

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

2 David D. Bibiyan (SBN 287811)

3 *david@tomorrowlaw.com*

4 Vedang J. Patel (SBN 297296)

5 *vedang@tomorrowlaw.com*

6 1460 Westwood Boulevard

7 Los Angeles, CA 90024

8 Telephone: (310) 438-5555; Facsimile: (310) 300-1705

9 Attorneys for Plaintiff, ROBERTO GONZALEZ, on behalf of himself
10 and all others similarly situated and aggrieved

11 *[Additional Counsel listed on next page]*

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

14 ROBERTO GONZALEZ, an individual and
15 on behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 SANTA MARIA TOM’S JR., INC., a
19 California corporation; TOM’S JR. BURGER
20 INC., a California corporation; TOM’S JR.
21 LA MIRADA, INC.; a California
22 corporation, SPIROS POLITIS, an
23 individual; DIMITRIOS SPATHOPOULOS,
24 an individual; and DOES 1 through 100,
25 inclusive,

26 Defendants.

CASE NO.: 22STCV25501 [*Lead Case*]

[*Related to CASE NO. 22STCV30296*]

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

**CLASS AND PAGA SETTLEMENT
AGREEMENT**

Action Filed: August 8, 2022

Trial Date: None Set

1 RUTAN & TUCKER, LLP
Edson K. McClellan (State Bar No. 199541)
emcclellan@rutan.com
2 Peter Hering (State Bar No. 298427)
phering@rutan.com
3 Jonas Trevethan (State Bar No. 340465)
jtrevethan@rutan.com
4 18575 Jamboree Road, 9th Floor
Irvine, CA 92612
5 Telephone: 714-641-5100
6 Facsimile: 714-546-9035

7 Attorneys for Defendants POLITIS BURGER CORPORATION,
TOM'S JR. BURGER, INC., and SPIROS POLITIS
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 This Class and PAGA Settlement Agreement (“**Settlement**,” “**Agreement**” or
2 “**Settlement Agreement**”) is made by and between plaintiff Roberto Gonzalez (“**Plaintiff**”) and
3 defendants Politis Burger Corporation, Tom’s Jr. Burger, Inc., and Spiros Politis (collectively,
4 “**Defendants**”). The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or
5 individually as “Party.”

6 **1. DEFINITIONS**

7 1.1. “**Action**” or “**Actions**” means the Plaintiff’s wage and hour class action, captioned
8 *Roberto Gonzalez v. Santa Maria Tom’s Jr., Inc., et al.*, Case No. 22STCV25501, initiated on
9 August 8, 2022, and pending in the Superior Court of the State of California, County of Los
10 Angeles (“**Class Action**”); and representative action under PAGA captioned *Roberto Gonzalez*
11 *v. Santa Maria Tom’s Jr., Inc., et al.*, Case No. 22STCV30296, initiated on September 16, 2022,
12 and pending in the Superior Court of the State of California, County of Los Angeles (“**PAGA**
13 **Action**”), to be consolidated by amended complaint in the Class Action.

14 1.2. “**Administrator**” means Apex Class Action, LLC, the neutral entity the Parties have
15 agreed to appoint to administer the Settlement.

16 1.3. “**Administration Expenses Payment**” means the amount the Administrator will be paid
17 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance
18 with the Administrator’s “not to exceed” bid submitted to the Court in connection with
19 Preliminary Approval of the Settlement.

20 1.4. “**Aggrieved Employee**” means anyone who was employed by Defendants in the State of
21 California, as a non-exempt, hourly-paid employee at any time during the PAGA Period, at either
22 the Compton Location or the Slauson Location.

23 1.5. “**Class**” means anyone who was employed by Defendants in the State of California, as a
24 non-exempt, hourly-paid employee at any time during the Class Period, at either the Compton
25 Location or the Slauson Location.

26 1.6. “**Class Counsel**” means David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group,
27 P.C.

28 1.7. “**Class Counsel Fees Payment**” and “**Class Counsel Litigation Expenses Payment**”

1 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys' fees
2 and expenses, respectively, incurred to prosecute the Action.

3 1.8. “**Class Data**” means Class Member identifying information in Defendants’ custody,
4 possession, or control, including the Class Member’s (1) name; (2) last known address(es); (3)
5 last known Social Security Number(s); (4) the date(s) of employment (i.e. hire dates, termination
6 date(s) (if applicable), and re-hire date(s) (if applicable); and (5) number of Workweeks during
7 the Class Period and the number of Pay Periods during the PAGA Period.

8 1.9. “**Class Member**” or “**Settlement Class Member**” means a member of the Class, as either
9 a Participating Class Member or Non-Participating Class Member (including a Non- Participating
10 Class Member who qualifies as an Aggrieved Employee).

11 1.10. “**Class Member Address Search**” means the Administrator’s investigation and search
12 for current Class Member mailing addresses using all reasonably available sources, methods and
13 means including, but not limited to, the National Change of Address database, skip traces, and
14 direct contact by the Administrator with Class Members.

15 1.11. “**Class Notice**” means the COURT APPROVED NOTICE OF PROPOSED CLASS
16 AND REPRESENTATIVE ACTION SETTLEMENT AND DATE FOR FINAL APPROVAL
17 HEARING, to be mailed to Class Members in English and Spanish in the form, without material
18 variation, attached as Exhibit A and incorporated by reference into this Agreement.

19 1.12. “**Class Period**” means the period from August 8, 2018, through the date the Court grants
20 preliminary approval of the class settlement.

21 1.13. “**Class Representative**” means the named Plaintiff in the Operative Complaint in the
22 Action seeking Court approval to serve as a Class Representative.

23 1.14. “**Class Representative Service Payment**” means the payment to the Class
24 Representative for initiating the Action and providing services in support of the Action.

25 1.15. “**Compton Location**” means the Tom’s Jr. restaurant located at 1725 N. Long Beach
26 Blvd., Compton, CA 90221.

27 1.16. “**Court**” means the Superior Court of California, County of Los Angeles.

28 1.17. “**Defendants**” means named defendants Politis Burger Corporation, Tom’s Jr. Burger,

1 Inc., and Spiros Politis.

2 1.18. “**Defense Counsel**” means Edson McClellan, Peter Hering and Jonas Trevethan of Rutan
3 & Tucker, LLP.

4 1.19. “**Effective Date**” means the later of: (i) the 61st day after service of notice of entry of the
5 Order Granting Final Approval of the Settlement, if no appeal, review, or writ has been filed; or
6 (ii) if an appeal, review, or writ is sought from the Order Granting Final Approval of the
7 Settlement, the day after the Order Granting Final Approval of the Settlement is affirmed or the
8 appeal, review, or writ is dismissed or denied, and the Order Granting Final Approval of the
9 Settlement is no longer subject to further judicial review.

10 1.20. “**Final Approval**” means the Court’s order granting final approval of the Settlement.

11 1.21. “**Final Approval Hearing**” means the Court’s hearing on the Motion for Final Approval
12 of the Settlement.

