

1 Robert W. Ottinger (SBN 156825)
2 robert@ottingerlaw.com

3 THE OTTINGER FIRM, P.C.

4 535 Mission Street

5 San Francisco, CA 94105

6 Telephone: (415) 262-0096

7 Facsimile: (212) 571-0505

8 Attorneys for Plaintiff

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**
12

13 JAMIE JAMES and SPENCER JOHNSTON,
14 individually and on behalf of all others similarly
15 situated,

16 Plaintiffs,

17 vs.

18 J.J. KELLER & ASSOCIATES, INC., and DOES
19 1-50, inclusive,

20 Defendants.

Case No. 21STCV10996

**DECLARATION OF ROBERT OTTINGER
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

Date: August 3, 2022

Time: 10:00 a.m.

Location: Department 7
Spring Street Courthouse
312 N. Spring St.

Los Angeles, CA 90012

Judge: Hon. Amy D. Hogue

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1. I am an attorney in good standing duly admitted to the State Bar of California and an attorney of record for Plaintiffs in this action against Defendant J.J. Keller & Associates, Inc. (hereafter, “Defendant”).

3. My firm, The Ottinger Firm, P.C., is an employment law firm with offices in New York and San Francisco. We have been focusing on employment law since 1999 and have represented thousands of people over the years in various employment matters, including wage & hour class actions.

5. I started the Ottinger Firm in 1999. At the Ottinger Firm, I served as lead counsel in over two hundred employment cases involving a wide range of legal claims, a role in which I continue to engage. I have handled Fair Labor Standards Act cases since 2008. The Ottinger Firm, in addition to this case, has handled numerous class actions involving wage and hour claims. The Ottinger Firm has

1 represented or continues to represent Plaintiffs in, among others, the following class and/or collective
2 actions and putative class and/or collective actions:

- 3 a. *Spencer v. Bargain Land*, 10-CV-957 (E.D.N.Y)
- 4 b. *Mas v. Cumulus Media Inc.*, 10-CV-01396 (N.D. Cal)
- 5 c. *Fouathia v. Gurwitch Products*, 10-CV-6411(S.D.N.Y)
- 6 d. *Me Gomez v. Bloomberg Technology, Inc.*, 10-CV-6412 (S.D.N.Y)
- 7 e. *Bardouille v. Goldman Sachs & Co.*, 10-CV-6412 (S.D.N.Y.)
- 8 f. *Ellis v. Ben's Asphalt, et al.*, 30-2009-00329394 (Cal. Orange Co. Sup. Court)
- 9 g. *Parnell v. Kroll On Track, Inc.*, 11-CV-0473 (S.D.N.Y)
- 10 h. *Landin v. UBS*, 10-CV-711 (S.D.N.Y)
- 11 i. *Mas v. Cumulus Media Partners*, 10-CV-1396 (N.D. Cal.)
- 12 j. *Martinez v. Forest Laboratories*, 10-CV-06032 (S.D.N.Y)
- 13 k. *Orgill v. Ingersoll-Rand Company*, 101142-2010 (S.D.N.Y)
- 14 l. *Staley v. Lifetouch, Inc.*, 10-CV-3464 (N.D. Cal)
- 15 m. *Dorn v. Eddington Security, Inc.*, 08-CV-10271 (S.D.N.Y)
- 16 n. *Olivia v. Executive Cellular Phones, Inc.*, 11-CV-3994 (S.D.N.Y)
- 17 o. *Vosilla v. Novo Nordisk, Inc.*, 11-CV-3744 (E.D.N.Y)
- 18 p. *Chisholm v. Sanofi-Aventis U.S. LLC*, 11-CV-7758 (S.D.N.Y)
- 19 q. *McKenzie v. Schulte Roth & Zabel, LLP*, 11-CV-3991 (S.D.N.Y)
- 20 r. *Cruz v. Shiseido Americas, Inc.*, 11-CV-6622 (S.D.N.Y)
- 21 s. *Doyle v. MapMyFitness*, 11-CV-05879 (D.N.J)
- 22 t. *Butt v. Megabus Northeast, LLC*, 11-CV-3993 (S.D.N.Y)
- 23 u. *Gomez v. Gravitas Technology, Inc.*, 10-CV-6412 (S.D.N.Y)
- 24 v. *Szu v. TGI Friday's, Inc.*, 12-CV-2707 (E.D.N.Y)
- 25 w. *Keller v. Axa Equitable Life Insurance Company*, 12-CV-4565 (S.D.N.Y)
- 26 x. *Lebron v. Apple-Metro, Inc.*, 12-CV-1870 (S.D.N.Y)
- 27 y. *Dalton v. Gem Financial Services, Inc.*, 15-CV-05636 (E.D.N.Y)

1 6. Among these cases, The Ottinger Firm has been appointed as class counsel in *Barouille*
2 *v. Goldman Sachs & Co.*, 10-CV-4285, (S.D.N.Y); *Mas v. Cumulus Media Partners*, 10-CV-1396 (N.D.
3 Cal); *Landin v. UBS*, 10-CV-711, (S.D.N.Y); *Martinez v. Forest Laboratories*, 10-CV-06032,
4 (S.D.N.Y); *Orgill v. Ingersoll-Rand Company*, 101142/2010, (S.D.N.Y); *Butt v. Megabus Northeast*,
5 *LLC*, 11-CV-3993, (S.D.N.Y); *Gomez v. Gravitas Technology, Inc.*, 10-CV-6412, (S.D.N.Y); *Fouathia*
6 *v. Gurwitch Products*, 10-CV-6411, (S.D.N.Y); *McKenzie v. Schulte Roth & Zabel, LLP*, 11-CV-3991,
7 (S.D.N.Y); *Dorn v. Eddington Security*, 08-CV-10271, (S.D.N.Y), (co-counsel with Outten & Golden
8 LLP); and *Lebron v. Apple-Metro, Inc.*, 12-CV-1411, (S.D.N.Y).

9 7. Defendant is a Wisconsin-based company that helps businesses “ensure safe, respectful
10 workplaces, job sites and highways” (www.jjkeller.com/learn/purpose), including training drivers to
11 operate commercial motor vehicles similar to UPS box-trucks safely so they can deliver goods sold on
12 Amazon. Plaintiff James filed the original complaint in this action on March 19, 2021, in the Los
13 Angeles Superior Court. Subsequently, on January 4, 2022, Plaintiff James amended her complaint,
14 adding Spencer Johnston as a plaintiff and a PAGA claim. The operative amended complaint alleges
15 that Defendant failed to pay overtime wages, reimburse necessary business expenses, provide accurate
16 wage statements, waiting time penalties, and civil penalties under PAGA, *inter alia*.

17
18 8. After agreeing to participate in a mediation, Defendant provided Plaintiffs with informal
19 discovery. This included a chart of driver-trainers, their dates of employment, and salaries. Based on
20 this information, Plaintiffs prepared a detailed mediation brief and calculated the potential exposure
21 based on a variety of assumptions.

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

11 10. Plaintiffs are unaware of any class actions that overlap with this case.

12 11. Plaintiffs brought claims alleging Defendants failed to pay for putative class members’
13 expenses, which were necessary to perform their job duties, including expenses for cell phones, Covid
14 supplies like masks and Covid tests in the midst of the pandemic, Adobe Acrobat Pro needed for pdfs
15 of mandatory company paperwork, televisions needed to show trainees how to track hours worked on
16 an app, and two Uber rides needed after dropping off trucks.

17 12. Defendants’ approximate exposure for PAGA penalties is \$347,575.00.

18 13. Plaintiffs estimate maximum potential liability of \$425,795.14 in damages for overtime;
19 \$74,461.69 in rest period premiums; \$74,461.69 in meal period premiums; \$9,913.41 in expense
20 reimbursement damages; \$90,529.32 in waiting time penalties; \$38,400.00 in wage statement violations;
21 and \$347,575.00 in PAGA penalties, including stacking; Defendant of course denies that any sums are
22 owed on these claims.

23 14. Plaintiffs and Settlement Class Members have strong and co-extensive interests in this
24 litigation because they all worked for Defendant during the relevant time period in the state of California,
25 suffered the same alleged injuries from the same alleged course of conduct, and there is no evidence of
26 any conflict of interest between Plaintiffs and Settlement Class Members.

1 15. Moreover, Plaintiffs have demonstrated their commitment to the Settlement Class by,
2 among other things, retaining experienced counsel, speaking to Plaintiff's counsel by phone to help them
3 identify claims and evaluate the case, assisting them in preparing for mediation (in Plaintiff James's
4 case) or settlement discussions and gathering information, and communicating regularly with Plaintiffs'
5 counsel.

6 16. Named Plaintiffs agreed to prosecute this case on a class action basis and agreed to
7 represent the interests of all members of the class.

8 17. Attached as Exhibit 1 is a true and correct copy of the settlement agreement in this action.

9 18. Attached as Exhibit 2 is a true and correct copy of the amended complaint in this action.

10 19. Attached as Exhibit 3 is a true and correct copy of DLSE opinion letter dated March 5,
11 1997.

12 20. Plaintiff gave written notice by online filing with the LWDA and to Defendant of the
13 specific provisions of the Labor Code alleged to have been violated pursuant to Labor Code § 2699.3.
14 Attached as Exhibit 4 is a true and correct copy of this notice.

15 21. The LWDA has not taken action to date with respect to Plaintiffs' notices and Plaintiffs
16 filed the operative Amended Complaint in this action, alleging claims under PAGA premised on
17 violations of Labor Code set out in Plaintiffs' Amended Complaint. Plaintiffs' lawsuit is asserted on
18 behalf of themselves and all Aggrieved Employees.

19 22. Plaintiff submitted the Settlement Agreement, this Motion, and all supporting documents
20 to the LWDA on April 20, 2022, concurrently with the filing of this Motion. Attached as Exhibit 5 is a
21 copy of the LWDA confirmation.

22 23. I declare under the penalty of perjury of the laws of the State of California that the
23 foregoing is true and correct.

24 Executed on April 20, 2022, at San Francisco, California.

25
26
27 
28 ROBERT OTTINGER
Declarant

Exhibit 1

AKERMAN LLP

Sarah Kroll-Rosenbaum (SBN 272358)
sarah.kroll-rosenbaum@akerman.com
Anthony D. Sbardellati (SBN 246431)
anthony.sbardellati@akerman.com
Venessa Drake (SBN 319844)
Venessa.drake@akerman.com
601 West Fifth Street, Suite 300
Los Angeles, CA 90071
Telephone: (213) 688-9500
Facsimile: (213) 627-6342

Attorneys for Defendant
J.J. KELLER & ASSOCIATES, INC.

THE OTTINGER FIRM, P.C.

Robert W. Ottinger (SBN 156825)
535 Mission Street
San Francisco, CA 94105
robert@ottingerlaw.com
Telephone: (415) 262-0096
Facsimile: (212) 571-0505

Attorneys for Plaintiffs
JAMIE JAMES and SPENCER JOHNSTON

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

JAMIE JAMES and SPENCER JOHNSTON,
individually and on behalf of all others similarly
situated,

Plaintiffs,

vs.

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

Defendants.

Case No. 21STCV10996
(Assigned to the Hon. Amy D. Hogue,
Dept. 7)

**JOINT STIPULATION OF CLASS AND
PAGA SETTLEMENT AND RELEASE
BETWEEN PLAINTIFFS AND
DEFENDANT**

Complaint Filed: March 19, 2021
Trial Date: None Set

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1 This Joint Stipulation and Settlement Agreement (hereinafter “Settlement,” “Agreement,” or
2 “Settlement Agreement”) is entered into by and between Defendant J.J. Keller & Associates, Inc.
3 (“Defendant”), on the one hand, and Plaintiffs Jamie James (“James”) and Spencer Johnston
4 (“Johnston”) (collectively with James, “Representative Plaintiffs”), on behalf of themselves, each
5 member of the Settlement Class, and each member of the PAGA Group, on the other hand, subject to
6 the terms and conditions hereof and the approval of the Court pursuant to California Rule of Court
7 3.769 and California Labor Code § 2699(1)(2).

8 **I. SUMMARY OF SETTLEMENT TERMS**

9 Under the terms of this Settlement, Defendant will pay the Gross Settlement Amount of
10 \$357,500.00, without reversion, in exchange for the consideration and subject to the terms and
11 conditions discussed herein. Authorized Claimants will not be required to make a claim to receive a
12 Settlement Award. With the exception of employer-side payroll taxes, Defendant will not be required
13 to pay anything more than the Gross Settlement Amount.

14 The Parties will seek the Court’s approval of this Settlement pursuant to both California Rule
15 of Court 3.769 and California Labor Code § 2699(1)(2). Following entry of the Preliminary Approval
16 Order, individuals who are members of the Settlement Class will be provided with the Class Notice.
17 Further, the members of the Settlement Class will be provided with an opportunity to exclude
18 themselves from this Settlement Agreement during the Opt-Out Period (except that all Settlement
19 Class Members who worked for Defendant during the PAGA Period are also PAGA Group Members
20 and will receive a PAGA Payment regardless of whether they opt-out). Individuals who are members
21 of the PAGA Group, only, will not be provided with an opportunity to exclude themselves from this
22 Settlement Agreement and will automatically receive the PAGA Payment following Final Approval.
23 Should the Court not approve this Settlement, the Settlement Agreement shall be deemed null and
24 void *ab initio* and of no force and effect.

25 Finally, in exchange for the consideration discussed herein: (1) Representative Plaintiffs agree
26 to a general release of any and all claims, except as expressly excluded in this Agreement, that they
27 have against Defendant pursuant to the Personal Release contained herein; (2) the Settlement Class

Members who do not opt-out will release the Class Released Claims by participating in the Settlement; (3) the PAGA Group Members will release the PAGA Released Claims; and (4) the Labor & Workforce Development Agency (“LWDA”) will release its claims and/or right to recover civil penalties against Defendant for Labor Code or Wage Order violations suffered by any of the Settlement Class Members (regardless of whether they opt out of this Settlement) and PAGA Group Members which are premised upon the facts and allegations in the Complaint or First Amended Complaint.

II. DEFINITIONS

As used in this Settlement Agreement, the following terms shall have the following meanings:

1. “Action” means the civil action titled *James et al. v. J.J. Keller & Associates, Inc.*, pending in the Superior Court of California, County of Los Angeles, Case No. 21STCV10996.

2. “Authorized Claimants” means and includes all members of the Settlement Class who do not timely opt-out of this Settlement.

3. “Claims Administration Costs” means the fees and costs incurred or charged by the Claims Administrator in connection with the execution of its duties under this Settlement Agreement including, but not limited to: (a) preparing, issuing, mailing and/or monitoring reports, filings, and notices; (b) computing the amount of the individual Settlement Awards, individual PAGA Payments, and any other payments to be made under this Settlement Agreement, and issuing those payments; (c) handling inquiries about the calculation of individual Settlement Awards and individual PAGA Payments; (d) establishing and operating a Settlement payment center address and phone number to receive inquiries about the Settlement; and (e) preparing and issuing any tax forms required under the law and/or this Agreement, and preparing and submitting any filings required by any governmental taxing authority or other governmental agency.

4. “Claims Administrator” means the third-party entity that Class Counsel and Defense Counsel mutually selected to process and administer the terms of this Settlement Agreement, as approved by the Court.

1 5. “Class Counsel” means Robert Ottinger, Esq. of The Ottinger Firm, P.C.

2 6. “Class Notice” means the notice to be sent to the individuals who are members of the
3 Settlement Class after the Court preliminarily approves the terms contained in this Agreement,
4 informing them of the material terms of the Settlement, why they are receiving the Class Notice, and
5 what their options are with respect to the Settlement. The proposed Class Notice is attached as Exhibit
6 A to this Settlement Agreement.

7 7. “Class Notice Packet” means and includes: (a) the Opt-Out Form and (b) the Class
8 Notice.

9 8. “Class Released Claims” means the claims released as follows: Representative
10 Plaintiffs and the members of the Settlement Class who do not opt out of the settlement will release
11 the Released Parties from all claims as pled in the Complaint, First Amended Complaint, and any
12 further amended pleadings as necessary, including claims for (1) failure to provide meal periods; (2)
13 failure to provide rest periods; (3) failure to pay minimum and overtime wages; (4) wage statement
14 violations; (5) failure to pay wages at time of termination/waiting time penalties; (6) unfair business
15 practices/unfair competition; (7) failure to reimburse for business expenses; and (8) violation of
16 California Labor Code section 2698, *et seq.* (“PAGA”) based on the allegations in the operative First
17 Amended Complaint, as well as any and all wage and hour claims that were asserted or could have
18 been asserted based on the factual allegations contained in the Complaint, First Amended Complaint,
19 or any amended complaints. This also includes, but is not limited to, any and all claims alleged or that
20 could have been alleged based on the facts of Plaintiffs' First Amended Complaint or any amended
21 complaint for unpaid wages, economic damages, non-economic damages, any other damages, civil or
22 statutory penalties, waiting time penalties, liquidated damages, and all other associated damages
23 and/or penalties, including but not limited to claims under Labor Code section 2698, *et seq.*, Labor
24 Code sections 200-204, 210, 212, 218.5, 218.6, 221, 223, 225.5, 226, 226(a), 226(e), 226.2, 226.3,
25 226.7, 246, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802,
26 2810.5, 6310, all applicable IWC Wage Orders, Business and Professions Code section 17200 *et seq.*,
27 and any and all claims or potential claims for lost wages and/or benefits, consequential economic
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1 damages, other economic damages, punitive damages, emotional distress damages, reputation
2 damages, any other damages, attorneys' fees and costs and interest. For Representative Plaintiffs and
3 the members of the Settlement Class who do not opt out of the Settlement, the Class Release shall
4 include all released claims from March 19, 2017 through the date of preliminary approval of the
5 settlement ("Settlement Class Release Period"). However, regardless of whether the members of the
6 Settlement Class opt out of the Settlement: (a) this Agreement shall be effective to release the PAGA
7 claim (i.e., the Judgment on this Settlement will have res judicata effect as to the PAGA claim for all
8 members of the Settlement Class, regardless of whether those members opt-out of the Settlement); and
9 (b) this Agreement shall be effective to adjudicate and release the claims and/or rights of the LWDA
10 to recover civil penalties against Defendant for Labor Code or Wage Order violations suffered by any
11 of the Settlement Class members (regardless of whether they opt out of this Settlement) which are
12 premised upon the facts and allegations in the Complaint, First Amended Complaint, or any amended
13 complaint, as well as any and all claims for civil penalties that were asserted or could have been
14 asserted based on the factual allegations contained in the Complaint, First Amended Complaint, or
15 any amended complaint (i.e., the Judgment on this Settlement will have res judicata effect as to those
16 claims of the LWDA, whether pursued directly by the LWDA or by a representative pursuant to
17 PAGA).

