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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

AMANDA GONZALEZ and
AUDRIANA GONZALEZ on behalf
of themselves, all others similarly
situated and on behalf of the general
public,

Plaintiffs,

v.

BURLINGTON COAT FACTORY
WAREHOUSE CORPORATION
and DOES 1-10,

Defendants.

CASE NO. 5:18-cv-00666-JGB-SP

Honorable Jesus G. Bernal

**DECLARATION OF DAVID MARA,
ESQ. IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: August 24, 2020
Time: 9:00 a.m.
Courtroom: 1

Filed: February 27, 2018
FAC Filed: October 31, 2018
Trial Date: None

1 I, DAVID MARA, declare as follows:

- 2 1. I am President of Mara Law Firm, PC and counsel of record for Plaintiffs
3 Amanda Gonzalez and Audriana Gonzalez (“Plaintiffs”) and the putative class
4 in this matter. I am duly admitted to practice before all the courts of the state of
5 California. The following facts are within my personal knowledge and, if called
6 to testify, I could and would competently testify thereto.
- 7 2. I have been practicing law in California since 2004.
- 8 3. I extensively handle employment cases which involve violations of the
9 California Labor Code and Industrial Welfare Commission Wage Orders, such
10 as wage and hour class actions and cases alleging violations of the Private
11 Attorneys General Act of 2004 (“PAGA”).
- 12 4. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.*, San Diego
13 Superior Court, Case No. GIC834348, which was the underlying case in the
14 California Supreme Court’s landmark decision in *Brinker Restaurant Corp. v.*
15 *Superior Court* (2012) 53 Cal.4th 1004, in which the California Supreme Court
16 delineated the scope of employer obligations to provide, and employee rights to
17 receive, meal and rest periods under California law.
- 18 5. I wrote an Amicus brief on behalf of Consumer Attorneys Of California
19 (“CAOC”) in the recent decision by the California Supreme Court in *Augustus*
20 *v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257 (rest breaks must be duty-
21 free and time spent being on call during rest breaks is not considered duty-free).
- 22 6. My firm also wrote an Amicus brief on behalf of CAOC in the recent decision
23 by the California Supreme Court in *Williams v. Superior Court* (2017) 3 Cal.
24 5th 531 (PAGA and wage and hour class action).
- 25 7. I have also lectured as a panelist for California Employment Lawyers
26 Association regarding a host of wage and hour issues.
- 27 8. My firm has been granted class certification in both state and federal courts.
- 28 9. I am also Plaintiff’s counsel in a host of other class actions involving violations

1 of California's wage and hour laws. For example, I have been and am involved
2 as counsel for plaintiffs in the following sampling of class action cases involving
3 wage and hour violations under California law: *Davis v. Apria Healthcare*
4 *Group* (Case No. 37-2015-00007743); *Norona v. B&G Delivery System, Inc.*
5 (Case No. RG1577005); *Perez v. City of San Diego* (Case No. 37-2014-
6 00016621); *Cuellar-Ramirez v. US Foods, Inc.* (Case No. RG15770766); *Peron*
7 *v. The Vons Companies, Inc.* (Case No. 15-cv-01567-L-JMA); *Hilderbrand v.*
8 *LinkUs Enterprises, LLC* (Case No. DR150155); *Belton v. Pacific Pulmonary*
9 *Services* (Case No. CGC-15-547564); *Medina v. Central Cal Transportation,*
10 *Inc.* (Case No. RG15770011); *Eure v. Dotson v. Asbury Environmental Services*
11 (Case No. RG16842620); *Spikes v. Bear Trucking, Inc.* (Case No.
12 16CECG02389); *Reynoso v. Benjamin's Transfer, Inc.* (Case No. FCS048845);
13 *Montes v. Coram Specialty Infusion Services, Inc.* (Case No. 37-2016-
14 00028950-CU-OE-CTL); *Rodriguez v. Delta Sierra Beverage, LLC* (Case No.
15 34-2017-00206727); *Clavel v. La Jolla Beach & Tennis Club, Inc.* (Case No.
16 37-2017-00004802-CU-OE-CTL); *Martin v. Sysco Central California, Inc.*
17 (Case No. 9000052).

18 10. Mara Law Firm, PC (formerly The Turley & Mara Law Firm, APLC) devotes a
19 significant portion of its practice specifically to wage and hour class actions. A
20 majority of the cases I handle are wage and hour class actions and actions filed
21 pursuant to the Private Attorneys General Act of 2004 ("PAGA"). Ms. Serb and
22 Mr. Roberts solely handle wage and hour class actions and PAGA actions. Mara
23 Law Firm, PC, has been appointed class counsel in numerous federal and state
24 class actions. Mara Law Firm, PC, and its lawyers have handled over three
25 hundred and fifty (350) class action and PAGA lawsuits. Mara Law Firm, PC,
26 and its lawyers have successfully settled over one hundred (100) cases over a
27 period of approximately sixteen (16) years, resulting in the recovery of millions
28 of dollars for class members.

1 11. Mara Law Firm, PC, is well versed in wage and hour class action law.
2 Specifically, Mara Law Firm, PC, has obtained class certification and has been
3 certified as class counsel in the following cases: *Mario Norona v. B&G Delivery*
4 *System, Inc.* (Sacramento County Superior Court, Case No. 34-2015-00186826-
5 CU-OE-GDS); *Jerald Schroeder v. YRC, Inc.*; *YRC Worldwide, Inc.* (Central
6 District of California, Case No. 12-cv-01374-TJH); *John Martin v. Sysco*
7 *Corporation*; *Sysco Central California, Inc.* (Eastern District of California, Case
8 No. 1:16-cv-00990-DAD-SAB); *William Smith v. Werner Enterprises, Inc.*
9 *d/b/a C.L. Werner, Inc.* (District of Nebraska, Case No. 8:15-cv-287); and
10 *Thomas Perez v. City of San Diego* (San Diego County Superior Court, Case
11 No. 37-2014-00016621-CU-OE-CTL).

12 12. In addition, Mara Law Firm, PC, filed and fully briefed class certification
13 motions before the following cases were settled: *Alton Davis v. Apria*
14 *Healthcare Group, Inc.* (San Diego County Superior Court, Case No. 37-2014-
15 00004724); *Rick Frieri v. Sysco Corporation*; *Sysco San Diego, Inc.* (Southern
16 District of California, Case No. 16-cv-1432-JLS-NLS); *Alberto Solano and*
17 *Damon Randall v. Professional Auto Transport, Inc.* (San Bernardino County
18 Superior Court, Case No. CIVDS1619020); *Richard Terry v. Hoovestol, Inc.*
19 (Northern District of California, Case No. 3:16-cv-05183-JST); and *Kristina*
20 *McConville v. Renzenberger, Inc.* (Central District of California, Case No. 2:17-
21 cv-02972-FMO-JC).

22 13. I have litigated over three hundred and fifty (350) class action and PAGA
23 lawsuits. I have been litigating wage and hour class action lawsuits for
24 approximately sixteen (16) years. I graduated from California Western School
25 of Law and was admitted to practice law in California in May 2004. I primarily
26 handle wage and hour class actions and PAGA actions. I am the president of
27 Mara Law Firm, PC.

28 14. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.* (San Diego

County Superior Court, Case No. GIC834348) which was the underlying case in the California Supreme Court's landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, in which the California Supreme Court delineated the scope of employer obligations to provide, and employee rights to receive, meal and rest periods under California law. I also wrote the Amicus Curiae brief on behalf of Consumer Attorneys of California ("CAOC") in the decision by the California Supreme Court in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257 (rest breaks must be duty-free and time spent being on call during rest breaks is not considered duty-free). I also wrote the Amicus Curiae brief on behalf of CAOC in the matter currently pending before the California Supreme Court, *Frlekin v. Apple, Inc.* (Cal. S. Ct. No. S243805).

15. I oversee all aspects of the class action and PAGA action cases Mara Law Firm, PC, handles. I also write a wide range of motions and argue at a wide range of hearings. I review and edit motions written by the associates at Mara Law Firm, PC; develop strategies with associates at Mara Law Firm, PC, in how to best litigate each case; review and edit discovery that is sent out to employers; review and edit clients' discovery responses; draft and revise complaints; draft and revise retainers sent to clients; communicate with clients; communicate with class members; communicate with defense counsel; communicate with co-counsel; review documents produced by employers; conduct investigations into potential cases; research and stay up to date in relevant law; attend mediations; draft, review, and revise settlement agreements; and oversee all day to day matters in cases.

16. I have been named as class counsel in the following certified cases as a result of the court granting a motion for class certification: *Mario Norona v. B&G Delivery System, Inc.* (Sacramento County Superior Court, Case No. 34-2015-00186826-CU-OE-GDS); *Jerald Schroeder v. YRC, Inc.*; *YRC Worldwide, Inc.*

(Central District of California, Case No. 12-cv-01374-TJH); *John Martin v. Sysco Corporation*; *Sysco Central California, Inc.* (Eastern District of California, Case No. 1:16-cv-00990-DAD-SAB); *William Smith v. Werner Enterprises, Inc. d/b/a C.L. Werner, Inc.* (District of Nebraska, Case No. 8:15-cv-287); and *Thomas Perez v. City of San Diego* (San Diego County Superior Court, Case No. 37-2014-00016621-CU-OE-CTL).

17. Jamie Serb is an associate at Mara Law Firm, PC. She solely handles wage and hour class actions and PAGA actions. Ms. Serb graduated from California Western School of Law and was admitted to practice law in California in June 2013 and received her undergraduate degree from University of California, San Diego in 2004. Ms. Serb has been litigating wage and hour class actions for over five (5) years and has handled over one hundred (100) class action and PAGA lawsuits. Ms. Serb received her training in wage and hour class action and PAGA lawsuits while at Mara Law Firm, PC. Ms. Serb has been at the Mara Law Firm, PC, for over five (5) years. She also co-wrote an amicus brief on behalf of CAOC in *Williams v. Superior Court* (2017) 3 Cal.5th 531.

18. Ms. Serb oversees all aspects of the cases assigned to her. Ms. Serb oversees other associates' that work on these cases. Ms. Serb routinely writes and opposes motions and argues at hearings. Ms. Serb edits motions written by associates; drafts and revises discovery propounded on employers; communicates with clients; communicates with class members; communicates with co-counsel; communicates with defense counsel; drafts and revises notices to the Labor and Workforce Development Agency pursuant to the Private Attorneys General Act of 2004; creates exhibits for use in cases; reviews documents produced by employers; deposes employer witnesses; defends client depositions; attends mediations; drafts, reviews, and revises settlement agreements; drafts, reviews, and revises settlement approval motions; argues at hearings on settlement motions; and oversees all day to day work in her cases.

1 19.Ms. Serb has been named as class counsel in the following certified cases as a
2 result of the court granting a motion for class certification: *William Smith v.*
3 *Werner Enterprises, Inc. d/b/a C.L. Werner, Inc.* (District of Nebraska, Case No.
4 8:15-cv-287) and *Thomas Perez v. City of San Diego* (San Diego County
5 Superior Court, Case No. 37-2014-00016621-CU-OE-CTL).

6 20.Tony Roberts solely handles wage and hour class actions and PAGA lawsuits.
7 Mr. Roberts graduated from the University of San Diego School of Law where
8 he merited honors in class action studies and performed independent studies on
9 class actions. Mr. Roberts externed at the United States District Court for the
10 Honorable Mitchell D. Dembin. Mr. Roberts was admitted to practice law in
11 California in June 2017. Shortly thereafter, Mr. Roberts joined the Mara Law
12 Firm, PC, litigating wage and hour class and PAGA actions. Mr. Roberts
13 received his training in wage and hour class action and PAGA lawsuits while at
14 Mara Law Firm, PC. Mr. Roberts is also an adjunct professor of law at the
15 University of San Diego School of Law.

16 21.Mr. Roberts routinely writes and opposes motions, drafts complaints, appears
17 before the Court at law and motion and settlement hearings; engages in the
18 discovery process, including drafting *Belaire West* notices and meet and confer
19 letters; deposes witnesses and defends depositions. Mr. Roberts also
20 communicates with clients, communicates with class members, and defense
21 counsel.

22 22.The proposed settlement is the product of serious, informed, non-collusive
23 negotiations, has no obvious defects, does not improperly grant preferential
24 treatment to the class representative or segments of the class and falls within the
25 range of fair and reasonable settlements. I believe that this non-reversionary
26 settlement is in the best interests of the class as fair, reasonable, and adequate.
27 Therefore, I recommend approval of the settlement.

28 23.A true and correct copy of the Parties' Joint Stipulation of Class Action and

1 PAGA Representative Action Settlement and Release (“Joint Stipulation”) is
2 attached hereto as **Exhibit 1**. A true and correct copy of the proposed Class
3 Notice is attached to **Exhibit 1** as **Exhibit A**.

4 24. Burlington is an off-price retailer with operations in California. The company
5 ships products from distribution centers in San Bernardino and Redlands as part
6 of its supply chain operation. Burlington utilizes temporary workers from
7 Lyneer Staffing Solutions at its distribution centers to assist with the flow of
8 merchandise during the distribution process. This class settlement involves non-
9 exempt, non-union, hourly employees provided as temporary workers by Lyneer
10 Staffing Solutions who worked one or more shifts in a workweek at Burlington’s
11 distribution centers located in California.

12 25. As part of the Parties’ settlement, Plaintiffs wish to file a Second Amended
13 Complaint adding PAGA claims into their wage and hour class action.
14 Plaintiffs’ proposed Second Amended Complaint (“SAC”) is attached to the
15 Joint Stipulation as Exhibit B. As part of this motion, Plaintiffs respectfully
16 request that the Court grant Plaintiffs leave to file their SAC.

