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8 individuals

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF IMPERIAL**

11 BRYAN CIOFFI, individually and on behalf
12 of all similarly situated individuals,

13 Plaintiff,

14 v.

15 J.J. KELLER & ASSOCIATES, INC., a
16 Wisconsin corporation, and DOES 1
through 10, inclusive,

17 Defendants.

CLASS ACTION

CASE NO: ECU002941

Assigned to the Hon. L. Brooks Anderholt, Dept. 9

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint Filed: May 26, 2023

1 **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 This Settlement Agreement and Release of Claims ("Settlement Agreement") is made and
3 entered into by and between Plaintiff Bryan Cioffi ("Plaintiff" or "Class Representative"),
4 individually and on behalf of all others similarly situated, and Defendant J.J. Keller & Associates,
5 Inc., a Wisconsin corporation ("Defendant"), subject to the terms and conditions herein and the
6 Court's approval.

7 **A. Definitions.**

8 1. Plaintiff, the Settlement Class (as defined below), and Defendant are collectively
9 referred to herein as "the Parties."

10 2. Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC are counsel of
11 record for Plaintiff Bryan Cioffi. For purposes of this Settlement Agreement only, the firm of
12 Gaines & Gaines, APLC shall be designated as "Class Counsel."

13 3. The "Action" means the case of *Bryan Cioffi v. J.J. Keller & Associates, Inc.*, El
14 Centro County Superior Court Case No. ECU002941 (the "Action").

15 4. The "Settlement Class" shall be defined as "all non-exempt employees who worked
16 for J.J. Keller & Associates Inc. in California from December 14, 2018 through May 2, 2023."
17 Defendant represents 16 Class Members worked during this period. Those individuals worked an
18 estimated 491 pay periods between December 14, 2018 and March 18, 2023, excluding pay periods
19 released as part of the settlement in *James, et al. v. J.J. Keller & Associates, Inc.*, Los Angeles
20 Superior Court, Case No. 21STCV10996 ("*James*"). An anonymized list of all members of the
21 Settlement Class and their total pay periods worked between December 14, 2018 and March 18,
22 2023, excluding the pay periods released through *James*, is attached hereto as **Exhibit 3**.

23 5. The "Settlement Class Period" shall be defined as the period from December 14,
24 2018 through the date of Preliminary Approval.

25 6. The "Aggrieved Employees" shall be defined as "all non-exempt employees who
26 worked for J.J. Keller & Associates Inc. in California from December 14, 2021 through May 2,
27 2023." An anonymized list of all members of the Aggrieved Employees and their total pay periods
28

1 worked between December 14, 2021 and March 18, 2023, excluding the pay periods released
2 through *James*, is attached hereto as Exhibit 3.

3 7. The "PAGA Period" shall be defined as the period from December 14, 2021
4 through the date of Preliminary Approval.

5 8. Members of the Settlement Class shall collectively be referred to as a "Class
6 Member" or "Class Members." Any Class Member who files a timely request for exclusion, as
7 detailed below, will be excluded from the final Settlement Class.

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

15 **B. General.**

16 1. On December 14, 2022, Plaintiff exhausted the pre-filing requirements of PAGA.

17 2. On May 26, 2023, Plaintiff initiated his Action in the Imperial County Superior
18 Court by filing a class and representative action complaint, pursuant to PAGA, on behalf of himself
19 and all other similarly situated individuals.

20 3. As set forth in the operative Complaint, the Action assert claims against Defendant
21 for (1) failure to pay all minimum and overtime wages due (Labor Code §§ 510 and 1194); (2)
22 failure to provide meal periods or compensation in lieu thereof (Labor Code §§ 226.7 and 512 and
23 IWC Wage Order 7-2001); (3) failure to provide rest periods or compensation in lieu thereof (Labor
24 Code § 226.7 and IWC Wage Order 7-2001); (4) knowing and intentional failure to comply with
25 itemized employee wage statement provisions (Labor Code §§ 226(a) and (e)); (5) failure to timely
26 pay wages due at the separation of employment (Labor Code §§ 201-203); (6) violation of Business
27 and Professions Code § 17200 for underlying violations of the Labor Code as set forth in the
28

1 complaint in the Action; and (7) civil penalties pursuant to PAGA for underlying violations of the
2 Labor Code as set forth in the complaint in the Action.

3 4. Defendant denies any liability or wrongdoing of any kind associated with the claims
4 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
5 purpose other than this settlement. Defendant contends that it has complied at all times with the
6 California Labor Code. It is Defendant's position that, if this case were to be litigated, class
7 certification would be inappropriate because Plaintiff is not an adequate Class Representative,
8 Plaintiff's claims are not typical of putative class members, and individual issues predominate over
9 class issues, among other defenses. The Action, the negotiation and execution of this Settlement
10 Agreement, and all acts performed or documents executed pursuant to or in furtherance of this
11 Settlement Agreement (i) shall not be used as an admission, or as evidence of wrongdoing by the
12 Defendant, or for any other purpose whatsoever; (ii) shall not be an admission or evidence of fault
13 on behalf of Defendant in any action before a civil court, criminal court, administrative agency of
14 any type, or other tribunal; and (iii) shall not be deemed to be, and may not be used as, an admission
15 or evidence of the appropriateness of these or similar claims for class certification in the Action or
16 with respect to any other proceeding whatsoever.

17 5. The Class Representative contends that Defendant violated the California Labor
18 Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class
19 certification.

20 6. Class Counsel represent that they have conducted a thorough investigation into the
21 facts and law during the prosecution of this class action case, including the exchange of extensive
22 informal discovery and the review and verification of statistical data and other facts and information
23 provided by Defendant. Counsel for the Parties also represent that they have investigated the
24 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and
25 potential defenses thereto, and the damages and other losses claimed by Plaintiff.

26 7. Prior to filing the Action, and following their exchange of information and
27 documents regarding the Settlement Class and the claims and defenses asserted by the Parties, the
28 Parties engaged in direct arm's-length negotiations and reached this Settlement.

1 8. Based on their own independent investigation and evaluation, Class Counsel are of
2 the opinion (and will so represent to the Court) that settlement for the consideration and on the
3 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
4 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
5 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses
6 asserted by Defendant. Defendant and its counsel also agree (and will so represent to the Court)
7 that this settlement is fair and in the best interest of the Settlement Class.

