

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT

This Private Attorneys General Act Settlement Agreement and Release (the "Agreement") is made by and between Plaintiff David Farrell ("Farrell"), on behalf of himself and each of the alleged aggrieved employees, and Defendant BJ's Restaurants, Inc. (erroneously sued as BJ's Restaurants Operations Company) ("BJ's"). Farrell and BJ's are referred to hereafter collectively as the "Parties" and each a "Party." Through this Agreement the Parties hereby resolve the lawsuit entitled David Farrell v. BJ's Restaurants Operations Corporation., United States District Court for the Central District of California Case No. 2:20-cv-03771-DSF, (the "Action").

1. DEFINED TERMS

In addition to the defined terms referenced above, as used herein, the following terms are defined as:

1.1 The term "PAGA Settlement Members" herein consists of all persons employed by BJ's as non-exempt employees in California at any time during the PAGA Period.

1.2 The term "PAGA Period" is defined as October 7, 2017 through the date of approval of the PAGA settlement.

1.3 The term "Court" as used herein means the United States District Court for the Central District of California.

1.4 The term "Effective Date" refers to the date upon which both of the following have occurred: (i) approval of the PAGA Settlement is granted by the United States District Court for the Central District of California, or other court assuming jurisdiction of this matter, and (ii) the Court's Judgment approving the PAGA Settlement becomes Final. Final shall mean the latest of: (i) if there is an appeal of the Court's Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for writ of certiorari to the United States Supreme Court or California Supreme Court; (ii) if a petition for writ of certiorari is filed, the date of denial of the petition for writ of certiorari, or the date the Judgment is affirmed pursuant to such petition; or (iii) if no appeal is filed, the expiration date of the time for filing or noticing any appeal of the Judgment.

1.5 The term "PAGA Settlement Amount" means an amount not to exceed Fifty-Eight Thousand Dollars (\$58,000.00) that will be used to fund the Qualified Settlement Fund. The PAGA Settlement Amount includes all Individual Settlement Payments, the Settlement Administration Costs, and payment to the Labor and Workforce Development Agency ("LWDA").

1.6 The term "Individual Settlement Payment" means the amount to be paid to a PAGA Settlement Member pursuant to Section 6 of this Agreement.

1.7 The term “PAGA Fund” means the portion of the PAGA Settlement Amount after Settlement Administration Costs are paid, in full satisfaction of the Released Claims as defined below. This PAGA Fund is made pursuant to Labor Code §2699(i).

1.8 The term “Pay Periods” means the number of pay periods worked by the PAGA Settlement Members during the PAGA Period as determined by the Settlement Administrator.

1.9 The term “Farrell’s Counsel” means HAMNER LAW OFFICES, APLC.

1.10 “Qualified Settlement Fund” shall be the fund established and administered by the Settlement Administrator pursuant to Internal Revenue Code Section 1.468B-1 in connection with the Settlement.

1.11 The term “Settlement” means the settlement described in this Agreement.

1.12 The term “Settlement Administration Costs” means all Settlement Administrator fees and costs incurred in administering the Settlement.

1.13 The term “Settlement Administrator” means Phoenix Settlement Administrators, the firm that the Parties mutually agree shall be responsible for the administration of the Settlement, pursuant to the terms of this Agreement.

2. SCOPE, PURPOSE, AND BENEFITS OF THE SETTLEMENT

2.1 As detailed below, this Agreement establishes a procedure to resolve all PAGA Settlement Members’ claims for penalties, attorneys’ fees, costs, and interest under PAGA arising out of or in any way relating to the facts giving rise to the claims in the Action, directly or indirectly, or claims that they have alleged or that could have been alleged based on the facts alleged in the Action. The Parties believe that continued litigation would be protracted, expensive, uncertain, and contrary to their best interests. In light of these realities, the Parties believe that this Settlement is the best way to resolve the disputes between them.

2.2 The Parties believe this Agreement constitutes a fair, adequate, and reasonable settlement of the Action and have arrived at this Agreement in arms-length negotiations, taking into account all relevant factors, present and potential, and will so represent to the Court. This Settlement was reached after extensive informal discovery and negotiations. In addition, the Parties have conducted significant investigation of the facts and law during the prosecution of this Action. The Parties have also investigated the applicable law as applied to the facts discovered regarding the alleged claims of Farrell and potential defenses thereto, and the civil penalties claimed by Farrell.

3. JURISDICTION

The Court has jurisdiction over the Parties and the subject matter of this dispute. The Action include claims that, while BJ’s denies them in their entirety, would, if proven, authorize the Court to grant relief pursuant to the California laws cited therein. If the Settlement is

approved, the Court will retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

4. STATEMENT OF NO ADMISSION

4.1 The Parties agree that this Agreement reflects their good faith compromise of the claims raised in the Action, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel. This Agreement does not constitute, is not intended to constitute, and will not be deemed to constitute, an admission of liability by BJ's as to the merits, validity, or accuracy of any of the allegations or claims made against it in the Action.