17 26. Throughout the course of litigation, the Parties engaged in concentrated
18 informal discovery. Although informal in the sense that documents, data, and
19 information were produced pursuant to informal requests instead of formal
20 discovery inquiries, the gathering of information was no less robust than
21 Plaintiffs would obtain through formal means.

22 27. The discovery conducted and the resultant meet and confer efforts led to
23 exchanging hundreds of pages of documents and hundreds of thousands of lines
24 of data. The information and data included, for example, policies and best
25 practices, meal period and rest break policies, contracts between Burlington and
26 Lyneer Staffing Solutions, Lyneer Staffing Solutions’ time records, attendance
27 records, and pay records, as well as personnel files. Plaintiffs hired an expert,
28 Mr. Jarrett Gorlick, who analyzed the timekeeping and payroll data.

1 28. On January 3, 2019, the Parties attended mediation with Jeff Ross. At the first
2 mediation, the Parties found unintended flaws in the data—*i.e.*, the number of
3 shifts used in the Parties exposure analysis was inflated for many temporary
4 workers. As such, the Parties agreed to reschedule the mediation.

5 29. On October 15, 2019, the Parties attended a second mediation with David
6 Rotman. The mediation resulted in a mediator’s proposal later accepted by both
7 Parties. The Parties’ memorialized the settlement in a long form agreement and
8 now seek the Court’s approval of their Joint Stipulation. *See* Ex. 1.

9 30. The Joint Stipulation proposes a Class comprised of: All current and/or former
10 non-exempt, non-union, hourly employees provided as temporary workers by
11 Lyneer Staffing Solutions who worked one or more shifts in a workweek at
12 Burlington’s distribution centers located in California at any time between
13 February 27, 2014 and [August 22, 2020 or the Date of Preliminary Approval
14 of this settlement, inclusive, whichever is earliest]. *See* Ex. 1 at ¶¶ 3, 6. There
15 are approximately 5,776 individuals who fall within this Class definition.

16 31. Subject to the Court’s approval, Plaintiffs shall receive a payment not to exceed
17 \$7,500 each. The payment shall be made from the MSA. If the amount awarded
18 is less than the amount requested, the difference shall become part of the Net
19 Settlement Amount (“NSA”). In Class Counsel’s experience, the typical
20 enhancement award in wage and hour class action settlements ranges from
21 \$5,000 to \$75,000. Very commonly there is more than one class representative
22 who receives an award in the above range. The requested enhancement of
23 \$7,500 is appropriate and reasonable and unopposed by Burlington. This
24 payment is made, in part, to compensate Plaintiffs for the work they performed
25 on this case. As part of final approval, Plaintiffs will submit a declaration
26 detailing the efforts they expended on behalf of the Class to advance this case
27 to its successful conclusion. There is no question that this case would not have
28 reached the same result but for Plaintiffs’ involvement and input at all stages of

1 the litigation.

2 32. Subject to Court approval, Plaintiffs' Counsel shall request an award of
3 attorneys' fees in an amount of \$750,000 (25% of the MSA). This includes work
4 remaining in documenting the settlement, securing Court approval, ensuring the
5 settlement is fairly administered, and obtaining dismissal of the action. Also,
6 subject to Court approval, Plaintiffs' Counsel shall request a reimbursement
7 from the MSA for actual litigation costs in an amount not to exceed \$50,000.
8 Class Counsel will move the Court for a fee award in conjunction with final
9 approval. Class Counsel will file the moving papers in support of their attorney
10 fee request no later than fourteen (14) days before the expiration of the notice
11 period. At that time, Class Counsel intends on requesting 25% of the MSA as
12 their fee award, which is in line with the federal benchmark for such awards.
13 Class Counsel will submit a fee motion, supporting their request for 25% of the
14 MSA—which is \$750,000—including a lodestar crosscheck, hours, and hourly
15 rates.

16 33. Plaintiffs will only seek the amount of actual costs incurred during the litigation
17 of this case. Should the actual costs exceed \$50,000, Plaintiffs will only seek
18 reimbursement of costs up to \$50,000. If the actual costs are less than the
19 \$50,000 cap, the remainder will become part of the NSA, distributable to
20 Participating Class Members.

21 34. The Parties respectfully request to appoint CPT Group, Inc. ("CPT") as the
22 settlement administrator. CPT, an experienced class administration company,
23 has acted as claims administrator in numerous wage and hour cases. The Joint
24 Stipulation allocates \$45,000 to administer this settlement, which falls within
25 the range of estimates Class Counsel has received in the past for settlements of
26 similar size and circumstances. CPT has provided an estimate that its expenses
27 will be approximately \$45,000.

28 35. A true and correct copy of CPT's settlement administration bid received by

Counsel is attached hereto as **Exhibit 2**.

36. After all deductions and employer payroll tax obligations have been made, it is estimated that \$1,843,194.684 (“Net Settlement Amount” or “NSA”), less withholdings for federal and state taxes on the amounts deemed wages, will be available for disbursement to Participating Class Members--\$75,000 in PAGA penalties and \$1,768,194.68 in wages, interest, and penalties, resulting in an average payment of \$319.11 per Class Member. Per the Agreement, the term “Participating Class Members” is defined as any Class Member who does not opt-out of the Settlement or who opts-out but subsequently rescinds the opt-out in a timely manner. The money available for payout to these individuals comes out of the NSA, which is what remains of the MSA after subtracting all Court approved attorneys’ fees and costs, the Class Representative Enhancement Payment, settlement administration costs, the LWDA’s portion of the PAGA Payment, and the employer’s payroll tax obligation. The NSA is calculated as follows: \$3,000,000 MSA - \$45,000 (administration costs) - \$50,000 (costs) - \$750,000 (attorneys’ fees) - \$15,000 (service awards) - \$225,000 (LWDA share of PAGA penalties) = \$1,915,000 after deductions. Of the \$1,915,000, one-third, or \$638,296.50 is attributable to wages. This amount is multiplied by 11.25% to arrive at the estimated employer payroll taxes of \$71,805.32. Subtracting \$71,805.32 in payroll taxes from \$1,915,000 results in the \$1,843,194.68 NSA. The class members settlement share is calculated as follows: \$1,843,194.68 divided by 5,776 Class Members equates to \$319.11 per Class Member.

37. The Parties chose the United Way of California as the cy pres beneficiary. The United Way of California is an umbrella organization, supporting multiple local United Ways throughout the state that all serve the public by working towards financial stability of the citizens they support. The United Way has specific programs aimed at promoting steady, gainful employment of Californians,

1 something that meets the objectives of a lawsuit brought with the aim of
2 enforcing employee rights, and supports silent class members through the
3 variety of programs offered. For example, the United Way institutes local
4 programs offering job coaching and training, career development, and business
5 development, providing the skills needed to find and maintain a lifelong career.
6 Beyond just programs supporting job seekers and employees, the United Way
7 also advocates at the policy level for an increase to the State minimum wage.
8 There is no relationship between the proposed cy pres beneficiary and the Parties
9 or their Counsel.

10 38. Plaintiffs' Counsel should be appointed Class Counsel as Plaintiffs' Counsel is
11 highly experienced and knowledgeable regarding complex wage and hour class
12 actions like this one. Indeed, Plaintiffs' counsel was class counsel in *Hohnbaum*
13 *et al. v. Brinker Restaurant Corp et al.*, which is the subject case in the landmark
14 decision of *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012).
15 By prosecuting numerous cases on behalf of employees for California Labor
16 Code violations, Plaintiffs' Counsel has merited the experience and qualification
17 to evaluate the class claims, to evaluate settlement versus trial on a fully
18 informed basis, and to evaluate the viability of Burlington's defenses. In sum,
19 Plaintiffs' Counsel fully commits to representing the Class in this case, have the
20 skill and expertise to do it properly, and will continue to do so whether or not
21 the settlement is approved.

22 39. The proposed settlement is the product of arm's-length negotiations facilitated
23 by David Rotman, one of the most respected mediators in wage and hour class
24 actions.

25 40. Plaintiffs submit, and Burlington disputes, that this case is factually and legally
26 strong. This matter was settled after discovery that resulted in hundreds of pages
27 of documents and hundreds of thousands of lines of data. The information and
28 data included, for example, policies and best practices, meal period and rest

1 break policies, contracts between Burlington and Lyneer Staffing Solutions,
2 Lyneer Staffing Solutions' time records, attendance records, and pay records, as
3 well as personnel files. Plaintiffs hired an expert, Mr. Jarrett Gorlick, who
4 analyzed the timekeeping and payroll data. At the point the settlement was
5 initially agreed to, no one was in a better position than Plaintiffs' Counsel to
6 understand the strengths and potential limitations of Plaintiffs' case and thus
7 evaluate the reasonableness of the amount offered in settlement. In sum, each
8 side maintains a clear idea of the strengths and weaknesses of their respective
9 cases, such that the extent of discovery completed, and the stage of the
10 proceedings weighs in favor of preliminary approval.

11 41. Plaintiffs contend that Burlington's failure to pay all wages owed and to provide
12 compliant meal periods and rest breaks are the predominant claims in the
13 lawsuit. While Plaintiffs believe they would successfully litigate these claims,
14 these claims are subject to risks in obtaining and maintaining certification,
15 proving liability, and in continued litigation. However, before reaching the
16 merits of these claims, Plaintiffs would first have to prove that Burlington was
17 their employer as well as the Class Members' employer and successfully certify
18 this issue.

19 42. All the claims alleged in this matter are based on Burlington's failure to classify
20 Plaintiffs and the Class Members as employees. Based on the interviews,
21 staffing agreements, policies, Burlington's practices, and documents produced
22 in this matter, Plaintiffs contend that Burlington substantially controls the Class
23 Members and would meet the factors delineated in the *Borello* test in *S. G.*
24 *Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d
25 341. Because, at most, Burlington would be considered a co-employer and
26 because Burlington has not classified the Class Members as independent
27 contractors, the multi-factored analysis in *Borello*, rather than the streamlined
28 ABC test adopted by the recent Supreme Court decision in *Dynamex Operations*

1 *West, Inc. v. Superior Court* (2018) 4 Cal.5th 903 and recently codified at Labor
2 Code § 2750.3 (popularly referred to under its pre-passage moniker, AB 5),
3 determines whether Burlington is the employer.

4 43. Plaintiffs claim that Burlington retained the right to control the manner and
5 means of accomplishing the desired result of the Class Members' work. To this
6 end, Plaintiffs claim that Burlington had the right to discharge at will, without
7 cause, that the type of work performed by Class Members was that typically
8 performed by low-wage/low skilled employees who do so under strict
9 supervision, that Burlington supplied the place of work and instrumentalities
10 needed to perform the work, that Class Members were paid by the hour, and that
11 the work Class Members performed in Burlington's warehouse was part of its
12 regular business of clothing retail.

13 44. Burlington disputes that it is the employer under *Borello*. Rather, Burlington
14 maintains that, on balance, the staffing company – Lyneer Staffing Solutions –
15 is the employer. Burlington relies on the facts that Lyneer recruits and hires
16 Class Members, pays Class Member wages, maintains time, attendance, and
17 wage records of Class Members, provides meal, rest period and other applicable
18 employment policies, sets Class Member wages, and can discharge with or
19 without cause. Thus, Burlington concludes that, although Class Members
20 perform work at Burlington facilities, all other control under *Borello* is exerted
21 through Lyneer, whom Burlington claims is the appropriate employer.

22 45. The importance of who prevailed on the issue of employment cannot be
23 understated. All of Plaintiffs' causes of action are predicated on satisfying the
24 threshold issue of Burlington being deemed the employer. If the Court found
25 otherwise, there would be no recovery. Thus, in exploring settlement, Plaintiffs
26 had to factor in the risks associated with not prevailing on the employment issue.

27 46. While Plaintiffs remain confident in their claims, they recognize the risk to
28 continued litigation. Namely, Burlington argues that the issue of whether workers

1 were provided meal periods and rest breaks is not susceptible of common proof.
2 Burlington argues that, even if it were deemed the employer, it would be a co-
3 employer with Lyneer Staffing Solutions, who was involved in hiring, firing,
4 and paying the putative class members. Thus, Burlington argues that the
5 determination of whether the putative class members were provided meal
6 periods and rest breaks would not depend exclusively on Burlington's policies,
7 but would also depend on whether the various Lyneer Staffing Solutions on-site
8 managers ensured the different groups of workers they supervised were
9 provided lawful breaks and whether Lyneer Staffing Solutions provided for
10 meal periods and rest breaks despite Burlington's policies and practices.
11 Although Plaintiffs are confident the common questions that would be framed
12 for certification would avoid these problems, this variance could cast doubt on
13 whether class treatment is appropriate and therefore had to be factored for
14 purposes of exploring classwide settlement.

15 47. There is also a risk that should the Court grant certification of these claims, these
16 claims would later be decertified. For example, in the case *Hamilton v. Wal-*
17 *Mart Stores, Inc.* the district court granted certification of the unpaid wages
18 claims based on employees going through a security checkpoint, only to later
19 decertify them on the basis that the plaintiff was unable to set forth a workable
20 damages model. *Hamilton*, Case No. Case No. ED CV 17-01415-AB (KKx),
21 2019 U.S. Dist. LEXIS 153367 *1, *41 (C.D. Cal. March 4, 2019) (“[T]he Court
22 finds that Plaintiffs’ security checkpoint subclass and Plaintiffs’ overtime
23 subclass to the extent it is based on the security checkpoint claim cannot be
24 maintained because Plaintiffs are unable to put forth a workable damages
25 model.”). As such, if Plaintiffs’ unpaid wages claim is certified, there is a risk
26 that this class may later be decertified.

