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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

LATOIA SMITH, an individual, and
RAYMOND JONES, an individual on behalf
of the State of California, as private attorney
generals

PLAINTIFFS,

v.

BURLINGTON MERCHANDISING
CORPORATION, a Delaware Corporation;
BURLINGTON COAT FACTORY DIRECT
CORPORATION, a New Jersey Corporation;
BURLINGTON DISTRIBUTION CORP., a
Delaware Corporation; and DOES 3-50,
inclusive,

DEFENDANTS.

JASMINE SPIVEY, on behalf of herself and
all others similarly situated, and on behalf of
the general public,

PLAINTIFF,

v.

BURLINGTON COAT FACTORY OF
TEXAS, INC. BURLINGTON COAT
FACTORY WAREHOUSE
CORPORATION; and DOES 1-100,

DEFENDANTS.

CONSOLIDATED CASE NO: CIVDS1929684

[Assigned to the Hon. David Cohn, Dept. S-26]

**DECLARATION OF CRAIG J.
ACKERMANN IN SUPPORT OF
MOTION TO APPROVE PAGA
SETTLEMENT**

Date: October 23, 2020
Time: 10:00 am

Complaint Filed: October 3, 2019

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1. I am an attorney licensed to practice law before this Court and the federal and state courts of California, Washington State, and Texas. I am over 18 years of age. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to them.

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1 was an associate in the labor and employment law group for Jenkins & Gilchrist, P.C. ("J&G"),
2 in the firm's Dallas, Texas office, where I represented Fortune 1000 companies, including
3 Hartford Insurance, Belo Corporation, and Alcatel, as second-chair in various employment-
4 related matters, including several class action cases. While employed by J&G, I drafted a
5 number of summary judgment motions in cases where we obtained summary judgment for the
6 defendants, including several that were reported on Westlaw. *See Wayne v. The Dallas Morning*
7 *News, Inc.*, CIV.A.No.3-98-CV-0711-L, 1999 WL 1146840 (N.D. Tex. Nov. 24, 1999) (with
8 lead counsel, Robert E. Sheeder, Esq.); *Mieritz v. Hartford Fire Insurance Co.*, No. Civ.A.3:99-
9 CV-121-R, 2000 WL 422909 (N.D. Tex. April 17, 2000) (with lead counsel Steve Fox, Esq.).

10 6. From 2000 through mid-2003, I worked in New York City for a plaintiffs' side
11 employment law firm, Arenson, Ditmar & Karban, where I was involved for several years, *pro*
12 *hac vice*, in a second-chair capacity representing 150 individually-named plaintiffs in a large
13 sexual harassment case against a major Wall Street bank that was eventually resolved for \$23.5
14 million. In terms of the number of plaintiffs and the size of the ultimate settlement, this sexual
15 harassment case was the second largest sexual harassment case in U.S. history. There were over
16 60 depositions taken and defended in that case prior to trial. In mid- and late-2003, I worked as
17 an associate in the Labor and Employment Law Section of Mitchell, Silberberg & Knupp, LLP in
18 Los Angeles, where we represented large entertainment companies in various employment-
19 related litigations, including several class actions.

20 7. From January 2004 through the present, I have been a founding and managing
21 shareholder in the firm of Ackermann & Tilajef, P.C. where we have represented thousands of
22 employees in wage and hour class actions, PAGA cases, and other employment-related matters.
23 In addition to the instant case, we have served as class counsel in over other 300 wage and hour
24 class and/or PAGA actions, many of which have been resolved, and others of which are currently
25 pending in federal and state courts. I, along with the attorneys at my firm, have developed
26 extensive litigation experience in complex employment litigation matters, particularly in
27 California class actions. For example, we have successfully obtained class certification and been
28 appointed as adequate class counsel in numerous cases where contested class certification motions

1 were filed and fully briefed. *See, e.g.,* (1) *Martinez v. Knight Transportation*, Case No. 1:16-cv-
2 01730-DAD (order granting Plaintiff's Motion for Class Certification, dated December 3, 2018)
3 (certifying Class of over 4,000 non-resident drivers with claims of unpaid rest breaks and non-
4 productive time on California routes);(2) *Moss v. USF Reddaway, Inc.*, No. 5:15-CV-01541-JAK-
5 FFM, (C.D. Cal June 30, 2017) (Hon. Judge John A. Kronstadt) Order Granting Plaintiff's Motion
6 for Class Certification (Dkt. No. 80); (3) *Jack Morrison v. Knight Transportation, Inc.*, Tulare
7 County Superior Court, Case No. 228016, Nov. 13, 2009 Order Granting Plaintiff's Motion for
8 Class Certification (Hon. Lloyd Hicks) (granting certification of class of over 2,000 truck drivers,
9 which later grew to 4,111 drivers, with claims for, inter alia, failing to provide duty-free meal
10 breaks); (4) Order Adopting Findings and Recommendations, *Clayton v. Knight Transportation,*
11 *Inc.*, No. 1:11cv0735 LJO DLB, 2012 WL 3638026 (E.D. Cal. Aug. 21, 2012) (Hon. Lawrence
12 O'Neil); Findings and Recommendations Regarding Plaintiff's Motion for Class Certification,
13 *Clayton v. Knight Transportation, Inc.*, No. 1:11cv0735 LJO DLB, 2012 WL 2912395 (E.D. Cal.
14 July 16, 2012) (U.S. Magistrate Judge Dennis L. Beck) (recommending certification of class
15 action for 2,000 truck drivers alleging claims for unpaid orientation time); (5) *Anderson v. Andrus*
16 *Transportation*, San Bernardino County Superior Court, Case No. CIV DS 915878, August 16,
17 2011 Order Granting In Part Plaintiff's Motion for Class Certification (class certification granted
18 to class of over 550 truck drivers with claims for unpaid minimum wages and derivative claims);
19 and (6) *Trujillo v. WinCo Foods, LLC*, Stanislaus County Superior Court, Case No. 622364,
20 March 16, 2011 Order Granting Plaintiff's Motion for Class Certification (granting class
21 certification of missed meal and rest break claims and derivative claims to class of 150 truck
22 drivers). In each of these cases, the trial court judges determined that my firm and I were
23 competent and adequate class counsel, or co-class counsel, following a contested motion for class
24 certification.

25 8. In addition to being found adequate on numerous contested class certification
26 motions from 2007 through 2019, my firm and I have been appointed class counsel or co-class
27 counsel for numerous wage and hour class action settlements, which obtained final approval,
28 including dozens of cases that were resolved for more than \$1 million. *See e.g.,* Order Granting

1 Final Approval of Class Action Settlement, *Hugues v. The Morning Star Trucking Company,*
2 *LLC*, et al. Yolo County Case No. CV16-1215 (August 3, 2017) (granting final approval to \$1.95
3 million Class Action Settlement for unpaid rest breaks for 1,405 truck seasonal truck drivers, with
4 an additional \$500,000 in debt relief on the plaintiffs' trucking school over-charging claims and
5 agreement that the defendant would lower the cost of trucking school in its training agreement
6 going forward); Supplemental Order Granting Final Approval to Class Action Settlement, *Powers*
7 *v. Estensen Logistics, LLC*, Case No. CIVDS 1602295, San Bernardino Superior Court (July 12,
8 2017) (approving \$1.98 million settlement for 1,600 drivers with unpaid rest break and derivative
9 claims and appointing A&T as co-class counsel); Order Finally Approving Class Action
10 Settlement, *Plimpton v. Gordon Trucking, Inc.*, Case No. CIV-DS-1511918, San Bernardino
11 Superior Court (January 26, 2017) (approving \$3.7 million non-reversionary settlement for 1,800
12 drivers with meal and rest break claims and appointing A&T as co-counsel for the Class); *Downs*
13 *v. U.S. Foodservice, Inc.*, Case No. 3:10-cv-02163-EMC (N.D. Cal. Sept. 11, 2012), ECF No. 84
14 (granting approval to class action settlement for \$3 million for 1,100 truck drivers with meal and
15 rest break claims; Memorandum Decision Re Unopposed Motion for Final Approval of Class
16 Action Settlement (Doc. 41) and For Attorneys' Fees and Costs (Doc. 48), *Bond v. Ferguson*
17 *Enterprises, Inc.*, NO. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 (E.D. June 30, 2011)
18 (granting approval to \$2.25 million class settlement for 553 truck drivers); Order Re Final
19 Approval of Class Action Settlement, *Padilla v. Young's Market Company, LLC*, Case No. 2:09-
20 CV-08730 DMG (RCx) (C.D. Cal. Aug. 23, 2010), ECF No. 53 (approving settlement of \$1
21 million for meal and rest break claims of 310 truck drivers); Order Granting Plaintiffs' Motion for
22 Final Approval of Class Action Settlement, Approving Service Awards to the Class
23 Representatives, and Granting Plaintiffs' Motion for Attorneys' Fees and Costs, *Jape v. Southern*
24 *Wine and Spirits of America, Inc.*, Case No. CV09-2599 SJO (FMOx) (C.D. Cal. July 19, 2010),
25 ECF No. 50 (granting final approval to \$1 million settlement for 301 truck drivers); Order
26 Granting Plaintiffs' Motions for: (1) Final Approval of Class Action Settlement and Award of
27 Service Fee to Class Representative; and (2) Reasonable Attorneys' Fees and Reimbursement of
28 Litigation Expenses and Costs to Class Counsel, *Valladares v. The SYGMA Network, Inc.*, Los

1 Angeles County Case No. BC 406053 (April 6, 2010) (granting final approval to \$1.95 million
2 wage and hour settlement for class of 515 truck drivers); Order Granting Plaintiffs' Motion for
3 Final Approval of Class Action Settlement, *Valdez v. Sysco Food Services of Los Angeles, Inc.*,
4 Los Angeles County Case No. BC396372 (Feb. 1, 2010) (granting final approval to \$1.4 million
5 missed meal break settlement for class of 480 truck drivers); Order (1) Granting Final Approval of
6 Class Action Settlement; (2) Awarding Payment of Class Counsel's Attorneys' Fees, Expenses,
7 and Costs; and (3) Awarding Participation, Service, and Incentive Payment to Class
8 Representative From Settlement Fund, *Murray v. United Natural Foods, Inc.*, Placer County Sup.
9 Court Case No. SCV21938 (Jan. 6, 2009) (granting final approval to \$1.5 million missed meal
10 break settlement for 335 truck drivers); Order Granting Final Approval of Class Action
11 Settlement.

12 9. In addition, on July 30, 2014, in the case of *Anderson v. Andrus Transportation*
13 *Services*, Case No. CIV DS 915878 (San Bernardino Superior Court), the Honorable Judge Brian
14 McCarville granted final approval to a settlement of a class of truck drivers challenging a piece-
15 rate compensation system with claims for *inter alia* meal and rest breaks, and unpaid wages for
16 rest breaks, and appointed me and my firm as class counsel. On November 12, 2015, in the case
17 of *Gonzalez v. SAILA Motor Freight Line LLC*, San Bernardino Case No., CIVDS1503144, the
18 Honorable Judge Wilfred J. Schneider in Department S32 finally approved a class action
19 settlement for \$499,000 for 215 truck drivers and appointed me and my firm as class counsel. On
20 February 11, 2016, in the case of *Harris v. Toyota Logistics Services, Inc.*, Contra Costa Superior
21 Court Case No. C-15-00217, the Honorable Judy S. Craddick in Department 09 finally approved a
22 class action settlement for drivers and appointed me and my firm class counsel. On May 12, 2016,
23 in the case of *Velasco v. Knight Port Services, LLC, et al.*, San Bernardino Superior Court Case
24 No, CIVDS1513403, the Honorable Donna G. Garza in Department S24 finally approved a class
25 action settlement for drivers and appointed me and my firm class counsel. On December 8, 2016,
26 in the case of *Sansinena v. Garzelle Transportation, Inc.*, Kern County Superior Court Case No.
27 2-1500-CV-283400 (LHB), the Honorable Lorna H. Brumfeld in Department 17 finally approved
28 a class action settlement for drivers and appointed me and my firm class counsel. On December 9,

2016, in the case of *Blan v. Button Transportation, Inc.*, Solano County Superior Court Case No. FCS045949, the Honorable Michael Mattice in Department 10 finally approved a class action settlement for truck drivers and appointed me and my firm class counsel. On January 14, 2017, in the case of *Ramon Reyes v. Mike Lowrie Trucking, Inc.*, Solano Superior Court Case N. FS045537, the Court granted final approval to a \$540,000 class settlement for 1,116 seasonal truck drivers with piece-rate claims for unpaid rest breaks and non-productive time, and derivative claims for rest break premiums, wage statement violations and waiting time penalties. In March 2017, in the case of *Shaun Keyes v. Waveco, Inc.*, Solano Superior Court case no. FCS046709, the Court granted final approval to a settlement of \$497,000 for 315 truck drivers.

10. Notably, in early 2016, after 7 years of hotly contested litigation, including class certification, multiple summary judgment motions, decertification, and preparation for the phase 1 liability trial, the case of *Jack Morrison v. Knight Transportation, Inc.*, Tulare County Superior Court, Case No. 228016, was resolved for an amount of \$2.25 million to the class of 4,100 drivers, and attorney's fees were then decided on a contested motion. On a contested fees motion, the Tulare County Superior Court awarded our firm over \$1.1 million in fees for our work on that case.

11. Since 2004, our firm has also represented more than 500 individual employees in cases brought under various state and federal statutes, including the California Labor Code, and we have obtained favorable results in numerous cases. In December 2012, for example, we obtained a Final Judgment in the amount of \$318,913.09 in a Title VII and FEHA retaliation case after a general jury verdict for the Plaintiff and a successful appeal to the Ninth Circuit from the district court's denial of Plaintiff's motion for attorneys' fees. *See* Final Judgment, *Barrios v. Diamond Contract Services, Inc.*, Case No. 2:07-cv-03500-CBM-FMO (C.D. Cal. Dec. 20, 2012), ECF No. 138 (final judgment entered for Plaintiff in the amount of \$318,913.09); *see also* *Barrios v. Diamond Contract Services, Inc.*, 461 F. App'x 571 (9th Cir. Dec. 13, 2011) (reversing original district court judge's denial of motion for attorneys' fees).

