construed or used as an admission by or against the Settlement Class Members or Class  
13 Counsel as to the merits or lack thereof of the claims asserted.

#### 14 **TERMS OF AGREEMENT**

15 34. Release as To All Class Members. As of the Effective Date, in exchange for the  
16 Gross Settlement Fund, Plaintiff and the Settlement Class Members, on their own behalf and on  
17 behalf of their respective heirs, beneficiaries, devisees, executors, administrators, trustees,  
18 conservators, guardians, personal representatives, successors-in-interest, and assigns, release the  
19 Released Parties from the Released Claims for the Class Period. Plaintiff and the Settlement Class  
20 Members may hereafter discover facts or legal arguments in addition to or different from those  
21 they now know or currently believe to be true with respect to the claims and causes of action in this  
22 case which are the subject matter of the Released Claims. Regardless, the discovery of new facts or  
23 legal arguments will in no way limit the scope or definition of the Released Claims and by virtue of  
24 this Agreement, the Settlement Class Members will be deemed to have, and by operation of the  
25 final judgment approved by the Court, will have fully, finally, and forever settled and released all  
26 of the Released Claims as defined above.

27 35. Release as to Plaintiff. As of the Effective Date, in exchange in exchange for the  
28 Gross Settlement Fund, Plaintiff, on his own behalf and on behalf of his heirs, beneficiaries,

1 devisees, executors, administrators, trustees, conservators, guardians, personal representatives,  
2 successors-in-interest, and assigns, releases the Released Parties from all claims, demands, rights,  
3 liabilities, and causes of action, known or unknown, including but not limited to the Released  
4 Claims, and stipulates and agrees that, upon the Effective Date, the Plaintiff will be deemed to  
5 have, and by operation of the final judgment will have, expressly waived and relinquished, to the  
6 fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California  
7 Civil Code, or any other similar provision under federal or state law, which Section provides:

8  
9           A general release does not extend to claims that the creditor or  
10           releasing party does not know or suspect to exist in his or her  
11           favor at the time of executing the release and that, if known by  
12           him or her, would have materially affected his or her settlement  
13           with the debtor or released party.

14           Plaintiff may hereafter discover facts in addition to or different from those he now knows or  
15           believes to be true, but upon the Effective Date, will be deemed to have, and by operation of the  
16           final judgment will have, fully, finally, and forever settled and released any and all claims and  
17           causes of action against the Released Parties, whether known or unknown, suspected or  
18           unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, upon any  
19           theory of law or equity, including but not limited to conduct that is negligent, intentional, with or  
20           without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or  
21           existence of such different or additional facts.

22           Plaintiff understands that under the provisions of the Age Discrimination in Employment  
23           Act, he is entitled to a 21-day period to consider this Agreement and to sign it. If Plaintiff elects to  
24           sign the Agreement sooner, he acknowledges that he voluntarily waived the 21-day period.  
25           Plaintiff shall have a period of seven calendar days after he signs this Agreement to revoke it. Any  
26           revocation by Plaintiff shall be in writing and shall be delivered personally or by e-mail to Defense  
27           Counsel before the expiration of such seventh day. In the event that Defense Counsel does not  
28           receive such notice, the Agreement will become effective, final and binding under the terms set  
          forth herein. Should Plaintiff exercise his right to revoke the Agreement, he will not be entitled to  
          the payments provided in this Agreement.



1           36.    Tax Liability. The Parties make no representations as to the tax treatment or legal  
2 effect of the payments called for hereunder, and Settlement Class Members are not relying on any  
3 statement or representation by the Parties in this regard. Settlement Class Members understand and  
4 agree that they will be responsible for the payment of any employee taxes and penalties assessed on  
5 the payments described herein.

