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11 **UNITED STATES DISTRICT COURT**  
12  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14  
15 **SAN FRANCISCO/OAKLAND DIVISION**

15 CAROL FOSTER, and THEO FOREMAN,  
on behalf of themselves, individually, and on  
16 behalf of all others similarly situated,

17 Plaintiffs,

18 v.

19 ADAMS AND ASSOCIATES, INC., ROY  
20 A. ADAMS, LESLIE G. ADAMS, DANIEL  
B. NOREM, JOY CURRY NOREM, and  
21 THE DANIEL NOREM REVOCABLE  
22 TRUST DATED JANUARY 9, 2002

23 Defendants.

Case No.: C-18-02723-JSC

**CLASS ACTION  
SECOND AMENDED COMPLAINT**

1 **I. INTRODUCTION**

2 1. Plaintiffs bring this action under the Employee Retirement Income Security Act  
3 of 1974 (“ERISA”), 29 U.S.C. §§ 1001 *et seq.*, on behalf of a Class of participants in and  
4 beneficiaries of the Adams and Associates Employee Stock Ownership Plan (“the Adams  
5 ESOP,” “the ESOP” or “the Plan”) to restore losses to the Plan, disgorge any profits through the  
6 use of Plan assets, and to obtain other remedial and appropriate equitable relief in order to  
7 redress violations and enforce the provisions of Title I of ERISA.

8 2. Adams and Associates operates Job Corps Centers under contract with the U.S.  
9 Department of Labor. Plaintiffs’ claims arise out of a transaction in October 2012 in which  
10 Defendants Roy A. Adams, Leslie G. Adams, and The Daniel Norem Revocable Trust dated  
11 January 9, 2002 sold 100% of the stock of Adams and Associates, Inc (“the October 2012 ESOP  
12 Transaction”) to the Adams ESOP and subsequent breaches by the fiduciaries of the Adams  
13 ESOP. This transaction was not designed to be in the best interests of the ESOP participants. On  
14 the one hand, the ESOP participants were represented by a Trustee who was a felon and was later  
15 incarcerated for stealing from other ESOPs. On the other hand, the Selling Shareholders withheld  
16 material information from the Trustee regarding Adams and Associates’ loss of key contracts  
17 and a change in Department of Labor policy that Adams and Associates alleged would cause  
18 irreparable harm to its business in two lawsuits filed against the federal government in 2012.

19 3. The ESOP paid in excess of fair market value in the October 2012 Transaction.  
20 As a result of violations of ERISA’s fiduciary rules by the fiduciaries entrusted with their Plan.,  
21 Plaintiffs and the Class have not received all of the hard-earned retirement benefits or the loyal  
22 and prudent management of the ESOP to which they are entitled. Moreover, Adams and  
23 Associates and the Director Defendants have concealed from Plaintiffs and the ESOP’s other  
24 participants the fact that the ESOP’s Trustee was a felon because they do not want to arouse  
25 suspicion about the October 2012 ESOP Transaction.

26 **II. JURISDICTION AND VENUE**

27 4. This Court has subject matter jurisdiction over this action pursuant to ERISA § 502(e)(2),  
28 29 U.S.C. § 1132(e)(2) because this action arises under the laws of the United States and

1 pursuant to 29 U.S.C. § 1132(e)(1).

2 5. Venue is proper in this District pursuant to ERISA § 502(e)(2), 29 U.S.C. §  
3 1132(e)(2), because the breaches and violations giving rise to the claims occurred in this District,  
4 and one or more of the Defendants may be found in this District.

5 **III. INTRA-DISTRICT ASSIGNMENT**

6 6. This action arises in the County of San Francisco in that some of the alleged  
7 breaches took place in the County of San Francisco, California and one or more of the  
8 Defendants may be found in San Francisco.

9 **IV. PARTIES**

10 7. Plaintiff Carol Foster is a former employee of Adams and Associates. Plaintiff  
11 Foster was employed as a Security Advisor by Adams and Associates from on or about February  
12 4, 2015 through on or about March 16, 2018 at the Treasure Island Job Corps Center in San  
13 Francisco, California. As a result of her employment, Plaintiff became and is a participant, as  
14 defined in ERISA § 3(7), 29 U.S.C. § 1002(7), in the Adams ESOP. Plaintiff Foster resides in  
15 Oakland, California.

16 8. Plaintiff Theo Foreman is a current employee of Adams and Associates. Plaintiff  
17 Foreman has been employed as a Center Shift Manager by Adams and Associates from on or  
18 about June 1, 2009 through the present at the Treasure Island Job Corps Center in San Francisco,  
19 California. As a result of his employment, Plaintiff became and is a participant, as defined in  
20 ERISA § 3(7), 29 U.S.C. § 1002(7), in the Adams ESOP. Plaintiff Foreman resides in Oakland,  
21 California.

22 9. Defendant Adams and Associates, Inc. (“Adams and Associates”) is and has been  
23 since the inception of the ESOP, the Sponsor of the ESOP within the meaning of ERISA §  
24 3(16)(B), 29 U.S.C. § 1002(16)(B), the designated Plan Administrator of the ESOP within the  
25 meaning of ERISA § 3(16)(A), § 1002(16)(A), and a named fiduciary of the ESOP within the  
26 meaning of ERISA § 402, 29 U.S.C. § 1102. Adams and Associates is and was a fiduciary of the  
27 ESOP under ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), by virtue of its position as Plan  
28 Administrator and because it exercised discretionary authority or discretionary control respecting

1 management of the ESOP, and/or had discretionary authority or discretionary responsibility in  
2 the administration of the ESOP.

3 10. Defendant Roy A. Adams (“Mr. Adams”) is and has been a member of the Board  
4 of Directors of Adams and Associates and President of Adams and Associates since the  
5 Company’s incorporation in 1990. As a result of his membership on the Board of Directors, Mr.  
6 Adams is and has been at all relevant times a fiduciary of the ESOP within the meaning of  
7 ERISA § 3(21)(A), 29 U.S.C. § 1002(21), and a “party in interest” as to the ESOP as defined in  
8 ERISA § 3(14), 29 U.S.C. § 1002(14). Pursuant to the terms of the Adams and Associates  
9 Employment Stock Ownership Plan, Effective as of January 1, 2012 (“the Plan Document”), the  
10 “Committee,” also known as the “Plan Committee,” is a named fiduciary of the ESOP as defined  
11 in ERISA. Mr. Adams is and has been at all relevant times a member of the Plan Committee. As  
12 a result of his membership on the Plan Committee, Mr. Adams is and has been a fiduciary of the  
13 ESOP within ERISA § 402(a), 29 U.S.C. § 1102(a). Mr. Adams resides in or near Reno, Nevada.

14 11. Defendant Leslie G. Adams (“Ms. Adams”) is and has been a member of the  
15 Board of Directors of Adams and Associates since the Company’s incorporation in 1990. Ms.  
16 Adams has been the Secretary of the Company and/or Vice President of Adams and Associates  
17 since at least 2011. Ms. Adams is the wife of Defendant Roy Adams. As a result of her  
18 membership on the Board of Directors, Defendant Leslie Adams is and has been at all relevant  
19 times a fiduciary of the ESOP within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21),  
20 and a “party in interest” as to the ESOP as defined in ERISA § 3(14), 29 U.S.C. § 1002(14). Ms.  
21 Adams is and has been at all relevant times a member of the Plan Committee. As a result of her  
22 membership on the Plan Committee, Ms. Adams is and has been a fiduciary of the ESOP within  
23 ERISA § 402(a), 29 U.S.C. § 1102(a). Ms. Adams resides in or near Reno, Nevada.

24 12. Defendant Daniel B. Norem (“Mr. Norem”) is the Executive Vice-President of  
25 Adams and Associates. Defendant Norem is and has been a member of the Board of Directors of  
26 Adams and Associates from at least 1998 through the present. As a result of his membership on  
27 the Board of Directors, Mr. Norem is and has been at all relevant times a fiduciary of the ESOP  
28 within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21), and a “party in interest” as to

1 the ESOP as defined in ERISA § 3(14), 29 U.S.C. § 1002(14). Mr. Norem is and has been at all  
2 relevant times a member of the Plan Committee. As a result of his membership on the Plan  
3 Committee, Mr. Norem is and has been a fiduciary of the ESOP within ERISA § 402(a), 29  
4 U.S.C. § 1102(a). Mr. Norem resides in or near Reno, Nevada.

5 13. Defendant The Daniel Norem Revocable Trust dated January 9, 2002 and its  
6 successor(s) in interest (“Norem Trust”) is and has been a “party in interest” as to the ESOP as  
7 defined in ERISA § 3(14), 29 U.S.C. § 1002(14). Upon information and belief, Mr. Norem is the  
8 trustee and settlor of the Norem Trust and also a beneficiary of the Norem Trust.

9 14. Defendant Joy Curry Norem (“Ms. Norem”) is the spouse of Defendant Daniel B.  
10 Norem and is and has been a “party in interest” as to the ESOP as defined in ERISA § 3(14), 29  
11 U.S.C. § 1002(14). Upon information and belief, Ms. Norem is a trustee, settlor and beneficiary  
12 of Defendant Norem Trust. Upon information and belief, Ms. Norem and Mr. Norem were not  
13 married at the time of the October 2012 ESOP Transaction. Upon information and belief, the  
14 Norem Trust was amended and Ms. Norem was appointed a trustee of the amended Norem Trust  
15 after the October 2012 ESOP Transaction. Ms. Norem is named as a defendant herein because  
16 she claims an interest in the Norem Trust and deciding the action in her absence may as a  
17 practical matter impair or impede her ability to protect her interest in the Norem Trust and her  
18 presence as a party is necessary for the Court to accord complete relief, e.g., injunctive relief as  
19 to the Norem Trust.

20 15. Both the Director Defendants and the Committee Defendants refer to Defendants  
21 Roy Adams, Leslie Adams and Daniel Norem.

22 16. The Adams Family refers to Defendants Roy Adams, Leslie Adams, members of  
23 the Adams family and/or Adams family trusts.