27 48. Plaintiffs’ claims for unpaid straight and overtime wages and meal and rest
28 period violations are based on the same set of facts, *i.e.*, Burlington’s security

1 screenings employees have to satisfy upon entry and exit. Plaintiffs claim that,
2 because of these searches, Plaintiffs are not relieved of all control for meal and
3 rest breaks and, due to the fact that Class Members endure these screenings
4 while they are off the clock, they are not paid straight and overtime wages while
5 undergoing the screenings.

6 49. Based on the security screenings, Plaintiffs claim that their right to 30-minute
7 meal and 10-minute rest periods, wherein employees are to be free to leave the
8 premises without being subject to employer controls, have been violated.
9 Because these screenings subject them to control off the clock, *i.e.*, when they
10 are not being paid, Plaintiffs also claim that their right to be compensated for all
11 hours subject to the employer's control has been violated.

12 50. There was a considerable dispute over the degree of employer control the
13 searches at issue here occasioned on Class Members. Burlington contends that
14 its entry/exit screenings are minimal, with most employees not even breaking
15 stride upon entering and exiting the facility. Burlington searches bags upon entry
16 to ensure employees are not bringing anything dangerous, *i.e.*, a weapon, into
17 the warehouse. Burlington urges employees to either not bring in bags or bring
18 all belongings in a clear plastic bag for quick, unhindered passage at checkpoint.
19 The exit searches, although for a different, inventory control related purpose,
20 bear the same hallmark according to Burlington. That is, if no bag is brought
21 out, or, if the employee does tote a bag of some sort, if it is contained in a clear
22 plastic bag, the employee is not delayed in leaving the facility. Burlington
23 contrasts its searches from those of the tech retail giant in *Frlekin v. Apple, Inc.*
24 8 Cal.5th 1038 (2020), wherein the record showed employees were detained
25 under the policy for up to several minutes while a manager was flagged down
26 to perform a search. Burlington employees do not have to endure such wait times
27 to comply with the policy, as there is a designated security gate through which
28 they pass. Thus, based on these facts, Burlington contends that, on balance of

1 the factors outlined in *Apple*, its searches do not constitute an unlawful control
2 for purposes of assessing wage and meal/rest period violations.

3 51. Given the load-bearing nature of the status of the security screenings here on the
4 predominating claims for unpaid straight/overtime wages and meal and rest
5 period violations, Plaintiffs had to seriously evaluate the risk of Burlington
6 prevailing on the issue in engaging in settlement discussions.

7 52. In evaluating the risks, Plaintiffs did so on a sliding scale. Whether a search rises
8 to the level of a compensable control during which employees must be paid does
9 not fall under the same analysis when analyzed in the context of meal and rest
10 period claims. Meal and rest periods enjoy a more heightened freedom from
11 employer mandated controls and intrusions than they do for purposes of
12 evaluating the same in the unpaid wage context. Whereas for purposes of
13 evaluating whether an employer policy – like the security screenings at issue
14 here – rises to a compensable control focuses on “the degree of the employer’s
15 control,” Plaintiffs contend *any* employer control exerted during a meal and/or
16 rest period triggers meal and rest period liability for which an hours’ worth of
17 pay is owed under Labor Code § 226.7.

18 53. Based on the different legal impact the searches have on meal and rest period
19 claims as opposed to wage claims, Plaintiffs placed a greater risk factor on the
20 straight and overtime wage claims than the claims for meal and rest period
21 violations when evaluating settlement. Burlington disputes Plaintiffs’
22 interpretation of California law. Specifically, Burlington contends that whether
23 the security screenings rise to the level of unlawful control is the same analysis
24 for wage claims as it is for meal and rest period claims. At any rate, the dispute
25 about the legal test of what constitutes a violation is exemplary of another
26 threshold issue that could have significant bearing on the outcome of the case if
27 litigation continued.

28 54. Plaintiffs also pursued claims for failure to provide accurate itemized wage

1 statements and waiting time penalty claims. These claims are derivative of
2 Plaintiffs' unpaid wages claims. Should Plaintiffs' unpaid wages claims fail,
3 these claims would also fail. Burlington argues that it would not be liable for
4 waiting time penalties because a "good faith dispute" exists over the payment
5 of past wages. *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No.*
6 *2* (2008) 163 Cal.App.4th 1157, 1201. Further, Burlington contends Plaintiffs
7 would have to prove it "willfully" failed to pay class members appropriate
8 wages due upon separation of employment, which Burlington contends was not
9 willful, as it was not adjudged to be the workers' employer at the time of
10 separation. *See* Cal. Lab. Code § 203(a).

11 55. Plaintiffs' PAGA claims are based on the same alleged unlawful conduct as their
12 class claims. Therefore, PAGA penalties could only be awarded if the factfinder
13 agreed with Plaintiffs' theories of liability. Should the Court agree with any of
14 Burlington's defenses to certification or on the merits, the potential exposure for
15 PAGA would be reduced and any associated PAGA penalties would be
16 extinguished, as penalties can only be awarded if the Court agrees with
17 Plaintiffs' underlying allegations. Further, these penalties would be in addition
18 to the potential recovery from the underlying violations.

19 56. Burlington argues that if the case were to continue in litigation, it would be able
20 to show that it took its obligations to comply with the law seriously such as
21 providing an additional 15 minutes during meal periods and 5 minutes during
22 rest breaks. As such, if Plaintiffs were able to prevail on the merits of their
23 PAGA claims, it is likely that the Court would reduce the maximum penalty
24 allowed.

25 57. The potential maximum exposure for Plaintiffs' core claims for unpaid wages,
26 meal period, and rest break claims is approximately \$4,299,418.

27 58. Based on the data Burlington provided leading up to the mediation, Plaintiffs
28 were able to determine there were approximately 134,662 shifts in the Class

1 Period and Class Members were paid approximately \$11.61 per hour. Using 45
2 minutes of unpaid detention time where employees are subject to entry/exit
3 searches, an amount of time Burlington strongly disputes for the reasons
4 explained above, the total wage exposure would be \$1,172,568 (134,662 shifts
5 x \$11.61/hour x .75 hours = \$1,172,568). If Plaintiffs prevail on their meal and
6 rest period claims, the combined total exposure for violations would be
7 \$3,126,850 (134,662 shifts x \$11.61/hour x 2 violations per shift = \$3,126,850).

8 59.If Plaintiffs succeed on their PAGA claims, the PAGA group could be entitled
9 to \$36,608,000 (1,408 class members x \$100 x 5 PAGA violations x 52 pay
10 periods= \$36,608,000). However, the assessment of PAGA penalties is left up
11 to the discretion of the trial court, which has resulted in drastic reduction of
12 PAGA penalties in other cases. Using the recent appellate decisions in
13 *Kaanaana v. Barrett Business Services, Inc.*, 29 Cal.App.5th 778, 788 & 809
14 (2018) and *Carrington v. Starbucks*, 30 Cal.App.5th 504, 517 (2018) as a gauge
15 of potential reduction of PAGA penalties in the event Plaintiffs were to prevail
16 on proving violation of the underlying claims for meal/rest breaks,
17 straight/overtime, and wage statements, Plaintiffs factored in an average of the
18 reductions in those two cases in valuing the likely extent of PAGA exposure
19 here, or 6.6% total PAGA exposure (*Kaanaana* – 13% and *Carrington* .2%
20 divided by two equals 6.6%). *See Kaanaana*, 29 Cal.App.5th at 788 & 809; *see*
21 *also Carrington*, 30 Cal.App.5th at 517. Thus, the likely maximum exposure for
22 PAGA penalties was evaluated at \$2,416,128.

23 60.The likely exposure of the core claims for unpaid wages, meal and rest period
24 violations and PAGA penalties associated therewith was evaluated at
25 \$6,715,546. As the above explains, however, Plaintiffs had to significantly
26 factor in the risks of prevailing in these claims, all of which are based on whether
27 the entry/exit searches constituted unlawful controls in the context of the
28 particular claims at issue. Plaintiffs also had to seriously factor in the risk of

1 losing on the issue of whether Burlington is the employer under the *Borello*
2 factors.

3 61.The settlement amount of \$3,000,000 is a reasonable compromise of those
4 claims and their respective risks as outlined above. The gross settlement amount
5 is 44% of the total exposure of those core claims and provides certainty and
6 significant cash value to the Class. Without the settlement, the Parties would be
7 required to litigate the merits of the case—a process which is long, complex,
8 uncertain and expensive. Burlington would conduct further motion practice to
9 defend against Plaintiffs' claims such as seek summary judgment on the
10 employment relationship issue and oppose any motion for class certification.
11 Settlement of this matter will conserve the resources of this Court and the
12 Parties, thus weighing in favor of preliminary approval.

13 62.The settlement here of \$3,000,000 is fair, adequate, and reasonable when
14 considering that it provides class members with a definite and substantial
15 recovery in proportion to the strengths and challenges associated with
16 establishing Burlington as the class members' employer, achieving and
17 maintaining certification on all claims, and establishing liability for all claims.

18 I declare under penalty of perjury under the laws of the United States of America
19 that the foregoing is true and correct.

20
21 Dated: July 27, 2020

/s/David Mara

David Mara, Esq.

Exhibit 1

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

AMANDA GONZALEZ and
AUDRIANA GONZALEZ on behalf
of themselves, all others similarly
situated and on behalf of the general
public,

Plaintiffs,

v.

BURLINGTON COAT FACTORY
WAREHOUSE CORPORATION
and DOES 1-100,

Defendants.

CASE NO. 5:18-cv-00666-JGB-SP

Honorable Jesus G. Bernal

**JOINT STIPULATION OF CLASS
ACTION AND PAGA
REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE**

Complaint Filed: February 27, 2018
FAC Filed: October 31, 2018

1 **I. INTRODUCTION**

2 1. This Joint Stipulation of Class Action and PAGA Representative Action
3 Settlement and Release (hereinafter “Settlement Agreement”) is made and entered into
4 by and between the following parties: Plaintiff Amanda Gonzalez and Plaintiff Audriana
5 Gonzalez (collectively “Plaintiffs”), individually and on behalf of other similarly situated
6 current and former temporary workers supplied by Lyneer Staffing Solutions (as
7 described more fully below), on the one hand, and Defendant Burlington Coat Factory
8 Warehouse Corporation (“Burlington”), on the other hand (collectively, the “Parties”),
9 and their respective counsel of record. This Settlement Agreement is subject to the terms
10 and conditions set forth below and to the approval of the Court. This Settlement
11 Agreement supersedes any and all prior memoranda of understanding and accurately sets
12 forth the Parties’ class action and representative action settlement to resolve all claims as
13 detailed below.

14 **II. DEFINITIONS**

15 2. “Action” means the lawsuit entitled *Gonzalez, et al. v. Burlington Coat*
16 *Factory Warehouse Corporation*, Case No. 5:18-cv-00666-JGB-SP, pending in the
17 United States District Court for the Central District of California (former San Bernardino
18 Superior Court, Case No. CIVDS1804785).

19 3. “Class” means all current and/or former non-exempt, non-union, hourly
20 employees provided as temporary workers by Lyneer Staffing Solutions who worked one
21 or more shifts in a workweek at Burlington’s distribution centers located in California at
22 any time between February 27, 2014, and the Date of Preliminary Approval of this
23 Settlement.

24 4. “Class Counsel” or “Plaintiffs’ Counsel” means David Mara, Jamie Serb,
25 and Tony Roberts, of Mara Law Firm, PC.

26 5. “Class Member” means each person eligible to participate in this Settlement
27 who is a member of the Class, as defined above.

1 6. “Class Notice” or “Notice of Settlement” shall mean the document attached
2 hereto as Exhibit A.

3 7. “Class Period” means the period between February 27, 2014, and the date
4 that is 60 days from the date this Settlement Agreement is fully executed, or the Date of
5 Preliminary Approval of this settlement, inclusive, whichever is earliest.

6 8. “Class Representatives” means Plaintiffs Amanda Gonzalez and Audriana
7 Gonzalez, who have been designated by Plaintiffs’ Counsel as the Class Representatives
8 for settlement purposes.

9 9. “Complaint” means the Second Amended Complaint, a draft of which is
10 attached hereto as Exhibit B, to be filed in this Action.

11 10. “Court” means the United States District Court for the Central District of
12 California.

13 11. “Cy Pres Beneficiary” means the United Way of California. The United
14 Way of California is an umbrella organization, supporting multiple local United Ways
15 throughout the state that all serve the public by working towards financial stability of the
16 citizens they support. Many of these local United Ways have specific programs aimed at
17 promoting steady, gainful employment of Californians, something that meets the
18 objectives of a lawsuit brought with the aim of enforcing employee rights, and supports
19 silent Class Members through the variety of programs offered.

20 12. “Date of Preliminary Approval” means the date the Court approves this
21 Stipulation of Settlement, and the exhibits thereto, and enters an Order providing for
22 notice to the Class Members, an opportunity to opt-out of the Class, an opportunity to
23 submit timely objections to the settlement, a procedure for submitting claims, and setting
24 a hearing for Final Approval of the Settlement, including approval of attorneys’ fees and
25 costs.

26 13. “Deficient Opt-Out” means a Class Member that has submitted a Deficient
27 Request for Exclusion and has failed to cure its deficiencies within the time required by
28 this Settlement Agreement.

1 14. “Deficient Request for Exclusion” means a Request for Exclusion that is not
2 signed by the Class Member submitting the Request for Exclusion or cannot be verified
3 by the Settlement Administrator as being an authentic submission by the Class Member.

4 15. “Defendant” means Burlington Coat Factory Warehouse Corporation
5 (“Burlington”).

