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J & K Culver, LLC, Potato Corner LA Group, LLC,

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

Karina Guevara, on behalf of herself and all others similarly situated,

Plaintiffs,

v.

J & K CULVER, LLC, a California limited liability company; POTATO CORNER LA GROUP LLC, a California limited liability company; GUY KOREN, an individual; ARIZONA OUM, an individual; AMIR JACOBY, an individual; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 19STCV39951

CLASS ACTION

[Assigned to the Hon. Elihu M. Berle in Dept. 6]

FIRST AMENDED JOINT STIPULATION RE: CLASS ACTION AND REPRESENTATIVE ACTION SETTLEMENT

Action Filed: November 06, 2019
Trial Date: None Set

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Attorneys for Defendant AMIR JACOBY

1 This First Amended Joint Stipulation re: Class Action and Representative Action
2 Settlement (“Settlement” or “Agreement” or “Settlement Agreement”) is made by and between
3 plaintiff KARINA GUEVARA (“Plaintiff”) individually and on behalf of the Settlement Class
4 and as an agent for the State of California on behalf of all Aggrieved Employees, on the one
5 hand; and defendant J & K CULVER, LLC (“J&K”), defendant POTATO CORNER LA
6 GROUP, LLC (“Potato”), defendant GUY KOREN (“Koren”) and defendant AMIR JACOBY
7 (“Jacoby”, and collectively with J&K, Potato and Koren, “Defendants”), on the other hand, in
8 the lawsuit entitled *Guevara v. J&K Culver, LLC, et al.* filed in Los Angeles County Superior
9 Court, Case No. 19STCV39951 (the “Action”). Plaintiff and Defendants shall be, at times,
10 collectively referred to as the “Parties”. This Agreement is intended by the Parties to fully,
11 finally, and forever resolve the claims as set forth herein, based upon and subject to the terms
12 and conditions of this Agreement.

13 **1. DEFINITIONS**

14 **A. “Action”** means *Guevara v. J&K Culver, LLC, et al.* filed in Los Angeles County
15 Superior Court, Case No. 19STCV39951.

16 **B. “Aggrieved Employees”** means all Class Members working for Defendants
17 during the PAGA Period as non-exempt, hourly-paid employees, regardless of whether a Class
18 Member opts-out of the Settlement.

19 **C. “Class Counsel”** means: David D. Bibiyan, Jeffrey D. Klein, and Diego Aviles
20 of Bibiyan Law Group, P.C. The term “Class Counsel” shall be used synonymously with the term
21 “Plaintiff’s Counsel.”

22 **D. “Class Period”** means the period from November 6, 2015 through August 31,
23 2021.

24 **E. “Court”** means the Superior Court of the State of California for the County of
25 Los Angeles.

26 **F. “Final Approval Date”** means the date the Court signs an Order granting final
27 approval of this Settlement pursuant to California Rules of Court, Rule 3.769(a) (“Final
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1 Approval”) and enters Judgment pursuant to California Rules of Court, Rule 3.769(h)
2 (“Judgment”).

3 **G. “Effective Date”** means the later of: (1) if no appeal or writ is filed after Final
4 Approval, the date that is 61 days from service of Notice of Entry of Judgment; or (2) to the
5 extent any appeals or writs have been filed, the date on which they have been dismissed or finally
6 resolved consistent with the terms of the Settlement and all rights to pursue further relief have
7 been fully exhausted.

8 **H. “Defendants”** means, collectively, J & K Culver, LLC, Potato Corner LA Group,
9 LLC, Guy Koren and Amir Jacoby.

10 **I. “Employer Taxes”** means employer-funded taxes and contributions imposed on
11 the wage portions of the Individual Settlement Payments under the Federal Insurance
12 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes
13 and contributions required of employers, such as for unemployment insurance.

14 **J. “General Release”** means the general release of claims by Plaintiff, which is in
15 addition to Plaintiff’s limited release of claims as a Participating Class Member.

16 **K. “Gross Settlement Amount”** means a non-reversionary common fund in the sum
17 of Three Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00),¹ which shall be paid
18 by Defendants after the Effective Date, from which all payments for the Individual Settlement
19 Payments to Participating Class Members, the Court-approved amounts for attorneys’ fees and
20 reimbursement of litigation costs and expenses to Class Counsel, Settlement Administration
21 Costs, the Service Award, the PAGA Payment, and the LWDA Payment shall be paid. It
22 expressly excludes Employer Taxes, which shall be paid by Defendants separate and apart from
23 the Gross Settlement Amount.

24 **L. “Individual PAGA Payment”** means a payment made to an Aggrieved
25 Employee of his or her share of the PAGA Payment, which may be in addition to his or her
26 Individual Settlement Share if he or she is a Participating Class Member.

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28 ¹ As the same may be increased in accordance with Paragraph 17, below.

1 **M. “Individual Settlement Payment”** means a payment to a Participating Class
2 Member of his or her net share of the Net Settlement Amount.

3 **N. “Individual Settlement Share”** means the gross amount of the Net Settlement
4 Amount that a Settlement Class Member is eligible to receive based on the number of Workweeks
5 that he or she worked as a Settlement Class Member during the Class Period if he or she does not
6 submit a timely and valid Request for Exclusion.

7 **O. “LWDA Payment”** means the payment to the State of California Labor and
8 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total
9 amount allocated toward penalties under the PAGA all of which is to be paid from the Gross
10 Settlement Amount. The Parties have agreed that Ten Thousand Dollars and Zero Cents
11 (\$10,000.00) shall be allocated toward PAGA penalties, of which Seven Thousand Five Hundred
12 Dollars and Zero Cents (\$7,500.00) will be paid to the LWDA (*i.e.*, the LWDA Payment) and
13 Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) will be paid to Aggrieved
14 Employees on a *pro rata* basis based on the Workweeks worked in the PAGA Period.

15 **P. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
16 that is available for distribution to the Participating Class Members after deductions for the Court-
17 approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award
18 of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, the LWDA
19 Payment, and the PAGA Payment.

20 **Q. “Operative Complaint” or “Complaint”** means the Third Amended Complaint
21 that was filed with the Court on February 19, 2021.²

22 **R. “PAGA Payment** is the is the 25% portion of the Ten Thousand Dollars and Zero
23 Cents (\$10,000.00) that is allocated toward PAGA penalties (Two Thousand, Five Hundred
24 Dollars and Zero Cents (\$2,500.00)) that will be paid to Aggrieved Employees on a *pro rata*
25 basis based on the Workweeks worked in the PAGA Period, which would be in addition to their
26 Individual Settlement Share regardless of whether they are Participating Class Members.

