

1 **MARLIN & SALTZMAN, LLP**
 2 Christina A. Humphrey, Esq. (SBN 226326)
 3 Leslie H. Joyner, Esq. (SBN 262705)
 4 29229 Canwood Street, Suite 208
 5 Agoura Hills, California 91301
 Telephone: (818) 991-8080
 Facsimile: (818) 991-8081
chumphrey@marlinsaltzman.com
ljoyner@marlinsaltzmna.com

6 Attorneys for Plaintiff

7 **SEYFARTH SHAW LLP**
 8 Brandon R. McKelvey, Esq. (SBN 217002)
 9 Timothy B. Nelson, Esq. (SBN 235279)
 400 Capitol Mall, Suite 2350
 Sacramento, California 95814-4428
 Telephone: (916) 448-0159
 Facsimile: (916) 558-4839
bmckelvey@seyfarth.com
tnelson@seyfarth.com

12 **SEYFARTH SHAW LLP**
 13 Thomas J. Piskorski, Esq. (*admitted pro hac vice*)
 14 131 South Dearborn Street, Suite 2400
 Chicago, Illinois 60603
 Telephone: (312) 460-5000
 Facsimile: (312) 460-7000
tpiskorski@seyfarth.com

16 Attorneys for Defendant

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA - SACRAMENTO DIVISION

19	SALVADOR ROBLES, individually and on)	CASE NO. 2:13-CV-00161-JAM-AC
20	behalf of others similarly situated,)	
21)	<u>CLASS ACTION</u>
22	Plaintiffs,)	
23	v.)	STIPULATION AND ORDER RE: FIRST
24	COMTRAK LOGISTICS, INC., a Delaware)	AMENDED COMPLAINT AND
25	corporation; and DOES 1 through 10,)	RELATED MATTERS
26	inclusive,)	
27	Defendants.)	
28	_____)	

1 **STIPULATION**

2 WHEREAS, on January 25, 2013, Plaintiff filed his Complaint.

3 WHEREAS, Defendant filed its Motion to Dismiss the entire action on March 26, 2013,
4 with a noticed hearing date of May 15, 2013;

5 WHEREAS, Plaintiff anticipated filing a First Amended Complaint the same time
6 Defendant filed its Motion to Dismiss, in order to add the same individual labor code claims on
7 behalf of Plaintiff Robles for the time he spent as an employee of Defendant;

8 WHEREAS, on April 15, 2013, the parties filed a Stipulation and Proposed Order RE:
9 Tolling Agreement and Related Matters seeking to preserve the May 15, 2013, hearing date on
10 Defendant's Motion to Dismiss and to preserve Plaintiff's right to file a First Amended Complaint
11 pursuant to Fed. Rule Civ. Proc. 15(a)(1)(B) after the hearing on the Motion to Dismiss;

12 WHEREAS, the deadline for Plaintiff to file a First Amended Complaint as a matter of right
13 pursuant to Fed. Rule Civ. Proc. 15(a)(1)(B) was April 16, 2013;

14 WHEREAS, the parties have reached the following agreement, each subpart below being
15 material and necessary to the entire agreement;

16 THEREFORE, the parties, through their respective counsel of record, agree to stipulate that;

17 (a) Defendant will withdraw its current Motion to Dismiss;

18 (b) Plaintiff will file a First Amended Complaint within fourteen (14) days of the date this
19 Stipulation is filed; and

20 (c) Defendant will have twenty-eight (28) days from the date Plaintiff files his First Amended
21 Complaint to file its responsive pleading.

22 Following which the normal briefing deadlines will govern, tied to the hearing date for the
23 anticipated motion to dismiss.

24 All parties further agree that the parties' following arguments are reserved, and not in any
25 way impacted by this Stipulation:

26 (a) Plaintiff reserves the right to argue that Plaintiff's labor code claims relating to his
27 status as an employee relate back to the January 25, 2013, filing date of the original Complaint; and
28

1 (b) Defendant's arguments that Plaintiff's claims do not relate back to the January 25,
2 2013, filing date of the original Complaint, and all other defenses and arguments which Defendant
3 had available as of the date this Stipulation is filed with the Court. Defendant also reserves all
4 other available arguments in response to the original Complaint and any First Amended Complaint.

5
6 DATED: April 22, 2013

MARLIN & SALTZMAN, LLP

7
8 By: /S/ Christina A. Humphrey
9 Christina A. Humphrey, Esq.
10 Leslie H. Joyner, Esq.
11 Attorneys for Plaintiff

12 DATED: April 22, 2013

SEYFARTH SHAW LLP

13
14 By: /S/ Timothy B. Nelson
15 Thomas J. Piskorski
16 Brandon R. McKelvey
17 Timothy B. Nelson
18 Attorneys for Defendant

ORDER

19 Pursuant to stipulation of the parties and good cause appearing therefore, **IT IS SO**
20 **ORDERED.**

21
22 DATED: 4/23/2013

/s/ John A. Mendez

23
24 JOHN A. MENDEZ
25 UNITED STATES DISTRICT COURT JUDGE
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