13 1.22. “**Final Judgment**” means the Judgment entered by the Court based upon the Final
14 Approval.

15 1.23. “**Funding Date**” means the date by which Defendants must fully-fund the Gross
16 Settlement Amount pursuant to Paragraph 4.3.

17 1.24. “**Gross Settlement Amount**” means \$430,000.00 (Four Hundred Thirty Thousand
18 Dollars and Zero Cents), which is the total amount Defendants agree to pay under the Settlement,
19 except as provided in Paragraph 8.1 below and any and all employer payroll taxes owed on the
20 Wage Portions of the Individual Class Payments. The Gross Settlement Amount will be used to
21 pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class
22 Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, and
23 Administrator’s Expenses.

24 1.25. “**Individual Class Payment**” means the Participating Class Member’s pro rata share of
25 the Net Settlement Amount calculated according to the number of Workweeks worked during
26 the Class Period.

27 1.26. “**Individual PAGA Payment**” means the Aggrieved Employee’s pro rata share of 25%
28 of the PAGA Penalties calculated according to the number of Workweeks worked during the

1 PAGA Period.

2 1.27. “**Judgment**” means the judgment entered by the Court based upon Final Approval.

3 1.28. “**LWDA**” means the California Labor and Workforce Development Agency, the agency
4 entitled, under Labor Code section 2699, subd. (i).

5 1.29. “**LWDA PAGA Payment**” means the 75% of the PAGA Penalties paid to the LWDA
6 under Labor Code section 2699, subd. (i).

7 1.30. “**Net Settlement Amount**” means the Gross Settlement Amount, less the following
8 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
9 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
10 Litigation Expenses Payment, and Administration Expenses Payment. The remainder is the Net
11 Settlement Amount, which shall be paid to Participating Class Members as Individual Class
12 Payments.

13 1.31. “**Non-Participating Class Member**” means any Class Member who opts out of the
14 Settlement by sending the Administrator a valid and timely Request for Exclusion.

15 1.32. “**Operative Complaint**” means the consolidated First Amended Complaint in the Action.

16 1.33. “**PAGA Pay Period**” means any pay period during which an Aggrieved Employee
17 worked for Defendants for at least one day during the PAGA Period, based on the Defendants’
18 pay records.

19 1.34. “**PAGA Period**” means the period from July 6, 2021, through the date the Court grants
20 preliminary approval of the class settlement.

21 1.35. “**PAGA**” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

22 1.36. “**PAGA Notice**” or “**PAGA Notices**” means Plaintiff’s July 6, 2022 letter to defendants
23 Tom’s Jr. Burger, Inc., and Spiros Politis and the LWDA, providing notice pursuant to Labor
24 Code section 2699.3 subd. (a) (“**Original PAGA Notice**”) and Plaintiff’s October 17, 2023 letter
25 to defendants Tom’s Jr. Burger, Inc., and Spiros Politis and the LWDA, providing notice pursuant
26 to Labor Code section 2699.3 subd. (a) (“**First Amended PAGA Notice**”); and Plaintiff’s letter
27 to be filed with the LWDA and served upon Tom’s Jr. Burger, Inc., Spiros Politis and Politis
28 Burger Corporation (collectively, “Defendants”), providing notice pursuant to Labor Code section

1 2699.3 subd. (a) and this Settlement Agreement (“**Second Amended PAGA Notice**”).

2 1.37. “**PAGA Penalties**” means the total amount of PAGA civil penalties to be paid from the
3 Gross Settlement Amount in the amount of \$20,000.00, allocated 25% to the Aggrieved
4 Employees (\$5,000.00) and the 75% to the LWDA (\$15,000.00) in settlement of PAGA claims.

5 1.38. “**Participating Class Member**” means a Class Member who does not submit a valid and
6 timely Request for Exclusion from the Settlement.

7 1.39. “**Plaintiff**” means Roberto Gonzalez, the named plaintiff in the Action.

8 1.40. “**Preliminary Approval**” means the Court’s Order Granting Preliminary Approval of the
9 Settlement.

10 1.41. “**Preliminary Approval Order**” means the proposed Order granting Preliminary
11 Approval and Approval of PAGA Settlement.

12 1.42. “**Released Class Claims**” means any and all claims, known or unknown, contingent or
13 accrued, against Defendants and the Released Parties that have been asserted against Defendants,
14 or could have been based on the facts asserted in the Operative Complaint in the Action,
15 including, without limiting the foregoing: claims for failing to accurately track and/or pay for all
16 minutes worked, including for time spent performing pre-shift, post-shift, and other off-the-clock
17 work, donning and doffing, attending off-the-clock company meetings; undergoing security
18 screenings or temperature checks, and waiting in line to clock in; detrimental rounding and
19 manipulation or editing of employee time entries; failure to pay split-shift premiums; failure to
20 pay reporting time pay; failure to pay all overtime wages; failure to pay all minimum wages;
21 failure to include all forms of remuneration in employees’ regular rate of pay; failure to pay all
22 wages owed; failure to provide meal periods or additional pay in lieu thereof; failure to provide
23 rest breaks or additional pay in lieu thereof; preventing employees from taking cooldown rest
24 periods or additional pay in lieu thereof; failure to reimburse for all necessary business expenses;
25 failure to reimburse deposits made, including uniform deposit; failure to timely pay wages upon
26 separation; failure to maintain accurate timekeeping and pay records; failure to furnish
27 employment records upon request; failure to provide notice of material terms of employment;
28 failure to timely pay wages owed during employment; failure to pay all vacation wages;

1 inaccurate itemized wage statements; and claims for violation of California Business and
2 Professions Code § 17200, *et seq.*

3 1.43. “**Released PAGA Claims**” means all claims for civil penalties under PAGA, which arose
4 during the PAGA Period, and asserted against Defendants in the Operative Complaint in the
5 Action and PAGA Notices, or that could have been based on the facts asserted in the Operative
6 Complaint in the Action and PAGA Notices, including, but not limited to, the claims described
7 above as part of the Released Class Claims, for purposes of civil penalties under PAGA, as well
8 as: preventing employees from using or disclosing the skills, knowledge, and experience they
9 obtained from Defendants for purposes of competing with Defendants; preventing employees
10 from disclosing violations of state and federal law; preventing employees from engaging in
11 lawful conduct during non-work hours; failure to furnish and use safety devices and safeguards;
12 failure to provide and maintain a healthy and safe work environment; failure to give sufficient
13 and proper notice of COVID-19 exposure and maintain records relating to the same; failure to
14 provide adequate and readily accessible sanitation facilities, cleaning schedules, an adequate
15 number of cleansing agents, and a sufficient number of toilets to be used; requiring employees
16 to unlawfully waive protections of the FEHA or the Labor Code; failure to provide one day’s rest
17 in seven; failure to provide suitable seating; failure to provide paid sick leave and COVID-19
18 supplemental sick leave; unlawful background checks; unlawful deductions; and unlawful
19 reliance on applicants’ salary history.

