

1 **BIBIYAN LAW GROUP, P.C.**

David D. Bibiyán (SBN 287811)

2 *david@tomorrowlaw.com*

3 Diego Aviles (SBN 315533)

diego@tomorrowlaw.com

4 Vedang J. Patel (SBN 328647)

vedang@tomorrowlaw.com

5 8484 Wilshire Boulevard, Suite 500

Beverly Hills, California 90211

6 Tel: (310) 438-5555; Fax: (310) 300-1705

7 Attorneys for Plaintiff, KARINA GUEVARA,
8 on behalf of herself and all others similarly situated
9 and aggrieved

FILED
Superior Court of California
County of Los Angeles
01/18/2023

David W. Slayton, Executive Officer / Clerk of Court
By: M. Fregoso Deputy

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

12 KARINA GUEVARA, on behalf of herself
13 and all others similarly situated,

14 Plaintiff,

15 v.

16 J&K CULVER, LLC, a California limited
17 liability company; POTATO CORNER LA
18 GROUP LLC, a California limited liability
19 company; GUY KOREN, an individual;
20 ARIZONA OUM, an individual; AMIR
21 JACOBY, an individual; and DOES 1 through
22 100, inclusive,

23 Defendants.

CASE NO.: 19STCV39951

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

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
AND REPRESENTATIVE ACTION
SETTLEMENT, APPLICATION FOR
ATTORNEYS’ FEES AND COSTS, AND
SERVICE AWARD**

23 This matter having come before the Court on January 18, 2023 for a final fairness hearing
24 pursuant to the First Amended Order of this Court dated September 13, 2022, granting preliminary
25 approval (“Preliminary Approval Order”) of the class and representative action settlement upon the
26 terms set forth in the First Amended Joint Stipulation re: Class Action and Representative Action
27 Settlement (“Settlement Agreement”) submitted in support of Motion for Preliminary Approval of
28 the Class and Representative Action Settlement and Certifying Class for Settlement Purposes; and

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1 due and adequate notice having been given to the Class Members as required in the Preliminary
2 Approval Order; and the Court having considered all papers filed and proceedings had herein and
3 otherwise being fully informed and good cause appearing therefore, it is hereby **ORDERED,**

4 **ADJUDGED AND DECREED THAT:**

5 1. The Motion for Final Approval of Class Action and Representative Action Settlement;
6 Service Award; and Reasonable Attorneys' Fees and Costs is hereby granted in its entirety.

7 2. All terms used herein shall have the same meaning as defined in the Settlement
8 Agreement.

9 3. This Court has jurisdiction over the subject matter of this litigation and over all Parties
10 to this litigation, including all Class Members.

11 4. For settlement purposes only, the Court certifies the following class: all current and
12 former non-exempt, hourly-paid employees who worked for Potato Corner on behalf of defendants
13 J&K Culver, LLC, Potato Corner LA Group, LLC, Guy Koren, and Amir Jacoby (collectively,
14 "Defendants") at any time during the period between November 6, 2015 through August 31, 2021
15 ("Class Period") in California ("Settlement Class," "Settlement Class Members" or "Class
16 Members").

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

25 6. "Plaintiff" refers to plaintiff Karina Guevara.

26 7. Upon the entry of this Order granting Final Approval of the Settlement, entry of
27 Judgment, and payment by Defendants to the Settlement Administrator of the full Gross Settlement
28 Amount and Employer's Taxes necessary to effectuate the Settlement, Plaintiff and all Participating

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

21 8. 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, 1174.5,
27 1197.1, and 2699, *et seq.*, in connection with alleged violations of Labor Code sections 96, 98.6,
28 200, 201, 202, 203, 204, 226, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558.1, 1102.5,

1 1174, 1194, 1194.2, 1197, 1197.5, 1198.5, 2802, and 2810.5 (the “PAGA Released Claims” or
2 “PAGA Release”). Collectively, the Class Released Claims and PAGA Released Claims shall be
3 referred to as the “Released Claims”.