24 17. The Selling Shareholders refers to Defendants Roy Adams, Leslie Adams, Daniel  
25 Norem and the Norem Trust.

26 **V. RELEVANT NON-PARTIES**

27 18. Alan M. Weissman (“Mr. Weissman” or “Weissman”) was the Trustee of the  
28 Adams and Associates ESOP at the time of the October 2012 ESOP Transaction, and a convicted

1 felon who was indicted in February 2016 and pled guilty on March 1, 2017 in *United States v.*  
2 *Alan Weissman*, No. CR 16-0063-1-CRB (N.D. Cal.) to four counts in an indictment that charged  
3 him with bank fraud, theft and embezzlement from an employee pension benefit plan –  
4 specifically two ESOPs – which occurred in 2010 and 2011 as well as false statements and  
5 concealment of facts in relation to ERISA documents. According to the Summary Plan  
6 Description for the Adams and Associates ESOP available to employees in April 2018, Alan  
7 Weissman remained the Trustee of the ESOP. Adams and Associates, however, apparently  
8 replaced Weissman as Trustee in May 2016, but failed to inform ESOP participants of the  
9 appointment of a new Trustee until after this lawsuit was filed. From at least October 2012  
10 through May 2016, Alan Weissman was a fiduciary of the ESOP within the meaning of ERISA  
11 § 3(21)(A), 29 U.S.C. § 1002(21). Alan Weissman resided at the Federal Correctional  
12 Institution, Terminal Island in San Pedro, California, when the Complaint was filed on May 9,  
13 2018. Weissman died on May 10, 2018. Janice U. Weissman is designated as Executor in the  
14 codicil to the will of Alan Weissman and is his legal successor.

## 15 **VI. FACTUAL ALLEGATIONS**

16 19. Adams and Associates claims on its website to be one of the largest private sector  
17 entities involved in the federal Job Corps program. According to Statements of Information filed  
18 by Adams and Associates with the State of California Secretary of State, the address of the  
19 principal office Adams and Associates in the State of California is located at 655 H Avenue,  
20 Building 442, Treasure Island Station, San Francisco, California 94130.

21 20. According to its website, Adams and Associates “began as a small business,  
22 formed in 1990.” According to the Articles of Incorporation obtained from the Nevada Secretary  
23 of State, Adams and Associates was incorporated on September 25, 1990. Prior to the October  
24 2012 Transaction, Adams and Associates was owned by the Adams Family and the Norem Trust.

25 21. The U.S. Department of Labor awards Job Corps contracts based on a competitive  
26 bidding process. The Department of Labor issues a Request for Proposals for a limited time  
27 period, plus optional renewals. The bidding process for Job Corps contracts and renewals of  
28 those contracts is highly competitive.

1           22.     Moreover, as alleged below, the Department of Labor has set aside many Job  
2 Corps Center contracts for small businesses. Prior to the October 2012 ESOP Transaction, the  
3 Department of Labor announced a multi-year initiative to increase the number of small  
4 businesses as prime contractors for Job Corps.

5           23.     The appeals process for Job Corps contracts and possible litigation if an appeal is  
6 denied creates additional uncertainty for any bidder's ability to secure a contract. Most newly  
7 awarded contracts are appealed and the incumbent remains in place while appeals are pending.  
8 The appeal process can take years. In addition, incumbents may file suit in the Federal Court of  
9 Claims if an appeal is unsuccessful. Indeed, Adams and Associates used this tactic when it lost  
10 the contracts for the Gadsden and Sargent Shriver Job Corps Centers, as alleged below.

11           24.     In its early years, Adams and Associates qualified as a "small business" in  
12 bidding on contracts for the Job Corps program. In 2012, the industry code used by the Small  
13 Business Association for Job Corps Centers limited the annual receipts for a qualifying small  
14 business to approximately \$35.5 million. Adams and Associates' annual revenue had been far  
15 above the small business limit for Job Corps Centers for at least five years prior to 2012.

16           25.     In 2011, the Department of Labor began implementing the "Rule of Two" in the  
17 procurement of Job Corps Center contracts. Under the "Rule of Two," the contracting officer is  
18 required to set aside any procurement above \$150,000 for small businesses when there is a  
19 reasonable expectation that offers will be obtained from at least two responsible small businesses  
20 and the award will be made at fair market prices. This change in Department of Labor policy  
21 dramatically increased the number of Job Corps Center operator contracts set aside for small  
22 businesses and for which large businesses, such as Adams and Associates, were not permitted to  
23 bid.

24           26.     Prior to the October 2012 ESOP Transaction, Adams and Associates was notified  
25 that it would not be able to bid on three of its Job Corps Center contracts which were up for  
26 renewal – the Gadsden Job Corps Center in Alabama, the Shriver Job Corps Center in  
27 Massachusetts and the Woodland Job Corps Center in Maryland – because these contracts had  
28 been set aside for small businesses under the "Rule of Two."

1           27.     Prior to the sale of Adams and Associates stock to the ESOP, all or almost all  
2 Company stock was owned by the Selling Shareholders. Adams and Associates adopted the  
3 ESOP effective January 1, 2012. As reflected by the 2012 Form 5500 filed on October 4, 2013,  
4 the ESOP had no assets as of January 1, 2012.

5           28.     In order to facilitate the sale of the Adams Family stock to the Adams ESOP, the  
6 Director Defendants of Adams and Associates appointed Alan Weissman as Trustee of the ESOP  
7 in July 2012. Alan Weissman was Trustee of the ESOP at the time of the October 2012 ESOP  
8 Transaction.

9           29.     No loyal and prudent fiduciary who had conducted a reasonably prudent  
10 investigation would have appointed Alan Weissman as the Trustee of the ESOP because Alan  
11 Weissman was engaged in criminal conduct involving ESOPs at the time he acted on behalf of  
12 the ESOP in the October 2012 ESOP Transaction.

13           30.     The Director Defendants did not conduct appropriate due diligence before  
14 appointing Alan Weissman as trustee of the ESOP. For example, Alan Weissman provided the  
15 Director Defendants with a list of references. The list of references included representatives of  
16 several ESOP plan sponsors who had terminated Alan Weissman as an ESOP trustee because  
17 they had been informed in early 2012 of allegations that Weissman had embezzled funds from an  
18 ESOP. The list of references also included an attorney who in early 2012 had referred the  
19 successor trustee of the MBEA ESOP to litigation counsel for the purpose of pursuing claims  
20 against Alan Weissman arising from Weissman's embezzlement of funds from the MBEA  
21 ESOP. Had the Director Defendants conducted an appropriate investigation of the background  
22 of Alan Weissman prior to or at the time of the October 2012 ESOP Transaction, the Director  
23 Defendants would also have discovered that on June 12, 2012, Weissman was sued for improper  
24 management of the MBEA ESOP for which he had served as trustee, in *Rickstrew v. Weissman*,  
25 No. 12-cv-03133-WHA (N.D. Cal.). Had the Director Defendants read the *Rickstrew* complaint,  
26 the Director Defendants would have learned that Weissman was accused of embezzling almost  
27 \$400,000 from the MBEA ESOP. No loyal or prudent fiduciary would have appointed Alan  
28



1 Weissman to act as the Trustee for an ESOP had they discovered the allegations in the *Rickstrew*  
2 lawsuit.

3 31. The Director Defendants did not conduct appropriate due diligence *after*  
4 appointing Weissman as Trustee of the ESOP. Had they conducted an appropriate investigation  
5 of Weissman after the October 2012 ESOP Transaction, the Director Defendants would have  
6 discovered the following (in addition to Weissman being civilly sued for his embezzlement):

7 a. On February 11, 2016, a grand jury indicted Weissman on 14 counts,  
8 including theft or embezzlement from two ESOPs for which Weissman served as trustee  
9 in *United States v. Weissman*, No. 16-cr-00063-CRB (N.D. Cal.). Weissman's  
10 misconduct, as alleged in the indictment, dated back to at least 2010.

11 b. On March 1, 2017, Weissman pled guilty to one count of bank fraud, two  
12 counts of embezzlement from the ESOPs, and one count of making false statements and  
13 concealment of facts in relation to documents required by ERISA. In sum, Weissman  
14 admitted embezzling \$787,762 in ERISA plan funds.

15 c. On June 7, 2017, the U.S. District Court for the Northern District of  
16 California sentenced Weissman to 30 months in prison.

17 32. Defendant Adams and Associates and the Director Defendants have not disclosed  
18 Alan Weissman's criminal conduct to Plaintiffs or other ESOP participants. Defendant Adams  
19 and Associates and the Director Defendants have concealed Alan Weissman's criminal conduct  
20 from Plaintiffs and other ESOP participants. Defendant Adams and Associates and the Director  
21 Defendants have concealed Weissman's criminal conduct in order to avoid arousing suspicion  
22 about the October 2012 ESOP Transaction. Plaintiffs first learned of Alan Weissman's criminal  
23 conduct in April 2018.

24 33. As of April 2018, the ESOP's Summary Plan Description available to participants  
25 still identified Alan Weissman as the Trustee of the ESOP.

26 34. On June 25, 2012, Adams and Associates filed a bid protest in the U.S. Court of  
27 Federal Claims protesting the Department of Labor's designation of the Request for Proposals  
28 ("RFP") for the Gadsden Job Corps Center as a 100% small business set aside, *Adams and*

1 *Associates, Inc. v. United States* (Fed. Claims 12-00409-MCW). The Complaint sought  
2 declaratory and injunctive relief directing the Department of Labor to allow Adams and  
3 Associates to compete for the Department of Labor Solicitation (RFP) for future follow-on  
4 operation of the Gadsden Job Corps Center, which was issued on May 8, 2012 and issued as a  
5 total small business set-aside. Fed. Claims Case No. 12-00409-MCW, ECF 1 at ¶ 62.

6 35. In the June 25, 2012 Complaint, Adams and Associates alleged that it would be  
7 irreparably harmed if the Gadsden Job Corps Center RFP proceeded as a total small business set-  
8 aside because Adams and Associates, as a large business, would not be permitted to submit a  
9 proposal. ECF 1 at ¶¶ 72-77.