20 1.44. “**Released Parties**” means: Defendants and their current and former parents, predecessors
21 or successors, holding companies, affiliated companies, entities, owners (including Spiros Politis
22 and Elizabeth Politis), shareholders, members, partners, officers, directors, managers, employees,
23 insurers and agents. The Released Parties expressly excludes Konstantinos Politis and Sofia
24 Politis, as well any affiliated entities of either, who are believed to own and operate the “Florence
25 Location” located at 953 West Florence Avenue, Los Angeles, 90044.

26 1.45. “**Request for Exclusion**” means a Class Member’s timely submission of a written request
27 to be excluded from the Class Settlement signed by the Class Member pursuant to Paragraph 7.5.

28 1.46. “**Response Deadline**” means forty-five (45) days after the Administrator mails Notice to

1 Class Members and Aggrieved Employees, and shall be the last date on which Class Members
2 may: (a) mail Requests for Exclusion from the Settlement, or (b) mail his or her Objection to the
3 Settlement. Class Members to whom Notice Packets are resent after having been returned
4 undeliverable to the Administrator shall have an additional 15 days beyond the date the Response
5 Deadline has expired.

6 1.47. “**Settlement**” means the disposition of the Action effected by this Agreement and the
7 Judgment.

8 1.48. “**Slauson Location**” means the Tom’s Jr. restaurant located at 1500 E. Slauson Ave, Los
9 Angeles, CA 90011.

10 1.49. “**Workweek**” means any week during which a Class Member worked for Defendants, for
11 at least one day during the Class Period, based on Defendants’ pay records.

12 **2. RECITALS**

13 2.1. On July 6, 2022, Plaintiff submitted the Original PAGA Notice to the LWDA.

14 2.2. On August 8, 2022, Plaintiff commenced the Class Action by filing a Complaint alleging
15 causes of action against defendants Santa Maria Tom’s Jr., Inc., Tom’s Jr. Burger, Inc., Tom’s
16 Jr. La Mirada, Inc., Spiros Politis and Dimitrios Spathopoulos for: failure to pay overtime and
17 minimum wages; failure to provide meal breaks, rest breaks, or compensation in lieu thereof;
18 waiting time penalties; wage statement violations; failure to timely pay wages; failure to
19 indemnify for business expenses; failure to pay unused vested vacation time; and unfair
20 competition.

21 2.3. On September 16, 2022, after sixty-five (65) days had passed without any action by the
22 LWDA with respect to the alleged Labor Code violations, Plaintiff commenced the PAGA Action
23 against defendants Santa Maria Tom’s Jr., Inc., Tom’s Jr. Burger, Inc., Tom’s Jr. La Mirada, Inc.,
24 Spiros Politis and Dimitrios Spathopoulos in the Superior Court of California, County of Los
25 Angeles, Case No. 22STCV30296, for the Labor Code violations set out in the PAGA Notice.

26 2.4. On March 14, 2023, defendants Tom’s Jr. La Mirada, Inc., and Dimitrios Spathopoulos
27 were dismissed without prejudice from the Class Action.

28 2.5. Thereafter, the Parties agreed to exchange informal discovery and attend mediation.

1 2.6. Prior to mediation Plaintiff obtained, through informal discovery: (a) payroll records of
2 the estimated 103 putative class members during the period from December 20, 2019 through
3 March 19, 2024 at the Compton Location; (b) time records of approximately 35% of the estimated
4 103 putative class members from 2021 through 2023; (c) putative class data points, including
5 average rates of pay, total hours worked during the period from December 20, 2019 through
6 March 19, 2024, the number of pay periods worked during the period from July 6, 2021 through
7 March 19, 2024, the number of putative class members separated from employment in the waiting
8 time penalty period, the number of Aggrieved Employees, the number of hours worked, and the
9 number of pay periods in the wage statement penalty period and in the period from July 6, 2021
10 through March 19, 2024; (d) all policy documents of Defendants, including their employee
11 handbook; and all documents pertaining to Plaintiff available to Defendants.

12 2.7. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in
13 *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker*
14 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("***Dunk/Kullar***").

15 2.8. On March 19, 2024, the Parties participated in an all-day mediation presided over by
16 Tagore Subramaniam, Esquire, with Jeffrey Krivis, Esquire. The mediation was successful, and
17 the Parties agreed to globally resolve all class and PAGA claims in the Action.

18 2.9. As part of this Agreement, the Parties agree to stipulate to (1) Plaintiff's filing of a Second
19 Amended PAGA Notice, adding Politis Burger Corporation as defendant, and alleging the
20 Released PAGA Claims; (2) the filing of a First Amended Complaint in the Class Action, adding
21 Politis Burger Corporation as a defendant and all allegations brought in the PAGA Action and
22 PAGA Notices, and dismissing defendant Santa Maria Tom's Jr., Inc. without prejudice, thereby
23 effectively consolidating the two Actions for purposes of settlement, with the Class Action being
24 the lead case (the "Action"); and (3) requesting for dismissal of the PAGA Action, without
25 prejudice. The First Amended Complaint shall be the Operative Complaint in the Action.

26 2.10. Plaintiff will file the Second Amended PAGA Notice to the LWDA and the Parties will
27 stipulate to the filing of a First Amended Complaint.

28 2.11. The Court has not granted class certification.

1 2.12. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any
2 other pending matter or action asserting claims that will be extinguished or affected by the
3 Settlement.

4 **3. MONETARY TERMS**

5 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8.1 below,
6 Defendants promise to pay **\$430,000.00** as the Gross Settlement Amount, unless increased
7 pursuant to Paragraph 8.1 of this Agreement, and to separately pay any and all employer payroll
8 taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no
9 obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated
10 in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement
11 Amount without asking or requiring Participating Class Members or Aggrieved Employees to
12 submit any claim as a condition of payment. None of the unclaimed funds from the Gross
13 Settlement Amount will revert to Defendants.

14 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct
15 the following payments from the Gross Settlement Amount, in the amounts specified by the Court
16 in the Final Approval:

17 3.2.1. To Plaintiff: A Class Representative Service Payment to Plaintiff of not more than
18 \$7,500.00 in addition to any Individual Class Payment and any Individual PAGA
19 Payment Plaintiff is entitled to receive as a Participating Class Member. Defendants will
20 not oppose Plaintiff's request for a Class Representative Service Payment that does not
21 exceed this amount. As part of the motion for Class Counsel Fees Payment and Class
22 Litigation Expenses Payment, Plaintiff will seek Court approval for any Class
23 Representative Service Payments prior to the Final Approval Hearing. If the Court
24 approves a Class Representative Service Payment less than the amount requested, the
25 Administrator will retain the remainder in the Net Settlement Amount. The
26 Administrator will pay the Class Representative Service Payment using IRS Form 1099.
27 Plaintiff assumes full responsibility and liability for employee taxes owed on the Class
28 Representative Service Payment.