27 _____
28 ² The Parties Stipulated on February 5, 2021 to dismiss, without prejudice, individual defendant Arizona
Oum from the Action.

1 **S.** **“PAGA Period”** means the period from November 6, 2018 through the end of the
2 Class Period.

3 **T.** **“Participating Class Members”** means all Settlement Class Members who do
4 not submit a timely and valid Request for Exclusion.

5 **U.** **“Participating Individual Settlement Share”** means the gross amount of the Net
6 Settlement Amount that a Participating Class Member is eligible to receive based on the number
7 of Workweeks that he or she worked as a Settlement Class Member during the Class Period once
8 all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she
9 may be entitled if he or she is also an Aggrieved Employee.

10 **V.** **“Plaintiff”, “Named Plaintiff” or “Class Representative”** shall refer to
11 Plaintiff Karina Guevara.

12 **W.** **“Potato Corner”** shall refer to J&K Culver, LLC, J&K Oakridge, LLC, J&K
13 Ontario, LLC, J&K Valley Fair, LLC, J&K Lakewood, LLC, NKM Capital Group, LLC and
14 J&K Americana, LLC, each doing business as a Potato Corner quick-serve food restaurant.

15 **X.** **“Preliminary Approval Date”** means the date on which the Court enters an
16 Order granting preliminary approval of the Settlement.

17 **Y.** **“Released Parties”** shall mean Defendants and each of their past, present, and
18 future respective parents, subsidiaries, dba’s, affiliates, related entities, including but not limited
19 to J&K Oakridge, LLC, J&K Ontario, LLC, J&K Valley Fair, LLC, J&K Lakewood, LLC, NKM
20 Capital Group, LLC and J&K Americana, LLC, insurers and reinsurers, and company-sponsored
21 employee benefit plans of any nature, and each of their successors, assigns and predecessors in
22 interest, including all of their respective owners, officers, directors, shareholders, members,
23 partners, employees, agents, principals, heirs, representatives, accountants, auditors, consultants,
24 attorneys, administrators, fiduciaries, trustees, and agents.

25 **Z.** **“Response Deadline”** means the deadline for Settlement Class Members to mail
26 any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator,
27 which is sixty (60) calendar days from the date that the Class Notice is first mailed in English
28 and Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In

1 such an instance, the Response Deadline shall be fifteen (15) calendar days from the re-mailing,
2 or sixty (60) calendar days from the date of the initial mailing, whichever is later, in which to
3 postmark a Request for Exclusion, Workweek Dispute or Objection. The date of the postmark
4 shall be the exclusive means for determining whether a Request for Exclusion, Objection, or
5 Workweek Dispute was submitted by the Response Deadline.

6 **AA. “Request for Exclusion”** means a written request to be excluded from the
7 Settlement Class pursuant to Paragraph 9.C below.

8 **BB. “Service Award”** means monetary amounts to be paid to Plaintiff of up to Seven
9 Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00), which subject to Court approval,
10 will be paid out of the Gross Settlement Amount.

11 **CC. “Settlement Administration Costs”** means all costs incurred by the Settlement
12 Administrator in administration of the Settlement, including, but not limited to, translating the
13 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
14 and Spanish, calculating Individual Settlement Shares, Individual Settlement Payments,
15 Individual PAGA Payments, and Participating Individual Settlement Shares, as well as associated
16 taxes and withholdings, calculating and transmitting the Employer Taxes, providing declarations,
17 generating Individual Settlement Payment checks and related tax reporting forms, doing
18 administrative work related to unclaimed checks, transmitting payment to Class Counsel for the
19 Court-approved amounts for attorneys’ fees and reimbursement of litigation costs and expenses,
20 to Plaintiff for her Service Award, and to the LWDA for the LWDA Payment, providing weekly
21 reports of opt-outs, objections and related information, mailing a reminder notice in English and
22 Spanish to those Participating Class Members who have not yet cashed their Settlement Checks
23 within 120 days of mailing, calculating and mailing out checks for the redistribution of residual
24 funds for checks that remained uncashed after 180 days, and any other actions of the Settlement
25 Administrator as required, all pursuant to the terms of this Agreement. The Settlement
26 Administration Costs are estimated not to exceed \$11,000.00. If the actual amount of the
27 Settlement Administration Costs is less than \$11,000.00, the difference between \$11,000.00 and
28 the actual Settlement Administration Costs shall be a part of the Net Settlement Amount. If the

1 Settlement Administration Costs exceed \$11,000.00 then such excess will be paid solely from
2 the Gross Settlement Amount and Defendants will not be responsible for paying any additional
3 funds in order to pay these additional costs.

4 **DD. “Settlement Administrator”** means Phoenix Settlement Administrators, the
5 Third-Party Administrator mutually agreed upon by the Parties that will be responsible for the
6 administration of the Settlement including, without limitation, translating the Class Notice in
7 Spanish, the distribution of the Individual Settlement Payments to be made by Defendants from
8 the Gross Settlement Amount
9 and related matters under this Agreement, unless otherwise ordered by the Court.

10 **EE. “Settlement Class” or “Settlement Class Members”** means all current and
11 former non-exempt, hourly-paid employees who worked in California for Potato Corner on
12 behalf of Defendants at any time during the Class Period.

13 **FF. “Workweeks”** means the number of payroll periods times two that a Settlement
14 Class Member performed work for Potato Corner on behalf of Defendants in a non-exempt,
15 hourly position during the Class Period in California, based on hire dates, re-hire dates,
16 termination dates and paycheck data from Defendants’ payroll records. (i.e., one payroll period
17 equals two Workweeks.)

18 **2. BACKGROUND**

19 **A.** On November 6, 2019, Plaintiff filed a putative wage-and-hour class action
20 alleging that, during the Class Period, Defendants, as it pertains to Plaintiff and the Class
21 Members: (1) failed to pay overtime wages; (2) failed to pay minimum wages; (3) failed to
22 provide meal periods or compensation in lieu thereof; (4) failed to provide rest periods or
23 compensation in lieu thereof; (5) failed to pay due wages at termination or resignation; (6) failed
24 to provide accurate wage statements; (7) failed to reimburse employees for business expenses;
25 (8) failed to permit inspection and/or copying of employees’ wage statements; (9) failed to permit
26 inspection and/or copying of employees’ personnel records; and (10) engaged in unfair
27 competition.
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1 **B.** Also, on November 6, 2019, Plaintiff filed with the LWDA and served on
2 Defendants a notice under Labor Code section 2699.3 stating she intended to serve as a proxy of
3 the LWDA to recover civil penalties for Aggrieved Employees for various Labor Code violations
4 (“PAGA Notice”).