18 9. "Class Lists" means the lists to be provided to the Class Administrator, which consist
19 of the following information as pertains to the members of the Settlement Class and the PAGA Group:
20 (a) their first and last names; (b) last-known addresses; (c) dates of employment; (d) social security
21 numbers; (e) the number of pay periods worked during the Settlement Class Period, if any; and (f) the
22 number of pay periods worked during the PAGA Period, if any.

23 10. "Court" means the Superior Court of California for the County of Los Angeles, in
24 which the Action is pending, or any other Court with proper jurisdiction over this Action.

25 11. "Defendant" means J.J. Keller & Associates, Inc.

26 12. "Defense Counsel" means Sarah Kroll-Rosenbaum, Esq., Anthony Sbardellati, Esq.,
27 and Venessa Drake, Esq. of Akerman LLP.

13. “Effective Date” means the date when the Settlement becomes final, which is 65 days after the date when the Final Approval Order and Judgment in this Action is entered, unless there is an appeal. If there is an appeal, the Effective Date will be the date on which (a) all such appeals have been dismissed; or (b) the appropriate Court of Appeals has entered a final judgment affirming the Final Approval Order and Judgment, which (i) is no longer subject to any further appellate challenge, or (ii) has been affirmed by the California Supreme Court, whichever is earlier.

14. “FAC” means the First Amended Complaint, which is the operative complaint in the Action, filed by Representative Plaintiffs on January 4, 2022.

15. “Final Approval Date” means the date of entry of the Order granting final approval of this Settlement Agreement.

16. “Final Approval Hearing” means the hearing following the Opt-Out Period, at which time the Parties will request the Court to finally and fully approve the fairness, reasonableness, and adequacy of the Settlement Agreement and to enter a Final Approval Order and Final Judgment.

17. “Final Approval Order” means the Order granting final approval of this Settlement.

18. “Final Judgment” or “Judgment” means the judgment entered by the Court pursuant to the terms set forth in this Settlement Agreement, finally and fully giving effect to the terms contained herein.

19. “Gross Settlement Amount” means the total amount of \$357,500.00 paid by Defendant in full satisfaction of the Class Released Claims, the PAGA Released Claims, and all claims released by Representative Plaintiffs pursuant to the Personal Release, and includes (a) the payments previously made by Defendant pursuant to the individual settlement agreements with certain members of the PAGA Group, which total \$102,000.00; (b) all individual Settlement Awards payable to the Authorized Claimants; (c) all individual PAGA Payments payable to the PAGA Group Members; (d) Representative Plaintiffs' Incentive Awards; (e) Class Counsel's attorneys' fees and costs (owed under this Agreement, under a catalyst theory, or otherwise); (f) the Claims Administration Costs; (g) the portion of the PAGA Fund payable to the LWDA; and (h) all legally required employment tax payments (except for any employer-side payroll taxes).

20. “Incentive Awards” means the 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.

21. “Net Settlement Amount” (“NSA”) means the portion of the Gross Settlement Amount 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. The NSA will fund the Settlement Awards paid to the Authorized Claimants among the Settlement Class Members.

22. “Opt-Out Form” means a form by which the members of the Settlement Class may seek exclusion from the Settlement Agreement. The proposed Opt-Out Form is attached as Exhibit B to this Settlement Agreement.

23. “Opt-out Period” means the 45 calendar-day period after the mailing of the Class Notice Packets to the members of the Settlement Class, during which they can timely opt out of the Settlement Agreement.

24. “PAGA Fund” means the portions of the Gross Settlement Amount the Parties have agreed to allocate to settle and resolve the claims for civil penalties under PAGA, which totals \$75,000.00. Of the \$75,000.00 PAGA Fund, 75% shall be paid to the LWDA and 25% shall be used to fund the individual PAGA Payments to the PAGA Group Members.

25. “PAGA Group” means all employees employed by Defendant in the role of “Driver Trainer” and classified as exempt during the PAGA Period, regardless of whether those employees previously signed individual settlement agreements with Defendant.

26. “PAGA Group Members” means all individuals in the PAGA Group.

27. “PAGA Payment(s)” means the individual gross payments from the PAGA Fund to the PAGA Group Members made pursuant to the terms of this Settlement Agreement in exchange for their release of the PAGA Released Claims.

1 28. “PAGA Period” means the period from March 1, 2020 through the date of the
2 Preliminary Approval Order.

3 29. “PAGA Released Claims” means the claims released as follows: Representative
4 Plaintiffs and the members of the PAGA Group will release the Released Parties from all claims as
5 pled in the Complaint, First Amended Complaint, and any further amended pleadings as necessary,
6 for violation of California Labor Code section 2698, *et seq.* (“PAGA”) based on the allegations in the
7 operative First Amended Complaint, as well as any and all PAGA claims that were asserted or could
8 have been asserted based on the factual allegations contained in the Complaint, First Amended
9 Complaint, or any amended complaints. This also includes, but is not limited to, any and all PAGA
10 claims alleged or that could have been alleged based on the facts of Representative Plaintiffs' First
11 Amended Complaint or any amended complaint, including but not limited to claims for civil penalties
12 under Labor Code section 2698, *et seq.*, Labor Code sections 200-204, 210, 212, 218.5, 218.6, 221,
13 223, 225.5, 226, 226(a), 226(e), 226.2, 226.3, 226.7, 246, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5,
14 1194, 1194.2, 1197, 1197.1, 1198, 2698, *et seq.*, 2802, 2810.5, 6310 and all applicable IWC Wage
15 Orders. There shall be no right to opt-out of the Settlement for members of the PAGA Group and the
16 Judgment on this Settlement will have res judicata effect as to the PAGA claim for all members of the
17 PAGA Group. Moreover, this Agreement shall be effective to adjudicate and release the claims and/or
18 rights of the LWDA to recover civil penalties against Defendant for Labor Code or Wage Order
19 violations suffered by any of the PAGA Group Members which are premised upon the facts and
20 allegations in the Complaint, First Amended Complaint, or any amended complaint, as well as any
21 and all claims for civil penalties that were asserted or could have been asserted based on the factual
22 allegations contained in the Complaint, First Amended Complaint, or any amended complaint (i.e.,
23 the Judgment on this Settlement will have res judicata effect as to those claims of the LWDA, whether
24 pursued directly by the LWDA or by a representative pursuant to PAGA). For Representative
25 Plaintiffs, the PAGA Group Members, and the LWDA, the PAGA Release shall include all released
26 claims from March 1, 2020 through the date of preliminary approval of the settlement (“PAGA Group
27 Release Period”).

1 30. “Parties” means James, Johnston, and Defendant, collectively.

2 31. “Party” means either James, Johnston, and/or Defendant, individually.

3 32. “Personal Release” means:

- 4 a. Representative Plaintiffs James and Johnston release the Released Parties from any and
5 all claims, known and unknown, relating to their employment with Defendant, of any
6 nature whatsoever, from the beginning of time through the date on which this
7 Settlement is executed. This includes but is not limited to all claims pled in the
8 Complaint, the First Amended Complaint, and any further amended pleading as
9 necessary, with a corresponding California Civil Code section 1542 waiver, including
10 but not limited to claims for (1) failure to provide meal periods; (2) failure to provide
11 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;
13 (6) unfair business practices/unfair competition; (7) failure to reimburse for business
14 expenses; and (8) violation of California Labor Code section 2698, *et seq.* (“PAGA”).
15 This also includes, but is not limited to, any and all claims for unpaid wages, economic
16 damages, non-economic damages, any other damages, civil or statutory penalties,
17 waiting time penalties, liquidated damages, and all other associated damages and/or
18 penalties, including but not limited to any and all claims under Labor Code section
19 2698 *et seq.*, Labor Code sections 200-204, 210, 212, 218.5, 218.6, 221, 223,
20 225.5, 226, 226(a), 226(e), 226.2, 226.3, 226.7, 246, 510, 512, 558, 558.1, 1102.5,
21 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 2810.5, 6310, IWC Wage
22 Order 1-2001, IWC Wage Order 7-2001, and any other applicable wage orders,
23 Business and Professions Code section 17200 *et seq.*, Government Code section 12900
24 *et seq.*, the common law, and any and all claims or potential claims for lost wages
25 and/or benefits, consequential economic damages, other economic damages, punitive
26 damages, emotional distress damages, reputation damages, any other damages,
27 attorneys’ fees and costs and interest.

- b. With respect to claims released in Section 32.a., Representative Plaintiffs expressly waive the benefits of California Civil Code § 1542. Civil Code § 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Notwithstanding the provisions of § 1542, and for the purpose of implementing a complete release and discharge of the claims in the Personal Release, Representative Plaintiffs expressly acknowledge that this Agreement is intended to include in its effect all claims they do not know of or suspect to exist in their favor at the time of execution hereof and that this Agreement contemplates the extinguishment of all such claims.

33. “Preliminary Approval Motion” means the motion that will be filed by Representative Plaintiffs to obtain the Court’s (a) preliminary approval of this Settlement, (b) approval of the Class Notice and the Opt-Out Form, and (c) provisional certification of the Settlement Class.

34. “Preliminary Approval Order” means the order preliminarily approving this Settlement, provisionally certifying the Settlement Class, and approving the Class Notice and the Opt-Out Form.

35. “Qualified Settlement Fund Account” means the account into which the Claims Administrator will transfer the Gross Settlement Amount pursuant to Internal Revenue Code § 1.468B-1.

36. “Released Parties” means Defendant; and, Defendant's past, present, or future subsidiaries, divisions, affiliates, clients, predecessors, successors, and assigns, officers, directors, agents, employees, advisors, insurers, attorneys, executors, administrators, servants, owners, shareholders, bondholders, partners, and any parent or related organizations, successors in interest, and/or representatives.

37. “Settlement Award” means the gross payment from the NSA to any Authorized

1 Claimant in the Settlement Class made pursuant to the terms of this Settlement Agreement in exchange
2 for their release of the Class Released Claims.

3 38. “Settlement Class” consists of all employees employed by Defendant in the role of
4 "Driver Trainer" and classified as exempt during the Settlement Class Period, excluding the employees
5 who worked for Defendant in that role during that period and previously signed individual settlement
6 agreements with Defendant.

7 39. “Settlement Class Member(s)” means all individuals in the Settlement Class.

8 40. “Settlement Class Period” means the period from March 19, 2017 through the date of
9 the Preliminary Approval Order.

10 **III. BACKGROUND**

11 James initiated the Action on March 19, 2021 by filing the initial complaint in this matter.
12 Thereafter, on January 4, 2022, James and Johnston filed the FAC, alleging causes of action for (1)
13 failure to provide meal periods, (2) failure to authorize or permit rest periods, (3) failure to pay
14 overtime wages, (4) failure to provide accurate, itemized wage statements, (5) waiting time penalties,
15 (6) unfair business practices, (7) failure to reimburse for business expenses, and (8) violation of PAGA,
16 on behalf of themselves and a putative class of persons who have been employed by Defendant in
17 California since March 19, 2017.¹ Defendant filed its Answer to the FAC on February 3, 2022.

18 Since the Action was commenced, the Parties have engaged in extensive discovery, and
19 exchanged information and documents related to issues of class certification, the merits of the claims
20 set forth in the FAC, and potential exposure. In July 2021, the Parties engaged in efforts to mediate
21 the Action. Specifically, on July 14, 2021, the Parties participated in a full day mediation before the
22 Honorable Suzanne Segal (Ret.), which did not result in a resolution. Following the Parties' July 14,
23 2021 mediation, Defendant entered into individual settlement agreements with 12 of the 15 members
24 of the PAGA Group, pursuant to which those particular PAGA Group Members released the class
25 claims pursued by Representative Plaintiffs in the Action, in exchange for payments totaling
26

27 ¹ Although the statutory period commences on March 19, 2017, Defendant did not employ any
28 members of the Settlement Class or PAGA Group until late 2019.

1 \$102,000.00. Thereafter, however, the Parties continued their settlement negotiations over the course
2 of several months and ultimately, in February 2022, their post-mediation settlement negotiations
3 resulted in an executed Memorandum of Understanding laying out, in summary terms, the present
4 Settlement Agreement between the Parties.

5 Class Counsel has investigated the facts relating to the claims alleged in the Action, and
6 analyzed the legal principles applicable to those claims. Based upon Class Counsel's discovery,
7 investigation, and legal evaluation, and taking into account the sharply contested legal and factual
8 issues involved, Class Counsel's assessment of the uncertainties of complex litigation, and the relative
9 benefits conferred upon the Settlement Class and the PAGA Group pursuant to this Settlement
10 Agreement, Class Counsel has concluded that a settlement with Defendant on the terms set forth in
11 this Agreement is fair, reasonable, adequate, and in the best interests of the Representative Plaintiffs,
12 the Settlement Class Members, and the PAGA Group Members. In particular, Class Counsel and
13 Representative Plaintiffs understand the risks of the arguments and defenses asserted by Defendant in
14 the Action.

15 Defendant denies the allegations in the Action in their entirety and any and all liability arising
16 out of the conduct alleged in the FAC. Defendant also denies that, if the case were to proceed, any
17 class could be certified. Defendant has asserted defenses to the claims alleged in the Action, has always
18 maintained that Defendant complied at all times with the California Labor Code and the California
19 Business and Professions Code, and further maintains that Representative Plaintiffs, the Settlement
20 Class Members, and the PAGA Group Members have been properly paid all wages and all other
21 payments owed to them under all applicable laws.

22 Nevertheless, Defendant has concluded that further defense of this Action would likely be
23 protracted and expensive. Substantial amounts of Defendant's time, energy, and resources have
24 already been expended, and absent this Settlement, will continue to be expended in defense of the
25 claims asserted in this Action. Defendant has, therefore, agreed to settle in the manner and upon the
26 terms described in this Agreement to put to rest the claims set forth in the Action.

1 The Parties and their counsel specifically agree that Defendant's agreement to settle this matter
2 is not, and shall not be construed as, an admission of any wrongdoing whatsoever by Defendant.

3 **IV. SETTLEMENT APPROVAL & IMPLEMENTATION PROCEDURE**

4 **A. Mutual Cooperation**

5 The Parties agree to cooperate fully with each other to accomplish the terms and requirements of
6 this Settlement Agreement, including the execution of such documents and the taking of such other action
7 as may be necessary to implement the terms of this Agreement.

8 **B. Class Certification for Settlement Purposes Only**

9 For settlement purposes only, the Parties agree that the requisites for establishing class certification
10 with respect to the Settlement Class are met, and that the Settlement Class may be certified. If the
11 Settlement fails to be approved or otherwise fails to be consummated for any reason whatsoever, then
12 Defendant retains all rights previously available to it, and any provisional certification of any class, or the
13 adoption of any procedure herein, shall be undone and the Parties restored to their pre-Settlement status.

14 **C. Preliminary Approval of the Settlement**

15 After signing this Settlement Agreement and no later than April 20, 2022, Plaintiffs will file the
16 Preliminary Approval Motion, including such papers, pleadings, and evidence as may be required for the
17 Court to determine that this Agreement is fair, adequate, and reasonable, per California Rule of Court 3.769
18 and approve this Agreement per California Labor Code § 2699(1)(2). Such submissions will also include
19 the proposed Class Notice and Opt-Out Form attached hereto as Exhibits A and B, for the Court to approve.
20 Defense Counsel shall have a reasonable opportunity to review and comment on that motion before it is
21 filed.

22 **D. LWDA Notice**

23 Simultaneously with filing the Preliminary Approval Motion, Class Counsel will submit a copy of
24 this Settlement to the LWDA as required by Labor Code § 2699(1)(2).

25 **E. Notice, Opt-Outs, and Objections**

26 Subject to the approval of the Court, and after Preliminary Approval, Settlement Class Members
27 will be provided notice of the Settlement in the form of the proposed Class Notice attached hereto as
28

1 Exhibit A.² The Parties believe and agree that the following proposed procedures will provide the best
2 practicable notice to the Settlement Class:

3 1. No later than 10 business days after the date of the entry of the Preliminary Approval Order,
4 Defendant shall provide the Class List to the Claims Administrator.

5 2. Neither Defendant nor the Claims Administrator shall provide the identification of
6 Settlement Class Members to the Representative Plaintiffs, Class Counsel, any other Settlement Class
7 Member, or to any other person or entity. However, before the Claims Administrator provides notice to
8 the Settlement Class Members as outlined below, it will advise the Parties of the total number of Settlement
9 Class Members, and the total number of pay periods on the Class Lists.

10 3. If Defendant and the Claims Administrator determine, based upon further review of
11 available data, that a person previously identified as being a Settlement Class Member should not be so
12 included, or if they identify a person who should have been included as a Settlement Class Member but
13 was not so included, Defendant and the Claims Administrator shall promptly delete or add such person as
14 appropriate and immediately notify Class Counsel prior to such deletions or additions (and the reasons
15 therefore).