6 16. “Defendant’s Counsel” means Greenberg Traurig LLP.

7 17. “Fairness Hearing” means the hearing to be scheduled by the Court after
8 granting preliminary approval of the Settlement.

9 18. “Final Approval” means the date on which the Court enters the Final
10 Approval Order.

11 19. “Final Approval Order” means the Court’s Order approving the Settlement
12 after the Fairness Hearing.

13 20. “Judgment” means the judgment to be rendered by the Court pursuant to this
14 Stipulation.

15 21. “Late Opt-Out” means a Class Member that has submitted a Late Request
16 for Exclusion.

17 22. “Late Request for Exclusion” means a Request for Exclusion that is
18 submitted to the Settlement Administrator after the Response Deadline.

19 23. “LWDA” means the California Labor and Workforce Development Agency.

20 24. “LWDA PAGA Payment” is the 75% share of the \$300,000 (or \$225,000)
21 allocated from the Maximum Settlement Amount for PAGA penalties that will be paid to
22 the LWDA.

23 25. “Lyneer Staffing Solutions” means Lyneer Staffing Solutions, Infinity
24 Staffing Solutions, LLC dba Lyneer Staffing Solutions, Staff4Jobs, LLC dba Lyneer
25 Staffing Solutions, Employers HR LLC, Ciera Staffing, LLC, Lyneer Staffing Solutions,
26 LLC, and all of their members, predecessors, successors, affiliates, and related
27 companies, including but not limited to, Gary Spinner, Todd McNulty, James Radvany,
28 Bryan Smith, Brian Henderson, Marti White and Greg Lomonaco.

1 26. “Maximum Settlement Amount” or “MSA” is the sum of Three Million
2 Dollars and No Cents (\$3,000,000.00), which represents the maximum amount payable
3 in this Settlement by Defendant, and includes all attorneys’ fees, litigation costs,
4 Settlement Administration Expenses, LWDA PAGA Payment, PAGA Group Payment,
5 the Service Enhancement to the Class Representatives, and the employer’s share of
6 payroll taxes on any portions of claims paid under this Settlement that would qualify as
7 wages to settling Class Members.

8 27. “Named Plaintiffs” means Plaintiffs Amanda Gonzalez and Audriana
9 Gonzalez, and each of them.

10 28. “Net Settlement Amount” is the portion of the MSA eligible for distribution
11 to Participating Class Members. It equals the MSA less Class Counsel’s attorneys’ fees
12 and actual litigation costs as ordered to be paid by this Court, Settlement Administration
13 Expenses, LWDA PAGA Payment, PAGA Group Payment, Service Enhancement to the
14 Class Representatives, and the employer’s share of payroll taxes on any portions of
15 claims paid under this Settlement that would qualify as wages to settling Class Members.

16 29. “PAGA” means the California Labor Code Private Attorneys General Act,
17 California Labor Code §§ 2698, *et seq.*

18 30. “PAGA Group” means all current and/or former non-exempt, non-union,
19 hourly employees provided as temporary workers by Lyneer Staffing Solutions who
20 worked one or more shifts in a workweek at Burlington’s distribution centers located in
21 California at any time during the PAGA Period.

22 31. “PAGA Group Members” means each person eligible to participate in this
23 Settlement who is a member of the PAGA Group, as defined above.

24 32. “PAGA Group Payment” means the 25% share of the Three Hundred
25 Thousand Dollars and No Cents (\$300,000.00) (or \$75,000.00) allocated from the MSA
26 for PAGA penalties that will be paid to PAGA Group Members.

33. “PAGA Period” means February 3, 2019 through the date that is 60 days after the full execution of this Settlement Agreement or the Date of the Preliminary Approval, whichever is earlier.

34. “Participating Class Member” means any Class Member who does not opt out of the Settlement or who opts out but subsequently rescinds the opt-out in a timely manner.

35. “Parties” means collectively Plaintiffs and Defendant herein.

36. “Qualified Settlement Fund” or “QSF” means the bank account to be overseen by the Settlement Administrator created for receipt of the MSA and from which all payments due under the terms of this Settlement Agreement will be made. The account will be organized and existing under the laws of the State of California, intended by the Parties to be a “Qualified Settlement Fund” as described in Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section 1.468B-1, et seq.

37. “Releasees” means each and all of Burlington Coat Factory Warehouse Corporation, Lyneer Staffing Solutions (as defined above), and each of their respective predecessors, successors and assigns, their current and former direct and indirect parents, affiliates, subsidiaries, divisions, and related business entities, and their current and former officers, directors, shareholders, employees, agents, representatives and employee benefit programs (including the trustees, administrators, fiduciaries and insurers of such programs).

38. “Request for Exclusion” means a signed request from a Class Member to be excluded from the non-PAGA portions of this Settlement.

39. “Response Deadline” shall mean the period of sixty (60) days following the mailing of the Class Notice by the Settlement Administrator. If the 60th day falls on a Sunday or federal holiday, the Response Deadline shall end on the next business day that is not a Sunday or federal holiday.

40. “Service Enhancement” means the incentive payments in an amount not to exceed \$7,500.00 to each Class Representative.

1 41. “Settlement Administration Expenses” are those expenses incurred by the
2 Settlement Administrator in effectuating the Settlement, not to exceed \$45,000.00, which
3 will be deducted from the MSA.

4 42. “Settlement Administrator” means CPT Group, Inc.

5 43. “Settlement Effective Date” means thirty (30) calendar days after entry of
6 the Final Approval Order. If an appeal or motion to intervene is filed, then “Settlement
7 Effective Date” means the date of final resolution of any appeal from the Final Approval
8 Order where the resolution affirms the Final Approval Order. The Settlement Effective
9 Date cannot occur, and Defendant will not be obligated to fund this Settlement, unless
10 and until there is no possibility of an appeal or further appeal (by anyone who has the
11 right to, or claims to have the ability to, take an appeal) that could potentially prevent this
12 Settlement Agreement from becoming final and binding. The Parties intend that the
13 Final Approval Order will effectuate the releases and extinguish all released claims,
14 including but not limited to PAGA claims, for the periods covered by this Settlement on
15 the Settlement Effective Date. The Court will retain jurisdiction to enforce the
16 Settlement after the Settlement Effective Date.

17 44. “Settlement Payment” is the allocation from the Net Settlement Amount
18 paid to Participating Class Members and does not include the PAGA Group Payment to
19 members of the PAGA Group.

20 45. “Stipulation of Settlement” and “Settlement Agreement” shall mean this
21 Joint Stipulation of Class Action and PAGA Representative Action Settlement and
22 Release.

23 **III. LITIGATION BACKGROUND**

24 46. On February 27, 2018, Named Plaintiffs filed a purported class action
25 complaint in San Bernardino County Superior Court against Burlington alleging Labor
26 Code violations, including: failure to pay Named Plaintiffs and other similarly situated
27 individuals for work performed off-the-clock before and after their scheduled shifts;
28 failure to provide legally required meal and rest breaks; failure to timely pay all wages

1 owed upon termination of employment; and issuance of inaccurate wage statements to
2 employees. Named Plaintiffs claimed that Burlington was liable for their claims as their
3 employer or “joint employer.”

4 47. On April 2, 2018, Burlington timely removed the case to federal court.

5 48. Pursuant to this Settlement Agreement, Plaintiffs intend to file a Second
6 Amended Complaint as attached hereto as Exhibit B, adding the PAGA claims for the
7 alleged underlying Labor Code violations that Named Plaintiffs asserted on behalf of
8 similarly situated individuals.

9 49. Defendant denies Named Plaintiffs’ claims, and asserts that, during all
10 relevant times, Named Plaintiffs and Class Members/PAGA Group Members were not
11 employed by Burlington, that Burlington was not liable as a “joint employer,” and that as
12 far as Burlington was aware, Named Plaintiffs and Class Members/PAGA Group
13 Members had been properly paid for all hours worked, received all overtime wages to
14 which they were entitled, and were provided with compliant meal and rest breaks in
15 accordance with California law. Burlington also denies that it had any obligation to
16 furnish wage statements, but that, as far as Burlington was aware, the Named Plaintiffs
17 and Class Members/PAGA Group Members received compliant wage statements, were
18 timely paid all wages due, and that Class Members/PAGA Group Members who ended
19 their affiliation or employment with Lyneer Staffing Solutions and/or any Releasee
20 during the Class Period or PAGA Period were properly compensated for all wages due as
21 required by California law. Consequently, Defendant does not believe that any liability
22 to Named Plaintiffs or Class Members/PAGA Group Members exists, or that Named
23 Plaintiffs or Class Members/PAGA Group Members are entitled to any recovery under
24 any theory. In addition, Defendant contends that Named Plaintiffs’ claims are not
25 suitable for class or representative treatment.

26 50. After exchanging initial disclosures and other documentary information, the
27 Parties agreed to attempt to resolve this action through private mediation. On October
28 15, 2019, the Parties participated in a full-day mediation with David A. Rotman, Esq.

1 While the Parties did not reach a resolution at the mediation, they continued to utilize the
2 mediator and discuss the terms of a possible settlement in the following weeks, and were
3 able to reach a resolution.

4 51. It is the desire of the Parties to fully, finally, and forever settle, compromise,
5 and discharge all disputes and claims against the Releasees arising from or related to the
6 Action.

7 52. It is the intention of the Parties that this Settlement Agreement shall
8 constitute a full and complete settlement and release of the claims averred in the Action.
9 This release includes in its effect a release of all Releasees.

10 **IV. JURISDICTION AND VENUE**

11 53. This Court has jurisdiction over the Parties and the subject matter of this
12 Action. This Court will have continuing jurisdiction over the terms and conditions of this
13 Settlement Agreement, until all payments and obligations provided for herein have been
14 fully executed.

15 **V. TERMS OF SETTLEMENT**

16 54. NOW, THEREFORE, in consideration of the mutual covenants, promises,
17 and undertakings set forth herein, the Parties agree, subject to the Court's approval, as
18 follows:

- 19 a. **Non-Admission.** Nothing in this Settlement Agreement shall be
20 construed to be or deemed an admission by Defendant of any liability,
21 culpability, negligence, or wrongdoing toward the Class
22 Representatives, the Class Members, PAGA Group Members, or any
23 other person, and Defendant specifically disclaims any liability,
24 culpability, negligence, or wrongdoing toward the Class
25 Representatives, the Class Members, the PAGA Group Members or
26 any other person, or that class or collective certification is appropriate.
27 Each of the Parties has entered into this Stipulation of Settlement with
28 the intention to avoid further disputes and litigation with the attendant

1 inconvenience, expenses, and contingencies. This Settlement
2 Agreement and any related court documents or orders between the
3 Parties may not be cited or otherwise admitted as evidence of liability
4 or that class or collective certification is appropriate or that a
5 representative action could ever be manageably tried before a court.
6 There has been no final determination by any court as to the merits of
7 the claims asserted by Named Plaintiffs against Defendant or as to
8 whether a class should be certified, other than for settlement purposes
9 only. Furthermore, nothing in this Settlement Agreement shall be
10 considered any form of waiver of any alternative dispute resolution
11 provisions, including but not limited to those provisions outlined in
12 Defendant's STEPS Program Rules & Procedures, or any other
13 applicable alternative dispute resolution policy.

14 b. **Certification.** The Parties stipulate, for settlement purposes only, to
15 the certification of the Class defined above under Federal Rule of
16 Civil Procedure 23(b)(3) as to all claims asserted in the Second
17 Amended Complaint pursuant to state law. If for any reason the
18 Court does not approve this Stipulation, fails to enter the Final
19 Approval Order, or fails to enter the Judgment or Final Judgment, or
20 if this Settlement Agreement and Stipulation is lawfully terminated
21 for any other reason, Defendant shall retain the absolute right to
22 dispute the propriety of class or conditional certification and/or the
23 ability of this action to proceed as a class or representative action on
24 all applicable grounds.

25 c. The Parties further stipulate that, for settlement purposes only,
26 Plaintiffs' Counsel may be appointed Class Counsel and that Named
27 Plaintiffs may be appointed as Class Representatives. Defendant's
28 stipulation to this settlement Class shall in no way be considered any

1 form of waiver of any form of alternative dispute resolution.
2 Defendant's stipulation to this settlement Class shall not be construed
3 as an admission or acknowledgment of any kind that any class should
4 be certified or given class action treatment. The Class may be
5 provisionally certified as a class action for the purposes of the
6 monetary relief provided in this Settlement Agreement. For
7 settlement purposes only, the Parties agree that Plaintiffs' Counsel,
8 Mara Law Firm, may be preliminarily and conditionally appointed as
9 Class Counsel.

10 d. **Non-Approval By The Court.** In the event that this Settlement
11 Agreement is not approved by the Court, fails to become effective, or
12 is reversed, withdrawn or modified by the Court:

- 13 i. The Settlement Agreement shall have no force or effect, other
14 than the confidentiality and non-disclosure provisions in
15 Section XIV and the non-admission provisions in Paragraph
16 V.54.a;
- 17 ii. The Settlement Agreement shall not be admissible in any
18 judicial, administrative or arbitral proceeding for any purpose
19 or with respect to any issue, substantive or procedural;
- 20 iii. The preliminary and conditional certification of the Class shall
21 become null and void, and the fact of certification shall not be
22 cited to or admissible in any judicial, administrative or arbitral
23 proceeding for any purpose or with respect to any issue,
24 substantive or procedural; and
- 25 iv. None of the Parties to this Settlement Agreement will be
26 deemed to have waived any claims, objections, defenses or
27 arguments with respect to the issue of class or collective
28 certification or the merits of Named Plaintiffs' claims.