12. From 2012 through 2014, we also represented plaintiffs in class action cases alleging claims for unreimbursed mileage expenses. On September 16, 2013, in the case of *Zotea*

1 v. *Ross Stores, Inc.*, Alameda County Superior Court Case No. CV11592051, the Honorable
2 Wynne Carvill appointed me as co-class counsel in conjunction with granting final approval to a
3 settlement regarding the failure to reimburse mileage expenses on behalf of a class of retail
4 supervisory employees. On November 1, 2013, in the case of *Grom v. The Men's Wearhouse,*
5 *Inc.*, Sacramento Superior Court Case No. 34-2012-00117446, the Honorable Alan G. Perkins
6 appointed me as co-class counsel in conjunction with granting final approval to a settlement
7 regarding the failure to reimburse mileage expenses on behalf of a class of retail employees. On
8 November 20, 2013, the Honorable Morris C. England, in conjunction with a Memorandum and
9 Order granting Final Approval of a class action settlement for unreimbursed mileage expenses of
10 supervisors of Best Buy LP, found that our firm was adequate class counsel in *Monterrubio v.*
11 *Best Buy Stores, L.P.*, No. 2:11-cv-03270-MCE-AC (E.D. Cal. Nov. 20, 2013). On June 30, 2014,
12 in conjunction with the granting of final approval to a settlement regarding the failure to
13 reimburse mileage expenses on behalf of a class of 1,400 current and former Assistant Managers,
14 Store Managers, and Department Managers, the Honorable Jon S. Tigar approved me and Michael
15 Malk as competent class counsel for the putative class in the case of *Boring v. Bed Bath and*
16 *Beyond of California LLC*, Case No. 3:12-cv-05259-JST (N.D. Cal. June 30, 2014). On August 6,
17 2014, in conjunction with the granting of final approval to a settlement regarding the failure to
18 reimburse mileage expenses on behalf of a class of thousands of assistant managers, the
19 Honorable Phyllis J. Hamilton approved me as competent class counsel for the putative class in
20 the case of *Eichelberger and Montellano v. Home Depot USA, Inc.*, Case No. 4:13-cv-00260PJH
21 (N.D. Cal. Aug. 6, 2014). Our firm currently has over 150 additional pending class actions where
22 we are lead counsel for putative classes of truckers in connection with unpaid minimum wage, rest
23 break and wage statement and other derivative claims under both the laws of California and
24 Washington state.

25 13. In 2017, we represented more than 60,000 workers in wage and hour cases
26 recovering more than \$24 million for our clients. In 2018, we recovered more than \$29 million for
27 more than 69,000 Class Members. In 2019, we recovered over \$35 million for more than 50,000
28 workers.

14. We have also been appointed PAGA counsel or PAGA co-counsel in numerous cases, including several that resolved relatively recently for substantial amounts, including most recently: (1) *Nika Miller et al v. Mattress Firm, Inc.*, Santa Clara County Superior Court Case No. 17CV313148, approved by the Honorable Thomas E. Kunle on December 17, 2018 in the gross amount of \$3,750,000; (2) *Myers v. Mor Furniture for Less, Inc.*, San Diego County Superior Court Case No. 37-2018-00055055-CU-OE-NC, approved by the Honorable Ronald Frazier on November 27, 2018 in the amount of \$1,062,000; and (3) *Singletary v. Guard Management, Inc.*, San Diego County Superior Court Case No. 37-2018-00017663-CU-OE-NC, approved and judgment entered by the Honorable Timothy M. Casserly in the gross amount of \$235,000 on June 21, 2018. Based upon my experience and after factoring in the risks of litigation, I believe the proposed PAGA settlement is fair and reasonable. As such and for the reasons stated forth below, I believe that Plaintiffs' Proposed PAGA Settlement should be approved.

PROCEDURAL AND FACTUAL HISTORY

15. On September 11, 2018, Plaintiff Spivey submitted her PAGA letter to the LWDA and to Defendants Burlington Coat Factory of Texas, Inc. and Burlington Coat Factory Warehouse Corporation, wherein she described the facts and theories supporting her and the aggrieved employees' allegations of Defendants Burlington Coat Factory of Texas, Inc. and Burlington Coat Factory Warehouse Corporation's violations, including of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197.1, and 1199, as well as corresponding violations of IWC Wage Orders. On April 15, 2019, Plaintiff Spivey filed her representative action complaint in San Bernardino County Superior Court, Case No. CIVDS1911341 (the "Spivey Action") wherein she alleged Defendants Burlington Coat Factory of Texas, Inc. and Burlington Coat Factory Warehouse Corporation's liability for PAGA penalties including based on underlying violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197.1, and 1199, as well as corresponding violations of IWC Wage Orders. On July 29, 2019, Plaintiff Smith submitted her PAGA letter to the LWDA and to Defendant Burlington Merchandising Corporation, wherein she described the facts and theories supporting her and the

1 aggrieved employees' allegations of Defendant Burlington Merchandising Corporation's
2 violations of Labor Code §§ 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 510, 512, 558, 1194,
3 1194.2, 1197, 1197.1, 1198, 1199, 1199.5 as well as IWC Wage Order No. 7-2001.

4 16. On October 3, 2019, Plaintiff Smith filed her representative action complaint in
5 San Bernardino County Superior Court, Case No, CIVDS1929684 (the "*Smith* Action") wherein
6 she alleged Defendant Burlington Merchandising Corporation's liability for PAGA penalties
7 based on underlying violations of Labor Code §§ 204, 210, 221, 226(a), 226(e), 226.3, 226.7,
8 510, 512, 558, 1194, 1197, 1197.1, and 1198 as well as IWC Wage Order Nos. 7-2001 and 9-
9 2001.

10 17. On November 6, 2019, Plaintiff Jones submitted a PAGA Notice to the LWDA
11 and Defendant Burlington Merchandising Corporation raising similar claims to those alleged by
12 Plaintiff Smith. Thereafter, the Parties stipulated to Plaintiff Smith filing a First Amended
13 Complaint to add Plaintiff Jones as an additional PAGA Plaintiff to the *Smith* Action. The crux
14 of Plaintiffs' claims included that Defendants did not pay for employees' time spent on security
15 checks, and there were also various violations relating to meal and rest breaks, itemized wage
16 statements and payment to employees upon termination from employment.

17 18. Subsequently, on February 2, 2020, the Parties in the *Smith* Action as well as
18 Plaintiff Spivey in the *Spivey* Action stipulated to the consolidation of the *Smith* and *Spivey*
19 Actions.²

20 19. The Parties then agreed to engage in an extensive exchange of informal discovery
21 and to attempt to resolve the Actions through private mediation. As part of the informal
22 discovery exchange, Defendants provided Plaintiffs' counsel with the number of aggrieved
23 employees and the total number of pay periods worked by the aggrieved employees from July
24 29, 2018 through May 1, 2020 (May 1, 2020 reflects the last date of work before the distributions
25 centers temporarily closed due to COVID-19 shelter-in-place orders. Defendants also provided
26 various policy documents, wage statements and employee personnel files and time records.
27 Specifically, there are 3,613 aggrieved employees who worked approximately 137,784 pay

28 ² The Court ultimately signed the order consolidating these matters on June 1, 2020.

1 periods from July 29, 2018 through May 1, 2020. Plaintiffs assert that the Defendants'
2 "estimated" exposure for the PAGA claims for PAGA Aggrieved Employees based on one
3 underlying violation of the Labor Code and assuming all aggrieved employees only suffered an
4 initial violation is \$13,778,400.00 (137,784 initial pay periods * \$100 initial penalty).

5 20. Defendants deny all of the allegations made by Plaintiffs in the action and denies
6 that it is liable or owes damages or other compensation or remedies to anyone with respect to the
7 action. Specifically, Defendants contended, among other things, that employees did not incur any
8 off-the-clock work time associated with time spent in security lines because: (1) most employees
9 do not carry a bag and can simply walk through the security line; (2) Defendants encourage
10 employees to use clear plastic bags to expedite the process of going through the security line; (3)
11 in the event that employees bring a bag that is not clear, employees simply walk through the
12 security line with their bag open and do not "break stride"; (4) employees come in to the
13 distribution centers at staggered times thereby alleviating any issues with long lines at security
14 checkpoints; (5) there are several security lines also alleviating any issued with long lines at
15 security checkpoints; (6) the time spent in security lines is de minimis; and (7) many employees
16 come into the distribution centers up to one early to take advantage of the onsite cafeteria and
17 fitness center made available. Additionally, with respect to Plaintiffs claims for Defendant's
18 meal and rest period violations, Defendants contended, among other things: (1) employees
19 received 15 minute rest breaks and 45 minute meal breaks thereby alleviating any issues with
20 employee transit time from their work stations to designated break areas; and (2) the bell
21 indicating the end of employees' rest breaks would only ring at the end of the rest break meaning
22 that transit time for break areas to work stations was time spent on the clock; and (3) Defendants'
23 conduct did not otherwise result in meal and rest break violations. Defendants also contend that
24 their conduct was otherwise lawful, including with respect to its wage statements and payments
25 to terminated employees. Defendants also stated that this matter is not subject to representative
26 action treatment and is highly "unmanageable" under PAGA, as a multitude of individualized
27 inquires and variations exist, such that Defendants had intended to file the appropriate motion to
28 strike to eliminate the representative claims that Plaintiffs purported to bring.

1 21. Both Parties have vigorously litigated this action.

2 22. On June 18, 2020, the Parties attended an all-day Zoom-video mediation session
3 presided over by experienced wage and hour mediator, Jeffrey A. Ross, Esq. The mediation
4 resulted in a settlement that is memorialized in the Settlement Agreement attached hereto as
5 **Exhibit 1**. Plaintiffs Smith and Jones submitted Amended PAGA Notices to the LWDA naming
6 the additional dbas and submitted two Doe Amendments to add Burlington Coat Factory Direct
7 Corporation and Burlington Distribution Corp., as additional Defendants. A notice of settlement
8 and request to lift the stay for purposes of filing approval motion was executed by the parties on
9 July 30, 2020 and approved by the Court on August 5, 2020.

10 **THE AGGRIEVED EMPLOYEES AND SETTLEMENT CONSIDERATIONS**

11 23. For purposes of this settlement, the PAGA Aggrieved Employees are defined as
12 all individuals who are or were employed by Burlington Merchandising Corporation and/or
13 Burlington Distribution Corp. in California as non-exempt employees at any time from February
14 7, 2018 through the date of approval of the settlement.

15 24. Plaintiffs' claims are summarized below:

16 Defendants Do Not Pay For All Hours Worked and Engaged in a Policy and Practice of
17 Deducting Wages Earned by Employees

18 25. Plaintiffs allege that Defendants have engaged in a practice of failing to pay for
19 all hours worked.³ Specifically, Defendants force aggrieved employees through a security check
20 when entering or exiting the building. Not only do Defendants subject aggrieved employees to
21 bag searches, but also the company requires a clothing inspection to ensure aggrieved employees
22 do not leave with Defendant's products (*i.e.*, to prevent employees from wearing the products to
23 steal them). Regardless of whether these aggrieved employees bring in bags (and many do bring
24 their lunches) – they are forced to toil through a long-lines for Defendants to inspect the cloths
25 on their body primarily for Defendant's benefit to detect and deter theft. Furthermore, in *Troester*
26 *v. Starbucks Corp.* (2018) 5 Cal.5th 829, 848, the California Supreme Court held that all regular
27 work time in California is compensable and held that the de minimis doctrine has no application

28 ³ In *Frlekin v. Apple Inc.*, 2020 Cal. LEXIS 547 the California Supreme Court found that time employees spent
undergoing bag searches at the end of their shifts was compensable.

1 under California law to regularly recurring activities. Waiting in security lines and bag check
2 lines are “regularly occurring activities” in warehouses and other California workplaces. In sum,
3 aggrieved employees cannot avoid Defendant’s searches and cannot use their time effectively for
4 their own purposes. As such, Defendants exercises compensable control over aggrieved
5 employees undergoing mandatory searches and owes aggrieved employees wages for time spent
6 in these security lines. Additionally, at times during the period applicable to Plaintiffs’ claims,
7 Defendants unilaterally deducted hours from Plaintiffs’ wages and failed to provide any
8 compensation whatsoever for the work performed. Defendant also made retroactive deductions
9 to wages such that minimum wages were not paid for all hours worked. Therefore, as a result of
10 Defendants’ unlawful wage deduction policies and practices, Defendants failed to pay minimum
11 wages or even half of the minimum wage rate in effect for certain pay periods

12 Defendants Do Not Provide Lawful Rest Breaks

13 26. Plaintiffs allege that Defendants do not authorize and permit net ten-minute rest
14 breaks because most of employees’ break time is consumed by transit time. Additionally, should
15 employees wish to exit the facility to get fresh air outside, they are not free to do so without
16 being accosted by Defendants through its security procedure of being checked before they leave
17 and when they come back. Specifically, Defendants prevent employees from using break time
18 effectively for their own purposes because employees cannot leave the premises to use the time
19 effectively for their own purposes free from the employer control. If they leave during a rest
20 period, they have to submit themselves to the company’s controlling and invasive searches.
21 Employees are thereby – as a matter of policy and practice – prevented from using all their break
22 time free of employer control for off-plant pursuits. Lastly, employees are not free to leave the
23 premises due to Defendant’s promulgation of an on-premises rest break policy. Per Defendant’s
24 Attendance Policy, employees are expressly told they are responsible for “remaining at work for
25 the duration of [their] shift,” which includes rest breaks.

26 Defendants Do Not Provide Lawful Meal Periods

27 27. Plaintiffs allege that Defendants do not authorize and permit lawful meal periods.
28 Specifically, a supervisor blows a horn, which is not automated but rather controlled by a

1 supervisor so the timing varies, to send a division on lunch. Therefore, if any employee wishes to
2 take his or her lunch outside or away from the warehouse, the employee must plod through
3 Defendants' security line and subject himself or herself to a bag check and clothing inspection
4 which could result in up to 20 minutes of employer-controlled time. In other words, during
5 security checks, aggrieved employees are subject to employer control. Further, employees are
6 discouraged from leaving the premises, as they know they will be subjected to security checks,
7 which eats away at the time Defendants allot for a lunch break.⁴

8 Defendants Do Not Provide Accurate Itemized Wage Statements

9 28. Plaintiffs allege that because Defendants fail to account for the unpaid wages as
10 discussed above, on the aggrieved employees' wage statements, Defendants are liable for Labor
11 Code § 226 penalties. Specifically, Defendants have inaccurately reported total hours worked on
12 aggrieved employees' wage statements. Specifically, Defendants deduct the "Actual Hours
13 Worked" from the "Hours" on aggrieved employees' wage statements. By deducting the Actual
14 Hours Worked from the Hours, Defendants confusingly itemize the "Total Hours Worked" on
15 wage statements as 0.00. Thus, Defendants have failed to itemize the total hours worked on wage
16 statements as Cal. Lab. Code § 226 (a) requires, and Defendants have reported the total hours on
17 the employees' wage statements inaccurately. Defendants' deductions unequivocally signal that
18 employees work 0.00 hours in total, and the employees have been unable to arrive at the total
19 hours worked by summing up the figures on the wage statement without a need to reference
20 other records or documents. Put differently, without additional information on the wage
21 statement, an employee cannot simply arrive at the sum of hours worked. As such, Defendants'
22 wage statements do not comply with Cal. Lab. Code § 226(a)(2) because the wage statements do
23 not provide for the total hours worked nor can an employee, easily and sensibly, arrive at the
24 correct hours.

25 ///

26 ⁴ See *Hamilton v. Wal-Mart Stores, Inc.*, No. 5:17-cv-01415-AB (KKx)), 2019 U.S.Dist.LEXIS 77699, at *12, 2019
27 WL 1949456, at *4 (C.D.Cal. Mar. 4, 2019) ("Walmart's security check arguably "impedes or discourages"
28 associates from taking an "uninterrupted 30-minute break" because employees have only two options: leave the
premises and go through the security check even though the security check may eat up some part of their meal break
or stay inside the facility.")