4.2 Neither this Agreement, nor any action taken or made in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to the Agreement, is intended by the Parties (nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding) as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, the Agreement may be used in any proceeding that has as its purpose the interpretation, implementation, or enforcement of the Agreement or any orders or judgments of the Court entered into in connection therewith.

4.3 Evidence produced or created by the Parties in connection with the Settlement procedure does not constitute, is not intended to constitute, and will not be deemed to constitute, an admission by BJ's of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

4.4 In the event that this Settlement is not approved by the Court, is terminated, or otherwise fails to be enforceable, BJ's will not be deemed to have waived, limited, or affected in any way any of its objections or defenses in the Action.

5. WAIVER, RELEASE, AND DISMISSAL

5.1 Release and Waiver of Claims by PAGA Settlement Members. Upon the Effective Date, all PAGA Settlement Members, including Farrell, and their successors, assigns, and/or agents, shall be deemed to have fully and finally released and discharge BJ's and its past, present, and future subsidiaries, parents, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials, directors, attorneys, personal representatives, executors, and shareholders, including their respective pension, profit sharing, savings, health, and other employee benefits plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, and fiduciaries (collectively, the "Released Parties"), from the "Released Claims." For purposes of this Agreement, the

“Released Claims” are defined as all PAGA Settlement Members’ claims for penalties, attorneys’ fees, costs or interest under PAGA arising out of or in any way relating to the facts giving rise to any of the claims in the Action, directly or indirectly, or claims that they have alleged or that could have been alleged based on the facts alleged in the Action, including but not limited to PAGA claims concerning unpaid wages, including failure to pay minimum wages, straight time compensation, overtime compensation, vacation wages and reporting time pay; failure to reimburse for business expenses; failure to maintain accurate records; failure to provide and maintain accurate itemized wage statements; failure to timely pay wages due during or at separation of employment; failure to identify all required items on wage statements; failure to pay for all hours worked, including off-the-clock work; meal periods and/or premiums; rest periods and/or premiums. This includes without limitation any claims arising under California Labor Code sections 201-204, 210, 221, 226, 226.3, 226.7, 226.8, 510, 512, 515, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1197, 1197.1, 1198, 1198.5 1199, and 2802, any duplicative or similar provisions arising under the Wage Orders of the California Industrial Welfare Commission and any other PAGA penalty claims whatsoever alleged in the Action, whether known or unknown, from and including October 7, 2017 up to and including the date the Court approves the Settlement. Farrell agrees to amend his PAGA letter and/or the operative complaint as necessary to comport with this release.

6. COMPUTATION AND DISTRIBUTION OF PAYMENTS

6.1 PAGA Settlement Amount. The PAGA Settlement Amount of Fifty Eight Thousand Dollars and No Cents (\$58,000.00) is on an all-in, non-reversionary basis to settle the Action and to resolve all released claims, penalties, attorneys’ fees, costs, administrative fees, and interest. In no event shall BJ’s be liable for more than Fifty Eight Thousand Dollars and No Cents (\$58,000.00) as a result of this Settlement, and any of the administrative fees, penalties, and sums specified in this Agreement shall be paid from this amount, except as otherwise noted in this Agreement. This PAGA Settlement Amount of Fifty Eight Thousand Dollars and No Cents (\$58,000.00) has been agreed to by Farrell and BJ’s.

6.2 Deposit of the PAGA Settlement Amount into the Qualified Settlement Fund. Not later than fifteen (15) days following the Effective Date, BJ’s shall deposit the PAGA Settlement Amount into the Qualified Settlement Fund. At no time will BJ’s have any obligation to make that deposit or otherwise fund the Settlement, in whole or in part, until after the Effective Date. All payments that are required to be made pursuant to the Agreement shall be made from the Qualified Settlement Fund.

6.3 Distribution Formula. The Settlement Administrator shall distribute the PAGA Fund to the LWDA and PAGA Settlement Members as described in this Section 6.3.

Pursuant to PAGA, Seventy-Five Percent (75%) of the PAGA Fund will be paid to the LWDA, and the remaining Twenty-Five Percent (25%) will be paid to all PAGA Settlement Members.

The net amount of the PAGA Settlement Members’ share of the PAGA Fund shall be paid pro rata to all PAGA Settlement Members based on the number of Pay Periods worked

according to BJ's records (e.g., excluding leaves of absence, any other absences, vacation, and any pay periods when the PAGA Settlement Member did not perform any work, to the extent the foregoing is readily ascertainable from BJ's records).