4 9. Distribution of the Notice of Class Action Settlement (“Class Notice” or “Notice”)
5 directed to the Class Members as set forth in the Settlement Agreement and the other matters set
6 forth herein have been completed in conformity with the Preliminary Approval Order, including
7 individual notice to all Class Members who could be identified through reasonable effort, and was
8 the best notice practicable under the circumstances. This Class Notice provided due and adequate
9 notice of the proceedings and of the matters set forth therein, including the proposed class settlement
10 set forth in the Settlement Agreement, to all persons entitled to such Class Notice, and the Class
11 Notice fully satisfied the requirement of due process.

12 10. Zero (0) Settlement Class Members opted out of the Settlement and zero (0) Settlement
13 Class Members objected to the Settlement.

14 11. The Court further finds that the Settlement is fair, reasonable and adequate and that
15 Plaintiff has satisfied the standards and applicable requirements for final approval of class action
16 settlement under California law, including the provisions of Code of Civil Procedure section 382
17 and Federal Rules of Civil Procedure, rule 23, approved for use by the California state courts in
18 *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

19 12. This Court hereby approves the settlement set forth in the Settlement Agreement and
20 finds that the settlement is, in all respects, fair, adequate and reasonable and directs the parties to
21 effectuate the settlement according to its terms. The Court finds that the settlement has been reached
22 as a result of intensive, serious and non-collusive arm’s length negotiations. The Court further finds
23 that the Parties have conducted extensive and costly investigation and research and counsel for the
24 parties are able to reasonably evaluate their respective positions. The Court also finds that
25 settlement at this time will avoid additional substantial costs, as well as avoid the delay and risks
26 that would be presented by the further prosecution of this Action. The Court has noted the
27 significant benefits to the Class Members under the settlement. The Court also finds that the class
28 is properly certified as a class for settlement purposes only.

1 13. Nothing contained in the Settlement Agreement shall be construed or deemed in
2 admission of liability, culpability, negligence, or wrongdoing on the part of Defendants. Each of the
3 Parties has entered into this Settlement Agreement with the intention to avoid further disputes and
4 litigation, and the attendant inconvenience and expense. This Settlement Agreement shall be
5 inadmissible in evidence in any action or proceeding, except an action or proceeding to approve,
6 interpret, or enforce its terms.

7 14. The Court approves Plaintiff as class representative.

8 15. The Court approves David D. Bibiyan and Diego Aviles of Bibiyan Law Group, P.C.,
9 as Class Counsel.

10 16. The Court approves Phoenix Settlement Administrators (“Phoenix”) as the Settlement
11 Administrator.

12 17. The Court hereby awards Class Counsel attorneys' fees in the total amount of
13 \$116,666.67, which is one-third (1/3) of the Gross Settlement Amount and to be deducted therefrom.
14 In addition, the Court awards Class Counsel reimbursement of their costs of \$14,799.75 to be
15 deducted from the Gross Settlement Amount. Attorneys' fees and costs will be paid by the
16 Settlement Administrator from the Gross Settlement Amount as set forth in the Settlement
17 Agreement. In approving the payment of Attorneys' Fees, the Court finds that the Settlement
18 conferred a significant benefit on the Class and the necessity and financial burden of private
19 enforcement of California labor laws makes an attorneys' fee award to Class Counsel appropriate.

