

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)
SETTLEMENT AGREEMENT & RELEASE

Alize Spencer v. Canadian Guys Burgers Limited
San Bernardino County Superior Court
Case Number: CIVDS2020591

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned Parties, subject to the approval of the Court, that the settlement of this action with respect to certain claims brought in a representative capacity pursuant to the California Private Attorneys General Act (“PAGA”) (Labor Code § 2698, *et seq.*) shall be effectuated upon and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in Article I or elsewhere in this PAGA Settlement Agreement (“PAGA Settlement” or “Agreement”).

This Agreement is made by and between Defendant Canadian Guys Burgers Limited (“Defendant”), Plaintiff Alize Spencer (“Plaintiff”), for herself, the Aggrieved Employees (defined below), and on behalf of the State of California (Defendant and Plaintiff, as defined herein, are sometimes collectively referred to as the “Parties”). This Agreement shall be effective upon the last date upon which it is signed by the Parties.

The Parties agree that all representative PAGA claims brought or that could have been brought based upon the facts alleged pursuant to PAGA in San Bernardino County Superior Court Case Number CIVDS2020591 (the “Litigation” or “Action”) based on Plaintiff’s allegations that Defendant failed to pay Plaintiff and Aggrieved Employees all overtime wages owed, failed to provide Plaintiff and Aggrieved Employees legally compliant rest periods, failed to issue Plaintiff and Aggrieved Employees accurate itemized wage statements, and failed to timely pay Plaintiff and Aggrieved Employees all wages owed upon separation of employment shall be, and hereby are, fully and completely ended, settled, resolved, and concluded by agreement of Defendant to pay the sum of Eighty Thousand Dollars and Zero Cents (\$80,000.00) (hereinafter referred to as the “PAGA Settlement Sum”) for settlement of the PAGA civil penalties sought in the Litigation, which shall be inclusive of Plaintiff’s Counsel attorneys’ fees and costs in connection with this Agreement and general release by Plaintiff.

Article I.

Definitions.

Section 1.01 Definitions.

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- (a) “Aggrieved Employees” means all individuals who are, or previously were, employed by Defendant and classified as non-exempt employees in California during the Release

Period. Defendant represents that the total number of Aggrieved Employees is approximately 317 individuals.

(b) “Court” means the Superior Court for the State of California, County of San Bernardino.

(c) “Defendant’s Counsel” or “Counsel for Defendant” are:

Joseph E. Pelochino, Esq.
Geoff D. La Val, Esq.
Atkinson, Andelson, Loya, Ruud & Romo
4275 Executive Square, Suite 700
La Jolla, California 92037

(d) “Effective Date” means the latter of: (a) if no objections to the motion to approve this Agreement are made in writing or at the hearing for Court approval, the date the Court enters an order granting the Order approving the Agreement; (b) if objections are made in writing or at the hearing on the motion to approve the Agreement and overruled, and no appeal is taken of the Order granting approval, then the Effective Date shall be three (3) calendar days after the deadline to file an appeal of the Order granting approval; or (c) if one or more appeals are taken from the Court’s overruling any objections to the Agreement, then the Effective Date shall be three (3) calendar days after any appeal is dismissed or the Order granting approval of the Agreement is affirmed after an appeal, and the Order granting approval is not subject to further review and becomes final.

(e) “Complaint” means the operative Complaint filed by Plaintiff on September 28, 2020 in the San Bernardino County Superior Court, Case No. CIVDS2020591 and the PAGA notice submitted to the California Labor and Workforce Development Agency (“LWDA”) on July 15, 2020, the filing of which was a procedural prerequisite for Plaintiff to pursue recovery of civil penalties under PAGA.

(f) “Plaintiff’s Counsel” is:

Manny Starr, Esq.
Dan Ginzburg, Esq.
Frontier Law Center, APC
23901 Calabasas Road, Suite 2074
Calabasas, California 91302

(g) “Release Period” means the time period July 25, 2019 to the date the Court grants approval of the PAGA Settlement or May 25, 2021, whichever is sooner.

Article II.

Background.

Section 2.01 Background.