1 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 35% of the
2 Gross Settlement Amount, which, unless escalated pursuant to Paragraph 8.1 of this
3 Agreement, is currently estimated to be \$150,500.00 and a Class Counsel Litigation
4 Expenses Payment of not more than \$30,000.00. Defendants will not oppose requests
5 for these payments provided that they do not exceed these amounts. Plaintiff and/or
6 Class Counsel will endeavor to file a motion for Class Counsel Fees Payment and Class
7 Litigation Expenses Payment prior to the Final Approval Hearing. If the Court approves
8 a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less
9 than the amounts requested, the Administrator will allocate the remainder to the Net
10 Settlement Amount. Released Parties shall have no liability to Class Counsel or any
11 other Plaintiff's Counsel arising from any claim to any portion of any Class Counsel Fee
12 Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will
13 pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment
14 using one or more IRS 1099 Forms. Class Counsel assume full responsibility and
15 liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel
16 Litigation Expenses Payment and hold Defendants and the Released Parties harmless,
17 and indemnify Defendants and the Released Parties, from any dispute or controversy
18 regarding any division or sharing of any of these Payments. There will be no additional
19 charge of any kind to either the Settlement Class Members or request for additional
20 consideration from Defendants for such work unless, Defendants materially breach this
21 Agreement, including any term regarding funding, and further efforts are necessary from
22 Class Counsel to remedy said breach, including, without limitation, moving the Court
23 to enforce the Agreement. Should the Court approve attorneys' fees and/or litigation
24 costs and expenses in amounts that are less than the amounts provided for herein, then
25 the unapproved portion(s) shall be a part of the Net Settlement Amount.

26 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
27 \$7,500.00 except for a showing of good cause and as approved by the Court. To the
28 extent the Administration Expenses are less or the Court approves payment less than

1 \$7,500.00, the Administrator will retain the remainder in the Net Settlement Amount.

2 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by
3 (a) dividing the Net Settlement Amount by the total number of Workweeks worked by
4 all Participating Class Members during the Class Period and (b) multiplying the result
5 by each Participating Class Member's Workweeks.

6 3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating
7 Class Member's Individual Class Payment will be allocated to settlement of
8 wage claims (the "**Wage Portion**"). The Wage Portions are subject to tax
9 withholding and will be reported on an IRS W-2 Form. The 80% of each
10 Participating Class Member's Individual Class Payment will be allocated to
11 settlement of claims for interest and penalties (the "**Non-Wage Portion**"). The
12 Non-Wage Portions are not subject to wage withholdings and will be reported
13 on IRS 1099 Forms. Participating Class Members assume full responsibility and
14 liability for any employee taxes owed on their Individual Class Payment.

15 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual
16 Class Payments. Non-Participating Class Members will not receive any
17 Individual Class Payments. The Administrator will retain amounts equal to their
18 Individual Class Payments in the Net Settlement Amount for distribution to
19 Participating Class Members on a pro rata basis.

20 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
21 \$20,000.00 to be paid from the Gross Settlement Amount, with 75% (\$15,000.00)
22 allocated to the LWDA PAGA Payment and 25% (\$5,000.00) allocated to the Individual
23 PAGA Payments.

24 3.2.5.1. The Administrator will calculate each Individual PAGA
25 Payment by (a) dividing the amount of the Aggrieved Employees' 25% share
26 of PAGA Penalties (\$5,000.00) by the total number of PAGA Pay Periods
27 worked by all Aggrieved Employees during the PAGA Period and (b)
28 multiplying the result by each Aggrieved Employee's PAGA Pay Periods

1 worked during the PAGA Period. Aggrieved Employees assume full
2 responsibility and liability for any taxes owed on their Individual PAGA
3 Payment.

4 3.2.5.2. If the Court approves PAGA Penalties of less than the
5 amount requested, the Administrator will allocate the remainder to the Net
6 Settlement Amount. The Administrator will report the Individual PAGA
7 Payments on IRS 1099 Forms.

8 3.2.5.3. The Parties agree that, if this Settlement Agreement is not
9 approved, in whole or in part, because the Court determines that the PAGA
10 Penalties should be increased, the Net Settlement Amount shall be decreased to
11 account for any required increase in PAGA Penalties such that the Gross
12 Settlement Amount does not exceed \$430,000.00, subject to the conditions set
13 forth herein.

14 **4. SETTLEMENT FUNDING AND PAYMENTS**

15 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records
16 through the June 5, 2024 pay date, Defendants estimate there are 234 Class Members who
17 collectively worked a total of 16,399 Workweeks, and 143 of Aggrieved Employees who worked
18 a total of 3,977 PAGA Pay Periods.

19 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the
20 Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the
21 form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
22 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
23 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
24 employees who need access to the Class Data to effect and perform under this Agreement.
25 Defendants have a continuing duty to immediately notify Class Counsel if it discovers that the
26 Class Data omitted class member identifying information and to provide corrected or updated
27 Class Data as soon as reasonably feasible. Without any extension of the deadline by which
28 Defendants must send the Class Data to the Administrator, the Parties and their counsel will

1 expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related
2 to missing or omitted Class Data.

3 4.3. Funding of Gross Settlement Amount. Defendants shall fund the Gross Settlement
4 Amount in two (2) equal installments of \$215,000.00 and the amounts necessary to fully pay
5 Defendants' share of payroll taxes. The first installment shall be paid within ninety (90) days
6 following the Final Approval, assuming the Effective Date has occurred. The second installment
7 and the amounts necessary to fully pay Defendants' share of payroll taxes shall be paid no later
8 than six (6) months after the first installment, provided the Effective Date has occurred. The
9 Gross Settlement Amount and the amounts necessary to fully pay Defendants' share of payroll
10 taxes shall be paid by transmitting these funds to the Administrator within or no later than the
11 aforementioned period or date.

12 4.4. Payments from the Gross Settlement Amount. Within 15 days after Defendants fully fund
13 the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
14 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
15 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
16 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel
17 Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative
18 Service Payment shall not precede disbursement of Individual Class Payments and the Individual
19 PAGA Payments.

20 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or
21 Individual PAGA Payments and send them to the Class Members via First Class U.S.
22 Mail, postage prepaid. The face of each check shall prominently state the date (not less
23 than 180 days after the date of mailing) when the check will be voided (the "**Void**
24 **Date**"). The Administrator will cancel all checks not cashed by the Void Date. The
25 Administrator will send checks for Individual Settlement Payments to all Participating
26 Class Members (including those for whom Class Notice was returned undelivered). The
27 Administrator will send checks for Individual PAGA Payments to all Aggrieved
28 Employees including Non-Participating Class Members who qualify as Aggrieved

1 Employees (including those for whom Class Notice was returned undelivered). The
2 Administrator may send Participating Class Members a single check combining the
3 Individual Class Payment and the Individual PAGA Payment. Before mailing any
4 checks, the Settlement Administrator must update the recipients' mailing addresses
5 using the National Change of Address Database.

6 4.4.2. The Administrator must conduct a Class Member Address Search for all other
7 Class Members whose checks are returned undelivered without USPS forwarding
8 address. Within 7 days of receiving a returned check the Administrator must re-mail
9 checks to the USPS forwarding address provided or to an address ascertained through
10 the Class Member Address Search. The Administrator need not take further steps to
11 deliver checks to Class Members whose re-mailed checks are returned as undelivered.
12 The Administrator shall promptly send a replacement check to any Class Member whose
13 original check was lost or misplaced, requested by the Class Member prior to the Void
14 Date.