1 Defendants Failed to Pay All Wages Due at Termination

2 29. Plaintiffs allege that by Defendants never paying the unpaid wages owed to the
3 aggrieved employees referenced above, Defendants are liable under Labor Code § 203 for
4 waiting time penalties at the maximum rate.

5 30. Plaintiffs allege that the aforementioned underlying conduct gives rise to a claim
6 pursuant to Labor Code Section 2699, *et seq.*

7 31. In a PAGA action, the Court has the same discretion “to assess a civil penalty”
8 that the Labor Commissioner would have, as well as complete discretion to “award a lesser
9 amount than the maximum civil penalty amount specified [by PAGA] if, based on the facts and
10 circumstances of the particular case, to do otherwise would result in an award that is unjust,
11 arbitrary and oppressive, or confiscatory.” Lab. Code§ 2699(e)(2). It is possible that at trial
12 Defendants could have convinced the Court that it should exercise its discretion under PAGA to
13 significantly reduce any penalties awarded.

14 32. The period covered by this settlement is from July 29, 2018 through court
15 approval of the settlement. Since Defendant’s distributed center warehouse workers all signed
16 individual arbitration agreements, this case was brought and settled only on a PAGA
17 representative basis.

18 **THE PROPOSED SETTLEMENT**

19 33. As detailed fully in the Settlement Agreement and Release of Claims, the
20 settlement provides for Defendants to pay a Gross Settlement Amount of \$2,000,000.00.

21 34. Pursuant to the Joint Stipulation, PAGA Counsel proposes the following
22 allocation of the Settlement to determine the Net Settlement Sum:

23 Gross Settlement Sum:	\$2,000,000.00
24 Estimated Attorneys’ Fees (1/3):	\$666,666.67
25 Estimated Case Costs:	\$13,931.67
26 Estimated Plaintiffs’ Service Awards	\$30,000.00
27 <u>Estimated Settlement Administration Costs:</u>	<u>\$14,925.00</u>
28 Estimated PAGA Penalties:	\$1,274,476.66

1 35. The PAGA Penalties (\$1,274,476.66) consists of the Gross Settlement Amount
2 minus Court Approved PAGA Counsel's attorneys' fees and litigation costs as well as the
3 Named Plaintiffs' service awards and settlement administration costs.

4 36. The anticipated total PAGA Penalty Fund will be approximately \$1,274,476.66.
5 Seventy-five percent of the PAGA Penalty Fund (\$955,857.50) will be paid to the LWDA as
6 required by Labor Code section 2699(i). The remaining 25% of the PAGA Penalty Fund
7 (\$318,619.16) will be distributed to PAGA Aggrieved Employees based on the number of pay
8 periods each PAGA Member worked during the PAGA Period as a percentage of the total
9 number of pay periods worked by all PAGA Members during the PAGA Period. Each PAGA
10 Aggrieved Employee's pro-rata share of the PAGA Penalty Fund represents their Individual
11 Settlement Payment.

12 37. In evaluating the reasonableness of the settlement offers, my Co-Counsel and I
13 considered both my own experience with other similar PAGA settlements as well as PAGA
14 settlements obtained by other firms. Here, it was also very possible that the Court would have
15 exercised its discretion under PAGA to reduce the amount of estimated PAGA penalties of
16 \$13,778,400.00. See Par. 20, above. Under Labor Code section 2699(e)(2), a court may award a
17 lesser amount than the maximum civil penalty specified under PAGA, if based on the facts and
18 circumstances of the particular case, to do otherwise would result in an award that is unjust,
19 arbitrary and oppressive or confiscatory. Courts often exercise their discretion to reduce the
20 amount of PAGA penalties awarded to as little as \$5.00 per pay period or 18% (or less) of the
21 available PAGA penalties.⁵ Here, the gross amount obtained by PAGA Counsel per pay period is
22 approximately \$14.51 (\$2,000,000.00 Settlement Amount / 137,784 pay periods). Defendants
23 contended that employees did not incur any off-the-clock work time associated with time spent
24 in security lines because: (1) most employees do not carry a bag and can simply walk through the
25 security line; (2) Defendants encourage employees to use clear plastic bags to expedite the

26 ⁵ See e.g., *Kileigh Carrington v. Starbucks Corporation, et al.*, San Diego Superior Court Case No. 37-2014-
27 00018637-CU-OE-CTL (Apr. 3, 2017) (holding that the plaintiff was only entitled to collect the reduced penalty
28 amount of \$5.00 for each pay period in which a meal period violation occurred or 5% of the PAGA penalties at
issue); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047, at *4 (reducing PAGA penalties by
82%)

1 process of going through the security line; (3) in the event that employees bring a bag that is not
2 clear, employees simply walk through the security line with their bag open; (4) employees come
3 in to the distribution centers at staggered times thereby alleviating any issues with long lines at
4 security checkpoints; (5) there are several security lines also alleviating any issued with long
5 lines at security checkpoints; (6) the time spent in security lines is de minimis; and (7) many
6 employees come into the distribution centers up to one early to take advantage of the onsite
7 cafeteria and fitness center made available. Additionally, with respect to Plaintiffs claims for
8 Defendant's meal and rest period violations, Defendants contended: (1) employees received 15
9 minute rest breaks and 45 minute meal breaks thereby alleviating any issues with employee
10 transit time from their work stations to designated break areas (since statutory breaks are thirty
11 minutes for lunch and ten minutes for rest so extra time is built into Defendants' system); and (2)
12 the bell indicating the end of employees' rest breaks would only ring at the end of the rest break
13 meaning that transit time for break areas to work stations was time spent on the clock.
14 Furthermore, Defendants stated that any possible on-premises break policy was not actually used
15 in practice and employees were free to leave the premises during breaks, and their conduct was
16 otherwise lawful (including but not limited to regarding wage statements and payment to
17 terminated employees).

18 38. Furthermore, Defendants also argued that Courts have discretion to reduce PAGA
19 Penalties specifically on the basis of a Defendant's potential inability to pay. *See e.g. Thurman v.*
20 *Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112 (4th District Court of Appeal
21 February 27, 2012) ("The evidence supports the trial court's penalty reduction even under
22 Thurman's view that section 2699, subdivision (e)(2) requires evidence of inability to pay,
23 because the trial court made the undisputed finding that defendants' loss of the NCT contract in
24 March 2007 rendered them unable to pay penalties from ongoing revenues.").

25 39. As a result, my Co-Counsel and I believe that this settlement is fair, reasonable,
26 and in the best interests of the aggrieved employees and the State of California.

27 40. None of the aggrieved employees will relinquish any of their individual rights as
28 part of this settlement. *See Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46

1 Cal.4th 993, 1003 (2009); (holding that “[PAGA] does not create property rights or any other
2 substantive rights” and that “an aggrieved employee cannot assign a claim for statutory penalties
3 because the employee does not own an assignable interest.”); *Medina v. Vander Poel*, 523 B.R.
4 820, 825 (E.D. Cal. 2015) [a bankruptcy court finding that “PAGA plaintiffs do not have
5 property rights in their cases.”]; *Villacres v. ABM Industries Inc.*, 189 Cal. App. 4th 562,579
6 (2010).

7 **ATTORNEYS FEES’ AND COSTS**

8 41. This declarant is familiar with the contingent fee market throughout California,
9 particularly as it pertains to complex employment, wage and hour, PAGA and class action
10 litigation. During this litigation, PAGA Counsel litigated this case without receiving any
11 payment for their services or reimbursement of their costs incurred for the benefit of the state of
12 California and the aggrieved employees.

13 42. On behalf of my firm, I have negotiated numerous contingency fee agreements
14 with plaintiffs, both as individuals and as representatives in class action suits. Many of those
15 agreements provided that counsel will receive a fee that is 33.33% of any recovery that is
16 obtained, and, in addition, that counsel be reimbursed for the costs they incurred out of the
17 recovery amount.

18 43. Ackermann & Tilajef, P.C., Winston Law Group, P.C., and Mara Law Firm, PC
19 have never been paid any money for attorneys' fees in this case and have advanced costs
20 amounting to \$13,931.67. See paragraph 55 below; Winston Decl., ¶ 24; and Mara Decl., ¶ 34.

21 44. There are always risks attendant to billing cases on a contingency basis. Those
22 risks are even higher in the current economic climate. Ackermann & Tilajef, P.C., Winston Law
23 Group, P.C., and Mara Law Firm, PC bills the vast majority of its cases on contingency. As with
24 every contingency case, there is always the possibility that the Plaintiffs will not prevail and
25 PAGA Counsel will not receive any compensation for its services and/or that the Defendants will
26 lack the assets necessary to satisfy any judgment obtained against it.

27 45. Courts have recognized our firm’s expertise and skill in litigating complex
28 employment cases and our 2020, 2019, and 2018 rates above have been approved by numerous

1 Courts. *See, e.g., Hollis v. Union Pacific Railroad Co.*, Case No. 5:17-cv-02499-JGB-SHK,
2 Order Granting Final Approval and Attorneys' Fees, dated September 19, 2018 (Docket No. 28)
3 ("Here, Plaintiff's counsel billed at hourly rates ranging from \$200-\$890 for attorney
4 timekeepers. ... Craig Ackerman billed \$717/hour. ... The Court reviewed the experience of the
5 respective attorneys and finds the amount billed per hour to be reasonable."); *Moss v. USF*
6 *Reddaway, Inc.*, Case No. 5:15-cv-01541-JAK-FFM, Docket No. (Order Granting Final
7 Approval, dated July 25, 2018), the Hon. Judge John Krondstadt, 124 at p. 13 of 15 (noting that
8 "The attorneys and paralegals who worked on this matter have substantial experience in complex
9 employment litigation ... For example, Craig Ackermann has served as lead counsel or co-lead
10 counsel in more than 200 class actions during his 21-year career, and the court approved my
11 hourly rates of \$660 to \$715 for each respective year of the litigation, including \$715 for work in
12 2018, as "within the range of reasonableness" for the "hourly rates charged in this District")
13 (trucker piece-rate class action); *Santamour v. UPS Freight, Inc.*, Case No. 2:17-cv-00196, ECF
14 No. 33 (Order Granting Final Approval, dated June 26, 2018) (the Hon. Chief Judge Thomas
15 Rice of the Eastern District of Washington) ("The Court, based on its independent review as well
16 as its review of the supporting documents submitted by Plaintiffs, finds the rates billed by
17 Plaintiffs' counsel and paralegals are commensurate with the prevailing rates for similar
18 representation in the relevant market", and approving my rate at \$717 per hour) (trucker piece-
19 rate class action). *Bykov v. DC Transportation Services, Inc.*, Case No. 2:18-cv-1691 DB, Docket
20 No. 29 (Order dated March 3, 2020), (the Hon. Deborah Barnes, at pp. 7 and 11 noted that
21 "plaintiff's counsel are experienced litigators of class actions involving the precise claims here,
22 i.e., wage and hour disputes involving truck drivers" and "[p]laintiff's counsel has collectively
23 represented hundreds of truck drivers in similar wage and hour cases"). In this case, I
24 participated in, among other things, attending the mediation and negotiating the settlement terms.

25 46. My associate Avi Kreitenberg has 10 years of experience. Mr. Kreitenberg
26 graduated from the University of West Los Angeles School of Law and has been licensed to
27 practice law in the State of California since 2009. His hourly rate of \$500 has been approved by
28 district and state courts throughout California in several class and PAGA action settlements. Mr.

1 Kreitenberg participated in, among other things, attending the mediation and drafting the PAGA
2 approval papers. My paralegal/legal assistant, Jaclyn Blackwell, is a legal assistant/paralegal
3 with significant experience with class and PAGA actions. Her hourly rate of \$200 has also been
4 approved by several California courts in similar class action settlements.

5 47. Recently, the California Supreme Court approved trial courts' usage of the
6 common fund method of awarding attorneys' fees in cases like this one, and upheld a fee
7 awarded of 1/3 of the total settlement amount obtained for the class. *See Laffitte v. Robert Half*
8 *Int'l Inc.*, 1 Cal. 5th 480, 506 (2016); *see also*, 4 Newberg on Class Actions, § 14:6 at 552 ("fee
9 awards in class actions average around one-third of the recovery"). Specifically, in *Laffitte*, the
10 Court wrote: "[w]e join the overwhelming majority of federal and state courts in holding that
11 when class action litigation establishes a monetary fund for the benefit of the class members, and
12 the trial court in its equitable powers awards class counsel a fee out of that fund, the court may
13 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
14 created"). *Id.* at 503. The California Supreme Court also noted that trial courts have the
15 discretion to award fees as a percentage of the common fund, with or without the necessity to
16 conduct a lodestar cross-check. *Id.* ("...[Courts] ... retain the discretion to forgo a lodestar cross-
17 check and use other means to evaluate the reasonableness of a requested percentage fee.").

18 48. The California Supreme Court's recent *Laffitte* decision was consistent with its
19 prior rulings recognizing that "when a number of persons are entitled in common to a specific
20 fund, and an action brought by ... plaintiffs for the benefit of all results in the creation or
21 preservation of that fund, such ... plaintiffs may be awarded attorneys' fees out of the fund."
22 *Serrano III v. Priest*, 20 Cal.3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478
23 (1980) ("[A] lawyer who recovers a common fund . . . is entitled to reasonable attorneys' fees
24 from the fund as a whole").

25 49. The requested fees and costs of up to one-third of the Settlement Amount are also
26 on point with awards obtained in similar cases granted approval by courts in California. *See e.g.*,
27 *Miller, et al. v. Mattress Firm, Inc.*, Santa Clara County Superior Court Case No. 17CV313148,
28 Order Re: Motion to Approve PAGA Settlement, December 17, 2018 (the Honorable Thomas E.

1 Kuhnle granted approval to a PAGA settlement and awarded PAGA Counsel's attorneys' fees in
2 the amount of one-third of the total settlement); *Singletary v. Guard Management, Inc.*, San
3 Diego County Superior Court Case No. 37-2018-00017663-CU-OE-NC, Order Approving
4 Representative Action Settlement, June 21, 2018 (the Honorable Timothy M. Casserly granted
5 approval to a PAGA settlement and awarded PAGA Counsel's attorneys' fees in the amount of
6 one-third of the total settlement); *Peysakhovich v. Perry Automotive Group, Inc., et al.*, San
7 Diego County Superior Court Case No. 37-2018-00025183-CU-OE-NC, Final Judgment,
8 November 15, 2018 (the Honorable Ronald Frazier granted approval to a PAGA settlement and
9 awarded PAGA Counsel's attorneys' fees in the amount of one-third of the total settlement);
10 *Dominguez v. Scandinavian Designs, Inc., et al.*, Sonoma County Superior Court Case No.
11 SCV-263531, Final Judgment, January 22, 2019 (the Honorable Patrick M. Broderick granted
12 approval to a PAGA settlement and awarded PAGA Counsel's attorneys' fees in the amount of
13 one-third of the total settlement); *Freeman v. Redwood Wise Riders, Inc., et al.*, Solano County
14 Superior Court Case No. FSC050140, Order Approving Representative Action Settlement,
15 December 3, 2018 (the Honorable Wendy G. Getty granted approval to a PAGA settlement and
16 awarded PAGA Counsel's attorneys' fees in the amount of one-third of the total settlement).