8 9. The Parties agree that the Settlement Class described herein may be certified for
9 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
10 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
11 approved, the certification will have no force or effect and will immediately be revoked. The
12 Parties further agree that certification for purposes of the settlement is in no way an admission that
13 class certification is proper under the more stringent standard applied for litigation and that
14 evidence of this limited Settlement Agreement for settlement purposes only will not be admissible
15 for any purpose in this or any other proceeding.

16 **C. Terms of Settlement.**

17 1. The financial terms of the Settlement Agreement are as follows:

18 (a) **Gross Settlement Amount:** The Parties agree to settle the Action for a Gross
19 Settlement Amount of One Hundred Thirty-Five Thousand Dollars (\$135,000) (the "Gross
20 Settlement Amount"), subject to the provision in paragraph H(16) herein. The Gross Settlement
21 Amount includes the attorney's fees of Class Counsel; litigation costs and expenses (which
22 includes, without limitation, all such fees and costs incurred to date, as well as such fees and costs
23 to be incurred in documenting the settlement, providing any notices required as part of the
24 settlement, securing Court approval of the settlement, and obtaining judgment in the Action); the
25 Incentive Award Payment to the Class Representative, as approved by the Court; the payment to
26 the California Labor and Workforce Development Agency ("LWDA"); and all costs of
27 administration, including, without limitation, settlement administration fees and expenses. All
28 employer payroll tax obligations due on wage payments made from the Net Settlement Proceeds

1 shall be paid by Defendant separate and apart from, and in addition to, the Gross Settlement
2 Amount.

3 (b) **Net Settlement Proceeds:** "Net Settlement Proceeds" is defined as the
4 Gross Settlement Amount less the amounts approved and awarded by the Court for: attorney's fees
5 and documented litigation costs and expenses incurred or advanced by Class Counsel; the Incentive
6 Award Payment to the Class Representative; the payment to the LWDA pursuant to PAGA; and
7 the costs of administering the settlement.

8 (c) **Calculation of the Individual Payment Amounts:** "Individual Payment
9 Amount" means the portion of the Net Settlement Proceeds distributable to each Class Member
10 who participates in the Class Settlement (i.e., who does not submit a valid request for exclusion
11 form) and each Aggrieved Employee, whether they participate in the Class Settlement or not. As
12 to participating Class Members, the class portion of the Individual Payment Amount will be
13 determined by dividing the Net Settlement Proceeds, less the \$2,500 PAGA allocation, by the total
14 number of pay periods worked by the entire Settlement Class in a non-exempt position in California
15 during the Settlement Class Period, net of opt outs, resulting in the class pay period value; and then
16 multiplying the class pay period value by the number of pay periods worked by each participating
17 Class Member in a non-exempt position in California during the Settlement Class Period. As to
18 the Aggrieved Employees, the PAGA portion of the Individual Payment Amount will be
19 determined by dividing the PAGA settlement amount (\$2,500) by the total number of pay periods
20 worked by all Aggrieved Employees in a non-exempt position in California during the PAGA
21 Period, resulting in the PAGA pay period value; and then multiplying the PAGA pay period value
22 by the number of pay periods worked by each Aggrieved Employee in a non-exempt position in
23 California during the PAGA Period.

24 (d) Pay periods worked between December 14, 2018 and October 26, 2022 for
25 Class Members who released their claims alleged in *James, et al. v J. J. Keller & Associates, Inc.*,
26 Los Angeles Superior Court, Case No. 21STCV10996 shall not be included in the computation of
27 pay periods as detailed above. Pay periods worked between December 14, 2021 and October 26,
28 2022 for Aggrieved Employees who released their PAGA claims alleged in *James, et al. v J. J.*

1 *Keller & Associates, Inc.*, Los Angeles Superior Court, Case No. 21STCV10996 shall not be
2 included in the computation of pay periods as detailed above. These are referred to as "Excluded
3 Pay Periods."

4 (e) For tax purposes, the class portion of each Individual Payment Amount will
5 be apportioned (a) 25% as wages (reported on an IRS Form W-2 and subject to applicable
6 withholdings); and (b) 50% as penalties and 25% as interest (reported on an IRS Form 1099, if
7 required). The PAGA portion of each Individual Payment Amount will be apportioned 100% as
8 penalties (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to
9 Class Members and Aggrieved Employees will be subject to any applicable wage garnishments,
10 liens, or other legally mandated treatment as required by law.

11 (f) **PAGA Payments:** The Parties agree that Ten Thousand Dollars (\$10,000)
12 shall be allocated to settle Plaintiff's claims brought pursuant to PAGA. Of this amount, Seventy-
13 Five percent (75%), or Seven Thousand Five Hundred Dollars (\$7,500), shall be paid to the LWDA,
14 and the remaining Twenty-Five percent (25%), or Two Thousand Five Hundred Dollars (\$2,500),
15 shall be paid to Aggrieved Employees as part of the Net Settlement Proceeds.

16 (g) **Incentive Award Payment and General Release Payment to Class**
17 **Representative:** The amount awarded to the Class Representative as a "Incentive Award Payment"
18 and in exchange for a general release, as set forth in Paragraph D(2), below, will be set by the Court
19 in its discretion, not to exceed Ten Thousand Dollars (\$10,000). This amount will be deducted from
20 the Gross Settlement Amount. An IRS Form 1099 will be issued to the Class Representative for
21 his Incentive Award Payment. Defendant agrees not to dispute or otherwise object to the Incentive
22 Award Payment if Plaintiff requests \$10,000 or less.

23 (h) **Attorney's fees:** An award to Class Counsel of attorney's fees will be
24 deducted from the Gross Settlement Amount in an amount to be set by the Court taking into account
25 the settlement award that has been made available for the Settlement Class by the efforts of Class
26 Counsel. The amount awarded shall not exceed 40% of the Gross Settlement Amount (i.e., Fifty-
27 Four Thousand Dollars (\$54,000)). An IRS Form 1099 will be issued to Class Counsel with respect
28 to its award of attorney's fees. Defendant agrees not to dispute or otherwise object to the attorneys'

1 fee award requested by Class Counsel so long as the request does not exceed 40% of the Gross
2 Settlement Amount.

