

1 Robert W. Ottinger (SBN 156825)  
2 [robert@ottingerlaw.com](mailto:robert@ottingerlaw.com)  
3 **THE OTTINGER FIRM, P.C.**  
4 535 Mission Street, 14<sup>th</sup> Floor  
5 San Francisco, CA 94133  
6 Tel: (415) 325-2088  
7 Fax: (212) 571-0505

8 *Attorneys for Plaintiffs*  
9 *Jamie James and Spencer Johnston*  
10 *and the Putative Class*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

13 JAMIE JAMES and SPENCER JOHNSTON,  
14 individual and in their representative capacity,

15 Plaintiffs,

16 vs.

17 J.J. KELLER & ASSOCIATES INC., and DOES  
18 1-50, inclusive,

19 Defendants.

Case No.: 21STCV10996

20 **MEMORANDUM OF POINTS AND**  
21 **AUTHORITIES IN SUPPORT OF**  
22 **PLAINTIFFS' MOTION FOR**  
23 **PRELIMINARY APPROVAL OF**  
24 **CLASS ACTION SETTLEMENT**

25 **Hearing Date: August 3, 2022**

26 **Time: 10:00 a.m.**

27 **Department: 7**

28 **Complaint Filed: March 19, 2021**

**Amended Complaint Filed: January 4,**  
**2022**

## Table of Contents

|                                                                                                                                                                                           |    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| MEMORANDUM OF POINTS AND AUTHORITIES .....                                                                                                                                                | 1  |
| I. INTRODUCTION .....                                                                                                                                                                     | 1  |
| II. FACTUAL AND PROCEDURAL BACKGROUND .....                                                                                                                                               | 2  |
| III. OVERVIEW OF THE SETTLEMENT .....                                                                                                                                                     | 4  |
| A. Settlement Class Definition.....                                                                                                                                                       | 4  |
| B. Monetary Terms .....                                                                                                                                                                   | 4  |
| C. Reasonable Scope of Release of Claims .....                                                                                                                                            | 6  |
| D. Tax Treatment .....                                                                                                                                                                    | 6  |
| E. Notice Process and Procedures .....                                                                                                                                                    | 7  |
| F. Impact on Other Pending Litigation.....                                                                                                                                                | 7  |
| IV. THE PROPOSED SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE AND SHOULD BE APPROVED. ....                                                                                                | 7  |
| A. The Settlement Amount Is Fair and Reasonable in View of the Strengths and Weaknesses of the Claims Asserted and Risks of Continued Litigation.....                                     | 9  |
| 1. Failure to Provide Rest and Meal Periods .....                                                                                                                                         | 10 |
| 2. Overtime Claims.....                                                                                                                                                                   | 11 |
| 4. Failure to Reimburse for Necessary Business Expenses .....                                                                                                                             | 13 |
| 5. Wage Statement Penalties .....                                                                                                                                                         | 13 |
| 6. Waiting Time Penalties .....                                                                                                                                                           | 14 |
| 7. PAGA Penalties.....                                                                                                                                                                    | 14 |
| 8. Summary of Reasonableness and Adequacy of Monetary Terms.....                                                                                                                          | 15 |
| B. The Settlement Fairly, Reasonably, and Adequately Compensates Settlement Class and PAGA Group Members Through a Fair Allocation Formula. ....                                          | 16 |
| C. The Proposed Awards of Attorneys' Fees and Costs Are Fair, Adequate, and Reasonable and Should Be Preliminarily Approved. ....                                                         | 16 |
| D. The Proposed Incentive Awards to Plaintiffs Are Also Fair, Adequate, and Reasonable and Should Be Preliminarily Approved.....                                                          | 17 |
| V. This Court Should Conditionally Certify the Class Because It Meets All the Requirements for Class Certification for Settlement Purposes Only Under Code of Civil Procedure § 382. .... | 18 |
| A. The Class Is Objectively Ascertainable. ....                                                                                                                                           | 19 |

|   |                                                                    |    |
|---|--------------------------------------------------------------------|----|
| 1 | B. The Membership of the Class Is Sufficiently Numerous. ....      | 19 |
| 2 | C. Common Questions Predominate Over Individual Questions. ....    | 20 |
| 3 | D. Plaintiffs Are Typical of the Class. ....                       | 21 |
| 4 | E. Plaintiffs Will Adequately Represent the Settlement Class. .... | 22 |
| 5 | VI. THIS COURT SHOULD APPROVE THE PROPOSED NOTICE AND RELATED      |    |
| 6 | PROCEDURES BECAUSE THEY ADEQUATELY APPRISE SETTLEMENT CLASS        |    |
| 7 | MEMBERS OF THEIR RIGHTS UNDER THE SETTLEMENT AND SATISFY DUE       |    |
| 7 | PROCESS. ....                                                      | 22 |
| 8 | VII. CONCLUSION.....                                               | 24 |

## Table of Authorities

### Cases

|    |                                                                                                     |           |
|----|-----------------------------------------------------------------------------------------------------|-----------|
| 12 | <i>Acosta v. Trans Union, LLC</i> (C.D. Cal. 2007) 243 F.R.D., 386 .....                            | 8         |
| 13 | <i>Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.</i> (7th Cir. 1972) 455 F.2d, 109 ..... | 9         |
| 14 | <i>Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.</i> (S.D. Cal.   |           |
| 14 | 2009) .....                                                                                         | 10        |
| 15 | <i>Bell v. Farmers Ins. Exchange</i> (2004) 115 Cal.App.4th, 726.....                               | 17        |
| 16 | <i>Benton</i> , 220 Cal. App. 4th at 725 .....                                                      | 10        |
| 17 | <i>Bowles v. Superior Court</i> (1955) 44 Cal.2d 574.....                                           | 19        |
| 18 | <i>Camp v. Alexander</i> , 300 F.R.D. 617 (N.D. Cal. 2014) .....                                    | 15        |
| 19 | <i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d, 974 .....                                      | 23        |
| 20 | <i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th .....                                         | 16        |
| 21 | <i>Chindarah v. Pick Up Stix, Inc.</i> 171 Cal. App. 4th 796 (2009) .....                           | 15        |
| 22 | <i>City of Norco v. Mugar</i> , 59 Cal. App. 5th 786 (2020) review denied (Mar. 17, 2021) .....     | 17        |
| 23 | <i>Clark v. Am. Residential Servs. LLC</i> (2009) 175 Cal.App.4th, 801 .....                        | 9         |
| 24 | <i>Classen v. Weller</i> (1983) 145 Cal.App.3d, 46.....                                             | 21        |
| 25 | <i>County of Santa Clara v. Astra USA, Inc.</i> , 2010 WL 2724512 at * (N.D. Cal. 2010).....        | 15        |
| 26 | <i>Daar v. Yellow Cab Co.</i> (1967) 67 Cal.2d 695 .....                                            | 19        |
| 27 | <i>Dunk v. Ford Motor Co.</i> (1996), 48 Cal.App.4th, 1802 .....                                    | 8, 18, 19 |
| 28 | <i>Faulkinbury v. Superior Court</i> , 216 Cal. App. 4th .....                                      | 10        |
|    | <i>Fireside Bank v. Superior Court</i> (2007) 40 Cal.4th 1069.....                                  | 21        |
|    | <i>Flores v. Starwood Hotels &amp; Resorts Worldwide, Inc.</i> (C.D. Cal. 2017) .....               | 9         |