17 50. The table attached hereto as **Exhibit 2** summarizes the time each timekeeper at
18 our firm expended on this case, their respective years of experience, and hourly billing rates,
19 which have been approved by California state and federal Courts in other wage and hour class
20 and representative actions:

21 51. Adding in the lodestar of our co-counsel as set forth in their declarations, PAGA
22 Counsel's total lodestar to date collectively amounts to \$318,402.50. In addition, the table above
23 does not include the approximately 15 additional hours our firm anticipates to spend between
24 now and the conclusion of this matter, including preparing for, and appearing at the PAGA
25 approval hearing, corresponding with the settlement administrator (if needed) and opposing
26 counsel throughout the settlement administration process, corresponding with our client, writing
27 tax letters to our client, and other typical and reasonably necessary tasks that arise post-final
28 approval.

52. PAGA Counsel also seeks cost reimbursement in the amount of \$13,931.67, less than the \$20,000.00 contemplated by the Parties' Settlement Agreement and equal to the amount incurred and anticipated to be incurred by PAGA Counsel. Below is a breakdown of the costs incurred and anticipated to be incurred by my firm. The receipts to the following are attached hereto as **Exhibit 3**:

<i>Costs Incurred by Ackermann & Tilajef, P.C.</i>			
Date	Type	Description	Amount
11/21/2019	Postage/Mailing	USPS – postage to service Initial CMC Orders on OPC (first-class/priority label)	\$7.35
12/19/2019	Service Fees	San Bernardino Court – fee to obtain conformed POS re Initial CMC Orders from online docket	\$1.00
1/23/2020	Postage/Mailing	Postage to serve P's CourtCall Service Copy on OPC (<i>in-house stamps, no receipt</i>)	\$0.55
2/4/2020	Mediation	Jeffrey A. Ross – A&T's portion (1/3) of P's portion (1/2) of mediation fee	\$2,333.34
3/18/2020	Postage/Mailing	Postage to service Notice of Continued Hearing on OPC (<i>in-house stamps, no receipt</i>)	\$1.10
6/18/2020	Service Fees	San Bernardino Court – fee to obtain conformed POS re Notice of Continued Hearing from online docket	\$1.00
7/8/2020	Postage/Mailing	Jaclyn Blackwell – reimbursement for certified mailing of Amended PAGA letters via USPS	\$42.00
7/30/2020	Filing Fees – Pleadings	First Legal – file/conform/return Joint CMS & Notice of Settlement/Request to Vacate/Set PAH Date (add'l billing of \$20.80 added 8/12/20)	\$112.94
8/11/2020	Service Fees	San Bernardino Court – fee to obtain conformed Notice of Settlement + POS from online docket	\$4.50
8/11/2020	CourtCall	Avi Kreitenberg telephonic appearance at 8/13/2020 CMC	\$94.00
9/8/2020	Filing Fees – Pleadings	First Legal – file/conform/return Joint Stip & Order to Continue Hearing on PAGA Approval	\$111.54
9/15/2020	Service Fees	San Bernardino Court – fee to obtain conformed/signed Order Continuing PAGA Approval Hearing from online docket	\$3.50
	In-house copying	308 pgs * .06 each	\$18.48
	Anticipated	ANTICIPATED – First Legal – file/conform/return Motion for PAGA Approval	\$150.00
	Anticipated	ANTICIPATED – CourtCall – AK telephonic appearance at Hearing on PAGA Approval	\$94.00
TOTAL			\$2,975.30

THE PROPOSED NOTICE TO ACCOMPANY THE PAGA PENALTY CHECKS

53. The Parties have agreed to use a reputable third-party PAGA settlement

1 administrator, ILYM Group, Inc., to administer the settlement. Although the aggrieved employees
2 do not possess property rights in a PAGA action and this action is not subject to the class action
3 approval process, Plaintiffs and Defendants have nevertheless agreed to provide an explanatory
4 letter to the aggrieved employees to accompany the PAGA penalty checks. *See Amalgamated*
5 *Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th 993, 1003 (2009); (holding that
6 “[PAGA] does not create property rights or any other substantive rights” and that “an aggrieved
7 employee cannot assign a claim for statutory penalties because the employee does not own an
8 assignable interest.”); *Medina v. Vander Poel*, 523 B.R. 820, 825 (E.D. Cal. 2015) [holding
9 “PAGA plaintiffs do not have property rights in their cases.”]; *Villacres v. ABM Industries Inc.*,
10 189 Cal. App. 4th 562, 579 (20 10); *see also Arias v. Superior Court*, 46 Cal.4th 969 (2009)
11 (holding that a PAGA action is not governed by the class action procedural rules and therefore
12 PAGA Plaintiffs need not obtain approval of the PAGA settlement thorough a motion for
13 preliminary or final approval.); *accord Mendoza vs. Nordstrom, Inc.* 2017 Cal. Lexis 3171 (Cal.
14 Supreme Court May 8, 2017) (“PAGA authorizes a representative action without the need for
15 class certification.”). Attached hereto as **Exhibit 4** is a true and correct copy of the proposed letter
16 for employees.

17 54. The LWDA was provided with a copy of the settlement documents concurrently
18 with the filing as required by PAGA a copy of the email confirmation is attached hereto as
19 **Exhibit 5**.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct.

22 Executed this 28th day of September, 2020 in Los Angeles, California.

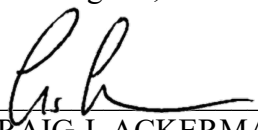
23
24 
25 CRAIG J. ACKERMANN
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EXHIBIT 1

PAGA SETTLEMENT AND RELEASE AGREEMENT

This PAGA Settlement and Release Agreement (hereinafter “Settlement” or “Agreement”) is made and entered into by and between Plaintiffs JASMINE SPIVEY, LATOIA SMITH, and RAYMOND JONES (hereinafter “Plaintiffs”) on behalf of themselves and as authorized proxies and agents for the State of California and the Labor and Workforce Development Agency pursuant to Labor Code section 2698 *et seq.*, the Private Attorneys’ General Act (“PAGA”) on the one hand, and Defendants BURLINGTON MERCHANDISING CORPORATION, BURLINGTON COAT FACTORY OF TEXAS, INC., BURLINGTON COAT FACTORY WAREHOUSE CORPORATION, BURLINGTON COAT FACTORY DIRECT CORPORATION, AND BURLINGTON DISTRIBUTION CORP. (“Defendants” or “Burlington”), on the other hand. Plaintiffs and Defendants are collectively referred to herein as “the Parties.”

1. THE CONDITIONAL NATURE OF THIS AGREEMENT

1.1 This Agreement and all associated exhibit(s) or attachment(s) are made for the purpose of settling the Covered Claims, as described herein, in the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. The Parties enter into this Agreement and associated settlement on a conditional basis. If the Court does not enter the Approval Order and Final Judgment and/or the Effective Date does not occur, this Agreement shall be deemed null and void *ab initio*, it shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose whatsoever, and the negotiation of the Agreement shall remain subject to the provisions of California Evidence Code section 1152 and any other analogous rules of evidence that are applicable.

1.2 Defendants deny all the allegations asserted in the Complaint, and any amendments thereto, and also deny any claims for relief, including claims for penalties, attorneys’ fees, and costs of suit. Defendants have agreed to resolve Plaintiffs’ sole cause of action for violation of the PAGA [Labor Code §§ 2698 *et seq.*] via this Agreement, but to the extent this Agreement is not approved or the Effective Date does not occur, Defendants do not waive, but rather expressly reserve, all rights to challenge Plaintiffs’ Complaint(s) upon all procedural and factual grounds, as

well as asserting any and all other potential defenses or privileges. Plaintiffs and PAGA Counsel agree that Defendants retain and reserve these rights, and agree not to argue or present any argument, and hereby waive any argument that, based on this Agreement, Defendants cannot assert any and all potential defenses and privileges if this Action were to proceed.

2. NATURE OF ACTION

2.1 For purposes of this Settlement, the Aggrieved Employees or PAGA Members are defined as: All individuals who are or previously were employed by Burlington Merchandising Corporation and/or Burlington Distribution Corp. in California as non-exempt employees at any time from February 7, 2018, through the Approval Date (as defined below) of the settlement (the “PAGA Period”).

2.2 Through informal discovery, Defendants provided Plaintiffs and PAGA Counsel with information about the number of potentially Aggrieved Employees, estimated at 3,613 Aggrieved Employees and the total number of pay periods, estimated at 137,784, as of the mediation date.

2.3 Burlington Merchandising Corporation was Plaintiffs’ employer, and this Agreement settles Covered Claims for alleged Labor Code violations for non-exempt employees in all of Burlington Merchandising Corporation’s and its related entities California distribution centers, as well as all those entities and parties included in the definition of Released Parties.

3. DEFINITIONS

3.1 “Action” or “Lawsuit” means the consolidated civil action pending in San Bernardino County Superior Court titled, *LATOIA SMITH, an individual, and RAYMOND JONES, an individual on behalf of the State of California, as private attorney generals, PLAINTIFFS v. BURLINGTON MERCHANDISING CORPORATION, a Delaware Corporation; and DOES 1 to 50, inclusive, DEFENDANTS*; and *JASMINE SPIVEY, on behalf of herself and all others similarly situated, and on behalf of the general public, PLAINTIFF, v. BURLINGTON COAT FACTORY OF TEXAS, INC., BURLINGTON COAT FACTORY WAREHOUSE CORPORATION; and DOES 1-100, DEFENDANTS*, San Bernardino County Superior Court,

Consolidated Case No. CIVDS1929684.

3.2 “Aggrieved Employee,” “Aggrieved Employees,” “PAGA Member” or “PAGA Members” mean any and all individuals who are or previously were employed by Burlington Merchandising Corporation and/or Burlington Distribution Corp. in California as non-exempt employees at any time from February 7, 2018, through the date of Court approval of the Settlement.

3.3 “Aggrieved Employee Share” means each Aggrieved Employee’s share of the 25% of PAGA penalties allocated to the Aggrieved Employees in accordance with Labor Code section 2699(i).

3.4 “Approval Date” means the date that the Court enters the Approval Order.

3.5 “Approval Motion” means the Motion for Approval of Representative PAGA Settlement that Plaintiffs will submit to the Court identifying the key terms of this Agreement and requesting that the Court approve the Settlement.

3.6 “Approval Order” means an Order from the Court approving this PAGA Settlement and Release Agreement.

3.7 “Complaint” collectively means all complaints and amendments in the Action, including the complaint Plaintiff Jasmine Spivey filed on April 15, 2019 (San Bernardino County Superior Court Case No. CIVDS1911341), initiating the Action, as well as the complaint filed on October 7, 2019 by Latoia Smith (San Bernardino County Superior Court Case No. CIVDS1929684), amended on or about July 17, 2020, which were consolidated by the Court order’s approving stipulation on June 1, 2020, and Doe Amendments 1 and 2 submitted on July 17, 2020.

3.8 “Court” means the San Bernardino County Superior Court.

3.9 “Counsel for Defendant(s)” and “Defense Counsel” means Seyfarth Shaw LLP.

3.10 “Covered Claims” includes any and all PAGA claims or PAGA causes of action arising under Labor Code section 2698, *et seq.* during the PAGA Period that were alleged, or that reasonably could have been alleged in the Action based on the facts alleged in any and all of

Plaintiffs' LWDA letters (including the amended LWDA letters) or in the complaints and amendments that constitute the Complaint. The Covered Claims include, but are not limited to, PAGA claims or PAGA causes of action relating to any and all theories of liability regarding or related to any and all possible compensable time that Aggrieved Employees spent going through, or related in any way to a bag check, security check, security process, or security procedure in order to enter or leave a facility (including but not limited to walk time, wait time or checking and/or inspection by security personnel), and any and all allegations that such conduct was unlawful or led to any derivative liability (including but not limited to wage statement violations, failure to pay wages timely upon termination or any other monies owed or penalties of any kind). Covered Claims also include, but are not limited to, PAGA claims or PAGA causes of action relating to any and all theories of liability regarding or relating to meal or rest period obligations or alleged violations thereof, and any and all allegations that such conduct was unlawful or led to any derivative liability (including but not limited to wage statement violations, failure to pay wages timely upon termination or any other monies owed or penalties of any kind). The Covered Claims include any and all violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 224, 225.5, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 1199.5, and the applicable Wage Order (including but not limited to Paragraph 4 of the applicable Wage Order), regardless of theory of recovery.

3.11 "Defendant" or "Defendants" means Burlington Merchandising Corporation, Burlington Coat Factory of Texas, Inc., Burlington Coat Factory Warehouse Corporation, Burlington Coat Factory Direct Corporation, and Burlington Distribution Corp.

3.12 "Effective Date" means the date the Court enters final judgment as to all complaints and causes of action in the Action in connection with an order granting and entering approval of PAGA settlement pursuant to this Agreement ("Final Judgment") and shall be the later of the day after (a) the expiration of the time for any notice of intention of a post-judgment motion or appeal to be filed following Final Judgment or (b) if a post-judgment motion or appeal has been filed, the date the Final Judgment is no longer appealable and constitutes a "final

judgment” for purposes of res judicata and collateral estoppel.

3.13 “Eligible Pay Periods” means the total number of pay periods that each Aggrieved Employee received a wage statement during the PAGA Period.

3.14 “Maximum Settlement Amount” or “MSA” means TWO MILLION U.S. DOLLARS AND 00/100 CENTS (\$2,000,000.00) that Defendants are obligated to pay under the terms of the proposed settlement. The MSA is non-reversionary, such that the entire amount will be disbursed and none will revert to Defendants. The MSA includes the PAGA Payment (as defined below), PAGA Counsel’s attorney’s fees (not to exceed 33 and 1/3 percent of the Maximum Settlement Amount) and costs (not to exceed \$20,000), Settlement Administration Costs, and Service Awards to the PAGA Representatives. In no circumstance will Defendants be required to pay more than \$2,000,000.00 as part of or in connection with this Agreement.

3.15 “PAGA” means the California Labor Code Private Attorneys’ General Act of 2004, codified at Cal. Lab. Code § 2698 *et seq.*

3.16 “PAGA Counsel” means David S. Winston of the Winston Law Group, P.C., Craig Ackermann of Ackermann & Tilajef, P.C., and David Mara and Tony Roberts of the Mara Law Firm.

3.17 “PAGA Payment” means the portion of the Maximum Settlement Amount (after excluding PAGA Counsel’s attorney’s fees and costs, Settlement Administration Costs, and the Service Awards to the PAGA Representatives) that represents the amount payable in this settlement for PAGA penalties, 75% of which will be paid to the Labor and Workforce Development Agency (“LWDA”) and 25% of which will be paid to the PAGA Members. All PAGA Members will receive a monetary payment from the PAGA Payment.