No PAGA Settlement Member shall be required to file a claim in order to receive such payment.

For tax purposes, all Individual Settlement Payments will constitute penalties and will be reported on an IRS Form-1099, which the Settlement Administrator will provide to PAGA Settlement Members if necessary, as required by law. No person or entity shall have any claim against BJ's, BJ's counsel, Farrell, any PAGA Settlement Members, Farrell's Counsel, or the Settlement Administrator based upon distributions and payments made in accordance with this Agreement.

6.4 Distribution to the PAGA Settlement Members. Individual Settlement Payments shall be paid out of the PAGA Fund pursuant to the Distribution Formula set forth in Section 6.3 of this Agreement.

Not later than twenty (20) days following the Effective Date, BJ's shall send a list of all PAGA Settlement Members to the Settlement Administrator containing: (1) name; (2) last known home address and telephone number; (3) number of pay periods as a PAGA Settlement Member during the Covered Period; and (4) social security number. This shall be known as the "Group List." BJ's shall transmit the Group List in Excel or similar format or other method as agreed to by the Parties in good faith as technology requires to transmit the data. BJ's employment records shall be determinative for purposes of calculating the number of pay periods that each PAGA Settlement Member worked for BJ's and any payments under the PAGA Settlement. BJ's will provide these records to the Settlement Administrator on a confidential basis, which will not be shared with Farrell or his counsel.

Not later than three (3) days following receipt of the Group List, the Settlement Administrator shall email the Parties confirming receipt of the Group List and stating the number of PAGA Settlement Members and the number of Pay Periods included therein.

Not later than ten (10) days following receipt of the Group List, the Settlement Administrator shall cross-reference all the addresses provided in the Group List with the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information.

Not later than fifteen (15) days following receipt of the PAGA Settlement Amount from BJ's, the Settlement Administrator shall make the following payments from those proceeds: (1) the Individual Settlement Payments; (2) the portion of the PAGA Fund to the LWDA; and (3) payment to the Settlement Administrator for administration of the Settlement.

The Settlement Administrator shall mail via U.S. First Class mail each Individual Settlement Payment to each PAGA Settlement Member's last known address with directions to

the Postmaster to deliver the checks to any applicable forwarding address and to return all undeliverable checks to the Settlement Administrator. The date of the initial mailing of the check shall be conclusively determined according to the records of the Settlement Administrator.

A letter substantially in the form of Exhibit "A" hereto will be included in the mailing of each PAGA Settlement Member's Individual Settlement Payment.

Individual Settlement Payments shall remain valid and negotiable for one hundred sixty (160) days from the date of their issuance. If there are uncashed checks following this period, the uncashed funds shall escheat to the State of California Unclaimed Property Fund in the name of the PAGA Settlement Member whose check went uncashed.

The Settlement Administrator's determination of eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Agreement, shall be conclusive, final, and binding on all PAGA Settlement Members, including Farrell.

6.5 Settlement Administrator. The Settlement Administrator will be paid subject to court approval. Any amount not awarded for costs of administration to the Settlement Administrator will result in the non-awarded amount being made part of the PAGA Fund, available for distribution to the LWDA and the PAGA Settlement Members. A Form 1099 – MISC, Box 7 shall be issued to the Settlement Administrator.

The Settlement Administrator shall calculate the portion of the PAGA Fund to be paid to the LWDA and the Individual Settlement Payments to be paid to the PAGA Settlement Members in accordance with the terms and provisions of this Agreement; pay any applicable state and/or federal taxes; make payment to the LWDA and mail the Individual Settlement Payment checks to the PAGA Settlement Members along with the letter substantially in the form of Exhibit "A," attached hereto; resolve any disputes regarding the calculation or application of the formula for determining the Individual Settlement Payments; issue 1099 forms; and perform such other tasks necessary to effectuate the terms of this Agreement or as the Parties mutually agree or the Court orders the Parties to perform.

Any disputes relating to the Settlement Administrator's ability and need to perform its duties shall be referred to the Court.

7. INTEREST

7.1 The PAGA Settlement Amount includes any and all interest accruals, and no additional interest shall be due under any circumstances.

8. TAXATION

8.1 Farrell and, through Farrell's Counsel, PAGA Settlement Members represent and warrant that they understand that it is their sole obligation to pay appropriate federal, state, and local income taxes on any amounts they receive under this Agreement that lawfully qualify as taxable income.

8.2 Neither the Parties nor their respective counsel provide or purport to provide any tax advice to the PAGA Settlement Members in connection with this Agreement or otherwise. The Parties agree that they shall not rely upon any terms of this Agreement for the purpose of determining or avoiding federal, state, or local tax obligations.