10 36. The June 25, 2012 Complaint alleged that in Program Year 2010 (ending on June  
11 30, 2011), twenty-one (21) Job Corps Centers were operated by small businesses, having been  
12 set-aside for competition solely among such concerns. The Complaint further alleged that  
13 between October 2010 and June 2012, there had been a marked increase in the number of Job  
14 Corps Center operations contracts set-aside for and awarded to small businesses. The Complaint  
15 further alleged that “[t]he presently stated official [Department of Labor] goal is a minimum of  
16 28.5%, or 36 Centers – a **71% increase** over [Program Year 2010] participation.” *Id.* ¶ 29  
17 (emphasis in original). Furthermore, the Complaint alleged that the Department of Labor “has  
18 publicly announced that it will not stop at 28.5%, and indeed stated that it is possible that  
19 ‘virtually all’ Center operations will be set-aside for and awarded to small business concerns.”  
20 *Id.*

21 37. The June 25, 2012 Complaint further alleged that the Department of Labor “is  
22 finding that there is no longer enough money to go around. Indeed, [DOL] has directed all Center  
23 operators to reduce and limit costs for the balance of the current Program Year. Moreover, DOL  
24 is proposing, in its recent [Fiscal Year 2013] budget proposal to Congress, to close five Job  
25 Corps Centers due to lack of funds.” *Id.* ¶ 36.

26 38. The June 25, 2012 Complaint further alleged that a number of Job Corps Center  
27 operators met with DOL shortly before Adams and Associates filed the Complaint and during  
28

1 this meeting DOL “restated its previously-advised interpretation that application of the so-called  
2 ‘Rule of Two’ is mandatory.” *Id.* ¶¶ 69-70.

3 39. Adams and Associates attached a document entitled “Analysis of Small Business  
4 Contracting in Job Corps” dated August 18, 2011 as an exhibit to its June 25, 2012 Complaint.  
5 The Analysis was prepared by a former National Director of Job Corps and a former President of  
6 another large Job Corps contractor, ResCare, Inc. The Analysis was presented to the Department  
7 of Labor by a coalition of Job Corps Center operators, including Adams and Associates, in  
8 August 2011. *See* June 25, 2012 Complaint at ¶ 48. The Analysis states, “During the past five  
9 years DOL has increased the emphasis on utilizing small businesses as subcontractors,  
10 establishing goals for the Department which exceed the Federal mandates by a significant  
11 amount....” Fed. Claims Case No. 12-00409-MCW, ECF 1-2 at p. 1. The Analysis further states  
12 that “Goals were established which required the Department of Labor to achieve a specific  
13 percentage of **prime** contract dollars awarded to small businesses. The **Federal mandate** for  
14 prime contracting is **23%**.... DOL ... established a Departmental goal significantly higher than  
15 that **at 28.5%**. Since the Department does very little contracting other than Job Corps (the vast  
16 majority of DOL funds are distributed through grants), the Department had to focus on Job Corps  
17 contracting to meet its small business goals.” *Id.* at 2 (emphasis in original). Moreover, DOL set  
18 a goal of 61% for small business subcontracting. *Id.*

19 40. As explained by the Analysis submitted as an exhibit to Adams and Associates’  
20 June 25, 2012 complaint, the DOL goal for prime contract dollars was a significant policy  
21 change with major implications for Job Corps Center contracts. “During the late 1980’s and  
22 much of the 1990’s, Job Corps did not utilize small business set-asides.” *Id.* at 2. However,  
23 “During the period [Program Year 2002 – Program Year 2010] (July 1, 2002 – June 30, 2011),  
24 DOL has increased the number of small businesses/[Alaskan Native Corporations] charged with  
25 operating Job Corps centers from 11 in [Program Year 2002] to 21 in [Program Year 2011].” *Id.*  
26 at 3.

27 41. Adams and Associate’s June 25, 2012 bid protest was accompanied by an  
28 application for a temporary restraining order and motion for preliminary approval. Defendant

1 Roy Adams submitted a declaration dated June 24, 2012 in support of the application for a  
2 temporary restraining order and motion for preliminary approval. In his declaration, Defendant  
3 Roy Adams averred, “As a result of DOL’s decision to designate the challenged RFP as a 100%  
4 small business set-aside, Adams has been and will be irreparably harmed by being arbitrarily  
5 excluded and prohibited from submitting a proposal, and having such proposal evaluated and  
6 considered, for an award of the follow-on Gadsden Job Corps Center operating contract.” *Id.*,  
7 ECF 08 at ¶ 11. Defendant Roy Adams further averred: “Adams further will be irreparably  
8 harmed by DOL’s decision to designate the RFP as 100% small business set-aside, since Adams  
9 ... will lose the opportunity to continue operating Gadsden beyond the expiration of the Adams’  
10 current contract, and to earn the revenues and profits from such continuing operation...” *Id.* at ¶  
11 12.

12 42. In his June 24, 2012 declaration, Defendant Roy Adams also explained the  
13 “DOL’s current fiscal restraints in operating Job Corps Centers, which have resulted in DOL  
14 directing all Job Corps Centers to reduce and limit costs for the balance of the current Program  
15 Year. Indeed, DOL is proposing, in its recent budget proposal to Congress, to close five (5) Job  
16 Corps Centers due to lack of funds.” *Id.* at ¶ 16.

17 43. On October 26, 2012 – the day after the October 2012 ESOP Transaction –  
18 Adams and Associates filed a bid protest in the U.S. Court of Federal Claims protesting the  
19 Department of Labor’s designation of the RFP for the Shriver Job Corps Center as a 100% small  
20 business set aside, *Adams and Associates, Inc. v. United States* (Fed. Claims 12-00731-EGB).  
21 The Complaint sought declaratory and injunctive relief directing the Department of Labor to  
22 allow Adams and Associates to compete for the RFP for future follow-on operation of the  
23 Shriver Job Corps Center in response to DOL’s Pre-solicitation Notice issued on October 16,  
24 2012 as a total small business set-aside. Fed. Claims Case No. 12-00731-MCW, ECF 1 at ¶ 50.  
25 The Complaint challenged “[t]he conversion of Job Corps Center operating contracts to small  
26 businesses through the increased use of total small business set-asides...” *Id.* ¶ 2. The Complaint  
27 alleged that the “set-aside will preclude [Adams and Associates] ... from competing to continue”  
28 its operation of the Shriver Job Corps Center because it was a large business. *Id.* ¶ 3.

1           44.     In the October 26, 2012 Complaint, Adams and Associates alleged that it would  
2 be irreparably harmed if the Shriver Job Corps Center RFP proceeded as a total small business  
3 set-aside because Adams and Associates, as a large business, would not be permitted to submit a  
4 proposal. ECF 1 at ¶¶ 78-84.

5           45.     The Complaint further alleged that between October 2010 and October 2012,  
6 there had been a marked increase in the number of Job Corps Center operations contracts set-  
7 aside for and awarded to small businesses. The Complaint further alleged that **“of the 20 RFPs**  
8 **for Job Corps Center Operators that [DOL] has issued in the past year (365 days), 55%**  
9 **have been set aside for competition among small businesses only.”** *Id.* ¶ 34 (emphasis in  
10 original).

11           46.     In the October 26, 2012 Complaint, Adams and Associates alleged that on August  
12 23, 2011, a coalition of Job Corps Center operators, presumably including Adams and  
13 Associates, met with top Department of Labor officials responsible for administering the Job  
14 Corps program and attempted to convince them to change DOL’s “new small business set-aside  
15 policies and practices....” *Id.* ¶¶ 56 – 61. These meetings, however, were not successful as DOL  
16 “did not extend any of the then pending or subsequent procurements, including the instant  
17 Shriver operations procurement.” *Id.* ¶ 61.

18           47.     Adams and Associate’s October 26 bid protest was accompanied by an  
19 application for a temporary restraining order and motion for preliminary approval. Defendant  
20 Roy Adams submitted a declaration dated October 23, 2012 – *two days before the October 2012*  
21 *ESOP Transaction* – in support of the application for a temporary restraining order and motion  
22 for preliminary approval. In his declaration, Defendant Roy Adams averred, “As a result of  
23 DOL’s decision to designate the challenged RFP as a 100% small business set-aside, Adams has  
24 been and will be irreparably harmed by being arbitrarily excluded and prohibited from  
25 submitting a proposal, and having such proposal evaluated and considered, for an award of the  
26 follow-on Shriver Job Corps Center operating contract.” *Id.*, ECF 04 at ¶ 11. Defendant Roy  
27 Adams further averred: “Adams further will be irreparably harmed by DOL’s decision to  
28 designate the RFP as 100% small business set-aside, since Adams ... will lose the opportunity to

1 continue operating Shriver beyond the expiration of the Adams' current contract, and to earn the  
2 revenues and profits from such continuing operation....” *Id.* at ¶ 12.

3 48. In his October 23, 2012 declaration, Defendant Roy Adams further averred “In  
4 recent history, Adams has experienced three (3) of its centers being set-aside for small  
5 businesses. Key employees ... left before the contract was turned over.... The departures left a  
6 significant hole at the center that had to be filled by temporary/interim employees because  
7 Adams was not able to locate proper candidates who were interested in working ... for the  
8 remainder of the short contract. Other employees left the center as well....” *Id.* at ¶ 17.

9 49. In his October 23, 2012 declaration, Defendant Roy Adams also averred that  
10 Adams and Associates had made an unsuccessful attempt to partner with a small business that  
11 had been awarded the small business set-aside contract as the prime contractor for the Hartford  
12 Job Corps Center. Defendant Roy Adams averred that “[t]he combination of weak management  
13 and limited funds for direct student services” led “Adams and Associates [to sever] its  
14 subcontractor relationship with ... the Hartford Job Corps Center.” *Id.* at ¶ 24.

