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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

LUIS PRADO and ROBERT VARELA, on
behalf of themselves and on behalf of all
similarly situated individuals,

Plaintiffs,

v.

J.S. HOMEN TRUCKING, INC., a
California corporation, and DOES 1 through
10, inclusive,

Defendants.

CASE NO: STK-CV-UOE-2022-0001797

CLASS ACTION

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint Filed: March 9, 2022

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Settlement Agreement” or “Stipulation of Settlement”) is made and entered into by and between Plaintiffs Luis Prado and Robert Varela (“Plaintiffs” or “Class Representatives”), collectively and on behalf of the Settlement Class and all others similarly situated, and Defendant J.S. Homen Trucking, Inc. (“Defendant”), subject to the terms and conditions herein and the Court’s approval.

A. Definitions.

1. Plaintiffs, the Settlement Class (as defined below), and Defendant are collectively referred to herein as “the Parties.”

2. Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC are counsel of record for Plaintiffs. For purposes of this settlement only, the firm of Gaines & Gaines, APLC shall be designated as “Class Counsel.”

3. The “Action” means the case entitled “*Luis Prado and Robert Varela v. J.S. Homen Trucking, Inc.*,” Case No. STK-CV-UOE-2022-0001797, pending before the Superior Court of the State of California for the County of San Joaquin.

4. The “Class Period” refers to the time period between April 30, 2017 and the earlier of (i) April 15, 2022 or (ii) the date preliminary approval is granted by the Court.

5. The “Settlement Class” shall be defined as “all non-exempt truck drivers who worked for J.S. Homen Trucking, Inc. in California at any time during the Class Period.” Defendant represents that this Class contains approximately 63 members.

6. Members of the Settlement Class shall collectively be referred to as a “Class Member” or “Class Members.” Any Class Member who files a timely Request for Exclusion, as detailed below, will be excluded from the final Settlement Class.

B. General.

1. On March 3, 2021, Plaintiffs exhausted the pre-filing requirements of the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

2. On or about March 9, 2022, after tolling their claims and settlement negotiations, Plaintiffs initiated the Action by filing a Class and Representative Action Complaint for Penalties,

1 pursuant to PAGA, on behalf of themselves and all similarly situated individuals (the "Complaint").
2 The Complaint asserts direct class and PAGA representative action claims against Defendant for
3 (1) failure to pay all minimum, overtime and regular wages due (Labor Code §§ 223, 510, 558,
4 1194, and 1194.2); (2) failure to provide compliant meal periods or compensation in lieu thereof
5 (Labor Code §§ 226.7, 510, 512, 558 and 1194; IWC Wage Order 9-2001); (3) failure to provide
6 compliant rest periods or compensation in lieu thereof (Labor Code §§ 226.2, 226.7 and 558; IWC
7 Wage Order 9-2001); (4) failure to reimburse employee business expenses (Labor Code § 2802;
8 IWC Wage Order 9-2001); (5) failure to provide complete and accurate itemized wage statements
9 (Labor Code §§ 226 and 226.3; IWC Wage Order 9-2001); (6) failure to timely pay wages due at
10 separation of employment (Labor Code §§ 201-203); (7) violation of Business and Professions
11 Code §§ 17200, *et seq.*; and (8) civil penalties pursuant to Labor Code §§ 2698, *et seq.* for violations
12 of Labor Code §§ 201, 202, 203, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1194 and 2802.

13 3. Defendant denies any liability or wrongdoing of any kind associated with the claims
14 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
15 purpose other than this settlement. Defendant contends that it has complied at all times with the
16 California Labor Code, Industrial Welfare Commission Wage Orders, and all other applicable
17 federal, state, and local laws and regulations. The Action, the negotiation and execution of this
18 Settlement Agreement, and all acts performed or documents executed pursuant to or in furtherance
19 of the Settlement Agreement (i) shall not be used as an admission or evidence of wrongdoing on
20 behalf of Defendant; (ii) shall not be an admission or evidence of fault on behalf of Defendant in
21 any action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be,
22 and may not be used as, an admission or evidence of the appropriateness of these or similar claims
23 for class certification in the Action or with respect to any other proceeding.

24 4. Class Counsel represent that they have conducted a thorough investigation into the
25 facts and law during the prosecution of this class action case, including the exchange of extensive
26 informal discovery and the review and verification of statistical data and other facts and information
27 provided by Defendant. Counsel for the Parties also represent that they have investigated the
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1 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiffs and
2 potential defenses thereto, and the damages and other losses claimed by Plaintiffs.

3 5. On February 3, 2022, following their exchange of information and documents
4 regarding the Settlement Class and the claims and defenses asserted by the Parties, the Parties
5 engaged in arm's-length negotiations with the assistance of mediator Judge Hurl Johnson (Ret.),
6 through which they were able to reach the resolution of the Action set forth herein.

7 6. Based on their own independent investigation and evaluation, Class Counsel are of
8 the opinion (and will so represent to the Court) that settlement for the consideration and on the
9 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
10 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
11 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses
12 asserted by Defendant. Defendant and its counsel also agree (and will so represent to the Court)
13 that this settlement is fair and in the best interest of the Settlement Class.