16 4. After receipt of the Class List and prior to mailing, the Claims Administrator will perform
17 a search based on the National Change of Address (“NCOA”) Database for information to update and
18 correct for any known or identifiable address changes.

19 5. No later than 20 business days after the date of entry of the Preliminary Approval Order,
20 the Claims Administrator shall send the Class Notice Packet to all Settlement Class Members via first-
21 class mail, postage prepaid, using the most current mailing address information available as contained in
22 the Class List, or as updated following the NCOA search.

23 5. Any Class Notice Packets returned to the Claims Administrator as non-delivered before
24 the expiration of the Opt-Out Period shall be sent to the forwarding addresses affixed thereto. If no
25 forwarding address is provided for a Class Notice Packet that is returned as non-delivered, then such Class

26 ² PAGA Group Members who are not also Settlement Class Members will be provided notice of the
27 Settlement in the form of their individual PAGA Payments, only, which will be distributed after Final
28 Approval.

1 Notice Packet will be re-sent by the Claims Administrator after the address is updated using customary
2 skip-trace procedures based on the individual's social security number and other available data, including
3 address searches using public and proprietary electronic resources which collect their data from various
4 sources such as utility records, property tax records, motor vehicle registration records, and credit bureaus.
5 Undelivered Class Notice Packets will be re-sent within 5 business days after the Claims Administrator
6 receives notice that the Class Notice Packet was undeliverable.

7 6. The objection deadline shall not be extended for members of the Settlement Class whose
8 original notices are re-mailed pursuant to paragraph IV.E.5.

9 7. Other than the obligations set forth in this Settlement Agreement, Representative Plaintiffs,
10 Class Counsel, Defendant, Defense Counsel, and the Claims Administrator shall have no additional
11 obligation to identify or locate any Settlement Class Members, or have any liability in connection with the
12 provision of information to the Claims Administrator or otherwise.

13 8. Requests for Exclusion/Opt Outs. The Class Notice shall provide that Settlement Class
14 Members who wish to exclude themselves from the Settlement Agreement must return an Opt-Out Form
15 or other written letter to the to the Claims Administrator by mail, postmarked on or before the expiration
16 of the Opt-Out Period. Such written request for exclusion must contain all of the information requested on
17 the Opt-Out Form (i.e. if a Settlement Class Member submits some other form of written exclusion as an
18 Opt-Out Form, it must also include the Settlement Class Member's name, address, last 4 digits of their
19 Social Security Number/Tax ID Number, and a statement that they request exclusion from the Settlement
20 Agreement and do not wish to participate in the settlement). The Opt-Out Form must be personally signed
21 by the Settlement Class Member who seeks to opt out. No opt-out request may be made on behalf of more
22 than one Settlement Class Member. The postmark date of the mailing envelope shall be the exclusive
23 means used to determine whether an Opt-Out Form has been timely submitted and the Claims
24 Administrator shall have the sole power to determine timeliness or validity of an opt-out, but may confer
25 with counsel for the Parties in reaching that determination. Any Settlement Class Member who opts out of
26 the Settlement Agreement will not be entitled to any Settlement Award attributable to his or her
27 membership in the Settlement Class; however, such individuals will still be entitled to a pro rata share of

1 the PAGA Fund in the form of an individual PAGA Payment if such individuals are also PAGA Group
2 Members. Further, any Settlement Class Member who opts out of the Settlement Agreement will not be
3 bound by the Settlement Agreement, except as they may be affected by the PAGA Released Claims and
4 the LWDA's release of claims. Lastly, any Settlement Class Member who opts out of the Settlement
5 Agreement will not have any right to object, appeal, or comment on the terms of this Settlement
6 Agreement.

7 9. Objections to Settlement. The Class Notices shall state that those Settlement Class
8 Members who wish to object to the Settlement Agreement should submit a written statement of objection
9 on or before the expiration of the Opt-Out Period to the Claims Administrator. The Notice of Objection
10 should include the case name, case number, and the basis for the objection. Regardless of whether a
11 Settlement Class Member has complied with this procedure, he or she will be permitted to speak to the
12 Court at the Final Approval Hearing.

13 10. No Encouragement of Objections, Opt-Outs, or Appeals. At no time shall any of the Parties
14 or their counsel seek to solicit or encourage Settlement Class Members to opt-out, object to, or to appeal
15 from the Final Approval Order and Final Judgment.

16 11. Right to Rescission In Event of Excess Opt-Outs. Notwithstanding any other provision of
17 this Settlement Agreement, Defendant shall retain the right, in the exercise of its sole discretion, to nullify
18 the Settlement Agreement within 10 business days of receipt of the Opt-Out Report as detailed in paragraph
19 IV.F.2., below, if more than 15% of Settlement Class Members opt out of the Settlement Agreement
20 pursuant to paragraph IV.E.8., above. In the event of such a rescission, no Party may use the fact that any
21 Party agreed to settle this case as evidence of Defendant's liability in this lawsuit or the lack thereof, or that
22 class certification is proper for any purpose other than settlement. If Defendant exercises its right to
23 rescission under this paragraph, it shall bear the Claims Administration Costs incurred through the date of
24 rescission.

25 **F. Reports by the Claims Administrator**

26 1. Weekly Reports. Starting on the date that the Claims Administrator receives the Class List,
27 the Claims Administrator shall provide weekly reports to counsel for the Parties detailing the progress of

1 the claims process outlined herein.

2 2. Opt-Out Report by the Claims Administrator. No later than 5 business days after the Opt-
3 Out Period expires, the Claims Administrator shall provide counsel for the Parties with a declaration setting
4 forth: (a) due diligence and proof of mailing of the Class Notice Packets; (b) the total amounts to be paid
5 to the Settlement Class; (c) the total amount to be paid to the PAGA Group; and (d) the total number of
6 Settlement Class Members who timely mailed Opt-Out Forms or objections to the Settlement Agreement
7 (“Opt-Out Report”), along with the complete copies of all Opt-Out Forms and objections received,
8 including the postmark dates for each (including any Opt-Out Forms or objections received after the close
9 of the Opt-Out Period). The Parties may challenge the validity of any returned Opt-Out Form and the
10 Claims Administrator will be the sole arbiter of its validity.

11 **G. Motion for Final Approval**

12 Plaintiffs will file with the Court a motion for final approval of this Settlement no later than 5 court
13 days (subject to Court approval of shortened notice) before the date of the Final Approval Hearing, which
14 will be set by the Court.

15 **H. Final Approval Hearing**

16 After expiration of the Opt-Out Period, the Court shall conduct a Final Approval Hearing to
17 determine final approval of the Settlement Agreement along with the amounts properly payable for:
18 (i) Class Counsel’s attorneys’ fees and costs; (ii) the Incentive Awards to Plaintiffs; (iii) Claims
19 Administration Costs; and (iv) the PAGA Fund. Upon final approval of the Settlement Agreement by
20 the Court at or after the Final Approval Hearing, the Parties shall present a final order to the Court for
21 its approval and entry. After entry of the Final Approval Order, which shall include the Judgment, the
22 Court shall have continuing jurisdiction over the Action for purposes of addressing: (i) settlement
23 administration matters; (ii) such post-Final Approval Order matters as may be appropriate under Court
24 rules or as set forth in this Settlement Agreement; and (iii) ruling on the stipulated request for entry of
25 an Amended Final Judgment of the entire Action when all aspects of the Settlement Agreement have
26 been consummated, in compliance with Code of Civil Procedure Section 384(b). Within 10 calendar
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1 days of entry of the Final Approval Order, Class Counsel will submit a copy thereof to the LWDA as
2 required by Labor Code § 2699(1)(3).

3 **V. SETTLEMENT FUND AND SETTLEMENT AWARD CALCULATION**

4 **A. Gross Settlement Amount**

5 1. Defendant shall pay the Gross Settlement Amount of \$357,500.00 to settle this Action,
6 which is inclusive of the \$102,000.00 credit for the individual payments already made by Defendant
7 to certain members of the PAGA Group in resolution of their class claims (leaving a balance of
8 \$255,500.00 remaining to be deposited by Defendant as set forth in paragraph V.A.2., below). In no
9 event shall the Gross Settlement Amount exceed the sum of \$357,500.00. The Gross Settlement
10 Amount is based in part on the following:

- 11 a. Settlement Class: during the Settlement Class Period and through February 10, 2022,
12 55 pay periods (which the parties assume will increase pro rata through the date of
13 Preliminary Approval) and 3 Settlement Class Members, assuming a 15% margin of
14 error.
- 15 b. PAGA Group: during the PAGA Period and through February 10, 2022, 442 pay
16 periods (which the parties assume will increase pro rata through the date of Preliminary
17 Approval) and 15 PAGA Group Members, assuming a 15% margin of error.
- 18 c. If the number of pay periods is either 15% more or 15% less than these estimates (after
19 accounting for a pro rata increase through Preliminary Approval), the Parties agree to
20 meet and confer to adjust the closing date of the Settlement Class Period and/or the
21 PAGA Period.

22 2. Deposit. Fourteen days after the Effective Date, Defendant shall deliver via wire
23 transfer to the Claims Administrator the Gross Settlement Amount (excluding the credit of
24 \$102,000.00 already paid) plus its share of employer-side payroll taxes. Immediately upon receipt by
25 the Claims Administrator, these funds shall be transferred into a Qualified Settlement Fund Account.
26 No Party shall have any further obligation for any payment under this Settlement Agreement to
27 Plaintiffs, the Settlement Class Members, the PAGA Group Members, the LWDA, Class Counsel, or
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1 the Claims Administrator.

2 3. Disbursement by Claims Administrator. All disbursements hereunder shall be made
3 from the Qualified Settlement Fund Account, and only the Claims Administrator shall be authorized
4 to make withdrawals or payments from that account.

5 4. Payroll Taxes. The Gross Settlement Amount will not cover Defendant's share of
6 employer-side payroll taxes on the Settlement Awards paid to the Authorized Claimants. Such taxes
7 shall be borne by Defendant, exclusive of the Gross Settlement Amount.

8 5. Payments from the Gross Settlement Amount. Subject to Court approval and for
9 purposes of effectuating this Settlement Agreement, the following amounts shall be paid by the Claims
10 Administrator from the Gross Settlement Amount:

11 a. Incentive Awards: Subject to Court approval, in exchange for Representative Plaintiffs'
12 release of all claims in the Personal Release and covenant not to sue (as described
13 below), and in addition to their individual Settlement Awards as Authorized Claimants
14 and individual PAGA Payments as PAGA Group Members: (i) \$15,000.00 will be paid
15 to James as an Incentive Award for her efforts in bringing and prosecuting this matter;
16 and (ii) \$15,000.00 will be paid to Johnston as an Incentive Award for his efforts in
17 bringing and prosecuting this matter. The Qualified Settlement Fund Account shall
18 issue an IRS Form 1099 for these payments. The Claims Administrator shall pay the
19 Incentive Awards approved by the Court within 10 business days after deposit of the
20 Gross Settlement Amount by Defendant. Any amounts not approved by the Court as
21 Incentive Awards up to the amounts set forth in this paragraph shall be added back to
22 the NSA. As part of their consideration for the Incentive Awards, Representative
23 Plaintiffs covenant and agree not to assert any claim released by the Personal Release,
24 or to commence, join in, or voluntarily assist in a lawsuit or adversary proceeding
25 against the Released Parties, or any of them, arising out of or regarding the claims
26 released by the Personal Release.

27 b. Class Counsel Attorneys' Fees and Costs: Class Counsel shall make a motion for
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1 reasonable attorneys' fees and costs incurred in the Action, which shall be heard
2 concurrently with the motion for final approval of the Settlement. The attorneys' fees
3 requested by Class Counsel shall not exceed one-third (33.33%) of the Gross
4 Settlement Amount, or \$119,166.67. This amount will compensate Class Counsel for
5 work already performed and all remaining work to be performed in the Action. Class
6 Counsel's separate request for reimbursement of costs shall not exceed the amount of
7 their reasonable costs actually incurred, up to a maximum of \$10,000.00.

- 8 i. Defendant and its attorneys agree not to oppose any application or motion by
9 Class Counsel for their attorneys' fees and costs up to the sums set forth herein,
10 so long as any such application or motion is consistent with the provisions of
11 this Settlement Agreement, and Class Counsel agrees not to petition the Court
12 for any additional payments for fees, costs, or interest.
- 13 ii. The Claims Administrator shall pay the attorneys' fees and costs approved by
14 the Court from the Gross Settlement Amount within 10 business days after its
15 deposit. Any amounts not approved by the Court in attorneys' fees and costs,
16 up to the amounts set forth herein, shall be added back to the NSA.
- 17 iii. The attorneys' fees and costs approved by the Court shall constitute full
18 satisfaction of Defendant's obligation to pay amounts to any person, attorney,
19 or law firm for attorneys' fees, expenses, or costs incurred in this Action on
20 behalf of Representative Plaintiffs, the Settlement Class, and the PAGA Group,
21 and shall relieve Defendant from any other claims or liability to any other
22 attorney or law firm for any attorneys' fees, expenses, and/or costs to which any
23 of them may claim to be entitled on behalf of Representative Plaintiffs, the
24 Settlement Class, and the PAGA Group. Representative Plaintiffs further agree
25 that any allocation of fees between or among Class Counsel and any other
26 attorney representing a plaintiff and/or the Settlement Class and/or the PAGA
27 Group shall be the sole responsibility of Class Counsel, and Representative
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1 Plaintiffs agree to hold harmless Defendant from any claim by any other
2 individual, entity, or other third party seeking any additional attorneys' fees or
3 costs.

4 iv. An IRS Form 1099 shall be provided to Class Counsel for the payments made
5 to Class Counsel. Class Counsel shall be solely responsible to pay any and all
6 applicable taxes on the payments made to Class Counsel. Defendant makes no
7 representations or warranties regarding the tax consequences resulting from any
8 payments made to Class Counsel. Class Counsel agrees to hold harmless
9 Defendant, the Claims Administrator, and the Qualified Settlement Fund
10 Account from any claim or liability for taxes, penalties, or interest for which
11 Class Counsel is responsible as a result of the payment made to Class Counsel.

12 c. Claims Administration Costs: All Claims Administration Costs shall be paid from the
13 Gross Settlement Amount in an amount not to exceed \$5,000.00. Any amounts not
14 approved by the Court in Claims Administration Costs, up to the amount set forth in
15 this paragraph, shall be added back to the NSA. The Parties agree to cooperate in the
16 settlement administration process and to make all reasonable efforts to control and
17 minimize the Claims Administration Costs. The Claims Administrator shall pay itself
18 the Claims Administration Costs approved by the Court within 10 business days after
19 the deposit of the Gross Settlement Amount.

20 d. PAGA Fund: The PAGA Fund shall total \$75,000.00, allocated as follows: (i) 75% or
21 \$56,250.00 shall be paid to the LWDA within 10 business days after the deposit of the
22 Gross Settlement Amount; and (ii) the remaining 25% or \$18,750.00 shall be paid to
23 the PAGA Group Members on a pro rata basis based on pay periods worked during the
24 PAGA Period according to the formula described in paragraph V.B.1.b.

25 **B. Settlement Awards to Authorized Claimants; PAGA Payments to All PAGA**
26 **Group Members; Formula**

27 1. Solely for purposes of effectuating this Settlement Agreement and in exchange for the
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1 release of the Class Released Claims and PAGA Released Claims, Authorized Claimants and PAGA
2 Group Members shall be paid pursuant to the following formulas:

3 a. The individual Settlement Award to the Authorized Claimants within the Settlement Class
4 shall be paid from the NSA in the amount(s) calculated as follows: Each Authorized
5 Claimant within the Settlement Class (i.e., the Settlement Class Members who do not
6 timely and validly opt-out) will be paid a pro rata share of the NSA based on the number
7 of pay periods he or she worked for Defendant during the Settlement Class Period as a
8 Settlement Class Member, divided by the total number of pay periods worked by all
9 Authorized Claimants within the Settlement Class during the Settlement Class Period.
10 Each of the amounts in this section is subject to change depending on the final tally of
11 Authorized Claimants.

12 b. The individual PAGA Payments to the PAGA Group Members shall be paid from 25% of
13 the PAGA Fund in the amount(s) calculated as follows: Each PAGA Group Member will
14 be paid a pro rata share of 25% of the PAGA Fund based on the number of pay periods he
15 or she worked for Defendant during the PAGA Period as a PAGA Group Member, divided
16 by the total number of pay periods worked by all PAGA Group Members during the PAGA
17 Period.

18 3. The Claims Administrator shall be responsible for determining eligibility for, and the
19 amount of: (i) the individual Settlement Awards to be paid to the Authorized Claimants among the
20 Settlement Class; and (ii) the individual PAGA Payments to be paid to the PAGA Group Members.
21 Settlement Awards shall be paid to Authorized Claimants and PAGA Payments shall be paid to the PAGA
22 Group Members no later than 10 business days after the deposit of the Gross Settlement Amount.

23 4. The individual Settlement Awards and individual PAGA Payments shall be treated by all
24 Parties as follows:

25 a. The individual Settlement Awards paid to the Authorized Claimants within the Settlement
26 Class shall be treated as 75% non-wage penalties and interest, to be reported to the
27 Authorized Claimants on an IRS Form 1099 and shall not be subject to withholdings, and

1 25% wages, subject to withholdings, to be reported to the Authorized Claimants on an IRS
2 Form W-2.

3 b. The individual PAGA Payments paid to the PAGA Group Members shall be treated as
4 75% non-wage penalties and 25% interest, to be reported to the PAGA Group Members
5 on an IRS Form 1099, and shall not be subject to withholdings.

6 5. Authorized Claimants and PAGA Group Members shall be solely and legally responsible
7 to pay any and all applicable taxes on the payments made to them. Defendant makes no representations or
8 warranties regarding the tax consequences or obligations resulting from any payments made to Authorized
9 Claimants and PAGA Group Members.