- e. **Settlement Payments.** Defendant agrees to pay a MSA of Three Million Dollars and No Cents (\$3,000,000.00), inclusive of all Settlement Payments, fees and costs identified in this Settlement Agreement, including Service Enhancements to the Class Representatives, Settlement Administration Expenses, attorneys' fees and out-of-pocket litigation expenses, PAGA penalties (inclusive of both the LWDA PAGA Payment and the PAGA penalties paid to PAGA Group Members (the PAGA Group Payment)), and any employer-side payroll taxes for wages. The Parties agree, subject to Court approval, to the following allocations to be paid from the MSA:
- i. From the MSA, Class Counsel may seek from the Court a maximum of twenty-five percent (25%) of the MSA (\$750,000.00) in attorneys' fees in addition to actual litigation costs not to exceed Fifty Thousand Dollars and No Cents (\$50,000.00), for serving as Class Counsel.
 - ii. From the MSA, Named Plaintiffs may seek from the Court a Service Enhancement not to exceed Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00) each for serving as Class Representatives.
 - iii. From the MSA, a payment of Two Hundred Twenty-Five Thousand Dollars and No Cents (\$225,000.00) to the LWDA (the LWDA PAGA Payment), representing the LWDA's 75% share of the settlement attributable to PAGA penalties. In connection with settlement approval, the Named Plaintiffs shall notify the LWDA of the existence of the settlement and shall provide confirmation to Defendant of same. Should the LWDA object to the amount of this payment, the Parties agree to work in good faith to negotiate another agreeable amount.

- 1 iv. From the MSA, a payment of Seventy-Five Thousand Dollars
2 and No Cents (\$75,000.00) to be allocated among PAGA
3 Group Members (the PAGA Group Payment) based on the
4 number of pay periods each PAGA Group Member worked that
5 qualify them for membership in the PAGA Group.
- 6 v. From the MSA, Settlement Administration Expenses in a
7 reasonable amount, not to exceed Forty-Five Thousand Dollars
8 and No Cents (\$45,000.00).
- 9 vi. If the Court approves a lesser amount of attorney's fees,
10 litigation costs, or Service Enhancements than those sought by
11 Named Plaintiffs or Class Counsel, any amounts not approved
12 will be reallocated to the Net Settlement Amount, distributable
13 to Participating Class Members, and the amounts awarded will
14 not affect approval of the settlement.
- 15 vii. **Settlement Administrator's Duties.** The Settlement
16 Administrator will administer the notice, challenges, and opt
17 outs, informing Class Members of their rights in regard to the
18 proposed settlement as specified below; will disburse monies
19 per the terms of this Settlement Agreement as and when
20 authorized in this Settlement Agreement and by order of the
21 Court; and will inform the Parties and the Court of its
22 fulfillment of the duties imposed by this Settlement Agreement.
23 Settlement Administrator Expenses shall be paid from the
24 MSA. The Settlement Administrator shall issue Settlement
25 Payment checks to Participating Class Members under this
26 Settlement Agreement, as well as a Service Enhancement to the
27 Class Representatives and attorneys' fees and expenses
28 awarded to Class Counsel, the LWDA PAGA Payment, and the

PAGA Group Payment by sending such payments by mail or other reliable means to the respective recipients as specified below.

viii. **Net Settlement Amount.** Settlement Payments shall be allocated to the Participating Class Members for allegedly unpaid wages, overtime, premium wages, employer- and employee-side payroll taxes, and related fees, interest, and penalties. The Net Settlement Amount shall be used to pay all Settlement Payment amounts due to Participating Class Members based on their weeks worked as Class Members. Any unclaimed amounts shall be redistributed pro rata to the Participating Class Members.

ix. **Calculation of Class Member Settlement Payments.** The Settlement Administrator shall, after Final Approval of the Settlement Agreement by the Court and after the Settlement Effective Date, pay each Participating Class Member a pro rata portion of the Net Settlement Amount based on the number of weeks he or she worked as a Class Member. That pro rata portion shall be determined by dividing the total number of weeks worked as a Class Member by all members of the Class into the amount of the Net Settlement Amount to arrive at an amount per week; then, for each eligible Class Member, multiplying that amount times the number of weeks the Settlement Administrator determines that such individual was working as a Class Member.

x. **Calculation of PAGA Group Payments.** The Settlement Administrator will also conduct a similar pro rata calculation for each PAGA Group Member to determine their share of the

PAGA Group Payment and pay those amounts in a separate check to all PAGA Group Members, including any individuals who opt out of becoming Participating Class Members.

xi. **Eligible Work Weeks.** The number of eligible weeks worked by Class Members/PAGA Group Members shall be determined by the Settlement Administrator based on employment records to be provided by Defendant or by Lyneer Staffing Solutions or its agents as specified below as well as any documents and evidence provided by the Class Member, PAGA Group Member and/or Class Counsel.

xii. **Work Week Disputes.** Class Members/PAGA Group Members shall have the right to challenge the number of weeks worked reflected in the employment records. Challenges to the dates of employment and/or number of weeks worked listed on the Class Notice shall be sent directly to the Settlement Administrator at the address indicated on the Class Notice. Any challenge must be made during the Response Deadline. For such disputed claims, the records provided by Lyneer Staffing Solutions will be presumed accurate. If a Class Member or PAGA Group Member disputes those records, he or she has the burden to establish otherwise—i.e., a Participating Class Member who fails to provide written proof will have his or her challenge denied. In the event of any dispute over an individual's dates of employment, Defendant's Counsel, after consultation with Plaintiffs' Counsel, will investigate the challenge and determine whether any additional amount is owed to the Participating Class Member/PAGA Group Member making the challenge. The Parties will decide whether the

Participating Class Member's/PAGA Group Member's challenge shall be accepted. Payments on disputed claims will be made at Defendant's discretion following a conference with Class Counsel and, to the extent possible, resolved prior to finalizing the amounts distributable to Class Members and PAGA Group Members.

xiii. Class Members/PAGA Group Members entitled to recover under this Settlement Agreement will include only those individuals who are identified in Lyneer Staffing Solutions' records as having worked as Class Members/PAGA Group Members in California during the covered period, or those additional individuals who can provide to the Settlement Administrator evidence that they worked in that capacity notwithstanding the absence of Lyneer Staffing Solutions' records confirming such employment.

xiv. The Settlement Administrator will inform Class Counsel and Defendant's Counsel in writing of any timely filed disputes.

f. **Objections.** Only Participating Class Members who do not opt-out may object to the Settlement. Class Members who opt-out of the Settlement are not eligible to object.

i. **Timing.** All objections must be filed with the Court no later than the Response Deadline. The timeline to submit an objection will not be increased for returned mailings.

ii. **Format.** Any objections shall state: (a) the case name (e.g. *Gonzalez v. Burlington Coat Factory Warehouse Corporation*) and case number (5:18-cv-00666-JGB-SP); (b) the objecting person's or his/her attorney's full name, address, and telephone number; (c) the words "Notice of Objection" or "Formal

Objection;” (d) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (e) list identifying witness(es) the objector may call to testify at the Final Approval Hearing; and (f) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing; and (g) state whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class. Any objection must comply with Federal Rules of Civil Procedure, Rule 23(e)(5).

iii. **Notice of Intent to Appear.** Class Members who timely submit valid objections to the Settlement may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector’s own counsel. The Notice will request that the objector notify the Parties of the objector’s intent to appear at the Final Approval Hearing by mailing or filing a Notice of Intent to Appear with the Court by the Response Deadline.

iv. Anyone who fails to file and serve timely written objections in this manner shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Settlement and from filing any appeal from any Final Approval Order issued by the Court. The Parties may file a response to any objections submitted by objecting Class Members at or prior to the Fairness Hearing. Class Members shall be permitted to withdraw their objections in writing by submitting a withdrawal statement to the Settlement Administrator or as otherwise ordered by the Court.

- 1 g. **Requests for Exclusion (“Opt Outs”).** Class Members who wish to
2 “opt out” of and be excluded from this Settlement must submit a
3 written Request for Exclusion from the Settlement bearing a post-
4 mark prior to or on the Response Deadline.
- 5 i. **Format.** The Request for Exclusion must: (a) state the Class
6 Member’s name, address, telephone number, and last four
7 digits of the Class Member’s social security number or
8 employee identification number; (b) state the Class Member’s
9 desire to exclude himself or herself from the Settlement (*e.g.* “I
10 want to exclude myself from this settlement”); and (c) be
11 addressed to the Settlement Administrator; (d) be signed by the
12 Class Member or his or her lawful representative; and (e) be
13 postmarked no later than the Response Deadline.
- 14 ii. **Effect of “Opt-Out.”** Any Class Member who returns a timely,
15 valid, and executed Request for Exclusion will not participate
16 in or be bound by the Settlement and subsequent judgment and
17 will not receive a Settlement Payment from the Net Settlement
18 Amount. Class Members are still bound by the release of
19 PAGA claims even if they submit a valid Request for Exclusion
20 and will receive a check with his or her PAGA Group Payment
21 allocation from the \$75,000.00 in PAGA penalties if he or she
22 is a member of the PAGA Group.
- 23 iii. **Deficient Opt-Outs.** If a Class Member submits a Deficient
24 Opt-Out, the Settlement Administrator shall notify the Class
25 Member of the deficiency within five (5) business days of
26 receipt. The Class Member shall have until the end of the
27 Response Deadline or five (5) business days after the close of
28 the Response Deadline if the notice of deficiency is sent by the

1 Settlement Administrator within (5) business days of the end of
2 the Response Deadline to cure said deficiencies, at which point
3 his or her Request for Exclusion will be rejected if not received.
4 Class Members submitting untimely or Deficient Opt-Outs
5 shall be bound by the Settlement and its releases and will be
6 considered Participating Class Members for settlement
7 distribution purposes. Class Members shall be permitted to
8 rescind their Request for Exclusion in writing by submitting a
9 rescission statement to the Settlement Administrator not later
10 than one (1) business day prior to the Fairness Hearing, or as
11 otherwise ordered by the Court. The Settlement Administrator
12 shall not accept Late Requests for Exclusion without the
13 authorization of the Parties.

- 14 h. **Class Member Released Claims.** Upon Final Approval, each Class
15 Member who has not opted out of the Settlement shall be deemed to
16 have fully, finally, and forever released Releasees from all Settlement
17 Class Released Claims as set forth in Section IX.
- 18 i. **Class Representatives' Released Claims.** Upon Final Approval, the
19 Class Representatives shall be deemed to have fully, finally, and
20 forever released Releasees from all claims covered by the General
21 Release as set forth in Section IX.
- 22 j. **Entry of Judgment.** At the Fairness Hearing, the Parties will request
23 that the Court, among other things: (a) certify the Settlement Class
24 for purposes of settlement only; (b) enter a Final Approval Order in
25 accordance with the terms of this Settlement Agreement; (c) approve
26 the settlement as fair, adequate, reasonable, and binding on all
27 Participating Class Members/PAGA Group Members; and (d) enter an
28 Order permanently enjoining all Participating Class Members/PAGA

Group Members from pursuing and/or seeking to reopen claims that have been released by this Settlement Agreement.

VI. SETTLEMENT ADMINISTRATION

55. The Parties have agreed to the appointment of CPT Group, Inc. to perform the duties of Settlement Administrator.

56. **Settlement Funding.** No later than 10 calendar days after the Settlement Effective Date, Defendant shall pay by wire transfer or otherwise transmit to the QSF set up by the Settlement Administrator, the MSA. The MSA transferred into the QSF by Defendant shall constitute the total Settlement cash outlay by Defendant in connection with: (1) the resolution of this matter; (2) this Settlement Agreement; and (3) the dismissal of this Action. This sum is inclusive of payment for the MSA (and all payments to be made from the MSA as described herein) and tax treatments and tax reporting of payments to Participating Class Members, preparation of tax returns (and the taxes associated with such tax returns as defined below) by the QSF, and applicable federal, state and local income taxes and all applicable payroll taxes.

57. The Settlement Administrator shall serve as Trustee of the QSF and shall act as a fiduciary with respect to the handling, management and distribution of the QSF, including with regard to making all payments per the terms of this Settlement Agreement and reporting and paying any taxes on such payments. The Settlement Administrator shall act in a manner necessary to qualify the MSA as a “Qualified Settlement Fund” under Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section 1.468B-1, et seq., and to maintain that qualification.

58. **Settlement Administration Duties.** The Settlement Administrator shall be responsible for: (a) calculating each Class Member’s and PAGA Group Member’s potential Settlement Payments; (b) preparing and mailing to all Class Members and PAGA Group Members the Class Notice with estimated Settlement Payment amounts and instructions on how to opt out of or object to the non-PAGA portions of the Settlement, and will take appropriate steps to trace, update and locate any individual

1 Class Members or PAGA Group Members whose address or contact information as
2 provided to the Settlement Administrator is inaccurate or outdated; (c) receiving and
3 serving on Class Counsel and Defendant's Counsel, and the Court, Requests for
4 Exclusion and any withdrawal and rescission statements; (d) providing to Class Counsel
5 and Defendant's Counsel a weekly report of activity; (e) establishing a toll free telephone
6 line and responding to inquiries and requests for information or assistance from Class
7 Members; (f) determining and paying the final amounts due to be paid to Participating
8 Class Members after adjustment for funds due to Class Members who opt out of the
9 settlement; (g) reporting to Class Counsel, Defendant's Counsel, and the Court regarding
10 the completion of the tasks identified in this paragraph; (h) carrying out other related
11 tasks including the proper maintenance of the QSF and reporting required for that
12 account, in accordance with the terms of this Settlement Agreement; and (i) establishing
13 and maintaining a website dedicated to the Settlement, and hosting the Settlement
14 Agreement, Class Notice, preliminary approval motion, attorney fee motion, and final
15 approval motions on the website for Class Members' review.