14 **C. Terms of Settlement.**

15 1. The financial terms of the settlement are as follows:

16 (a) **Maximum Settlement Amount:** The Parties agree to settle this Action for
17 a Maximum Settlement Amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) ("the
18 Maximum Settlement Amount"), subject to increase based on the escalator provision in paragraph
19 H(16) herein. The Maximum Settlement Amount includes the attorneys' fees of Class Counsel;
20 litigation costs and expenses (which includes, without limitation, all such fees and costs incurred
21 to date, as well as such fees and costs to be incurred in documenting the settlement, providing any
22 notices required as part of the settlement, securing Court approval of the settlement, and obtaining
23 judgment in the Action); the General Release/Enhancement payments to the Class Representatives,
24 as approved by the Court; the payments to the California Labor and Workforce Development
25 Agency ("LWDA") and Class Members pursuant to the PAGA claims in the Action; and all costs
26 of administration, including, without limitation, settlement administration fees and expenses. The
27 employer payroll tax obligations due on wage payments made will be paid from the Maximum
28 Settlement Amount.

1 (b) **Net Settlement Proceeds:** “Net Settlement Proceeds” is defined as the
2 Maximum Settlement Amount less the amounts approved and awarded by the Court for: attorneys’
3 fees and documented litigation costs and expenses incurred or advanced by Class Counsel; the
4 General Release/Enhancement payments to the Class Representatives; the payments to the LWDA
5 pursuant to PAGA; payment of the employer-side payroll taxes; and the costs of administering the
6 settlement.

7 (c) **Individual Settlement Payments:** “Individual Settlement Payments” means
8 the portion of the Net Settlement Proceeds distributable to each Class Member who participates in
9 the Settlement (i.e., who does not submit a valid request for exclusion form). The Individual
10 Settlement Payments will be calculated by dividing the Net Settlement Proceeds by the total weeks
11 worked by all participating Class Members in California as a non-exempt truck driver during the
12 Class Period, which will yield the applicable weekly rate. The weekly rate shall be multiplied by
13 the number of weeks each individual participating Class Member worked for Defendant in
14 California as non-exempt truck drivers during the Class Period to yield their Individual Settlement
15 Payments. Each Participating Settlement Class Member who does not opt out will receive an
16 Individual Settlement Payment equal to their individual weeks worked in California in as a non-
17 exempt truck driver during the Class Period multiplied by the weekly rate.

18 i. For tax purposes, each Individual Settlement Payment will be
19 apportioned (a) 10% to expense reimbursement (not subject to any tax reporting); (b) 15% to wages
20 (reported on an IRS Form W-2 and subject to applicable withholdings); (c) 50% to penalties
21 (reported on an IRS Form 1099); and (d) 25% to interest (reported on an IRS Form 1099). All
22 Individual Settlement Payments paid to Class Members will be subject to any applicable wage
23 garnishments, liens, or other legally mandated treatment as required by law.

24 (d) **PAGA Payments:** The Parties agree that Twenty Thousand Dollars
25 (\$20,000.00) shall be allocated to settle Plaintiffs’ claims brought pursuant to PAGA. Of this
26 amount, Seventy-Five percent (75%), or Fifteen Thousand Dollars (\$15,000.00), shall be paid to
27 the LWDA, and the remaining Twenty-Five percent (25%), or Five Thousand Dollars (\$5,000.00),
28 shall be included in the Net Settlement Proceeds for payment to Class Members.

1 (e) **General Release/Enhancement Payments to Class Representatives:** The
2 amount awarded to the Class Representatives as a General Release/Enhancement Payments will be
3 set by the Court in its discretion, not to exceed Ten Thousand Dollars (\$10,000.00) for each Class
4 Representative. This amount will be deducted from the Maximum Settlement Amount. An IRS
5 Form 1099 will be issued to the Class Representative for their General Release/Enhancement
6 Payments. Defendant agrees not to dispute or otherwise object to the General
7 Release/Enhancement Payments if Plaintiffs each request \$10,000 or less.

8 (f) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be
9 deducted from the Maximum Settlement Amount in an amount to be set by the Court taking into
10 account the settlement award that has been made available for the Settlement Class by the efforts
11 of Class Counsel. The amount awarded shall not exceed 35% of the Maximum Settlement Amount
12 (i.e., Eighty-Seven Thousand Five Hundred Dollars (\$87,500.00)). An IRS Form 1099 will be
13 issued to Class Counsel with respect to its award of attorneys' fees. Defendant agrees not to dispute
14 or otherwise object to the attorneys' fee award requested by Class Counsel so long as the request
15 does not exceed 35% of the Maximum Settlement Amount.

16 (g) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
17 the Maximum Settlement Amount in an amount to be set by the Court for documented out-of-
18 pocket litigation costs and expenses, not to exceed Twelve Thousand Dollars (\$12,000.00). If the
19 costs incurred by Class Counsel are less than \$12,000, the difference shall become part of the Net
20 Settlement Proceeds. An IRS Form 1099 will be issued to Class Counsel with respect to its award
21 of costs and expenses. Defendant agrees not to dispute or otherwise object to the attorneys' cost
22 award requested by Class Counsel so long as the request does not exceed \$12,000.