3.18 “PAGA Period” means the period from February 7, 2018 through the date of Court approval of the Settlement.

3.19 “PAGA Representatives” or “Plaintiffs” means Plaintiffs Jasmine Spivey, Latoia Smith, and Raymond Jones.

3.20 “Qualified Settlement Fund” or “QSF” means a qualified settlement fund

established by the Settlement Administrator for the purpose of administering the settlement.

3.21 “Released Parties” means any entity named as a defendant in the Action, and their parents, subsidiaries, affiliates, owners, predecessors, successors, and associated organizations, past and present, and each of their respective trustees, directors, officers, agents, joint employers, attorneys, managing agents, employees, contractors, insurers, representatives, assigns, all persons acting by, through, under, or in concert with any of them, and/or all persons acting on behalf of them.

3.22 “Service Award” means a monetary amount of up to TEN THOUSAND U.S. DOLLARS AND 00/100 CENTS (\$10,000.00) for each Plaintiff, which, subject to Court approval, will be paid as provided for below.

3.23 “Settlement” and “Agreement” means this PAGA Settlement and Release Agreement.

3.24 “Settlement Administrator” means ILYM Group, Inc.

3.25 “Settlement Administration Costs” means the amount to be paid to the Settlement Administrator for the cost of administering this settlement, which are currently estimated to be approximately \$14,925.00. The Settlement Administration Costs shall include: all costs of administering the Settlement, including, but not limited to, administering the Qualified Settlement Fund; all tax document preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees associated with preparing, issuing and mailing any and all communications to PAGA Members; all costs and fees associated with issuing the individual payments to PAGA Members and the payments to the State of California LWDA; and all costs and fees associated with issuing IRS Form 1099s (to the extent any are required by applicable law), relating to payments made under the settlement; all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering the settlement, and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement.

4. **REPRESENTATIONS**

4.1 Plaintiffs alleged on behalf of the State of California, among other things, that they and the other Aggrieved Employees were not paid for all hours worked associated with time spent in security lines, did not receive lawful rest periods, did not receive lawful meal periods, did not receive accurate itemized wage statements, did not receive all wages owed at the conclusion of their employment, and therefore, are owed penalties for the above. Plaintiffs allege that this underlying conduct gives rise to a claim pursuant to PAGA.

4.2 The Parties exchanged meaningful information through informal discovery for the mediation including policies and practices, information about the number of Aggrieved Employees, and the number of pay periods at issue during the PAGA Period. Defendants deny all of the allegations made by Plaintiffs.

4.3 Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuit and deny any liability or intentional wrongdoing. Defendants contend, among other things, that they have complied at all times with the California Labor Code, the related California Wage Orders, and all other state and federal wage laws, and further contend that the Lawsuit is without merit and that Plaintiffs cannot pursue claims, if any, against Defendants. Defendants have denied and continue to deny each and every material factual allegation and alleged claim asserted against them in the Lawsuit. Defendants further contend that the imposition of any penalties would be unjust, arbitrary, oppressive, and confiscatory. Nevertheless, Defendants are willing to resolve this matter in accordance with the terms set forth herein.

4.4 The Parties recognize that the issues presented in the Lawsuit are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. The Parties have taken into account the risk and uncertainty of the outcome inherent in any litigation.

4.5 Plaintiffs and PAGA Counsel contend that they have diligently pursued an

investigation of the State of California's claims under PAGA against Defendants.

4.6 Based on their own independent investigations and evaluations, Plaintiffs and PAGA Counsel are of the opinion that the settlement for the consideration and on the terms set forth in this Agreement is fair, reasonable, and adequate and is in the best interests of the Plaintiffs, the Aggrieved Employees, and the State of California in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, PAGA Counsel believes that the settlement amount entered into is in the best interests of the Aggrieved Employees and the State of California and that the settlement is fair, reasonable, and adequate, given the inherent risk of litigation.

4.7 The purpose of this Settlement is to settle and compromise the Lawsuit and all Covered Claims that Plaintiffs, the State of California, and the Aggrieved Employees have under PAGA against Defendants and the Released Parties. Neither the existence of this Settlement nor anything contained in this Settlement shall be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants or the Released Parties. Nothing herein shall constitute an admission by Defendants or the Released Parties that the Lawsuit was properly brought as a representative action other than for settlement purposes. Settlement of the Lawsuit, the negotiation and execution of this Settlement, and all acts performed or documents executed pursuant to or in furtherance of this Settlement or the settlement of the Lawsuit: (a) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendants or the Released Parties or of the truth of any of the factual allegations in the operative Complaint in the Lawsuit; (b) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omissions on the part of Defendants or the Released Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; (c) are not, shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for representative treatment, or administration other than for purposes of administering this Settlement; and (d) shall not constitute or be deemed a waiver of Defendants' or the Released

Parties' right to compel arbitration of any dispute with an Aggrieved Employee.

4.8 This Settlement shall be binding on Plaintiffs, the Aggrieved Employees they represent (as defined herein), and on the Defendants and the Released Parties, subject to the terms and conditions hereof and the approval of the Court.

4.9 In order to comply with the requirements of Labor Code Section 2699(l), Plaintiffs shall submit an Approval Motion identifying the key terms of this Agreement and requesting that the Court approve the Settlement. The Settlement is contingent upon the approval by the Court. If the Court denies the Approval Motion due to concerns that the Parties cannot address through non-material modifications of this Agreement, (i) this Settlement shall be considered null and void; (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as if this Settlement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Settlement, except for the amount of attorneys' fees and costs and Service Awards to the PAGA Representatives, shall invalidate this Settlement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect. The Parties agree to abide by all of the terms of the Settlement in good faith and to support the Settlement fully and to use their best efforts to defend this Settlement from any legal challenge, whether by appeal or collateral attack. The Parties shall make all possible good faith efforts to resolve any issues raised by the Court during the approval process.

4.10 In the event that the Court does not grant the Approval Motion after three attempts to address any issues raised by the Court to the satisfaction of all Parties (unless all of the Parties agree in writing to proceed with additional attempts), the Parties will be restored to their positions prior to the execution of this Agreement and the Agreement shall be null and void.

5. TERMS OF SETTLEMENT

The Parties to the Action agree as follows:

5.1 **Agreement to Settle Lawsuit and the Covered Claims.** In consideration of the mutual covenants, promises and representations set forth in this Settlement, Plaintiffs, on behalf

of the State of California as Private Attorney Generals as well as the Aggrieved Employees and Defendants agree to settle and compromise the Lawsuit and the Covered Claims, subject to the terms and conditions set forth in this Settlement.

5.2 **Maximum Settlement Amount (“MSA”).** As consideration for the settlement described herein and the release contained in this Settlement, Defendants agree to pay the MSA of TWO MILLION U.S. DOLLARS AND 00/100 CENTS (\$2,000,000.00) to resolve this Action.

The MSA will be allocated as follows:

- (a) PAGA Counsel’s attorney fee request of one-third of the MSA (\$666,666.67 to be divided 1/3 to Winston Law Group, P.C., 1/3 to Ackermann & Tilajef, P.C. and 1/3 to Mara Law Firm);
- (b) PAGA Counsel’s request for costs in the amount of up to \$20,000.00;
- (c) Service Awards in the amount of \$10,000.00 to each of the PAGA Representatives for their service on behalf of the State of California and Aggrieved Employees and in contemplation of the broader release of claims entered into by the PAGA Representatives as part of this Settlement;
- (d) Settlement Administration Costs of \$14,925.00 to be paid to the Settlement Administrator (administration costs shall not exceed the amount estimated by the bid submitted by the Settlement Administrator to administrate the Settlement); and
- (e) the remainder of the MSA after deducting the items (a), (b), (c), and (d) herein shall be designated as the PAGA Payment, which is estimated to be \$1,268,408.40 and will be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699(i) with 75% paid to the LWDA (\$951,306.30) and 25% paid to the Aggrieved Employees on a pro-rata basis (\$317,102.10).

5.3 **Allocation and Calculation of the PAGA Payment.** The anticipated total PAGA

Payment will be approximately \$1,268,408.40. Seventy-five percent (75%) of the PAGA Payment will be paid to the LWDA as required by Labor Code section 2699(i). The remaining twenty-five percent (25%) of the PAGA Payment will be distributed to Aggrieved Employees based on the number of Eligible Pay Periods each PAGA Member worked during the PAGA Period as a percentage of the total number of Eligible Pay Periods worked by all PAGA Members during the PAGA Period. Because the Aggrieved Employee Share payments are payments in compromise and settlement of a claim for alleged penalties, all Aggrieved Employee Share payments will be treated as nonwage income with no tax withholdings and will be reported, if required, on an IRS Form 1099. Each Aggrieved Employee Share payment of the PAGA Payment represents their share of the twenty-five percent (25%) in PAGA penalties distributable to the Aggrieved Employees.

5.4 **PAGA Counsel's Fees and Costs.** As part of the Approval Motion, PAGA Counsel will request Court approval of one-third of the MSA, which is \$666,666.67 to be divided 1/3 to Winston Law Group, P.C., 1/3 to Ackermann & Tilajef, P.C. and 1/3 to Mara Law Firm. In addition, PAGA Counsel will request cost reimbursement in an amount up to \$20,000.00 for costs incurred by PAGA Counsel. Should PAGA Counsel request a lesser amount for attorneys' fees and costs and/or the Court approve a lesser amount, the difference shall be allocated to the PAGA Payment and distributed accordingly. Any attorneys' fees and costs awarded to PAGA Counsel, hereinafter referred to as "PAGA Counsel Fees & Costs," shall fully compensate and reimburse PAGA Counsel for any and all of the work already performed in connection with the Lawsuit and all work remaining to be performed in fully and finally resolving the Lawsuit, including but not limited to securing Court approval of the settlement, appearing at any hearings, making sure that the settlement is fairly and properly administered, defending the settlement in any appeal or other post-approval matter, all other work that PAGA Counsel has performed or will perform, and all costs that PAGA Counsel has incurred or will incur.

5.5 **Tax Treatment of Settlement Amounts.** With regard to settlement payments to Aggrieved Employees, IRS Form 1099s will be issued, if required. Nothing in this Settlement is

intended to constitute legal advice regarding federal, state, and/or local tax obligations. Plaintiffs acknowledge that they have obtained no tax advice from Defendants and that neither Defendants nor their attorneys have made any representation concerning the tax consequences, if any, of the MSA in this Agreement or any payment to be made pursuant to this Agreement. Plaintiffs also acknowledge they have had an opportunity to consult with independent tax counsel. To the extent that this Settlement or any of its attachments is interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Defendants are not responsible for any Aggrieved Employees' tax obligations regarding the allocation of the settlement payments. Payment of PAGA Counsel Fees & Costs will be reflected in a Form 1099 to PAGA Counsel who shall assume full responsibility and liability for the payment of taxes due on such payments. The Service Awards to the PAGA Representatives will be in addition to their Aggrieved Employee Share. Because the Service Awards represent payments to the PAGA Representatives for service in this Action, payroll taxes will not be withheld from the Service Awards. The Settlement Administrator will report the Service Awards on a Form 1099, and any other required tax forms, and will provide the form(s) to the PAGA Representatives and to the pertinent taxing authorities as required by law. The PAGA Representatives assume full responsibility for paying all taxes, federal and state, if any, due as a result of the Service Award and agrees to indemnify Defendants for any such taxes owed by them. An award by the Court of less than the amount of the requested Service Awards shall not be a basis upon which PAGA Counsel may void this Agreement, and any amount not awarded shall remain included in the amount available for distribution to the Aggrieved Employees.

5.6 Aggrieved Employees' Aggrieved Employee Shares pursuant to this Agreement are not intended by the Parties to be compensation for purposes of determining eligibility for or benefit calculations of any health and welfare benefit plan, retirement benefit plan, vacation benefit plan, unemployment compensation, including, without limitation, all plans, subject to the Employee Retirement Income Security Act ("ERISA"). The Parties agree that the Aggrieved

Employee Shares are not intended to represent any modification of any employee's previously-credited hours of service or other eligibility criteria under any employee pension benefit plan, employee welfare benefit plan, or other program or policy.

5.7 **Release.**

5.7.1 **Release By All PAGA Members.** Upon approval of the Settlement , and except as to the right to enforce the terms and conditions of the Settlement, Plaintiffs, on behalf of themselves and the State of California, and all PAGA Members, hereby fully release the Released Parties from any and all Covered Claims (including any and all PAGA claims or PAGA causes of action) during the PAGA Period that were alleged, or that reasonably could have been alleged in the Action based on the facts alleged in any and all of Plaintiffs' LWDA letters (including the amended LWDA letters) or in the complaints and amendments that constitute the Complaint. The release includes, but is not limited to, PAGA claims or PAGA causes of action relating to any and all theories of liability regarding or related to any and all possible compensable time that Aggrieved Employees spent going through, or related in any way to a bag check, security check, security process, or security procedure in order to enter or leave a facility (including but not limited to walk time, wait time or checking and/or inspection by security personnel), and any and all allegations that such conduct was unlawful or led to any derivative liability (including but not limited to wage statement violations, failure to pay wages timely upon termination or any other monies owed or penalties of any kind). The release also includes, but is not limited to, PAGA claims or PAGA causes of action relating to any and all theories of liability regarding or relating to meal or rest period obligations or alleged violations thereof, and any and all allegations that such conduct was unlawful or led to any derivative liability (including but not limited to wage statement violations, failure to pay wages timely upon termination or any other monies owed or penalties of any kind). The release includes any and all violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 224, 225.5, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 1199.5, and the applicable Wage Order, regardless of theory of recovery.

5.7.2 **Covenant Not to Participate in Proceedings.** The Settlement is conditioned upon this release by all PAGA Members of any claim or right under Labor Code section 2698 *et seq.* as to the release set forth above, and upon covenants by all PAGA Members that they will not participate in any proceeding seeking penalties as to the released claims set forth above. The Parties stipulate that beyond the Maximum Settlement Amount, Defendants shall not owe any further monies to the Plaintiffs, PAGA Counsel, PAGA Members, the State of California, or LWDA based upon any allegations made in Plaintiffs' LWDA letters or their complaints.

5.7.3 **Release by Plaintiffs.** In addition to their participation in the Release by all PAGA Members and except as otherwise provided herein, upon the funding of this Settlement, Plaintiffs, on their own behalf and on behalf of their descendants, dependents, heirs, executors, administrators, assigns, and successors (collectively, "Plaintiffs' Releasers"), hereby covenant not to sue and fully and unconditionally forever release and discharge the Released Parties from and against any and all claims, causes of action, judgments, liens, demands, damages, obligations, suits, contracts, liabilities, losses, costs, and expenses, including, but not limited to, attorneys' fees and disbursements, or offsets of any nature whatsoever (collectively, "Claims") that Plaintiffs' Releasers now have, have had, or may hereafter have against the Released Parties arising out of the Parties' relationship, the cessation of this relationship, including but not limited to those claims arising out of or relating to (i) Plaintiffs' performance and reputation, (ii) harassment, (iii) discrimination, (iv) retaliation, and (v) any Claims arising under the Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Federal Rehabilitation Act, the Employee Retirement Income Security Act, the Family and Medical Leave Act, the Fair Labor Standards Act, the California Fair Employment and Housing Act, the California Family Rights Act, the California Labor Code, and any other applicable state or federal law.