15 4.4.3. For any Class Member whose Individual Class Payment check or Individual
16 PAGA Payment check is uncashed and cancelled after the void date, the Administrator
17 shall transmit the funds represented by such checks to the California Controller's Office,
18 Unclaimed Property Fund.

19 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall
20 not obligate Defendants to confer any additional benefits or make any additional
21 payments to Class Members (such as 401(k) contributions or bonuses) beyond those
22 specified in this Agreement.

23 **5. RELEASE OF CLAIMS**

24 Effective upon entry of Judgment, the Order granting Final Approval of this Settlement,
25 and on the date when Defendants fully fund the entire Gross Settlement Amount and fund all
26 employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff,
27 Class Members, and Class Counsel will release claims against all Released Parties as follows:

28 5.1. Plaintiff's Release. Plaintiff and his respective former, present, and future spouses,

1 representatives, agents, attorneys (including Class Counsel), heirs, executors, administrators,
2 successors, and assigns generally, release, waive, acquit, and discharge Defendants and all
3 Released Parties from all claims, transactions, or occurrences (known or unknown), which he
4 has, had, or might otherwise have had against the Released Parties, from the beginning of time
5 to the date Plaintiff signs this Agreement, regarding any aspect of Plaintiff's employment,
6 including, but not limited to: (a) all claims that were, or reasonably could have been, alleged,
7 based on the facts contained, in the Operative Complaint; (b) all PAGA claims that were, or
8 reasonably could have been, alleged based on facts contained in the Operative Complaint and
9 Plaintiff's PAGA Notices; (c) the Released Class Claims; (d) the Released PAGA Claims; (e)
10 any common law or statutory torts (including invasion of privacy), any federal, state or
11 governmental constitution, statute, regulation or ordinance, and any claim for wages, tips, or any
12 other compensation or benefit ("**Plaintiff's Release**"). Plaintiff's Release does not extend to any
13 claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment
14 benefits, disability benefits, social security benefits, workers' compensation benefits that arose
15 at any time, or based on occurrences after the date Plaintiff signs this Agreement. Plaintiff
16 acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts
17 or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's
18 Release shall be and remain effective in all respects, notwithstanding such different or additional
19 facts or Plaintiff's discovery of them.

20 5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
21 purposes of Plaintiff's Release only, Plaintiff expressly waives and relinquish the
22 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,
23 which reads:

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

28 5.2. Release by Participating Class Members: Each Participating Class Member who does not

1 timely submit a valid Request for Exclusion (opt-out), on behalf of themselves and their
2 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
3 and assigns, will release, for the duration of the Class Period, the Released Class Claims against
4 Defendants and the Released Parties.

5 5.3. Except as set forth in Section 5.2 of this Agreement, Participating Class Members do not
6 release any other claims, including claims for vested benefits, wrongful termination, violation of
7 the Fair Employment and Housing Act, unemployment insurance, disability, social security,
8 workers' compensation, or claims based on facts occurring outside the Class Period.

9 5.4. Release by Aggrieved Employees: Each Aggrieved Employee, on behalf of themselves
10 and their respective former and present representatives, agents, attorneys, heirs, administrators,
11 successors, and assigns, will release, for the duration of the PAGA Period, the Released PAGA
12 Claims against Defendants and all Released Parties.

13 **6. AMENDED PAGA NOTICE AND COMPLAINT, REQUESTS FOR**
14 **DISMISSAL, AND MOTION FOR PRELIMINARY APPROVAL**

15 6.1. Second Amended PAGA Notice and First Amended Complaint. The Parties hereby agree
16 to stipulate to Plaintiff's filing of a Second Amended PAGA Notice, adding Politis Burger
17 Corporation as defendant; requests for dismissal without prejudice of defendant Santa Maria
18 Tom's Jr., Inc., from the Class Action and the PAGA Action; a First Amended Complaint in the
19 Class Action, adding Politis Burger Corporation as defendant and all allegations brought in the
20 PAGA Action and PAGA Notices, and request for dismissal of the PAGA Action, without
21 prejudice, thereby effectively consolidating the two actions for purposes of Settlement.

22 6.2. Relation Back. The Parties agree that, for purposes of settlement, the Second Amended
23 PAGA Notice and First Amended Complaint relates back to Plaintiff's filing of the initial PAGA
24 Notice.

25 6.3. Motion for Preliminary Approval. Class Counsel shall prepare and file a motion for
26 preliminary approval ("**Motion for Preliminary Approval**") that complies with the Court's
27 current checklist for Preliminary Approvals. Class Counsel shall send a draft Motion for
28 Preliminary Approval to Defense Counsel for review and comment at least five (5) days prior to

1 its filing with the Court.

2 6.4. Defendants' Declaration in Support of Preliminary Approval. Within 21 days of full
3 execution of this Agreement, Defendants will prepare and deliver to Class Counsel a signed
4 declaration from Defendants and Defense Counsel disclosing all facts relevant to any actual or
5 potential conflicts of interest with the Administrator and Cy Pres Recipient.

6 6.5. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all
7 documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and
8 memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the
9 Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor
10 Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and
11 Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from
12 the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting
13 to its willingness to serve; competency; operative procedures for protecting the security of Class
14 Data; amounts of insurance coverage for any data breach, defalcation of funds or other
15 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;
16 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense
17 Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve
18 and disclosing all facts relevant to any actual or potential conflicts of interest with Class
19 Members; (vi) a signed declaration from each Class Counsel firm attesting to its competency to
20 represent the Class Members; its timely transmission to the LWDA of all necessary PAGA
21 documents (the PAGA Notices (Labor Code section 2699.3, subd. (a)), Operative Complaint
22 (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2));
23 and (vii) all facts relevant to any actual or potential conflict of interest with Class Members and
24 the Administrator.

25 6.6. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible
26 for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 45 days
27 after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for
28 Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for

1 Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary
2 Approval to the Administrator.

3 6.7. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
4 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
5 Defense Counsel will expeditiously work together on behalf of the Parties by meeting and
6 conferring in good faith to resolve the disagreement. If the Court does not grant Preliminary
7 Approval or conditions Preliminary Approval on any material change to this Agreement, Class
8 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by
9 meeting and conferring in good faith to modify the Agreement and otherwise satisfy the Court’s
10 concerns.

11 **7. SETTLEMENT ADMINISTRATION**

12 7.1. Selection of Administrator. The Parties have jointly selected Apex Class Action, LLC to
13 serve as the Administrator and verified that, as a condition of appointment, Apex Class Action,
14 LLC agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in
15 this Agreement in exchange for payment of Administration Expenses. The Parties and their
16 Counsel represent that they have no interest or relationship, financial or otherwise, with the
17 Administrator other than a professional relationship arising out of prior experiences
18 administering settlements.