10 6. All eligibility, individual Settlement Award determinations, and individual PAGA
11 Payment determinations shall be based on pay period counts based on payroll data and/or dates of
12 employment as maintained in Defendant's records, which Defendant will make available as needed to the
13 Claims Administrator. Settlement Class Members shall have an opportunity to dispute the pay period
14 information as reflected in the Class Notices. The Claims Administrator shall have the sole authority to
15 resolve any such disputes, and may consult with Class Counsel and Defense Counsel in doing so. Any
16 individual Settlement Awards that are undeliverable to Authorized Claimants and any individual PAGA
17 Payments that are undeliverable to PAGA Group Members shall be distributed to the California State
18 Controller's Office pursuant to the procedures of the State of California's Unclaimed Property Law.

19 7. All checks for individual Settlement Awards and PAGA Payments shall remain valid and
20 negotiable for 90 days from the date of their issuance. The Claims Administrator will include with the
21 checks a letter stating that the check must be cashed or deposited within 90 days. The funds represented
22 by individual Settlement Award and PAGA Payment checks returned as undeliverable and those checks
23 remaining un-cashed for more than 90 days after issuance shall be retained by the Claims Administrator.
24 Any amounts from such checks that remain uncashed and otherwise unclaimed shall be distributed to the
25 California State Controller's Office pursuant to the procedures of the State of California's Unclaimed
26 Property Law.

27 8. The aggregate amount of the individual Settlement Awards paid to Authorized Claimants
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1 shall not under any circumstances exceed the NSA, and the aggregate amount of the individual PAGA
2 Payments paid to the PAGA Group Members shall not under any circumstances exceed 25% of the PAGA
3 Fund.

4 9. There shall be language included on the back of the individual Settlement Award and
5 PAGA Payment checks that states the following:

6 Paid pursuant to the court approved Settlement in *James, et al. v. J.J. Keller & Associates Inc.*,
7 Case No. 21STCV10996, Superior Court of California, County of Los Angeles

8 **C. Taxes**

9 1. Withholding and Reporting Requirements. The Claims Administrator shall be
10 responsible for ensuring that all taxes associated with this Settlement Agreement are timely paid to
11 the appropriate tax authorities. The Claims Administrator's responsibilities include the following: (i)
12 filing all federal, state, and local tax deductions; (ii) timely and proper filing of all required federal,
13 state and local forms with the appropriate taxing authorities; and (iii) completing any other steps
14 necessary for compliance with any tax obligations of the Settlement under federal, state, and/or local
15 law, as applicable. To verify the Claims Administrator's compliance with the foregoing withholding
16 and reporting requirements, as soon as administratively practicable, the Claims Administrator shall
17 furnish Class Counsel and Defense Counsel with copies of all forms detailing the payment of taxes
18 sufficient to prove that such payments were properly remitted. The Claims Administrator shall provide
19 a final accounting declaration adequate to demonstrate full compliance with all duties set forth in this
20 Settlement Agreement, including, but not limited to, tax withholding, payment, and reporting
21 obligations.

22 2. Determination and Payment of Taxes. The Claims Administrator shall determine the
23 amount of any taxes to be withheld from each Authorized Claimant's individual Settlement Award
24 and issue the appropriate IRS Forms to the Authorized Claimant. All such withholdings shall be
25 remitted by the Claims Administrator to the proper governmental taxing authorities. Each Authorized
26 Claimant and PAGA Group Member shall be responsible for any tax consequences of any funds paid
27 out to him or her pursuant to this Settlement Agreement.

3. Circular 230 Disclaimer. Each Party to this Settlement Agreement (for purposes of this paragraph, only, referred to as the “Acknowledging Party”; and each Party to this Settlement Agreement other than the Acknowledging Party, an “Other Party”) acknowledges and agrees that (1) no provision of this Settlement Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisors, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the Acknowledging Party (a) has relied exclusively upon his, her, or its own, independent legal and tax advisers for advice (including tax advice) in connection with this Settlement Agreement, (b) has not entered into this Settlement Agreement based upon the recommendation of any Other Party or any attorney or advisor to any Other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any Other Party to avoid any tax penalty that may be imposed on the Acknowledging Party; and (3) no attorney or adviser to any Other Party has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement Agreement.

4. Completion of and Report on Settlement Administration. Administration of the Settlement Agreement shall be completed on or before the eleventh business day after the deposit of the Gross Settlement Amount. Upon completion of administration of the Settlement Agreement, the Claims Administrator shall provide written certification of such completion and provide proof of payment at the request of the Court and/or counsel for the Parties. The Claims Administrator shall also furnish counsel for the Parties with a report showing the amounts and dates of each payment.

VI. RELEASES

Upon Final Approval by the Court of this Settlement Agreement and by operation of the Agreement’s terms, and except as to such rights or claims as may be created by this Agreement, Representative Plaintiffs, the Settlement Class Members who do not timely and validly opt-out of this

1 Settlement, and all persons purporting to act on their behalf or purporting to assert a claim under or
2 through them, including, but not limited to, their spouses, dependents, attorneys, heirs and assigns,
3 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal
4 representatives, and successors-in-interest, whether individual, class, collective, representative, legal,
5 equitable, direct or indirect, or any other type or in any other capacity, fully, finally, and forever settle
6 and compromise the Class Released Claims, and discharge the Released Parties from the Class
7 Released Claims.

8 Also upon Final Approval by the Court of this Settlement Agreement and by operation of the
9 Agreement's terms, and except as to such rights or claims as may be created by this Agreement,
10 Representative Plaintiffs, the PAGA Group Members, and all persons purporting to act on their behalf
11 or purporting to assert a claim under or through them, including, but not limited to, their spouses,
12 dependents, attorneys, heirs and assigns, beneficiaries, devisees, legatees, executors, administrators,
13 trustees, conservators, guardians, personal representatives, and successors-in-interest, whether
14 individual, class, collective, representative, legal, equitable, direct or indirect, or any other type or in
15 any other capacity, fully, finally, and forever settle and compromise the PAGA Released Claims, and
16 discharge the Released Parties from the PAGA Released Claims. Moreover, upon Final Approval by
17 the Court of this Settlement Agreement and by operation of law, this Agreement shall be effective to
18 adjudicate and release the claims and/or rights of the LWDA to recover civil penalties against
19 Defendant for Labor Code or Wage Order violations suffered by any of the Settlement Class Members
20 (regardless of whether they opt out of this Settlement) which are premised upon the facts and
21 allegations in the Complaint or First Amended Complaint, as well as any and all claims for civil
22 penalties that were asserted or could have been asserted based on the factual allegations contained in
23 the Complaint or First Amended Complaint (i.e., the Judgment on this Settlement will have res judicata
24 effect as to those claims of the LWDA, whether pursued directly by the LWDA or by a representative
25 pursuant to PAGA).

1 Lastly, and pursuant to this Settlement Agreement, Representative Plaintiffs hereby fully,
2 finally and forever settle and compromise the claims in the Personal Release and discharge the
3 Released Parties from all such claims.

4 **VII. FAILURE OF SETTLEMENT; IMPACT OF APPELLATE REVIEW**

5 1. Invalid without Court Approval. In the event this Settlement Agreement is not
6 approved by the Court, it shall be deemed null and void, of no force and effect, and of no probative
7 or evidentiary value, and the Parties hereto represent, warrant, and covenant that it will not be used
8 or referred to for any purpose whatsoever.

9 2. Effect of Revocation or Failure of Settlement. In the event that the Settlement does
10 not become final for any reason, this Agreement shall be null and void and any order entered by the
11 Court in furtherance thereof shall be treated as void *ab initio*. In such a case, the Parties shall return
12 to the status quo as if they had not entered into this Settlement Agreement. The Claims
13 Administrator will be paid by Defendant for its costs through the date it is notified that the
14 Settlement will not proceed.

15 3. Impact of Appellate Review. In the event an appeal is filed from any of the Court's
16 Orders, or any other appellate review is sought prior to the Effective Date, administration of the
17 Settlement Agreement shall be stayed pending final resolution of the appeal or other appellate
18 review.

19 **VIII. PARTIES' AUTHORITY**

20 1. Authority. The signatories hereto represent that they are fully authorized to enter into
21 this Settlement Agreement and bind the Parties to its terms and conditions.

22 2. No Signature Required by Settlement Class Members or PAGA Group Members on
23 Settlement Agreement. Because the Settlement Class and PAGA Group Members are numerous, it is
24 impossible or impractical to have each one execute this Agreement. The Class Notice will advise all
25 Settlement Class Members of the binding nature of the applicable releases herein, and shall have the
26 same force and effect as if this Settlement Agreement were executed by each of them. The PAGA
27

1 Group Members shall be bound by the applicable releases herein by operation of law, and shall have
2 the same force and effect as if this Settlement Agreement were executed by each of them.

3 **IX. LIMITATIONS ON USE OF THIS AGREEMENT**

4 1. No Admission of Liability or Wrongdoing. Defendant denies any and all claims
5 alleged in the FAC and denies all wrongdoing and liability whatsoever. Defendant maintains, among
6 other things, that it has complied at all times with the California Labor Code, and all applicable
7 California and federal laws. This Settlement Agreement is not a concession or admission, and shall
8 not be used against Defendant as an admission or indication with respect to any claim of any fault,
9 concession, or omission by Defendant. Whether or not the Settlement Agreement is finally approved,
10 neither the Agreement, nor any document, statement, proceeding or conduct related to this
11 Agreement, nor any reports or accounts thereof, shall in any event be: (i) construed, offered, or
12 admitted in evidence as, received as, or deemed to be, evidence for any purpose, including, but not
13 limited to, evidence of a presumption, concession, indication or admission by Defendant of any
14 liability, fault, wrongdoing, omission, concession, or damage; or (ii) disclosed or referred to for any
15 purpose, or offered or received in evidence in any further proceeding in this lawsuit, or any other
16 civil, criminal, or administrative action or proceeding against Defendant except for purposes of
17 settling the Action pursuant to this Agreement and for obtaining preliminary and final approval
18 thereof. The limitations set forth in this paragraph do not apply to any use of this Agreement by the
19 Parties to enforce this Settlement following final approval by the Court.

20 2. No Impact on Employee Benefit Plan, Policy or Bonus Program. Defendant states
21 that the amounts paid under this Settlement Agreement will not affect any previously credited hours
22 of service under any employee benefit plan, policy, or bonus program sponsored by Defendant. To
23 the extent permitted by the terms of any plan as exists at the time of the payment, the amounts paid
24 under this Agreement will not form the basis for additional contributions to, benefits under, or any
25 other monetary entitlement under any of Defendant's employee benefit plans, policies, or bonus
26 programs. Any payments made under the terms of this Agreement shall not be applied retroactively,
27 currently, or on a going forward basis as salary, earnings, wages, bonuses, commissions, or any other
28

1 form of compensation for the purposes of any of Defendant's employee benefit plan, policy, or bonus
2 program. Defendant retains the right to modify the language of its employee benefit plans, policies,
3 and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this
4 Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring
5 term as defined by applicable plans, policies, and bonus programs for the purpose of eligibility,
6 vesting, benefit accrual or any other purpose, and that additional contributions or benefits are not
7 required by this Agreement. Neither Defendant nor Representative Plaintiffs are opining on the
8 terms of any such plan.

9 3. No Publicity. Neither the Parties nor their counsel, without the prior written approval
10 of counsel for the other Party (which may be withheld in a Party's sole discretion), shall issue,
11 authorize, or contribute to the preparation or dissemination of any press release or any other public
12 statement, social media posting, or advertisement concerning this Agreement or any of its terms, or
13 sponsor or participate in any press conference, interview, media appearance, or other public
14 discussion concerning this Agreement or any of its terms. If the Parties or their counsel are contacted
15 by the press, media or any industry association, they will respond only that the Action has been
16 amicably resolved to the Parties' mutual satisfaction. Any violation of this provision by
17 Representative Plaintiffs or Class Counsel shall entitle Defendant to nullify the Settlement
18 Agreement at any time before entry of the Final Approval Order. The foregoing does not limit
19 Defendant's right to enforce this provision through an action for injunctive relief.

20 4. Various Proceedings Stayed. The Parties agree to stay all proceedings in the Action,
21 except those proceedings necessary to implement and complete the Settlement, pending the Final
22 Approval Hearing to be conducted by the Court.

23 5. Use of Defendant's Data and Documents. Representative Plaintiffs and Class Counsel
24 agree that none of the documents provided to them by Defendant during the Action shall be used for
25 any purpose other than the Settlement of this Action. Furthermore, should Representative Plaintiffs
26 or Class Counsel possess any originals or copies of Defendant's documents, they agree to destroy or
27 return such originals and copies upon the Effective Date of the Settlement Agreement.

1 **X. MISCELLANEOUS**

2 1. No Assignment of Rights. Representative Plaintiffs warrant and represent that they
3 have not assigned, transferred, or hypothecated, or purported to assign, transfer, or hypothecate to any
4 person or entity any of the claims in the Personal Release or any rights, claims, or causes of action
5 arising out of those claims. This warranty and representation of non-assignment shall survive the
6 execution of this Settlement Agreement and entry of Final Judgment in the Action. No Settlement
7 Award shall be paid to any person or entity with respect to whom Representative Plaintiffs have
8 assigned, transferred, or hypothecated, or purported to assign, transfer, or hypothecate, any of the
9 claims in the Personal Release or any rights, claims, or causes of action arising out of those claims. In
10 addition, Representative Plaintiffs shall defend, hold harmless, and indemnify the Released Parties, or
11 any of them, from and against any claims, damages, litigation, causes of action, and expenses,
12 including reasonable attorneys' fees, resulting from any breach by Representative Plaintiffs of this
13 warranty and representation, or any breach by Representative Plaintiffs of their release of claims in
14 the Personal Release.

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

19 3. Captions and Interpretations. Paragraph titles or captions contained herein are inserted
20 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope
21 of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is
22 contractual and not merely a recital.

23 4. Modification. This Settlement Agreement may not be changed, altered, or modified,
24 except in a writing signed by the Parties hereto and approved by the Court. This Settlement Agreement
25 may not be discharged except by performance in accordance with its terms or by a writing signed by
26 the Parties hereto.

8. Counterparts. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties. This Settlement Agreement will become effective on the date when the last person signs and dates it.

///

9. Governing Law. All terms of this Settlement Agreement shall be governed by and interpreted according to the laws of the State of California and the United States of America, where applicable.

DATED: April 14, 2022



Jamie James, for herself, the Settlement Class,
and the PAGA Group

DATED: April 14, 2022



Spencer Johnston, for himself, the Settlement
Class, and the PAGA Group

DATED: April ___, 2022

Amy Sabourin, on behalf of J.J. Keller &
Associates, Inc.

9. Governing Law. All terms of this Settlement Agreement shall be governed by and interpreted according to the laws of the State of California and the United States of America, where applicable.

DATED: April __, 2022	Jamie James, for herself, the Settlement Class, and the PAGA Group
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DATED: April __, 2022	Spencer Johnston, for himself, the Settlement Class, and the PAGA Group
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DATED: April <u>15</u> , 2022	<i>Amy Sabourin</i> Amy Sabourin, on behalf of J.J. Keller & Associates, Inc.
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1 **APPROVED AS TO FORM**

2
3 DATED: April 19, 2022

AKERMAN LLP

4
5 By: 

6 Sarah Kroll-Rosenbaum
7 Anthony D. Sbardellati
8 Venessa Drake
9 Attorneys for Defendant
10 J.J. KELLER & ASSOCIATES, INC.

11 DATED: April 20, 2022

THE OTTINGER FIRM, P.C.

12 By: 

13 Robert W. Ottinger
14 Attorneys for Plaintiffs
15 JAMIE JAMES AND SPENCER JOHNSTON, the
16 Settlement Class, and the PAGA Group

Exhibit A

CALIFORNIA SUPERIOR COURT FOR THE COUNTY OF LOS ANGELES

Jamie James, et al. v. J.J. Keller & Associates, Inc.
Case No. 21STCV10996

*A court has authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
Your legal rights are affected whether you act or do not act.*

NOTICE OF CLASS ACTION SETTLEMENT

To: All employees employed by J.J. Keller & Associates, Inc. ("JJK") in the role of "Driver Trainer" and classified as exempt at any point from March 19, 2017 through [REDACTED] (the "Class Period"), excluding the employees who worked for JJK in that role during that period and previously signed individual settlement agreements with JJK.

YOU MAY BE ELIGIBLE TO RECEIVE A PAYMENT FROM THE CLASS ACTION SETTLEMENT DESCRIBED IN THIS NOTICE.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	You will automatically receive a payment based on the calculation set forth in this Notice after the Court grants final approval of the settlement (the "Settlement Class Member Payment"). You will also automatically receive a PAGA Payment if you worked for JJK at any point during the period from March 1, 2020 through [REDACTED] (the "PAGA Period").
EXCLUDE YOURSELF BY [REDACTED], 2022	You may exclude yourself from ("opt out" of) the class action settlement, if you do not want to participate in the class action settlement. If you timely exclude yourself, you will not receive a Settlement Class Member Payment or release the Class Released Claims under the class action settlement. However, even if you opt-out, you will still receive the PAGA Payment, if applicable.
OBJECT BY [REDACTED], 2022	Write to the Settlement Administrator if you think the settlement is not fair. You must remain a part of the settlement to object to it, and you cannot object if you also ask to be excluded.

THESE RIGHTS AND OPTIONS – AND THE DEADLINES TO EXERCISE THEM – ARE EXPLAINED IN THIS NOTICE.

WHY AM I RECEIVING THIS NOTICE?