5 **C.** On January 21, 2020, after sixty-five (65) days had passed from the time Plaintiff
6 filed the PAGA Notice without any action by the LWDA with respect to alleged violations of the
7 Labor Code, Plaintiff filed a First Amended Complaint in the Action seeking PAGA civil
8 penalties under Labor Code sections 226.3, 558, 1197.1, and 2699.

9 **D.** On December 16, 2020, Plaintiff filed and served an amended notice, clarifying
10 and expanding on the Labor Code violations in connection with the sought civil penalties for
11 Aggrieved Employees, as well as adding AMIR JACOBY (“Jacoby”) as a named respondent
12 (“Amended PAGA Notice”).

13 **E.** On December 30, 2020, Plaintiff, following a stipulation between Plaintiff and
14 Defendants, filed a Second Amended Complaint adding Jacoby as a named defendant.

15 **F.** On February 19, 2021, following a stipulation between Plaintiff and Defendants,
16 after sixty-five (65) days had passed from the time Plaintiff filed the Amended PAGA Notice
17 without any action by the LWDA with respect to alleged violations of the Labor Code, Plaintiff
18 filed a Third Amended Complaint adding causes of action seeking PAGA civil penalties under
19 Labor Code sections, 226.3, 558, 1174.5, 1197.1, and 2699 against all identified and named
20 defendants.

21 **G.** During the pendency of the Action, the Parties agreed to exchange informal
22 discovery and attend mediation, for which Plaintiff was provided with, among other things: (1)
23 a sampling of time records and pay records for the employees of Potato Corner; (2) 2016, 2018,
24 2020, and 2021 employee handbooks of Potato Corner; and (3) 2020 and 2021 Meal and Rest
25 policies of Potato Corner; and (4) hire dates, termination dates, and rates of pay permitting
26 Plaintiff to calculate Defendants’ potential exposure for damages and penalties in the Class
27 Period and PAGA Period.

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1 **H.** On November 9, 2020, the Parties attended mediation with Jeffrey Krivis,
2 Esquire, a well-regarded mediator experienced in mediating complex labor and employment
3 matters. The Action was not resolved at mediation.

4 **I.** The Parties continued litigation with Plaintiff propounding formal discovery,
5 adding named defendants who could potentially be liable for the causes of action set forth in the
6 Complaint, exchanging financial documentation pertaining to Defendants' financial condition,
7 and exchanging documents and information informally, including regarding potential liability of
8 individuals for alleged Labor Code violations.

9 **J.** After further discovery as set forth above was performed, and after one year of
10 further negotiations with the aid of the mediator, the Parties reached the Settlement to resolve the
11 Action.

12 **K.** Class Counsel has conducted significant investigation of the law and facts relating
13 to the claims asserted in the Action, PAGA Notice, and Amended PAGA Notice, including a
14 review of documents that set forth Defendants' financial condition, and have concluded that that
15 the Settlement set forth herein is fair, reasonable, adequate, and in the best interests of the
16 Settlement Class, taking into account the sharply contested issues involved, the expense and time
17 necessary to litigate the Action through trial and any appeals, the risks and costs of further
18 litigation of the Action, the risk of an adverse outcome, the uncertainties of complex litigation,
19 the information learned through informal discovery regarding Plaintiff's allegations, issues of
20 collectability should a judgment be recovered, and the substantial benefits to be received by the
21 Settlement Class Members.

22 **L.** Defendants have concluded that, because of the substantial expense of defending
23 against the Action, the length of time necessary to resolve the issues presented herein, the
24 inconvenience involved, and the concomitant disruption to its business operations, it is in its best
25 interest to accept the terms of this Agreement. Defendants deny each of the allegations and
26 claims asserted against it in the Action, PAGA Notice, and Amended PAGA Notice. However,
27 Defendants nevertheless desire to settle the Action for the purpose of avoiding the burden,
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1 expense and uncertainty of continuing litigation and for the purpose of putting to rest the
2 controversies engendered by the Action.

3 **M.** This Agreement is intended to and does effectuate the full, final, and complete
4 resolution of all Class Released Claims of Plaintiff and Participating Class Members, and all
5 PAGA Released Claims of Plaintiff and, to the extent permitted by law, of the State of California
6 and Aggrieved Employees.

7 **3. JURISDICTION**

8 The Court has jurisdiction over the Parties and the subject matter of the Action. The
9 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
10 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
11 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
12 pursuant to California Rule of Court, rule 3.769, subdivision (h).

13 **4. STIPULATION OF CLASS CERTIFICATION**

14 The Parties stipulate to the certification of the Settlement Class under this Agreement for
15 purposes of settlement only. If for any reason the Parties are not able to obtain Final Approval
16 of the Settlement, the stipulation as to the certification of the Settlement Class under this
17 Agreement shall be void and inadmissible in this Action or any other proceeding for any purpose.

18 **5. MOTIONS FOR APPROVAL OF SETTLEMENT**

19 After full execution of this Agreement, Plaintiff will move for an order granting
20 preliminary approval of the Settlement, approving and directing the mailing of the proposed
21 Notice of Class Action Settlement (“Class Notice”) attached hereto as **Exhibit “A”**, conditionally
22 certifying the Settlement Class for settlement purposes only, and approving the deadlines
23 proposed by the Parties for the submission of Requests for Exclusion, Workweek Disputes, and
24 Objections. If and when the Court preliminarily approves the Settlement, and after
25 administration of the Class Notice in a manner consistent with the Court’s Preliminary Approval
26 Order, Plaintiff will move for an order finally approving the Settlement and seek entry of a
27 Judgment in line with this Settlement. The Parties may both respond to any Objections lodged
28 to final approval of the Settlement up to five (5) court days before the Final Approval Hearing.

1 Class Counsel will provide Defendants with a reasonable period of time to review and approve
2 the Preliminary Approval papers and the Final Approval papers prior to Class Counsel filing the
3 respective motion papers with the Court.

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5 **6. STATEMENT OF NO ADMISSION**

6 Defendants deny any wrongdoing of any sort and further deny any liability to Plaintiff
7 and the Settlement Class with respect to any claims or allegations asserted in the Action, PAGA
8 Notice, and Amended PAGA Notice and Defendants specifically deny that they violated any
9 federal, state or local law, statute, regulation or ordinance. This Agreement shall not be deemed
10 an admission by Defendants of any claims or allegations asserted in the Action, PAGA Notice,
11 and Amended PAGA Notice. Except as necessary to enforce the terms of this Settlement, this
12 Settlement Agreement and its terms and provisions shall not be offered or received as evidence
13 in any action or proceeding to establish any liability or admission on the part of Defendants or to
14 establish the existence of any condition constituting a violation of, or a non-compliance with, any
15 federal, state, local or other applicable law. Except as set forth elsewhere herein, in the event
16 that this Agreement is not approved by the Court, or any appellate court, is terminated, or
17 otherwise fails to be enforceable, Plaintiff will not be deemed to have waived, limited or affected
18 in any way any claims, rights or remedies, or defenses in the Action, PAGA Notice, and Amended
19 PAGA Notice, and Defendants will not be deemed to have waived, limited, or affected in any
20 way any of its objections or defenses in the Action, PAGA Notice, and Amended PAGA Notice.
21 The Parties shall be restored to their respective positions in the Action prior to the entry of this
22 Settlement.