19 7.2. Employer Identification Number. The Administrator shall have and use its own Employer
20 Identification Number for purposes of calculating payroll tax withholdings and providing reports
21 state and federal tax authorities.

22 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
23 the requirements of a Qualified Settlement Fund (“**QSF**”) under US Treasury Regulation section
24 468B-1.

25 7.4. Notice to Class Members

26 7.4.1. No later than five (5) business days after receipt of the Class Data, the
27 Administrator shall notify Class Counsel that the list has been received and state the
28 number of Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the

1 Class Data.

2 7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14
3 days after receiving the Class Data, the Administrator will send to all Class Members
4 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail,
5 the Class Notice with Spanish translation, substantially in the form attached to this
6 Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the
7 dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable
8 to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable)
9 used to calculate these amounts. Before mailing Class Notices, the Administrator shall
10 update Class Member addresses using the National Change of Address database.

11 7.4.3. Not later than 3 business days after the Administrator’s receipt of any Class Notice
12 returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice
13 using any forwarding address provided by the USPS. If the USPS does not provide a
14 forwarding address, the Administrator shall conduct a Class Member Address Search,
15 and re-mail the Class Notice to the most current address obtained. The Administrator
16 has no obligation to make further attempts to locate or send Class Notice to Class
17 Members whose Class Notice is returned by the USPS a second time.

18 7.4.4. The deadlines for Class Members’ written objections, Challenges to Workweeks
19 and/or Pay Periods, and Requests for Exclusion will be extended an additional 15 days
20 beyond the 45 days otherwise provided in the Class Notice for all Class Members whose
21 notice is re-mailed. The Administrator will inform the Class Member of the extended
22 deadline with the re-mailed Class Notice.

23 7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
24 discovers any persons who believe they should have been included in the Class Data
25 and should have received Class Notice, the Parties will expeditiously meet and confer,
26 and in good faith, in an effort to agree on whether to include them as Class Members.
27 If the Parties agree, such persons will be Class Members entitled to the same rights as
28 other Class Members, and the Administrator will send, via email or overnight delivery,

1 a Class Notice requiring them to exercise options under this Agreement not later than
2 15 days after receipt of Class Notice, or the deadline dates in the Class Notice, which
3 ever are later.

4 7.5. Requests for Exclusion (Opt-Outs).

5 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement
6 must send the Administrator, by mail, a signed written Request for Exclusion not later
7 than 45 days after the Administrator mails the Class Notice (plus an additional 15 days
8 for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter
9 from a Class Member or his/her representative that reasonably communicates the Class
10 Member's election to be excluded from the Settlement and includes the Class Member's
11 full name, address and email address or telephone number. To be valid, a Request for
12 Exclusion must be timely postmarked by the Response Deadline.

13 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it
14 fails to contain all the information specified in the Class Notice. The Administrator shall
15 accept any Request for Exclusion as valid if the Administrator can reasonably ascertain
16 the identity of the person as a Class Member and the Class Member's desire to be
17 excluded. The Administrator's determination shall be final and not appealable or
18 otherwise susceptible to challenge. If the Administrator has reason to question the
19 authenticity of a Request for Exclusion, the Administrator may demand additional proof
20 of the Class Member's identity. The Administrator's determination of authenticity shall
21 be final and not appealable or otherwise susceptible to challenge.

22 7.5.3. Every Class Member who does not submit a timely and valid Request for
23 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled
24 to all benefits and bound by all terms and conditions of the Settlement, including the
25 Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement,
26 regardless whether the Participating Class Member actually receives the Class Notice
27 or objects to the Settlement.

28 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a

1 Non-Participating Class Member and shall not receive an Individual Class Payment or
2 have the right to object to the class action components of the Settlement. Because future
3 PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-
4 Participating Class Members who are Aggrieved Employees are deemed to release the
5 claims identified in Paragraph 5.4 of this Agreement and are eligible for an Individual
6 PAGA Payment. In other words, any Class Member who worked during the PAGA
7 Period and who submits a valid and timely Request for Exclusion from the Class
8 Settlement will still be bound by the PAGA Settlement and issued an Individual PAGA
9 Payment, regardless of whether they submit a Request for Exclusion.

10 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after
11 the Administrator mails the Class Notice (plus an additional 15 days for Class Members whose
12 Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods
13 (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the
14 allocation by communicating with the Administrator via mail. The Administrator must encourage
15 the challenging Class Member to submit supporting documentation. In the absence of any
16 contrary documentation, the Administrator is entitled to presume that the Workweeks contained
17 in the Class Notice are correct so long as they are consistent with the Class Data. The
18 Administrator's determination of each Class Member's allocation of Workweeks and/or Pay
19 Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator
20 shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods
21 to Defense Counsel and Class Counsel and the Administrator's determination of the challenges.

22 7.7. Objections to Settlement

23 7.7.1. Only Participating Class Members may object to the class action components of
24 the Settlement and/or this Agreement, including contesting the fairness of the
25 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
26 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

27 7.7.2. Participating Class Members may send written objections to the Administrator by
28 mail. In the alternative, Participating Class Members may appear in Court (or hire an

1 attorney to appear in Court) to present verbal objections at the Final Approval Hearing.
2 A Participating Class Member who elects to send a written objection to the
3 Administrator must do so not later than 45 days after the Administrator's mailing of the
4 Class Notice (plus an additional 15 days for Class Members whose Class Notice was re-
5 mailed).

6 7.7.3. Non-Participating Class Members have no right to object to any of the class action
7 components of the Settlement.

8 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
9 performed or observed by the Administrator contained in this Agreement or otherwise.

10 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will maintain
11 and use an internet website to post information of interest to Class Members including
12 the date, time and location for the Final Approval Hearing and copies of the Settlement
13 Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
14 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment,
15 Class Counsel Litigation Expenses Payment and Class Representative Service Payment,
16 the Final Approval and the Judgment. The Administrator will also maintain and monitor
17 an email address and a toll-free telephone number to receive Class Member calls and
18 emails.

19 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
20 promptly review on a rolling basis Requests for Exclusion to ascertain their validity.
21 Not later than 5 days after the expiration of the deadline for submitting Requests for
22 Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel
23 containing (a) the names and other identifying information of Class Members who have
24 timely submitted valid Requests for Exclusion ("**Exclusion List**"); (b) the names and
25 other identifying information of Class Members who have submitted invalid Requests
26 for Exclusion; and (c) copies of all Requests for Exclusion from Settlement submitted
27 (whether valid or invalid).

28 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written

1 reports to Class Counsel and Defense Counsel that, among other things, tally the number
2 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for
3 Exclusion (whether valid or invalid) received, objections received, challenges to
4 Workweeks and/or Pay Periods received and/or resolved, and checks mailed for
5 Individual Class Payments and Individual PAGA Payments (“**Weekly Report**”). The
6 Weekly Reports must include provide the Administrator’s assessment of the validity of
7 Requests for Exclusion and attach copies of all Requests for Exclusion and objections
8 received.