3 (i) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
4 the Gross Settlement Amount in an amount to be set by the Court for documented out-of-pocket
5 litigation costs and expenses, not to exceed Five Thousand Dollars (\$5,000). An IRS Form 1099
6 will be issued to Class Counsel with respect to its award of costs and expenses. Defendant agrees
7 not to dispute or otherwise object to the attorneys' cost award requested by Class Counsel so long
8 as the request does not exceed \$5,000.

9 (j) **Settlement Administration Costs:** The fees and other charges of the
10 Settlement Administrator to administer the Settlement are expected to total no more than Four
11 Thousand Dollars (\$4,000) and will be paid from the Gross Settlement Amount. These fees shall
12 include any costs associated with the required tax reporting on any Individual Payment Amounts,
13 and the issuing of any and all W-2 and 1099 forms. Subject to approval of the Court, the Parties
14 have agreed that Phoenix Settlement Administrators will serve as a neutral third-party claims'
15 administrator ("Settlement Administrator") to perform all acts related to providing notice to the
16 Settlement Class. Settlement Administrator shall be responsible for (a) printing and distributing
17 the Court-approved Notice of Class Action Settlement ("Class Notice") to all Class Members; (b)
18 administering the settlement; (c) processing exclusions, objections, and field inquiries from Class
19 Members; (d) resolving disputes; (e) calculating the Individual Payment Amount that each
20 Participating Class Member and Aggrieved Employee is eligible to receive; (f) distributing the
21 Gross Settlement Amount as directed by the Court and set forth herein; (g) tax reporting; (h)
22 providing necessary weekly status reports; and (i) other duties and responsibilities set forth herein.

23 (k) **No Warranty by Defendant:** Plaintiff understands and agrees that
24 Defendant is not providing Plaintiff or Class Members with tax or legal advice and that Defendant
25 makes no representations regarding tax obligations or consequences, if any, related to this
26 Settlement Agreement.

1 **D. Release of Claims.**

2 1. Upon the Effective Date, and subject to Defendant's full payment of the Gross
3 Settlement Amount and all associated employer payroll tax obligations, Plaintiff and all Settlement
4 Class Members who do not timely opt-out of the Settlement will be deemed to have fully released
5 and discharged Defendant J. J. Keller & Associates, Inc., all entities affiliated with it, and all
6 officers, directors, representatives, owners, partner, subsidiaries, parent companies, joint
7 venturers, clients, joint employer, predecessors, managers, servants, successors-in-interest,
8 assigns, current and former employees of Defendant, including but not limited to agents, insurers,
9 attorneys and all persons or entities acting in concert with or affiliated with any of them
10 ("Releasees") from any and all Settlement Class Released Claims which arose during their
11 employment in a non-exempt position in California during the Settlement Class Period.

12 2. Upon the Effective Date, and subject to Defendant's full payment of the Gross
13 Settlement Amount and all associated employer payroll tax obligations, Plaintiff and all Aggrieved
14 Employees will be deemed to have fully released and discharged the Releasees from any and all
15 Released PAGA Claims which arose during their employment in a non-exempt position in
16 California during the PAGA Period.

17 3. "Settlement Class Released Claims" means all claims as pled in the PAGA letter
18 and the operative complaint, and any further amended pleadings as necessary, including claims for
19 (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay minimum
20 and overtime wages; (4) wage statement violations; (5) failure to pay wages at time of
21 termination/waiting time penalties; and (6) violation of Business & Professions Code section
22 17200 based on the allegations in the PAGA letter and the operative complaint. This also includes,
23 but is not limited to, any and all claims alleged or that could have been alleged based on the facts
24 of Plaintiff's operative complaint or any amended complaint for unpaid wages, economic damages,
25 non-economic damages, any other damages, civil or statutory penalties, waiting time penalties,
26 liquidated damages, and all other associated damages and/or penalties, including but not limited to
27 claims under Labor Code section 2698, *et seq.*, Labor Code sections 201, 202, 203, 226, 226.3,
28 226.7, 510, 512, 558, 1194, all applicable IWC Wage Orders, Business and Professions Code

1 section 17200 et seq., and any and all claims or potential claims for lost wages and/or benefits,
2 consequential economic damages, other economic damages, punitive damages, emotional distress
3 damages, reputation damages, any other damages, attorneys' fees and costs and interest. For
4 Plaintiff and the members of the Settlement Class who do not opt out of the settlement, the
5 Settlement Class Release shall include all released claims which arose during employment by
6 Defendant in a non-exempt position in California during the Settlement Class Period.

7 4. "Released PAGA Claims" means all claims as pled in the PAGA letter and the
8 operative complaint, and any further amended pleadings as necessary, for violation of PAGA based
9 on the allegations in the PAGA letter and the operative complaint, as well as any and all PAGA
10 claims that were asserted or could have been asserted based on the factual allegations contained in
11 the operative complaint and PAGA letter. This also includes, but is not limited to, any and all PAGA
12 claims alleged or that could have been alleged based on the facts of Plaintiff's PAGA letter or any
13 complaint, including but not limited to claims for civil penalties under Labor Code section 2698, *et*
14 *seq.*, Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 510, 512, 558, 1194 and all applicable
15 IWC Wage Orders.