You received this notice because the records of JJK identify you as a member of a class who will be affected by a proposed class action settlement. The purpose of this notice is to explain the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the California Superior Court for the County of Los Angeles. The case consists of a class action titled *Jamie James, et al. v. J.J. Keller & Associates, Inc.*, Case No. 21STCV10996 (hereafter, the “Lawsuit”).

On [REDACTED], 2022, the Court entered an order granting preliminary approval of a proposed settlement and directing that this Notice be sent to class members because they have a right to know about the proposed settlement, and about all of their options, before the Court decides whether to grant final approval of the proposed settlement.

WHO IS INCLUDED IN THE SETTLEMENT?

The settlement includes anyone who is a member of the following class that has been certified for settlement purposes only (the “Settlement Class”):

All employees employed by JJK in the role of "Driver Trainer" and classified as exempt at any point from March 19, 2017 through [REDACTED] (the "Class Period"), excluding the employees who worked for JJK in that role during that period and previously signed individual settlement agreements with JJK.

JJK's records identify you as one of the individuals who falls within this class definition.

WHAT IS THIS LAWSUIT ABOUT?

The Lawsuit is brought by Jamie James and Spencer Johnston (“Plaintiffs”), two Driver Trainers formerly employed by JJK. The Lawsuit is against JJK.

In the Lawsuit, Plaintiffs allege that JJK violated California law in several ways. Specifically, the Lawsuit includes claims for (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay minimum and overtime wages; (4) wage statement violations; (5) failure to pay wages at time of termination/waiting time penalties; (6) unfair business practices/unfair competition; (7) failure to reimburse for business expenses; and (8) violation of California Labor Code section 2698, *et seq.* (“PAGA”).

JJK denies all the allegations in the Lawsuit and contends that it fully complied with the California Labor Code and all other applicable laws.

WHO ARE THE ATTORNEYS FOR THE PARTIES?

Counsel for Plaintiffs and the Class (Class Counsel)

THE OTTINGER FIRM, P.C.
Robert W. Ottinger
535 Mission Street
San Francisco, CA 94105
Tel: (415) 262-0096
Fax: (212) 571-0505

Counsel for JJK

AKERMAN LLP
Sarah Kroll-Rosenbaum
Anthony D. Sbardellati
Venessa Drake
601 W. Fifth Street, Suite 300
Los Angeles, CA 90071
Tel: (213) 688-9500
Fax: (213) 627-6342

WHY IS THERE A SETTLEMENT?

The Court has not decided the merits of the claims asserted in the Lawsuit. There was no trial. Plaintiffs have agreed to the proposed settlement because they believe it will provide prompt and substantial benefits to the Settlement Class. These benefits were compared with the risk of zero recovery after a contested trial and likely appeals, possibly years into the future. JJK vigorously denies all allegations of wrongdoing or liability whatsoever, but has agreed to the proposed settlement to eliminate the burden, expense, uncertainty, and distraction of further litigation.

WHAT IS THE SETTLEMENT AMOUNT?

The proposed Settlement provides for a total payment of \$357,500.00 (referred to as the "Gross Settlement Amount").

The portion of the Gross Settlement Amount which will be used to make the Settlement Class Member Payments – the "Settlement Class Pool" – is currently estimated to be approximately \$[REDACTED]. The Class Settlement Pool will be apportioned and paid out to members of the Settlement Class who do not request to be excluded from ("opt out" of) the class action settlement. **You are not required to do anything to be eligible to receive payment from the Settlement Class Pool.** However, if you request to be excluded from ("opt out" of) the class action settlement, you will **not** receive the Settlement Class Member Payment from the Settlement Class Pool.

In addition to the Settlement Class Member Payment, the members of the Settlement Class will receive a PAGA Payment if they worked for JJK as a Driver Trainer at any point during the PAGA Period (the "PAGA Group Members"). The portion of the Gross Settlement Amount which will be used to make the PAGA Payments to the PAGA Group Members is currently estimated to be approximately \$18,750.00 (the "PAGA Fund"). The PAGA Fund will be apportioned among and paid out to the members of the PAGA Group who worked for JJK as Driver Trainers during the PAGA Period, regardless of whether they are members of the Settlement Class and, if they are, regardless of whether they opt-out of the class action settlement.

Additionally, Class Counsel will apply to the Court for attorneys' fees of no more than one-third (\$119,166.67) of the Gross Settlement Amount and for a reimbursement for their reasonable litigation costs. Class Counsel will also apply for a service award of no more than \$15,000.00, each, for Plaintiffs Jamie James and Spencer Johnston for their work and efforts prosecuting this case, and for undertaking the risks of payment of costs (a risk if there had been an unsuccessful outcome in this Lawsuit). Settlement administration costs anticipated not to exceed \$5,000.00 and a payment of \$56,250.00 to the California Labor & Workforce Development Agency ("LWDA") for its share of PAGA penalties will also be deducted from the Gross Settlement Amount. Before they are deducted from the Gross Settlement Amount, the exact amount of these costs will be determined by the Court at the final approval hearing.

HOW WILL THE SETTLEMENT CLASS MEMBER PAYMENTS AND PAGA PAYMENTS BE CALCULATED?

Settlement Class Member Payments

The Settlement Class Pool will be allocated pro rata among the Settlement Class Members who do not request to be excluded from (“opt out” of) the class action settlement based on the number of pay periods each Settlement Class Member worked for JJK within the Class Period.

The Settlement Class Pool will first be divided by the aggregate number of pay periods that each Settlement Class Member worked during the Class Period to determine the monetary value of each qualifying pay period. The Settlement Class Member Payment to each individual Settlement Class Member will then be calculated by multiplying the number of qualifying pay periods worked by that individual during the Class Period by the monetary value of each qualifying pay period.

Each Settlement Class Member Payment will be allocated twenty-five percent (25%) to alleged unpaid wages and seventy-five percent (75%) to alleged penalties and interest. The portion of the Settlement Class Member Payment allocated to wages will be subject to regular and/or applicable payroll and income tax withholdings (just like a paycheck), and will be reported on an IRS Form W-2. The portion of the Settlement Class Member Payment allocated to penalties and interest will be reported on an IRS Form 1099. Settlement Class Members will be responsible for correctly characterizing the Settlement Class Member Payments for tax purposes and paying taxes due, if any.

PAGA Payments

The PAGA Fund will be allocated pro rata among the PAGA Group Members (regardless of whether they opt-out of the class action settlement) based on the number of pay periods each PAGA Group Member worked for JJK within the PAGA Period.

The PAGA Fund will first be divided by the aggregate number of pay periods that each PAGA Group Member worked during the PAGA Period to determine the monetary value of each qualifying pay period. The PAGA Payment to each individual PAGA Group Member will then be calculated by multiplying the number of qualifying pay periods worked by that individual during the PAGA Period by the monetary value of each qualifying pay period.

Each PAGA Payment will be allocated twenty-five percent (25%) to interest and seventy-five percent (75%) to non-wage penalties. The PAGA Payment will be reported on an IRS Form 1099. PAGA Group Members will be responsible for correctly characterizing the PAGA Payment for tax purposes and paying taxes due, if any.

HOW MUCH WILL MY PAYMENT BE?

The amount of your Settlement Class Member Payment is estimated to be \$ [REDACTED]. That amount is based on JJK's records that show that you worked [REDACTED] pay periods for JJK between March 19, 2017 and [REDACTED].

The amount of your PAGA Payment is estimated to be \$ [REDACTED]. That amount is based on JJK's records that show that you worked [REDACTED] pay periods for JJK between March 1, 2020 and [REDACTED].

WHAT SHOULD I DO IF MY QUALIFYING PAY PERIOD INFORMATION IS INCORRECT?

If you believe the number of pay periods you worked for JJK, as stated above, is incorrect, you may send a letter to the settlement administrator, [REDACTED] (hereafter “Settlement Administrator”), indicating what you believe to be the correct information. You should include any documents or other information that supports what

you believe to be the correct number of pay periods. The Settlement Administrator will resolve any dispute regarding this issue based on JJK's records and any information that you provide. The estimated payment amount and number of qualifying pay periods stated above will be presumed correct unless you supply company records from JJK or other competent records showing different information. Your letter must be postmarked on or before _____, 2022 [45 days from mailing Notice Packet] and sent to the following address:

[Settlement Administrator Line 1]
[Settlement Administrator Line 2]
[Settlement Administrator Line 3]

DO I HAVE TO TAKE ANY ACTION TO RECEIVE A PAYMENT?

No. To receive your Settlement Class Member Payment and PAGA Payment (if applicable), you do not need to do anything. If you do nothing, you will automatically receive a Settlement Class Member Payment because you are an identified Settlement Class Member. You will also receive a PAGA Payment if you worked for JJK during the PAGA Period.

However, it is your responsibility to keep the Settlement Administrator informed of any changes to your address. Any Settlement Class Member Payment and PAGA Payment will be mailed to the last known address the Settlement Administrator has on file for you. If your mailing address is different than the address to which this Notice was mailed, you should contact the Settlement Administrator to change your address at 1-800-_____. Checks for the Settlement Class Member Payment and the PAGA Payment should be deposited soon after receipt. Checks uncashed after 90 days will be voided and the funds sent to the California State Controller's Unclaimed Property Fund in your name.

WHEN WILL I GET MY PAYMENT?

The Settlement Class Member Payment and PAGA Payment (if applicable) will be distributed only if the Court approves the proposed settlement. The Court will hold a final approval hearing on _____, 2022 to decide whether to finally approve the proposed settlement. If the Court grants final approval and there is no appeal of that order, Settlement Class Member Payments and PAGA Payments (if applicable) will be distributed approximately two and one-half (2 ½) months after the Court enters a Judgment approving the settlement. If there is an appeal of the Court's Judgment granting final approval, however, the approval process will take additional time to resolve and could last for more than a year.

WHAT CLAIMS AM I RELEASING IN RETURN FOR A PAYMENT?

If the proposed settlement is finally approved by the Court, all Settlement Class Members who have not timely requested exclusion from ("opted out" of) the class action settlement will release JJK and its past, present and future subsidiaries, divisions, affiliates, clients, predecessors, successors, and assigns, officers, directors, agents, employees, advisors, insurers, attorneys, executors, administrators, servants, owners, shareholders, bondholders, partners, and any parent or related organizations, successors in interest, and/or representatives, from any and all claims that were or could have been alleged based on the facts alleged in the operative complaint on file in the Lawsuit which occurred during the Class Period (i.e. from March 19, 2017 through _____), including, but not limited to claims for (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay minimum and overtime wages; (4) wage statement violations; (5) failure to pay wages at time of termination/waiting time penalties; (6) unfair business practices/unfair competition; (7) failure to reimburse for business expenses; and (8) violation of PAGA; and also including, but not limited to, any corresponding or related or other similar claims under any federal, state, or local law ("Class Released Claims"). The Class

Released Claims expressly exclude claims of vested benefits, wrongful termination, unemployment insurance, social security, disability, and workers' compensation, and claims outside of the Class Period.

Also, if the proposed settlement is finally approved by the Court, the LWDA will release its right to recover civil penalties from JJK and its past, present and future subsidiaries, divisions, affiliates, clients, predecessors, successors, and assigns, officers, directors, agents, employees, advisors, insurers, attorneys, executors, administrators, servants, owners, shareholders, bondholders, partners, and any parent or related organizations, successors in interest, and/or representatives for Labor Code or Wage Order violations suffered by any of the PAGA Group Members who worked for JJK during the PAGA Period (regardless of whether they opt-out of the class action settlement) which are premised upon the facts and allegations in the operative complaint on file in the Lawsuit which occurred during the PAGA Period.

HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT CLASS?

If you wish to pursue your own separate legal action against JJK for the claims asserted in the Lawsuit, or if you otherwise wish not to participate in the class action settlement for whatever reason, you should exclude yourself from this case (that is, "opt out" of the class action settlement). To opt out and exclude yourself from the class action settlement, you must either (1) complete, sign, and return the enclosed Opt-Out Form to the Settlement Administrator or (2) send a letter to the Settlement Administrator at the address below, including a statement that you wish to be excluded from the class action settlement.

The Opt-Out Form or letter to the Settlement Administrator stating that you wish to be excluded from the class action settlement must include your full name, the name of this case (*Jamie James, et al. v. J.J. Keller & Associates, Inc.*, Case No. 21STCV10996), your current address, and the last four digits of your social security number, must be signed by you, and must be postmarked and mailed to the Settlement Administrator at the below address on or before [REDACTED], 2020 [45 days from mailing Notice Packet]. Opt-Out Forms and letters postmarked after this date may be disregarded.

[Settlement Administrator Line 1]

[Settlement Administrator Line 2]

[Settlement Administrator Line 3]

All individuals who timely return a properly completed Opt-Out Form or letter (as described above) will not release the Class Released Claims and will not receive a Settlement Class Member Payment under the class action settlement. However, regardless of whether you timely return a properly completed Opt-Out Form or letter (as described above), you will still receive the PAGA Payment if you worked for JJK at any point during the PAGA Period.

HOW DO I OBJECT TO THE SETTLEMENT?

If you don't think the proposed settlement is fair, you can object to the settlement and tell the Court that you don't agree with the settlement or some part of it. Any Settlement Class Member who has NOT asked to be excluded from the settlement may object to the proposed settlement. The Court will consider your input.

Specifically, you can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed settlement must be in writing. If you submit a written objection, you may, but are not required to, appear at the final approval hearing, either in person or through your own attorney. If you

appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Jamie James, et al. v. J.J. Keller & Associates, Inc.*, Case No. 21STCV10996), (b) be submitted to the Settlement Administrator at the address below, and (c) be filed or postmarked on or before **[45 days from mailing Notice Packet]**.

[Settlement Administrator Line 1]
[Settlement Administrator Line 2]
[Settlement Administrator Line 3]

If you do not submit a written objection, you may still appear at the final approval hearing and make your objection to the Court.

WHAT'S THE DIFFERENCE BETWEEN OBJECTING AND OPTING OUT?

Objecting is telling the Court that you don't like something about the settlement. You may object only if you remain in the Settlement Class. By contrast, requesting to be excluded or opting out of the Settlement Class is telling the Court that you don't want to participate in the class action settlement. If you opt out, you have no basis to object.

WHEN AND WHERE IS THE FINAL APPROVAL HEARING?

The Court will hold a final approval hearing concerning the proposed settlement on **[redacted]**, **2022** at **[redacted]** **a.m./p.m.**, in Department 7 of the California Superior Court for the County of Los Angeles, located at 312 North Spring Street, Los Angeles, California 90012. At this hearing, the Court will determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, Plaintiffs' service award, the Settlement Administrator's fees and expenses, the PAGA Fund, the payment to the LWDA, and the payment to the Settlement Class.

The Court may reschedule the final approval hearing without further notice to the Settlement Class Members. However, any Settlement Class Member who has submitted a timely objection to the settlement will be notified by Class Counsel of any rescheduling of the date and time of the final approval hearing.

You are **not** required to come to the final approval hearing. Class Counsel will represent the interests of Settlement Class Members at the hearing. But you are welcome to come at your own expense and you may ask the Court for permission to speak at the hearing. If you send an objection, you don't have to come to Court to talk about it. As long as you timely mailed your written objection, the Court will consider it. You may also hire and pay your own lawyer to attend if you so desire.

If you wish to attend the hearing by telephone or videoconference, you must contact the settlement administrator **[redacted]** (see contact information above), or Class Counsel (Mr. Ottinger, see contact information above), and they will provide you with instructions as to how to appear. You cannot speak at the hearing if you opt out of the settlement.

WHO MAY I CONTACT IF I HAVE QUESTIONS ABOUT THE SETTLEMENT?

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at [www.\[redacted\].com](http://www.[redacted].com), by contacting Class Counsel, The Ottinger Firm, P.C., at (415) 262-0096, or by accessing the Court docket in this case through the Court's website at <https://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil>.

After arriving at the website, enter 21STCV10996 as the case number and click 'SEARCH.' Images of every document filed in the case may be viewed through the 'Register of Actions' at a minimal charge. You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE
ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

Exhibit B

OPT-OUT FORM

Jamie James, et al. v. J.J. Keller & Associates, Inc.
Civil Action No. 21STCV10996
California Superior Court, County of Los Angeles

To exclude yourself from, or “opt out” of, the Settlement Class, please complete, sign, and date this form, and then mail it on or before , 2022 to the Settlement Administrator at the following address:

INSTRUCTIONS:

A. Only complete and return this form if you do **NOT** want to be included in the Settlement Class. You will **NOT** receive a Settlement Class Member Payment if you return this form. However, you may still receive a PAGA Payment if you return this form, if applicable.

B. To exclude yourself from, or “opt out” of, the Settlement Class, complete, sign, date, and return this form. To be effective, this form must be filled out completely and postmarked on or before , 2022.

C. You are responsible for maintaining a copy of the fully completed form and proof of mailing.

I want to OPT-OUT of the class action lawsuit and Settlement Class in the case entitled *Jamie James, et al. v. J.J. Keller & Associates, Inc.*, California Superior Court, County of Los Angeles, Case No. 21STCV10996. I understand that by requesting to be excluded, I will not receive the Settlement Class Member Payment described in the Notice.

Name: _____ (please print)

Address: _____

Last 4 Digits of SSN: _____

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

(Sign your name here)

Date

Exhibit 2

Robert W. Ottinger (SBN 156825)
THE OTTINGER FIRM, P.C.
535 Mission Street
San Francisco, CA 94105
robert@ottingerlaw.com
Tel: 415-262-0096
Fax: 212-571-0505

Attorneys for Plaintiffs

FILED
Superior Court of California
County of Los Angeles

01/04/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: T. Bivins Deputy

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JAMIE JAMES and SPENCER JOHNSTON,
individually and in their representative
capacity,

Plaintiff,

vs.

J. J. KELLER & ASSOCIATES INC., and
DOES 1–50, inclusive,

Defendants.