9 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to
10 address and make final decisions consistent with the terms of this Agreement on all
11 Class Member challenges over the calculation of Workweeks and/or Pay Periods. The
12 Administrator’s decision shall be final and not appealable or otherwise susceptible to
13 challenge.

14 7.8.5. Administrator’s Declaration. Before the date by which Plaintiff is required to file
15 the Motion for Final Approval of the Settlement, the Administrator will provide to Class
16 Counsel and Defense Counsel, a declaration suitable for filing in Court attesting to its
17 due diligence and compliance with all of its obligations under this Agreement,
18 including, but not limited to, its mailing of Class Notice, the Class Notices returned as
19 undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total
20 number of Requests for Exclusion from Settlement it received (both valid or invalid),
21 the number of written objections and attach the Exclusion List. The Administrator will
22 supplement its declaration as needed or requested by the Parties and/or the Court. Class
23 Counsel is responsible for filing the Administrator’s declaration(s) in Court.

24 7.8.6. Final Report by Settlement Administrator. Within 10 days after the Administrator
25 disburses all funds in the Gross Settlement Amount, the Administrator will provide
26 Class Counsel and Defense Counsel with a final report detailing its disbursements by
27 employee identification number only of all payments made under this Agreement. At
28 least 7 days before any deadline set by the Court, the Administrator will prepare, and

1 submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in
2 Court attesting to its disbursement of all payments required under this Agreement. Class
3 Counsel is responsible for filing the Administrator's declaration in Court.

4 **8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE**

5 8.1. Increase in Workweeks. The Settlement is based on the Parties' assumption that, based
6 on Defendants' records, there were approximately 15,000 combined Workweeks at the Compton
7 Location and Slauson Location in the period from August 8, 2018, through March 19, 2024. In
8 the event the number of Workweeks increases by more than 10% during the Class Period,
9 Defendants shall have the option either to: (a) pay a proportional increase in the Gross Settlement
10 Amount for each additional Workweek over 16,500; or (b) modify the end date of the Class
11 Period to the date the number of Workweeks reaches 16,500. Thus, for example, should the
12 number of Workweeks in the Class Period be 11% higher than 15,000, or 16,650, then
13 Defendants shall have the option either to (a) pay a Gross Settlement Amount that is 1% higher
14 than the originally agreed-upon Gross Settlement Amount, or \$434,300.00; or (b) modify the end
15 date of the Class Period to the date the number of Workweeks reaches 16,500.

16 **9. DEFENDANTS' RIGHT TO WITHDRAW**

17 If the number of valid Requests for Exclusion identified in the Exclusion List exceeds ten
18 percent (10%) of all Class Members, Defendants may, but are not obligated, elect to withdraw
19 from the Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be void
20 ab initio, have no force or effect whatsoever, and that neither Party will have any further
21 obligation to perform under this Agreement; provided, however, Defendants will remain
22 responsible for paying all Settlement Administration Expenses incurred to that point. Defendants
23 must notify Class Counsel and the Court of its election to withdraw not later than seven (7) days
24 after the Administrator sends the final Exclusion List to Defense Counsel. Late elections will
25 have no effect.

26 **10. MOTION FOR FINAL APPROVAL**

27 No later than 16 court days before the calendared Final Approval Hearing, Plaintiff will
28 file in Court, a motion for final approval of the Settlement that includes a request for approval of

1 the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order
2 and a proposed Judgment (collectively “**Motion for Final Approval**”). Plaintiff shall provide
3 drafts of these documents to Defense Counsel prior to filing the Motion for Final Approval. Class
4 Counsel and Defense Counsel will expeditiously meet and confer, and in good faith, to resolve
5 any disagreements concerning the Motion for Final Approval.

6 10.1. Response to Objections. Each Party retains the right to respond to any objection raised by
7 a Participating Class Member, including the right to file responsive documents in Court no later
8 than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the
9 Court.

10 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
11 Approval on any material change to the Settlement (including, but not limited to, the scope of
12 release to be granted by Class Members), the Parties will expeditiously work together in good
13 faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final
14 Approval. The Court’s decision to award less than the amounts requested for the Class
15 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
16 Expenses Payment and Administrator Expenses Payment shall not constitute a material
17 modification to the Agreement within the meaning of this paragraph.

18 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
19 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of
20 (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters,
21 and (iii) addressing such post-Judgment matters as permitted by law.

22 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
23 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class
24 Counsel Litigation Expenses Payment reflected as set forth in this Settlement, the Parties, their
25 respective counsel, and all Participating Class Members who did not object to the Settlement as
26 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
27 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
28 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver

1 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
2 Parties' obligations to perform under this Agreement will be suspended until such time as the
3 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
4 the amount of the Net Settlement Amount.

5 10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
6 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material
7 modification of this Agreement (including, but not limited to, the scope of release to be granted
8 by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
9 expeditiously work together in good faith to address the appellate court's concerns and to obtain
10 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
11 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
12 the Court's award of the Class Representative Service Payment or any payments to Class Counsel
13 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
14 as long as the Gross Settlement Amount remains unchanged.

15 **11. AMENDED JUDGMENT**

16 If any amended judgment is required under Code of Civil Procedure section 384, the
17 Parties will work together in good faith to jointly submit and a proposed amended judgment.

18 **12. ADDITIONAL PROVISIONS**

19 12.1. No Admission of Liability, Class Certification or Representative Manageability for Other
20 Purposes. This Agreement represents a compromise and settlement of highly disputed claims.
21 Nothing in this Agreement is intended or should be construed as an admission by Defendants
22 that any of the allegations in the Operative Complaint have merit or that Defendants have any
23 liability for any claims asserted; nor should it be intended or construed as an admission by
24 Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class
25 certification and representative treatment is for purposes of this Settlement only. If, for any reason
26 the Court does not grant Preliminary Approval, Final Approval or enter Judgment, Defendants
27 reserve the right to contest certification of any class for any reasons, and Defendants reserve all
28 available defenses to the claims in the Action, and Plaintiff reserves the right to move for class

1 certification on any grounds available and to contest Defendants' defenses. The Settlement, this
2 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be
3 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
4 Settlement and this Agreement).

5 12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants and
6 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement
7 is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit
8 another person to disclose, disseminate or publicize, any of the terms of the Agreement directly
9 or indirectly, specifically or generally, to any person, corporation, association, government
10 agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom
11 will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the
12 extent necessary to report income to appropriate taxing authorities; (4) in response to a court
13 order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
14 government agency. Each Party agrees to immediately notify each other Party of any judicial or
15 agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel,
16 Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any
17 conversation or other communication, before the filing of the Motion for Preliminary Approval,
18 any with third party regarding this Agreement or the matters giving rise to this Agreement except
19 to respond only that "the matter was resolved," or words to that effect. This paragraph does not
20 restrict Class Counsel's communications with Class Members in accordance with Class
21 Counsel's ethical obligations owed to Class Members.

22 12.3. No Solicitation. The Parties separately agree that they and their respective counsel and
23 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal
24 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's
25 ability to communicate with Class Members in accordance with Class Counsel's ethical
26 obligations owed to Class Members.