23 **7. RELEASE OF CLAIMS**

24 **A. Release by All Participating Class Members and Aggrieved Employees.**

25 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
26 of Judgment, and payment by Defendant to the Settlement Administrator of the Full Gross
27 Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, Plaintiff and
28 all Participating Class Members fully, finally and forever waive and release all claims, rights,

1 causes of action and damages against the Released Parties asserted in the Operative Complaint
2 filed in the Action, or which could have been alleged or asserted against the Released Parties
3 based on the factual allegations in the Operative Complaint under any federal, state, local or
4 common law, as follows: For the duration of the Class Period, the release includes, for
5 Participating Class Members, including Plaintiff: (a) all claims for failure to pay overtime wages;
6 (b) all claims for failure to pay minimum wages; (c) all claims for failure to provide compliant
7 meal periods or premium compensation in lieu thereof; (d) all claims for failure to provide
8 compliant rest periods or premium compensation in lieu thereof; (e) all claims for the failure to
9 timely pay wages upon termination or resignation; (f) all claims for failure to provide accurate
10 wage statements; (g) all claims for failure to reimburse employees for business expenses; (h) all
11 claims for failure to permit inspection or copying of employees' wage statements; (i) all claims
12 for failure to permit inspection and/or copying of employees' personnel records; and (j) all claims
13 asserted through California Business & Professions Code section 17200, *et seq.* arising out of the
14 Labor Code violations and applicable Wage Orders referenced in the Operative Complaint (the
15 "Class Released Claims"). The Class Released Claims shall also include the release of all related
16 claims for civil penalties, statutory penalties, liquidated damages, attorneys' fees, costs,
17 expenses, interest and any other losses or damages that could have been asserted based on the
18 claims alleged in the Operative Complaint. The Parties additionally agree that the scope of the
19 release under this Agreement shall include the release of claims under the federal Fair Labor
20 Standards Act ("FLSA") pursuant to *Rangel v. Check Cashers*, 899 F.3d 1106 (9th Cir. 2018).

21 For Aggrieved Employees, including Plaintiff, (and, to the fullest extent permitted by
22 law, the State of California), the release includes for the duration of the PAGA Period, all claims
23 asserted in the PAGA Notice, Amended PAGA Notice, and alleged in the Operative Complaint
24 against the Released Parties, or which could have been alleged or asserted against the Released
25 Parties based on the factual allegations in the PAGA Notice, Amended PAGA Notice, and the
26 Operative Complaint, for PAGA civil penalties pursuant to Labor Code sections, 226.3, 558,
27 1174.5, 1197.1, and 2699, *et seq.*, in connection with alleged violations of Labor Code sections
28 96, 98.6, 200, 201, 202, 203, 204, 226, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512,

1 558.1, 1102.5, 1174, 1194, 1194.2, 1197, 1197.5, 1198.5, 2802, and 2810.5 (the “PAGA
2 Released Claims” or “PAGA Release”).

3 The release expressly excludes all other claims, including claims for wrongful
4 termination, vested benefits, unemployment insurance, disability, social security, workers’
5 compensation, and any other claims outside of the Class Released Claims of Participating Class
6 Members arising during the Class Period and the PAGA Released Claims of Aggrieved
7 Employees (and, to the extent permitted by law, the State of California) arising outside of the
8 PAGA Period. The Class Released Claims and PAGA Released Claims shall be referred to
9 herein as the “Released Claims”.

10 **B. General Release by Plaintiff.**

11 Effective only upon the entry of an Order granting Final Approval of the Settlement and
12 entry of Judgment, or as otherwise provided in a separate release agreement, in addition to the
13 Released Claims, Plaintiff makes the additional following General Release: Plaintiff releases the
14 Released Parties from of all claims, demands, rights, liabilities and causes of action of every
15 nature and description whatsoever, known or unknown, asserted or that might have been asserted,
16 whether in tort, contract, or for violation of any state or federal statute, rule, law or regulation
17 arising out of, relating to, or in connection with any act or omission of the Released Parties
18 through the date of full execution of this Agreement in connection with or relating to Plaintiff’s
19 employment or the termination thereof, except for those claims alleged in the civil lawsuit filed
20 on November 5, 2020 in the Los Angeles County Superior Court, Case No. 20STCV42419 and/or
21 any other claims that may not be released as a matter of law through this Agreement.

22 As it pertains to the claims released in this Paragraph, Plaintiff stipulates and agrees that
23 she shall have expressly waived and relinquished, to the fullest extent permitted by law, the
24 provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar
25 provision under federal or state law, which provides:

26 A general release does not extend to claims that the creditor or
27 releasing party does not know or suspect to exist in his or her
28 favor at the time of executing the release and that, if known by

1 him or her, would have materially affected his or her settlement
2 with the debtor or released party.

3 **8. SETTLEMENT ADMINISTRATOR**

4 A. Plaintiff and Defendants, through their respective counsel, have selected Phoenix
5 Settlement Administrators to administer the Settlement, which includes but is not limited to
6 translating the Class Notice to Spanish, distributing and responding to inquiries about the Class
7 Notice and calculating all amounts to be paid from the Gross Settlement Amount. Charges and
8 expenses of the Settlement Administrator, currently estimated to be \$11,000.00 will be paid from
9 the Gross Settlement Amount. If the actual amount of the Settlement Administration Costs is
10 less than \$11,000.00, the difference between \$11,000.00 and the actual Settlement
11 Administration Costs shall be a part of the Net Settlement Amount. If the Settlement
12 Administration Costs exceed \$11,000.00, then such excess will be paid solely from the Gross
13 Settlement Amount and Defendants will not be responsible for paying any additional funds in
14 order to pay these additional costs.