15 50. In his October 23, 2012 declaration, Defendant Roy Adams also noted the  
16 Department of Labor Employment and Training Administration’s “current fiscal restraints in  
17 operating Job Corps Centers, which resulted in ETA directing all Job Corps Centers to reduce  
18 and limit costs for the last month of [Program Year 2011] and continuing into [Program Year  
19 2012]. Indeed, the DOL has proposed, in its recent budget proposal to Congress, to close several  
20 Job Corps Centers due to lack of funds.” *Id.* at ¶ 16.

21 51. By Order dated February 28, 2013, the district court rejected Adams and  
22 Associates’ argument regarding the “Rule of Two” and granted judgment to the United States in  
23 Adams and Associates’ Shriver Job Corps Center bid protest. *See Adams and Associates, Inc. v.*  
24 *United States*, 109 Fed. Cl. 340 (2013).

25 52. On March 27, 2013, the district court rejected Adams and Associates’ argument  
26 regarding the “Rule of Two” and granted judgment to the United States in Adams and  
27 Associates’ Gadsden Job Corps Center bid protest.

1           53.     On January 27, 2014, the Federal Circuit affirmed both judgments against Adams  
2 and Associates. *See Adams and Associates, Inc. v. U.S.*, 741 F.3d 102 (Fed. Cir. 2014).

3           54.     Adams and Associates lost the Job Corps contracts for the Gadsden and Shriver  
4 Job Corps Centers.

5           55.     In or about July 2012, Alan Weissman sent Defendants Roy Adams and Daniel  
6 Norem a list of due diligence questions for the proposed ESOP transaction entitled “Due  
7 Diligence Checklist.”

8           56.     Request No. 103 on the Due Diligence Checklist requested “Information  
9 regarding any material litigation, actual or threatened, in which the Company is or may become  
10 involved.” On September 21, 2012, Roy Adams responded to Request No. 103 by email to Alan  
11 Weismann. Daniel Norem and Alan Weissman’s valuation and legal advisor were copied on the  
12 September 21, 2012 email. Mr. Adams’ response to Request No. 103 was limited to a U.S.  
13 Department of Labor/Office of Inspector General investigation “related to the enrollment of  
14 income ineligible students into the Gadsden Job Corps Center....”

15           57.     Defendants Roy Adams and Daniel Norem did not disclose Adams and  
16 Associates’ existing or impending lawsuits against the United States in response to due diligence  
17 Request No. 103. Specifically Roy Adams and Danie Norem did not disclose *Adams and*  
18 *Associates, Inc. v. United States*, Court of Federal Claims No. 12-409 (Bid Protest re: Gadsden  
19 Job Corps Center) had been filed on June 25, 2012, or that *Adams and Associates, Inc. v. United*  
20 *States*, Court of Federal Claims No. 12-731 (Bid Protest re: Shriver Job Corps Center) would be  
21 filed on October 26, 2012 in response to Request No. 103.

22           58.     On or about October 25, 2012, Alan Weissman, acting as Trustee of the ESOP,  
23 caused the Adams ESOP to purchase 100% of Adams and Associates stock from the Selling  
24 Shareholders for \$33,500,000 (the “October 2012 ESOP Transaction”).

25           59.     Based on Plaintiffs’ investigation and review of documents produced produced in  
26 discovery, Director Defendants and Adams and Associates withheld material information from  
27 Weissman and Weissman’s valuation and legal advisors prior to the October 2012 ESOP  
28 Transaction. The material information withheld by Director Defendants and Adams and

1 Associates includes, but is not limited to, the following: (a) the impending loss of the Gadsden  
2 Job Corps Center contract; (b) the impending loss of the Shriver Job Corps Center contract; (c)  
3 Adams and Associates' lawsuit against the Department of Labor regarding the loss of the  
4 Gadsden Job Corp Center contract; (d) Adams and Associates' imminent lawsuit against the  
5 Department of Labor regarding the loss of the Shriver Job Corps Center; (e) the Department of  
6 Labor's decision in 2011 to begin implementing the "Rule of Two" in the procurement of Job  
7 Corps Center contracts; (f) the significant increase in the number of Job Corps Center contracts  
8 set-aside for small businesses; (g) Director Defendants and Adams and Associates' belief that the  
9 Department of Labor's designations of the Gadsden and Shriver Job Corps Center contracts as  
10 100% small business set-asides would cause irreparable harm to Adams and Associates; and (h)  
11 Adams and Associates' unsuccessful efforts to get the Department of Labor to change its small  
12 business set-aside policies.

13         60. Plaintiffs further allege that the following factual allegations in this paragraph will  
14 likely have evidentiary support after a reasonable opportunity for further investigation and  
15 discovery. The Director Defendants and Adams and Associates were intentionally dishonest in  
16 withholding material information from Weissman and Weissman's valuation and legal advisors  
17 prior to the October 2012 ESOP Transaction, and fraudulently omitted disclosing such material  
18 information.

19         61. As a result of withholding the material information, the Defendant Selling  
20 Shareholders and Adams and Associates gained a profit, remuneration or advantage to which  
21 they were not legally entitled in the October 2012 ESOP Transaction.

22         62. The Director Defendants caused Adams and Associates to establish the ESOP, in  
23 part, based on the misguided and mistaken belief that being an ESOP-owned company would  
24 allow Adams and Associates to compete for Job Corps contracts set aside for small businesses.  
25 This belief has not proven correct and was not reasonable at the time.

26         63. Adams and Associates faced other obstacles and challenges in or around 2012.  
27 For example, Edna Primrose, a former employee of Adams and Associates, was appointed as  
28 National Director of Job Corps in March 2010. At first, Ms. Primrose's appointment helped



1 Adams and Associates obtain and retain Job Corps contracts. However, Job Corps was plagued  
2 by financial and management troubles under Ms. Primrose's leadership. In April 2012, it was  
3 discovered that Job Corps had a \$39 million budget shortfall for Program Year 2011. As a result,  
4 there were immediate cuts to budgets and contracts to make up the shortfall. The cutbacks  
5 included an enrollment freeze that was in place for a number of months. In addition, the Job  
6 Corps program overspent its budget by an additional \$69.5 million in the 2012 Program Year,  
7 which led to additional cutbacks. Ms. Primrose was forced to resign in November 2012.

8         64. Having an ESOP own Adams and Associates would also allow the Director  
9 Defendants to retain control of the Company so long as they were officers and directors and had  
10 the power to appoint and remove the Trustee. According to filings with the Nevada Secretary of  
11 State, both prior to and after the ESOP-ownership, Roy Adams was and is the President and a  
12 member of the Board of Adams and Associates and Leslie Adams was and is the Secretary and a  
13 member of the Board of Directors. Daniel Norem was and is the Executive Vice President of  
14 Adams and Associates and a member of the Board of Directors.

15         65. The Director Defendants also had Adams and Associates establish the ESOP, in  
16 part, to try to eliminate a union representing many workers at the Treasure Island Job Corps  
17 Center. Union members are not eligible to participate in the ESOP. Adams and Associates  
18 believed that represented employees would choose to leave the union in order to be eligible for  
19 ESOP benefits.

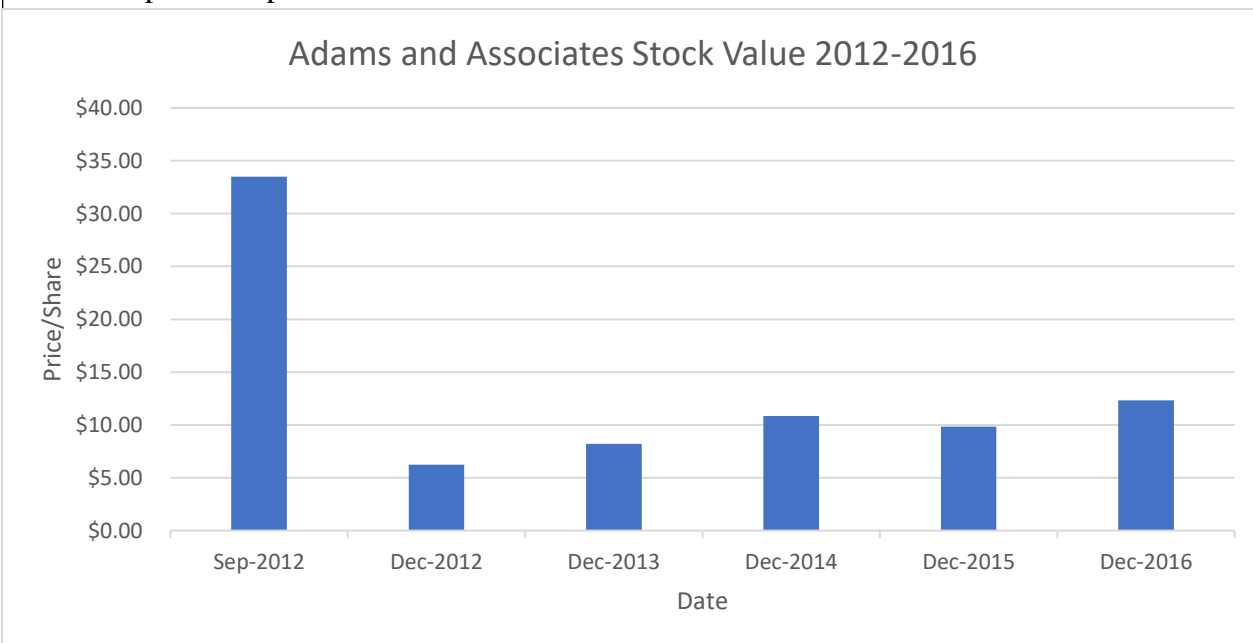
20         66. As set forth in the Summary Plan Description ("SPD"), the ESOP provides that  
21 "[a]n Employee whose terms of employment with the Employer are covered by a collective  
22 bargaining agreement shall not be eligible to participate in the [ESOP]."