27 12.4. Effective Date Of Defendants' Obligations Under This Agreement. Defendants' payment
28 obligations under this Agreement will become final and effective only upon the occurrence of

1 the Effective Date. In the event that any of the conditions specified in this Agreement are not
2 satisfied, or in the event that this Settlement does not obtain preliminary or final approval of the
3 Court for any reason, all matters covered by this Agreement will be null and void. In such event,
4 neither this Agreement, nor any negotiations leading to this Settlement, will be used or construed
5 by or against any Party as a determination, admission, or concession of any issue of law or fact
6 in the litigation; and the Parties do not waive, and instead expressly reserve, their respective
7 rights regarding the prosecution and defense of the Action, including all available defenses and
8 affirmative defenses, and to challenge any claim, as if this Agreement never existed. Nonetheless,
9 the Parties expressly agree to address any and all Court concerns, including, but not limited to,
10 amending this Agreement as is mutually acceptable to the Parties in order to obtain approval.

11 12.5. Nullification. If: (1) the Court should for any reason fail to enter the Final Approval
12 Order and Judgment; or (2) the Court's Final Approval Order and Judgment is reversed or
13 modified as to any material term as defined above, or declared or rendered void as to any material
14 term as defined above, then (a) the Agreement shall become null and void; and (b) the Parties
15 will revert to their respective positions immediately prior to reaching the settlement. Nonetheless,
16 the Parties expressly agree to address any and all Court concerns, including, but not limited to,
17 amending this Agreement as is mutually acceptable to the Parties in order to obtain approval.

18 12.6. Invalidation. Invalidation of any material term of this Settlement Agreement will
19 invalidate this Agreement in its entirety unless the Parties subsequently agree in writing that the
20 remaining provisions will remain in full force and effect.

21 12.7. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
22 together with its attached exhibits shall constitute the entire agreement between the Parties
23 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or
24 inducements made to or by any Party.

25 12.8. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
26 represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate
27 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
28 its terms, and to execute any other documents reasonably required to effectuate the terms of this

1 Agreement including any amendments to this Agreement.

2 12.9. Cooperation. The Parties and their counsel will cooperate with each other and use their
3 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
4 Settlement Agreement, submitting supplemental evidence and supplementing points and
5 authorities as requested by the Court. In the event the Parties are unable to agree upon the form
6 or content of any document necessary to implement the Settlement, or on any modification of the
7 Agreement that may become necessary to implement the Settlement, the Parties will seek the
8 assistance of mediator Tagore Subramaniam and/or the Court for resolution.

9 12.10. No Prior Assignments. The Parties separately represent and warrant that they have not
10 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
11 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
12 action, or right released and discharged by the Party in this Settlement.

13 12.11. No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense Counsel are
14 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
15 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR
16 Part 10, as amended) or otherwise.

17 12.12. Modification of Agreement. This Agreement, and all parts of it, may be amended,
18 modified, changed, or waived only by an express written instrument signed by all Parties or their
19 representatives, and approved by the Court.

20 12.13. Agreement Binding on Successors. This Agreement will be binding upon and inure to the
21 benefit of the successors of each of the Parties.

22 12.14. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
23 governed by and interpreted according to the internal laws of the state of California, without
24 regard to conflict of law principles.

25 12.15. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
26 this Agreement. This Agreement will not be construed against any Party on the basis that the
27 Party was the drafter or participated in the drafting.

28 12.16. Confidentiality. To the extent permitted by law, all agreements made, and orders entered

1 during Action and in this Agreement relating to the confidentiality of information shall survive
2 the execution of this Agreement. In addition, other than information necessary to secure Court
3 approval of this settlement, Plaintiffs and Class Counsel agree that the terms of this Settlement
4 Agreement (including, but not limited to, the Gross Settlement Amount), the negotiations leading
5 to the execution of this Settlement Agreement, the MOU, and the Settlement Agreement itself,
6 shall not be discussed with or publicized or promoted to the media (including, without limitation,
7 legal periodicals and publications such as “Jury Verdicts,” disclosure of the Settlement
8 Agreement on any web site of Class Counsel or any other website, or on any blogs, articles, or
9 on any social media platforms or channels), or the public at large, without the advance written
10 consent of Defendants. The Parties intend this Paragraph 10.14 to prohibit Plaintiffs and Class
11 Counsel from discussing, answering questions about, promoting or publicizing the Settlement
12 Agreement, its terms, or the negotiations leading to the Settlement Agreement with anyone other
13 than the Court or those individuals necessary to effectuate the terms of the Agreement.
14 Notwithstanding the foregoing, Plaintiff and Class Counsel (1) may tell the public in general only
15 that certain claims “have been resolved by the Parties;” and (2) may disclose the terms of the
16 Settlement Agreement (a) in appropriate filings with the Court in this case; (b) where required
17 by law (e.g., income tax returns); and (c) to accountants or other tax professionals for the purpose
18 of preparing tax returns. In addition, Class Counsel may respond to questions received from, and
19 discuss any aspect of this Agreement with Class Members. Nothing herein shall prevent Class
20 Counsel from referring to the Action in any declaration before the courts relating to the adequacy
21 or in future applications by Class Counsel for approval of attorneys’ fees.

22 12.17. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal.
23 Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by
24 Defendants in connection with the mediation, other settlement negotiations, or in connection with
25 the Settlement, may be used only with respect to this Settlement, and no other purpose, and may
26 not be used in any way that violates any existing contractual agreement, statute, or rule of court.

27 12.18. Headings. The descriptive heading of any section or paragraph of this Agreement is
28 inserted for convenience of reference only and does not constitute a part of this Agreement.

1 12.19. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall
2 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
3 weekend or federal legal holiday, such date or deadline shall be on the first business day
4 thereafter.

5 12.20. Execution in Counterparts. This Agreement may be executed in one or more counterparts
6 by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall
7 be accepted as an original. All executed counterparts and each of them will be deemed to be one
8 and the same instrument if counsel for the Parties will exchange between themselves signed
9 counterparts. Any executed counterpart will be admissible in evidence to prove the existence and
10 contents of this Agreement.

11 12.21. Stay of Litigation. The Parties agree that upon the execution of this Agreement the
12 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
13 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend
14 the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
15 process.

16 12.22. Severability. In the event that one or more of the provisions contained in this Agreement
17 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,
18 illegality, or unenforceability shall in no way effect any other provision if Defendants’ Counsel
19 and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing
20 to proceed as if such invalid, illegal, or unenforceable provision had never been included in this
21 Agreement.

22
23 **IT IS SO AGREED:**

24
25 _____
26 
27 Roberto Gonzalez (Jul 18, 2025 16:49 PDT)
28 Plaintiff, Roberto Gonzalez

For Defendant, Politis Burger Corporation

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

For Defendant, Tom's Jr. Burger, Inc.

Defendant, Spiros Politis

AGREED AS TO FORM ONLY:

Vedang J. Patel

David D. Bibiyan
Vedang J. Patel
Counsel for Plaintiff

Edson McClellan
Peter Hering
Jonas Trevethan
Counsel for Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28