15 **9. NOTICE, WORKWEEK DISPUTE, OBJECTION, AND EXCLUSION**
16 **PROCESS**

17 A. **Notice to the Settlement Class Members**

18 (1) Within ten (10) business days after the Preliminary Approval Date,
19 Defendants' Counsel shall provide the Settlement Administrator with information with respect
20 to each Settlement Class Member, including his or her: (1) name; (2) last known address(es)
21 currently in Defendants' possession, custody, or control; (3) last known telephone number(s)
22 currently in Defendants' possession, custody, or control; (4) last known Social Security
23 Number(s) in Defendants' possession, custody, or control; (5) the dates of employment (*i.e.*, hire
24 dates, and, if applicable, re-hire date(s) and/or separation date(s)) for each Settlement Class
25 Member; and number of Workweeks worked by the Class Member during the applicable Class
26 Period and PAGA Period ("Class List"), which shall be made available to Class Counsel upon
27 request for the purpose of effectuating the Settlement. The Settlement Administrator shall keep
28 the names, addresses and other private/personal data contained on the Class List strictly

1 confidential and shall not disclose the information to any other person or entity. The Settlement
2 Administrator shall perform an address search using the United States Postal Service National
3 Change of Address (“NCOA”) database and update the addresses contained on the Class List
4 with the newly-found addresses, if any. Within seven (7) calendar days of receiving the Class
5 List from Defendants, the Settlement Administrator shall mail the Class Notice in English and
6 Spanish to the Settlement Class Members via first-class regular U.S. Mail using the most current
7 mailing address information available. The Settlement Administrator shall maintain the Class
8 List and digital copies of all the Settlement Administrator’s records evidencing the giving of
9 notice to any Settlement Class Member, for at least four (4) years from the Final Approval Date.

10 (2) The Class Notice will set forth:

- 11 (a) the Settlement Class Member’s estimated Individual
12 Settlement Payment and Individual PAGA Payment,
13 and the basis for each;
- 14 (b) the information required by California Rule of Court,
15 rule 3.766, subdivision (d);
- 16 (c) the material terms of the Settlement;
- 17 (d) the proposed Settlement Administration Costs;
- 18 (e) the definition of the Settlement Class;
- 19 (f) a statement that the Court has preliminarily approved
20 the Settlement;
- 21 (g) how the Settlement Class Member can obtain
22 additional information, including contact information
23 for Class Counsel;
- 24 (h) information regarding opt-out and objection
25 procedures;
- 26 (i) the date and location of the Final Approval Hearing,
27 except that counsel for the Parties with Court approval
28

1 may continue the Final Approval Hearing without
2 further notice to the Class; and

3 (j) that the Settlement Class Member must notify the
4 Settlement Administrator no later than the Response
5 Deadline if the Settlement Class Member disputes the
6 accuracy of the number of Workweeks as set forth on
7 his or her Class Notice (“Workweek Dispute”). If a
8 Settlement Class Member fails to timely dispute the
9 number of Workweeks attributed to him or her in
10 conformity with the instructions in the Class Notice,
11 then he or she shall be deemed to have waived any
12 objection to its accuracy and any claim to any
13 additional settlement payment based on different data.

14 (3) If a Class Notice from the initial notice mailing is returned as
15 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
16 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
17 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
18 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
19 is successful in obtaining a new address, it will promptly re-mail the Class Notice to the
20 Settlement Class Member. Further, any Class Notices that are returned to the Settlement
21 Administrator with a forwarding address before the Response Deadline shall be promptly re-
22 mailed to the forwarding address affixed thereto.

23 (4) No later than seven (7) calendar days from the Response Deadline, the
24 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
25 completion of the notice process, including the number of attempts to obtain valid mailing
26 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
27 and copies of all Requests for Exclusion and Objections received by the Settlement
28 Administrator.

1 (5) Upon completion of administration of the Settlement, the Settlement
2 Administrator will provide a written declaration under oath for the Court and counsel for all
3 Parties to certify such completion of the Settlement as requested or ordered by the Court.

4 **B. Objections.**

5 Only Participating Class Members may object to the Settlement. In order for any
6 Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must
7 do so by mailing a written objection to the Settlement Administrator at the address or phone
8 number provided on the Class Notice no later than the Response Deadline. The Settlement
9 Administrator shall email a copy of the Objection forthwith to Class Counsel and Defendants'
10 counsel and attach copies of all Objections to the Declaration it provides Class Counsel, which
11 Class Counsel shall file in support of Plaintiff's Motion for Final Approval. The Objection
12 should set forth in writing: (1) the Objector's name; (2) the Objector's address; (3) the last four
13 digits of the Objector's Social Security Number; (4) the Objector's signature; (5) a statement of
14 whether the Objector plans to appear at the Final Approval Hearing; and (6) the reason(s) for the
15 Objection, along with whatever legal authority, if any, the Objector asserts in support of the
16 Objection. If a Settlement Class Member objects to the Settlement, the Settlement Class Member
17 will remain a member of the Settlement Class and if the Court approves this Agreement, the
18 Settlement Class Member will be bound by the terms of the Settlement in the same way and to
19 the same extent as a Settlement Class Member who does not object. The date of mailing of the
20 Class Notice to the objecting Settlement Class Member shall be conclusively determined
21 according to the records of the Settlement Administrator. Settlement Class Members need not
22 object in writing to be heard at the Final Approval Hearing; they may object or comment in
23 person at the hearing at their own expense. Class Counsel and Defendant's Counsel may respond
24 to any objection lodged with the Court up to five (5) court days before the Final Approval
25 Hearing.

26 **C. Requesting Exclusion.**

27 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the
28 Settlement by mailing a written request to be excluded from the Settlement ("Request for

1 Exclusion”) to the Settlement Administrator, postmarked on or before the Response Deadline.
2 To be valid, a Request for Exclusion must include: (1) the Class Member’s name; (2) the Class
3 Member’s Social Security Number; (3) the Class Member’s signature; and (4) the following
4 statement: “Please exclude me from the Settlement Class in the *Guevara v. J&K Culver, LLC, et*
5 *al.* matter” or a statement of similar meaning. The Settlement Administrator shall immediately
6 provide copies of all Requests for Exclusion to Class Counsel and Defendants’ Counsel and shall
7 report the Requests for Exclusions that it receives, to the Court, in its declaration to be provided
8 in advance of the Final Approval Hearing. Any Settlement Class Member who requests exclusion
9 using this procedure will not be entitled to receive any payment from the Settlement as a
10 Participating Class Member and will not be bound by the Settlement Agreement or have any right
11 to object to, appeal, or comment on the Settlement, except they will receive their individual
12 PAGA Payment and will be bound by the PAGA Release. Any Settlement Class Member who
13 does not opt out of the Settlement by submitting a timely and valid Request for Exclusion will
14 be bound by all terms of the Settlement, including those pertaining to the Released Claims, as
15 well as any Judgment that may be entered by the Court if Final Approval of the Settlement is
16 granted. A Settlement Class Member cannot submit both a Request for Exclusion and an
17 objection. If a Settlement Class Member submits an objection and a Request for Exclusion, the
18 Request for Exclusion will control and the objection will be overruled. Settlement Class
19 Members who worked during the PAGA Period as Aggrieved Employees that submit a valid
20 Request for Exclusion will still be deemed Aggrieved Employees, will still receive their
21 Individual PAGA Payments, and will be bound by the release of the PAGA Released Claims.