16 5. Upon the Effective Date, and subject to Defendant's full payment of the Gross
17 Settlement Amount and all associated employer payroll tax obligations, Plaintiff Cioffi shall be
18 deemed to have fully, finally, and forever released the Releasees from any and all claims,
19 obligations, demands, Action, rights, causes of action, and liabilities against the Releasees, of
20 whatever kind and nature, character, and description, whether in law or equity, whether sounding
21 in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or
22 other source of law, whether known or unknown, and whether anticipated or unanticipated,
23 including unknown claims covered by Civil Code Section 1542, arising through the date of his
24 signature hereon, for any type of relief, including, without limitation, claims for wages, damages,
25 unpaid costs, penalties, liquidated damages, punitive damages, interest, attorney's fees, litigation
26 costs, restitution, or equitable relief. These claims include, but are not limited to, the Settlement
27 Class Released Claims and Released PAGA Claims, as well as any other claims under any
28 provision of the California Labor Code or any applicable California Industrial Welfare

1 Commission Wage Orders, and claims under local, state, or federal discrimination statutes,
2 including, without limitation, the California Fair Employment and Housing Act, California
3 Government Code §§ 12940 et seq.; the Unruh Civil Rights Act, California Civil Code §§ 51 et
4 seq.; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 et
5 seq.; the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.; the Employee Retirement
6 Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq.; and all of their implementing regulations
7 and interpretive guidelines. With respect to these Released Claims as described in this Section,
8 Plaintiff Cioffi shall be deemed to have expressly waived and relinquished, to the fullest extent
9 permitted by law, the provisions, rights, and benefits he may otherwise have had pursuant to
10 Section 1542 of the California Civil Code, which provides as follows:

11 **A general release does not extend to claims that the creditor or releasing party**
12 **does not know or suspect to exist in his or her favor at the time of executing the**
13 **release and that, if known by him or her, would have materially affected his or**
14 **her settlement with the debtor or released party.**

15 Notwithstanding Section 1542, Plaintiff understands and agrees that this Agreement shall
16 act as a release of all future claims that may arise from Plaintiff's employment or separation from
17 employment with Defendant, or any other matters that existed between Plaintiff and the Releasees
18 up to the date of this Agreement, whether such claims are currently known or unknown, and that
19 Plaintiff intentionally waives any rights he may have under the provisions of Section 1542, as well
20 as under any other statutes or common law principles of similar effect in the State of California or
21 in any other state.

22 **E. Notice and Exclusion Process.**

23 1. Within ten (10) calendar days after entry of the order granting preliminary approval
24 of this Settlement, Defendant shall provide to the Settlement Administrator a list of all Class
25 Members and Aggrieved Employees, including their last known addresses, telephone numbers,
26 social security numbers, their dates of employment in a non-exempt position in California, and pay
27 periods worked during both the Settlement Class Period and PAGA Period ("Settlement Class
28 Information"), but not including Excluded Pay Periods. The names, addresses, telephone numbers,
and Social Security numbers will only be disclosed to the Settlement Administrator and not to

1 Plaintiff's Counsel. All information provided to the Settlement Administrator will be marked
2 CONFIDENTIAL. This information shall be kept confidential and shall not be disclosed, either in
3 writing or orally, by the Settlement Administrator. The Settlement Administrator shall use due care
4 with respect to the storage, custody, use, and/or dissemination of the confidential information. Such
5 information must be stored in a secure fashion and all persons who access the data must agree to
6 keep it confidential.

7 2. A notice of pendency of class action, proposed settlement, and hearing date for
8 Court approval ("Class Notice") in the form attached hereto as **Exhibit 1**, and as approved by the
9 Court, shall be sent by the Settlement Administrator to the Class Members, by first class mail,
10 within twenty (20) calendar days after entry of the order granting preliminary approval. Attached
11 to the Class Notice will be a request for exclusion form ("Request for Exclusion Form") in the form
12 attached hereto as **Exhibit 2**.

13 3. The Settlement Administrator will make reasonable efforts to ensure that the Class
14 Notice and Request for Exclusion Form are sent to all Class Members. It will conclusively be
15 presumed that if an envelope has not been returned within thirty (30) days of the mailing that the
16 Class Member received the Class Notice. In the event of returned or non-deliverable notices, the
17 Settlement Administrator will make reasonable efforts to locate Class Members and re-send the
18 notices.

19 4. Each Class Member will be fully advised of the settlement, the ability to object to
20 the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will
21 inform the Class Members of the Court-established deadlines for filing objections and a Request
22 for Exclusion Form.

23 5. Each Class Notice will contain personalized information setting forth the number of
24 pay periods each Class Member worked for Defendant in California in a non-exempt position
25 during the Settlement Class Period (but not including Excluded Pay Periods) and their estimated
26 Individual Payment Amount. To the extent a Class Member disputes any of the information listed
27 on his or her Class Notice, the Class Member may produce evidence to the Settlement
28 Administrator showing such information the Class Member contends should be reflected in the

1 Class Notice. Defendant's records will be presumed determinative, however, and the Settlement
2 Administrator's decision on these matters will be final. The Class Notice will also set forth IRS
3 W-9 information if required.

4 6. All Class Members who do not submit a Request for Exclusion Form will be eligible
5 to receive an Individual Payment Amount and all Aggrieved Employees will be eligible to receive
6 a share of the PAGA allocation from the Net Settlement Proceeds, which shall be mailed to them
7 if and when the Effective Date occurs.

8 7. In order to elect not to participate in the Settlement, a Class Member must submit a
9 Request for Exclusion Form, and mail it to the Settlement Administrator no later than forty-five
10 (45) calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to
11 Class Members, unless the Court requires a longer period, in which case the Court ordered
12 exclusion period will apply. The date of the postmark shall be deemed the date of submission. The
13 timeliness of submitted Request for Exclusion Forms will be determined by valid postmark. If the
14 45th day falls on a Sunday or federal holiday, the time to request exclusion will be extended to the
15 next day on which the U.S. Postal Service is open.

16 8. The deadline for submission of Exclusion Forms shall be extended once by 30 days
17 for those Class Members whose Class Notice and Exclusion Form are returned as "undeliverable."
18 If the 30th day falls on a Sunday or federal holiday, this deadline will be extended to the next day
19 on which the U.S. Postal Service is open.

20 9. The Settlement Administrator will search for additional addresses on returned mail
21 and will re-mail the Class Notice and Exclusion Form to an updated address (if any) within 15 days
22 of receipt of the returned mail. The 30-day extended time limit will run from the date of the second
23 mailing for those Class Members. To the extent a Class Notice from the initial mailing is not
24 returned within 30 days, it shall be deemed to have been sent to a valid address even if it is thereafter
25 returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts be used to
26 locate Class Members. If the initial Class Notice and Request for Exclusion Form is returned, the
27 Settlement Administrator will search using the social security number for a more current address.
28 If no address is found within 10 days, no further action is required.

1 10. The Settlement Administrator will notify the Parties of the total number of valid
2 Request for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the
3 Request for Exclusion Forms (fifty-five (55) days following the initial mailing of the Class Notice
4 and Request for Exclusion Forms to Class Members).