23 (h) **Settlement Administration Costs:** The fees and other charges of the
24 Settlement Administrator to administer the Settlement are expected to total no more than Four
25 Thousand Dollars (\$4,000.00), and will be paid from the Maximum Settlement Amount. These
26 fees shall include any costs associated with the required tax reporting on any Individual Settlement
27 Payments, and the issuing of any and all W-2 and 1099 forms. Subject to approval of the Court,
28 the Parties have agreed that Simpluris will serve as a neutral third-party claims' administrator

1 (“Settlement Administrator”) to perform all acts related to providing notice to the Settlement Class.
2 Settlement Administrator shall be responsible for (a) printing and distributing the Court-approved
3 Notice of Class Action Settlement (“Class Notice”) to all Class Members; (b) administering the
4 settlement; (c) processing exclusions, objections, and field inquiries from Class Members; (d)
5 resolving disputes; (e) calculating the Individual Settlement Payment each Participating Class
6 Members is eligible to receive; (f) distributing the Maximum Settlement Amount as directed by the
7 Court and set forth herein; (g) tax reporting; (h) providing necessary weekly status reports; and (i)
8 other duties and responsibilities set forth herein.

9 (i) **No Warranty by Defendant:** Plaintiffs understand and agree that
10 Defendant is not providing Plaintiffs or Class Members with tax or legal advice and that Defendant
11 makes no representations regarding tax obligations or consequences, if any, related to this
12 Settlement Agreement.

13 **D. Release of Claims.**

14 1. Upon the Effective Date, and subject to Defendant’s full payment of the Maximum
15 Settlement Amount, Plaintiffs and all Settlement Class Members who do not timely opt-out will
16 be deemed to have fully released and discharged Defendant, and each of its present and former
17 officers, directors, members, owners, managers, shareholders, agents, operators, partners, joint
18 ventures, subsidiaries, parent companies, related entities, consultants, attorneys, successors or
19 assignees (“Released Parties”) from any and all Released Claims which arose during employment
20 as a non-exempt truck driver in California during the Class Period.

21 2. The “Released Claims” include all claims, rights, demands, liabilities and causes of
22 actions that are alleged or reasonably could have been alleged based on the facts and claims asserted
23 in the Action, including alleged violations of California Labor Code sections 201, 202, 203, 204,
24 223, 225.5, 226, 226.2, 226.3, 226.6, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2,
25 1197, 1197.1, 2699 and 2802, and IWC Wage Order No. 9-2001 arising from the following claims:
26 (i) failure to pay all minimum, overtime and regular wages due; (ii) failure to provide meal periods
27 or premium compensation in lieu thereof; (iii) failure to provide rest periods or compensation in
28 lieu thereof; (iv) failure to reimburse employee business expenses; (v) failure to provide complete

1 and accurate itemized wage statements; (vi) failure to timely pay wages due at separation of
2 employment; (vii) unfair business practices that could have been premised on the claims, causes of
3 action, or legal theories of relief described above or any of the claims, causes of action, or legal
4 theories of relief pleaded in the Action; and (viii) all claims under PAGA that could have been
5 premised on the claims, causes of action or legal theories described above or any of the claims,
6 causes of action or legal theories of relief pleaded in the Action. Released claims also includes a)
7 claims that could have been brought under the Fair Labor Standards Act or similar federal or state
8 governmental agencies regulating wage and hour or labor and employment laws; and b) penalties,
9 interest, costs, and attorneys' fees; that could have been premised on the claims, causes of action
10 or legal theories described above or any of the claims, causes of action or legal theories of relief
11 pleaded in the Action. The Released Claims are expressly limited to claims arising during the Class
12 Period during employment as a non-exempt truck driver in California. The release applies
13 regardless of whether the Class Member deposits his/her settlement check.

14 **3. Parties' Mutual Release of Unknown Claims.**

15 Subject to the occurrence of the Effective Date, Plaintiffs, individually, and Defendant
16 have agreed to release, in addition to the Released Claims described above, all claims, whether
17 known or unknown, under federal law or state law against each other and the Released Parties.
18 Each Party understands that this release includes unknown claims and that he or it is, as a result,
19 waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which
20 provides:

21 A general release does not extend to claims which the creditor does
22 not know or suspect to exist in his or her favor at the time of
23 executing the release, which if known by him or her must have
24 materially affected his or her settlement with the debtor.

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

27 **E. Notice and Exclusion Process.**

28 1. Within fifteen (15) calendar days after entry of the order granting preliminary
approval of this Settlement, Defendant shall provide to the Settlement Administrator a list of all

1 Class Members, including their last known addresses, telephone numbers, social security numbers,
2 and their dates of employment as a non-exempt truck driver in California during the Class Period
3 (“Settlement Class Information”). The names, addresses, telephone numbers, and Social Security
4 numbers will only be disclosed to the Settlement Administrator and not to Plaintiffs’ Counsel. All
5 information provided to the Settlement Administrator will be marked CONFIDENTIAL. This
6 information shall be kept confidential and shall not be disclosed, either in writing or orally, by the
7 Settlement Administrator. The Settlement Administrator shall use due care with respect to the
8 storage, custody, use, and/or dissemination of the confidential information. Such information must
9 be stored in a secure fashion and all persons who access the data must agree to keep it confidential.