16 59. All disputes relating to the Settlement Administrator's ability and need to
17 perform its duties shall be referred to the Court, if necessary, which will have continuing
18 jurisdiction over the terms and conditions of this Settlement Agreement, until all
19 payments and obligations contemplated by the Settlement Agreement have been fully
20 executed.

21 60. **Participating Class Member and PAGA Group Member Final**
22 **Calculations.** When and if the Court grants Final Approval of the Settlement, and the
23 Settlement Effective Date as defined herein has passed, the Settlement Administrator
24 shall prepare a final list of all Participating Class Members and PAGA Group Members.
25 The Settlement Administrator shall provide this list to Defendant within 5 days after the
26 Settlement Effective Date. For each Participating Class Member and PAGA Group
27 Member on this list, the Settlement Administrator will re-calculate the amounts due to
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each Participating Class Member and PAGA Group Member and issue checks payable to said Participating Class Members and PAGA Group Members.

61. **Tax Treatment.** Except for the Service Enhancement described above to be paid to the Class Representatives, all Settlement Payments to Participating Class Members shall be allocated as follows: 1/3 of each Settlement Payment as unpaid wages and 2/3 of each Settlement Payment as interest and penalties. All PAGA Group Payments will be allocated entirely to penalties. The PAGA Group Payments and the 2/3 of each Settlement Payment representing interest and penalties shall be reported on IRS 1099 Forms. All employee-side payroll and all applicable state and federal withholding taxes on the 1/3 of Settlement Payment that is unpaid wages will be withheld from Settlement Payments and shall be reported on IRS W2 Forms. The Class Representatives and Participating Class Members shall be exclusively liable for any and all tax liability. The Settlement Administrator shall be responsible for the timely reporting and remitting of the employer payroll tax payment to the appropriate taxing authorities and shall indemnify Defendant for any penalty arising out of an incorrect calculation and/or interest with respect to late payment of the same. All Parties represent that they have not received, and shall not rely on, advice or representations from other Parties or their agents or attorneys regarding the tax treatment of payments under federal, state, or local law.

62. The Service Enhancement to the Class Representatives shall be treated as compensation for non-wage related claims, injuries, and reimbursement, and shall be reported on an IRS 1099 without tax withholdings.

63. All portions of Settlement Payments to Named Plaintiffs and/or Participating Class Members that are allocated as unpaid wages under this Settlement Agreement shall be considered compensation for disputed hours worked as Class Members during the period of employment with Lyneer Staffing Solutions. To the extent any Settlement Payment results in any overpayment of unemployment benefits to the Named Plaintiffs

and/or any Participating Class Member, the amount of any such overpayment shall be the responsibility of the individual Named Plaintiff and/or Participating Class Member.

64. After all payments have been disbursed from the QSF, the Settlement Administrator shall dissolve the QSF and file a return (SF-1120) with the IRS.

VII. NOTICE TO THE PARTICIPATING CLASS MEMBERS/PAGA GROUP MEMBERS

65. **Class Database.** Defendant shall obtain from Lyneer Staffing Solutions, and within forty (40) days after the Date of Preliminary Approval by the Court, Defendant shall provide to the Settlement Administrator information in electronic format regarding all Class Members/PAGA Group members, including name(s), last known residence addresses, Social Security numbers, and dates worked as Class Members/PAGA Group Members during the Class Period/PAGA Period.

66. Class data shall only be used by the Settlement Administrator for the purpose of calculating settlement shares and finding and notifying Class Members/PAGA Group Members of the settlement. Class data for Class Members/PAGA Group Members shall not be disclosed to the Named Plaintiffs, Class Counsel, or any other Class Members or PAGA Group Members without the written consent of Defendant and will be subject to the Settlement Administrator's confidentiality agreement.

67. Prior to mailing the Class Notice, the Settlement Administrator will update the addresses for the Class Members/PAGA Group Members using the National Change of Address database and other available resources deemed suitable by the Settlement Administrator. Any returned envelopes from the initial mailing with forwarding addresses will be used by the Settlement Administrator to locate Class Members/PAGA Group Members and re-mail the Class Notice to the correct or updated address. The Settlement Administrator will use all appropriate tracing methods, including skip tracing, to ensure that the Class Notice are received by Class Members/PAGA Group Members.

1 **68. Undeliverable Notices.** The Settlement Administrator shall also take
2 reasonable steps including skip tracing to locate any Class Member/PAGA Group
3 Member whose Class Notice is returned as undeliverable.

4 **69.** Within fourteen (14) days of receiving the class data from Defendant and
5 after it has completed all of the address updates for Class Members/PAGA Group
6 Members, the Settlement Administrator shall mail the Class Notice to Class
7 Members/PAGA Group Members. At least five (5) business days prior to this mailing,
8 the Settlement Administrator shall provide Defendant with a preliminary calculations
9 report listing the estimated Settlement Payment amounts to each Class Member/PAGA
10 Group Member.

11 **70.** Class Members shall have until the Response Deadline to opt out of the
12 Class or object to the Settlement.

13 **71.** Each Class Notice mailed to a Class Member/PAGA Group Member will
14 identify the dates of employment and/or number of compensable weeks that Lyneer
15 Staffing Solution's records indicate the individual worked as a Class Member and
16 estimate each Class Member's pro rata share of the Net Settlement Amount including (if
17 applicable) their share of the PAGA Group Payment as members of the PAGA Group.

18 **72.** The Settlement Administrator shall (a) date stamp all original Requests for
19 Exclusion that it receives; (b) date stamp all original rescission of Requests for Exclusion
20 it receives; and (c) within fourteen (14) calendar days after expiration of the Response
21 Deadline provide Defendant's counsel and Class Counsel with a written report which
22 certifies (i) the number of Class Members who have submitted valid Requests for
23 Exclusion; (ii) the number of Settlement Members who have submitted an objection to
24 the settlement, along with copies of any objections. Additionally, the Settlement
25 Administrator will provide to counsel for the Parties any updated reports regarding the
26 administration of the Settlement Agreement on a weekly basis and as reasonably
27 requested by a Party. Neither Requests for Exclusion, nor rescissions thereof, nor
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identifying information of individuals who submit same, shall be provided to Class Counsel.

VIII. CALCULATION OF SETTLEMENT PAYMENTS AND SETTLEMENT DISTRIBUTION

73. **Calculation of Settlement Amounts.** The Settlement Administrator will calculate pro rata Settlement Payments to Class Members based on each Class Member's relative percentage of eligible employee service time in the Class as reflected on the records of Lyneer Staffing Solutions or its agents. This same percentage will also determine the pro rata share of the PAGA payment to the members of the PAGA Group. After deducting for attorney's fees, litigation costs, the Service Enhancement, the PAGA payment (both the LWDA PAGA Payment and the PAGA Group Payments paid to the PAGA Group), Settlement Administration Expenses and the employer's share of payroll taxes on any portions of claims paid under this Settlement that would qualify as wages to settling Class Members, the remainder of the MSA will be allocated to Class Members as the Net Settlement Amount.

74. **Eligibility for Settlement Payments.** Class Members who have not opted-out of the settlement will be considered Participating Class Members eligible to receive a Settlement Payment. Only Participating Class Members will be eligible to receive a Settlement Payment.

75. **Final Calculations.** The Settlement Administrator shall make the final calculation of Settlement Payments from the Net Settlement Amount to be distributed to the Participating Class Members within 5 days after the Settlement Effective Date. Upon completion of its final calculation of payments, and at least 5 days prior to the distribution of payments to Participating Class Members from the Net Settlement Amount, the Settlement Administrator shall provide the Parties with a redacted report listing the amount of all Settlement Payments to be made to each Participating Class Member from the Net Settlement Amount. The Settlement Administrator shall also provide Defendant's Counsel with an un-redacted copy of the report.

1 76. **Settlement Disbursement.** Within 20 days after the Settlement Effective
2 Date, the Settlement Administrator shall distribute and pay Settlement Payment checks to
3 all Participating Class Members, pay the Class Representatives their Enhancement
4 Payments, issue a check to the LWDA for the LWDA PAGA Payment, issue checks to
5 the PAGA Group for their PAGA Group Payments, and pay Class Counsel's attorney's
6 fees and costs.

7 77. **Disbursement Declaration.** The Settlement Administrator shall be
8 responsible for issuing and mailing the checks and any necessary tax reporting forms to
9 Participating Class Members, PAGA Group Members, the Class Representatives, Class
10 Counsel, the LWDA, and Defendant. The Settlement Administrator shall provide a
11 declaration of payment, which will be filed with the Court and served on Class Counsel
12 and Defendant's counsel within 30 days of mailing the payments to Participating Class
13 Members, PAGA Group Members, the Class Representatives, Class Counsel, and the
14 LWDA.

15 78. **Uncashed Settlement Checks.** Participating Class Members who are sent
16 Settlement Payments and PAGA Group Members who are sent PAGA Group Payments
17 shall have 180 calendar days after mailing by the Settlement Administrator to cash their
18 checks and will be so advised of such deadline.

19 a. **Reminder Postcard.** If any checks are not redeemed or deposited within
20 ninety (90) calendar days after mailing, the Settlement Administrator will
21 send a reminder postcard indicating that unless the check is redeemed or
22 deposited in the next ninety (90) days, it will expire and become non-
23 negotiable, and offer to replace the check if it was lost or misplaced.

24 b. **Cy Pres.** If any checks remain uncashed or not deposited by the
25 expiration of the 90-day period after mailing the reminder notice, the
26 Settlement Administrator will, within one hundred eighty (180) calendar
27 days after the checks are mailed, cancel the checks. All funds associated
28 with the individual settlement share checks returned as undeliverable and

funds associated with those individual settlement share checks remaining un-cashed, shall be transmitted by the Settlement Administrator to the Cy Pres Beneficiary.

IX. RELEASE BY PARTICIPATING CLASS MEMBERS AND CLASS REPRESENTATIVES

79. **Release by the Named Plaintiffs.** The releases agreed upon and made part of the settlement by the Named Plaintiffs, and each of them (the “General Release”), shall include a general release of Releasees, as defined above, from all waivable claims of any kind (whether known or unknown), and including those under the Age Discrimination in Employment Act (“ADEA”) as amended, that Named Plaintiffs may have against Releasees, which arise from or relate to their affiliation or employment and/or the termination of their affiliation or employment with Defendant and/or any Releasee. The released/waived claims include, but are not limited to, any and all claims that Releasees: 1) discriminated, harassed or retaliated against Named Plaintiffs on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity/expression, age, disability, veteran status or other characteristic or activity protected by law; 2) violated any of Defendant’s policies, procedures, covenants or express or implied contracts of any kind, 3) violated any public policy, statutory or common law (including tort), or 4) are in any way obligated to pay Named Plaintiffs any wages, penalties, damages, expenses, interest, costs or attorneys’ fees in relation to an alleged violation of any waivable local, state or federal law. This General Release specifically includes claims under the California Fair Employment and Housing Act, the Unruh Civil Rights Act, the California Equal Pay Act, the California Business and Professions Code, the California Labor Code, California Whistleblower Protection Laws, the California Family Rights Act, the California Pregnancy Disability Leave Law, the California Worker Adjustment and Retraining Notification Act, any applicable California Industrial Welfare Commission Wage Order, and the California Constitution.

1 80. Named Plaintiffs also specifically waive all rights and benefits under
2 Section 1542 of the California Civil Code, which states:

3 **A general release does not extend to claims that the creditor or**
4 **releasing party does not know or suspect to exist in his or her favor**
5 **at the time of executing the release and that, if known by him or**
6 **her, would have materially affected his or her settlement with the**
7 **debtor or released party.**

8 81. In connection with such waiver and relinquishment, Named Plaintiffs hereby
9 acknowledge that they or their attorneys may hereafter discover claims or facts in
10 addition to, or different from, those which they now know or believe to exist, but that
11 Named Plaintiffs expressly agree to fully, finally and forever settle and release any and
12 all claims, known or unknown, suspected or unsuspected, which exist or may exist on
13 their behalf against Defendant and/or any Releasees at the time of execution of the
14 Settlement Agreement, including, but not limited to, any and all claims relating to or
15 arising from Named Plaintiffs' affiliation or employment with Defendant and/or any
16 Releasee or the cessation of that affiliation or employment. Named Plaintiffs and
17 Defendant further acknowledge, understand and agree that this representation and
18 commitment is essential to each Party and that this Settlement Agreement would not have
19 been entered into were it not for this representation and commitment.

20 82. Named Plaintiffs agree that this Settlement Agreement is further conditioned
21 upon their covenant not to participate in any proceeding seeking penalties under
22 California Labor Code § 2699, *et seq.*, for claims pled or that could have been pled in this
23 Action.

24 83. If any of the provisions, terms, clauses, waivers or releases of claims and
25 rights contained in this General Release are declared illegal, unenforceable, or ineffective
26 in a legal forum of competent jurisdiction, such provisions, terms, clauses, waivers or
27 releases of claims or rights shall be modified, if possible, in order to achieve, to the
28 extent possible, the intentions of the Parties and, if necessary, such provisions, terms

1 clauses, waivers and releases of claims and rights shall be deemed severable, such that all
2 other provisions, terms, clauses and waivers and releases of claims and rights contained
3 in this General Release shall remain valid and binding upon both Parties, provided,
4 however, that, notwithstanding any other provision of this General Release, if any portion
5 of the waiver or release of claims or rights is held to be unenforceable, Defendant, at its
6 option, may seek modification or severance of such portion, or terminate the Settlement
7 Agreement pursuant to Section XIII.