Case Number: 21STCV10996

FIRST AMENDED COMPLAINT:

1. FAILURE TO PROVIDE MEAL PERIODS
(LAB. CODE §§ 226.7, 512, & 1198);
2. FAILURE TO PROVIDE REST PERIODS
(LAB. CODE §§ 226.7 & 1198);
3. FAILURE TO PAY OVERTIME WAGES
(LAB. CODE §§ 510, 1194)
4. WAGE STATEMENT PENALTIES
(LAB. CODE § 226);
5. WAITING TIME PENALTIES
(LAB. CODE § 203);
6. UNFAIR COMPETITION
(BUS. & PROF. CODE § 17200 *ET SEQ.*)
7. UNREIMBURSED BUSINESS EXPENSES
(LAB. CODE § 2802)
8. CIVIL PENALTIES UNDER PAGA (CAL.
LABOR CODE § 2698, *ET SEQ.*)

JURY TRIAL DEMANDED

1 Plaintiffs JAMIE JAMES (“Plaintiff James”) and SPENCER JOHNSTON (“Plaintiff Johnston”)
2 (collectively “Plaintiffs”), for themselves and on behalf of other persons similarly situated and in their
3 representative capacity (collectively “Class Members”), complain and alleges upon personal knowledge
4 and information and belief as follows.

5 **INTRODUCTION**

6 1. In this class, collective and representative Private Attorneys General Act (“PAGA”) action,
7 Plaintiffs seek declaratory, injunctive, and equitable relief, as well as monetary damages, to redress
8 Defendant’s unlawful employment practices on their own behalf, on behalf of other persons similarly
9 situated and a proposed Representative Class in California under California’s PAGA, including violations
10 of the California Labor Code, California Business and Professions Code, Wage Order 4-2001 or any other
11 applicable Wage Order (“Wage Order”).

12 2. Defendant J.J. Keller & Associates, Inc. (“Defendant” or “Keller”) is a company based in
13 Neenah, Wisconsin and has been operating since 1953. Keller is a self-described “trusted source for
14 DOT/Transportation, OSHA/Workplace Safety, Human Resources, Construction Safety and
15 Hazmat/Hazardous Materials regulation compliance products and services.” One of Keller’s many areas
16 of focus is driver training for commercial enterprises, such as Amazon and similar companies.

17 3. Plaintiffs, putative class members and Representative Class Members are or were employed
18 by Keller as Commercial Motor Vehicle (“CMV”) Driver-Trainers and worked in or around Los Angeles
19 County. As the need for home delivery services rose during the COVID-19 pandemic, so did the demand
20 for delivery drivers and driver training services. Plaintiffs and putative class members found themselves
21 working in a fast-paced environment that was not well managed. As a result, Plaintiffs and putative class
22 members were required to work long hectic hours with no opportunity for uninterrupted meal or rest
23 periods.

24 4. Defendant misclassified Plaintiffs, putative class members, and Representative Class
25 Members as salaried, exempt employees, and therefore failed to pay Plaintiffs and putative class members
26 for all overtime hours worked in violation of California Labor Code §§ 510, 1194; failed to provide
27 compliant meal and rest periods in violation of California Labor Code §§ 218.5, 226.7, 512, 1198; failed
28 to provide accurate wage statements in violation of California Labor Code § 226(a); failed to maintain

1 requisite payroll records in violation of California Labor Code § 1174(d); engaged in unfair business
2 practices in violation of California Business & Professions Code § 17200 (“Unfair Competition Law”);
3 and violated PAGA, California Labor Code § 2698, *et seq.*

4 5. Defendant violated California Labor Code § 2802 by failing to reimburse the Plaintiffs,
5 putative class members and the Representative Class for business related expenses, such as mobile phone
6 use, COVID-19 facemasks, and equipment or supplies that the employees had to purchase for the company.

7 6. Defendant also violated California law by making Plaintiffs and putative class members
8 sign non-compete agreements stating that they agree bound by the laws of Wisconsin and that all disputes
9 must be resolved in Wisconsin. These terms violate fundamental principles of California law as set forth
10 in California Business and Professions Code § 16600 which prohibits non-compete agreements. Further,
11 Defendants violated California Labor Code § 925 by requiring Plaintiffs and putative class members that
12 live and work in California to agree to a provision that requires them to adjudicate claims arising in
13 California outside of California and depriving the employees of the substantive protection of California
14 law.

15 7. As a result of Defendant’s several violations of the California Labor Code and applicable
16 IWC Wage Order, Defendant is also liable for civil penalties under California’s Private Attorneys General
17 Act.

18 **JURISDICTION AND VENUE**

19 8. Plaintiffs are informed and believe, and thereon allege that Defendant was, at all relevant
20 times, operating within the state of California and thus subject to the jurisdiction of California courts by
21 reason of “minimum contacts;” did transact and conduct business in the State of California; and is thus
22 subject to the jurisdiction of all laws, regulations, and court decisions rendered by the state of California.

23 9. Jurisdiction is proper under California Code of Civil Procedure § 410.10. Plaintiffs are
24 informed and believe that Defendant was operating at all relevant times within California and thus subject
25 to jurisdiction in California. Jurisdiction is conferred on this Court as to all causes of action because they
26 arise under state statutory or common law. Jurisdiction is proper in this Court because alleged damages
27 exceed \$25,000.00, exclusive of costs and attorneys’ fees.

28 10. Venue is proper in this Court under Code of Civil Procedure § 395.5 because Defendant

1 employs individuals in this County and Defendant's liability arose, in part, in this County, and Defendant
2 continues to conduct business in this County.

3 **PARTIES**

4 11. Plaintiff James resides in Los Angeles, California and was employed by Defendant as a
5 Driver-Trainer from approximately April 14, 2020, to February 1, 2021.

6 12. Plaintiff Johnston currently resides in Arlington, Texas and was employed by Defendant as
7 a Driver-Trainer from approximately April 27, 2020, to April 30, 2021.

8 13. Defendant J. J. KELLER & ASSOCIATES INC. is a Transportation/Compliance Company
9 that operates in the State of California and within this County.

10 14. Defendants Does 1-10, inclusive, are sued herein under fictitious names. Their true names
11 and capacities are unknown to Plaintiffs. When their true names and capacities are ascertained, Plaintiffs
12 will amend this Complaint by inserting their true names and capacities herein. Plaintiffs are informed and
13 believe and thereon allege that each of the fictitiously named Defendants is responsible in some manner
14 for the occurrences herein alleged, and that the damages of Plaintiffs, putative class members and the
15 proposed Representative Class herein alleged were proximately caused by such Defendants.

16 15. Plaintiffs are informed, believe, and thereon allege that each of the Defendants herein was,
17 at all times relevant to this action, the agent, employee, representing partner, and/or joint venture of the
18 remaining Defendants and was acting within the course and scope of the relationship. Plaintiffs are further
19 informed, believe, and thereon allege that each of the Defendants herein gave consent to, ratified, and
20 authorized the acts alleged herein to the remaining Defendants.

21 **FACTUAL ALLEGATIONS**

22 16. Plaintiff James was employed by Defendant as a Driver-Trainer from approximately April
23 14, 2020, to February 1, 2021. Defendant erroneously classified Plaintiff James as an exempt, salaried
24 employee.

25 17. Ms. James generally worked approximately 12 hours per day, four days per week on
26 Monday to Thursday, and spent about 12 hours for the rest of the week on different days doing paperwork.

27 18. As a Driver-Trainer, Plaintiff James was required to hold class lessons for dozens of
28 trainees, hands-on training with trainees to explain pre-trip and post-trip inspections, instructing trainees

1 how to maneuver or park trucks, assemble and disassemble obstacle courses, filling out paperwork on
2 trainee performance, conduct road tests, expense tallies, and filling out reports for every week.

3 19. Although classes were scheduled from 9 a.m. to 5 p.m., Plaintiff James was required to
4 work additional hours to perform preliminary and postliminary activities to satisfy her job obligations.
5 Plaintiff James spent several hours prior to the scheduled class time gathering supplies such as cones and
6 setting up the range or obstacle courses for trainees to learn how to maneuver trucks. Plaintiff James also
7 gathered supplies such as gloves and safety vests for the drivers and did supply counts.

8 20. After class ended, Plaintiff James was required to pick up the cones and any other supplies
9 used for lessons, park the trucks, provide additional training, and fill out paperwork on trainee
10 performance.

11 21. During the class period from 9 a.m. to 5 p.m., trainees were permitted to take a half hour
12 lunch period. Plaintiff James rarely had an opportunity to take an uninterrupted lunch break because
13 trainees would ask her questions about the training during the lunch period.

14 22. On days Plaintiff James was required to conduct road tests, she was scheduled for at least
15 six back-to-back tests per day. Road tests lasted up to two hours per test and had to be completed at
16 scheduled times set by Keller. As a result, Plaintiff James was unable to take meal or rest periods.

17 23. Due to Defendant's erroneous classification of Plaintiff James as an exempt and salaried
18 employee, Plaintiff James was not compensated for the overtime hours she worked, and she was not
19 provided with meal and rest periods as entitled to her by California law.

20 24. While Plaintiff James worked for Defendant, she incurred several necessary business-
21 related expenses such as parking cones, vests, Adobe Acrobat Pro, scanner subscriptions, facemasks for
22 protection against COVID-19, Uber expenses, and other necessary expenses. Plaintiff James was also
23 required to use her own personal cell phone for work-related activities and was not reimbursed for such
24 use.

25 25. Plaintiff Johnston was employed by Defendant as a Driver-Trainer from approximately
26 April 27, 2020, to April 30, 2021. Defendant erroneously classified Plaintiff Johnston as an exempt,
27 salaried employee.

28 26. As a Driver-Trainer, Plaintiff Johnston was required to hold class lessons for dozens of

1 trainees, hands-on training with trainees to explain pre-trip and post-trip inspections, instructing trainees
2 how to maneuver or park trucks, assemble, and disassemble obstacle courses, filling out paperwork on
3 trainee performance, conduct road tests, expense tallies, and filling out reports for every week.

4 27. Plaintiff Johnston regularly spent time performing preliminary and postliminary activities
5 outside his eight-hour scheduled shift but was not properly compensated for all this time. These activities
6 included picking up and dropping off the truck used for training and testing, driving to and from the
7 training facility, setting up the classroom and training site, road testing, answering questions, and
8 completing paperwork.

9 28. Plaintiff Johnston regularly was required to work through his meal periods and rarely
10 received rest breaks due to the demanding workload. If Plaintiff Johnston was able to take meal periods,
11 they were rarely uninterrupted due to trainees asking questions or additional work that needed to be
12 completed.

13 29. Due to Defendant's erroneous classification of Plaintiff Johnston as an exempt and salaried
14 employee, Plaintiff Johnston was not compensated for the overtime hours he worked, and he was not
15 provided with meal and rest periods as entitled to him by California law.

16 30. Plaintiff Johnston generally worked one or two days per week doing training, during which
17 he generally worked approximately twelve hours per day.

18 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

19 31. On March 1, 2021, Plaintiff James gave written notice of Defendant's violations of various
20 provisions of the California Labor Code as alleged in this complaint to the Labor and Workforce
21 Development Agency ("LWDA") and Defendant attached hereto as Exhibit A.

22 32. To date, the LWDA has not provided notice of its intention to investigate Defendant's
23 violations per California Labor Code § 2699.3(a)(2)(A).

24 33. Plaintiffs are informed and believe and thereon allege that Defendant uniformly
25 misclassified Driver-Trainers as exempt, salaried employees when they were, in fact, hourly, non-exempt
26 employees based on their job duties.

27 34. Since the filing of the complaint in this action on March 19, 2021, Plaintiffs are informed
28 and believe and thereon allege that Defendants acknowledged that the Driver Trainer position was

misclassified and properly re-classified all Driver Trainers as hourly, non-exempt employees.

35. Defendants common, company-wide policy and practice of misclassifying Driver-Trainers resulted in the failure to pay Plaintiffs, putative class members and the Representative Class for all hours worked, including overtime, to which Plaintiffs and the Representative Class were entitled to.

36. For example, Defendants' misclassification resulted in Plaintiffs, putative class members and the Representative class not being paid for hours spent, including but not limited to, 1) traveling at their beginning of the shift to pick up the truck used for training and testing, 2) traveling from the truck pick-up site to the assigned training facility, 3) setting up the training class room and driving test site prior to the arrival of students, 4) traveling to the truck drop-off site after the end of their shift, and 5) performing other work-related tasks during, prior to, or after their scheduled shifts.

37. Defendants instructed Plaintiffs, putative class members and the Representative Class to report only eight (8) hours worked per day despite them working more than twelve (12) hours per day when training.

38. Defendant's common, company-wide policy and practice of misclassifying Driver-Trainers also resulted in the failure to provide adequate meal and rest periods to relieve Plaintiffs, putative class members and the Representative Class from all duties.

39. For example, Plaintiffs, putative class members and the Representative Class were often required to use the designated meal period while training to complete paperwork and answer questions from students.

40. As a matter of common, company-wide policy and practice of misclassifying Driver-Trainers, Defendants failed to ensure that Plaintiffs, putative class members and the Representative Class were paid proper meal and rest break penalties when they did not receive the meal and rest break that they were entitled to.

41. Defendants have common, company-wide policies and practices of failing to reimburse Plaintiff James, putative class members and the Representative Class for all business expenses incurred in connection with their work. As a result, Defendants deprived Plaintiff James, putative class members and the Representative Class of proper reimbursement to which they are entitled by law.

42. Defendants have common, company-wide policies and practices of failing to provide

1 Plaintiffs, putative class members and the Representative Class with accurate, itemized wage statements
2 as required by California Labor Code § 226(a). The wage statements issued either did not have all the
3 categories of information required or the information listed therein was inaccurate.

4 43. Defendants have common, company-wide policies and practices of requiring all employees
5 to sign an agreement entitled “Agreement Barring Unfair Activities” that violates Plaintiffs, putative class
6 members and the Representative Class’s rights by 1) containing a non-compete and non-solicitation clause
7 that violates California Business and Professional Code § 16600 prohibiting these clauses and 2) providing
8 that all disputes must be resolved in Wisconsin under Wisconsin law in violation of California Labor Code
9 § 925 the deprivation of the protection of California law for California residents working in the State of
10 California.

11 **CLASS ALLEGATIONS**

12 44. Plaintiffs bring this action on behalf of themselves and as a class action under Code of Civil
13 Procedure § 382 on behalf of the following defined group and subgroups: All persons who are or have
14 been employed by Defendant as non-exempt, hourly employees within the State of California within four
15 years prior to the filing of this Complaint to the final disposition of this case (“Class Members”). The class
16 includes all trainees, servers, hosts and other non-exempt workers.

17 45. **Reservations of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiffs reserve the right to
18 amend or modify the class definitions with greater specificity, by further division into subclasses, and/or
19 by limitation to particular issues.

20 46. **Numerosity:** The Proposed Class is so numerous that joinder of all members is
21 impracticable. Plaintiffs are informed and believe, and on that basis allege, that during the relevant time
22 period, Defendants employed over 40 people who satisfy the definition of the Proposed Class. The Class
23 Members are so numerous that joinder of all Class Members is impracticable. The individuals and the
24 identity of such membership is readily ascertainable by inspection of Defendants’ employment records.

25 47. **Typicality:** Plaintiffs’ claims are typical of all other Class Members as demonstrated herein.
26 Plaintiffs will fairly and adequately protect the interests of the other Class Members with whom they have
27 a well-defined community of interest.
28

1 48. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of each class member,
2 with whom she has a well-defined community of interest and typicality of claims, as demonstrated herein.
3 Plaintiffs have no interest that is antagonistic to the other Class Members. Plaintiffs' attorneys, the
4 proposed class counsel, are versed in the rules governing class action discovery, certification, and
5 settlement. Plaintiffs have incurred, and during the pendency of this action will continue to incur, costs
6 and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action
7 for the substantial benefit of each class member. Plaintiffs have retained counsel experienced in wage and
8 hour class action litigation.