23         67. Roy Adams has taken steps to eliminate union representation on other occasion.  
24 For example, when Adams and Associates became a subcontractor at a Sacramento Job Corps  
25 Center in 2014, Roy Adams sought get rid of union representation. In a decision affirmed by the  
26 Fifth Circuit, the NLRB Administrative Law Judge found that in connection with its operation of  
27 the Job Corps Center in Sacramento, "overwhelming evidence supports the government's  
28 allegation that Adams refused to hire former employees ... in order to avoid the obligation to

1 recognize and bargain with the Union as a successor employer. *Adams & Associates, Inc. and*  
 2 *McConnell, Jones, Lanier & Murphy, LLP and Sacramento Job Corps Fedn. of Teachers, Aft*  
 3 *Loc. 4986, Am. Fedn. of Teachers*, 2015 L.R.R.M. (BNA) ¶ 184715 (N.L.R.B. Div. of Judges  
 4 June 16, 2015).

5 68. As found by the Fifth Circuit, “[Roy Adams’] own statements and actions evince  
 6 an intent to avoid bargaining with the Union. [Adams and Associates] does not deny that [Roy  
 7 Adams] explicitly voiced displeasure at the transition team’s failure to avoid Union recognition.”  
 8 *Adams and Associates, Inc. v. NLRB*, 871 F.3d 358, 370 (5th Cir. 2017). “[Roy Adams’]  
 9 statements ... indicate that the CEO of [Adams and Associates] himself intended for the  
 10 company to avoid recognizing the Union.” *Id.* at 371.

11 69. As shown by the chart below, the value of the ESOP’s Adams and Associates  
 12 stock declined precipitously following the October 2012 ESOP Transaction and has remained far  
 13 below the purchase price:



24 70. As explained by the Form 5500s filed with the Department of Labor, the funds  
 25 borrowed by the ESOP are “collateralized by the *unallocated* shares of stock and guaranteed by  
 26 the Company.” But “[t]he lenders have no rights against shares once they are allocated under the  
 27 ESOP.” As explained by the Form 5500, the financial statements present separately the assets  
 28 and liabilities of the stock allocated to the accounts of participants from the assets and liabilities

1 of the unallocated shares. As the acquisition indebtedness is only a liability of the *unallocated*  
2 shares, the acquisition debt cannot explain the post-acquisition depressed price of the *allocated*  
3 *shares*.

4 71. According to the 2012 Form 5500 filed with the Department of Labor on October  
5 4, 2013, the fair market value for the stock held by the ESOP was only \$ 6,250,000 as of  
6 December 31, 2012.

7 72. According to the 2016 Form 5500 filed with the Department of Labor on  
8 September 21, 2017, the fair market value for the stock held by the ESOP was only \$12,310,000  
9 as of December 31, 2016.

10 73. The Adams ESOP paid more than fair market value in the October 2012 ESOP  
11 Transaction. Based on the available information, the purchase price for the October 2012 ESOP  
12 Transaction was based in part on a valuation report that was unreliable.

13 74. Based on the available information, the October 2012 ESOP Transaction price  
14 was based on unrealistic financial projections and did not adequately consider Adams and  
15 Associates' dependence on Job Corps contracts, the competitive bidding process for Job Corps  
16 contracts, the impending loss of the Gadsden and Sargent Shriver Job Corps Center contracts,  
17 Job Corps' budget problems, or the fact that Adams and Associates no longer qualified for small  
18 business set-aside contracts.

19 75. A prudent fiduciary who had conducted a prudent investigation would have  
20 concluded that the ESOP was paying more than fair market value for the Adams and Associates  
21 shares and/or the debt incurred in connection with the Transaction was excessive.

22 76. All of the Defendants would have had access to the financial information upon  
23 which the valuation for the October 2012 ESOP Transaction was based and as a result of their  
24 status as fiduciaries for the ESOP would have had access to the valuation report itself. The  
25 valuation report was not provided to the participants of the Adams ESOP.

26 77. The decline in value of the Adams and Associates stock owned by the ESOP  
27 following the October 2012 ESOP Transaction should have caused Alan Weissman as well as the  
28 Director Defendants, at a minimum, to investigate whether the ESOP had paid more than fair

1 market value in the October 2012 ESOP Transaction. To the extent that any of the Defendants  
2 had conducted such an investigation, that investigation as well as any corrective measures would  
3 have been reported in one of the Form 5500s filed with the Department of Labor. As none of the  
4 Form 5500s report any such investigation or corrective actions, none of the Defendants  
5 investigated whether fiduciary violations had occurred in the 2012 ESOP Transaction despite  
6 numerous red flags that should have raised concerns.

## 7 **VII. CLASS ACTION ALLEGATIONS**

8 78. Plaintiffs bring these claims as a class action pursuant to Fed. R. Civ. P. 23 (a)  
9 and (b), on behalf of all participants in the Adams and Associates ESOP from October 2012 (or  
10 the date of the Transaction) or any time thereafter who vested under the terms of the Plan and  
11 those participants' beneficiaries. Excluded from the Plaintiff Class are Defendants and their  
12 immediate family, any fiduciary of the Plan; the officers and directors of Adams and Associates  
13 or of any entity in which a Defendant has a controlling interest; and legal representatives,  
14 successors, and assigns of any such excluded persons.

15 79. The members of the Class are so numerous that joinder of all members is  
16 impracticable. According to the 2016 Form 5500 filed with the Department of Labor, which is  
17 the most recent available Form 5500, as of January 1, 2016, there were 2,097 participants, within  
18 the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), in the ESOP. As Adams and Associates  
19 claims on its website to employ more than 2,700 employees at over 20 locations including 17 Job  
20 Corps centers across the country, the members of the Class are geographically dispersed.

21 80. The issues of liability are common to all members of the Class and are capable of  
22 common answers as those issues primarily focus on defendants' acts (or failure to act). Questions  
23 of law and fact common to the Plaintiff Class as a whole include, but are not limited to, the  
24 following:

- 25 a. Whether Defendants engaged in a prohibited transaction under ERISA by  
26 permitting the ESOP to purchase Adams and Associates stock from Defendants Roy  
27 Adams, Leslie Adams and the Norem Trust for more than adequate consideration in the  
28 October 2012 Transaction;

1           b.       Whether the Director Defendants and Adams and Associates withheld  
2 material information from Alan Weissman and Weissman's valuation and legal advisors  
3 prior to the October 2012 ESOP Transaction;

4           c.       Whether Alan Weissman engaged in a prudent investigation of the  
5 proposed purchase of Adams and Associates stock by the ESOP in the October 2012  
6 Transaction;

7           d.       Whether Alan Weissman breached a fiduciary duty to ESOP participants  
8 by causing the ESOP to purchase Adams and Associates stock in 2012 for more than fair  
9 market value;

10          e.       Whether the Director Defendants breached their fiduciary duties by failing  
11 to adequately monitor the ESOP's Trustee;

12          f.       Whether Defendants Adams and Associates, Roy Adams, Leslie Adams  
13 and Daniel Norem breached their fiduciary duties to inform the ESOP participants about  
14 Alan Weissman's criminal activity and to take appropriate corrective action;

15          g.       The amount of losses suffered by the ESOP as a result of Defendants'  
16 fiduciary violations and/or other appropriate remedial and equitable relief.

17       81.       Plaintiffs' claims are typical of those of the Class because their claims arise from  
18 the same event, practice and/or course of conduct. Specifically, Plaintiffs, on behalf of the Class,  
19 alleged that Defendants breached their fiduciary duties or otherwise violated ERISA in  
20 connection with the sale of stock to the Adams ESOP, management of the assets of the Plan or in  
21 performing their fiduciary duties to the Plan. Plaintiffs challenge the legality and appropriateness  
22 of a plan-wide transaction, which as the Form 5500s explain whereby stock is allocated to all  
23 participants' accounts based on the per share price in the October 2012 Transaction as the Plan  
24 makes each payment of principal and interest. As a result, Plaintiffs like other ESOP participants  
25 in the Plaintiff Class, have received less in their ESOP accounts based on the same per share  
26 purchase price of Adams and Associates stock, and continue to suffer such losses in the present  
27 because Defendants have failed to correct the overpayment by the ESOP.  
28

1 82. Plaintiffs will fairly and adequately represent and protect the interests of the  
2 Class. Plaintiffs do not have any interests antagonistic to or in conflict with those of the Class.

3 83. Defendants do not have any unique defenses that would interfere with Plaintiffs'  
4 representation of the Class.

5 84. Plaintiffs have retained counsel competent and experienced in complex class  
6 actions, ERISA, and employee benefits litigation and with particular experience and expertise in  
7 ESOP litigation.

8 85. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(1)(A).  
9 Fiduciaries of ERISA-covered plans have a legal obligation to act consistently with respect to all  
10 similarly situated participants and to act in the best interests of the Plan and their participants.  
11 This action challenges whether Defendants acted consistently with their fiduciary duties or  
12 otherwise violated ERISA as to the ESOP as a whole. As a result, prosecution of separate actions  
13 by individual members would create the risk of inconsistent or varying adjudications that would  
14 establish incompatible standards of conduct relating to the Plan.

15 86. Class certification is also appropriate pursuant to Fed. R. Civ. P. 23(b)(1)(B).  
16 Administration of an ERISA-covered plan requires that all similarly situated participants be  
17 treated the same. Resolving whether Defendants fulfilled their fiduciary obligations to the Plans,  
18 engaged in prohibited transactions with respect to the Plan would, as a practical matter, be  
19 dispositive of the interests of the other participants in the ESOP even if they are not parties to  
20 this litigation and would substantially impair or impede their ability to protect their interests if  
21 they are not made parties to this litigation by being included in the Class.

22 87. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because  
23 Defendants have acted or refused to act on grounds generally applicable to the Class, making  
24 appropriate declaratory and injunctive relief with respect to Plaintiff and the Class as a whole.  
25 This action challenges whether Defendants acted consistently with their fiduciary duties or  
26 otherwise violated ERISA as to the ESOP as a whole. The members of the Class are entitled to  
27 declaratory and injunctive relief to remedy Defendants' fiduciary violations. As ERISA is based  
28

1 on trust law, any monetary relief consists of equitable monetary relief and is either provided  
2 directly by the declaratory or injunctive relief or flows as a necessary consequence of that relief.