|    |                                                                                                                       |            |
|----|-----------------------------------------------------------------------------------------------------------------------|------------|
| 1  | <i>Global Minerals &amp; Metals Corp. v. Superior Court</i> (2003) 113 Cal.App.4th, 859.....                          | 18         |
| 2  | <i>Guar. Ins. Agency Co. v. Mid-Cont'l Rty. Coj.</i> (N.D. Ill. 1972) .....                                           | 22         |
| 3  | <i>Hanon v. Dataproducts Corp.</i> (9th Cir. 1992) 976 F.2d, 508.....                                                 | 21         |
| 4  | <i>Hebbard v. Colgrove</i> (1972) 28 Cal.App.3d, 1030.....                                                            | 19         |
| 5  | <i>Hypolite v. Carlson</i> (1975) 52 Cal.App.3d, 579 .....                                                            | 19         |
| 6  | <i>Jaimez v. Daiohs USA, Inc.</i> (2010) 181 Cal.App.4th, 1304 &1305 .....                                            | 10, 13, 20 |
| 7  | <i>Jordan v. NCI Grp., Inc.</i> (C.D. Cal. Jan. 5, 2018) .....                                                        | 9          |
| 8  | <i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal.App.4th, 128.....                                                 | 8, 9       |
| 9  | <i>Malibu Outrigger Bd. of Governors v. Superior Court</i> (1980) 103 Cal.App.3d, 578-579 .....                       | 8          |
| 10 | <i>McGhee v. Bank of America</i> (1976) 60 Cal.App.3d, 451 .....                                                      | 22         |
| 11 | <i>Naranjo v. Spectrum Sec. Servs., Inc.</i> , 40 Cal. App. 5th 444 (2019) .....                                      | 14         |
| 12 | <i>Nordstrom Commission Cases</i> (2010) 186 Cal.App.4th, 590.....                                                    | 9          |
| 13 | <i>Phillips Petroleum Co. v. Shutts</i> (1985) 472 U.S.....                                                           | 23         |
| 14 | <i>Reyes v. San Diego County Bd. of Supervisors</i> (1979) 196 Cal.App.3d 1263, 1278.....                             | 20         |
| 15 | <i>Richmond v. Dart Industries, Inc.</i> (1981) 29 Cal.3d, 470.....                                                   | 18         |
| 16 | <i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d, 932 .....                                                       | 19         |
| 17 | <i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th, 334.....                                         | 20         |
| 18 | <i>Shaw v. Toshiba America Information Systems, Inc.</i> (E.D. Tex. 2000).....                                        | 17         |
| 19 | <i>Skaff v. Rio Nido Roadhouse</i> , 55 Cal. App. 5 <sup>th</sup> 522 as modified on denial of reh 'g (Oct. 20, 2020) |            |
| 20 | <i>review denied</i> (Jan. 13, 2021) .....                                                                            | 17         |
| 21 | <i>Stambaugh v. Superior Court</i> (1976) 62 Cal.App.3d. 236 .....                                                    | 7          |
| 22 | <i>Trotsky v. Los Angeles Fed. Sav. &amp; Loan Assn.</i> (1975) 48 Cal.App.3d 134 .....                               | 23         |
| 23 | <i>Van Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294.....                                    | 17         |
| 24 | <i>Vasquez v. State of California</i> , 45 Cal. 4 <sup>th</sup> 243 as modified (2008).....                           | 17         |
| 25 | <i>Viceral v. Mistras Group, Inc.</i> (N.D. Cal., Oct. 11, 2016.....                                                  | 9          |
| 26 | <i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th, 250 .....                                               | 8, 9       |
| 27 | <b>Statutes</b>                                                                                                       |            |
| 28 | Cal. Lab. Code § 1174 .....                                                                                           | 13         |
|    | Cal. Lab. Code § 2698, et seq .....                                                                                   | 6          |
|    | California Rule of Court 3.766, subds. (d)-(e).....                                                                   | 23         |
|    | California Civil Code § 1542 .....                                                                                    | 6, 18      |
|    | Code of Civil Procedure § 382.....                                                                                    | passim     |

|    |                                    |        |
|----|------------------------------------|--------|
| 1  | IWC Wage Order No. 4-2001 .....    | 11     |
| 2  | Cal. Lab. Code § 203 .....         | 14     |
| 3  | Cal. Lab. Code § 226 .....         | 13, 15 |
| 4  | Cal. Lab. Code §§ 510, 1194 .....  | 11     |
| 5  | Cal. Lab. Code, § 2699(1)(2) ..... | 1, 24  |
| 6  |                                    |        |
| 7  |                                    |        |
| 8  |                                    |        |
| 9  |                                    |        |
| 10 |                                    |        |
| 11 |                                    |        |
| 12 |                                    |        |
| 13 |                                    |        |
| 14 |                                    |        |
| 15 |                                    |        |
| 16 |                                    |        |
| 17 |                                    |        |
| 18 |                                    |        |
| 19 |                                    |        |
| 20 |                                    |        |
| 21 |                                    |        |
| 22 |                                    |        |
| 23 |                                    |        |
| 24 |                                    |        |
| 25 |                                    |        |
| 26 |                                    |        |
| 27 |                                    |        |
| 28 |                                    |        |

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this Motion, Plaintiffs Jamie James and Spencer Johnston (collectively, “Plaintiffs”)  
4 respectfully request that this Court conditionally certify the below-defined Settlement Class for  
5 settlement purposes only pursuant to Code of Civil Procedure § 382; preliminarily approve the Class  
6 and PAGA Settlement Agreement (hereafter, the “Settlement”);<sup>1</sup> direct that the Notice be  
7 disseminated to the Settlement Class; approve the resolution of the PAGA claim pursuant to Labor  
8 Code, § 2699(1)(2); and schedule a final approval hearing. The Settlement provides for a non-  
9 reversionary gross settlement fund of \$357,500, with the entire settlement, net of fees and other  
10 standard payments, to be distributed to the Settlement Class and PAGA Group without any claim  
11 filing requirement.  
12

13  
14 In this action, on behalf of themselves, the Settlement Class, and the PAGA Group, Plaintiffs  
15 assert that Defendant J.J. Keller & Associates, Inc., (hereafter, “Defendant” or “J.J. Keller”) is liable  
16 on a class-wide basis for alleged wage and hour violations, primarily consisting of alleged failure to  
17 pay overtime wages, reimburse necessary business expenses; failure to provide accurate wage  
18 statements; waiting time penalties; and civil penalties under PAGA. (RO ¶ 7) The Settlement Class  
19 is defined as “all employees employed by Defendant in the role of ‘Driver Trainer’ and classified as  
20 exempt during the Settlement Class Period excluding the employees who worked for Defendant in  
21 that role during that period and previously signed individual settlement agreements with  
22 Defendant[,]” with the “Settlement Class Period” defined as March 19, 2017 through the date of the  
23 Preliminary Approval Order. (Settlement, ¶¶ II.38, 40) The PAGA Group is defined as “all  
24  
25

26  
27 <sup>1</sup> The Settlement is attached as Exhibit 1 to the Declaration of Robert Ottinger in Support of Plaintiffs’  
28 Motion for Preliminary Approval of Class Action Settlement (hereafter, “RO”), submitted under  
separate cover.