22 **D. Disputes Regarding Settlement Class Members’ Workweek Data.**

23 Each Settlement Class Member may dispute the number of Workweeks attributed to him
24 or her on his or her Class Notice (“Workweek Dispute”). Any such disputes must be mailed to
25 the Settlement Administrator by the Settlement Class Member, postmarked on or before the
26 Response Deadline. Settlement Class Members may produce evidence to the Settlement
27 Administrator showing that such information in the Class Notice is inaccurate. The Settlement
28 Administrator shall immediately provide copies of all disputes to Class Counsel and counsel for

1 Defendants and shall immediately attempt to resolve all such disputes directly with relevant
2 Settlement Class Member(s) with the assistance of Defendants' counsel and Class Counsel. The
3 Settlement Administrator will decide all such disputes. Defendants' records will be presumed
4 correct, but the Settlement Administrator will evaluate the evidence submitted by the Class Member
5 and will make the final decision as to the merits of the dispute, which decision shall be final and
6 binding and unappealable by any Party or Class Member. All disputes will be resolved by the
7 Settlement Administrator by no later than seven (7) calendar days after the Response Deadline.

8 **10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL PAGA**
9 **PAYMENTS**

10 Individual Settlement Payments will be calculated and distributed to Participating Class
11 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
12 Members' respective number of Workweeks during the Class Period as compared to the total
13 number of Workweeks during the Class Period. Individual PAGA Payments to Aggrieved
14 Employees will be calculated and distributed to Aggrieved Employees from the PAGA
15 Payment on a *pro rata* basis based on Aggrieved Employees' respective number of Workweeks
16 during the PAGA Period as compared to the total number of Workweeks during the PAGA
17 Period. Specific calculations of the Individual Settlement Shares and Individual PAGA
18 Payments to Aggrieved Employees will be made as follows:

19 **A.** The Settlement Administrator will determine the total number of Workweeks
20 worked by each Settlement Class Member during the Class Period ("Class Member's
21 Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement Class
22 Members during the Class Period ("Class Workweeks"). Additionally, the Settlement
23 Administrator will determine the total number of Workweeks worked by each Aggrieved
24 Employee during the PAGA Period ("Aggrieved Employee's Workweeks"), as well as the
25 aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period
26 ("PAGA Workweeks").

27 **B.** To determine each Settlement Class Member's Individual Settlement Share, the
28 Settlement Administrator will use the following formula: Individual Settlement Share =

1 (Settlement Class Member's Workweeks ÷ Class Workweeks) × Net Settlement Amount.

2 C. To determine each Participating Class Member's Participating Individual
3 Settlement Share, the Settlement Administrator will determine the aggregate number of
4 Workweeks worked by all Participating Class Members during the Class Period ("Participating
5 Class Workweeks") and use the following formula: Participating Individual Settlement Share

6 =
7 (Participating Class Member's Workweeks ÷ Participating Class Workweeks) × Net Settlement
8 Amount.

9 D. The net amount of the Participating Individual Settlement Share is to be paid out
10 to Participating Class Members by way of check and is referred to as "Individual Settlement
11 Payment(s)".

12 E. To determine each Aggrieved Employee's Individual PAGA Payment, the
13 Settlement Administrator will use the following formula: Aggrieved Employee's Individual
14 PAGA Payment = (Aggrieved Employee's Workweeks ÷ PAGA Workweeks) x \$2,500.00 (the
15 PAGA Payment).

16 F. Individual Settlement Payments and Individual PAGA Payments shall be paid
17 to Participating Class Members and/or Aggrieved Employees by way of check. When a
18 Participating Class Member is also an Aggrieved Employee, one check may be issued that
19 aggregates both the Individual Settlement Payment and the Individual PAGA Payment.

20 11. DISTRIBUTION OF PAYMENTS

21 A. **Distribution of Individual Settlement Payments.**

22 Participating Class Members will receive an Individual Settlement Payment and
23 Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement
24 Payment and Individual PAGA Payment checks shall remain valid and negotiable for one
25 hundred and eighty (180) calendar days after the date of their issuance. If a Participating Class
26 Member's Individual Settlement Payment or Individual PAGA Payment check is not cashed
27 within 120 days after the initial mailing to the Participating Class Member and/or Aggrieved
28 Employee, the Settlement Administrator will send each such individual a letter informing him

1 or her that unless the check is cashed in the next 60 days, it will expire and become non-
2 negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If any
3 checks remain uncashed after expiration of the 180-day check cashing period, the checks will
4 be cancelled and the funds represented by those checks shall be transmitted to the California
5 State Controller's Unclaimed Property Fund in the name of the applicable Participating Class
6 Member and/or Aggrieved Employee. As such, there will not be any unpaid residue that will
7 need to be distributed to a *cy pres* recipient pursuant to Code of Civil Procedure section 384.

8 **B. Funding of Settlement.**

9 Defendants shall, within fifteen (15) business days of the Effective Date, make or cause
10 payment of the Gross Settlement Amount (as the same may be escalated pursuant to Paragraph
11 17 of this Agreement) and Employer Taxes to the Settlement Administrator pursuant to Internal
12 Revenue Code section 1.468B-1 for deposit in an interest-bearing qualified settlement account
13 ("QSA") with an FDIC insured banking institution, for distribution in accordance with this
14 Agreement and the Court's Orders and subject to the conditions described herein. The QSA shall
15 be a "Qualified Settlement Fund" within the meaning of Section 468B of the Internal Revenue
16 Code of 1986, as amended, and Treas. Reg. Section 1.468B-1, *et seq.* The Settlement
17 Administrator shall request and obtain from the IRS an appropriate Tax ID for the QSA and shall
18 act as a fiduciary with respect to the handling, management, reporting and distribution of the
19 funds in a manner necessary to qualify and maintain the QSA as a Qualified Settlement Fund as
20 provided by law.

