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[Additional Counsel on Next Page]

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,

Plaintiff,

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.

Case No. CIVDS1929684

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

**DECLARATION OF LATOIA SMITH
IN SUPPORT OF APPROVAL OF
PAGA SETTLEMENT**

Date: October 23, 2020

Time: 10:00 am

Complaint Filed: October 3, 2019

Trial Date: None

Case No. CIVDS1911341

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

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DECLARATION OF LATOIA SMITH

1
2 1. I am one of the PAGA Representatives in this matter. I am over 18 years of age. I
3 have personal knowledge of the facts set forth in this declaration and, if called upon to testify I could
4 and would testify competently thereto.

5 2. At all times relevant to this case, I have been a California resident. I worked for
6 Defendants as a non-exempt hourly employee during the statutory period applicable to my PAGA
7 claims. Throughout my employment, I was regularly required to undergo security checks when
8 entering and leaving the premises at the beginning of my shifts, if I attempted to go outside during a
9 meal/rest period, and at the conclusion of my shifts. Defendants often required myself and the other
10 employees I observed, stand/wait in lines of up to twenty (20) or more people to have our bags
11 searched and subjected us to other security measures regardless of whether or not we brought bags.
12 It was not possible to record the time associated with these security checks because of Defendants
13 policy and practice of only permitting the other employees and I to record our time by swiping a
14 badge on a time clock/machine that was only accessible was the security check was completed (when
15 entering the premises) or prior to undergoing a security check (when exiting the premises). As a result
16 of these issues, I believe that Defendants failed to provide me with proper meal/rest periods, pay
17 minimum wages for all hours worked, pay overtime wages, failed to provide me with accurate
18 itemized wage statements and failed to timely pay wages during and after employment.

19 3. I am aware of all the major deal points of the proposed Settlement Agreement,
20 including the gross settlement amount of \$2,000,000.00, the requested sum of up to \$666,666.67 as
21 attorneys' fees, the requested cost reimbursement of up to \$20,000.00 to PAGA Counsel, the
22 requested Settlement Administration costs of \$14,925.00, my requested service award of \$10,000.00,
23 the two other requested service awards of \$10,000 each, and that the Net PAGA penalties after
24 accounting for these expenses are estimated to be \$1,268,408.33. I understand that the pursuant to
25 PAGA, 75% (\$951,306.25) of the estimated Net PAGA Penalties will be paid to the LWDA and 25%
26 (\$317,102.08) will be paid to the Aggrieved Employees on a pro-rata basis. I also understand that the
27 portion of PAGA penalties distributed to each PAGA Aggrieved Employee shall be calculated by
28 dividing the number of PAGA periods worked by an aggrieved employees during the covered period

(February 7, 2018 through the date of approval of the settlement) by the total number of pay periods worked by all aggrieved employees during the covered period and multiplying that amount by the amount of PAGA penalties awarded to the Aggrieved Employees (*i.e.* \$317,102.08)

4. In addition, I understand that this is a non-reversionary checks-mailed settlement meaning that aggrieved employees do not need to do anything to participate in the Settlement and none of the Settlement funds will revert back to Defendants.

5. Based upon my significant involvement and comprehensive understanding of the case, I understand the merits of this settlement and I strongly believe that the Settlement of this action is fair, reasonable, adequate, and in the best interests of the state of California and the aggrieved employees given the issues in this action.

6. Before filing my PAGA Notice in July 2019, I researched and identified Counsel that I believed could best represent the interests of the State of California and the aggrieved employees.

7. During the pendency of this action, I regularly contacted PAGA Counsel for updates regarding the case, kept myself informed about the status of the settlement discussions and claims, and assisted PAGA Counsel in evaluating possible settlements. I also assisted PAGA Counsel by sharing information about my experiences and that of other employees and discussed/evaluated potential litigation strategies with PAGA Counsel and provided relevant employment documents in my possession. Moreover, I used my considerable knowledge and insights in order to help obtain a favorable settlement. Based upon my significant involvement and comprehensive understanding of the case, I strongly believe this Settlement will benefit the State of California and the aggrieved employees. I also assisted in the preparation of my declaration. As of now, I estimate that I have spent approximately 45 hours researching my possible claims, searching for documents, and searching for counsel, 24 hours discussing the case, claims, and proposed settlement with my Counsel and his office staff, 8.2 hours participating in the mediation telephonically, approximately 1 hour reviewing the settlement agreement, 2 hours assisting with the preparation of my declaration including several phone calls related thereto. Accordingly, I estimate that I have spent approximately 80.2 hours on this case as of now.

8. In addition to the time and efforts I invested in the prosecution of this action, I also

1 believe that my proposed service award also reflects the broader general release I entered into with
2 Defendants, the fact that his name could become known and it was possible that her involvement in
3 the matter could make it more difficult for me to obtain employment in the future, as well as the
4 results achieved in this action.

5 9. I believe the Service Award of \$10,000 as proposed in the Settlement Agreement is
6 fair based on the time and effort I have devoted to this case as a PAGA Representative.

7
8 I declare under penalty of perjury under the laws of the United States and the State of
9 California that the foregoing is true and correct.

10
11 Executed on this 13th day of September, 2020 in Rialto,
12 California.

13
14 By:

DocuSigned by:
Latoia Smith
3A18B7475715447...
LATOIA SMITH