1 employees employed by Defendant in the role of ‘Driver Trainer’ and classified as exempt during  
2 the PAGA Period, regardless of whether those employees previously signed individual settlement  
3 agreements with Defendant,]” with the PAGA Period defined as March 1, 2020 through the date of  
4 the Preliminary Approval Order. (Settlement, ¶ II.25, 28)

5 This Court should grant Plaintiffs’ motion because: (1) the Settlement Class meets the  
6 requirements for class certification for settlement purposes only under of Code of Civil Procedure §  
7 382; (2) the Settlement warrants preliminary approval based on all indicia for fairness,  
8 reasonableness, and adequacy; (3) Plaintiffs are adequate to serve as the Class Representatives; (4)  
9 Plaintiffs’ attorneys are adequate to serve as Class Counsel; (5) the proposed notice procedures, and  
10 related forms, fully comport with due process and adequately apprise the Settlement Class Members  
11 of their rights; (6) a final fairness hearing will be scheduled to allow Settlement Class Members an  
12 opportunity to be heard regarding the Settlement and to give it finality; and (7) the requirements for  
13 approval under PAGA are also met. Accordingly, for the reasons detailed below, this Court should  
14 grant this Motion in its entirety and preliminarily approve the Settlement.  
15

## 16 **II. FACTUAL AND PROCEDURAL BACKGROUND**

17 Defendant is a Wisconsin-based company that helps businesses “ensure safe, respectful  
18 workplaces, job sites and highways” ([www.jjkeller.com/learn/purpose](http://www.jjkeller.com/learn/purpose)), including training drivers to  
19 operate commercial motor vehicles similar to UPS box-trucks safely so they can deliver goods sold  
20 on Amazon. (RO ¶ 7) Plaintiff James filed the original complaint in this action on March 19, 2021,  
21 in the Los Angeles Superior Court. (RO ¶ 7) Subsequently, on January 4, 2022, Plaintiff James  
22 amended her complaint, adding Spencer Johnston as a plaintiff and a PAGA claim. (RO ¶ 7) The  
23 operative amended complaint alleges that Defendant failed to pay overtime wages, reimburse  
24 necessary business expenses, provide accurate wage statements, waiting time penalties, and civil  
25 penalties under PAGA, *inter alia*. (RO ¶ 7) Based on these allegations, Plaintiffs seek restitution of  
26 unpaid wages, statutory and civil penalties, and related relief against Defendant. Defendant denies  
27  
28

1 liability, asserts that class treatment is improper except for purposes of settlement, and asserts that  
2 Plaintiffs' PAGA claim is unmanagable. The factual and legal bases of the claims asserted and the  
3 relevant defenses are set forth in Section IV below.

4 After agreeing to participate in a mediation, Defendant provided Plaintiffs with informal  
5 discovery. This included a chart of driver-trainers, their dates of employment, and salaries. (RO ¶ 8)  
6 Based on this information, Plaintiffs prepared a detailed mediation brief and calculated the potential  
7 exposure based on a variety of assumptions. (RO ¶ 8)

8  
9 Around July 14, 2021, the parties participated in a mediation with former Magistrate Judge,  
10 Hon. Suzanne Segal, which did not result in a resolution of the parties' dispute. (RO ¶ 9) Prior to  
11 the mediation, Defendant produced personnel and wage and hour policies and a spreadsheet showing  
12 salaries and compensation of putative class members and Plaintiff estimated potential damages based  
13 on the spreadsheet. (RO ¶ 9) Subsequently, Defendant obtained purported releases from certain  
14 employees who—but for the releases—would have been Settlement Class Members (and instead are  
15 only PAGA Group Members, to the extent they worked during the PAGA Period) and paid certain  
16 sums in exchange for those releases, totaling \$102,000. (RO ¶ 9) The parties then engaged in formal  
17 discovery, and Defendant produced redacted class-wide time and pay records, purported releases  
18 from putative class members and email communications about those releases. (RO ¶ 9) Plaintiff  
19 revised class-wide damage calculations and researched the validity of Defendant's purported  
20 releases. (RO ¶ 9) After extensive, direct, arms'-length negotiations after the parties' mediation, the  
21 Parties reached an agreement in principle to settle their dispute for \$357,500, inclusive of the  
22 \$102,000 already paid to certain members of the PAGA Group (who, but for their releases, would  
23 also have been Settlement Class Members). (RO ¶ 9) Now that the parties have finalized the  
24 settlement, Plaintiffs move for preliminary approval.  
25  
26  
27  
28

### III. OVERVIEW OF THE SETTLEMENT

The complete terms of the Settlement are set forth in the Class and PAGA Settlement Agreement, attached as Exhibit 1 to the Declaration of Robert Ottinger in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. The essential terms are summarized below.

#### A. Settlement Class Definition

The Settlement Class "consists of all employees employed by Defendant in the role of 'Driver Trainer' and classified as exempt during the Settlement Class Period, excluding the employees who worked for Defendant in that role during that period and previously signed individual settlement agreements with Defendant[,]" with the Settlement Class Period defined as "the period from March 19, 2017 through the date of the Preliminary Approval Order." (Settlement, ¶¶ II.38, 40.)

#### B. Monetary Terms

The Settlement establishes a Gross Settlement Amount ("GSA") of \$357,500.00. (*Id.* ¶ II.19.) The Net Settlement Amount ("NSA") "means the portion of the GSA after deducting: (a) Class Counsel's attorneys' fees and costs; (b) the Incentive Awards; (c) the Claims Administration Costs; (d) the PAGA Fund; and (e) the \$102,000.00 credit for the payments previously made to certain members of the PAGA Group pursuant to the individual settlement agreements." (*Id.* ¶ II.21.)

"Incentive Awards" mean "payments to Representative Plaintiffs for their service to the members of the Settlement Class and PAGA Group, and in consideration for their execution of the Personal Release contained herein, which is in addition to whatever payment they are otherwise entitled to receive as Authorized Claimants and PAGA Group Members." (*Id.* ¶ II.20.) The amount of the Incentive Award for each named plaintiff is \$15,000. (*Id.* ¶ V.A.5.a) The agreed upon PAGA Fund will be \$75,000, with 75% paid to the LWDA and 25% used to fund the individual PAGA Payments to PAGA Group Members. (*Id.* ¶ II.24.) The Settlement Administration Costs are defined as "the fees and costs incurred or charged by the Claims Administrator in connection with the

1 execution of its duties under this Settlement Agreement.” (*Id.*, ¶ II.3.) The GSA excludes any  
2 employer-side payroll taxes, if any, due on the portion of the individual Settlement Awards allocated  
3 to wages, which Defendant pay exclusive of the Gross Settlement Amount. (*Id.*, ¶ V.B.4; V.A.4.)  
4 The Net Settlement Amount will be allocated as fifteen percent (25%) in settlement of wage claims  
5 and seventy-five percent (75%) in settlement of claims for non-wage penalties and interest allegedly  
6 due to employees. (*Id.* ¶ V.B.4.a)

7  
8 The settlement shares from the Net Settlement Amount will not be distributed through a  
9 claims-made process. (*Id. generally*) Defendant has previously represented that there is an estimated  
10 total of 3 Settlement Class Members who collectively worked 55 pay periods during the Class Period  
11 and 15 PAGA Group Members who collectively worked 442 pay periods during the PAGA Period  
12 (“which the parties assume will increase pro rata through the date of Preliminary Approval”). (*Id.* ¶  
13 V.A.1.a-b) “If the number of pay periods is either 15% more or 15% less than these estimates (after  
14 accounting for a pro rata increase through Preliminary Approval), the Parties agree to meet and confer  
15 to adjust the closing date of the Settlement Class Period and/or the PAGA Period.” (*Id.* ¶ V.A.1.c.)  
16 The claims administrator shall make payments to the Class on a pay period basis. (*Id.* ¶ V.B.1.a)  
17 Defendants will fund the Gross Settlement Amount and the amount necessary to pay employer- side  
18 payroll taxes within fourteen (14) days of the Effective Date by depositing the money to the Claims  
19 Administrator, which shall immediately transfer them into a Qualified Settlement Fund Account  
20 (“QSF”). (*Id.*, ¶ V.A.2.)