- (a) On September 28, 2020, Plaintiff filed an individual and PAGA representative action in the Superior Court of the State of California for the County of San Bernardino, entitled *Alize Spencer v. Canadian Guys Burgers, Limited*, Case No. CIVDS2020591, which alleged violations of California Labor Code sections 201, 202, 203, 226, 226.7, 510, 1194, 1197, and 1197.1 and the provisions of the applicable Industrial Welfare Commission Wage Order, for which Plaintiff sought recovery of civil penalties under PAGA. Plaintiff's claims were premised on Defendant's alleged failure to pay all overtime wages owed, failure to provide legally compliant rest periods, failure to issue accurate itemized wage statements, and failure to timely pay all wages due upon separation of employment as to Plaintiff and Aggrieved Employees.
- (b) During the course of the Litigation, the Parties engaged in informal discovery and investigation into Plaintiff's claims. The Parties reached this PAGA Settlement only after such discovery and investigation was performed and a full-day, arms-length mediation before Hon. Linda Quinn (Ret.) with Judicate West.
- (c) In addition to this PAGA Settlement, Plaintiff has agreed to a full and complete release of her individual claims against Defendant, as set forth in a separate confidential settlement agreement between Plaintiff and Defendant.
- (d) In connection with this PAGA Settlement, Plaintiff's representative PAGA claims, alleging violations of California Labor Code sections 201, 202, 203, 226, 226.7, 510, 1194, 1197, and 1197.1 and the provisions of the applicable Industrial Welfare Commission Wage Order, will be dismissed with prejudice.
- (e) This PAGA Settlement contemplates the entry of an order by the Court approving the payment allocated for settlement of the PAGA penalties sought in the Action and dismissing the Action in accordance with the paragraph above.

Article III.

Approval and Implementation of Settlement.

Section 3.01 Court Approval of the PAGA Settlement; Mutual Cooperation.

Subject to Defendant's review and approval prior to filing, Plaintiff's Counsel shall be responsible for preparing and filing a Motion for Approval of the PAGA Settlement ("Motion"). Plaintiff's Counsel will provide Defendant's Counsel with a copy of the Motion no later than two (2) business days prior to the deadline for submission and an opportunity to propose revisions to that Motion before it is filed. The Parties will cooperate in obtaining, through an unopposed

motion, an Order from the Court approving the payment of the PAGA Settlement Sum as described in this Agreement at the earliest possible date.

Concurrently with the submission of this Agreement to the Court, Plaintiff shall submit it to the LWDA as required by PAGA. The Parties agree to use their best efforts to expedite the preparation and submission of the settlement documents. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to, the approval and implementation of the payment of the PAGA Settlement Sum as described in this Agreement.

The Court's approval of the payment of the PAGA Settlement Sum as described in this Agreement shall be embodied in a written Order, which shall be transmitted to the LWDA by Plaintiff promptly upon entry, as required by PAGA. Should the Court not grant approval of the payment of the PAGA Settlement Sum as described in this Agreement or decline to dismiss the Action as agreed by the Parties, this Agreement shall be null and void and have no further effect.

Section 3.02 Settlement Payment Procedures.

(a) Payment of PAGA Settlement Sum.

- (1) Defendant agrees to pay the total amount of Eighty Thousand Dollars and Zero Cents (\$80,000.00) to fully and finally settle this matter. This amount, *i.e.*, the PAGA Settlement Sum, shall cover, resolve, and fully and completely satisfy any and all amounts owed to the State of California, the Aggrieved Employees, and Plaintiff's Counsel, including all amounts allocated to attorneys' fees and costs, in settlement of all of Plaintiff's claims pursuant to PAGA based on underlying violations of California Labor Code sections 201, 202, 203, 226, 226.7, 510, 1194, 1197, and 1197.1 and the provisions of the applicable Industrial Welfare Commission Wage Order, which were asserted or could have been asserted based upon the facts alleged in the Action. The Parties agree there are no circumstances that would require Defendant to pay any amount greater than the PAGA Settlement Sum in connection with this Agreement. In the event this Agreement is canceled, rescinded, terminated, voided or nullified, however that may occur, or the settlement is barred by operation of law, invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendant shall have no obligation to pay any of the PAGA Settlement Sum.
- (2) The "Net Settlement Fund" shall be calculated by deducting from the PAGA Settlement Sum the following: (1) \$26,666.67 for the payment of Plaintiff's Counsel's fees and \$4,292.07 for the payment of Plaintiff's Counsel's costs; (2) a service award to Plaintiff in the amount of \$1,500.00; and (3) a reasonable amount for the payment of the Parties' chosen third-party Settlement Administrator, estimated to be roughly \$3,200.00 (but in any event not to exceed \$3,500). The Net Settlement Fund will total approximately \$44,341.26. If the Court does not approve the full amount of any of the items in the preceding paragraph, the amount not approved shall be re-allocated to the Net Settlement Fund. Seventy-five percent (75%) of the Net Settlement Fund (currently

estimated to be \$33,255.95) shall be distributed to the LWDA, and the remaining twenty-five percent (25%) of the Net Settlement Fund (currently estimated to be \$11,085.32) shall be distributed to the Aggrieved Employees on a pro rata basis, as set forth in Section 3.02(a)(5) below.