3 88. Additionally, and alternatively, class certification is appropriate pursuant to Fed.  
4 R. Civ. P. 23(b)(3) because questions of law and fact common to all Class members predominate  
5 over any questions affecting individual members of the Class, and because a class action is  
6 superior to other available methods for the fair and efficient adjudication of this action. Common  
7 questions related to liability will necessarily predominate over any individual questions precisely  
8 because Defendants' duties and obligations were uniform to all participants and therefore all  
9 members of the Class. Plaintiffs and all Class members have been harmed by the ESOP paying  
10 more than fair market value for Adams and Associates stock in the October 2012 Transaction. As  
11 relief and any recovery will be on behalf of the Plan, common questions as to remedies will  
12 likewise predominate over any individual issues.

13 89. A class action is a superior method to other available methods for the fair and  
14 efficient adjudication of this action. As the claims are brought on behalf of the Plan, resolution of  
15 the issues in this litigation will be efficiently resolved in a single proceeding rather than multiple  
16 proceedings and each of those individual proceedings could seek recovery for the entire Plan.  
17 The losses suffered by individual Class members are small compared to the expense and burden  
18 of individual prosecution of this action. In addition, class certification is superior because it will  
19 obviate the need for unduly duplicative litigation which might result in inconsistent judgments  
20 about Defendants' duties with regard to the ESOP.

21 90. The following factors set forth in Rule 23(b)(3) also favor certification of this  
22 case as a class action:

23 a. The members of the Class have an interest in a unitary adjudication of the  
24 issues presented in this action for the reasons that this case should be certified under Rule  
25 23(b)(1).

26 b. No other litigation concerning this controversy has been filed by any other  
27 members of the Class.  
28

1 c. This District is most desirable location for concentrating the litigation for  
2 reasons that include (but are not limited to) the following: (i) the ESOP is administered in  
3 part in this District, (iii) certain Defendants can be found in this District, and (iii) certain  
4 non-party witnesses, are located in this District.

5 91. The names and addresses of the Class are available from the ESOP. Notice will be  
6 provided to all members of the Plaintiff Class to the extent required by Rule 23.

7 **FIRST CLAIM FOR RELIEF**

8 **[Engaging in Prohibited Transaction Forbidden by ERISA §§ 406(a),**  
9 **29 U.S.C. §§ 1106(a), Against Selling Shareholder Defendants]**

10 92. Plaintiffs incorporate the preceding paragraphs as though set forth herein.

11 93. ERISA § 406(a)(1), 29 U.S.C. § 1106(a)(1), requires that a plan fiduciary “shall  
12 not cause the plan to engage in a transaction, if he knows or should know that such transaction  
13 constitutes a direct or indirect (A) sale or exchange, or leasing of any property between the plan  
14 and a party in interest,” or a “(D) transfer to, or use by or for the benefit of, a party in interest, of  
15 any assets of the plan.”

16 94. ERISA § 3(14), 29 U.S.C. § 1002(14) defines a “party in interest” to include (A)  
17 any fiduciary ... of such employee benefit plan”, (E) a relative -- which includes a spouse,  
18 ancestor, lineal descendant or the spouse of a lineal descendant -- of a fiduciary, and (H) an  
19 employee, officer or director or a 10 percent or more shareholder of an employer covered by the  
20 Plan. Defendants Roy Adams and Leslie Adams (and their relatives or trusts for their benefit or  
21 the benefit of their relatives) qualified as “parties in interest” within the meaning of ERISA §  
22 3(14).

23 95. ERISA § 408(e), 29 U.S.C. § 1108(e) provides a conditional exemption from the  
24 prohibited transaction rules for sale of employer securities to or from a plan if a sale is made for  
25 adequate consideration. The burden is on the fiduciary and the parties-in-interest to demonstrate  
26 that conditions for the exemption are met.

27 96. ERISA § 3(18)(B) defines adequate consideration as “the fair market of the asset  
28 as determined in good faith by the trustee or named fiduciary.” ERISA § 3(18)(B) requires that



1 the fiduciary or party-in-interest show that the price paid must reflect the fair market value of the  
2 asset at the time of the transaction, and the fiduciary conducted a prudent investigation to  
3 determine the fair market value of the asset.

4 97. As Trustee, Alan Weissman caused the Adams ESOP to engage in a prohibited  
5 transaction in violation of ERISA §§ 406(a)(1)(A) and (D), 29 U.S.C. §§ 1106(a)(1)(A) and (D),  
6 by failing to ensure that the ESOP paid no more than fair market value for the Adams and  
7 Associates stock purchased in the October 2012 ESOP Transaction. Specifically, the ESOP paid  
8 more than fair market value for shares sold by the Defendant Selling Shareholders.

9 98. As officers and directors of Adams and Associates, as fiduciaries of the ESOP and  
10 as the sellers of the stock to the Adams ESOP in the October 2012 ESOP Transaction,  
11 Defendants Roy Adams, Leslie Adams and Daniel Norem were aware of sufficient facts that the  
12 October 2012 ESOP Transaction constituted a prohibited transaction with parties-in-interest. As  
13 parties-in-interest, Defendant Selling Shareholders are liable for the violations of ERISA §  
14 406(a)(1)(A) and (D), 29 U.S.C. § 1106(a)(1)(A) and (D).

## 15 SECOND CLAIM FOR RELIEF

### 16 [Engaging in Prohibited Transaction Forbidden by ERISA §§ 406(b), 17 29 U.S.C. §§ 1106(a)-(b), Against Selling Shareholder Defendants]

18 99. Plaintiffs incorporate the preceding paragraphs as though set forth herein.

19 100. ERISA § 406(b), 29 U.S.C. § 1106(b), mandates that a plan fiduciary shall not (1)  
20 “act in any transaction involving the plan on behalf of a party (or represent a party) whose  
21 interests are adverse to the interests of the plan or the interests of its participants,” or (2) “deal  
22 with the assets of the plan in his own interest or for his own account,” or (3) “receive any  
23 consideration for his own personal account from any party dealing with such plan in connection  
24 with a transaction involving the assets of the plan.”

25 101. As members of the Board of Directors of Adams and Associates, Defendants Roy  
26 Adams, Leslie Adams and Daniel Norem were fiduciaries of the Adams ESOP at the time of the  
27 October 2012 ESOP Transaction.

1           102. By selling their shares of Adams and Associates stock to the Adams ESOP in the  
2 October 2012 ESOP Transaction, Defendant Selling Shareholders acted in a transaction  
3 involving a plan where their own interests were adverse to those of the Adams ESOP within the  
4 meaning of ERISA § 406(b)(1), they dealt with the assets of the Plan, which purchased their  
5 Adams and Associate stock, in their own interest within the meaning of ERISA § 406(b)(2) and  
6 as a result of the receipt of the proceeds from the sale of their Adams and Associates stock  
7 received consideration for the their own personal account in connection with a transaction  
8 involving assets of a plan within the meaning of ERISA § 406(b)(3).

9           103. ERISA § 408(e), 29 U.S.C. § 1108(e) provides a conditional exemption from the  
10 prohibited transaction rules for sale of employer securities to or from a plan if a sale is made for  
11 adequate consideration. The burden is on the fiduciary to demonstrate that conditions for the  
12 exemption are met.

13           104. ERISA § 3(18)(B) defines adequate consideration as “the fair market of the asset  
14 as determined in good faith by the trustee or named fiduciary.” ERISA § 3(18)(B) requires that  
15 the price paid must reflect the fair market value of the asset, and the fiduciary must conduct a  
16 prudent investigation to determine the fair market value of the asset.

17           105. By selling their shares of Adams and Associates stock to the Adams ESOP in the  
18 October 2012 ESOP Transaction, Defendant Selling Shareholders engaged in a prohibited  
19 transaction in violation of ERISA §§ 406(b), 29 U.S.C. §§ 1106(b) for which they are liable to  
20 restore the losses caused by these prohibited transactions, to disgorge profits or other appropriate  
21 remedial and equitable relief.

### 22                                   **THIRD CLAIM FOR RELIEF**

#### 23                           **[Breach of Fiduciary Duty Under ERISA §§ 404(a)(1)(A), (B) and (D),** 24                           **29 U.S.C. §§ 1104(a)(1)(A), (B) and (D) Against Director Defendants]**

25           106. Plaintiffs incorporate the preceding paragraphs as though set forth herein.

26           107. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), requires that a plan fiduciary  
27 discharge his or her duties with respect to a plan solely in the interest of the participants and  
28 beneficiaries, (A) for the exclusive purpose of providing benefits to participants and the

1 beneficiaries of the plan, (B) with the care, skill, prudence, and diligence under the  
2 circumstances then prevailing that a prudent person acting in a like capacity and familiar with  
3 such matters would use in the conduct of an enterprise of a like character and with like aims, and  
4 (D) in accordance with the documents and instruments governing the plan insofar as such  
5 documents and instruments are consistent with ERISA.

6 108. Under ERISA § 404(a)(1)(A) and (B), a fiduciary with the authority to appoint  
7 and/or remove other fiduciaries has an obligation to undertake an appropriate investigation that  
8 the fiduciary is qualified to serve in the position as fiduciary and at reasonable intervals to ensure  
9 that the fiduciary who has been appointed remains qualified to act as fiduciary and is acting in  
10 compliance with the terms of the Plan and in accordance with ERISA.

11 109. An ERISA fiduciary's duty of loyalty and prudence under ERISA § 404(a)(1)(A)  
12 and (B) includes a duty to disclose and inform. Those duties not only require that a fiduciary  
13 comply the specific disclosure provisions in ERISA, but also require (a) a duty not to misinform,  
14 (b) an affirmative duty to inform when the fiduciary knows or should know that silence might be  
15 harmful, and (c) a duty to convey complete and accurate information material to the  
16 circumstances of the participants and beneficiaries.

17 110. According to the SPD, "[t]he Trustee is appointed by the Board of Directors of  
18 the Company."