8 84. Named Plaintiffs further agree that neither of them will object to this
9 Settlement nor attempt to opt-out of it.

10 85. **Release by Participating Class Members/PAGA Group Members.** The
11 releases agreed upon and made part of the settlement by Participating Class Members
12 (“Settlement Class Released Claims”) shall include a release of Releasees, as defined
13 above, of the Settlement Class Released Claims. Settlement Class Released Claims are
14 any and all wage and hour claims that accrued during or prior to the Class Period and that
15 were or could have been asserted in the instant Action based on the allegations in any
16 pleading in the Action, including the Second Amended Complaint, whether such claims
17 were asserted or not, including but not limited to any and all claims for straight time,
18 overtime, minimum wage, meal and rest breaks, recovery periods, wage statements,
19 waiting time penalties, unfair competition, failure to produce personnel or wage records,
20 and claims under the California Labor Code Private Attorneys General Act, Labor Code
21 §§ 2699, *et seq.* (“PAGA”), as well as any and all state or federal claims that are
22 derivative or directly related to the foregoing claims, including any claims for wages,
23 penalties, premium pay, punitive damages, and interest, and/or under the common law,
24 such as conversion and unjust enrichment, and any claims under the California Business
25 & Professions Code. All Participating Class Members shall be bound by the release,
26 unless they formally opt-out. The PAGA Group shall be bound by the release as to any
27 PAGA claims even if they have formally opted-out of the Class.

1 86. Settlement is further conditioned upon all Participating Class Members
2 releasing any claim under PAGA, and upon covenant by Participating Class Members
3 from participating in any proceeding seeking penalties under PAGA for claims which
4 were or could have been alleged in any pleading in the Action based on the facts alleged
5 in the Action, including the Second Amended Complaint.

6 87. Nothing in this Settlement Agreement shall be construed to bar any claims
7 by the Named Plaintiffs or Participating Class Members that may arise after the Class
8 Period. This release also specifically excludes any claims the Named Plaintiffs and
9 Participating Class Members may have that arise from time periods in which they were
10 not working as Class Members during the Class Period.

11 **X. DUTIES OF THE PARTIES PRIOR TO PRELIMINARY APPROVAL AND**
12 **BETWEEN PRELIMINARY AND FINAL APPROVAL**

13 88. The Parties shall promptly submit this Settlement Agreement to the Court
14 together with a Motion for Preliminary Approval of Settlement and Certification of
15 Settlement Class. The motion shall also seek an Order:

- 16 a. Preliminarily approving the settlement;
- 17 b. Approving as to form and content the proposed Notice of Settlement;
- 18 c. Directing the mailing of the Notice of Settlement by first class mail to
19 members of the Settlement Class;
- 20 d. Preliminarily certifying the Settlement Class for purposes of
21 settlement and preliminarily appointing Named Plaintiffs and
22 Plaintiffs' Counsel as representatives of the Settlement Class;
- 23 e. Preliminarily approving settlement administration services to be
24 provided by the Settlement Administrator;
- 25 f. Preliminarily approving the proposed service awards to Named
26 Plaintiffs as Class Representatives;
- 27 g. Preliminarily approving the application for payment of reasonable
28 attorneys' fees and costs to Class Counsel;

- 1 h. Enjoining Named Plaintiffs and all Class Members and anyone acting
2 on behalf of any Class Member, until the Class Member opts out,
3 from: further prosecution of the Action; filing, or taking any action
4 directly or indirectly, to commence, prosecute, pursue or participate
5 on a class or collective or representative action basis any action, claim
6 or proceeding against Defendant in any forum in which any of the
7 claims subject to the Settlement are asserted, or which in any way
8 would prevent any such claims from being extinguished; or seeking,
9 whether on a conditional basis or not, certification of a class or
10 collective action that involves any such claims; and
11 i. Scheduling a Fairness Hearing on the question of whether the
12 proposed settlement should be finally approved as fair, reasonable and
13 adequate as to the members of the Settlement Class.

14 89. Defendant shall provide to the Settlement Administrator within forty (40)
15 days after Preliminary Approval is granted the class membership list and identification
16 and contact information specified in Paragraph VII.65 above. Defendant shall submit
17 this information in electronic format as specified by the Settlement Administrator and
18 shall thereafter, during the notice, approval, opt out, and payment processes, assist the
19 Settlement Administrator as necessary or as requested to use, correct, or update this
20 information in order to enable the Settlement Administrator to locate and contact Class
21 Members, and to provide information needed or requested by the Settlement
22 Administrator in order to make determinations on Class Members' challenges.

23 90. The Parties shall cooperate with each other and the Settlement Administrator
24 during the process of giving Class Members notice and opportunity to opt out of or object
25 to the Settlement, in every way necessary and appropriate to assure effective
26 communication to individual Class Members of information concerning their rights and
27 obligations under this Settlement Agreement.

1 91. Class Counsel shall provide the Court at least 5 days prior to the Fairness
2 Hearing a declaration by the Settlement Administrator of due diligence and proof of
3 mailing of the Notice of Settlement required to be mailed to Class Members by this
4 Settlement Agreement, and of the delivery results of the Settlement Administrator's
5 mailings including tracing and re-mailing efforts.

6 92. **CAFA Notice.** Pursuant to CAFA, within ten (10) business days after the
7 Settlement Agreement is first filed with the Court, Defendant will mail CAFA Notices to
8 the Attorney General of the United States, the Attorney General of the State of
9 California, and the Attorney General of any other state where a Class Member resides,
10 according to the Database. In connection with the final approval motion, Defendant will
11 submit a declaration stating its compliance with the CAFA Notice procedures.

12 **XI. DUTIES OF THE PARTIES AFTER FINAL COURT APPROVAL**

13 93. The Parties will submit a proposed Final Approval Order, which shall
14 include findings and orders:

- 15 a. Approving the settlement, adjudging the terms thereof to be fair,
16 reasonable and adequate, and directing that its terms and provisions
17 be carried out;
- 18 b. Approving the payment of a Service Enhancement to the Named
19 Plaintiffs as Class Representatives;
- 20 c. Approving Class Counsel's application for an award of attorneys' fees
21 and reimbursement of out-of-pocket litigation expenses;
- 22 d. Releasing and extinguishing all Class Member Released Claims and
23 Class Representatives Released Claims;
- 24 e. Permanently enjoining all Class Members and Participating Class
25 Members from pursuing and/or seeking to reopen claims that have
26 been released by this Settlement Agreement; and
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- f. Providing that the Court will retain jurisdiction to oversee administration and enforcement of the terms of the Settlement and the Court's orders.

94. Following entry of the Court's Final Approval Order, the Parties will each act to assure its timely execution and the fulfillment of all its provisions, including but not limited to the following:

- a. Should an appeal be taken from the Final Approval Order, all Parties will support the approval order on appeal;
- b. Class Counsel and Defendant's Counsel will assist the Settlement Administrator as needed or requested in the process of identifying and locating Class Members entitled to payments from the QSF and assuring delivery of such payments;
- c. Class Counsel and Defendant's Counsel will assist the Settlement Administrator as needed or requested in responding to late requests for payments and the fair administration of that payment;
- d. Class Counsel and Defendant's Counsel will cooperate with each other and assist the Settlement Administrator as needed.
- e. The Parties and Class Counsel will certify to the Court completion of all payments required to be made by this Settlement Agreement.

XII. PRELIMINARY TIMELINE FOR COMPLETION OF SETTLEMENT

95. The preliminary schedule for notice, approval, and payment procedures carrying out this settlement is as follows. The schedule may be modified depending on whether and when the Court grants necessary approvals and orders notice to the class, and sets further hearings. In the event of such modification, the Parties shall cooperate in order to complete the settlement procedures as expeditiously as reasonably practicable.

Within 40 days after the Date of Preliminary Approval	Defendant to provide the Settlement Administrator the names, last known
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	residence addresses, Social Security numbers, and dates worked as Class Members/PAGA Group Members during the Class Period/PAGA Period.
14 days after receipt of class data from Defendant	Settlement Administrator to complete any skip trace or other address searched for Class Members, including updating any Class Member contact information. Mailing by first class mail of Class Notice.
5 business days before mailing Class Notice.	Settlement Administrator to provide Defendant's counsel with estimated Settlement Payments to each Class Member and PAGA Group Payments to PAGA Group Members.
60 days after mailing Class Notice.	Response Deadline for Class Members to opt-out or object.
1 business day prior to the Fairness Hearing.	Last day to rescind opt-outs.
30 days after entry of the Court's Final Approval Order, if no appeals are filed.	Settlement Effective Date

Within 5 days after Settlement Effective Date.	Settlement Administrator to make the final calculation of Settlement Payments from the Net Settlement Amount to be distributed to the Participating Class Members and provide Defendant's counsel with a report listing the amount of all payments to be made to each Participating Class Member and/or members of the PAGA Group.
Within 10 days after the Settlement Effective Date	Defendant to fund the QSF.
Within 20 days after the Settlement Effective Date	Settlement Administrator to distribute and pay Settlement Payment checks to all Participating Class Members from the QSF, pay the Class Representatives their enhancement payment and pay Class Counsel the attorney's fees and costs approved by the Court, pay the LWDA PAGA Payment to the LWDA and pay the PAGA Group Payment to PAGA Group Members.
Within 30 days after distribution.	Settlement Administrator to provide a declaration of disbursement, which will be

	filed with the Court and served on Class Counsel and Defendant.
180 days after payment of first round settlement checks	Uncashed checks voided and Settlement Administrator pays uncashed funds to Cy Pres Beneficiary.

XIII. VOIDING OR MODIFYING THE SETTLEMENT AGREEMENT

96. Defendant has the right to withdraw from the Settlement within thirty (30) days after expiration of the opt-out period if: (a) 5% or more of all Class Members opts out of the Settlement; or (b) Named Plaintiffs or their counsel breach this Settlement Agreement; or (c) the Court does not certify the Settlement Class or does not certify a class releasing the claims set forth herein, or if the settlement is construed by the Court to be different from the Settlement Agreement. In the event of Defendant's withdrawal, Defendant will pay the costs already incurred by the Settlement Administrator.

97. If for any reason the Settlement is not approved by the Court, or if Defendant withdraws from the Settlement, this Settlement Agreement and any related settlement documents will be null and void, other than the confidentiality and non-disclosure provisions in Section XIV and the non-admission provisions in Paragraph V.54.a, and any class action certified for settlement purposes will be vacated. In such an event, neither this Settlement Agreement, nor the settlement documents, nor the negotiations leading to the Settlement may be used as evidence for any purpose, and Defendant shall retain the right to challenge all claims and allegations in the action, to assert all applicable defenses, and to dispute the propriety of class or collective certification on all applicable grounds.

98. Other than as specified above, this Settlement Agreement may not be changed, altered, or modified, except in writing and signed by counsel for the Parties

hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

XIV. CONFIDENTIALITY AND PUBLICITY

99. Names of Participating Class Members and their allocation amounts shall be kept strictly confidential by the Settlement Administrator, who will not release such information to Class Counsel and will only file such information under seal if necessary. Class Counsel agrees that any information they receive or have received in connection with this Settlement, may be used for this action only, and may not be used for any purpose or in any other action or proceeding.

100. Named Plaintiffs and Class Counsel agree not to disclose the terms of this settlement, except in court papers, or if required by legal process, as necessary to effectuate and administer the terms of this Settlement, or for accounting or tax reporting purposes, or as ordered by the Court. Neither Named Plaintiffs nor Class Counsel, directly or indirectly, shall issue a press release, hold a press conference, respond to any press inquiries, publish information about the settlement on any website (other than used by the Settlement Administrator for claims administration purposes) or on social media, or otherwise publicize the settlement. After the filing of the motion for preliminary approval, Class Counsel may respond to any press inquiries only that the matter has been resolved. This provision does not limit Class Counsel's ability to refer to this settlement in other cases to support Class Counsel's experience and adequacy of counsel.

101. Returns and/or Destruction of Confidential Settlement Materials.
Named Plaintiffs and Class Counsel agree to return and/or destroy all confidential documents produced to them for settlement purposes in this action. If Named Plaintiffs and Class Counsel elect to destroy said documents, they shall timely provide an affidavit of destruction to Defendant.

XV. PARTIES' AUTHORITY

102. The signatories hereby represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

XVI. MUTUAL FULL COOPERATION

103. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, executing such documents and taking such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court or otherwise to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and Defendant's counsel, take all necessary steps to secure the Court's preliminary and final approval of this Settlement Agreement.

XVII. NOTICES

104. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To Plaintiffs' Counsel:

David Mara

Jamie Serb

Mara Law Firm, PC

2650 Camino Del Rio North, Suite 205

San Diego, California 92108

Tel: 619-234-2833

Email: dmara@maralawfirm.com

jserb@maralawfirm.com

To Defendant's Counsel:

Rick L. Shackelford

GREENBERG TRAURIG, LLP

1840 Century Park East, Suite 1900

Los Angeles, CA 90067

Tel: 310-586-7700

Fax: 310-586-7800

Email: *shackelfordr@gtlaw.com*

If the identity of the persons to be notified for any Party changes, or their address changes, that Party shall notify all other Parties of said change in writing.

XVIII. MISCELLANEOUS PROVISIONS

105. Captions and Titles. 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 Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

106. Drafting. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms-length negotiations between the Parties. Neither party shall be considered the "drafter" of the Settlement Agreement for purposes of having terms construed against that party, and this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his, her or its counsel participated in the drafting of this Settlement Agreement.

107. Extensions of Time. If a party cannot reasonably comply with an obligation under this Settlement Agreement by the deadline set forth herein applicable to that obligation, that party may apply to the Court for a reasonable extension of time to fulfill that obligation. Consent to such a request for an extension will not be unreasonably withheld by the other party.