10 2. A notice of pendency of class action, proposed settlement, and hearing date for
11 Court approval (“Class Notice”) in the form attached hereto as **Exhibit 1**, and as approved by the
12 Court, shall be sent by the Settlement Administrator to the Class Members, by first class mail,
13 within ten (10) calendar days after entry of the Settlement Administrator receiving the Settlement
14 Class Information. Attached to the Class Notice will be a request for exclusion form (“Request for
15 Exclusion Form”) in the form attached hereto as **Exhibit 2**.

16 3. The Settlement Administrator will make reasonable efforts to ensure that the Class
17 Notice and Request for Exclusion Form are sent to all Class Members. It will conclusively be
18 presumed that if an envelope has not been returned within thirty (30) days of the mailing that the
19 Class Member received the Class Notice. In the event of returned or non-deliverable notices, the
20 Settlement Administrator will make reasonable efforts to locate Class Members and re-send the
21 notices.

22 4. Each Class Member will be fully advised of the settlement, the ability to object to
23 the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will
24 inform the Class Members of the Court-established deadlines for filing objections and a Request
25 for Exclusion Form.

26 5. Each Class Notice will contain personalized information setting forth the number of
27 weeks each Class Member worked for Defendant in California as a non-exempt truck driver during
28 the Class Period and their estimated Individual Settlement Payment. To the extent a Class Member

1 disputes any of the information listed on his or her Class Notice, the Class Member may produce
2 evidence to the Settlement Administrator showing such information the Class Member contends
3 should be reflected in the Class Notice. Defendant's records will be presumed determinative,
4 however, and the Settlement Administrator's decision on these matters will be final. The Class
5 Notice will also set forth IRS W-9 information if required.

6 6. All Class Members who do not submit a Request for Exclusion Form will be eligible
7 to receive an Individual Settlement Payment, which shall be mailed to them if and when the
8 Effective Date occurs.

9 7. In order to elect not to participate in the Settlement, a Class Member must submit a
10 Request for Exclusion Form, and mail it to the Settlement Administrator no later than sixty (60)
11 calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to Class
12 Members, unless the Court requires a longer period, in which case the Court ordered exclusion
13 period will apply. The date of the postmark shall be deemed the date of submission. The timeliness
14 of submitted Request for Exclusion Forms will be determined by valid postmark. If the 60th day
15 falls on a Sunday or federal holiday, the time to request exclusion will be extended to the next day
16 on which the U.S. Postal Service is open.

17 8. The deadline for submission of Exclusion Forms shall be extended once by 30 days
18 for those Class Members whose Class Notice and Exclusion Form are returned as "undeliverable."
19 If the 30th day falls on a Sunday or federal holiday, this deadline will be extended to the next day
20 on which the U.S. Postal Service is open.

21 9. The Settlement Administrator will search for additional addresses on returned mail
22 and will re-mail the Class Notice and Exclusion Form to an updated address (if any) within 15 days
23 of receipt of the returned mail. The 30-day extended time limit will run from the date of the second
24 mailing for those Class Members. To the extent a Class Notice from the initial mailing is not
25 returned within 30 days, it shall be deemed to have been sent to a valid address even if it is thereafter
26 returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts be used to
27 locate Class Members. If the initial Class Notice and Request for Exclusion Form is returned, the
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1 Settlement Administrator will search using the social security number for a more current address.
2 If no address is found, no further action is required.

3 10. The Settlement Administrator will notify the Parties of the total number of valid
4 Request for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the
5 Request for Exclusion Forms (fifty-five (55) days following the initial mailing of the Class Notice
6 and Request for Exclusion Forms to Class Members).

7 11. In order to object to the settlement, a Class Member must mail his or her objection
8 to the Settlement Administrator no later than sixty (60) calendar days after the mailing of the Class
9 Notice and Request for Exclusion Form to Class Members, unless the Court requires a longer
10 period, in which case the Court ordered objection period will apply. If the 60th day falls on a
11 Sunday or federal holiday, the time to object to the settlement will be extended to the next day on
12 which the U.S. Postal Service is open. Under no circumstances shall the objection deadline be
13 extended for any reason.

14 12. The Settlement Administrator shall provide to the Parties, at least twelve (12)
15 calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a declaration
16 of due diligence and proof of mailing with regard to the mailing of the Class Notice and Request
17 for Exclusion Forms. The Settlement Administrator will also provide to the Parties, at least twelve
18 (12) calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a report
19 listing the amount of all payments to be made to each Class Member without names or personal
20 identifying information.

21 13. Defendant shall deposit the Maximum Settlement Amount with the Settlement
22 Administrator on July 15, 2022 or (10) calendar days after the Effective Date, whichever is later.
23 The effective date of this Settlement Agreement ("Effective Date") is the later of (a) final approval
24 by the Court; or (b) if there are objections to the settlement which are not withdrawn, and if an
25 appeal, review, or writ is not sought from the judgment, the sixty-first (61st) day after service of
26 notice of entry of judgment; or (c) the dismissal or denial of an appeal, review, or writ, if the
27 Judgment is no longer subject to judicial review.