Except for any rights created by this Agreement, this General Release is intended to be interpreted as broadly as possible and to apply to any and all claims available to Plaintiffs in any forum, including, but not limited to, any claims for unpaid wages, unpaid penalties or premiums, liquidated damages, class or representative actions governing employment (to the fullest extent allowed by applicable law), constructive termination, negligent or intentional infliction of emotional distress, harassment, discrimination, wrongful termination, negligence, breach of contract, breach of the covenant of good faith and fair dealing, promissory estoppel, fraud, negligent or intentional misrepresentation, negligent or intentional interference with contract or prospective economic advantage, unfair business practices, defamation, libel, slander, personal injury; assault, battery, invasion of privacy, false imprisonment, conversion, disability benefits, violation of any provision of federal or state law governing employment, and any claim for attorneys' fees or costs. All such claims are forever barred by this Agreement. Plaintiffs also grant a general release to the Released Parties and waive all rights to assert any individual common law, tort, or unlawful employment practices claims against the Released Parties. Plaintiffs expressly waive the rights provided under California Civil Code Section 1542, which states that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiffs understand the significance and consequences of a California Civil Code Section 1542 waiver, and understand that they hereby waive all claims, known or unknown, suspected or unsuspected against the Released Parties. Plaintiffs alone shall assume full responsibility for any damages or losses caused by this waiver.

Nothing contained in this Agreement shall be deemed a release or waiver by

Plaintiffs of claims Plaintiffs may have against any of the Released Parties for: (a) unemployment and disability pursuant to the terms of applicable California law; (b) workers' compensation insurance injury or pay benefits pursuant to Division 4 of the California Labor Code, under the terms of any worker's compensation insurance policy or fund of the Plaintiffs; and (c) any claims that, under applicable federal, state, or local law, are not waivable. This waiver and release is contingent upon the Court's approval of the Parties' PAGA settlement.

5.8 **Approval of the Settlement.** As explained in Paragraph 4.9, in order to comply with the requirements of Labor Code Section 2699(I), Plaintiffs shall file an Approval Motion identifying the key terms of this Settlement requesting that the Court approve the Settlement.

5.9 **Administering the Settlement and Payment Plan.**

5.9.1 Within fifteen (15) calendar days after the Effective Date, Defendants will provide an Aggrieved Employee list ("Aggrieved Employee List") to the Settlement Administrator containing: (1) the name; (2) last known home address; (3) the number of Eligible Pay Periods worked by an Aggrieved Employee during the PAGA Period; and, (4) social security number of each Aggrieved Employee.

5.9.2 Defendants shall pay to the Settlement Administrator the MSA within fifteen (15) calendar days after the Effective Date.

5.9.3 The Settlement Administrator shall distribute each Aggrieved Employee Share to the Aggrieved Employees, the attorneys' fees and costs approved by the Court, and the Service Awards approved by the Court within thirty (30) calendar days of receipt of the MSA from Defendants (which, as set forth in Paragraph 5.9.2, will occur within fifteen (15) calendar days after the Effective Date).

5.9.4 The payment checks for each Aggrieved Employee Share shall be sent to each Aggrieved Employee by U.S. First Class mail to the Aggrieved Employee's address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to the Settlement Administrator. A notice explaining this

Settlement (substantially in the form attached hereto as Exhibit A) will be included in the mailing of each Aggrieved Employees' check and submitted to the Court for its review and approval ("Notice"). Prior to mailing the Notice and payment check, the Settlement Administrator shall check the addresses provided by Defendants in the Aggrieved Employee List using the National Change of Address database and shall update any addresses accordingly. Should any of the Notices and payment checks be returned as undeliverable, the Settlement Administrator will conduct a search for a more current address (via a skip trace or other reasonable method) and re-mail the Notice and payment check to the more current address, if any. It will be conclusively presumed that an Aggrieved Employee's Aggrieved Employee Share check was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check. The date of the initial mailing of the payment check shall be conclusively determined according to the records of the Settlement Administrator.

5.9.5 The Settlement Administrator shall ensure that seventy-five percent (75%) of the PAGA Payment is paid to the LWDA within thirty (30) calendar days of receipt of the MSA from Defendants.

5.9.6 Settlement checks shall remain valid and negotiable for one hundred eighty (180) calendar days from the date of their issuance. If there are uncashed checks following this period, the Settlement Administer will ensure that uncashed funds shall be forwarded to the State Controller in the name of the PAGA Member.

5.9.7 Since this is not a settlement of a class action but a PAGA settlement on behalf of the State of California, no person can (a) object to the settlement after the Court's Approval Order is made, or (b) opt out from being covered by release of claims at any time before or after the Approval Order is made.

5.10 **Duties of the Parties Prior to Approval.** Promptly upon execution of this Settlement, Plaintiffs shall file an Approval Motion. The Parties shall apply to the Court for the entry of an Approval Order and Final Judgment approving this Settlement as required by Labor

Code section 2699(l). The Approval Motion will request Court approval of the following:

- a. Approving the terms of this PAGA Settlement and Release Agreement;
- b. Approving the amount of PAGA Counsel Fees & Costs;
- c. Appointing ILYM Group Inc. as the Settlement Administrator and approving the amount of Settlement Administration Costs;
- d. Approving the amount of Plaintiffs' Service Awards;
- e. Approving the Notice; and
- f. Entering Final Judgment.

In conjunction with the Approval Motion, the Parties will submit a proposed Approval Order granting the Approval Motion, which will include a Final Judgment consistent with the terms of this Agreement. The proposed Approval Order and Final Judgment will include a dismissal of Plaintiffs' representative PAGA claims with prejudice, and a request pursuant to California Code of Civil Procedure section 664.6 that the Court retain continuing jurisdiction over this Action and over all Parties, to the fullest extent necessary to enforce and effectuate the terms and intent of this Agreement.

5.11 **Parties' Authorization.** The signatories hereto hereby represent that they are fully authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions hereof.

5.12 **Mutual Full Cooperation.** The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein. As soon as practicable after execution of this Settlement, PAGA Counsel shall, with the assistance and cooperation of Defendants and their counsel, take all necessary steps to secure the approval of

this Settlement from the Court. The Parties agree to work cooperatively to comply with the notice requirements to the LWDA pursuant to Labor Code sections 2699(1)(2) and 2699(1)(3).

5.13 **Confidentiality.** Other than information necessary to secure Court approval of this Settlement, the Parties agree to keep confidential all matters related to this Settlement, including the terms of the Settlement and the facts and circumstances leading up to it. The Parties may, however, discuss the terms of this Settlement with their spouses, fiancées, attorneys, financial advisors, tax advisors, and accountants, or upon a valid court order, at which time the individual receiving information about the terms of this Settlement shall be informed that the terms of this Settlement are confidential, and the individual may not reveal or disclose to any third party the terms of the Settlement. Neither Plaintiffs nor PAGA Counsel, directly or indirectly, shall issue a press release or hold a press conference, publish information about the Settlement on any website, or otherwise publicize the Settlement. Plaintiffs and PAGA Counsel agree not to respond to any press inquiries concerning the Settlement except to refer reporters to the papers filed with the Court. Nothing in this Agreement shall prohibit PAGA Counsel from disclosing this Settlement in declarations concerning their qualifications to serve as Class and/or PAGA Counsel.

5.14 **No Prior Assignments.** The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, or purported to assign, or transfer to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein. 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.

5.15 **No Admission.** Nothing contained herein nor is the consummation of this Settlement to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants or any of the Released Parties. Each of the Parties hereto has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expense. Defendants and the Released Parties deny that they have

engaged in any unlawful activity, that they failed to comply with the law in any material respect, or that they have any liability to anyone under the claims asserted in the Lawsuit. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or shall be construed as an admission of liability or wrongdoing by Defendants or any of the Released Parties.

5.16 **Non-Evidentiary Use.** Whether or not the Effective Date occurs, neither this Agreement nor any of its terms nor the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendants or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further proceeding in the Lawsuit, or any other civil, criminal, or administrative action or proceeding except for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendants or any of the Released Parties to establish that an Aggrieved Employee has resolved any of his/her claims released through this Agreement.

5.17 **Nullification.** If (a) the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties (except for the amount of attorneys' fees and costs and Service Awards), or (b) the Court's approval of this Settlement is reversed, modified, or declared or rendered void, then (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Agreement, except for the amount of attorneys' fees and costs and Service Awards, 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.

5.18 **Attorneys' Fees, Costs, and Expenses.** None of the Parties shall be construed as

the prevailing party in this matter. Except as specifically set forth herein, each party shall bear their/ his own attorneys' fees, costs, and expenses, taxable or otherwise, incurred by him/ them arising out of the Lawsuit, and shall not seek reimbursement thereof from any other party to this Agreement.

5.19 **Construction.** The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arms-length negotiations between the Parties and that this Agreement constitutes the entire agreement between Plaintiffs (on behalf of themselves and the State of California and the Aggrieved Employees) and Defendants regarding actual or potential claims asserted by Plaintiffs against the Released Parties. Excluding any arbitration or confidentiality agreement executed by Plaintiffs with Defendants, both of which will remain in full force and effect, this Agreement supersedes all prior agreements, written or oral, between or among the Parties regarding those claims or potential claims and the resolution of those claims. Consequently, no other agreement, statement, or promise made by one Party to another as to any matter addressed in this Agreement shall be binding or valid.

5.20 **Captions and Interpretations.** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

5.21 **Modifications.** This Settlement may not be amended, changed, altered, or modified, except in writing and signed by the Parties (or their successors-in-interest) hereto. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

6. MISCELLANEOUS

6.1 Neither Plaintiffs nor any of their counsel they have engaged in connection with the Lawsuit shall cause to be publicized, directly or indirectly, any discussion resulting in, or the existence of, the terms of this Agreement in any type of mass media or on any of their respective websites. Breach of this provision shall entitle Defendants, in the exercise of their sole

discretion, to nullify the Agreement and the Settlement at any time before the Effective Date.

6.2 This Settlement contains the entire agreement between the Parties relating to the Settlement of the Covered Claims and Plaintiffs' released claims, and all prior or contemporaneous agreements (except any arbitration agreement or confidentiality agreement), understandings, representations, and statements, whether oral or written and whether by a party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing. The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any such matters that would alter or change the terms of this Agreement. No representations, warranties, or inducements have been made to any party concerning this Agreement other than those expressly set forth or referred to herein.

6.3 This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

6.4 This Settlement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties. The counterparts may be transmitted electronically (PDF) or by facsimile.

6.5 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, irrespective of the State of California's choice of law principles.

6.6 The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement shall not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Agreement.

6.7 The San Bernardino County Superior Court shall retain jurisdiction to enforce this Agreement pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court 3.769(h). The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties to the fullest extent to enforce and effectuate the terms and intent of this Agreement.

6.8 This Agreement shall not be subject to collateral attack by any Aggrieved Employees. Such prohibited collateral attack shall include, but not be limited to, claims that the Aggrieved Employees failed, for any reason, to timely receive his or her Aggrieved Employee Share.

THE PARTIES HAVE READ THE FOREGOING AGREEMENT. THEY HAVE CONSULTED WITH LEGAL COUNSEL REGARDING THE FOREGOING AGREEMENT AND KNOW THE CONTENTS THEREOF AND SIGN THE SAME AS THEIR FREE, KNOWING, AND VOLUNTARY ACT AND DEED, BEING FULLY AWARE OF ITS CONSEQUENCES AND ITS FINAL AND BINDING EFFECT.

DATED: September __, 2020

9/13/2020

DATED: September __, 2020

JASMINE SPIVEY
as PAGA Representative

DocuSigned by:

Latoia Smith

LATOIA SMITH
as PAGA Representative

DATED: September __, 2020

RAYMOND JONES
as PAGA Representative

DATED: September __, 2020

FOR DEFENDANTS

By: _____

Its: _____

6.7 The San Bernardino County Superior Court shall retain jurisdiction to enforce this Agreement pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court 3.769(h). The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties to the fullest extent to enforce and effectuate the terms and intent of this Agreement.

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9/21/2020
DATED: September __, 2020

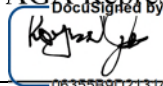


JASMINE SPIVEY
as PAGA Representative

DATED: September __, 2020

LATOIA SMITH
as PAGA Representative

9/14/2020
DATED: September __, 2020



RAYMOND JONES
as PAGA Representative

DATED: September __, 2020

FOR DEFENDANTS

By: _____
Its: _____

6.7 The San Bernardino County Superior Court shall retain jurisdiction to enforce this Agreement pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court 3.769(h). The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties to the fullest extent to enforce and effectuate the terms and intent of this Agreement.

6.8 This Agreement shall not be subject to collateral attack by any Aggrieved Employees. Such prohibited collateral attack shall include, but not be limited to, claims that the Aggrieved Employees failed, for any reason, to timely receive his or her Aggrieved Employee Share.

THE PARTIES HAVE READ THE FOREGOING AGREEMENT. THEY HAVE CONSULTED WITH LEGAL COUNSEL REGARDING THE FOREGOING AGREEMENT AND KNOW THE CONTENTS THEREOF AND SIGN THE SAME AS THEIR FREE, KNOWING, AND VOLUNTARY ACT AND DEED, BEING FULLY AWARE OF ITS CONSEQUENCES AND ITS FINAL AND BINDING EFFECT.

DATED: September __, 2020

JASMINE SPIVEY
as PAGA Representative

DATED: September __, 2020

LATOIA SMITH
as PAGA Representative

DATED: September __, 2020

RAYMOND JONES
as PAGA Representative

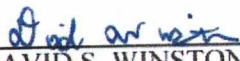
DATED: September 15, 2020

FOR DEFENDANTS
By: Karen R. Lew
Its: SYP, General Counsel

APPROVED AS TO FORM AND CONTENT:

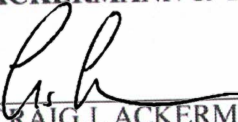
DATED: September 14, 2020

WINSTON LAW GROUP, P.C.

By: 
DAVID S. WINSTON
Attorney for Plaintiffs Latoia Smith and
Raymond Jones and the Aggrieved Employees

DATED: September 21, 2020

ACKERMANN & TILAJEF, P.C.