20 18. The amount of this award is based on a lodestar analysis and is subject to a reasonable
21 multiplier for awarding reasonable attorney's fees and costs—it is thus reasonable, fair and
22 eminently justified. In setting an award of attorneys' fees, costs and expenses, this Court has
23 considered the following factors: (a) the time and labor required; (b) preclusion of other
24 employment; (c) the contingent nature of the cases; (d) the experience, reputation and ability of
25 Plaintiff's Counsel and the skill they displayed in the litigation; (e) the reasonable hourly rate of
26 attorneys' fees assessed by Class Counsel associated with prosecution of this Class Action, to wit:
27 David Bibiyan, Esq.: \$775; Jeffrey D. Klein, Esq.: \$675; Diego Aviles, Esq.: \$575; Sara Ehsani-Nia,
28 Esq.: \$400; Vedang J. Patel, Esq.: \$400; Anton Swain-Gil: \$350; paralegals at \$150 and legal

1 assistants at \$75; (f) the results achieved and benefits conferred on the Settlement Class; and (g) the
2 reaction of Settlement Class Members. (*See, eg: Serrano v. Priest* (1977) 20 Cal.3d 25, 49; *Dunk v.*
3 *Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1810 fn. 21.)

4 19. The court hereby approves an incentive award of \$7,500.00 to Plaintiff Karina Guevara,
5 in consideration for her time, effort, and risk incurred on behalf of the Settlement Class, and for
6 providing a general release and releasing unknown claims pursuant to Civil Code section 1542. The
7 incentive award will be paid to Plaintiff by the Settlement Administrator from the Gross Settlement
8 Amount as set forth in the Settlement Agreement.

9 20. The Court hereby approves the Settlement Administrator’s cost in the amount of
10 \$11,000.00. The Settlement Administrator, Phoenix Settlement Administrators, shall be paid the
11 cost of administration of the settlement from the Gross Settlement Amount.

12 21. The Court hereby approves the PAGA penalties amount of \$10,000.00, of which
13 \$7,500.00 shall be paid to the LWDA and the remaining \$2,500.00 to be distributed to the
14 “Aggrieved Employees”, defined as all Class Members working for Defendants during the period
15 from November 6, 2018 through August 31, 2021 (“PAGA Period”) as non-exempt, hourly-paid
16 employees, regardless of whether a Class Member opts-out of the Settlement.

17 22. Except as expressly provided herein, the Parties each shall bear all of their own fees and
18 costs in connection with this matter.

19 23. Any checks issued by the Settlement Administrator to Participating Class Members and
20 Aggrieved Employees will be negotiable for one hundred eighty (180) calendar days after the date
21 of their issuance. If a Participating Class Member’s Individual Settlement Payment or Individual
22 PAGA Payment check is not cashed within one hundred twenty (120) days after the initial mailing
23 to the Participating Class Member and/or Aggrieved Employee, the Settlement Administrator will
24 send each such individual a letter informing him or her that unless the check is cashed in the next
25 60 days, it will expire and become non-negotiable, and offer to replace the check if it was lost or
26 misplaced but not cashed. If any checks remain uncashed after expiration of the 180-day check
27 cashing period, the checks will be cancelled and the funds represented by those checks shall be
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1 transmitted to the California State Controller's Unclaimed Property Fund in the name of the
2 applicable Participating Class Member and/or Aggrieved Employee.

3 24. The Court finds that the class settlement on the terms set forth in the Settlement
4 Agreement was made in good faith, and constitutes a fair, reasonable and adequate compromise of
5 the released claims against Defendants.

6 25. An Order to Show Cause Hearing Re: Final Administration of the Class Action
7 Settlement is hereby scheduled for September 27, 2023, 8:30 a.m, in Department 6 of the above
8 entitled Court. The Parties shall file a declaration confirming that the claims have been paid and that
9 administration of all of the terms and conditions of the class action settlement have been completed
10 by September 20, 2023. Should the Court find that said declaration has sufficiently evidenced full
11 and complete administration of the class action settlement, said OSC hearing will go off-calendar.

12 26. Without affecting the finality of the Judgment in any way, this Court hereby retains
13 continuing jurisdiction over the interpretation, implementation and enforcement of the settlement
14 and all orders and judgments entered in connection therewith.

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16 **IT IS SO ORDERED.**

17
18 Dated: _____, 2023

FEGH



Elihu M. Berle

Judge of the Superior Court
Elihu M. Berle / Judge

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