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14. The Settlement Administrator shall disburse the Maximum Settlement Amount within fifteen (15) calendar days after of (a) the day after the last date by which the final judgment in the Action may be appealed, and no appeal is filed; or (b) if an appeal of final judgment is filed, and the appeal is finally disposed of by ruling, dismissal, denial, or otherwise, the day after the last date for filing a request for further review of the Court of Appeal's decision passes, and no further review is requested; or (c) if an appeal of the final judgment is filed and there is a final disposition by ruling, dismissal, denial, or otherwise by the Court of Appeal, and review of the Court of Appeal's decision is requested, the day after the request for review is denied with prejudice and/or no further review of the judgment can be requested; or (d) if review is accepted, the day the California Supreme Court affirms the settlement. Class Members must cash each of their Individual Settlement Payment checks within one hundred eighty (180) calendar days after they are mailed by the Settlement Administrator. The value of any checks uncashed more than one hundred eighty (180) days after mailing shall be paid to the State of California State Controller's Office, to be held in the name of the respective Class Member.

F. Duties of the Parties Prior to Court Approval.

1. Promptly after execution of this Settlement Agreement, Plaintiffs shall move the Court for preliminary approval of this settlement and entry of an order accomplishing the following:

- (a) scheduling a fairness hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable and adequate as to the Class Members;
- (b) approving as to form and content the proposed Class Notice;
- (c) approving as to form and content the proposed Request for Exclusion Form;
- (d) preliminarily certifying the Settlement Class for purposes of settlement;
- (e) preliminarily approving the PAGA payment of \$15,000 to the LWDA;
- (f) preliminarily setting attorneys' fees and costs payable to Class Counsel;
- (g) preliminarily setting the General Release/Enhancement Payments to the Class Representatives; and

1 (h) preliminarily approving Simpluris as the Settlement Administrator and its
2 estimated fees and costs of \$4,000.

3 The Parties shall submit this Settlement Agreement to the Court and the LWDA in support
4 of Plaintiffs' unopposed motion for preliminary approval of the settlement.

5 **G. Duties of the Parties in Connection with and Following Final Court Approval.**

6 1. In connection with the hearing on final approval of the settlement provided for in
7 this Settlement Agreement, the Parties will submit a proposed final order no later than ten (10)
8 calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered
9 by the Court):

10 (a) approving the settlement, adjudging the terms thereof to be fair, reasonable
11 and adequate, and directing consummation of its terms and provisions;

12 (b) approving Class Counsel's application for an award of attorneys' fees and
13 reimbursement of documented litigation costs and expenses, the General Release/Enhancement
14 Payments to the Class Representatives, the PAGA Payment to the LWDA, and the costs of
15 administering the settlement; and

16 (c) entering judgment in this Action in accordance with this Stipulation,
17 pursuant to Cal. Rules of Court, Rule 3.769(h).

18 2. Class Counsel shall file an application for attorneys' fees and reimbursement of
19 costs and expenses no later than ten (10) calendar days prior to the scheduled date of the hearing
20 on final approval (unless otherwise ordered by the Court).

21 **H. Miscellaneous Provisions:**

22 1. **Voiding the Agreement.**

23 A failure of the Court to approve any material condition of this Settlement Agreement which
24 effects "a fundamental change of the Parties' settlement," or if the settlement is reversed or
25 materially modified on appellate review, shall render the entire Stipulation of Settlement voidable
26 and unenforceable as to all Parties herein at the option of any Party.

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1 2. **Parties' Authority.**

2 The signatories hereto represent that they are fully authorized to enter into this Settlement
3 Agreement and bind the Parties hereto to the terms and conditions hereof.

4 3. **Mutual Full Cooperation.**

5 The Parties agree to fully cooperate with each other to accomplish the terms of this
6 Stipulation of Settlement, including but not limited to, execution of such documents and such other
7 action as may reasonably be necessary to implement the terms of this Settlement Agreement. The
8 Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated
9 by this Settlement Agreement and any other efforts that may become necessary by order of the
10 Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As
11 soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the
12 assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the
13 Court's preliminary and final approval of the settlement.

14 4. **No Prior Assignments.**

15 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
16 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
17 entity any portion of any liability, claim, demand, action, cause of action or rights released and
18 discharged by this Stipulation of Settlement.

19 5. **No Admission.**

20 Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be
21 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
22 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
23 Settlement Agreement with the intention of avoiding further disputes and litigation with the
24 attendant inconvenience and expenses. This Settlement Agreement is a settlement document and
25 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408
26 and/or any other similar law, be inadmissible in evidence in any proceeding, except an action or
27 proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

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1 **6. Construction.**

2 The Parties hereto agree that the terms and conditions of this Settlement Agreement are the
3 result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement
4 Agreement shall not be construed in favor of or against any Party by reason of the extent to which
5 any Party or her or its counsel participated in the drafting of this Settlement Agreement.

6 **7. Captions and Interpretations.**

7 Paragraph titles or captions contained herein are inserted as a matter of convenience and for
8 reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement
9 or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a
10 recital.

11 **8. Modification.**

12 This Settlement Agreement may not be changed, altered, or modified, except in writing and
13 signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be
14 discharged except by performance in accordance with its terms or by a writing signed by each of
15 the Parties hereto on their attorneys.