- (3) The PAGA Settlement Sum shall be deposited with the Settlement Administrator and placed in an interest-bearing qualified settlement fund no later than thirty (30) business days after the Effective Date.
- (4) Distribution of the PAGA Settlement Sum shall be conditioned upon the Effective Date first occurring. The Settlement Administrator shall distribute the proceeds of the PAGA Settlement Sum within ten (10) business days of the deposit of the PAGA Settlement Sum. All interest accrued on the Settlement Sum shall be distributed 75% to the LWDA and 25% to the Aggrieved Employees. The Settlement Administrator shall transmit the settlement checks to the Aggrieved Employees, with no claims process required, to all Aggrieved Employees by first-class United States mail, postage prepaid, to the last known address of each recipient with directions to the Postmaster to return all undeliverable settlement checks.
- (5) The twenty-five percent (25%) portion of the Net Settlement Fund to be distributed to the Aggrieved Employees will be divided among and paid to all Aggrieved Employees according to the total number of pay periods that each Aggrieved Employee worked during the Release Period.
- (6) For each settlement check that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the Aggrieved Employee by using an address refresher database. Any settlement checks that remain uncashed more than 180 days after issuance shall be paid to the California State Controller, with the identity of the Aggrieved Employee(s) to whom the funds belong, to be held for the Aggrieved Employee(s) per the California Unclaimed Property Law, in the interest of justice. The money paid to the State Controller will remain each of the Aggrieved Employee's property.
- (7) 100% of the PAGA Settlement Amount is considered penalties and will not be subject to local, state, or federal tax withholdings. All recipients of payments under this PAGA Settlement shall have their payments reported on an Internal Revenue Service Form 1099-MISC by the Settlement Administrator.

Article IV.

Limitations On Use Of This Settlement.

Section 4.01 No Admission.

This Agreement, and compliance with this Agreement, shall not be construed as an admission by Defendant of any liability whatsoever, or as an admission by Defendant of any

violations of Plaintiff's or Aggrieved Employees' rights, violation of any order, law, statute, duty or contract whatsoever. Defendant specifically disclaims any liability to Plaintiff or any other allegedly Aggrieved Employee for any alleged violation of his/her rights, or for any alleged violation of any order, law, statute, duty or contract. Defendant further denies that, for any purpose other than settling these matters, that this action is appropriate for representative treatment.

Section 4.02 No Use; Non-Evidentiary Use.

Neither this Agreement, nor any of its terms, nor any of the negotiations connected with it or proceedings relating to this Agreement, payouts or anything else associated with it, shall be publicized, marketed, reported, or advertised by Plaintiff or her counsel, nor offered or used as evidence by any of the Parties or their respective counsel in the Litigation or in any other action or proceeding, including to establish any liability or admission on the part of Defendant or any Released Parties (defined in Section 5.01) or to establish the existence of any condition constituting a violation of, or noncompliance with, federal, state, local or other applicable law; provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement. Defendant and the Released Parties may also use this Agreement as an affirmative defense and bar to any future or subsequent claims or suits by the Aggrieved Employees, to the extent applicable. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it or proceedings relating to this Agreement, payouts or other events associated with it, shall be construed as an admission or concession by Defendant or any Released Parties or establishment of any such violation(s) or failure(s) to comply with any applicable law. Defendant specifically retains the right to defend, on the merits, against any non-settled claims brought by any allegedly Aggrieved Employees.

Section 4.03 Nullification.

Invalidation of any material provision of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

Article V.

Release and Waiver of Claims; Non-Disparagement.

Section 5.01 Limited Release of Claims.

Upon approval by the Court, Plaintiff, on behalf of herself and her heirs, executors, and assigns, and the State of California, fully releases and discharges Defendant, and each of its present and former affiliates, parent companies, subsidiaries, divisions, successors, predecessors, and assigns, and each of its respective past and present owners, officers, directors, managing agents, members, shareholders, partners, employees, agents, attorneys, insurers, successors, assigns, representatives, accountants, and all persons acting under, by, through, or in concert with any of them (collectively, "Released Parties") from any and all claims under PAGA which

were asserted in the Complaint or which could have been asserted in the Complaint based on the facts pleaded therein, relating to alleged violations of California Labor Code sections 201, 202, 203, 226, 226.7, 510, 1194, 1197, and 1197.1 and the provisions of the applicable Industrial Welfare Commission Wage Order (“Released Claims”) that accrued during the Release Period.

As a result of this release, the Aggrieved Employees will be unable to bring or recover on any claim against any of the Released Parties under the California Private Attorneys General Act, California Labor Code section 2698 et seq., for any violations of the Released Claims that took place during the Release Period. Defendant and the Released Parties shall have no liability for payment of civil penalties arising out of the Released Claims in this Action.

Section 5.02 Non-Disparagement by Plaintiff.