21 **C. Time for Distribution.**

22 Within five (5) business days after the Effective Date, the Settlement Administrator shall
23 provide Defendants with the amount of Employer Taxes necessary to fund the Settlement.
24 Within seven (7) calendar days after payment of the full Gross Settlement Amount and Employer
25 Taxes by Defendants, or as soon thereafter as practicable, the Settlement Administrator shall
26 distribute from the QSA the Individual Settlement Payments and the Individual PAGA Payments
27 to Participating Class Members and Aggrieved Employees. Within seven (7) calendar days of
28 the mailing of Individual Settlement Payments and Individual PAGA Payments, the Settlement

1 Administrator shall distribute all other payments due under the Settlement as follows: (1) the
2 Service Award to Plaintiff as specified in this Agreement and approved by the Court; (2) the
3 Attorneys' Fees and Cost Award to be paid to Class Counsel, as specified in this Agreement and
4 approved by the Court; (3) the Settlement Administrator Costs, as specified in this Agreement
5 and approved the Court; and (4) the LWDA Payment, as specified in this Agreement and
6 approved by the Court. All interest accrued shall be for the benefit of the Class Members and
7 distributed on a *pro rata* basis to Participating Class Members based on their respective
8 Individual Settlement Payment amount compared to the Net Settlement Amount.

9 **12. ATTORNEYS' FEES AND LITIGATION COSTS**

10 Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys'
11 fees of up to 35% of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph
12 17 of this Agreement, amounts to One Hundred, Twenty-Two Thousand, Five Hundred Dollars
13 and Zero Cents (\$122,500.00). Class Counsel shall further apply for, and Defendants shall not
14 oppose, an application or motion by Class Counsel for reimbursement of actual costs associated
15 with Class Counsel's prosecution of this matter as set forth by declaration testimony in an amount
16 up to Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Awards of attorneys' fees
17 and costs shall be paid out of the Gross Settlement Amount, for all past and future attorneys' fees
18 and costs necessary to prosecute, settle, and obtain Final Approval of the settlement in the Class
19 and PAGA Action. The "future" aspect of the amounts stated herein includes, without limitation,
20 all time and expenses expended by Class Counsel (including any appeals therein). There will be
21 no additional charge of any kind to either the Settlement Class Members or request for additional
22 consideration from Defendants for such work unless, Defendants materially breach this
23 Agreement, including any term regarding funding, and further efforts are necessary from Class
24 Counsel to remedy said breach, including, without limitation, a motion to enforce this
25 Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in
26 amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall
27 be a part of the Net Settlement Amount and Class Counsel shall have no basis to object to or
28 oppose the Settlement based on a lower-awarded amount.

1 **13. SERVICE AWARD TO PLAINTIFF**

2 Named Plaintiff shall seek, and Defendants shall not oppose, a Service Award in an
3 amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for
4 participation in and assistance with the Class Action. Any Service Award awarded to Plaintiff
5 shall be paid from the Gross Settlement Amount and shall be reported on an IRS Form 1099. If
6 the Court approves the Service Award to Plaintiff in less than the amounts sought herein, then
7 the unapproved portion(s) shall be a part of the Net Settlement Amount and Plaintiff shall have
8 no basis to object to or oppose the Settlement based on a lower-awarded amount.

9 **14. TAXATION AND ALLOCATION**

10 a. Each Individual Settlement Share shall be allocated as follows: 25% as wages (to
11 be reported on an IRS Form W2); and 75% as interest and penalties (to be reported on an IRS
12 Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties
13 agree that the employees' share of taxes and withholdings with respect to the wage-portion of the
14 Individual Settlement Share will be withheld from the Individual Settlement Share in order to
15 yield the Individual Settlement Payment. The amount of federal income tax withholding will be
16 based upon a flat withholding rate for supplemental wage payments in accordance with Treasury
17 Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also
18 be made pursuant to applicable state and/or local withholding codes or regulations.

19 b. Forms W-2 and/or Forms 1099 will be distributed by the Settlement
20 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
21 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
22 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
23 set forth in this Section may be modified in a manner to bring Defendants into compliance with
24 any such changes.

25 c. All Employer Taxes shall be paid by Defendants separate, apart, and above from
26 the Gross Settlement Amount. Defendants shall remain liable to pay the employer's share of
27 payroll taxes as described above.

1 d. Neither Counsel for Plaintiff nor Defendants intend anything contained in this
2 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
3 be relied upon as such within the meaning of United States Treasury Department Circular 230
4 (31 C.F.R. Part 10, as amended) or otherwise.

5 **15. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

6 The Parties agree to allocate Ten Thousand Dollars and Zero Cents (\$10,000.00) of the
7 Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent
8 (75%) of the amount allocated toward PAGA (\$7,500.00) will be paid to the LWDA and twenty-
9 five percent (25%) (\$2,500.00) will be distributed to Aggrieved Employees on a *pro rata* basis
10 based upon their respective Workweeks worked as Aggrieved Employees during the PAGA
11 Period. On or before the date on which the Motion for Preliminary Approval of Settlement is
12 filed with the Court, Class Counsel shall provide notice to the LWDA of the settlement and its
13 terms as required by PAGA. Within ten (10) days after entry of the Final Approval, Class
14 Counsel shall provide a copy of the Final Approval and Judgment to the LWDA as required by
15 PAGA.

16 **16. COURT APPROVAL**

17 This Agreement is contingent upon an order by the Court granting Final Approval of the
18 Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it
19 becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties
20 shall be restored to their respective positions in the Class and PAGA Action prior to entry of this
21 Settlement. If this Settlement Agreement is voided, not approved by the Court or approval is
22 reversed on appeal, it shall have no force or effect and no Party shall be bound by its terms except
23 to the extent: (a) the Court reserves any authority to issue any appropriate orders when denying
24 approval; and/or (b) there are any terms and conditions in this Settlement Agreement specifically
25 stated to survive the Settlement Agreement being voided or not approved, and which control in
26 such an event.

27 **17. INCREASE IN WORKWEEKS**

28 Defendants represent that there are no more than 20,000 Workweeks worked during the

1 Class Period by Class Members. In the event the number of Workweeks worked by Class
2 Members during the Class Period increases by more than 5%, or 1,000 Workweeks, then the
3 Gross Settlement Amount shall be increased proportionally by the percent of Workweeks in
4 excess of 21,000 Workweeks (20,000 Workweeks + 1,000 Workweeks) multiplied by the
5 Workweek Value%. The Workweek Value shall be calculated by dividing the originally
6 agreed-upon Gross Settlement Amount (\$350,000.00) by 20,000, which amounts to a
7 Workweek Value of \$17.50. For example, should there be 22,000 Workweeks in the Class
8 Period, then the Gross Settlement Amount shall be increased by \$17,500.00 ((22,000
9 Workweeks – 21,000 Workweeks) x \$17.50).

10 **18. NOTICE OF JUDGMENT**

11 In addition to any duties set out herein, the Settlement Administrator shall provide
12 notice of the Final Judgment entered in the Action by posting the same on its website for a
13 period of no less than four (4) years. It is the intent of the Parties that the Judgment entered by
14 the Court shall have *res judicata* effect and shall be final and binding upon Plaintiff and all
15 Participating Class Members and Aggrieved Employees.