5 11. In order to object to the settlement, a Class Member must mail his or her objection
6 to the Settlement Administrator no later than forty-five (45) calendar days after the mailing of the
7 Class Notice and Request for Exclusion Form to Class Members, unless the Court requires a longer
8 period, in which case the Court ordered objection period will apply. If the 45th day falls on a
9 Sunday or federal holiday, the time to object to the settlement will be extended to the next day on
10 which the U.S. Postal Service is open. Under no circumstances shall the objection deadline be
11 extended for any reason.

12 12. The Settlement Administrator shall provide to the Parties, at least twelve (12)
13 calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a declaration
14 of due diligence and proof of mailing with regard to the mailing of the Class Notice and Request
15 for Exclusion Forms. The Settlement Administrator will also provide to the Parties, at least twelve
16 (12) calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a report
17 listing the amount of all payments to be made to each Class Member without names or personal
18 identifying information.

19 13. Defendant shall deposit the Gross Settlement Amount and all employer payroll tax
20 obligations with the Settlement Administrator no later than fourteen (14) calendar days after the
21 Effective Date.

22 14. The Settlement Administrator shall disburse the Gross Settlement Amount within
23 fifteen (15) calendar days after its receipt thereof. Class Members and Aggrieved Employees must
24 cash each of their Individual Payment Amount checks within one hundred eighty (180) calendar
25 days after they are mailed by the Settlement Administrator. The value of any checks uncashed
26 more than one hundred eighty (180) days after mailing shall be paid to the State of California
27 Controller's Office – Unclaimed Property Fund, to be held in the name of the respective Class
28 Member or Aggrieved Employee.

1 **F. Duties of the Parties Prior to Court Approval.**

2 1. Promptly after execution of this Settlement Agreement, Plaintiff shall move the
3 Court for preliminary approval of this settlement and entry of an order accomplishing the
4 following:

5 (a) scheduling a fairness hearing on the question of whether the proposed
6 settlement should be finally approved as fair, reasonable, and adequate as to the Class Members;

7 (b) approving as to form and content the proposed Class Notice;

8 (c) approving as to form and content the proposed Request for Exclusion
9 Form;

10 (d) preliminarily certifying the Settlement Class for purposes of approving
11 the Settlement Agreement;

12 (e) preliminarily approving the PAGA payment of \$7,500 to the LWDA;

13 (f) preliminarily setting attorney's fees and costs payable to Class Counsel;

14 (g) preliminarily setting the Incentive Award Payment to the Class
15 Representative; and

16 (h) preliminarily approving Phoenix Settlement Administrators as the
17 Settlement Administrator and its estimated fees and costs of \$4,000.

18 2. The Parties shall submit this Settlement Agreement to the Court and the LWDA
19 in support of Plaintiff's unopposed motion for preliminary approval of the settlement.

20 **G. Duties of the Parties in Connection with and Following Final Court Approval.**

21 1. In connection with the hearing on final approval of the settlement, the Parties will
22 submit a proposed final order no later than ten (10) calendar days prior to the scheduled date of
23 the hearing on final approval (unless otherwise ordered by the Court):

24 (a) approving the settlement, adjudging the terms thereof to be fair, reasonable
25 and adequate, and directing consummation of its terms and provisions;

26 (b) approving Class Counsel's application for an award of attorney's fees and
27 reimbursement of documented litigation costs and expenses, the Incentive Award Payment to the
28

1 Class Representative, the PAGA Payment to the LWDA, and the costs of administering the
2 settlement; and

3 (c) Entering judgment in the Action in accordance with this Settlement
4 Agreement, pursuant to Cal. Rules of Court, Rule 3.769(h).

5 2. Class Counsel shall file an application for attorney's fees and reimbursement of
6 costs and expenses no later than ten (10) calendar days prior to the scheduled date of the hearing
7 on final approval (unless otherwise ordered by the Court).

8 **H. Miscellaneous Provisions:**

9 1. **Voiding the Agreement.**

10 A failure of the Court to approve any material condition of this Settlement Agreement which
11 effects "a fundamental change of the Parties' settlement," or if the settlement is reversed or
12 materially modified on appellate review, shall render the entire Settlement Agreement voidable and
13 unenforceable as to all Parties herein at the option of any Party.

14 2. **Parties' Authority.**

15 The signatories hereto represent that they are fully authorized to enter into this Settlement
16 Agreement and bind the Parties hereto to the terms and conditions hereof.

17 3. **Mutual Full Cooperation.**

18 The Parties agree to fully cooperate with each other to accomplish the terms of this
19 Settlement Agreement, including but not limited to, execution of such documents and such other
20 action as may reasonably be necessary to implement the terms of this Settlement Agreement. The
21 Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated
22 by this Settlement Agreement and any other efforts that may become necessary by order of the
23 Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As
24 soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the
25 assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the
26 Court's preliminary and final approval of the settlement.

27 ///

28 ///

1 **4. No Prior Assignments.**

2 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
3 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
4 entity any portion of any liability, claim, demand, action, cause of action or rights released and
5 discharged by this Settlement Agreement.

6 **5. No Admission.**

7 Nothing contained herein, nor the consummation of this Settlement Agreement, is to be
8 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
9 of Defendant or any of the other Releasees. Each of the Parties hereto has entered into this
10 Settlement Agreement with the intention of avoiding further disputes and litigation with the
11 attendant inconvenience and expenses. This Settlement Agreement is a settlement document and
12 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408
13 and/or any other similar law, be inadmissible in evidence in any proceeding, except an action or
14 proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

15 **6. Construction.**

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

20 **7. Captions and Interpretations.**

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

25 **8. Modification.**

26 This Settlement Agreement may not be changed, altered, or modified, except in writing and
27 signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be
28 discharged except by performance in accordance with its terms or by a writing signed by each of

1 the Parties hereto on their attorneys.

2 **9. Integration Clause.**

3 This Settlement Agreement contains the entire agreement between the Parties relating to
4 the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements,
5 understandings, representations, and statements, whether oral or written and whether by a Party or
6 such Party's legal counsel, are merged herein. No rights hereunder may be waived except in
7 writing.