Plaintiff agrees she will not, orally or in writing, publicly or privately, post, publish, make or express any comment, view or opinion which criticizes, is adverse to, brings disrepute in the eyes of the public, defames, derogates or disparages Defendant or the Released Parties in any manner, nor shall Plaintiff authorize any agent or representative to make or express any such comment, view or opinion.

Article VI.

Miscellaneous Provisions.

Section 6.01 Drafting.

The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm’s-length negotiations between the Parties and that neither Party shall be considered the “drafter” of this Settlement Agreement for purposes of having terms construed against that Party.

Section 6.02 No Impact on Benefit Plans.

Neither the Settlement Agreement nor any amounts paid to Plaintiff or any Aggrieved Employee under the Settlement Agreement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Defendant’s sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any of Defendant’s benefit plans, policy, or bonus program. Defendant retains the right, if necessary, to modify the language of its benefit plans, policies and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for “hours worked,” “hours paid,” “hours of service,” or any similar measuring term as defined by applicable plans, policies and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

Section 6.03 Acknowledgement that the Settlement is Fair and Reasonable.

The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement Agreement after arm's-length negotiations by experienced counsel before an experienced and neutral third-party mediator. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement Agreement.

Section 6.04 Mutual Preparation.

The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

Section 6.05 Representation By Counsel.

The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

Section 6.06 Waiver of Right to Appeal.

Provided that the Court's Order granting approval of this PAGA Settlement is consistent with the terms and conditions of the Settlement Agreement, Plaintiff hereby waives any and all rights to appeal, to the full extent she is authorized under the provisions of PAGA, in connection with any issue in the Court's Order, including, but not limited to, all rights to any post-judgment proceeding and/or appellate proceeding, such as a motion to vacate or set-aside judgment, a motion for new trial, and any extraordinary writ, and the Order will become final and non-appealable at the time it is entered.

Section 6.07 Voluntariness.

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

Section 6.08 Amendments.

The terms and provisions of this Agreement may be amended only by a written agreement that is both: (a) signed by the Plaintiff and Defendant who executed this Agreement; and (b) approved by the Court. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.

Section 6.09 Assignment.

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, without the express written consent of each other Party and their respective counsel hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement and shall not be construed to confer any right or to avail any remedy to any other person. Plaintiff expressly warrants that she has not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

Section 6.10 Governing Law.

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California.

Section 6.11 Entire Agreement.

This Agreement contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Litigation. Nothing in this section shall be construed to invalidate the separately executed confidential settlement agreement referenced in Section 2.01(c) above.

Section 6.12 Waiver of Compliance.

Any failure of any Party hereto to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 6.13 Counterparts.

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. It shall

not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

Section 6.14 Attorney Fees and Costs.

With respect to this Agreement, neither Plaintiff's Counsel nor any other attorneys acting for, or purporting to act for the Aggrieved Employees, or Plaintiff may recover, or seek to recover, any amounts for fees, costs, or disbursements from the Released Parties or the PAGA Settlement Sum except as expressly provided herein. Defendant shall bear their own attorney fees and costs, and neither Plaintiff's Counsel, the Aggrieved Employees, nor Plaintiff shall be responsible for Defendant's attorney fees and costs. The Court shall retain jurisdiction to enforce this Agreement pursuant to Code of Civil Procedure section 664.6; if any party moves the Court to enforce this Agreement, the prevailing party shall be entitled to recover from the other party all attorneys' fees and costs incurred to enforce this Agreement.

Section 6.15 Dispute(s).

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, the Parties shall submit any such dispute(s) to the Court. To the extent any Party seeks to enforce any of the terms of this Agreement in Court or before the Court, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

Section 6.16 Binding.

This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

Section 6.17 Default, Notice and Cure; Time is of the Essence.

If Defendant fails to timely make any payment required herein, it shall be in default. Plaintiff shall give counsel for Defendant notice of the default by e-mail and Defendant shall have ten (10) business days thereafter to cure the default. The Parties agree that time is of the essence with respect to all provisions of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Private Attorneys General Act Settlement Agreement on the dates set forth below.

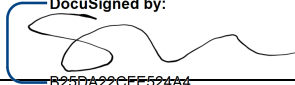
APPROVED AND ACCEPTED.

Dated:

CANADIAN GUYS BURGERS LIMITED

By _____
Name _____
Title _____

Dated: 03/03/21 | 3:15 PST

DocuSigned by:

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Plaintiff ALIZE SPENCER

**APPROVED AS TO THE AMOUNTS SET
FORTH IN SECTION 3.2(a)(2)**

Dated: 03/02/21 | 5:18 PST

Frontier Law Center, APC

DocuSigned by:

5840C27D1A28426...
By _____
Manny Starr
Dan Ginzburg
Theodore Tang
Attorneys for Plaintiff Alize Spencer