16 **9. Integration Clause.**

17 This Settlement Agreement contains the entire agreement between the Parties relating to
18 the settlement and transactions contemplated hereby, and all prior or contemporaneous agreements,
19 understandings, representations, and statements, whether oral or written and whether by a Party or
20 such Party's legal counsel, are merged herein. No rights hereunder may be waived except in
21 writing.

22 **10. Binding on Assigns.**

23 This Settlement Agreement shall be binding upon and inure to the benefit of the Parties
24 hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

25 **11. Governing Law.**

26 All terms of this Settlement Agreement and its exhibits shall be governed by and interpreted
27 according to the laws of the State of California, without giving effect to any conflict of law
28 principles or choice of law principles.

12. **Signatures of All Class Members Unnecessary to be Binding.**

It is agreed that, because the members of the Settlement Class are numerous, it is impossible or impractical to have each Class Member execute this Settlement Agreement. The Class Notice, attached hereto as Exhibit 1, will advise all Class Members of the binding nature of the release provided herein and such shall have the same force and effect as if this Settlement Agreement was executed by each Class Member.

13. **Counterparts.**

This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one fully-signed Settlement Agreement, which shall be binding upon and effective as to all Parties.

14. **Confidentiality**

Until Plaintiffs file their motion for preliminary approval of the class action settlement, the Parties and their Counsel agree to maintain confidentiality as to the Settlement, including the amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing agencies, or as otherwise required by law.

15. **No Publicity**

Plaintiffs and their Counsel will not contact the media about the settlement or respond to any inquiries by the media regarding the Settlement, other than to state that the matter was amicably settled, and the Court did not find Defendant liable. Plaintiffs and their Counsel also will not post any information about the settlement on social media or their firms' websites.

16. **Representation Regarding Class Size.**

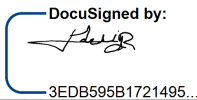
Defendant has represented that there are no more than 63 Class Members during the Class Period through February 3, 2022. Should this number increase by 10%, the Maximum Settlement Amount will increase proportionately. For example, if there are 69 Class Members as of February 3, 2022, the Maximum Settlement Amount will increase by 9.52% (i.e. 69/63).

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[SIGNATURES ON FOLLOWING PAGE]

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March 23, 2022
Dated: March _____, 2022

By: 

LUIS PRADO
Plaintiff and Class Representative

Dated: March _____, 2022

By: _____
ROBERT VARELA
Plaintiff and Class Representative

Dated: March _____, 2022

J.S. HOMEN TRUCKING, INC.

By: _____
Its: _____

APPROVED AS TO FORM AND CONTENT:

Dated: March 23, 2022

GAINES & GAINES, APLC

By: Daniel F. Gaines
Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Counsel for Plaintiffs and Class
Representatives

Dated: March _____, 2022

MICHAEL J. F. SMITH, APC

By: _____
John L. Migliazzo, Esq.
Counsel for Defendant

1 Dated: March _____, 2022

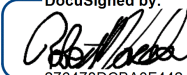
By:

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3 LUIS PRADO
Plaintiff and Class Representative

4 March 23, 2022

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7 ROBERT VARELA
Plaintiff and Class Representative

8
9 Dated: March _____, 2022

J.S. HOMEN TRUCKING, INC.

By:

12 Its: _____

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14 **APPROVED AS TO FORM AND CONTENT:**

15 Dated: March _____, 2022

GAINES & GAINES, APLC

By: _____

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Counsel for Plaintiffs and Class
Representatives

19
20 Dated: March _____, 2022

MICHAEL J. F. SMITH, APC

By: _____

John L. Migliazzo, Esq.
Counsel for Defendant

1 Dated: March _____, 2022

By:

LUIS PRADO
Plaintiff and Class Representative

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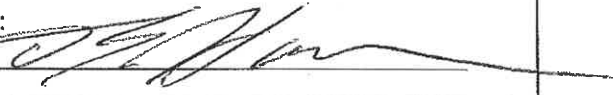
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ROBERT VARELA
Plaintiff and Class Representative

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9 Dated: March 30 , 2022

J.S. HOMEN TRUCKING, INC.

By:

Its: 

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14 **APPROVED AS TO FORM AND CONTENT:**

15 Dated: March _____, 2022

GAINES & GAINES, APLC

By:

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Counsel for Plaintiffs and Class
Representatives

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20 Dated: March 31, 2022

MICHAEL J. F. SMITH, APC

By:

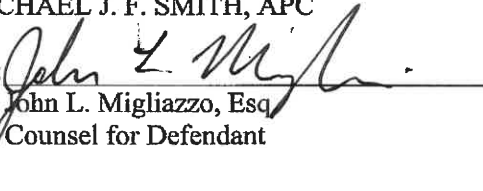

John L. Migliazzo, Esq.
Counsel for Defendant

EXHIBIT 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

LUIS PRADO and ROBERT VARELA, on
behalf of themselves and on behalf of all
similarly situated individuals,

Plaintiffs,

v.

J.S. HOMEN TRUCKING, INC., a California
corporation, and DOES 1 through 10, inclusive,

Defendants.