16 **19. MISCELLANEOUS PROVISIONS**

17 **A. Interpretation of the Agreement.**

18 This Agreement constitutes the entire agreement between the Parties with respect to its
19 subject matter. Except as expressly provided herein, this Agreement has not been executed in
20 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
21 written representations or terms shall modify, vary or contradict its terms. In entering into this
22 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
23 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
24 enforced under the laws of the State of California, both in its procedural and substantive aspects,
25 without regard to its conflict of law provisions. Any claim arising out of or relating to the
26 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
27 Court of the State of California for the County of Los Angeles, and Plaintiff and Defendants
28 hereby consent to the personal jurisdiction of the Court in the Action over it solely in connection

1 therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties,
2 and each of them, participated in the negotiation and drafting of this Agreement and had available
3 to them the advice and assistance of independent counsel. As such, neither Plaintiff nor
4 Defendants may claim that any ambiguity in this Agreement should be construed against the
5 other. The Agreement may be modified only by a writing signed by counsel for the Parties and
6 approved by the Court.

7 **B. Further Cooperation.**

8 The Parties and their respective attorneys shall proceed diligently to prepare and execute
9 all documents, to seek the necessary approvals from the Court, and to do all things reasonably
10 necessary to consummate the Settlement as expeditiously as possible.

11 **C. Counterparts.**

12 The Agreement may be executed in one or more actual or non-original counterparts, all
13 of which will be considered one and the same instrument and all of which will be considered
14 duplicate originals.

15 **D. Authority.**

16 Each individual signing below warrants that he or she has the authority to execute this
17 Agreement on behalf of the Party for whom or which that individual signs.

18 **E. No Third-Party Beneficiaries.**

19 Plaintiff, Participating Class Members, Aggrieved Employees, the State of California,
20 Class Counsel, and Defendants are direct beneficiaries of this Agreement, but there are no third-
21 party beneficiaries.

22 **F. Deadlines Falling on Weekends or Holidays.**

23 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
24 or legal holiday, that deadline shall be continued until the following business day.

25 **G. No Credit To Benefit Plans.**

26 The Individual Settlement Payments made to Participating Class Members, and the
27 Individual PAGA Payments made to Aggrieved Employees, as well as any other payments made
28 pursuant to this Settlement, shall not be utilized to calculate any additional benefits under any

1 benefit plans to which any Class Members may be eligible, including, but not limited to: profit-
2 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans,
3 PTO plans, or any other benefit plan or program sponsored by Defendants (collectively, the
4 “Benefit Plans”). Rather, it is the Parties’ intention that this Settlement Agreement will not affect
5 any rights, contributions, or amounts to which any Class Members may be entitled under any
6 Benefit Plans. The Parties further agree that any payments made under the terms of this
7 Settlement do not represent any modification of any Class Member’s previously credited hours
8 of service or other eligibility criteria and shall not be considered wages, compensation, or
9 earnings in any year for purposes of determining any eligibility for, vesting of, credit to, or benefit
10 accrual within, any Benefit Plans for purposes of determining any rights, eligibility, hours of
11 service, benefit accruals, contributions or amounts to which any Class Member may be entitled
12 with respect to any such Benefit Plans.

13 **H. No Solicitation of Objections, Opt-Outs, or Appeals.**

14 At no time shall the Parties seek to solicit or otherwise encourage any Class Members to
15 opt-out of the Settlement, object to the Settlement, or appeal from the Final Approval and
16 Judgment. Class Counsel shall not represent any Class Members with respect to any such
17 objections, opt-outs or appeals of this Settlement.

18 **I. Labor Code Sections 206 and 206.5 Do Not Apply.**

19 The Parties agree that this Settlement involves the settlement of highly contested and
20 disputed claims, such that the provisions of California Labor Code sections 206 and 206.5 are
21 not applicable to this Settlement or the Releases required by this Agreement.

22 **J. No Publicity.**

23 This Settlement is not confidential. However, the Parties and their counsel agree that
24 they will not issue any press or media releases about the Settlement, post information about the
25 Settlement on any media site, or publicize the Settlement in any way prior to the Preliminary
26 Approval of the Settlement. Plaintiff and Class Counsel further agree that they will not at any
27 time issue any press or media releases about the Settlement, or post information about the
28 Settlement on any media site, or engage in any advertising or distribution of any marketing

1 materials relating to the Settlement that in any manner identifies the Defendants, including but
2 not limited to any postings on any websites maintained by Class Counsel, except that Class
3 Counsel may identify this Settlement in other litigation matters to demonstrate to the Court in
4 such other matters their adequacy to serve as class counsel. This provision does not apply to
5 prevent any necessary disclosure to the Court or the LWDA to seek approval of the Settlement,
6 any court filings or Notices to be sent to Class Members by the Settlement Administrator, or the
7 posting of the final judgment of this Settlement on the Settlement Administrator's website to the
8 extent required by the Court in connection with approval of the Settlement. Furthermore, nothing
9 in this provision shall prevent Class Counsel from fulfilling their duties as Class Counsel for the
10 purpose of effectuating the Settlement, including, but not limited to, communicating with Class
11 Members.

12 **K. Jurisdiction of the Court**

13 Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
14 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of
15 this Settlement Agreement and all orders and judgments entered in connection therewith, and the
16 Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of
17 interpreting, implementing, and enforcing the settlement embodied in this Settlement Agreement
18 and all orders and judgments entered in connection therewith.

19 **L. Severability.**

20 In the event that one or more of the provisions contained in this Agreement shall for any
21 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
22 unenforceability shall in no way effect any other provision if Defendants' Counsel and Class
23 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
24 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

25 **IT IS SO AGREED:**

26 Dated: 08/10, 2022



Karina Guevara (Aug 10, 2022 17:26 PDT)

KARINA GUEVARA

Plaintiff and Class Representative

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Dated: Aug 11, 2022 Guy Koren
J & K CULVER, LLC

Defendant
By: Guy Koren
Its: Managing Member

Dated: Aug 11, 2022 Guy Koren
POTATO CORNER LA GROUP, LLC

Defendant
By: Guy Koren
Its: Managing Member

Dated: Aug 11, 2022 Guy Koren
Guy Koren

Defendant

AGREED AS TO FORM:

Dated: August 11, 2022, 2022 Vedang J. Patel

David D. Bibiyan
Vedang J. Patel
Counsel for Plaintiff Karina Guevara

Dated: August 11, 2022, 2022 Thomas Petrides

Thomas H. Petrides
Ashley D. Stein
Vedder Price (CA), LLP
Counsel for Defendants J & K CULVER, LLC, POTATO CORNER LA GROUP, LLC, and Guy Koren