9 49. **Predominant Common Questions:** Common questions of law and fact exist to all
10 members of the Proposed Class and predominate over any questions solely affecting individual members
11 of the Proposed Class, including but not limited to:

- 12 a. Whether Defendants misclassified Plaintiffs and Class Members as salaried employees.
- 13 b. Whether Defendants, as matters of policy or practice, have failed to relieve Plaintiffs and
14 Class Members of all duty for first meal periods before the end of the fifth hour of their
15 shifts;
- 16 c. Whether Defendants, as matters of policy or practice, have failed to relieve Plaintiffs and
17 Class Members of all duty for second meal periods before the end of the tenth hour of their
18 shifts;
- 19 d. Whether Defendants have failed to maintain a policy or practice that reasonably permits
20 Plaintiffs and Class Members to take net rest periods of ten minutes for each four-hour
21 work period, or major portion thereof;
- 22 e. Whether Defendants have, as matters of policy or practice, failed to make good faith efforts
23 to provide Plaintiffs and Class Members with rest periods of during the middle of each
24 four-hour work period;
- 25 f. Whether Defendants lack any mechanism for paying premium wages to Plaintiffs and
26 Class Members when they are not provided with timely meal and/or rest periods?
- 27 g. Whether Defendants are liable to Plaintiffs and Class Members for restitution of overtime
28 and premium wages;

- 1 h. Whether, by failing to pay premium wages to Plaintiffs and Class Members, Defendants
2 have failed to provide them with written wage statements that accurately reflect their gross
3 and net wages earned;
- 4 i. Whether Defendants had a corporate policy and practice of failing to pay their hourly-paid
5 or non-exempt employees within the State of California for all missed meal periods and
6 rest breaks in violation of California law;
- 7 j. Whether Defendants required Plaintiffs and the other Class Members to work over eight (8)
8 hours per day and failed to pay the legally required overtime compensation to Plaintiff and
9 the other Class Members;
- 10 k. Whether Defendants complied with wage reporting as required by the California Labor
11 Code, including, *inter alia*, section 226;
- 12 l. Whether Defendants failed to pay timely and complete wages to former employees at
13 termination in violation of California Labor Code, sections 201, 202, and 203?
- 14 m. Whether Defendants kept complete and accurate payroll records as required by the
15 California Labor Code, including *inter alia*, section 1174(d);
- 16 n. Whether Defendants' conduct was willful or reckless;
- 17 o. Whether Defendants engaged in unfair business practices in violation of California Business
18 & Professions Code section 17200, *et seq.*;
- 19 p. The appropriate amount of damages, restitution, and/or monetary penalties resulting from
20 Defendants' violation of California law;
- 21 q. Whether Plaintiffs and the other Class Members are entitled to compensatory damages
22 pursuant to the California Labor Code;
- 23 r. Whether Defendant failed to reimburse Plaintiff and the other Class Members for necessary
24 business-related expenses and costs;
25 and;
- 26 s. Whether Plaintiffs and others are entitled to civil penalties under California Labor Code
27 section 2699 *et seq.*
28

1 50. **Superiority:** A class action is superior to other available methods for the fair and efficient
2 adjudication of the controversy, particularly in the context of wage and hour litigation where individual
3 plaintiffs lack the financial resources to vigorously prosecute separate lawsuits against a corporate
4 Defendant. A class action is superior to other available means for fair and efficient adjudication of class
5 members' claims and offers significant benefits to the parties and the court. A class action will allow a
6 number of similarly situated persons to simultaneously and efficiently prosecute their common claims in
7 a single forum without the unnecessary duplication of effort and expense that numerous individual actions
8 would entail. The monetary amounts due to many class members are likely to be relatively small, thus
9 making it difficult, if not impossible, for individual class members to seek and obtain relief. Moreover, a
10 class action will serve important public interests by enabling the non-waivable statutory rights of class
11 members to be effectively asserted, and fundamental public policies to be vindicated, in one proceeding.
12 A class action will also provide a means for vindicating the rights of current employees who are less likely
13 to come forward to assert those rights based on fears of employer reprisal. Finally, a class action will
14 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation and
15 address the problems inherent in random and fragmentary enforcement.

16 **Cause of Action One**

17 **FAILURE TO PROVIDE MEAL PERIODS**

18 **(Lab. Code §§ 226.7, 512, and 1198)**

19 51. Plaintiffs incorporate all of the preceding paragraphs of this Complaint as if fully set forth
20 herein.

21 52. Labor Code § 512 and Section 11 of the Wage Order impose an affirmative obligation on
22 employers to provide non-exempt employees with a first uninterrupted, duty- free, meal period of at least
23 thirty minutes for each work period of five or more hours before the end of the fifth hour of work, and to
24 provide them with a second uninterrupted, duty-free, meal period of at least thirty minutes for each work
25 period of more than ten hours before the end of the tenth hour of work.

26 53. Labor Code § 226.7 and Section 11 of the Wage Order require employers to pay non-
27 exempt employees an additional hour of premium wages at the employee's regular rate of compensation
28 on each workday that the employee is not provided with a meal period.

63. Plaintiffs are informed, believe and thereon allege that, at all relevant times, Defendants have maintained policies and practices with respect to employee scheduling and rest periods that have failed to authorize and/or reasonably permit Class Members to take net rest periods for each four-hour work period, or major portion thereof.

64. Pursuant to Labor Code § 226.7, Plaintiffs and Class Members seeks to recover premium wages on behalf of themselves and the Representative Class in amounts subject to proof.

65. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiffs and Class Members seek awards of reasonable attorneys' fees and costs in amounts subject to proof.

Cause of Action Three

FAILURE TO PAY OVERTIME WAGES

(Lab. Code §§ 510 and 1194)

66. Plaintiffs incorporate all of the preceding paragraphs of this Complaint as if fully set forth herein.

67. Labor Code §§ 510 and 1194, and Section 3 of the Wage Order, require employers to pay overtime wages to non-exempt employees at no less than one and one-half times their regular rates of pay for all hours worked in excess of eight hours in one workday, all hours worked in excess of forty hours in one workweek, and for the first eight hours worked on a seventh consecutive workday.

68. Labor Code §§ 510 and 1194, and Section 3 of the Wage Order, also require employers to pay overtime wages to their non-exempt employees at no less than two times their regular rates of pay for all hours worked in excess of twelve hours in one workday, and for all hours worked in excess of eight hours on a seventh consecutive workday.

69. At relevant times during their employment, Defendants failed to pay Plaintiffs and Class Members overtime wages at the appropriate rate of pay for all overtime hours worked as a matter of class-wide policy and practice.

70. Pursuant to Labor Code § 1194, Plaintiffs and Class Members seek to recover (in addition to any other remedies provided by law) earned and unpaid overtime wages as well as awards of reasonable costs and attorneys' fees, all in amounts subject to proof.

1 **Cause of Action Four**

2 **WAGE STATEMENT PENALTIES**

3 **(Lab. Code § 226)**

4 71. Plaintiffs incorporate all of the preceding paragraphs of this Complaint as if fully set forth
5 herein.

6 72. Pursuant to Labor Code § 226(a), Defendants have been obliged to provide Plaintiffs and
7 Class Members, either semimonthly or at the time of each payment of wages, accurate itemized statements
8 showing, among other things, the gross and net wages earned by each class member.

9 73. By failing to pay minimum, overtime, and/or premium wages to Plaintiffs and Class
10 Members as set forth above, Defendants have furnished them with written wage statements that do not
11 accurately reflect, among other things, their amounts of gross and net wages earned, and number of hours
12 worked at each applicable wage rate.

13 74. Plaintiffs and Class Members are informed and believe and thereon allege that Defendants'
14 failures to provide them with accurate wage statements have been knowing and intentional, in that
15 Defendants have, at all relevant times, had the ability to provide them with accurate wage statements but,
16 instead, have knowingly and intentionally provided them with inaccurate wage statements as a result of
17 not keeping accurate records of all their hours worked, their meal period start and stop times, and amounts
18 of wages earned.

19 75. Plaintiffs and Class Members have suffered injuries due to Defendants' failures to provide
20 them with accurate written wage statements in that, among other things, their legal rights to receive
21 accurate wage statements have been violated, they have been misled about the amounts of wages they
22 have earned, they have been prevented from immediately challenging allegedly unlawful pay practices,
23 they have needed or will need to reconstruct time and pay records and perform mathematical computations
24 to determine the amounts of wages they have earned, and they have had inaccurate information about their
25 wages and deductions submitted to government agencies.

26 76. Pursuant to Labor Code § 226(e), Plaintiffs and Class Members seek to recover the greater
27 of actual damages or \$50 for the initial pay period in which a § 226(a) violation occurred, the greater of
28 actual damages or \$100 for each violation of § 226(a) in a subsequent pay period, up to the greater of

1 actual damages or an aggregate \$4,000 penalty per class member, as well as awards of reasonable
2 attorneys' fees and costs, all in amounts subject to proof.

3 **Cause of Action Five**

4 **WAITING TIME PENALTIES**

5 **(Lab. Code § 203)**

6 77. Plaintiffs incorporate all of the preceding paragraphs of this Complaint as if fully set forth
7 herein.

8 78. Labor Code § 201 provides that all of the earned and unpaid wages of an employee who is
9 discharged become due and payable immediately at the time of discharge.

10 79. Labor Code § 202 provides that all of the earned and unpaid wages of an employee who
11 quits become due and payable at the time of quitting if the employee gives at least 72-hours' notice before
12 quitting, or within 72 hours of quitting if the employee gives less than 72-hours' notice before quitting.

13 80. Labor Code § 203 provides that the wages of a terminated employee will continue as a
14 penalty for up to thirty calendar days if the employer willfully fails to timely pay any earned and unpaid
15 wages to the employee in the times set forth in Labor Code §§ 201–202.

16 81. By erroneously classifying Plaintiffs and Class Members as exempt, salaried employees,
17 Defendants deprived Plaintiffs and Class Members of premium wages, minimum wages, and/or overtime
18 wages. Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
19 § 201 or § 202.

20 82. Plaintiffs and Class Members are informed and believe and thereon allege that, at all
21 relevant times, Defendants' failures to pay them earned and unpaid wages in violation of Labor Code
22 §§ 201–202 have been willful in that Defendants have had the ability to fully comply with the
23 requirements set forth in those statutes but have deliberately chosen to maintain policies and practices
24 with respect to payroll that are incompatible with those requirements.

25 83. Pursuant to Labor Code § 203, Plaintiffs and Class Members seek up to thirty days of
26 wages as waiting time penalties in amounts subject to proof.

27 84. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine, and/or the
28 common fund doctrine, Plaintiffs and Class Members seek awards of reasonable attorneys' fees and costs

1 in amounts subject to proof.

2 **Cause of Action Six**

3 **UNFAIR COMPETITION**

4 **(Bus. & Prof. Code § 17200 *et seq.*)**

5 85. Plaintiffs incorporate all of the preceding paragraphs of this Complaint as if fully set forth
6 herein.

7 86. Business and Professions Code § 17200 defines “unfair competition” to include any
8 unlawful business practice.

9 87. Business and Professions Code § 17203 allows a person who has lost money or property
10 as a result of unfair competition to bring a class action in accordance with Code of Civil Procedure § 382
11 to recover money or property that may have been acquired from similarly situated persons by means of
12 unfair competition.

13 88. As set forth above, Plaintiffs and Class Members have lost money or property in the form
14 of earned minimum, overtime, and/or premium wages because of Defendants’ unlawful failures to pay
15 them those wages, and related failures to maintain accurate records, in violation of the requirements of
16 the Labor Code and the Wage Order.

17 89. Plaintiffs are informed, believe and thereon allege that, at all relevant times and as set forth
18 above, Defendants have either acquired, or may have acquired, money or property in the form of earned
19 minimum, overtime, and premium wages from Class Members by means of unfair competition as a result
20 of Defendant’s unlawful failures to pay them those wages, and related failures to maintain accurate
21 records, in violation of the requirements of the Labor Code and the Wage Order.

22 90. Pursuant to Business and Professions Code § 17203, Plaintiffs and Class Members, on
23 behalf of themselves and Class Members, seek restitution of all moneys and property, including, but not
24 limited to, earned regular, overtime, and premium wages, that Defendants either acquired, and/or may
25 have acquired, from them by means of unfair competition in amounts subject to proof at trial.

26 91. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine, and/or the
27 common fund doctrine, Plaintiffs and Class Members seek awards of reasonable attorneys’ fees and costs
28 in amounts subject to proof.

1 **Cause of Action Seven**

2 **REIMBURSEMENT FOR BUSINESS EXPENSES**

3 **(Cal. Labor Code § 2802)**

4 92. Plaintiffs incorporates each of the preceding paragraphs of this Complaint by reference as
5 if fully set forth herein.

6 93. Pursuant to Cal. Lab. Code § 2802, Defendant is required to indemnify Plaintiffs for the
7 expenses and losses incurred during the performance of their job duties. The purpose of this statute is to
8 prevent employers from passing their operating expenses onto their employees. *See Gattuso v. Harte-*
9 *Hanks Shoppers, Inc.* (2007) 42 Cal. 4th 554, 562.

10 94. In violation of Cal. Lab. Code § 2802, Defendant required Plaintiffs and Class Members
11 to pay the cost of various business-related expenses and did not reimburse Plaintiffs for those business
12 expenses.

13 95. Plaintiffs and Class Members were not provided with a cell phone to accomplish their job
14 obligations. As such, Plaintiffs were required to use their personal cell phones to send company forms to
15 Keller, answer work emails, and sign in and out of Keller's timekeeping app. Keller knew or had reason
16 to know that Plaintiffs would require a cell phone for these work-related obligations.

17 96. Plaintiffs were not provided with facemasks to protect themselves from COVID-19 during
18 the global pandemic, despite having to be in close contact with dozens of trainees as part of their job
19 duties. Plaintiffs were required to purchase their own facemasks for protection. Keller knew or had reason
20 to know that Plaintiffs would require facemasks for protection during the COVID-19 pandemic and that
21 Plaintiffs were required to be in close contact with several trainees.

22 97. Plaintiff James was required by Keller to take two rapid COVID-19 tests. During one
23 instance, Keller required Plaintiff James to take the rapid COVID-19 test when she developed a cough.
24 During the second instance, Keller required Plaintiff James to take a rapid COVID-19 test when a trainee
25 in the class had COVID-19. Plaintiff James paid for both rapid COVID-19 tests. Keller knew or had
26 reason to know Plaintiff paid for the rapid COVID-19 test when she was requested to take them by
27 Defendant.

28 98. Plaintiff James was required to purchase two televisions for class to show trainees how to

1 track their hours worked on an app. Keller knew or had reason to know that Plaintiff James would need
2 televisions to properly teach trainees about the app to track their hours.

3 99. Plaintiff James was required to fill out pdf versions of company forms and scan documents.
4 As a result, Plaintiff James needed to purchase Adobe Acrobat and a scanner app to fulfill her job
5 obligations. Keller knew or had reason to know that Plaintiff James would need Adobe Acrobat and a
6 scanner to adequately fulfill her job obligations.

7 100. On at least two occasions, Keller required Plaintiff James to return trucks to locations other
8 than where the training courses and classes were held. As a result, Plaintiff James had to order
9 transportation via Uber to return to her personal vehicle. Keller knew or had reason to know that Plaintiff
10 James would require transportation to return to her personal vehicle after having to return the trucks to
11 certain locations.

12 101. Defendant Keller failed to exercise due diligence to reimburse Plaintiff James and Class
13 Members for business expenses associated with adequately accomplishing their employment obligations.

14 102. Plaintiffs and Class Members seek to recover monies for these necessary business expenses
15 for which they were not reimbursed, plus interest thereon, reasonable attorneys' fees, and costs, in an
16 amount to be proven at trial.

17 **Cause of Action Eight**

18 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

19 **(Cal. Labor Code § 2698, et seq.)**

20 103. Plaintiffs incorporate each of the preceding paragraphs of this Complaint by reference as
21 if fully set forth herein.

22 104. Labor Code §§2699(a) and (g) authorize aggrieve employees, on behalf of themselves and
23 other current and former employees, to bring a representative civil action to recover civil penalties
24 pursuant to the procedures specified in Labor Code §2699.3 that may, but need not, be brought or
25 maintained as a class action pursuant to Code of Civil Procedure Section 382.

26 105. Plaintiffs, as employees against whom Defendant committed one or more violations of the
27 Labor Code during the applicable limitations period, are "aggrieved employees" within the meaning of
28 Labor Code § 2699(c).

106. During the applicable limitations period, Defendant violated, *inter alia*, Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 925, 1194, 1198, and 2802.

107. Pursuant to Labor Code §§ 2699(a) and (f), Plaintiffs, on behalf of themselves and other aggrieved employees, seek civil penalties for Defendant's above-referenced violations of the Labor Code.

108. Plaintiffs seek to recover the PAGA civil penalties through a representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Therefore, class certification of the PAGA claims is not required, but Plaintiffs may choose to seek certification of the PAGA claims.

109. Plaintiffs have complied with the procedures for bringing suit set forth in Labor Code § 2699.3. By letter dated March 1, 2021, Plaintiff Johnson gave written notice via online filing to the Labor and Workforce Development Agency ("LWDA") and certified mail to Defendant of the specified provisions of the Labor Code that she alleges to have been violated, including the facts and theories to support the alleged violations. More than 65 days have passed since the mailing of Plaintiff's letter without the LWDA informing her that it intends to investigate the violations of the Labor Code that she has alleged. Pursuant to Labor Code §2699(g)(1), Plaintiffs seek awards of reasonable costs and attorneys' fees in connection with their claims for civil penalties on behalf of themselves and other aggrieved employees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves, and all others similarly-situated, and all other aggrieved employees, pray for relief and judgment against Defendants as follows:

A. A declaratory judgment that the actions, conduct, and practices of Defendants complained of herein violated the laws of the United States and the State of California;

B. An injunction and order permanently restraining Defendants from engaging in such unlawful conduct;

C. An order that the action be certified as a class action;

D. An order that the named Plaintiffs herein be appointed as Representatives of the Class and PAGA action;

E. An award of damages in an amount to be determined at trial, plus prejudgment interest, to

1 compensate Plaintiffs and Class Members for all monetary and/or economic hardship, including, but not
2 limited to, the loss of past and future income, wages, compensation, and other benefits of employment;

3 F. An award of damages in an amount to be determined at trial, plus prejudgment interest, to
4 compensate Plaintiffs and Class Members, for all non-monetary and compensatory harm;

5 G. An award of damages for any and all other monetary and/or non-monetary losses suffered
6 by Plaintiffs and Class Members in an amount to be determined at trial, plus prejudgment interest;

7 H. Civil penalties pursuant to PAGA;

8 I. For reasonable attorney's fees and costs, including expert witness fees, pursuant to
9 California CCP §1021.5; and

10 J. For such other and further relief as the Court deems just and proper.

11
12 * * *

13
14 Dated: January 4, 2022
15 San Francisco, CA

Respectfully submitted,

16 

Robert W. Ottinger (SBN 156825)

EXHIBIT A

OTTINGER

EMPLOYMENT LAWYERS

Robert W. Ottinger
Direct: (917) 566-2037
robert@ottingerlaw.com

401 Park Avenue South
New York, NY 10016
(212) 571-2000

535 Mission Street, 14th Fl.
San Francisco, CA 94105
(415) 262-0096

OTTINGERLAW.COM

March 1, 2021

Via Online Submission: www.dir.ca.gov

California Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814

Re: PAGA Notice Pursuant to California Labor Code § 2699

Jamie James / J.J. Keller & Associates, Inc.