CASE NO: STK-CV-UOE-2022-1797

*Assigned to the Hon. Robert T. Waters, Dept.
11B*

**NOTICE OF PENDENCY OF PROPOSED
CLASS ACTION SETTLEMENT AND
FINAL HEARING**

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.**

A California court authorized this notice. This is not a solicitation from a lawyer.

- A settlement will provide \$250,000 to pay claims to all individuals who worked for J.S. Homen Trucking, Inc. (“Defendant”) as a non-exempt truck driver in California at any time between April 30, 2017 and [Class Period End Date].
- The settlement resolves a lawsuit alleging that Defendant failed to pay all minimum, overtime and regular wages due; provide compliant meal and rest periods or premium compensation in lieu thereof; reimburse employee business expenses; timely issue final wages upon separation of employment; and issue accurate and complete itemized wage statements. The Settlement avoids costs and risks of continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$87,500 as attorneys’ fees and \$12,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendant denies that it has done anything wrong. Defendant also denies that it owes Class Members any wages, restitution, statutory or civil penalties, damages, or any other remedies. Accordingly, the Settlement is a compromise of disputed claims and should not be considered as an admission of liability on the part of Defendant, by whom all liability is expressly denied

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If your address has changed, you must notify the Settlement Administrator of your new address. In exchange for the settlement payment, you will release claims against the Defendant, as detailed below.
Exclude Yourself	To exclude yourself, you must send a written Request for Exclusion to the Settlement Administrator by the applicable deadline, as detailed below. If you request exclusion, you may receive no money from the Settlement . This is the only option that allows you to ever be part of any other lawsuit against J.S. Homen Trucking, Inc. about the legal claims that were brought in this case.
Object	Write to the Settlement Administrator about why you don't like the settlement by the applicable deadline, as detailed below, and/or appear at the Final Approval Hearing to make an oral objection.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement, as detailed below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On March 9, 2022, Plaintiffs Luis Prado and Robert Varela ("Plaintiffs"), former employees of J.S. Homen Trucking, Inc., filed this lawsuit in the San Joaquin County Superior Court. The lawsuit alleges violations of the California Labor Code and California Business and Professions Code. The lawsuit seeks to certify a class of all current and former non-exempt California truck drivers of Defendant employed from April 30, 2017 through [Class Period End Date]. ("Class Period"). Specifically, the lawsuit alleges that members of the Class were not paid all minimum, overtime and regular wages due; were not provided all compliant meal and rest periods or premium compensation in lieu thereof; were not timely issued final wages upon separation of employment; were not issued accurate and complete itemized wage statements; and were not reimbursed for all business expenses incurred. The Settlement seeks recovery of wages, damages, interest, statutory and civil penalties, restitution, attorneys' fees and costs. Defendant denies all of the material allegations in the lawsuit and denies that it owes Class Members any remedies. The Court has not made a ruling on the merits of the case.

The lawyers for the parties are:

Plaintiffs' Attorneys

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Gaines & Gaines, APLC
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
Phone: (866) 550-0855

Defendant's Attorneys

John L. Migliazzo, Esq.
Michael J. F. Smith, APC
1391 West Shaw Avenue, Suite D
Fresno, California 93711

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or Defendant. Plaintiffs believes they would have prevailed on their claims at a trial. Defendant does not believe that Plaintiffs would have won anything from a trial. There has been no trial. Instead, both sides agreed to a settlement, which is memorialized in the Settlement Agreement and Release of Claims ("Settlement Agreement" or "Stipulation of Settlement"), in order to avoid the further costs, risks, and uncertainty of a trial. Plaintiffs and Plaintiffs' Attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all Class Members.

B. Who is in the Settlement Class?

The Settlement encompasses a class composed of all individuals who worked for J.S. Homen Trucking, Inc. as a non-exempt truck driver in California at any time between April 30, 2017 and [Class Period End Date].

C. What does the Settlement provide?

1. Maximum Settlement Amount.

The Settlement provides that Defendant will pay Two Hundred Fifty Thousand Dollars (\$250,000.00) (the "Maximum Settlement Amount") to settle the lawsuit.

2. Net Settlement Proceeds.

The "Net Settlement Proceeds" is the portion of the Maximum Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Proceeds amount is the Maximum Settlement Amount less the following amounts that will be requested at the Final Approval Hearing and are subject to comment or objection by Participating Class Members. The Court will fix these amounts at the Final Approval Hearing.

(a) **Class Counsel's Attorneys' Fees** in an amount set by the Court, not to exceed Eighty-Seven Thousand Five Hundred Dollars (\$87,500.00);

(b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed Twelve Thousand Dollars (\$12,000.00);

(c) **Service Payments to the Class Representatives** in an amount set by the Court, not to exceed Ten Thousand Dollars (\$10,000.00) each, for their service in the lawsuit;

(d) **Settlement Administration Costs** which are currently estimated to not exceed Four Thousand Dollars (\$4,000.00), for administering the settlement; and

(e) **PAGA Payment** in the total amount of Twenty Thousand Dollars (\$20,000.00) for the settlement of claims arising under the California Private Attorneys General Act (“PAGA”). Seventy-Five percent (75%), or Fifteen Thousand Dollars (\$15,000.00), shall be paid to the California Labor and Workforce Development Agency (“LWDA”). The remaining Twenty-Five percent (25%), or Five Thousand Dollars (\$5,000.00), shall be included in the Net Settlement Proceeds for payment to Class Members

3. Individual Payment Amount.

Your share of the Net Settlement Proceeds will be determined by the formula detailed in section E below.