19 111. Had the Director Defendants conducted a reasonably prudent investigation and  
20 been interested in ensuring that ESOP was managed for the exclusive purpose of providing  
21 benefits to ESOP participants, the Director Defendants would have learned prior to and after the  
22 October 2012 ESOP Transaction that Alan Weissman was not a suitable Trustee for the ESOP.

23 112. Upon discovering that Alan Weissman had been alleged to have engaged in and  
24 later pled guilty to felony charges arising from fraud, theft and embezzlement while acting as a  
25 fiduciary for two other ESOPs, the Director Defendants should have done at least the following:  
26 (a) promptly removed Alan Weissman as Trustee and replaced him as Trustee, (b) informed the  
27 ESOP participants of the circumstances of Weissman's removal (and the fact that he was  
28 removed and the name of his replacement), (c) conducted an investigation into Weissman's

1 administration of the ESOP, including the October 2012 Transaction, (d) informed the ESOP  
2 participants of the investigation and (e) taken actions necessary to remedy any fiduciary breaches  
3 including as necessary steps to correct the October 2012 Transaction such as appointing an  
4 independent fiduciary or a new Trustee to evaluate the October 2012 Transaction, remedy the  
5 ESOP's overpayment for Adams and Associates stock at any time between the date of the  
6 October 2012 ESOP Transaction and the present.

7 113. The Director Defendants permitted Alan Weissman to enter into the October 2012  
8 ESOP Transaction on behalf of the ESOP even though the Director Defendants knew that they  
9 had withheld material information from Weissman and his advisors and had provided an  
10 incomplete and dishonest answer to a key due diligence question.

11 114. The Director Defendants failed to take any corrective action after the October  
12 2012 ESOP Transaction even though they knew that they had withheld material information  
13 from Alan Weissman and his advisors and had provided an incomplete and dishonest answer to a  
14 key due diligence question.

15 115. Defendants breached their duties under ERISA § 404(a)(1), 29 U.S.C. §  
16 1104(a)(1), because they failed to conduct an adequate investigation of Alan Weissman before or  
17 after the October 2012, permitted Weissman to proceed with the October 2012 ESOP  
18 Transaction and failed to take sufficient steps or corrective action to protect Adams ESOP  
19 participants.

20 116. By failing to properly appoint a qualified Trustee, failing to properly monitor  
21 Alan Weissman and failing to take appropriate corrective actions, the Director Defendants  
22 breached their fiduciary duties under ERISA § 404(a)(1)(A) & (B), 29 U.S.C. § 1104(a)(1)(A)  
23 &(B).

#### 24 **FOURTH CLAIM FOR RELIEF**

25 **[Failure to Disclose Information Required by ERISA § 102, 104(b)(1), 29 U.S.C. §§ 1022,**

26 **1024(b)(1) & ERISA § 404(a)(1)(A) & (B), 29 U.S.C. §§ 1104(a)(1)(A) & (B),**

27 **Against Adams & Associates]**

28 117. Plaintiffs incorporate the preceding paragraphs as though set forth herein.

1 118. As the Plan Administrator within the meaning of ERISA § 3(16)(A), 29 U.S.C. §  
2 1002(16)(A), Adams and Associates was obligated to comply with ERISA §§ 102 and 104(b), 29  
3 U.S.C. § 1022 and 1024(b).

4 119. Pursuant to ERISA § 104(b)(1), Adams and Associates as Plan Administrator was  
5 required to furnish a current version of the SPD and any modifications and changes (A) to new  
6 participants within 90 days after that person became a participant and (B) to every participant in  
7 the Plan with an updated copy of an SPD to extent that there had been changes within the last 5  
8 years concerning information described in 29 U.S.C. § 1022.

9 120. When Alan Weissman was removed as Trustee, information identifying the new  
10 Trustee should have been communicated to participants and should have been provided in an  
11 updated SPD. As of April 2018, no updated SPD was distributed to participants and the SPD on  
12 the ESOP website was still the 2012 SPD identifying Alan Weissman as the Trustee. Since  
13 Weissman had been removed as Trustee in May 2016, Adams and Associates violated ERISA §§  
14 102, 104(b)(1), 29 U.S.C. §§ 1022 and 1024(b)(1).

15 121. Additionally, as the Plan Administrator within the meaning of ERISA § 3(16)(A),  
16 29 U.S.C. § 1002(16)(A) and a named fiduciary within the meaning of ERISA § 402(a), 29  
17 U.S.C. § 1102(a), Adams and Associates had fiduciary duties pursuant to ERISA § 404(a), 29  
18 U.S.C. § 1104(a).

19 122. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), requires that a plan fiduciary  
20 discharge his or her duties with respect to a plan solely in the interest of the participants and  
21 beneficiaries and (A) for the exclusive purpose of (i) providing benefits to participants and their  
22 beneficiaries; and .... (B) with “care, skill, prudence, and diligence.”

23 123. An ERISA fiduciary’s duty of loyalty and prudence under ERISA § 404(a)(1)(A)  
24 and (B) includes a duty to disclose and inform. Those duties not only require that a fiduciary  
25 comply the specific disclosure provisions in ERISA, but also require (a) a duty not to misinform,  
26 (b) an affirmative duty to inform when the fiduciary knows or should know that silence might be  
27 harmful, and (c) a duty to convey complete and accurate information material to the  
28 circumstances of the participants and beneficiaries.

1           124. The Ninth Circuit has recognized that a participant in an ERISA plan is entitled to  
2 know exactly where he stands with respect to the plan, including the benefits to which he or she  
3 may be entitled, the circumstances which may preclude him from obtaining benefits, what  
4 procedures he must follow to obtain benefits, and *who are the persons to whom the management*  
5 *and investment of his plan funds have been entrusted.*

6           125. Information that the Trustee of the ESOP had been indicted of, pled guilty to and  
7 had been incarcerated for fraud, theft and embezzlement from other ESOPs while acting as a  
8 fiduciary and that such criminal acts had occurred prior to and in close temporal proximity to the  
9 October 2012 ESOP Transaction is material information that the Adams ESOP participants had a  
10 right to know and that Adams and Associates as Plan Administrator had an obligation to convey  
11 to the Adams ESOP participants. Additionally, as Plan Administrator, Adams and Associates  
12 had and has an obligation to inform the Adams ESOP participants when Weissman was removed  
13 as Trustee of the ESOP and if not, why not and if so, the identity of the subsequent and current  
14 Trustee. Finally, as Plan Administrator, Adams and Associates had and has an obligation to  
15 inform the Adams ESOP participants whether – given the charges against Weissman for which  
16 he pled guilty – whether any Plan assets have been misused or embezzled.

17           126. As of the filing of the original Complaint, the ESOP participants were not  
18 provided sufficient information to allow them to know whether a convicted felon remained or  
19 was removed as Trustee. To date, the ESOP participants were not provided sufficient  
20 information to allow them to know whether there were any improprieties or criminal acts by that  
21 convicted felon while he was Trustee that affected their retirement accounts or even whether any  
22 such investigation was undertaken.

23           127. Where a fiduciary has breached its duty to account to the participants and  
24 beneficiaries of the trust, the participants and beneficiaries (and in fact, “any person financially  
25 interested in the trust administration”) is entitled to bring a suit to compel the fiduciaries of the  
26 Plan to provide such information.

27           128. To the extent that ERISA participants or beneficiaries are required to be harmed  
28 to obtain such information or an accounting, Plaintiffs and the Class have been harmed because

1 they have not been provided basic information about who is the current Trustee, whether their  
2 benefits have been affected by any criminal activity, whether there has been any such  
3 investigation into whether the assets of the Plan have been misappropriated or whether there is  
4 any Trustee or any other fiduciary actually looking out for their interests.

5 **FIFTH CLAIM FOR RELIEF**

6 **[Violation of ERISA § 410 and Breach of Fiduciary Duty under ERISA § 404(a)(1)(A), (B)**  
7 **and (D) against the Committee Defendants, the Director Defendants and Adams and**  
8 **Associates]**

9 129. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

10 130. ERISA § 410(a), 29 U.S.C. § 1110(a), provides in relevant part (with exceptions  
11 not applicable here) that “any provision in an agreement or instrument which purports to relieve  
12 a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this  
13 part [ERISA Part IV] shall be void as against public policy.” As Part IV of ERISA includes  
14 ERISA §§ 404, 405, and 406, 29 U.S.C. §§ 1104, 1105 and 1106, any provision that attempts to  
15 relieve a fiduciary of liability is void pursuant to ERISA § 410(a), unless there is an exception or  
16 exemption. No such exception or exemption is applicable here.

17 131. The Department of Labor Regulations promulgated under ERISA § 410, 29  
18 C.F.R. § 2509.75-4, renders “void any arrangement for indemnification of a fiduciary of an  
19 employee benefit plan by the plan” because it would have “the same result as an exculpatory  
20 clause, in that it would, in effect, relieve the fiduciary of responsibility and liability to the plan by  
21 abrogating the plan’s right to recovery from the fiduciary for breaches of fiduciary obligations.”

22 132. ERISA § 502(a)(3), 29 U.S.C. § 1102(a)(3), authorizes a plan participant to bring  
23 a civil action (A) to enjoin any act or practice which violates any provision of ERISA or the  
24 terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress violations of  
25 ERISA or the terms of the plan or (ii) to enforce any provisions of ERISA or the terms of the  
26 plan.

27 133. For a 100% ESOP-owned company, a provision requiring indemnity by the  
28 ESOP-owned company is treated as an indemnity provision by the Plan because it effectively

1 requires ESOP participants to pay for the costs of the breaching fiduciaries' liability. Adams and  
2 Associates is a 100% ESOP-owned company.