9. COURT'S APPROVAL

9.1 Farrell will promptly move the Court for approval of the Settlement pursuant to Labor Code § 2699(l). The Parties agree to use their best efforts to obtain approval as quickly as possible, to the extent not inconsistent with the terms of this Agreement, and will not take any action adverse to each other in obtaining the Court's approval of the Agreement in all respects. The Parties also agree that in the event the Court does not approve the Settlement, the Parties will work in good faith to amend the Settlement to comport with the Court's instructions.

9.2 In the event an appeal or petition for writ of mandamus is filed from the Court's order granting approval of the Settlement, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review.

10. PUBLICITY

Except as necessary to obtain Court approval, including prior submission to the LWDA, Farrell and Farrell's Counsel shall not communicate the terms or the fact of the Settlement to third parties other than (1) employees or law partners of Farrell's Counsel and/or Farrell's immediate family members; and (2) their respective accountants or lawyers as necessary for tax purposes. Farrell's Counsel agrees not to refer to the Action, BJ's, BJ's counsel, or the Settlement on any website or electronic or other communication, and to limit their statements (including electronic statements on the internet) regarding the Settlement to only say that the Action have been resolved. The Settlement Administrator shall not host or publish any website in association with the Settlement unless required by court order.

11. INAPPLICABILITY OF CALIFORNIA CIVIL PROCEDURE CODE SECTION 384

The Parties agree that California Civil Procedure Code ("CCP") section 384 is not applicable to the PAGA Settlement Amount. Neither Farrell nor Farrell's Counsel shall take, or cause any other person to take, a position before the Court that CCP section 384 applies to the PAGA Settlement Amount.

12. MISCELLANEOUS PROVISIONS

12.1 Headings. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

12.2 Interpretation of the Agreement. The Agreement will be interpreted and enforced under the laws of the State of California without regard to its conflict of law provisions.

12.3 Final Agreement. This Agreement constitutes the exclusive and final understanding and expression of all agreements between the Parties with respect to the resolution of the Action and supersedes all prior agreements and understandings between the Parties relating to the subject matter hereof. Farrell, on Farrell's own behalf and as a representative for the PAGA Settlement Members, and BJ's enter into this Agreement based solely upon its terms and not in reliance upon any representations or promises other than those contained in this Agreement. The Agreement may be modified only by a writing signed by the Parties, or their successors, and approved by the Court.

12.4 Counterparts/Facsimile/Electronic. The Agreement may be executed in one or more actual, telecopied or electronic counterparts, all of which will be considered one and the same instrument and all of which will be considered duplicate originals. A signature on this Agreement delivered by facsimile or electronically shall be as legally binding as an original signature, although the Parties will provide original signatures to each other for their records.

12.5 Authority. Counsel for all Parties represent and warrant they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate Action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effectuate the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties shall seek the assistance of the Court to resolve such disagreement. The persons signing this Agreement on behalf of BJ's represent and warrant that they are authorized to sign this Agreement on behalf of BJ's.

12.6 No Effect on Employee Benefits. The Individual Settlement Payments shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of Farrell or any PAGA Settlement Member. The payment of the Individual Settlement Payments does not represent any modification of PAGA Settlement Members' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by BJ's. Further, any Individual Settlement Payment shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by BJ's.

12.7 No Injunctive Relief. BJ's shall not be required to enter into any consent decree, nor shall BJ's be required to agree to any provision for injunctive relief, or to modify or eliminate any of its personnel, compensation, or payroll practices, or adopt any new personnel, compensation, or payroll practices.

12.8 Binding on Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

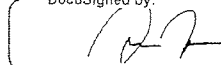
12.9 Cooperation and Drafting. Each of the Parties has cooperated in the drafting and preparation of this Agreement. Hence, in any construction made to this Agreement, the same shall not be construed against any of the Parties.

12.10 Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

12.11 Defense. To the extent permitted by law, this Settlement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceedings that may be instituted, prosecuted, or attempted with respect to the Released Claims in breach of or contrary to this Settlement.

WHEREFORE, Farrell, as representative of himself and PAGA Settlement Members, and BJ's, have executed this Agreement as of the dates set forth below.

7/10/2021
Dated: _____, 2021 By

DocuSigned by:

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DAVID FARRELL

Dated: _____, 2021 By

BJ'S RESTAURANTS, INC.

by its _____

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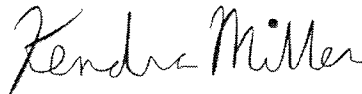
Dated: _____, 2022

By

DAVID FARRELL

Dated: January 17, 2022

By



BJ'S RESTAURANTS, INC.

by its EVP & General Counsel