21  
22 No later than 10 business days after preliminary approval, Defendant shall provide the Class  
23 List to the Claims Administrator and no later than twenty (20) business days after the date of entry  
24 of the Preliminary Approval Order, the Claims Administrator shall send the Class Notice Packets to  
25 all Settlement Class Members via first-class mail. (*Id.*, ¶ IV.E) Settlement Class Members will have  
26 forty-five (45) days to submit objections to the settlement and elections not to participate in the  
27  
28

1 settlement. (*Id.* ¶¶ IV.E.9; II.23) Settlement Class Members will have ninety (90) days to cash their  
2 check once it is mailed to them. (*Id.* ¶ V.B.7) If a Settlement Class Member's Settlement check is  
3 not cashed within ninety (90) days after its last mailing to the Settlement Class Member, the  
4 Settlement Administrator will distribute such checks to the California State Controller's Office  
5 pursuant to the procedures of the State of California's Unclaimed Property Law. (*Id.*, ¶ V.B.7)

6 **C. Reasonable Scope of Release of Claims**

7 All Settlement Class Members who do not submit valid requests for exclusion will be bound  
8 by the release of claims. The release of claims is set forth in Paragraph VI of the Settlement and the  
9 Class Released Claims means "all claims as pled in the Complaint, First Amended Complaint, and  
10 any further amended pleadings as necessary, including claims for (1) failure to provide meal periods;  
11 (2) failure to provide rest periods; (3) failure to pay minimum and overtime wages; (4) wage statement  
12 violations; (5) failure to pay wages at time of termination/waiting time penalties; (6) unfair business  
13 practices/unfair competition; (7) failure to reimburse for business expenses; and (8) violation of  
14 California Labor Code section 2698, et seq. ("PAGA") based on the allegations in the operative First  
15 Amended Complaint, as well as any and all wage and hour claims that were asserted or could have  
16 been asserted based on the factual allegations contained in the Complaint, First Amended Complaint,  
17 or any amended complaints. (Settlement, ¶ II.8) The Named Plaintiffs are agreeing to far broader  
18 general releases with waivers of their rights under Civil Code § 1542 and PAGA Group Members are  
19 releasing all PAGA claims that were or could have been asserted in any of the complaints in the case.  
20 (Settlement, ¶ VI; II.32; II.29)

21 **D. Tax Treatment**

22 For tax purposes, twenty-five percent (25%) of the individual Settlement Awards will be  
23 allocated to wages (for which an IRS Form W-2 will be issued to each Settlement Class Member)  
24 and seventy-five percent (75%) to non-wage penalties and interest (for which an IRS Form 1099 will  
25 be issued to each Settlement Class Member). (*Id.*, ¶ V.B.4.a) Individual PAGA Payments to PAGA  
26

1 Group Members shall be treated as 75% non-wage penalties and 25% interest, to be reported to  
2 PAGA Group Members on an IRS Form 1099, and shall not be subject to withholdings. (*Id.*, ¶  
3 V.B.4.b)

4 **E. Notice Process and Procedures**

5 No later than ten (10) business days after the Court enters an Order Granting Preliminary  
6 Approval of the Settlement, Defendant shall provide the Class List to the Claims Administrator (the  
7 Class List defined as names, last-known mailing addresses, date of employment, Social Security  
8 numbers, the number of pay periods worked during the Settlement Class Period and PAGA Period).  
9 (*Id.*, ¶¶ II.9; IV.E.1) Using best efforts to mail it as soon as possible, and in no event later than twenty  
10 (20) business days after the date of entry of the Preliminary Approval Order, the Claims  
11 Administrator will send the Class Notice Packet to all Settlement Class Members via first-class mail  
12 using the most current mailing address information available as contained in the Class List, or as  
13 updated following an NCOA search. (*Id.*, ¶ IV.E.5.) If a Class Notice Packet is not delivered, the  
14 Settlement Administrator will, not longer than five (5) business days from receipt of notice, search  
15 for a more current address for the Settlement Class Member using skip-trace procedures and re-mail  
16 the Class Notice Packet to the Class Member. (*Id.*, ¶ IV.E.5) As stated previously, Settlement Class  
17 Members will have forty-five (45) days to submit objections to the settlement and elections not to  
18 participate in the settlement. (*Id.* ¶¶ IV.E.9; II.23)

19 **F. Impact on Other Pending Litigation**

20 Plaintiffs are unaware of any overlapping class actions. (RO ¶ 10) Thus, they do not  
21 anticipate that this case will extinguish the claims in any currently pending cases that are not presently  
22 accounted for. (*Id.*)

23 **IV. THE PROPOSED SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**  
24 **AND SHOULD BE APPROVED.**

25 California courts favor settlement. (*e.g.*, *Stambaugh v. Superior Court* (1976) 62 Cal.App.3d  
26 231. 236.) Unlike most settlements, class action settlements involve a court approval process that  
27  
28

1 exists to prevent fraud, collusion, and unfairness to class members. (*Malibu Outrigger Bd. of*  
2 *Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579.) In determining whether to  
3 approve or reject a proposed settlement, the court has broad discretion. (*Wershba v. Apple Computer,*  
4 *Inc.* (2001) 91 Cal.App.4th 224, 250.) The purpose of the preliminary evaluation of a proposed class  
5 action settlement is to determine only whether the settlement is within the range of possible approval,  
6 and thus whether notice to the class of the settlement terms and conditions, and the scheduling of a  
7 formal fairness hearing are warranted. (*Id.* at 234-235, 251.)

8  
9 A settlement is presumptively fair where it is reached through arms' length bargaining, based  
10 on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel  
11 is experienced in similar litigation, and the percentage of objectors is small.<sup>2</sup> (*Dunk v. Ford Motor*  
12 *Co.* (1996), 48 Cal.App.4th 1794, 1802.) The following "well-recognized factors" are typically  
13 considered when evaluating the reasonableness of a proposed settlement, but are not exhaustive and  
14 should be tailored to each case: (1) the strength of plaintiffs' case; (2) the risk, expense, complexity  
15 and likely duration of further litigation; (3) the risk of maintaining class action status through trial;  
16 (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the  
17 proceedings; (6) the experience and views of counsel; (7) the presence of a government participant;  
18 and (8) the reaction of the class members to the proposed settlement. (*Kullar v. Foot Locker Retail,*  
19 *Inc.*, 168 Cal.App.4th 116, 128 (citing *Dunk, supra*, 48 Cal.App.4th at p. 1801).) At the preliminary  
20 approval stage, "the settlement need only be potentially fair, as the court will make a final  
21 determination of its adequacy at the hearing on final approval, after such time as any party has had a  
22 chance to object and/or opt out." (*Acosta v. Trans Union, LLC* (C.D. Cal. 2007) 243 F.R.D. 377,  
23 386.)  
24  
25  
26

27  
28 <sup>2</sup> Because the fourth prerequisite cannot be addressed until the final approval hearing, only the first  
three are relevant at this stage of the approval process.

