

David Mara, Esq. (CA Bar No. 230498)
Tony Roberts, Esq. (CA Bar No. 315595)
MARA LAW FIRM, PC
2650 Camino Del Rio North, Suite 205
San Diego, California 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048

Attorneys for Plaintiffs

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,

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 JASMINE SPIVEY IN
SUPPORT OF MOTION TO APPROVE
PAGA SETTLEMENT**

Date: October 23, 2020

Time: 10:00 am

Judge: Hon David Cohn

Dept: S26

Complaint Filed: October 3, 2019

1 I, JASMINE SPIVEY, declare as follows:

- 2 1. I have personal knowledge of all matters stated herein, and if called as a witness, I could
3 and would competently testify thereto, except as to those matters stated upon information
4 and belief, and as to those matters, I believe them to be true.
 - 5 2. I am a named Plaintiff in the above-captioned lawsuit, and I submit this declaration in
6 support of Plaintiffs' unopposed Motion for Approval of PAGA Settlement.
 - 7 3. I worked for Burlington as an hourly, non-exempt employee in California during the
8 PAGA Period.
 - 9 4. Before agreeing to be a named representative, I had many meetings and conversations
10 with my attorneys about my experience at Burlington and my understanding of how I and
11 other employees were paid, the type of work we would do, and that I did not think we
12 were being paid for all the time we spent working.
 - 13 5. In short, I felt that I was not getting all of my meal and rest breaks when I worked at
14 Burlington and that I was not being paid for all my hours worked. Based on my
15 communications with other employees and my personal experience, it was my belief that
16 other employees in California had the same concerns I did.
 - 17 6. My attorneys explained to me what my rights and remedies were under the law and the
18 options of trying to seek redress for my claims administratively, individually, or as a
19 representative of similarly situated current and former employees. My attorneys also
20 explained to me what a representative action was and I understood that, if this case was
21 filed as a representative action, I would not only be seeking relief for myself, but I would
22 also be representing the interests of all other employees like myself employed by
23 Burlington in California.
 - 24 7. I understood that filing the case as a representative action may subject me to the stigma
25 that is sometimes associated with those who bring these kinds of lawsuits. With this
26 understanding, I agreed to file the case as a representative action, with me as its named
27 representative.
- 28

1 8. I also understood that there were other risks involved in bringing this kind of lawsuit,
2 especially when it could prove so costly to Burlington. I was aware that being a named
3 plaintiff in this case could very well end up compromising my future employment
4 opportunities or serve to “blacklist” me from the industry. Even with that knowledge, I
5 was willing to go forward and represent the aggrieved employees, because I felt
6 Burlington was wrong in its employment practices and policies. I was not afraid to stand
7 up for what I believed was right, but I was nervous about the negative consequences that
8 could have resulted from my decision to be named representative.

9 9. During my many discussions with my attorneys, I learned that a large amount of work was
10 required of me as the named Plaintiff, and I was willing to engage in this work. I was
11 aware that, at some point in this case, I would be required to have my deposition taken in
12 person. My attorneys explained to me that my deposition may take weeks of in-person
13 interviews, preparation, and testimony. I was ready and willing to have my deposition
14 taken.

15 10. On many occasions, I spoke with my attorneys for case related purposes, such as to
16 discuss and explain my typical workday and breaks.

17 11. I met with my attorneys to discuss the strengths and weaknesses of the case and assisted
18 them in evaluating the potential damages and analyzing documents, such as Burlington’s
19 security process, meal and rest periods policies, handbook policies, paystubs, and time
20 records.

21 12. During the settlement negotiations, my attorneys continually communicated and explained
22 every part of the negotiation process. Having been fully informed and advised by my
23 attorneys as to the strengths and risks associated with further litigation, as well as
24 Burlington’s potential exposure, I gave my consent to settle with Burlington for the
25 maximum settlement amount of \$2,000,000, which I find to be fair and reasonable.

26 13. After the case settled, my attorneys provided me with a copy of the settlement agreement,
27 which I completely and carefully reviewed. I then signed the settlement agreement and
28 gave it to my attorneys.

1 14. Although I did not keep track of my time, I estimate I spent approximately 16 hours on
2 tasks related to this lawsuit. Those tasks included: reviewing and responding to document
3 requests from Burlington, discussing the case, documents, and settlement with my
4 attorneys, preparing for my deposition, and searching through my things for anything
5 related to Burlington that would be helpful to my attorneys in this lawsuit.

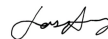
6 15. As part of the settlement agreement, I agreed to a general release of my claims against
7 Burlington. I believe the requested \$10,000 is fair and reasonable, given the time I spent
8 assisting with the lawsuit, the risk I took that I could be responsible for Burlington's costs
9 if this lawsuit was not successful, and the potential for future blacklisting from employer's
10 because I had the courage to pursue a lawsuit against my employer for the wrongs I felt
11 they had committed against employees.

12 16. I understand that this additional payment is not guaranteed and is subject to Court
13 approval. My opinion about the fairness and adequacy of the settlement in the case is not
14 based on this potential payment.

15 17. While I truly believe that I was doing the right thing in pursuing this case, I do believe that
16 I have paid a price for the greater good of other employees, who will now obtain some
17 relief through the terms of the proposed settlement.

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

21 Dated: September 20, 2020

22 

23 _____
Jasmine Spivey
24
25
26
27
28