3 **Purported Indemnification Provisions in the "Plan Document"**

4 134. Section 18(f) of the Plan Document provides that "the Employer," which is  
5 defined as Adams and Associates, Inc., "indemnifies and saves harmless the Trustee and the  
6 members of the Committee, and each of them, from and against any and all loss resulting from  
7 liability to which the Trustee and the Committee may be subjected by reasons of any act or  
8 conduct (except willful misconduct or gross negligence) in their official capacities in the  
9 administration of this Plan, the Trust or both, including all expenses reasonably incurred in their  
10 defense, in case the Employer fails to provide such defense."

11 135. Section 18(f) of the Plan Document provides that "[t]he indemnification  
12 provisions of this Section 18(f) do not relieve the Trustee or any Committee member from any  
13 liability he or she may have under ERISA for breach of a fiduciary duty." Section 18(f) of the  
14 Plan Document excludes indemnification by Adams and Associates for "willful misconduct or  
15 gross negligence" or breaches of fiduciary duties by any member of the Plan Committee but  
16 purports to relieve the members of the Committee from their responsibility or liability for  
17 causing the ESOP to engage in prohibited transactions or other violations of ERISA.

18 136. From 2012 to the present, the members of the Plan Committee consisted of the  
19 Director Defendants who were also the Selling Shareholders and/or parties-in-interest in the  
20 2012 Transaction.

21 137. To the extent that the Section 18(f) of the Plan Document attempts to relieve the  
22 Selling Defendants or Director Defendants of their responsibility or liability for causing the  
23 ESOP to engage in prohibited transactions or other violations of ERISA and either have Adams  
24 and Associates or the ESOP be responsible for the Director Defendants' liability, Section 18(f) is  
25 void as against public policy.

26 **Purported Indemnification Provisions in the Articles of Incorporation**

27 138. Article VIII of the Articles of Incorporation of Adams and Associates, Inc. ("the  
28 Articles of Incorporation") provides that any director or officer of Adams and Associates "shall



1 be indemnified and held harmless to the fullest extent legally permissible under the laws of the  
2 State of Nevada from time to time against all expenses, liability and loss (including attorneys’  
3 fees) judgments, fines and amounts paid or in connection therewith” and this right of  
4 indemnification “shall be a contract right which may be enforced in any manner desired by such  
5 person.” Article III also provides that the personal liability of such person “shall be limited to the  
6 full extent by Nevada law for damages for breach of fiduciary duty as an officer o[r] director.  
7 This provision shall not eliminate the liability of a director or officer for acts or omissions which  
8 involve intentional misconduct, fraud, a knowing violation of the law, or the payment of  
9 dividends in violation of N.R.S. 78.300.”

10       139. Article VIII of the Articles of Incorporation only excludes indemnification by  
11 Adams and Associates for these acts and omissions by the Director Defendants but purports to  
12 relieve the Director Defendants of their responsibility or liability for breaches of their ERISA  
13 fiduciary duties, causing the ESOP to engage in prohibited transactions under ERISA, or other  
14 violations of ERISA.

15       140. To the extent that Article VIII of the Articles of Incorporation attempts to relieve  
16 the Director Defendants of their responsibility or liability for breaches of their ERISA fiduciary  
17 duties, causing the ESOP to engage in prohibited transactions under ERISA, or other violations  
18 of ERISA and either have Adams and Associates or the ESOP be responsible for the Director  
19 Defendants’ liability or breaches, Article III is void as against public policy.

20       **Purported Indemnification Provisions in the Subscription Agreement**

21       141. Section 7.02 of the “Adams and Associates, Inc. Subscription Agreement” entered  
22 into between Adams and Associates and the ESOP, acting through Alan Weissman, in  
23 connection with the October 2012 Transaction (“the Subscription Agreement”) purports to have  
24 the ESOP indemnify Adams and Associates “against any loss by the Company resulting from (1)  
25 any breach by the Buyer [i.e., the ESOP] of this Agreement, (2) any breach of any  
26 representations, warranties or covenants of the Buyer made herein or in any document, certificate  
27 or exhibit delivered by the Buyer in accordance with the provisions of this Agreement, (3) any  
28 claim made by a third party alleging facts which, if true, would entitle the Company to

1 indemnification pursuant to (1) or (2) above, or (4) any failure of the Buyer to comply with his  
2 obligations under this Section 7.02.”

3 142. To the extent that Section 7.02 of the Subscription Agreement attempts to relieve  
4 Adams and Associates, including its officers and directors, of their responsibility or liability for  
5 breaches of their ERISA fiduciary duties or other violations of ERISA Part IV in connection with  
6 the October 2012 Transaction and Mr. Weissman’s breaches of his ERISA fiduciary duties or  
7 other violations of ERISA and have the ESOP be responsible for the Director Defendants’  
8 liability or breaches, Section 7.02 is void as against public policy.

9 143. To the extent that the Director Defendants, the Committee Defendants and Adams  
10 and Associates would agree to any of the above indemnity provisions, which are against public  
11 policy under ERISA § 410 (*i.e.*, by accepting its benefits), the Director Defendants and Adams  
12 and Associates breached their fiduciary duties under ERISA by failing to discharge their duties  
13 with respect to the Plan solely in the interest of the participants and beneficiaries (A) for the  
14 exclusive purpose of providing benefits to participants and beneficiaries and (B) with the care,  
15 skill, prudence, and diligence under the circumstances then prevailing that a prudent person  
16 acting in a like capacity and familiar with such matters would use in the conduct of an enterprise  
17 of like character and aims, and (D) in accordance with the documents and instruments governing  
18 the Plan insofar as such documents and instruments are consistent with ERISA, in violation of  
19 ERISA §§ 404(a)(1)(A), (B) and (D), 29 U.S.C. §§ 1104(a)(1)(A), (B) and (D).

20 144. Pursuant to ERISA § 410(a), Section 18(f) of the Plan Document, Article VIII of  
21 the Articles of Incorporation, and Section 7.02 of the Subscription Agreement should be declared  
22 void ab initio and should be reformed to strike or modified accordingly.

23 145. The Committee Defendants, Director Defendants, and Adams and Associates  
24 should be ordered to disgorge any indemnification payments made by Adams and Associates  
25 and/or the ESOP, plus interest.

## 26 **VIII. PRAYER FOR RELIEF**

27 Wherefore, Plaintiffs on behalf of themselves and the Class, pray that judgment be  
28 entered against Defendants on each Claim and be awarded the following relief:

1 A. Declare that Defendants have each breached their fiduciary duties under ERISA;

2 B. Declare that Weissman and Defendant Selling Shareholders have each engaged in  
3 prohibited transactions in violation of ERISA §§ 406(a)-(b), 29 U.S.C. §§ 1106(a)-(b), by  
4 engaging in the October 2012 Transaction;

5 C. Enjoin Defendants, and each of them, from further violations of their fiduciary  
6 responsibilities, obligations and duties;

7 D. Remove each of the Defendants as fiduciaries and Trustees of the Adams ESOP  
8 and/or bar each of them from serving as fiduciaries of the Adams ESOP in the future, and  
9 appoint a new independent fiduciary to manage the Adams ESOP and order the costs of such  
10 independent fiduciary be paid for by Defendants;

11 E. Order that Defendants found to have breached his/her/its fiduciary duties to the  
12 Adams ESOP to jointly and severally restore all the losses resulting from their breaches and  
13 disgorge all profits they have made through use of assets of the ESOP;

14 F. Require Adams and Associates as Plan Administrator to provide an updated SPD  
15 to all ESOP participants;

16 G. Require Adams and Associates as Plan Administrator and the Director Defendants  
17 to disclose to the ESOP participants when Weissman was removed as plan administrator,  
18 whether any investigation was conducted concerning any criminal or improper activity that  
19 occurred while he was Trustee and to provide an accounting to Plaintiffs and the Class of the  
20 financial accounts of the Plan;

21 H. Order that Defendants provide other appropriate equitable relief to the ESOP,  
22 including but not limited to, by forfeiting their ESOP accounts, providing an accounting for  
23 profits, imposing a constructive trust and/or equitable lien on any funds wrongfully held by any  
24 of the Defendants;

25 I. Order pursuant to ERISA § 206(d)(4) that any amount to be paid to the ESOP  
26 accounts of the Class can be satisfied by using or transferring any breaching fiduciary's ESOP  
27 account in the Plan (or the proceeds of that account) to the extent of that fiduciary's liability.  
28

1 J. Declare that any indemnification agreement between the Defendants, or any of  
2 them, and Adams and Associates or the ESOP violates ERISA § 410, 29 U.S.C. § 1110, and is  
3 therefore null and void.

4 K. Require Defendants to pay attorneys' fees and costs pursuant to ERISA § 502(g),  
5 29 U.S.C. § 1132(g), and/or ordering payment of fees and expenses to Plaintiffs' counsel on the  
6 basis of the common benefit or common fund doctrine out of any money recovered for the Class;

7 L. Order Defendants and each of them to disgorge any fees they received in  
8 conjunction with the 2012 ESOP Transaction;

9 M. Declare that any indemnification agreement between Defendants and the ESOP or  
10 Adams Associates violates ERISA § 410, 29 U.S.C. § 1110, and is therefore null and void;

11 N. Issue a preliminary and permanent injunction barring Defendants and each of  
12 them from seeking to enforce any indemnification agreement between Defendants and the ESOP  
13 or Adams and Associates;

14 O. Order Defendants and each of them to reimburse the ESOP or Adams and  
15 Associates for any money advanced by the ESOP or Adams and Associates, respectively, under  
16 any indemnification agreement or other instrument between Defendants and the ESOP or Adams  
17 and Associates;

18 P. Order that Defendants and each of them provide other appropriate equitable relief  
19 to the Plan, including but not limited to rescission, surcharge, providing an accounting for  
20 profits, and imposing a constructive trust and/or equitable lien on any funds wrongfully held by  
21 Defendants;

22 Q. Award pre-judgment interest and post-judgment interest; and

23 R. Award such other and further relief that the Court determines that Plaintiffs and  
24 the Class are entitled to pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a) or pursuant to Rule  
25 54(c) of the Federal Rules of Civil Procedure or that is equitable and just.

1 Dated: March 5, 2019

Respectfully submitted,

2 /s/ Daniel Feinberg

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