8 **10. Binding on Assigns.**

9 This Settlement Agreement shall be binding upon and insure to the benefit of the Parties
10 hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

11 **11. Governing Law.**

12 All terms of this Settlement Agreement and its exhibits shall be governed by and interpreted
13 according to the laws of the State of California, without giving effect to any conflict of law
14 principles or choice of law principles.

15 **12. Signatures of All Class Members Unnecessary to be Binding.**

16 It is agreed that, because the members of the Settlement Class are numerous, it is impossible
17 or impractical to have each Class Member execute this Settlement Agreement. The Class Notice,
18 attached hereto as Exhibit 1, will advise all Class Members of the binding nature of the release
19 provided herein and such shall have the same force and effect as if this Settlement Agreement was
20 executed by each Class Member.

21 **13. Counterparts.**

22 This Settlement Agreement may be executed in counterparts, and when each Party has
23 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
24 and when taken together with other signed counterparts, shall constitute one fully-signed Settlement
25 Agreement, which shall be binding upon and effective as to all Parties.

26 **14. Confidentiality**

27 Until Plaintiff files his motion for preliminary approval of the class action settlement of the
28 Action, the Parties and Counsel agree to maintain confidentiality as to the Settlement, including the

1 amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing
2 agencies, or as otherwise required by law.

3 **15. No Publicity**

4 Plaintiff and his Counsel will not contact the media about the Settlement Agreement or
5 respond to any inquiries by the media regarding the Settlement, other than to state that the matter
6 was amicably settled, and the Court did not find Defendant liable. Plaintiff and his Counsel also
7 will not post any information about the Settlement Agreement on social media or their firm's
8 websites.

9 **16. Representation Regarding Class Size.**

10 Defendant has prepared Exhibit 3, which includes an anonymized list of all Class Members,
11 all Aggrieved Employees, and their total pay periods worked during the Settlement Class Period
12 and PAGA Period through March 18, 2023, excluding the pay periods released through *James*.
13 Excluded Pay Periods are not included in these calculations. Should the final pay periods increase
14 by 15% or more beyond the estimates listed in Exhibit 3 (after accounting for a pro rata increase
15 through preliminary approval), the Parties shall meet and confer to shorten the closing date of the
16 Settlement Class Period and/or the PAGA Period so the final pay periods do not exceed 15% more
17 than the estimates.

18 **17. Continuing Jurisdiction.**

19 The Parties agree that upon the occurrence of the entry of judgment in this case pursuant to
20 the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code
21 of Civil Procedure Section 664.6 and all other applicable law, and the Court shall retain exclusive
22 and continuing equity jurisdiction of this Action over all Parties and Class Members to interpret
23 and enforce the terms, conditions and obligation of the Agreement.

24 **18. Default; Notice; Cure; Acceleration; Time is of the Essence.**

25 Time is of the essence with respect to all provisions of this Agreement. If Defendant fails
26 to timely make the payment due hereunder, it shall be in default of its obligations. Plaintiff shall
27 thereafter give notice of default and Defendant must cure said default within ten (10) calendar days
28 thereof. In the event of an uncured default, all unpaid amounts shall be due and payable with interest

1 at the legal rate from the date of default.

2 Dated: 06 / 01 / 2023

By:

3 BRYAN CIOFFI

4 Plaintiff and Class Representative

5 Dated: _____

J.J. KELLER & ASSOCIATES, INC.

6 By: _____

7 Its: _____

8
9 **APPROVED AS TO FORM AND CONTENT:**

10 Dated: 6/1/2023

GAINES & GAINES, APLC

11 By: Daniel F. Gaines, Esq.

12 Daniel F. Gaines, Esq.

13 Alex P. Katofsky, Esq.

14 Counsel for Plaintiff and Class
Representative

15 Dated: _____

AKERMAN LLP

16 By: _____

17 Sarah Kroll-Rosenbaum, Esq.

18 Counsel for Defendant

1 at the legal rate from the date of default.

2 Dated: _____

By: _____

3 BRYAN CIOFFI

4 Plaintiff and Class Representative

5 Dated: 6-2-2023

J.J. KELLER & ASSOCIATES, INC.

6 By: Amy Jensen

7 Its: Amy Jensen

8
9 **APPROVED AS TO FORM AND CONTENT:**

10 Dated: _____

GAINES & GAINES, APLC

11 By: _____

12 Daniel F. Gaines, Esq.

Alex P. Katofsky, Esq.

13 Counsel for Plaintiff and Class
Representative

14 Dated: 6/2/2023

AKERMAN LLP

15 By: Sarah Kroll-Rosenbaum

16 Sarah Kroll-Rosenbaum, Esq.

17 Counsel for Defendant

EXHIBIT 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF EL CENTRO**

BRYAN CIOFFI, individually and on behalf of
all similarly situated individuals,

Plaintiff,

v.

J.J. KELLER & ASSOCIATES, INC., a
Wisconsin corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: ECU002941

Assigned to the Hon. L. Brooks Anderholt, Dept. 9

**NOTICE OF PENDENCY OF PROPOSED
CLASS ACTION SETTLEMENT AND
FINAL HEARING**

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.**

A California court authorized this notice. This is not a solicitation from a lawyer.