By: 
CRAIG J. ACKERMANN
Attorney for Plaintiffs Latoia Smith and
Raymond Jones and the Aggrieved Employees

DATED: September 21, 2020

MARA LAW FIRM

By: 
DAVID MARA
Attorney for Plaintiff Jasmine Spivey and the
Aggrieved Employees

DATED: September 21, 2020

SEYFARTH SHAW LLP

By: 
JOHN A. SLAS
Attorney for Defendants

EXHIBIT 2

<i>Smith/Spivey v. Burlington</i> Ackermann & Tilajef, P.C. Lodestar Summary				
	Yrs.	Hours	Rate	Amount
Craig Ackermann, Esq.	22	21.00	\$800	\$16,800.00
Avi Kreitenberg, Esq.	10	55.02	\$500	\$27,510.00
Jaclyn Blackwell (Admin)	8	9.40	\$200	\$1,880.00
TOTAL		85.42		\$46,190.00

EXHIBIT 3

1:52 PM

09/28/20

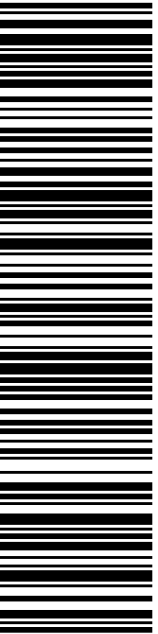
Accrual Basis

Ackermann & Tilajef, APC

Account QuickReport

All Transactions

Type	Date	Num	Name	Memo	Split	Amount
Client Costs						
Burlington						
Credit Card Charge	11/21/2019		USPS		AT&T Universa...	7.35
Credit Card Charge	12/19/2019		San Bern Supperior Ct		AT&T Universa...	1.00
Bill	02/04/2020		Jeff Ross, ESQ.	Mediation Fee	Accounts Paya...	2,333.34
Bill	06/18/2020		San Bern Supperior Ct	Smith v. Burlington - ...	Accounts Paya...	1.00
Bill	07/14/2020		Jaclyn Blackwell		Accounts Paya...	42.00
Bill	08/04/2020	10324...	First Legal		Accounts Paya...	92.14
Bill	08/11/2020		San Bern Supperior Ct	Smith v. Burlington - ...	Accounts Paya...	4.50
Bill	08/11/2020		Courtcall	Smith v. Burlington - ...	Accounts Paya...	94.00
Bill	08/15/2020	10329...	First Legal		Accounts Paya...	20.80
Bill	09/15/2020		San Bern Supperior Ct	Smith v. Burlington - ...	Accounts Paya...	3.50
Bill	09/22/2020	10336...	First Legal		Accounts Paya...	111.54
Total Burlington						2,711.17
Total Client Costs						2,711.17
TOTAL						2,711.17

 UNITED STATES POSTAL SERVICE®		Click-N-Ship®	
P	usps.com \$7.35 US POSTAGE	9405 5036 9930 0171 4779 21 0073 5000 0819 0017	
		11/21/2019 0 lb 8 oz Mailed from 90035 062S00000001301	
PRIORITY MAIL 1-DAY™			
JACLYN C BLACKWELL ACKERMANN & TILAJEF, P.C. 1180 S BEVERLY DR STE 610 LOS ANGELES CA 90035-1158		Expected Delivery Date: 11/22/19 0004	
Carrier -- Leave if No Response			
C025			
SHIP TO: SIMON L YANG, ESQ. SEYFARTH SHAW LLP 601 S FIGUEROA ST STE 3300 LOS ANGELES CA 90017-5793		USPS TRACKING #	
		9405 5036 9930 0171 4779 21	
Electronic Rate Approved #038555749			



Cut on dotted line.

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- Each Click-N-Ship® label is unique. Labels are to be used as printed and used only once. DO NOT PHOTO COPY OR ALTER LABEL.
- Place your label so it does not wrap around the edge of the package.
- Adhere your label to the package. A self-adhesive label is recommended. If tape or glue is used, DO NOT TAPE OVER BARCODE. Be sure all edges are secure.
- To mail your package with PC Postage®, you may schedule a Package Pickup online, hand to your letter carrier, take to a Post Office™, or drop in a USPS collection box.
- Mail your package on the "Ship Date" you selected when creating this label.

Click-N-Ship® Label Record

USPS TRACKING # :
9405 5036 9930 0171 4779 21

Trans. #: 477492733
 Print Date: 11/21/2019
 Ship Date: 11/21/2019
 Expected Delivery Date: 11/22/2019

Priority Mail® Postage: **\$7.35**
 Total: **\$7.35**

From: JACLYN C BLACKWELL
 ACKERMANN & TILAJEF, P.C.
 1180 S BEVERLY DR STE 610
 LOS ANGELES CA 90035-1158

To: SIMON L YANG, ESQ.
 SEYFARTH SHAW LLP
 601 S FIGUEROA ST
 STE 3300
 LOS ANGELES CA 90017-5793

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JEFFREY A. ROSS

EMPLOYMENT MEDIATION

February 4, 2020

Via Facsimile & USPS

Craig J. Ackermann
Ackermann & Tilajef, P.C.
1180 South Beverly Drive, Suite 610
Los Angeles, CA 90035
Fax: 310-277-0635

Via Facsimile & USPS

David S. Winston
Winston Law Group, P.C.
1180 South Beverly Drive, Suite 320
Los Angeles, CA 90035
Fax: 424-532-4062

Via Facsimile & USPS

David T. Mara
Tony Roberts
Mara Law Firm, PC
2650 Camino Del Rio North, Suite 205
San Diego, CA 92108-1631
Fax: 619-234-4048

Via Facsimile & USPS

John G. Yslas
Simon L. Yang
Zaher Lopez
Seyfarth Shaw LLP
601 Figueroa Street, Suite 3300
Los Angeles, CA 90017
Fax: 213-270-9601

Statement

Re: *Spivey/Smith v. Burlington Coat Factory of Texas, Inc., et al.*

Mediation Fee Due: February 18, 2020

Mediation Date: June 18, 2020

Mediation Fee - Class/Representative/PAGA \$14,000.00*

Due from Defendant (50%) \$7,000.00

Due from Plaintiff, Ackermann & Tilajef (1/3) \$2,333.34

Due from Plaintiff, Winston Law Group (1/3) \$2,333.33

Due from Plaintiff, Mara Law Firm (1/3) \$2,333.33

Please make checks payable to Jeffrey Ross

Tax ID No. 27-1343105

*The mediation fee is non-refundable, unless the mediation is cancelled or rescheduled by May 28, 2020.



Jaclyn Blackwell <jb@ackermanntilajef.com>

Receipt of Order

docsales@sb-court.org <docsales@sb-court.org>
To: km@ackermanntilajef.com

Thu, Jun 18, 2020 at 5:33 PM

Thank you for your order. Your payment has been received.
Details of your order are as follows:

Order ID: # 366092
Order Date: 06/18/2020
Name: Craig Ackermann

Document(s):
Case CIVDS1929684 PROOF OF SERVICE OF (2pgs)

Total Paid: \$1.00
Method of Payment: Visa*****9829

View your account transactions 24/7 at <http://Ecomm1.sb-court.org>.
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7102 4700 1000 0367 2900 6323

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BURLINGTON, NJ 08016

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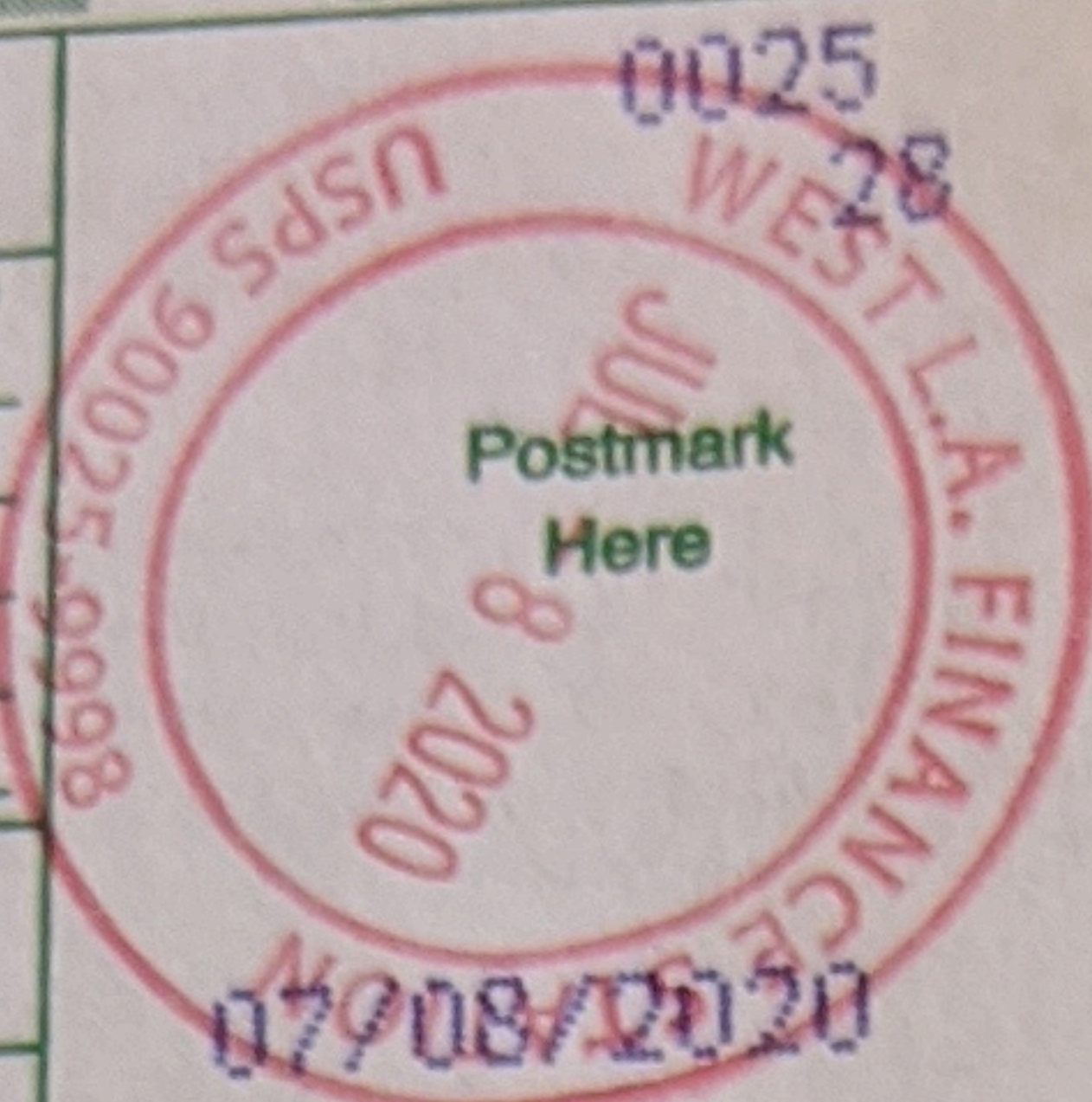
Certified Mail Fee \$3.55
\$
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$2.85
☐ Return Receipt (electronic) \$0.00
☐ Certified Mail Restricted Delivery \$0.00
☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00

Postage \$2.00
\$
Total Postage and Fees \$8.40
\$

Sent To
Burlington Coat Factory Warehouse Corporation
Street and Apt. No., or PO Box No.
1830 Route 130 North
City, State, ZIP+4®
Burlington, NJ 08016

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions



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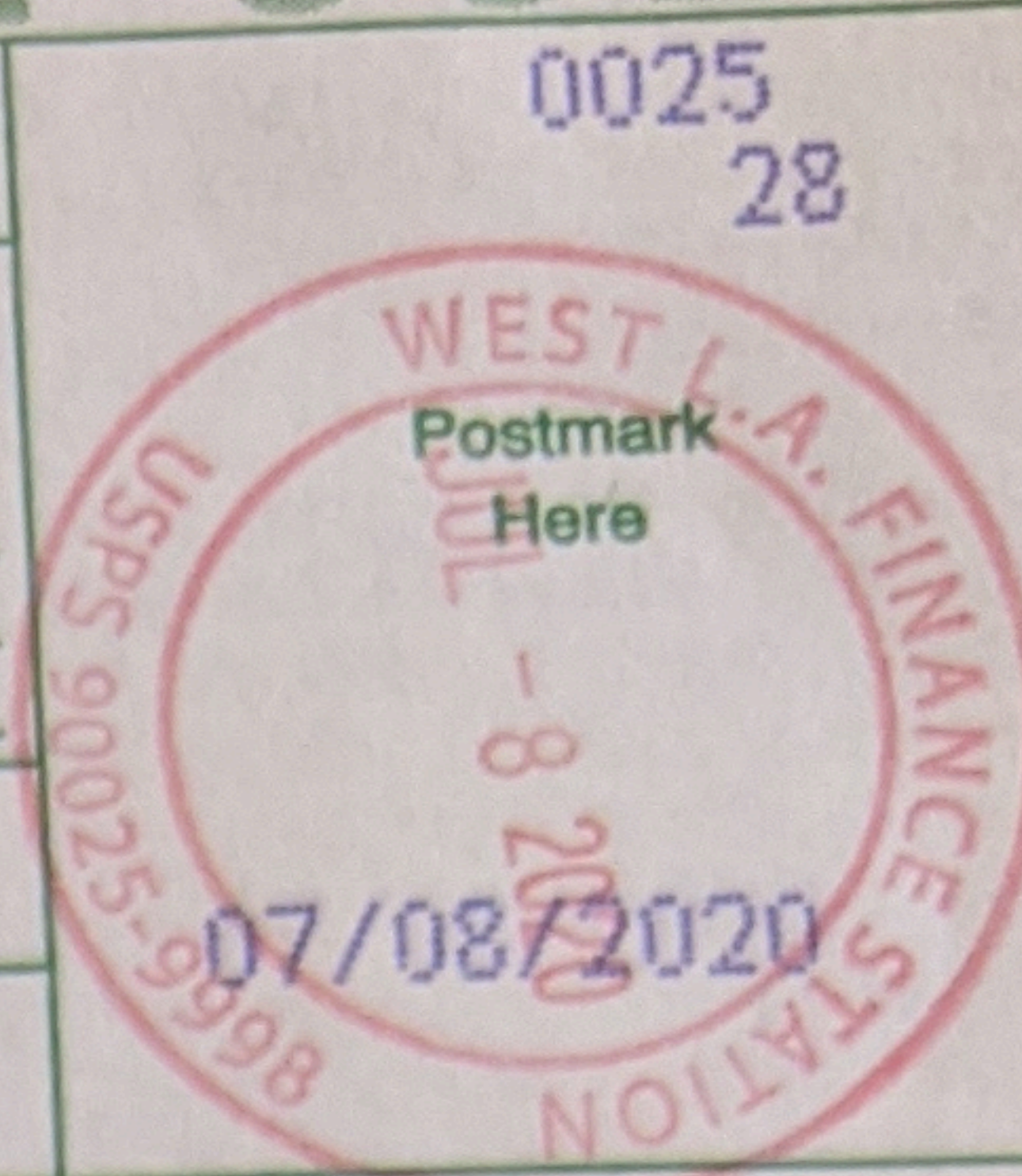
Certified Mail Fee \$3.55
\$
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$2.85
☐ Return Receipt (electronic) \$0.00
☐ Certified Mail Restricted Delivery \$0.00
☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00

Postage \$2.00
\$
Total Postage and Fees \$8.40
\$

Sent To
Burlington Merchandising Corporation
Street and Apt. No., or PO Box No.
1830 Route 130 North
City, State, ZIP+4®
Burlington, NJ 08016