1           **A. The Settlement Amount Is Fair and Reasonable in View of the Strengths and**  
2           **Weaknesses of the Claims Asserted and Risks of Continued Litigation.**

3           “In the context of a settlement agreement, the test is not the maximum amount plaintiffs  
4 might have obtained at trial on the complaint, but rather whether the settlement is reasonable  
5 under all of the circumstances.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,  
6 250 (*Wershba*)). Because settlements inherently involve compromise, even settlements providing  
7 for substantially narrower relief than likely would be obtained if the suit were successfully  
8 litigated can be reasonable because “the public interest may indeed be served by a voluntary  
9 settlement in which each side gives ground in the interest of avoiding litigation.” (*Id* [quoting *Air*  
10 *Line Stewards, etc., Local 550 v. Am. Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109].) In  
11 addition, courts review the discovery process and information received through it to aid them in  
12 assessing whether the parties sufficiently developed the claims and their supporting factual bases  
13 before reaching settlement. (See *Kullar v. Foot Locker Retail Inc.* (2008) 168 Cal.App.4th 116,  
14 129-131 (*Kullar*)). Information is sufficient where it allows the parties and the court to form “an  
15 understanding of the amount that is in controversy and the realistic range of outcomes of the  
16 litigation.” (*Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 801.) This  
17 requirement exists so that the parties can provide the court with “a meaningful and substantiated  
18 explanation of the manner in which the factual and legal issues have been evaluated.” (*Kullar*,  
19 168 Cal.App.4th at p. 118.) Courts often approve settlements where Class Members receive  
20 only pennies or even just coupons or vouchers. (See, e.g., *Nordstrom Commission Cases* (2010)  
21 186 Cal.App.4th 576, 590 [affirming final approval of wage and hour class action settlement  
22 where 20% of the fund allocated to the class was merchandise vouchers].)<sup>3</sup>

23 \_\_\_\_\_  
24 <sup>3</sup> Similarly, with respect to PAGA, courts will generally approve a PAGA settlement on a showing  
25 that the settlement terms are “fundamentally fair, adequate and reasonable” in light of PAGA’s  
26 policies and purposes. See *Jordan v. NCI Grp., Inc.* (C.D. Cal. Jan. 5, 2018), No.  
27 EDCV161701JVSSPX) 2018 WL 1409590, at \*3; *Flores v. Starwood Hotels & Resorts Worldwide,*  
28 *Inc.* (C.D. Cal. 2017) 253 F.Supp.3d 1074, 1075. A settlement may be substantially discounted  
from the total potential liability amount, however, given that courts often exercise their discretion  
to award PAGA penalties below the statutory maximum, even when a PAGA claim succeeds at  
trial. See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-cv-02198-EMC) 2016  
WL 5907869 at \*8-9. For substantially the same reasons that the class action settlement is fair, the  
PAGA settlement is also fair.

1  
2                   **1.       Failure to Provide Rest and Meal Periods**

3           Plaintiffs asserted class-wide claims for failure to provide rest periods. Plaintiffs contend that  
4 Defendant had a practice and de facto policy of requiring Settlement Class and PAGA Group  
5 Members to work without rest and meal periods or compensation in lieu thereof. Specifically, both  
6 Plaintiff James and Johnston allege that they could not take lunch breaks and had to answer students'  
7 questions on days when they were instructing classes and Plaintiff James additionally alleges that she  
8 could not take lunch breaks on days when she had to conduct road tests because she was scheduled  
9 for at least six back-to-back tests per day, which lasted up to two hours each. *See* Ex. 2; Am. Compl.  
10 ¶ 22; *Faulkinbury v. Superior Court*, 216 Cal. App. 4th (finding commonality where plaintiffs  
11 submitted declarations that employees were “not given or [were] rarely given a rest break, or could  
12 not leave the assigned post for a rest break except to use the bathroom,” and finding that conflicting  
13 declarations submitted by defendant establishes “at most...individual issues of damages,” which did  
14 not preclude class certification); *Benton*, 220 Cal. App. 4th at 725 (reversing denial of class  
15 certification and stating, “We agree with Bradley and Faulkinbury’s conclusion that, under Brinker,  
16 the fact that individual inquiry might be necessary to determine whether individual employees were  
17 able to take breaks despite the defendant’s allegedly unlawful policy (or unlawful lack of a policy) is  
18 not a proper basis for denying certification.”); *Jaimez*, 181 Cal.App.4th at 1304 (finding commonality  
19 as to meal and rest break claims where plaintiff-drivers submitted declarations that defendant had a  
20 policy of failing to permit or authorize rest breaks, stating “determinations about hours worked are  
21 routine in class actions involving alleged denials of overtime pay and meal/rest periods.”) *citing*  
22 *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.* (S.D. Cal. 2009)  
23 (internal quotations omitted).  
24  
25  
26

27           On the other hand, Defendants contend that they had in place a policy permitting rest breaks  
28 and meal periods, that the Settlement Class and PAGA Group Members regularly took rest breaks

1 and meal periods, there was no uniform policy or practice prohibiting the Settlement Class and PAGA  
2 Group Members from taking rest breaks and meal periods, and that in any event the Settlement Class  
3 and PAGA Group Members were properly classified as exempt from California's rest break and meal  
4 period requirements.

## 5                   **2.       Overtime Claims**

6           Plaintiffs asserted class-wide claims for failure to pay overtime on the ground that  
7 Defendant had a practice and de facto policy of paying Settlement Class and PAGA Group  
8 Members salaries, treating them as exempt, and requiring them to work in excess of eight (8)  
9 hours per day without extra compensation, in violation of Labor Code §§ 510, 1194, and IWC  
10 Wage Order No. 4-2001. In Plaintiffs' view, a DLSE opinion letter establishes that Plaintiffs are  
11 non-exempt employees who are entitled to overtime. Specifically, in a letter on March 5, 1997,  
12 the DLSE wrote that truck driving instructors at the U.S. Truck Driving School, Inc. did not fall  
13 within the professional exemption under the definition of "teacher" or "learned or artistic  
14 profession," stating, "It is our understanding that U.S. Truck Driving School has been cited on  
15 more than one occasion for its failure to pay the overtime premium owed to truck driver  
16 instructors. Thus, it would appear, your client knew of the position of the [DLSE]." *See* Ottinger  
17 Decl., ¶ 19, Ex. 3. In the case of the truck drivers at the U.S. Truck Driving School, Inc., the  
18 DLSE noted that their "course of study to become a truck driver instructor involve[d] a total of  
19 144 hours of classroom and on-site instruction" and, in any event, did not meet the IWC  
20 requirement that they have a certificate from "the Commission for Teacher Preparation and  
21 Licensing" or teach in an accredited college or university. See also Ex. C (DLSE opinion letter  
22 dated January 17, 2003). Here, similar to the truck drivers in the DLSE opinion letter, Ms. James  
23 did not undertake a course of study to become a driver-trainer for Keller, does not have a  
24 certificate from the Commission for Teacher Preparation and Licensing and did not teach at an  
25 accredited college or university. While Ms. James holds a Class A commercial driver's license,  
26  
27  
28

1 she spent about two hours per day for around two months training to obtain that license, which  
2 appears to be fewer hours of classroom and onsite instruction than the driver instructors at the  
3 U.S. Truck Driving School had. Similarly, Spencer Johnston did a few hours of training to do  
4 driver training in a previous job, and roughly a few days of training at Defendant to perform his  
5 job and did not need any licensure.

6 Plaintiff James contends that she generally worked approximately 12 hours per day, four  
7 days per week on Monday to Thursday, and spent about 12 hours for the rest of the week on  
8 different days doing paperwork, but was paid a salary without extra compensation for overtime.  
9 *See Am. Compl.*, ¶¶ 16-20. On days when Plaintiff James had to teach classes on driving trucks,  
10 which were scheduled from 9 a.m. to 5 p.m., she alleges that she had to perform preliminary and  
11 postliminary activities to satisfy her job obligations. *See Am. Compl.* ¶ 19. Prior to class,  
12 Plaintiff James alleges that she had to gather supplies for several hours such as cones and set up  
13 the range or obstacle course for trainees to learn how to maneuver trucks. *See Am. Compl.* ¶ 19.  
14 After class, Plaintiff James alleges that she had to pick up cones and any other supplies, park  
15 trucks, provide additional training and fill out paperwork on trainee performance. *See Am.*  
16 *Compl.* ¶ 20. On days when Plaintiff James had to conduct road tests, she alleges that she was  
17 scheduled for at least six back-to-back tests per day, with each test lasting up to two hours. *See*  
18 *Am. Compl.* ¶ 22. Similarly, Plaintiff Johnston alleges that he generally worked one or two days  
19 per week doing training, during which he generally worked approximately twelve (12) hours per  
20 day. *See Am. Compl.* ¶ 30. Plaintiff Johnston also alleges that he regularly spent time  
21 performing preliminary and postliminary activities, including picking up and dropping off the  
22 truck used for training and testing, driving to and from the training facility, setting up the  
23 classroom and training site, road testing, answering questions, and completing paperwork. *See*  
24 *Am. Compl.* ¶ 27.

1 Defendants contend that the Settlement Class and PAGA Group Members were properly  
2 classified as exempt from California's overtime wage laws, deny that the Settlement Class and  
3 PAGA Group Members worked hours which were unpaid, and deny the extent of unpaid overtime  
4 hours claimed by Plaintiffs.

#### 5 **4. Failure to Reimburse for Necessary Business Expenses**

6 Plaintiffs brought claims alleging Defendants failed to pay for putative class members'  
7 expenses, which were necessary to perform their job duties, including expenses for cell phones,  
8 Covid supplies like masks and Covid tests in the midst of the pandemic, Adobe Acrobat Pro  
9 needed for pdfs of mandatory company paperwork, televisions needed to show trainees how to  
10 track hours worked on an app, and two Uber rides needed after dropping off trucks. (RO ¶ 11)

12 Defendant denies that the Settlement Class and PAGA Group Members incurred any  
13 business expenses which were not reimbursed by Defendant, and note that Plaintiffs, themselves,  
14 were reimbursed for business expenses totaling many thousands of dollars, each.

15 With respect to these expenses, there is a risk that Plaintiffs will not certify a class because  
16 it will involve too many individualized inquiries about whether certain supplies or expenses were  
17 needed.  
18

#### 19 **5. Wage Statement Penalties**

20 Plaintiffs sought remedies for failure to provide accurate, itemized wage statements in  
21 violation of Labor Code § 226 providing that an employer shall provide employees with statements  
22 showing gross wages earned and total hours worked by the employee, among other things. Since  
23 Plaintiffs allege that Defendants have, on a class-wide basis, failed to pay proper overtime  
24 compensation and meal and rest period premiums, Plaintiffs argue that Defendants will also be liable  
25 for class-wide violations under Labor Code § 226. *See Jaimez*, 181 Cal. App.4th at 1306; Cal. Lab.  
26 Code § 1174.  
27  
28

1 As a derivative claim, wage statement penalties are subject to the same risks of establishing  
2 class certification as the unpaid overtime and meal and rest period claims. Further, to the extent that  
3 Plaintiffs' claims arise from the meal and rest period premiums, there is a significant risk that the  
4 Supreme Court in *Naranjo* will uphold the Appellate Court's finding that actions for violations of  
5 Labor Code's meal break provisions do not entitle employees to pursue the derivative wage statement  
6 penalties. *Naranjo v. Spectrum Sec. Servs., Inc.*, 40 Cal. App. 5th 444 (2019)

#### 7 **6. Waiting Time Penalties**

8 Plaintiffs sought remedies waiting time penalties under Labor Code § 203. Plaintiffs  
9 contends that Defendant willfully failed to timely pay earned hourly and premium wages to  
10 Settlement Class and PAGA Group Members who are former employees. Similar to the wage  
11 statement claim, this claim is derivative of the minimum wage and overtime and meal and rest  
12 period claims and therefore subject to the same risks. To the extent that these claims are  
13 derivative of meal and rest period claims, there is a risk that these violations do not trigger  
14 liability for waiting time penalties if the Supreme Court upholds the Appellate Court's decision in  
15 *Naranjo. Id.*

#### 16 **7. PAGA Penalties**

17 The PAGA claims in this case are entirely derivative of the underlying claims. The parties  
18 have allocated \$75,000 to the resolution of the PAGA claims, with 75% of the allocation going to the  
19 LWDA and 25% to PAGA Group Members. (Settlement, ¶ II.24) Plaintiffs estimate that the  
20 approximate exposure for the PAGA penalties is \$347,575.00. (RO ¶ 12) On the contrary,  
21 Defendants assert that no PAGA penalties are owed.

22 The strengths and weaknesses of the PAGA claims, being entirely derivative, are the same as  
23 those of the underlying claims discussed above and, as a result, there is risk that the claims giving  
24 rise to the majority of Defendant's PAGA exposure could not be efficiently managed outside of the  
25

1 settlement context. This is because the underlying claims, aside from those for violations of Labor  
2 Code § 226, are derivative and, by analogy, present manageability risks similar to their class  
3 certification risks. Despite these considerations, the parties agreed to a fair and appropriate PAGA  
4 allocation of \$75,000.

#### 5 **8. Summary of Reasonableness and Adequacy of Monetary Terms**

6 The total Settlement of \$357,500 results in a substantial benefit to all Settlement Class and  
7 PAGA Group Members and is fair and reasonable under all the relevant circumstances.

8 While Plaintiffs estimated maximum potential liability of \$425,795.14 in damages for  
9 overtime; \$74,461.69 in rest period premiums; \$74,461.69 in meal period premiums; \$9,913.41 in  
10 expense reimbursement damages; \$90,529.32 in waiting time penalties; \$38,400.00 in wage  
11 statement violations; and \$347,575.00 in PAGA penalties, including stacking; Defendant of course  
12 denies that any sums are owed on these claims. (RO ¶ 13)

13 However, Defendant obtained purported releases after the parties' first mediation failed and  
14 argued that the releases were valid and extinguished putative class members' wage and hour claims.  
15 *See Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4<sup>th</sup> 796 (2009) ("...there is no statute providing  
16 that an employee cannot release his claim to past overtime wages as part of a settlement of a bona  
17 fide dispute over those wages."). While Plaintiffs contended that the releases were invalid, there is a  
18 significant risk that the releases would be upheld. *See Camp v. Alexander*, 300 F.R.D. 617 (N.D.  
19 Cal. 2014) ("The caselaw nearly universally observes that employer-employee contact is particularly  
20 prone to coercion..."); *see also County of Santa Clara v. Astra USA, Inc.*, 2010 WL 2724512 at \*  
21 (N.D. Cal. 2010) ("The putative class members can be misled through omissions and failure to  
22 provide enough information, which can include the failure to append the plaintiffs' complaint to a  
23 settlement offer.")

Further, the policy under California law in favor of settlement in class actions and other complex cases applies with particular force here. Certainty of recovery is enhanced by an equitable and timely consummated settlement such as that under consideration in this case. The expense of protracted litigation in these cases is formidable. Here, Settlement Class and PAGA Group Members will be sent checks for their Individual Settlement Payments and PAGA Payments, respectively, based on their pay periods worked during the Settlement Class Period and the PAGA Period. (Settlement, ¶ III.C.)

As demonstrated above, the Settlement provides meaningful relief for disputed wage and hour violations and is well within the range of reasonableness given all of the circumstances, including that Defendant obtained numerous releases from putative class members.

**B. The Settlement Fairly, Reasonably, and Adequately Compensates Settlement Class and PAGA Group Members Through a Fair Allocation Formula.**

The entire Net Settlement Amount will be payable to Settlement Class Members without them being required to submit any sort of claim form. (Settlement, ¶ III.C.1.) The payments to them will be allocated based on their respective pay periods, as with the PAGA payments. (Settlement, ¶ III.C.2; V.A.5.d.) This method for allocating the Net Settlement Amount to Settlement Class Members is fair, adequate, and reasonable because Settlement Class Members with more pay periods are more likely to have been subjected to more alleged violations than those with fewer. The Settlement, as structured, recognizes this and compensates Settlement Class Members based on the number of pay periods. Thus, the method of allocation is fair, adequate, and reasonable.

**C. The Proposed Awards of Attorneys' Fees and Costs Are Fair, Adequate, and Reasonable and Should Be Preliminarily Approved.**

“Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 47 fn. 11 [quoting *Shaw v. Toshiba America Information*

1 *Systems, Inc.* (E.D. Tex. 2000) 91 F.Supp.2d 942, 972].) This is also consistent with Plaintiff's  
2 counsel's experience in these types of cases. Here, Plaintiffs' counsel intends to request attorneys'  
3 fees of \$119,166.67 (one-third of the GSA) and actual costs up to \$10,000. (Settlement, ¶ III.B.2;  
4 V.A.5.b) In view of Plaintiffs' attorneys' efforts and risks in pursuing this case, the results  
5 achieved, the amount of time and hours expended into the litigation, and the experience of counsel  
6 in other cases, these amounts are reasonable and thus warrant preliminary approval. Moreover,  
7 under a catalyst theory, Plaintiffs contend that they are entitled to attorneys' fees on the \$102,000  
8 paid by Defendant for releases after a failed mediation because Plaintiffs' lawsuit led to Defendant  
9 seeking such releases. *Skaff v. Rio Nido Roadhouse*, 55 Cal. App. 5<sup>th</sup> 522 *as modified on denial of*  
10 *reh'g* (Oct. 20, 2020) *review denied* (Jan. 13, 2021) (under a catalyst theory, "...plaintiff must show  
11 (1) that there was a causal connection between the lawsuit and the relief obtained; (2) that the suit  
12 had sufficient legal merit, and (3) that the plaintiff made a reasonable attempt to 'settle the matter  
13 short of litigation.'"); *see also Vasquez v. State of California*, 45 Cal. 4<sup>th</sup> 243 *as modified* (2008);  
14 *City of Norco v. Mugar*, 59 Cal. App. 5<sup>th</sup> 786 (2020) *review denied* (Mar. 17, 2021).<sup>4</sup>  
15  
16  
17

18 **D. The Proposed Incentive Awards to Plaintiffs Are Also Fair, Adequate, and**  
19 **Reasonable and Should Be Preliminarily Approved.**

20 Courts routinely approve incentive awards to compensate named plaintiffs for the services  
21 they provide and the risks they incur during class action litigation, often in much higher amounts  
22 than that sought here. (See, e.g., *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726  
23 [upholding "service payments" to named plaintiffs for their efforts in bringing the case]; *Van*  
24 *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294 [approving \$50,000  
25 enhancement award].) Here, the Settlement provides that each of the Plaintiffs may seek an Incentive  
26  
27

28 <sup>4</sup> Plaintiffs will provide further briefing on attorneys' fees at final approval.

1 Award of up to \$15,000 each. (Settlement, ¶ III.B.1.) This is entirely reasonable given Plaintiffs'  
2 efforts in this case and the risks they undertook on behalf of the Settlement Class and PAGA Group.  
3 Here, Plaintiffs advanced the interests of the Settlement Class and PAGA Group by, among other  
4 things, speaking with counsel over the telephone, assisting counsel in identifying potential claims  
5 and and in preparing for the mediation (in Plaintiff James's case) or settlement discussions, and  
6 communicating regularly with counsel. (RO ¶ 15) Further, Plaintiffs took the personal risks of  
7 potentially facing intrusive discovery and disclosure to future employers that they sued a former  
8 employer, making their futures uncertain. Finally, Plaintiffs are agreeing to a much broader release  
9 of claims than other Settlement Class and PAGA Group Members, including a release of known and  
10 unknown claims and a waiver of Civil Code section 1542. Given these considerations, these modest  
11 Incentive Awards to Plaintiffs are appropriate and justified as part of the Settlement.  
12

13 **V. This Court Should Conditionally Certify the Class Because It Meets All the**  
14 **Requirements for Class Certification for Settlement Purposes Only Under Code of**  
15 **Civil Procedure § 382.**

16 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable and  
17 its members are too numerous for joinder to be practical; (2) the representative and absent class  
18 members share a community of interest and questions of law and fact common to the class  
19 predominate over questions unique to individual class members; (3) the representative's claims are  
20 typical of the class' claims; and (4) the representative will fairly and adequately represent the class'  
21 interests. See, e.g., *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. "[I]t is also well  
22 established that trial courts should use different standards to determine the propriety of a settlement  
23 class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used  
24 for settlement cases." *Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th  
25 836, 859 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 & fn.19 (*Dunk*)].) As  
26 the court noted in *Dunk*, although certification requirements are intended "to protect the interests of  
27  
28

1 the non-representative class members,” that concern is “protected by the trial court’s fairness review  
2 of the settlement.” *Dunk*, 48 Cal. App. 4th at p. 1807 n.19.

3 **A. The Class Is Objectively Ascertainable.**

4 A class is ascertainable when it may be readily identified without unreasonable expense or  
5 time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932  
6 [citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579] The Class is defined as “all employees  
7 employed by Defendant in the role of ‘Driver Trainer’ and classified as exempt during the Settlement  
8 Class Period excluding the employees who worked for Defendant in that role during that period and  
9 previously signed individual settlement agreements with Defendant[,]” with the “Settlement Class  
10 Period” defined as March 19, 2017 through the date of the Preliminary Approval Order. (Settlement,  
11 ¶¶ II.38, 40) This is an ascertainable class because its members may be identified by reference to  
12 Defendants’ records, from which they have agreed to share the relevant information from to facilitate  
13 the process. (RO ¶ 58; Settlement, ¶ III.E.2.a.) Thus, the Class is ascertainable.

14  
15 **B. The Membership of the Class Is Sufficiently Numerous.**

16 No set number of class members is required as a matter of law to maintain a class action.  
17 *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030. Accordingly, the California Supreme Court  
18 has upheld a class of 10 individuals. *Bowles v. Superior Court* (1955) 44 Cal.2d 574. Here, based on  
19 the information furnished by Defendant, there are 3 Settlement Class Members and 15 PAGA Group  
20 Members (all of whom would have been Settlement Class Members, but for their execution of  
21 individual releases in exchange for payments totaling \$102,000). (Settlement, ¶ III.C.5.) It would be  
22 impractical and economically inefficient to require each Settlement Class Member to separately  
23 maintain an individual action or be joined as a named plaintiff in this action. Moreover, class  
24 certification here is for settlement purposes only. In light of these considerations, the Class’s  
25 membership is sufficiently numerous. *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695.

1                   **C. Common Questions Predominate Over Individual Questions.**

2                   A question of law or fact is common to the members of a class if it may be resolved through  
3 common proof. *See, e.g., Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1305. As for  
4 predominance, it “is a comparative concept, and ‘the necessity for class members to individually  
5 establish eligibility and damages does not mean individual fact questions predominate.’” *Sav-On*  
6 *Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 334 (“*Sav-On*”) [quoting *Reyes v. San*  
7 *Diego County Bd. of Supervisors* (1979) 196 Cal.App.3d 1263, 1278] Thus, “[i]ndividual issues do  
8 not render class certification inappropriate so long as such issues may effectively be managed.” *Id*  
9

10                  Here, common questions include, but are not limited to: (1) whether Defendant provided  
11 Settlement Class Members with lawful meal and rest breaks or premium payments in lieu thereof;  
12 (2) whether Defendants failed to keep accurate records of Settlement Class Members’ hours worked;  
13 (3) whether Defendants maintained policies that failed to authorize all required meal and rest periods  
14 for Settlement Class Members under required time constraints; (4) whether Defendants failed to pay  
15 Settlement Class Members for all hours worked, including overtime; (5) whether Defendants failed  
16 to provide accurate wage statements to Settlement Class Members as a result of its failure to pay for  
17 all time worked; and (6) whether Defendants failed to reimburse Settlement Class Members for all  
18 necessary business expenses.  
19

20                  From their review of the documentation provided, Plaintiffs’ counsel determined that for  
21 purposes of these claims, Defendant’s policies and practices are either identical or sufficiently similar  
22 to raise the same questions of liability and applied to all Settlement Class Members. Because  
23 Settlement Class Members would have to prove the same issues of law and fact to prevail – namely,  
24 that they did not receive overtime, meal and rest premiums – and because their potential legal  
25 remedies are identical, it would be preferable to resolve all Settlement Class Members’ claims by  
26 means of the Settlement than to require each Settlement Class Member to litigate his or her  
27  
28

individual claims. Therefore, common questions predominate over any questions that may be unique to individual Settlement Class Members, and class-wide settlement is superior to any other method of resolution.

**D. Plaintiffs Are Typical of the Class.**

Typicality “requires a showing that the class representative has claims or defenses typical of the class.” *Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069 This focuses on “the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought.” *Hanon v. Dataproducts Corp.* (9th Cir. 1992) 976 F.2d 497, 508 [internal citations and quotations omitted] This requirement ensures that the named plaintiff has interests that are reasonably co-extensive with those of absent class members. *Id* “The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.” *Id* [internal quotations and citations omitted] Notably, “it has never been the law in California that the class representative must have *identical* interest with the class members.” *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.

In light of these standards, Plaintiffs are typical of the Class. Like Settlement Class Members, each of Plaintiffs worked for Defendant in non-exempt capacities, were subject to the same general wage and hour practices, including those concerning overtime and meal and rest periods. In addition, Defendant would assert the same defenses to Plaintiffs’ claims as to those of Settlement Class Members—e.g., that all meal and rest periods were properly provided, that all required wages were paid, that all necessary expenses were reimbursed, and that none of their claims would be certified for class treatment outside the settlement context, and that any failures to pay wages, meal or rest period premiums, and related wage statement inaccuracies, if they occurred at all, resulted from good faith mistakes. Thus, Plaintiffs are typical of the Settlement Class.

1           **E.      Plaintiffs Will Adequately Represent the Settlement Class.**

2           The adequacy requirement is met where the plaintiffs are represented by counsel qualified to  
3 conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to the class's  
4 interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words, where the  
5 plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling  
6 conflicts of interest that might hinder the plaintiff's ability to represent the class. *Id*

7           Both of these requirements are met in this case. First, Plaintiffs' counsel is adequate to  
8 represent the Settlement Class. Plaintiffs' attorneys collectively have significant experience in labor  
9 and employment litigation, including numerous wage and hour class action matters. (RO ¶ 63-66)  
10 Moreover, adequacy of counsel may be presumed absent a contrary showing. *Guar. Ins. Agency Co.*  
11 *v. Mid-Cont'l Rty. Coj.* (N.D. Ill. 1972) 57 F.R.D. 555, 565-566 Second, Plaintiffs are adequate to  
12 represent the Settlement Class. (RO ¶¶ 3-6) Plaintiffs and Settlement Class Members have strong and  
13 co-extensive interests in this litigation because they all worked for Defendant during the relevant  
14 time period in the state of California, suffered the same alleged injuries from the same alleged course  
15 of conduct, and there is no evidence of any conflict of interest between Plaintiffs and Settlement  
16 Class Members. (RO ¶ 14) Moreover, Plaintiffs have demonstrated their commitment to the  
17 Settlement Class by, among other things, retaining experienced counsel, speaking to help them  
18 identify claims and evaluate the case, assisting them in preparing for mediation (in Plaintiff James's  
19 case) and gathering information. (RO ¶ 15) Thus, Plaintiffs are adequate to serve as the Class  
20 Representatives for the Settlement Class.  
21  
22

23           Accordingly, this case meets all the requirements for class certification for settlement  
24 purposes only under Code of Civil Procedure § 382.  
25

26       **VI.   THIS COURT SHOULD APPROVE THE PROPOSED NOTICE AND RELATED**  
27       **PROCEDURES BECAUSE THEY ADEQUATELY APPRISE SETTLEMENT**  
28       **CLASS MEMBERS OF THEIR RIGHTS UNDER THE SETTLEMENT AND**

1                   **SATISFY DUE PROCESS.**

2           Plaintiffs request that this Court approve the proposed plans for giving notice to the  
3 Settlement Class and administering the Settlement. The standard for determining the adequacy of  
4 notice is whether the notice has “a reasonable chance of reaching a substantial percentage of the class  
5 members.” *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974 This process is described in more  
6 detail in Paragraph III E.2 of the Settlement. It includes multiple measures to ensure that as many  
7 Settlement Class Members as practicable receive actual notice of the Settlement and have sufficient  
8 time to exercise their rights. For example, the proposed notice plan calls for first-class mailings to all  
9 Settlement Class Members within ten (10) business days of receipt of the Class List from Defendant,  
10 as well as additional steps to search for a more current address for any returned notices. These  
11 methods meet the constitutional standards as well as the standards under California Rule of Court  
12 3.766, subds. (d)-(e) and should be approved. *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797,  
13 811-812  
14

15           With respect to its content, “[The] notice given to the class must fairly apprise the class  
16 members of the terms of the proposed compromise and of the options open to dissenting class  
17 members.” *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152 The  
18 purpose of the notice is to give class members sufficient information to decide whether they should  
19 accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Id*  
20 Here, the Class Notice (Settlement, Ex. A) provides the Class with all pertinent information that they  
21 need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it  
22 clearly and concisely explains, among other things: (1) what the Settlement is about; (2) who is a  
23 Class Member; (3) how Class Counsel will be paid; (4) how to receive Settlement Share; (5) how to  
24 opt out of the Class; (6) how to object to the Settlement; (7) how the Settlement will be allocated; (8)  
25 how payments to Class Members will be calculated; and (9) the Class Member’s estimated Settlement  
26  
27  
28

1 Share. Further, the Class Notice Packet will be in English, which is sufficient given that at least two  
2 of three Settlement Class Members are English speakers and, in any event, there is contact  
3 information for the third Settlement Class Member to contact Plaintiff's counsel. Accordingly, the  
4 Notice should be approved because it describes the Settlement with sufficient clarity and specificity  
5 to explain to Settlement Class Members what this case is about, their rights under the Settlement, and  
6 how to exercise those rights.

7 **VII. CONCLUSION**

8  
9 For the reasons set forth herein, this Court should certify the Settlement Class for settlement  
10 purposes only under Code of Civil Procedure § 382, approve the resolution of the PAGA claim  
11 pursuant to Labor Code, § 2699(1)(2), preliminarily approve the Settlement, direct that notice be  
12 disseminated to Settlement Class Members, schedule a final approval hearing, and adopt the  
13 [Proposed] Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement  
14 submitted concurrently herewith.

15  
16 Respectfully submitted,  
17 THE OTTINGER FIRM, P.C.

18  
19  
20 Dated: April 20, 2022

21 BY   
22 Robert Ottinger  
23 Attorneys for Plaintiffs  
24  
25  
26  
27  
28