D. What Are You Giving Up To Get A Payment Or Stay In The Class?

Upon the Effective Date, and subject to Defendant’s full payment of the Maximum Settlement Amount, Plaintiffs and all Settlement Class Members who do not timely opt-out will be deemed to have fully released and discharged Defendant, and each of its present and former officers, directors, members, owners, managers, shareholders, agents, operators, partners, joint ventures, subsidiaries, parent companies, related entities, consultants, attorneys, successors or assignees (“Released Parties”) from any and all Released Claims which arose during employment as a non-exempt truck driver in California during the Class Period.

2. The “Released Claims” include all claims, rights, demands, liabilities and causes of actions that are alleged or reasonably could have been alleged based on the facts and claims asserted in the Action, including alleged violations of California Labor Code sections 201, 202, 203, 204, 223, 225.5, 226, 226.2, 226.3, 226.6, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 2699 and 2802, and IWC Wage Order No. 9-2001 arising from the following claims: (i) failure to pay all minimum, overtime and regular wages due; (ii) failure to provide meal periods or premium compensation in lieu thereof; (iii) failure to provide rest periods or compensation in lieu thereof; (iv) failure to reimburse employee business expenses; (v) failure to provide complete and accurate itemized wage statements; (vi) failure to timely pay wages due at separation of employment; (vii) unfair business practices that could have been premised on the claims, causes of action, or legal theories of relief described above or any of the claims, causes of action, or legal theories of relief pleaded in the Action; and (viii) all claims under PAGA that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the Action. Released claims also includes a) claims that could have been brought under the Fair Labor Standards Act or similar federal or state governmental agencies regulating wage and hour or labor and employment laws; and b) penalties, interest, costs, and attorneys’ fees; that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the Action. The Released Claims are expressly limited to claims arising during the Class Period during employment as a non-exempt truck driver in California. The release applies regardless of whether the Class Member deposits his/her settlement check.

E. How Is My Share Of The Settlement Calculated?

Each participating Class Member (those who do not opt out of the Settlement) shall receive an “Individual Payment Amount,” which is distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form).

The Individual Payment Amounts will be calculated by dividing the Net Settlement Proceeds by the total weeks worked by all participating Class Members in California as a non-exempt truck driver during the Class Period, which will yield the applicable weekly rate. The weekly rate shall be multiplied by the number of weeks each individual participating Class Member worked for Defendant in California as a non-exempt truck driver during the Class Period to yield their Individual Payment Amount. Each Participating Settlement Class Member who does not opt out will receive an Individual Payment Amount equal to their individual weeks worked in California as a non-exempt truck driver during the Class Period multiplied by the weekly rate.

For tax purposes, each Individual Settlement Payment will be apportioned (a) 10% to expense reimbursement (not subject to any tax reporting); (b) 15% to wages (reported on an IRS Form W-2 and subject to applicable withholdings); (c) 50% to penalties (reported on an IRS Form 1099); and (d) 25% to interest (reported on an IRS Form 1099). All Individual Settlement Payments paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

According to the records of Defendant, you worked [REDACTED] weeks while employed as a non-exempt truck driver in California from April 30, 2017 through [Class Period End Date]. Based on these weeks worked, you are entitled to an Individual Payment Amount of approximately \$[REDACTED]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than [REDACTED], 2022. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the “Final Settlement Hearing”) on [REDACTED], at 8:30 a.m., in the Courtroom of Judge Robert T. Waters of the San Joaquin County Superior Court, Department 11B, located at 180 E Weber Ave, Stockton, California 95202. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys’ fees and costs to be awarded to Plaintiffs’ Attorneys; and (v) the amount that should be awarded to Plaintiffs as a service payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than [redacted]. The Settlement Administrator's address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Written objections must be postmarked no later than [redacted].

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself ("opt out") from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will not be bound by a judgment in this case and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than [redacted].

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed "Settlement Agreement and Release of Claims" which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the San Joaquin County Superior Court, located at 180 E. Weber Ave., Stockton, California 95202, or can be accessed online by using the Court's online portal.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number].

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

**BY ORDER OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA**

EXHIBIT 2

REQUEST FOR EXCLUSION

ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE SETTLEMENT OF THE ACTION KNOWN AS *Luis Prado and Robert Varela v. J.S. Homen Trucking, Inc., and Does 1 Through 10, Inclusive, Defendants, San Joaquin County Superior Court, Case No. STK-CV-UOE-2022-0001797*. **IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.**

I confirm that I was employed by Defendant J.S. Homen Trucking, Inc. as a non-exempt truck driver in California between April 30, 2017 and [Class Period End Date].

I do not wish to receive any payment under the terms of the proposed class action settlement or to otherwise participate in the proposed settlement.

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE **[60 days after mailing of Notice]**. Send this signed request for exclusion form to the Settlement Administrator:

J.S. Homen Trucking, Inc. Claims Administrator
c/o Simpluris