6           37.    Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,  
7 the “acknowledging party” and each Party to this Agreement other than the acknowledging party,  
8 an “other party”) acknowledges and agrees that: (1) no provision of this Agreement, and no written  
9 communication or disclosure between or among the Parties or their attorneys and other advisers, is  
10 or was intended to be, nor will any such communication or disclosure constitute or be construed or  
11 be relied upon as, tax advice within the meaning of United States Treasury Department circular 230  
12 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her  
13 or its own, independent legal and tax counsel for advice (including tax advice) in connection with  
14 this Agreement, (b) has not entered into this Agreement based upon the recommendation of any  
15 other Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any  
16 communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty  
17 that may be imposed on the acknowledging party, and (3) no attorney or advisor to any other Party  
18 has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax  
19 strategies (regardless of whether such limitation is legally binding) upon disclosure by the  
20 acknowledging party of the tax treatment or tax structure of any transaction, including any  
21 transaction contemplated by this Agreement.

22           38.    Settlement Administration. Within 14 calendar days after the Court grants  
23 preliminary approval of this Agreement, Defendant will provide the Settlement Administrator with  
24 the Class Information for purposes of mailing Notice Packets to Settlement Class Members.

25           a.    Notice by First Class U.S. Mail. Upon receipt of the Class Information, the  
26 Settlement Administrator will perform a search based on the National Change of  
27 Address Database to update and correct any known or identifiable address changes.  
28           Within 10 days after receiving the Class Information from Defendant as provided

1 herein, the Settlement Administrator will mail copies of the Notice Packet to all  
2 Settlement Class Members via regular First-Class U.S. Mail. The Settlement  
3 Administrator will exercise its best judgment to determine the current mailing  
4 address for each Settlement Class Member. The address identified by the Settlement  
5 Administrator as the current mailing address will be presumed to be the best mailing  
6 address for each Settlement Class Member.

7 i. Undeliverable Notices. Any Notice Packets returned to the Settlement  
8 Administrator as non-delivered on or before the Response Deadline will  
9 be re-mailed to the forwarding address affixed thereto. If no forwarding  
10 address is provided, the Settlement Administrator will promptly attempt  
11 to determine a correct address by use of skip-tracing, or other search  
12 using the name, address and/or Social Security number of the Settlement  
13 Class Member involved, and will then perform a re-mailing, if another  
14 mailing address is identified by the Settlement Administrator. Settlement  
15 Class Members who received a re-mailed Notice Packet will have their  
16 Response Deadline extended 15 days from the original Response  
17 Deadline.

18 ii. Disputes Regarding Individual Settlement Payments. Settlement Class  
19 Members will have the opportunity, should they disagree with  
20 Defendant's records regarding the dates of employment stated on their  
21 Notice of Class Action Settlement form, to provide documentation  
22 and/or an explanation to show contrary employment dates. If there is a  
23 dispute, the Settlement Administrator will consult with the Parties to  
24 determine whether an adjustment is warranted. The Settlement  
25 Administrator will determine the eligibility for, and the amounts of, any  
26 Individual Settlement Payments under the terms of this Agreement.  
27 Defendant's records, including time and pay records, shall be  
28 presumptively determinative in any dispute or challenge by a Settlement

1 Class Member over entitlement to payment, share of payment or  
2 membership in the class. The Parties and the Settlement Administrator  
3 will evaluate any documentation timely submitted and discuss in good  
4 faith how many straight time hours, overtime hours and/or pay periods  
5 should be credited to each Settlement Class member so that a good faith  
6 resolution can be reached as to any disputes timely submitted. The  
7 Settlement Administrator's determination of the eligibility for and  
8 amount of any Individual Settlement Payment will be binding upon the  
9 Settlement Class Member and the Parties.

10 b. Exclusions. The Notice Packet will state that Settlement Class Members  
11 who wish to exclude themselves from the Settlement must submit a Request for  
12 Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain  
13 the name, address, telephone number and the last four digits of the Social Security  
14 number of the person requesting exclusion; (2) be signed by the Settlement Class  
15 Member; and (3) be postmarked or fax stamped by the Response Deadline and  
16 returned to the Settlement Administrator at the specified address or fax telephone  
17 number. The Request for Exclusion will not be valid if it is not timely submitted, if  
18 it is not signed by the Settlement Class Member, or if it does not contain the name  
19 and address of the Settlement Class Member. The date of the postmark on the return  
20 mailing envelope or fax stamp on the Request for Exclusion will be the exclusive  
21 means used to determine whether the Request for Exclusion was timely submitted.  
22 Any Settlement Class Member who requests to be excluded from the Settlement  
23 Class will not be entitled to any recovery under the Settlement and will not be  
24 bound by the terms of the Settlement or have any right to object, appeal or comment  
25 thereon. Settlement Class Members who fail to submit a valid and timely Request  
26 for Exclusion on or before the Response Deadline will be bound by all terms of the  
27 Settlement and any final judgment entered in this Action if the Settlement is  
28 approved by the Court. No later than 25 calendar days after the Response Deadline,

1 the Settlement Administrator will provide counsel for the Parties with a final list of  
2 the Settlement Class Members who have timely submitted written requests for  
3 exclusion. At no time will any of the Parties or their counsel seek to solicit or  
4 otherwise encourage members of the Settlement Class to submit requests for  
5 exclusion from the Settlement.

6 c. Objections. The Notice Packet will state that Settlement Class Members who  
7 wish to object to the Settlement must file with the Court and serve on the Settlement  
8 Administrator a written statement of objection (“Notice of Objection”) by the  
9 Response Deadline. The date of filing and the date on the proof of service will be  
10 deemed the exclusive means for determining that a Notice of Objection was filed  
11 and served timely. The Notice of Objection must be signed by the Settlement Class  
12 Member and state: (1) the full name of the Settlement Class Member; (2) the dates  
13 of employment of the Settlement Class Member; (3) the last four digits of the  
14 Settlement Class Member’s Social Security number; (4) the basis for the objection;  
15 and (5) if the Settlement Class Member intends to appear at the Final  
16 Approval/Settlement Fairness Hearing. Settlement Class Members who fail to make  
17 objections in the manner specified above will be deemed to have waived any  
18 objections and will be foreclosed from making any objections (whether by appeal or  
19 otherwise) to the Settlement. The Settlement Administrator shall, within two  
20 business days of receipt, serve any objection received on the Parties. The Parties  
21 may file and serve any responses to objections no later than five court days prior to  
22 the Final Approval Hearing. Settlement Class Members who submit a timely Notice  
23 of Objection will have a right to appear at the Final Approval/Settlement Fairness  
24 Hearing in order to have their objections heard by the Court. At no time will any of  
25 the Parties or their counsel seek to solicit or otherwise encourage Settlement Class  
26 Members to file or serve written objections to the Settlement or appeal from the  
27 Order and Final Judgment. Class Counsel will not represent any Settlement Class  
28 Members with respect to any such objections.

1           39.     Funding and Allocation of Gross Settlement Fund. The Gross Settlement Fund  
2 means a maximum payment amount of \$300,000, inclusive of the Class Counsel Award, the Class  
3 Representative Service Award, payment to the California Labor and Workforce Development  
4 Agency (“LWDA”) for settlement of penalties pursuant to the Private Attorneys General Act of  
5 2004 (“PAGA”), Cal. Labor Code section 2699 *et seq.*, and Settlement Administration Costs. The  
6 balance after deducting the Class Counsel Award, the Class Representative Service Award, the  
7 PAGA Payment, and Settlement Administration Costs is the Net Settlement Amount. Within 14  
8 calendar days after the Effective Date, Defendant will provide the Gross Settlement Fund to the  
9 Settlement Administrator to fund the Settlement, as set forth in this Agreement.

10           a.     Qualified Settlement Fund. “QSF” shall mean the Qualified Settlement  
11 Fund established by the Settlement Administrator for the benefit of the Settlement  
12 Class Members and from which the settlement shares and all other payments under  
13 this Agreement shall be paid with the exception of the employer’s share of payroll  
14 taxes, as stated above. The Settlement Administrator shall have its own Employer  
15 Identification Number under Internal Revenue Service Form W-9 and shall use its  
16 own Employer Identification Number and shall transmit the required employers’  
17 and employees’ share of the withholdings, if any, to the appropriate state and federal  
18 tax authorities. The Settlement Administrator shall establish a settlement fund that  
19 meets the requirements of a QSF under U.S. Treasury Regulation section 468B-1  
20 and section 468B of the Internal Revenue Code of 1986, as amended (the “Code”).  
21 The QSF shall be an interest-bearing account at a federally insured bank that is  
22 mutually acceptable to the parties and the Settlement Administrator. The Parties  
23 agree that the QSF is intended to be a “Qualified Settlement Fund” under Section  
24 468B of the Code and Treas. Reg. Section 1.468B-1, 26 CFR Sections 1.468B-1, *et*  
25 *seq.*, and will be administered by the Settlement Administrator as such. With  
26 respect to the QSF, the Settlement Administrator shall: (1) open and administer in  
27 such a manner as to qualify and maintain the qualification of the QSF as a  
28 “Qualified Settlement Fund” under Section 468B of the Code and Treas. Reg.

1 Section 1.468B-1; (2) satisfy all federal, state, and local income and other tax  
2 reporting, return, and filing requirements with respect to Defendants and the QSF  
3 and any interest or other income earned by the QSF; and (3) satisfy out of the QSF  
4 all (i) taxes (including any estimated taxes, interest, or penalties) with respect to the  
5 interest or other income earned by the QSF, and (ii) fees, expenses, and costs  
6 incurred in connection with the opening and administration of the QSF and the  
7 performance of its duties and functions as described in this Settlement Agreement.  
8 The aforementioned taxes, fees, costs, and expenses shall be treated as, and included  
9 in, the costs of administering the QSF and as Settlement Administration costs. The  
10 Settlement Administrator shall provide copies to Defendant of any federal, state,  
11 and local income or other tax reporting, return, and filing prepared on Defendant's  
12 behalf. The Parties agree to cooperate with the Settlement Administrator and one  
13 another to the extent reasonably necessary to carry out the provisions of this section.  
14 The Settlement Administrator shall be treated as an "administrator" as defined at  
15 Treasury Regulation section 1.468B-2(k) for purposes of federal and state income  
16 tax reporting with respect to the distributions and payments made under this  
17 Settlement Agreement. Accordingly, the Settlement Administrator will be  
18 responsible for issuing to participating Settlement Class Members IRS Forms W-2  
19 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as  
20 penalties and interest at times and in the manner required by the Internal Revenue  
21 Code and consistent with this Settlement Agreement. If the Internal Revenue Code,  
22 the regulations promulgated thereunder, or other applicable tax law, is changed after  
23 the date of this Settlement Agreement, the processes set forth in this section may be  
24 modified in a manner to comply with any such changes.

25 It is acknowledged and understood that Plaintiff, Defendant, Class Counsel, and  
26 Defense Counsel cannot offer tax advice to Settlement Class Members regarding the  
27 tax treatment of any payments made under this Settlement Agreement, nor should  
28 any statement made herein be construed as tax advice. Neither Class Counsel nor

1 Defense Counsel intend anything contained in this Settlement Agreement to  
2 constitute advice regarding taxes or taxability. Plaintiff and Settlement Class  
3 Members should consult with their respective tax advisers regarding the tax  
4 treatment of any payments made under this Settlement Agreement.

5 b. Individual Settlement Payments. Individual Settlement Payments will be  
6 paid from the Net Settlement Amount and will be paid pursuant to the settlement  
7 formula set forth herein. Individual Settlement Payments will be mailed by regular  
8 First-Class U.S. Mail to Settlement Class Members' last known mailing address  
9 within 14 calendar days after Defendant provides funds to the Settlement  
10 Administrator for disbursement under this Agreement. Individual Settlement  
11 Payments will be allocated as follows: 33.3% as wages; 66.7% as penalties and  
12 interest. Any checks issued to Settlement Class Members will remain valid and  
13 negotiable for 180 days from the date of their issuance. After that time, any such  
14 unclaimed checks will escheat to the State of California in the name of the  
15 Settlement Class Member.

16 i. Calculation of Individual Settlement Payments. The Settlement  
17 Administrator will calculate the total Compensable Workweeks for all  
18 Settlement Class Members. The respective Compensable Workweeks for  
19 each Settlement Class Member will be divided by the total Compensable  
20 Workweeks for all Settlement Class Members, resulting in the Payment  
21 Ratio for each Settlement Class Member. Each Settlement Class Member's  
22 Payment Ratio is then multiplied by the Net Settlement Amount to  
23 determine the proportionate allocation. Each Individual Settlement Payment  
24 will be reduced by any legally mandated employee tax withholdings (*e.g.*,  
25 employee payroll taxes, etc.) for each Settlement Class Member.

26 ii. Settlement Class Members are not eligible to receive any  
27 compensation other than Individual Settlement Payments from this  
28 Settlement.

1 c. Class Representative Service Award. Defendant agrees not to oppose or  
2 object to any application or motion by Plaintiff for a Class Representative Service  
3 Award of up to \$7,500 in exchange for the Released Claims and a General Release  
4 and for his time and effort in bringing and prosecuting this matter. The Class  
5 Representative Service Award will be paid to Plaintiff from the Gross Settlement  
6 Fund no later than 14 calendar days after Defendant provides funds to the  
7 Settlement Administrator for disbursement under this Agreement. The Settlement  
8 Administrator will issue an IRS Form 1099 – MISC to Plaintiff for his respective  
9 Class Representative Service Award. Plaintiff will be solely and legally responsible  
10 to pay any and all applicable taxes on his respective Class Representative Service  
11 Award and will hold harmless Defendant from any claim or liability for taxes,  
12 penalties, or interest arising as a result of the Class Representative Service Award.  
13 The Class Representative Service Award will be in addition to the Plaintiff's  
14 respective Individual Settlement Payment as a Settlement Class Member. In the  
15 event that the Court reduces or does not approve the requested Class Representative  
16 Service Award, Plaintiff will not have the right to revoke the Settlement, and it will  
17 remain binding.

18 d. Class Counsel Award. Defendant agrees not to oppose or object to any  
19 application or motion by Class Counsel for attorneys' fees not to exceed 33.33% of  
20 the Gross Settlement Fund (\$100,000), plus costs and expenses not to exceed  
21 \$20,000 supported by declaration, from the Gross Settlement Fund. The Class  
22 Counsel Award will be paid to Class Counsel from the Gross Settlement Fund no  
23 later than 14 calendar days after Defendant provides funds to the Settlement  
24 Administrator for disbursement under this Agreement. Class Counsel will be solely  
25 and legally responsible to pay all applicable taxes on the payment made pursuant to  
26 this paragraph. The Settlement Administrator will issue an IRS Form 1099 – MISC  
27 to Class Counsel for the payments made pursuant to this paragraph. In the event that  
28 the Court reduces or does not approve the requested Class Counsel Award, Plaintiff



1 and Class Counsel will not have the right to revoke the Settlement, and it will  
2 remain binding.

3 e. PAGA Payment. Class Counsel will comply with the settlement provisions  
4 of the Private Attorneys General Act of 2004 (“PAGA”), Cal. Labor Code section  
5 2699 *et seq.*, including taking the following steps to effectuate settlement: (1)  
6 provide a copy of this Agreement to the California Labor and Workforce  
7 Development Agency (“LWDA”) at the same time this Agreement is submitted to  
8 the Court, and (2) provide to the LWDA a copy of the Court’s judgment and any  
9 other order that awards or denies PAGA penalties within 10 days after entry of  
10 judgment or order. Subject to Court approval, the Parties will allocate a PAGA  
11 Payment in the amount of \$10,000 from the Gross Settlement Fund, to be  
12 distributed as follows: 75% or \$7,500 to the LWDA; and 25% or \$2,500 will be part  
13 of the Net Settlement Amount and distributed to Settlement Class Members as  
14 described in this Agreement.

15 f. Settlement Administration Costs. The Settlement Administrator will be paid  
16 for the costs of administration of the Settlement from the Gross Settlement Fund.  
17 The estimate of such costs of administration for the disbursement of the Gross  
18 Settlement Fund is approximately \$8,000. No fewer than 21 days prior to the Final  
19 Approval Hearing, the Settlement Administrator will provide the Parties with a  
20 statement detailing the costs of administration of this Settlement. The Settlement  
21 Administrator will be paid the Settlement Administration Costs no later than 14  
22 calendar days after Defendant provides funds to the Settlement Administrator for  
23 disbursement under this Agreement. The Settlement Administrator, on Defendant’s  
24 behalf, will have the authority and obligation to make payments, credits and  
25 disbursements, including payments and credits in the manner set forth herein, to  
26 Settlement Class Members calculated in accordance with the methodology set out in  
27 this Agreement and orders of the Court.

28

1 i. The Parties agree to cooperate in the Settlement administration  
2 process and to make all reasonable efforts to control and minimize the cost  
3 and expenses incurred in administration of the Settlement. The Parties each  
4 represent they do not have any financial interest in the Settlement  
5 Administrator or otherwise have a relationship with the Settlement  
6 Administrator that could create a conflict of interest.

7 ii. The Settlement Administrator will be responsible for: processing and  
8 mailing payments to the Plaintiff, Class Counsel, and Settlement Class  
9 Members; printing, translating and mailing the Notice Packets to the  
10 Settlement Class Members as directed by the Court; establishing and  
11 maintaining a settlement website; receiving and reporting the Request for  
12 Exclusions submitted by Settlement Class Members; deducting taxes from  
13 Individual Settlement Payments and distributing tax forms; processing and  
14 mailing tax payments to the appropriate state and federal taxing authorities;  
15 providing declaration(s) as necessary in support of preliminary and/or final  
16 approval of this Settlement; and other tasks as the Parties mutually agree or  
17 the Court orders the Settlement Administrator to perform. The Settlement  
18 Administrator will keep the Parties timely apprised of the performance of all  
19 Settlement Administrator responsibilities. No later than 25 calendar days  
20 after the Response Deadline, the Settlement Administrator will provide  
21 counsel for the Parties with a final accounting of the Gross Settlement Fund  
22 and report the amount of all payments to be made to each Settlement Class  
23 Member by employee number.

24 g. No person will have any claim against Defendant, Plaintiff, Settlement Class  
25 Members, Class Counsel or the Settlement Administrator based on distributions and  
26 payments made in accordance with this Agreement.

27 40. Option to Terminate Settlement. If, after the Response Deadline and before  
28 the Final Approval/Settlement Fairness Hearing, the number of Settlement Class Members

1 who submitted timely and valid written requests for exclusion from the Settlement is at  
2 least 10% of all Settlement Class Members, Defendant will have, in its sole discretion, the  
3 option to terminate this Settlement. If Defendant exercises its option to terminate this  
4 Settlement, Defendant will: (a) provide written notice to Class Counsel within seven  
5 calendar days after the Response Deadline and (b) pay all Settlement Administration Costs  
6 incurred up to the date or as a result of the termination; and the Parties will proceed in all  
7 respects as if this Agreement had not been executed. If the number of class members  
8 increases by more than 10% beyond what is disclosed at the time of preliminary approval,  
9 the maximum Gross Settlement Amount shall increase by a proportionate amount.

10 41. Final Settlement Approval Hearing and Entry of Final Judgment. Upon  
11 expiration of the Response Deadline, with the Court's permission, a Final  
12 Approval/Settlement Fairness Hearing will be conducted to determine final approval of the  
13 Settlement along with the amount properly payable for (i) the Class Counsel Award, (ii) the  
14 Class Representative Service Award, (iii) Individual Settlement Payments, (iv) the PAGA  
15 Payment, and (v) the Settlement Administration Costs. Pursuant to California Rule of  
16 Court 3.769(h), after granting Final Approval, the Court will retain jurisdiction over the  
17 Parties to enforce the terms of the judgment.

18 42. Nullification of Settlement Agreement. In the event: (i) the Court does not  
19 grant preliminary approval; (ii) the Court does not grant final approval; (iii) the Court does  
20 not enter a final judgment as provided herein; or (iv) the Settlement does not become final  
21 for any other reason, this Settlement Agreement will be null and void and any order or  
22 judgment entered by the Court in furtherance of this Settlement will be treated as void from  
23 the beginning. In such a case, the Parties and any funds to be awarded under this Settlement  
24 will be returned to their respective statuses as of the date and time immediately prior to the  
25 execution of this Agreement, and the Parties will proceed in all respects as if this  
26 Agreement had not been executed, except that any costs already incurred by the Settlement  
27 Administrator will be paid by Defendant. In the event an appeal is filed from the Court's  
28 final judgment, or any other appellate review is sought, administration of the Settlement

1 will be stayed pending final resolution of the appeal or other appellate review, but any fees  
2 incurred by the Settlement Administrator prior to it being notified of the filing of an appeal  
3 from the Court's Final Judgment, or any other appellate review, will be paid equally by the  
4 Parties to the Settlement Administrator within 30 days of said notification.

5 43. No Effect on Employee Benefits. Amounts paid to Plaintiff or other  
6 Settlement Class Members pursuant to this Agreement will be deemed not to be  
7 pensionable earnings and will not have any effect on the eligibility for, or calculation of,  
8 any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of the  
9 Plaintiff or Settlement Class Members.

10 44. No Admission By the Parties. Defendant denies any and all claims alleged in  
11 this Action and denies all wrongdoing whatsoever. This Agreement is not a concession or  
12 admission, and will not be used against Defendant as an admission or indication with  
13 respect to any claim of any fault, concession or omission by Defendant.

14 45. Exhibits and Headings. The terms of this Agreement include the terms set  
15 forth in any attached Exhibits 1-2, which are incorporated by this reference as though fully  
16 set forth herein. Any Exhibits to this Agreement are an integral part of the Settlement. The  
17 descriptive headings of any paragraphs or sections of this Agreement are inserted for  
18 convenience of reference only and do not constitute a part of this Agreement.

19 46. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the  
20 Action, except such proceedings necessary to implement and complete the Settlement, in  
21 abeyance pending the Final Approval/Settlement Fairness Hearing to be conducted by the  
22 Court.

23 47. Mutual Obligation of the Parties to Cooperate. The Parties acknowledge that  
24 it is their intent to consummate this Agreement, and they agree to cooperate to the extent  
25 reasonably necessary to effectuate and implement all terms and conditions of this  
26 Agreement and to exercise their best efforts to accomplish the foregoing terms and  
27 conditions of this Agreement. The Parties agree that they will not solicit, facilitate, or assist  
28 in any way, requests for exclusions or objections by putative or actual Class Members.

1 Class Counsel recognize that they have an obligation to support the Settlement and to seek  
2 the Court's approval of its terms. Class Counsel shall make a motion for preliminary  
3 approval within 20 days of execution of this Agreement. Class Counsel will abide by all  
4 applicable and governing ethical rules, opinions, and obligations precluding their  
5 representation of opt-outs.

6 48. Amendment or Modification. This Agreement may be amended or modified  
7 only by a written instrument signed by counsel for all Parties or their successors-in-interest.

8 49. Entire Agreement. This Agreement and any attached Exhibits constitute the  
9 entire Agreement among these Parties, and no oral or written representations, warranties or  
10 inducements have been made to any Party concerning this Agreement or its Exhibits other  
11 than the representations, warranties and covenants contained and memorialized in the  
12 Agreement and its Exhibits.

13 50. Authorization to Enter Into Settlement Agreement. Counsel for all Parties  
14 warrant and represent they are expressly authorized by the Parties whom they represent to  
15 negotiate this Agreement and to take all appropriate actions required or permitted to be  
16 taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any  
17 other documents required to effectuate the terms of this Agreement. The Parties and their  
18 counsel will cooperate with each other and use their best efforts to effect the  
19 implementation of the Settlement. The persons signing this Agreement on behalf of  
20 Defendant represent and warrant that they are authorized to sign this Agreement on behalf  
21 of Defendant. Plaintiff represents and warrants that he is authorized to sign this Agreement  
22 and that he has not assigned any claim, or part of a claim, covered by this Settlement to a  
23 third-party.

24 51. Binding on Successors and Assigns. This Agreement will be binding upon,  
25 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously  
26 defined.

1           52.    California Law Governs. All terms of this Agreement and the Exhibits hereto  
2 and any disputes arising hereunder will be governed by and interpreted according to the  
3 laws of the State of California.

4           53.    Counterparts. This Agreement may be executed in one or more counterparts.  
5 All executed counterparts and each of them will be deemed to be one and the same  
6 instrument provided that counsel for the Parties to this Agreement will exchange among  
7 themselves copies or originals of the signed counterparts.

8           54.    This Settlement Is Fair, Adequate and Reasonable. The Parties believe this  
9 Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at  
10 this Settlement after extensive arms-length negotiations, taking into account all relevant  
11 factors, present and potential.

12           55.    Jurisdiction of the Court. In accordance with California Rule of Court  
13 3.769(h), the Parties agree that the Court will retain jurisdiction with respect to the  
14 interpretation, implementation and enforcement of the terms of this Agreement and all  
15 orders and judgments entered in connection therewith, and the Parties and their counsel  
16 hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and  
17 enforcing the settlement embodied in this Agreement and all orders and judgments entered  
18 in connection therewith.

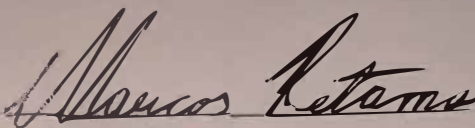
19           56.    Invalidity of Any Provision. Before declaring any provision of this  
20 Agreement invalid, the Court will first attempt to construe the provisions valid to the fullest  
21 extent possible consistent with applicable precedents so as to define all provisions of this  
22 Agreement valid and enforceable.

23           57.    Press Release. Class Counsel agrees not to publicize this case, the facts of the  
24 case, or the outcome of the mediation or settlement except: (a) as may be needed  
25 exclusively for purposes of distribution of a notice mailing packet to the Settlement Class  
26 Members to facilitate settlement of this action; and (b) in the context of requests for  
27 approval of settlement or requests for approval of an attorneys' fee application. Upon grant  
28 of Final Approval, Class Counsel may list this settlement without identifying Defendant or

1 any facts suggesting the identity of Defendant. Class Counsel will not post any information  
2 or Defendant on their website.

3 58. Waiver of Certain Appeals. The Parties agree to waive appeals and to  
4 stipulate to class certification for purposes of this settlement only provided.

5  
6 **AGREED:**

7  
8 DATED: 02-13-, 2020 By:   
9 Marcos Retana

10  
11 DATED: \_\_\_\_\_, 2020 By: \_\_\_\_\_  
12 Jeff Evanson  
13 Chief Financial Officer  
14 Adams Trucking, Inc.

15 **APPROVED AS TO FORM:**

16  
17 BRADLEY/GROMBACHER LLP

18  
19 DATED: \_\_\_\_\_, 2020 By: \_\_\_\_\_  
20 Marcus Bradley  
21 Kiley Grombacher  
22 Attorneys for Plaintiff

23 HANSON BRIDGETT LLP

24  
25 DATED: \_\_\_\_\_, 2020 By: \_\_\_\_\_  
26 Paul Mello  
27 Jennifer Martinez  
28 Attorneys for Defendant,  
Adams Trucking, Inc.

1 any facts suggesting the identity of Defendant. Class Counsel will not post any information  
2 or Defendant on their website.

3 58. Waiver of Certain Appeals. The Parties agree to waive appeals and to  
4 stipulate to class certification for purposes of this settlement only provided.

5

6 **AGREED:**

7

8 DATED: \_\_\_\_\_, 2020


By: \_\_\_\_\_

Marcos Retana

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10

11 DATED: 2/18, 2020

By: 

Jeff Evanson  
Chief Financial Officer  
Adams Trucking, Inc.

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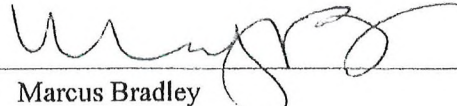
**APPROVED AS TO FORM:**

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BRADLEY/GROMBACHER LLP

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19 DATED: 2/14, 2020

By: 

Marcus Bradley  
Kiley Grombacher  
Attorneys for Plaintiff

20

21

22

23

HANSON BRIDGETT LLP

24

25 DATED: 3/3, 2020

By: 

Paul Mello  
Jennifer Martinez  
Attorneys for Defendant,  
Adams Trucking, Inc.

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