Dear Sir or Madam:

The Ottinger Firm, P.C. represents Jamie James, a former Driver Trainer employed by J.J. Keller & Associates (“J.J. Keller”). Ms. James was employed by J.J. Keller as a Driver Trainer from approximately April 14, 2020 to approximately February 1, 2021. Based on information provided to us by Ms. James, we believe J.J. Keller has engaged in a scheme designed to deprive Ms. James and similarly-situated employees working for J.J. Keller in the State of California from the protections of California’s laws.

Specifically, Ms. James alleges that J.J. Keller willfully misclassified her and other similarly-situated Driver Trainers in the State of California as exempt salaried employees. As a result, J.J. Keller violated numerous California wage and hour laws, including but not limited to failing to pay them minimum and overtime wages, failing to provide them with meal and rest periods, failing to reimburse them for necessary business expenses, failing to provide them with accurate wage statements, and failing to provide them with all wages earned upon termination of employment.

Also, J.J. Keller requires all California employees to sign an agreement entitled Agreement Barring Unfair Activities (the Agreement) that violates their rights under California Law in two respects. First, the Agreement contains non-compete and non-solicitation clauses that violate Cal. Bus. & Prof. Code § 16600 that prohibits non-compete and non-solicitation agreements. Second, the Agreement provides that all disputes must be resolved in Wisconsin under Wisconsin law in violation of California Labor Code section 925 that forbids such choice of law and forum selection clauses.

3/1/21

Page 2 of 3

This letter serves as notice of our intent to seek civil penalties pursuant to the Private Attorneys General Act (“PAGA”), Cal. Lab. Code §§ 2698 *et seq.*, on behalf of Ms. James and similarly-situated employees of J.J. Keller in the State of California at any time since February 1, 2020. Ms. James alleges that J.J. Keller violated numerous provisions of the California Labor Code, including but not limited to: §§ 201.3, 203, 216, 221, 226, 226.7, 226.8, 246, 247, 432.5, 510, 512, 558, 1174, 1175, 1197, 1198, 1199, 2802, and 3700 and provisions of the applicable Wage Order. Ms. James will seek all applicable civil penalties and liquidated damages on behalf of herself and all similarly-situated employees of J.J. Keller, including but not limited to penalties and liquidated damages pursuant to the aforementioned statutes and California Labor Code §§ 225.5, 226.3, 226.6, 248.5, 558.1, 1174.5, 1194.2, 1197.1, 2699, and 3700.5, and the applicable Wage Order.

The facts and claims contained herein are based on the limited information available at the time of this writing. Therefore, if through further review or informal or formal discovery, Ms. James becomes aware of additional compensation or penalties owed to her and other current or former employees of J.J. Keller or of additional claims against J.J. Keller, she reserves the right to revise these facts and/or add any new claims by amending this letter.

Based on the foregoing, Ms. James intends to file a civil action to pursue claims against J.J. Keller and to seek PAGA remedies for these violations. Ms. James respectfully requests that the Labor & Workforce Development Agency notify her if it intends to investigate the above allegations pursuant to PAGA.

Thank you for your attention to this matter. Please direct all communications and correspondence to our office going forward. If you have any questions, please do not hesitate to contact us at (212) 571-2000.

Sincerely,

The Ottinger Firm, P.C.



Robert Ottinger

3/1/21

Page 3 of 3

Cc: Via U.S. Certified Mail

Patrick P. Gill

501 S. Nicolet Road

Appleton, WI 54914

Exhibit 3

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF LABOR STANDARDS ENFORCEMENT

LEGAL SECTION

45 Fremont Street, Suite 3220
San Francisco, CA 94105
(415) 975-2060



H. THOMAS CADELL, JR., *Chief Counsel*

March 5, 1997

Thomas L Miller, Esq.
3891 11th St
Box 949
Riverside, CA 92502-7263

Re: **Mark T. Blouin v. U.S. Truck Driving School, Inc.**
Case No. 10-27969-001

Dear Mr. Miller:

Deputy Lucille Ferrell of the San Diego office has sent me a copy of the correspondence you sent to her on February 25, 1997, regarding the above-referenced case. In your letter you take the position that a truck driving instructor, licensed and certified by the State of California, is an exempt employee under the learned or artistic professions provision of Order 4-89. You attach a copy of a letter from an Industrial Relations Representative sent to an individual in 1991 which indicates that the IRR had concluded that the truck driving instructors involved in that case did fall under the exemption; however, that decision was incorrect. The Division does not agree with the position you set out in your letter of February 25th for the reasons set out below.

In 1989, the IWC added the exemption for persons "engaged in an occupation commonly recognized as a learned or artistic professional" in Order 4-89 and provided in the Statement of Basis for that Order:

"During its overtime investigation the IWC learned that the professional exemption, as distinct from the administrative or executive exemption contained in the IWC Orders, was too restrictive insofar as it did not recognize the societal and technological changes that have occurred and will occur in years to come. Emerging occupations, such as those in the fields of science and high technology, and other occupations requiring advanced knowledge, the exercise of discretion and independent judgment and/or invention, imagination or talent in a recognized field or artistic endeavor, while exempt under

1997.03.05

federal law, rarely, if ever, qualified for a professional exemption under the IWC Orders. Testimony indicated that this differentiation generated confusion and resulted in disadvantages both to employees and employers. The IWC also received information about enforcement problems due to the fact that there was very little flexibility to interpret and/or enforce individual professional exemptions based on actual duties and responsibilities. In response to these concerns, and based upon evidence received in the CHA petition, written materials, and oral and written public testimony, the IWC decided that the professional exemption relied too much on credentialism. Consequently, the IWC proposed language which would add persons engaged in an occupation commonly recognized as a "learned or artistic" profession to the licensed professions already listed in the order. This broad language would eliminate the need for the IWC to modify the list (as it did to add pharmacists in 1979) each time it wished to recognize a new group as professionals, because it would allow enforcement staff to consider individual situations and actual duties when applying the exemption. The language also would permit, but would not be limited to, use of the federal guidelines for purposes of interpretation." (Emphasis added)

The IWC intended to add to the list of "professionals" which are specifically listed in the IWC Orders: "law, medicine, dentistry, pharmacy, optometry, architecture, engineering, teaching, or accounting." These professions have one thing in common, those who practice these professions "requir[e] knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study as distinguished from a general academic education and from an apprenticeship and from training in the performance of routine mental, manual, or physical processes." (See 29 C.F.R. 541.301, defining "learned" professions)

In your letter you attached two pages of Commissioner Aubry's three-page Interpretive Bulletin issued at the time of the IWC's adoption of the learned and artistic exemption. The third page of that directive states, *inter alia*:

"As is always true in analyzing any of these exemptions, every case must be determined on its own merits. The letters and excerpts attached do not mean that every such person working in one of those occupations will be found to be either exempt or non-exempt."

This observation is especially true when applied to the term "teacher." Teachers are listed as one of the exempt professionals in the IWC Orders; however, the word "teacher" is specifically defined in those same Orders to mean those engaged in:

"...the profession of teaching under a certificate from the Commission for Teacher Preparation and Licensing or teaching in an accredited college or university." (See IWC Order 4-89, subsection 2(M))

The truck driver instructors your letter addresses appear to have some "certificate of authorization for service" issued by the Council for Private Postsecondary and Vocational Education. Our information is that the course of study to become a truck driver instructor involves a total of 144 hours of classroom and on-site instruction. Aside from the fact that the certification held by the instructors does not meet the requirement of the California IWC Orders that the certificate be from "the Commission for Teacher Preparation and Licensing" (and there is no showing that the instruction is being performed in an accredited college or university), the course of study required clearly does not entail a prolonged course of specialized intellectual instruction and study.

You indicate in your letter that you believe that the federal regulations would exempt the truck driver instructors employed by your client. Without arguing your conclusion with you I would point out that the Fair Labor Standards Act exempts only:

"...any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools..." 29 U.S.C. § 213(a)(1)

It may well be argued that the exemption you point to in the Code of Federal Regulations only applies to teachers engaged in teaching at the elementary and secondary level of academic schools. This argument seems to be buttressed by the language of 29 C.F.R. § 541.301(g)(1) and following sections. However, this is federal law and I will not attempt to give you legal advice in this area.

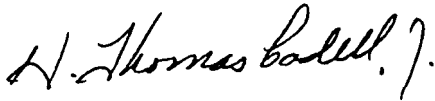
Notwithstanding the fact that federal law may or may not exempt your client's employees, it is obvious that the IWC did not intend that the term "teacher" as described in the Federal Regulations should supersede the definition they themselves had placed on the word in the California IWC Orders. (See IWC Order 4-89, subsection 2(G) cited above)

Thomas L. Miller
March 5, 1997
Page 4

For the reasons stated above, the Division continues to take the position that truck driver instructors are not exempt under the "learned and artistic" exemption contained in the California IWC Orders. We are sorry if the letter from the Industrial Relations Representative in 1991 caused you or your client any inconvenience. It is our understanding that U.S. Truck Driving School has been cited on more than one occasion for its failure to pay the overtime premium owed to truck driver instructors. Thus, it would appear, your client knew of the position of the Division.

If you have any further questions regarding this case please direct them to Deputy Ferrell in the San Diego office.

Yours truly,



H. THOMAS CADELL, JR.
Chief Counsel

c.c. John Duncan, Chief Deputy Director
Nance Steffen, Assistant Labor Commissioner
Greg Rupp, Assistant Labor Commissioner
Tom Grogan, Assistant Labor Commissioner
Abigail Calva, Assistant Labor Commissioner
Lucille Ferrell, DLC I, San Diego
Evangeline Perez, L.A. BOFE

1997.03.05

Exhibit 4

OTTINGER

EMPLOYMENT LAWYERS

Robert W. Ottinger
Direct: (917) 566-2037
robert@ottingerlaw.com

401 Park Avenue South
New York, NY 10016
(212) 571-2000

535 Mission Street, 14th Fl.
San Francisco, CA 94105
(415) 262-0096

OTTINGERLAW.COM

March 1, 2021

Via Online Submission: www.dir.ca.gov

California Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, CA 95814

Re: PAGA Notice Pursuant to California Labor Code § 2699

Jamie James / J.J. Keller & Associates, Inc.

Dear Sir or Madam:

The Ottinger Firm, P.C. represents Jamie James, a former Driver Trainer employed by J.J. Keller & Associates (“J.J. Keller”). Ms. James was employed by J.J. Keller as a Driver Trainer from approximately April 14, 2020 to approximately February 1, 2021. Based on information provided to us by Ms. James, we believe J.J. Keller has engaged in a scheme designed to deprive Ms. James and similarly-situated employees working for J.J. Keller in the State of California from the protections of California’s laws.

Specifically, Ms. James alleges that J.J. Keller willfully misclassified her and other similarly-situated Driver Trainers in the State of California as exempt salaried employees. As a result, J.J. Keller violated numerous California wage and hour laws, including but not limited to failing to pay them minimum and overtime wages, failing to provide them with meal and rest periods, failing to reimburse them for necessary business expenses, failing to provide them with accurate wage statements, and failing to provide them with all wages earned upon termination of employment.

Also, J.J. Keller requires all California employees to sign an agreement entitled Agreement Barring Unfair Activities (the Agreement) that violates their rights under California Law in two respects. First, the Agreement contains non-compete and non-solicitation clauses that violate Cal. Bus. & Prof. Code § 16600 that prohibits non-compete and non-solicitation agreements. Second, the Agreement provides that all disputes must be resolved in Wisconsin under Wisconsin law in violation of California Labor Code section 925 that forbids such choice of law and forum selection clauses.

3/1/21

Page 2 of 3

This letter serves as notice of our intent to seek civil penalties pursuant to the Private Attorneys General Act (“PAGA”), Cal. Lab. Code §§ 2698 *et seq.*, on behalf of Ms. James and similarly-situated employees of J.J. Keller in the State of California at any time since February 1, 2020. Ms. James alleges that J.J. Keller violated numerous provisions of the California Labor Code, including but not limited to: §§ 201.3, 203, 216, 221, 226, 226.7, 226.8, 246, 247, 432.5, 510, 512, 558, 1174, 1175, 1197, 1198, 1199, 2802, and 3700 and provisions of the applicable Wage Order. Ms. James will seek all applicable civil penalties and liquidated damages on behalf of herself and all similarly-situated employees of J.J. Keller, including but not limited to penalties and liquidated damages pursuant to the aforementioned statutes and California Labor Code §§ 225.5, 226.3, 226.6, 248.5, 558.1, 1174.5, 1194.2, 1197.1, 2699, and 3700.5, and the applicable Wage Order.

The facts and claims contained herein are based on the limited information available at the time of this writing. Therefore, if through further review or informal or formal discovery, Ms. James becomes aware of additional compensation or penalties owed to her and other current or former employees of J.J. Keller or of additional claims against J.J. Keller, she reserves the right to revise these facts and/or add any new claims by amending this letter.

Based on the foregoing, Ms. James intends to file a civil action to pursue claims against J.J. Keller and to seek PAGA remedies for these violations. Ms. James respectfully requests that the Labor & Workforce Development Agency notify her if it intends to investigate the above allegations pursuant to PAGA.

Thank you for your attention to this matter. Please direct all communications and correspondence to our office going forward. If you have any questions, please do not hesitate to contact us at (212) 571-2000.

Sincerely,

The Ottinger Firm, P.C.



Robert Ottinger

3/1/21

Page 3 of 3

Cc: Via U.S. Certified Mail

Patrick P. Gill

501 S. Nicolet Road

Appleton, WI 54914

OTTINGER

EMPLOYMENT LAWYERS

Robert W. Ottinger
Direct: (917) 566-2037
robert@ottingerlaw.com

79 Madison Avenue
New York, NY 10016
(347) 492-1904

535 Mission Street
14th Floor
San Francisco, CA 94105
(415) 262-0096

OTTINGERLAW.COM

December 16, 2021

Via Online Submission: www.dir.ca.gov
California Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814

Via Email and U.S. Certified Mail
Sarah Kroll-Rosenbaum
Akerman LLP
601 West Fifth Street, Suite 300
Los Angeles, CA 90071

**Re: PAGA Notice Pursuant to California Labor Code § 2699
Spencer Johnston / J.J. Keller & Associates, Inc.**

To Whom It May Concern:

The Ottinger Firm, P.C. represents Spencer Johnston with respect to his wage and hour claims against J.J. Keller & Associates (“J.J. Keller”). J.J. Keller is a company based in Neenah Wisconsin that assists businesses comply with complex regulations. One of the company’s many areas of focus is driver training for commercial enterprises such as Amazon and other similar companies and offers training classes throughout the State of California. Mr. Johnston was employed by J.J. Keller as a Driver Trainer from approximately April 27, 2020 to approximately April 30, 2021.

We believe J.J. Keller has engaged in a scheme designed to deprive Mr. Johnston and similarly-situated employees working for J.J. Keller in the State of California from the protections of California’s laws. Specifically, J.J. Keller willfully misclassified him and other similarly-situated Driver Trainers in the State of California as exempt salaried employees. As a result, J.J. Keller violated numerous California wage and hour laws, including but not limited to failing to pay them minimum and overtime wages, failing to provide them with meal and rest periods, failing to reimburse them for necessary business expenses, failing to provide them with accurate wage statements, and failing to provide them with all wages earned upon termination of employment.

Also, J.J. Keller requires all California employees to sign an agreement entitled Agreement Barring Unfair Activities (the Agreement) that violates their rights under California Law in two respects. First, the Agreement contains non-compete and non-solicitation clauses that violate Cal.

12/16/21

Page 2 of 2

Bus. & Prof. Code § 16600 that prohibits non-compete and non-solicitation agreements. Second, the Agreement provides that all disputes must be resolved in Wisconsin under Wisconsin law in violation of California Labor Code section 925 that forbids such choice of law and forum selection clauses.

This letter serves as notice of our intent to seek civil penalties pursuant to the Private Attorneys General Act (“PAGA”), Cal. Lab. Code §§ 2698 *et seq.*, on behalf of Mr. Johnston and similarly-situated employees of J.J. Keller in the State of California at any time since April 27, 2020. Mr. Johnston alleges that J.J. Keller violated numerous provisions of the California Labor Code, including but not limited to: §§ 201.3, 203, 216, 221, 226, 226.7, 226.8, 246, 247, 432.5, 510, 512, 558, 1174, 1175, 1197, 1198, 1199, 2802, and 3700 and provisions of the applicable Wage Order. Mr. Johnston will seek all applicable civil penalties and liquidated damages on behalf of himself and all similarly-situated employees of J.J. Keller, including but not limited to penalties and liquidated damages pursuant to the aforementioned statutes and California Labor Code §§ 225.5, 226.3, 226.6, 248.5, 558.1, 1174.5, 1194.2, 1197.1, 2699, and 3700.5, and the applicable Wage Order.

The facts and claims contained herein are based on the limited information available at the time of this writing. Therefore, if through further review or informal or formal discovery, Mr. Johnston becomes aware of additional compensation or penalties owed to him and other current or former employees of J.J. Keller or of additional claims against J.J. Keller, he reserves the right to revise these facts and/or add any new claims by amending this letter.

We respectfully request that the Labor & Workforce Development Agency notify us if it intends to investigate the above allegations pursuant to PAGA. We also request that the LWDA inform us if it does not intend to investigate these violations so that we may amend an existing complaint to add PAGA claims, to seek penalties on behalf of Mr. Johnston and all other employees who were subjected to J.J. Keller’s unlawful policies and practices described above, including but not limited to all current and former driver trainers who were employed by J.J. Keller in California within the statutory period for the claims described above.

Thank you for your attention to this matter. Please direct all communications and correspondence to our office going forward. If you have any questions, please do not hesitate to contact our office.

Sincerely,



Robert Ottinger
The Ottinger Firm, P.C.

Exhibit 5