- A settlement will provide \$135,000 to pay claims to all individuals who worked for J.J. Keller & Associates, Inc. ("Defendant") as a non-exempt employee in California at any time between December 14, 2018 and May 2, 2023.
- The settlement resolves a lawsuit alleging that Defendant failed to pay all wages, including all minimum and overtime wages; provide compliant meal and rest periods or premium compensation in lieu thereof; timely issue final wages upon separation of employment; and issue accurate and complete itemized wage statements. The Settlement avoids costs and risks of continuing the lawsuit, pays money to employees, and releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$54,000 as attorney's fees and \$5,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendant denies liability and believes all appropriate wages were paid and that it otherwise complied with any Labor Code obligations. The Parties disagree on how much money could have been awarded if employees won at trial.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If your address has changed, you must notify the Settlement Administrator of your new address. In exchange for the settlement payment, you will release claims against the Defendant, as detailed below.
Exclude Yourself	To exclude yourself, you must send a written Request for Exclusion to the Settlement Administrator by the applicable deadline, as detailed below. If you request exclusion, you will receive no money from the class settlement. This is the only option that allows you to ever be part of any other lawsuit against J.J. Keller & Associates, Inc. about the legal claims that were brought in this case. Even if you exclude yourself, you will still be an Aggrieved Employee subject to the PAGA settlement
Object	Write to the Settlement Administrator about why you don't like the settlement by the applicable deadline, as detailed below, and/or appear at the Final Approval Hearing to make an oral objection.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement, as detailed below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On May 26, 2023, Plaintiff Bryan Cioffi ("Plaintiff"), a former employee of Defendant J.J. Keller & Associates, Inc., filed this lawsuit in the El Centro County Superior Court. The lawsuit alleges violations of the California Labor Code and California Business and Professions Code. The lawsuit seeks to certify a class of all current and former non-exempt California employees of Defendant at any time between December 14, 2018 and May 2, 2023 ("Class Period"). Specifically, the lawsuit alleges that members of the Class were not paid all wages, including all minimum and overtime wages due; provided compliant meal and rest periods or premium compensation in lieu thereof; timely issued final wages upon separation of employment; or issued accurate and complete itemized wage statements. The Settlement seeks recovery of wages, liquidated damages, damages, interest, statutory and civil penalties, restitution, attorney's fees and costs. Defendant denies all of the material allegations in the lawsuit and denies that it owes Class Members any remedies. The Court has not made a ruling on the merits of the case.

The lawyers for the parties are:

Plaintiff's Attorneys

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Gaines & Gaines, APLC
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
Phone: (866) 550-0855

Defendant's Attorneys

Sarah Kroll-Rosenbaum, Esq.
Nancy Sotomayor, Esq.
Akerman LLP
601 West Fifth Street, Suite 300
Los Angeles, CA 90071
Phone: (213) 688-9500

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes he would have prevailed on his claims at a trial. Defendant does not believe that Plaintiff would have won anything from a trial. There has been no trial. Instead, both sides agreed to a settlement, which is memorialized in the Settlement Agreement and Release of Claims ("Settlement" or "Settlement Agreement"), in order to avoid the further costs, risks, and uncertainty of a trial. Plaintiff and Plaintiff's Attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all Class Members.

B. Who is in the Settlement Class? Who is an Aggrieved Employee?

The Settlement encompasses a class composed of all individuals who worked for J.J. Keller & Associates, Inc. as a non-exempt employee in California at any time between December 14, 2018 and May 2, 2023. It encompasses Aggrieved Employees composed of all individuals who worked for J.J. Keller & Associates, Inc. as a non-exempt employee in California at any time between December 14, 2021 and May 2, 2023.

C. What does the Settlement provide?

1. Gross Settlement Amount.

The Settlement provides that Defendant will pay \$135,000 (the "Gross Settlement Amount") to settle the lawsuit.

2. Net Settlement Amount.

The "Net Settlement Amount" is the portion of the Gross Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Amount is the Gross Settlement Amount less the following amounts that will be requested at the Final Approval Hearing and are subject to comment or objection by Participating Class Members. The Court will set these amounts at the Final Approval Hearing.

(a) **Class Counsel's Attorney's Fees** in an amount set by the Court, not to exceed \$54,000;

(b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed \$5,000;

(c) **Incentive Award Payment to the Class Representative** in an amount set by the Court, not to exceed \$10,000 to Plaintiff for his service in the lawsuit;

(d) **Settlement Administration Costs** which are currently estimated to not exceed \$4,000, for administering the settlement; and

(e) **PAGA Payment** in the total amount of \$10,000 for the settlement of claims arising under the California Private Attorneys General Act ("PAGA"). Of that amount, 75% or \$7,500, shall be paid to the California Labor and Workforce Development Agency ("LWDA"). The remaining 25% or \$2,500, shall be included in the Net Settlement Amount for payment to Aggrieved Employees.

3. Individual Payment Amount.

Your share of the Net Settlement Amount will be determined by the formula detailed in section E below.

D. What Are You Giving Up To Get A Payment Or Stay In The Class?

Upon the Effective Date, and subject to Defendant's full payment of the Gross Settlement Amount and all associated employer payroll tax obligations, Plaintiff and all Settlement Class Members who do not timely opt-out of the Settlement will be deemed to have fully released and discharged Defendant J. J. Keller & Associates, Inc., all entities affiliated with it, and all officers, directors, representatives, owners, partner, subsidiaries, parent companies, joint venturers, clients, joint employer, predecessors, managers, servants, successors-in-interest, assigns, current and former employees of Defendant, including but not limited to agents, insurers, attorneys and all persons or entities acting in concert with or affiliated with any of them ("Released Parties") from any and all Settlement Class Released Claims which arose during their employment in a non-exempt position in California during the Settlement Class Period (December 14, 2018 through [REDACTED] [date of preliminary approval]). "Settlement Class Released Claims" means all claims as pled in the PAGA letter and the operative complaint, and any further amended pleadings as necessary, including 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; and (6) violation of Business & Professions Code section 17200 based on the allegations in the PAGA letter and operative complaint. This also includes, but is not limited to, any and all claims alleged or that could have been alleged based on the facts of Plaintiff's operative complaint or any amended complaint for unpaid wages, economic damages, non-economic damages, any other damages, civil or statutory penalties, waiting time penalties, liquidated damages, and all other associated damages and/or penalties, including but not limited to claims under Labor Code section 2698, *et seq.*, Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 510, 512, 558, 1194, all applicable IWC Wage Orders, Business and Professions Code section 17200 *et seq.*, and any and all claims or potential claims for lost wages and/or benefits, consequential economic damages, other economic damages, punitive damages, emotional distress damages, reputation damages, any other damages, attorneys' fees and costs and interest. For Plaintiff and the members of the Settlement Class who do not opt out of the settlement, the Settlement Class Release shall include all released claims which arose during employment by Defendant in a non-exempt position in California during the Settlement Class Period. No PAGA claims are encompassed in the Settlement Class Released Claims.