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions



7102 4700 1000 0367 2900 6323

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Certified Mail Fee \$3.55
\$
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$2.85
☐ Return Receipt (electronic) \$0.00
☐ Certified Mail Restricted Delivery \$0.00
☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00

Postage \$2.00
\$
Total Postage and Fees \$8.40
\$

Sent To
Burlington Coat Factory of Texas, Inc.
Street and Apt. No., or PO Box No.
1830 Route 130 North
City, State, ZIP+4®
Burlington, NJ 08016

PS Form 3800, April 2015 PSN 7530-02-000-9047

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BURLINGTON, NJ 08016

OFFICIAL USE

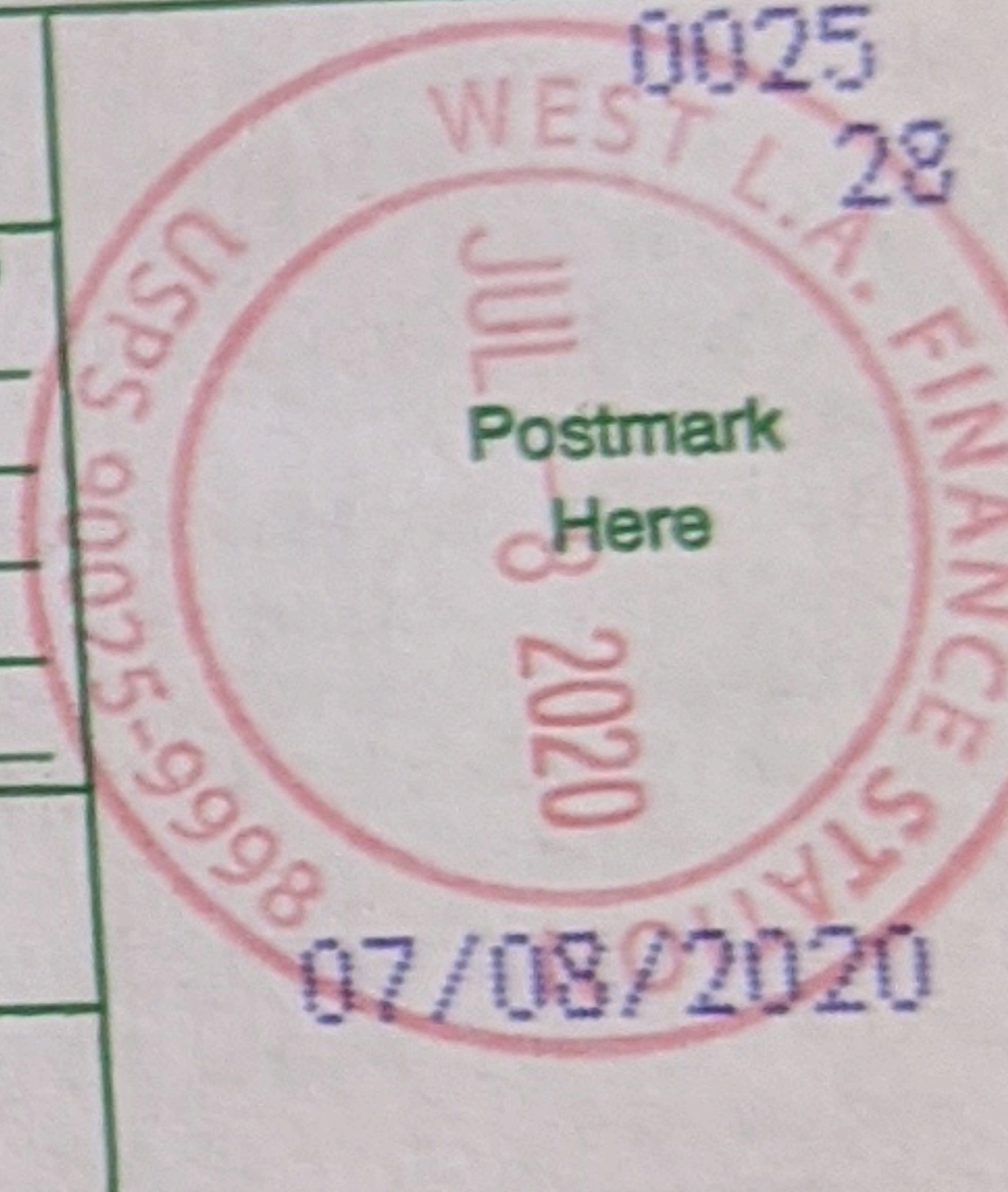
Certified Mail Fee \$3.55
\$
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$2.85
☐ Return Receipt (electronic) \$0.00
☐ Certified Mail Restricted Delivery \$0.00
☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00

Postage \$2.00
\$
Total Postage and Fees \$8.40
\$

Sent To
Burlington Coat Factory Direct Corporation
Street and Apt. No., or PO Box No.
1830 Route 130 North
City, State, ZIP+4®
Burlington, NJ 08016

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions



U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only

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BURLINGTON, NJ 08016

OFFICIAL USE

Certified Mail Fee \$3.55
\$
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$2.85
☐ Return Receipt (electronic) \$0.00
☐ Certified Mail Restricted Delivery \$0.00
☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00

Postage \$2.00
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Total Postage and Fees \$8.40
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Sent To
Burlington Distribution Corp.
Street and Apt. No., or PO Box No.
1830 Route 130 North
City, State, ZIP+4®
Burlington, NJ 08016

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions





First Legal Network, LLC
P.O. Box 743451
Los Angeles CA 90074-3451

TAX ID# 27-3093840

INVOICE

Invoice No.	Customer No.
10324955	11163
Invoice Date	Total Due
7/31/20	1,517.98

ACKERMANN & TILAJEF, P.C
ATTN: KAILTYN MORALES
1180 S. BEVERLY DRIVE, STE 610
LOS ANGELES, CA 90035

BILLING/PAYMENT QUESTIONS
CLIENT CARE (877)350-8698

			Customer No.	Invoice No.	Period Ending	Amount Due	Pg			
			11163	10324955	7/31/20	1,517.98	3			
Date	Ord# No.	Svc	Service Detail					Charges	Total	

INVOICE PAYMENT DUE UPON RECEIPT



Jaclyn Blackwell <jb@ackermanntilajef.com>

Receipt of Order

docsales@sb-court.org <docsales@sb-court.org>
To: km@ackermanntilajef.com

Tue, Aug 11, 2020 at 1:19 PM

Thank you for your order. Your payment has been received.
Details of your order are as follows:

Order ID: # 375003
Order Date: 08/11/2020
Name: Craig Ackermann

Document(s):
Case CIVDS1929684 PROOF OF SERVICE OF (3pgs)

Total Paid: \$1.50
Method of Payment: Visa*****9829

View your account transactions 24/7 at <http://Ecomm1.sb-court.org>.
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Jaclyn Blackwell <jb@ackermanntilajef.com>

Receipt of Order

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To: km@ackermanntilajef.com

Tue, Aug 11, 2020 at 1:20 PM

Thank you for your order. Your payment has been received.
Details of your order are as follows:

Order ID: # 375004
Order Date: 08/11/2020
Name: Craig Ackermann

Document(s):
Case CIVDS1929684 NOTICE OF SETTLEMENT (6pgs)

Total Paid: \$3.00
Method of Payment: Visa*****9829

View your account transactions 24/7 at <http://Ecomm1.sb-court.org>.
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6383 Arizona Circle
Los Angeles, CA 90045

Phone: (888) 882-6878

Fax: (888) 883-2946

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INVOICE / RECEIPT

08/11/2020 01:12 PM

All amounts below are in **U.S. Dollars**

COURTCALL ID: 10708360
CASE NUMBER/NAME: CIVDS1929684 / Latoia Smith v. Burlington Merchandising Corporation
CUSTOMER REF. NUMBER: Burlington
PROCEEDING: Case Management Conference
DATE OF HEARING: Thursday, August 13th, 2020 at 8:55 AM PT
FIRM NAME: Ackermann & Tilajef, P.C.
ATTORNEY/PARTY APPEARING: Avi Kreitenberg
TELEPHONE: (310) 277-0614
FAX/EMAIL: (310) 277-0635
BASIC FEE/LATE FEE: \$94.00
AMOUNT PAID: \$94.00
PAYMENT NOW DUE: \$0.00

Payment Details

Method	Type	Amount	Reference	Date/Time
Credit	Charge	\$94.00	Visa ending in 9829	8/11/2020 1:12:34PM

If the 'Payment Now Due' indicated above is zero, no payment is due and this receipt is for your records only; otherwise, the amount indicated is now due.

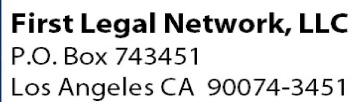
If there is an amount due, please remit your payment upon receipt of this notice. If you have already sent payment please contact our Accounting Department as our records do not reflect receipt of payment at the time this notice was sent. IF PAYMENT IS NOT RECEIVED, FUTURE SERVICE MAY BE DENIED AND/OR THE COURT MAY BE ADVISED OF YOUR REFUSAL TO PAY.

PAYMENT BY CREDIT CARD or COURTCALL DEBIT ACCOUNT: Payment can be made online by registering and logging in at www.courtcall.com or by calling (888) 882-6878 and selecting option '5' for the Accounting Department. Please have your CourtCall Debit Account number or complete credit card billing address in addition to the credit card number, expiration date and cardholder's full name available when making payment.

PLEASE DETACH AND RETURN THE PORTION BELOW IF PAYING BY CHECK OR MONEY ORDER

PAYMENT BY CHECK OR MONEY ORDER: If a balance is due detach and mail this payment section with your check, payable to: **CourtCall LLC, 6383 Arizona Circle. Los Angeles, CA 90045.** Please write the CourtCall ID number in the memo section of your check. Please note: CourtCall does not accept personal checks.

COURTCALL ID: 10708360
CASE NAME/NUMBER: CIVDS1929684 / Latoia Smith v. Burlington Merchandising Corporation
CUSTOMER REF. NUMBER: Burlington
PROCEEDING: Case Management Conference
DATE OF HEARING: Thursday, August 13th, 2020 at 8:55 AM PT
FIRM NAME: Ackermann & Tilajef, P.C.
ATTORNEY/PARTY APPEARING: Avi Kreitenberg
TELEPHONE: (310) 277-0614

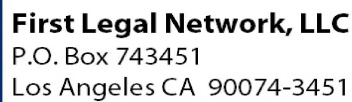


ACKERMANN & TILAJEF, P.C
ATTN: KAILTYN MORALES
1180 S. BEVERLY DRIVE, STE 610
LOS ANGELES, CA 90035

Invoice No. 10329082	Customer No. 11163
Invoice Date 8/15/20	Total Due 1,473.95

Customer No.	Invoice No.	Period Ending	Amount Due	Pg
11163	10329082	8/15/20	1,473.95	2

INVOICE PAYMENT DUE UPON RECEIPT



ACKERMANN & TILAJEF, P.C
ATTN: KAILTYN MORALES
1180 S. BEVERLY DRIVE, STE 610
LOS ANGELES, CA 90035

Invoice No. 10336988	Customer No. 11163
Invoice Date 9/15/20	Total Due 436.28

Customer No.	Invoice No.	Period Ending	Amount Due	Pg
11163	10336988	9/15/20	436.28	1

INVOICE PAYMENT DUE UPON RECEIPT

Receipt of Order

docsales@sb-court.org <docsales@sb-court.org>
To: km@ackermanntilajef.com

Tue, Sep 15, 2020 at 4:51 PM

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Name: Craig Ackermann

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EXHIBIT 4

[SETTLEMENT ADMINISTRATOR LETTERHEAD]

Mailing Date

NOTICE OF SETTLEMENT

Re: LATOIA SMITH, an individual, and RAYMOND JONES, an individual on behalf of the State of California, as private attorney generals, PLAINTIFFS v. BURLINGTON MERCHANDISING CORPORATION, a Delaware Corporation; and DOES 1 to 50, inclusive, DEFENDANTS; JASMINE SPIVEY, on behalf of herself and all others similarly situated, and on behalf of the general public, PLAINTIFF v. BURLINGTON COAT FACTORY OF TEXAS, INC., BURLINGTON COAT FACTORY WAREHOUSE CORPORATION; and DOES 1-100, DEFENDANTS, San Bernardino County Superior Court, Consolidated Case No. CIVDS1929684 filed on October 3, 2019

A settlement has been reached and approved by the Court in the above-referenced consolidated lawsuit. You have been identified as one of the Aggrieved Employees entitled to receive proceeds from that settlement.

On **XXXX**, the San Bernardino County Superior Court issued an Order approving the settlement of claims for penalties brought pursuant to the Private Attorneys General Act of 2004 ("PAGA") in the amount of \$2,000,000.00. Plaintiffs alleged on behalf of themselves, the State of California, and all other Aggrieved Employees who worked for Defendants between February 7, 2018 and **[INSERT JUDGMENT DATE]**, that Defendants failed to pay Aggrieved Employees for all hours worked including time spent on security and/or bag checks, failed to provide lawful rest and meal breaks, failed to provide complete wage statements, and failed to provide all wages to former employees upon their separation of employment as required by California law. Defendants continue to deny any liability or wrongdoing of any kind associated with the claims alleged in the lawsuit. After accounting for the relevant fees and costs and the portion of the settlement that PAGA requires to be paid to the California Labor and Workforce Development Agency, \$XXX,XXX.XX will be paid to the Aggrieved Employees on a pro-rata basis based on the number of eligible pay periods each Aggrieved Employee worked during the pertinent period. By way of this Settlement, Defendants have been released from all penalty claims under PAGA that were asserted as a part of this lawsuit or that reasonably could have been asserted based on the facts alleged by the Plaintiffs

You are receiving a portion of the Settlement because Defendants' business records indicate you worked one or more eligible pay periods for Defendants during the relevant time period and therefore you are one of the Aggrieved Employees entitled to receive a portion of the Settlement in the lawsuit. Your enclosed check, payable in the amount of <<**\$ Amount**>>, is valid for one hundred and eighty (180) days from the date of its issuance. After that date, it will be null and void. Funds associated with uncashed checks will be sent to California's State Controller in your name as an Aggrieved Employee.

Questions About The Settlement:

MARA LAW FIRM, PC
David Mara, Esq. (dmara@maralawfirm.com)
Tony Roberts, Esq. (troberts@maralawfirm.com)
2650 Camino Del Rio North, Suite 205
San Diego, California 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048

WINSTON LAW GROUP, P.C.
David S. Winston, Esq. (david@employmentlitigators.com)
1180 South Beverly Drive, Suite 320
Los Angeles, California 90035
Phone: (424) 288-4568
Fax: (424) 532-4062

Questions About The Settlement, Your Check, or Address Information:

SETTLEMENT ADMINISTRATOR
[INSERT CONTACT INFORMATION]

EXHIBIT 5



Jaclyn Blackwell <jb@ackermanntilajef.com>

Thank you for your Proposed Settlement Submission

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Reply-To: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
To: jb@ackermanntilajef.com

Tue, Sep 22, 2020 at 1:26 PM

09/22/2020 01:25:56 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm