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Superior Court of California
County of Los Angeles

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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

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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

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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

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Cc: Via U.S. Certified Mail

Patrick P. Gill

501 S. Nicolet Road

Appleton, WI 54914