Upon the Effective Date, and subject to Defendant's full payment of the Gross Settlement Amount and all associated employer payroll tax obligations, Plaintiff and all Aggrieved Employees will be deemed to have fully released and discharged the Released Parties from any and all Released PAGA Claims which arose during their employment in a non-exempt position in California during the PAGA Period

((December 14, 2021 through [redacted] [date of preliminary approval])). "Released PAGA Claims" means all claims as pled in the PAGA letter and the operative complaint, and any further amended pleadings as necessary, for violation of PAGA based on the allegations in the PAGA letter and the operative complaint, as well as any and all PAGA claims that were asserted or could have been asserted based on the factual allegations contained in the operative complaint and PAGA letter. This also includes, but is not limited to, any and all PAGA claims alleged or that could have been alleged based on the facts of Plaintiff's PAGA letter or any complaint, including but not limited to claims for civil penalties under Labor Code section 2698, *et seq.*, Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 510, 512, 558, 1194 and all applicable IWC Wage Orders. No Aggrieved Employee may opt out of the PAGA portion of the Settlement.

E. How Is My Share Of The Settlement Calculated?

Each participating Class Member (those who do not opt out of the Settlement) shall receive an "Individual Payment Amount," which is distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form), and a "PAGA Payment Amount," which is distributable to each Aggrieved Employees regardless of whether they participate in the Settlement (Aggrieved Employees will receive a PAGA Payment Amount even if they exclude themselves from the Settlement).

"Individual Payment Amount" means the portion of the Net Settlement Proceeds distributable to each Class Member who participates in the Class Settlement (i.e., who does not submit a valid request for exclusion form) and each Aggrieved Employee, whether they participate in the Class Settlement or not. As to participating Class Members, the class portion of the Individual Payment Amount will be determined by dividing the Net Settlement Proceeds, less the \$2,500 PAGA allocation, by the total number of pay periods worked by the entire Settlement Class in a non-exempt position in California during the Settlement Class Period, net of opt outs, resulting in the class pay period value; and then multiplying the class pay period value by the number of pay periods worked by each participating Class Member in a non-exempt position in California during the Settlement Class Period.

As to the Aggrieved Employees, the PAGA portion of the Individual Payment Amount will be determined by dividing the PAGA settlement amount (\$2,500) by the total number of pay periods worked by all Aggrieved Employees in a non-exempt position in California during the PAGA Period, resulting in the PAGA pay period value; and then multiplying the PAGA pay period value by the number of pay periods worked by each Aggrieved Employee in a non-exempt position in California during the PAGA Period.

Pay periods worked between December 14, 2018 and October 26, 2022 for Class Members who released their claims alleged in *James, et al. v J. J. Keller & Associates, Inc.*, Los Angeles Superior Court, Case No. 21STCV10996 shall not be included in the computation of pay periods as detailed above. Pay periods worked between December 14, 2021 and October 26, 2022 for Aggrieved Employees who released their PAGA claims alleged in *James, et al. v J. J. Keller & Associates, Inc.*, Los Angeles Superior Court, Case No. 21STCV10996 shall not be included in the computation of pay periods as detailed above. These are referred to as "Excluded Pay Periods."

For tax purposes, each Individual Payment Amount will be apportioned (a) 25% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); and (b) 50% as penalties and 25% as interest. The PAGA portion of each Individual Payment Amount will be apportioned 100% as penalties (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to Class Members and Aggrieved Employees will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

Settlement Class Payment: According to the records of Defendant, you worked [REDACTED] pay periods while employed as a non-exempt employee in California from December 14, 2018 through [REDACTED] [preliminary approval date]. Based on these pay periods worked, you are entitled to an Individual Payment Amount of approximately \$[REDACTED]. This amount is subject to change based on the final ruling of the Court.

PAGA Payment: According to the records of Defendant, you worked [REDACTED] pay periods while employed as a non-exempt employee in California from December 14, 2021 through [REDACTED] [preliminary approval date]. Based on these pay periods worked, you are entitled to a PAGA Payment Amount of approximately \$[REDACTED]. This amount is subject to change based on the final ruling of the Court.

Please be advised that Excluded Pay Periods are not included in the pay period counts, and the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than [REDACTED], 2023. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on [REDACTED], at 8:30 a.m., in the Courtroom of Judge L. Brooks Anderholt of the El Centro County Superior Court, Department 9, located at 1625 W Main St, El Centro, California 92243. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorney's fees and costs to be awarded to Plaintiff's Attorneys; and (v) the amount that should be awarded to Plaintiff as an incentive award payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. **YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE.** If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than [redacted]. The Settlement Administrator's address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Written objections must be postmarked no later than [redacted].

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself ("opt out") from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement except you will participate in the PAGA portion thereof and be paid a share of the PAGA settlement. With that exception, you will not be bound by a judgment in this case and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than [redacted].

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed "Settlement Agreement and Release of Claims" which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the El Centro County Superior Court, located at 1625 W Main St, El Centro, California 92243.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number].

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

**BY ORDER OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA**

EXHIBIT 2

REQUEST FOR EXCLUSION

ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE SETTLEMENT OF THE ACTION KNOWN AS *Bryan Cioffi v. J.J. Keller & Associates, Inc.*, El Centro County Superior Court Case. No. ECU002941. IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.

I confirm that I was employed by Defendant J.J. Keller & Associates, Inc. as a non-exempt employee in California between December 14, 2018 and May 2, 2023.

I do not wish to receive any payment under the terms of the proposed class action settlement or to otherwise participate in the proposed settlement.

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE **[45 days after mailing of Notice]**. Send this signed request for exclusion form to the Settlement Administrator:

J.J. Keller & Associates, Inc. Claims Administrator

c/o _____

EXHIBIT 3

Emp No.	Class pay periods 12/14/2018-3/18/23	PAGA pay periods 12/14/21-3/18/23
7116*	11	11
7114*	11	11
7326*	11	11
7349*	11	11
7351*	11	11
7992	24	20
7989	37	33
7996	37	33
7096	14	10
8013	36	33
8035	36	33
8234	25	25
6295	111	33
8023	37	33
7044	53	0
7247	26	0

*Pay periods that were released as part of the *James, et al. v. J. J. Keller & Associates Inc.*, Los Angeles Superior Court, Case No. 21STCV10996 shall not be included in the calculation of pay periods for the purpose of this settlement. For these employees, pay periods from March 19, 2017 through October 26, 2022 shall be excluded.