1 **108. Governing Law.** The rights and obligations of the Parties hereunder shall
2 be construed and enforced in accordance with, and shall be governed by, the laws of the
3 State of California, without regard to principles of conflict of laws.

4 **109. No Impact on Benefit Plans.** Neither the Settlement nor any amounts paid
5 under the Settlement will modify any previously credited hours or service under any
6 employee benefit plan, policy, or bonus program sponsored by Releasees. Such amounts
7 will not form the basis for additional contributions to, benefits under, or any other
8 monetary entitlement under Releasees' sponsored benefit plans, policies, or bonus
9 programs. The payments made under the terms of this Settlement shall not be applied
10 retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any
11 other form of compensation for the purposes of any Releasees' benefit plan, policy, or
12 bonus program. Releasees retain the right to modify the language of Releasees' benefit
13 plans, policies and bonus programs to effect this intent, and to make clear that any
14 amounts paid pursuant to this Settlement are not for "hours worked," "hours paid,"
15 "hours of service," or any similar measuring term as defined by applicable plans, policies
16 and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other
17 purpose, and that additional contributions or benefits are not required by this Settlement
18 Agreement.

19 **110. Integration.** This Settlement Agreement, along with attached exhibits,
20 contains the entire agreement between the Parties relating to the settlement and
21 transaction contemplated hereby, and all prior or contemporaneous agreements,
22 understandings, representations, and statements, whether oral or written and whether by a
23 Party or such Party's legal counsel, are merged herein. No rights hereunder may be
24 waived except in writing.

25 **111. No Prior Assignments.** This Settlement Agreement shall be binding upon
26 and inure to the benefit of the Parties hereto and their respective heirs, trustees,
27 executors, administrators and successors. The Parties hereto represent, covenant, and
28 warrant that they have not directly or indirectly, assigned, transferred, encumbered, or

purported to assign, transfer, or encumber 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.

112. **Class Member Signatories.** It is agreed that because the members of the Class are so numerous, it is impossible or impractical to have each member of the Class execute this Settlement Agreement. The Class Notice attached hereto will advise all Class Members of the binding nature of the release and such shall have the same force and effect as if this Settlement Agreement were executed by each member of the Class.

XIX. COUNTERPARTS

113. This Settlement Agreement may be executed in counterparts with signatures transmitted by facsimile or as an electronic image of the original signature. 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 Agreement, which shall be binding upon and effective as to all Parties. A facsimile signature shall have the same force and effect as the original signature.

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: 6/17/2020

AGonzales
Amanda Gonzalez

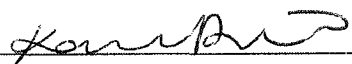
PLAINTIFF

Dated: 6/17/2020

A. Nomys
Audriana Gonzalez

1
2 **DEFENDANT**

3
4 Dated: 6/22/20


Burlington Coat Factory Warehouse Corporation
By: Kanon D. Lee
Its: General Counsel

5
6
7
8
9 **APPROVED AS TO FORM.**

10
11 Dated: 06/23/20

12 **GREENBERG TRAURIG, LLP**

13 By: 
Rick L. Shackelford
Ryan C. Bykerk
Attorney for Defendant,
Burlington Coat Factory Warehouse Corporation

14
15
16
17
18
19 Dated: 6.17.2020

MARA LAW FIRM, PC

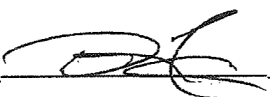
20 By: 
David Mara
Jamie Serb
Tony Roberts
Attorney for Plaintiffs,
Amanda Gonzalez and Audriana Gonzalez

Exhibit A

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA
Amanda Gonzalez and Audriana Gonzalez, on behalf of themselves, all others similarly situated, and on behalf
of the general public v. Burlington Coat Factory Warehouse Corporation
Case No. 5:18-cv-00666-JGB-SP

NOTICE OF CLASS ACTION SETTLEMENT

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected by whether you act or don't act.*

TO: All current and/or former non-exempt, non-union, hourly employees provided as temporary workers by Lyneer Staffing Solutions who worked one or more shifts in a workweek at Burlington's distribution centers located in California at any time between February 27, 2014 and [the date that is 60 days from the date the Settlement Agreement is fully executed, or the Date of Preliminary Approval of this settlement, inclusive, whichever is earliest] ("Class").

The United States District Court for the Central District of California has granted preliminary approval to a proposed settlement ("Settlement") of the above-captioned lawsuit ("Action"). Because your rights may be affected by this Settlement, it is important that you read this Notice of Class Action Settlement ("Notice") carefully.

The Court has certified the following class for settlement purposes ("Class" or "Class Members"):

All current and/or former non-exempt, non-union, hourly employees provided as temporary workers by Lyneer Staffing Solutions who worked one or more shifts in a workweek at Burlington's distribution centers located in California at any time between February 27, 2014 and [the date that is 60 days from the date the Settlement Agreement is fully executed, or the Date of Preliminary Approval of this settlement, inclusive, whichever is earliest.]

To be clear, you are a part of the Class if you worked as a full-time or part-time employee provided by Lyneer Staffing Solutions at a Burlington Coat Factory Warehouse Corporation distribution center. The purpose of this Notice is to provide a brief description of the claims alleged in the Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

WHAT INFORMATION IS IN THIS NOTICE

1. Why Have I Received This Notice?.....	Page 2
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1. Why Have I Received This Notice?

Records relating to your employment with Lyneer Staffing Solutions or one of its affiliates indicate that you may be a Class Member. The Settlement will resolve all Class Members' Released Claims, as described below, from February 27, 2014 through [the date that is 60 days from the date the Settlement Agreement is fully executed, or the Date of Preliminary Approval of this settlement, inclusive, whichever is earliest.] (the "Class Period").

A Preliminary Approval Hearing was held on [the date of Preliminary Approval], in the United States District Court for the Central District of California. The Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice. The Court will hold a Final Approval Hearing concerning the proposed settlement on [the date of final approval hearing], 2020 at [time a.m./p.m.], before the Honorable Jesus G. Bernal in Courtroom 1, located at 3470 12th Street, Riverside, California 92501.

2. What Is This Case About?

The action entitled *Amanda Gonzalez and Audriana Gonzalez v. Burlington Coat Factory Warehouse Corporation*, Case No. 5:18-cv-00666-JGB-SP, was commenced by Amanda and Audriana Gonzalez on February 27, 2018 in San Bernardino County Superior Court. Burlington removed the action to federal court, and the action is currently pending in the United States District Court, Central District of California.

Plaintiffs Amanda and Audriana Gonzalez alleged that as a result of alleged uncompensated time spent in security lines/bag checks, among other things, they and the Class were not paid all wages due, including all overtime hours at the applicable premium rates of pay, all applicable minimum wages, and compensation for all hours worked, were not provided meal and rest periods or paid additional sums of money in lieu thereof, were not furnished accurate and compliant paystubs, were not paid all wages due at termination of employment, and they allege that these alleged practices violated California's Unfair Competition Law. In addition, Plaintiffs sought penalties for these violations under the Private Attorneys General Act ("PAGA"). Finally, Plaintiffs alleged that although they were employed by Lyneer Staffing Solutions, Burlington is liable for these alleged violations as a joint employer. Burlington disputes these allegations on the grounds it is not a joint employer and believes it complied with the law.

The parties engaged in significant efforts to obtain the facts regarding the claims asserted, including the exchange of statistical data regarding Plaintiffs and the individuals Plaintiffs intended to represent, two separate mediation sessions, and detailed briefing and factual and legal analysis in connection with those mediations. The parties disagree as to the probable outcome of the Action with respect to liability and damages if the Action were not settled. While Plaintiffs and Burlington are prepared to proceed with litigating the Action, each side recognizes that litigating is a risky and costly proposition and that each may not prevail on any or all of the claims.

This Settlement is the result of good-faith and arm's-length negotiations between the Plaintiffs and Burlington. Each side agrees that given the risks and expense associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and is in the best interests of the Class Members.

The Court has not determined whether any laws have been violated, nor has it decided in favor of Amanda or Audriana Gonzalez; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial.

3. Am I A Class Member?

You are a Class Member if you are or were a non-exempt, non-union, hourly employee provided as a full-time or part-time temporary worker by Lyneer Staffing Solutions and you worked one or more shifts in a workweek at Burlington's distribution centers located in California at any time between February 27, 2014 and [the date that is 60 days from the date the Settlement Agreement is fully executed, or the Date of Preliminary Approval of this settlement, inclusive, whichever is earliest.]

4. How Does This Class Action Settlement Work?

Plaintiffs bring this action on behalf of themselves and all current and/or former non-exempt, non-union, hourly employees provided as temporary workers by Lyneer Staffing Solutions who worked one or more shifts in a workweek at Burlington's distribution centers located in California at any time between February 27, 2014 and [the date that is 60 days from the date the Settlement Agreement is fully executed, or the Date of Preliminary Approval of this settlement, inclusive, whichever is earliest.] Plaintiffs and these other current and former employees comprise a "Class" and are "Class Members." The settlement of this Action resolves the Released Claims of all Class Members, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiffs and Class Counsel believe the settlement is fair and reasonable. The Court must also review the terms of the Settlement and determine if it is fair and reasonable to the Class. The Court file has the settlement documents, which explain the settlement in greater detail. If you would like copies of the settlement documents, you can contact the Settlement Administrator or Class Counsel.

5. Who Are the Attorneys Representing the Parties?

Class Counsel (Attorneys for Plaintiffs and the Class)	Attorneys for Burlington
MARA LAW FIRM, PC David Mara Jamie Serb Tony Roberts 2650 Camino Del Rio North, Suite 205 San Diego, California 92108 Telephone: (619) 234-2833 Facsimile: (619) 234-4048	GREENBERG TRAURIG, LLP Rick L. Shackelford Ryan C. Bykerk 1840 Century Park East, Suite 1900 Los Angeles, CA 90067 Telephone: (310) 586-7700 Facsimile: (310) 586-7800

The Court has decided that Mara Law Firm, PC is qualified to represent you and all other Class Members simultaneously.

You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

6. ***What Are My Options?***

The purpose of this Notice is to inform you of the proposed settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

- **DO NOTHING:** If you do nothing and the Court grants final approval of the Settlement, you will become part of this lawsuit and may receive a payment from the Settlement. You will be bound by the release of the Released Claims as defined in the Settlement Agreement and the Final Judgment. You will also give up your right to pursue the Released Claims as defined in Section No. 9 below.
- **OPT OUT:** If you do not want to participate as a Class Member, you may “opt out,” which will remove you from the Class and this Action. If the Court grants final approval of the settlement, you will not receive an Individual Settlement Share payment and you will not give up the right to pursue claims you may believe you have against the Released Parties, as defined in Section No. 9 below. The PAGA Group shall be bound by the release as to any PAGA claims even if they have formally opted-out of the Class.
- **OBJECT:** You may file a legal objection to the proposed Settlement. If you would like to object, you may not opt out of this Settlement.

The procedures for opting out and objecting are set forth below in the sections entitled “How Do I Opt Out or Exclude Myself From This Settlement” and “How Do I Object To The Settlement?”

7. ***How Do I Opt Out Or Exclude Myself From This Settlement?***

If you do not want to take part in the Settlement, you must mail a written Request for Exclusion to the Settlement Administrator. The written Request for Exclusion must: (a) state your name, address, telephone number, and last four digits of your social security number or employee identification number; (b) state your desire to exclude yourself from the Settlement (e.g. “I want to exclude myself from this settlement”); (c) be addressed to the Settlement Administrator; (d) be signed by your or your lawful representative; and (e) be postmarked no later than **[the Response Deadline]**.

The Final Judgment entered, following Final Approval of the Settlement by the Court, will bind all Class Members who do not request exclusion from the Settlement. Class Members are still bound by the release of PAGA claims even if they submit a valid Request for Exclusion and will receive a check with his or her PAGA Group Payment allocation from the \$75,000.00 in PAGA penalties if he or she is a member of the PAGA Group.

8. ***How Do I Object To The Settlement?***

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney, by filing your objection with the Court no later than **[the Response Deadline]**. The objection must state: (a) the case name (e.g. *Gonzalez v. Burlington Coat Factory Warehouse Corporation*) and case number (5:18-cv-00666-JGB-SP); (b) the objecting person’s or his/her attorney’s full name, address, and telephone

number; (c) the words “Notice of Objection” or “Formal Objection;” (d) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (e) list identifying witness(es) the objector may call to testify at the Final Approval Hearing; and (f) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing; and (g) state whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class. Any objection must comply with Federal Rules of Civil Procedure, Rule 23(e)(5).

Class Members who timely submit valid objections to the Settlement may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector’s own counsel provided that the objector notifies the Parties of the objector’s intent to appear at the Final Approval Hearing by mailing or filing a Notice of Intent to Appear with the Court by [the Response Deadline].

If the Court rejects your objection, you will receive a settlement payment and will be bound by the terms of the Settlement.

9. *How Does This Settlement Affect My Rights? What are the Released Claims?*

If the proposed Settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court’s Final Judgment and will release Burlington and the Releasees¹ from the Released Claims. The Released Claims are as follows:

Any and all wage and hour claims that accrued during or prior to the Class Period and that were or could have been asserted in the Action based on the allegations in any pleading in the Action, including the Second Amended Complaint, whether such claims were asserted or not, including but not limited to any and all claims for straight time, overtime, minimum wage, meal and rest breaks, recovery periods, wage statements, waiting time penalties, unfair competition, failure to produce personnel or wage records, and claims under the California Labor Code Private Attorneys General Act, Labor Code §§ 2699, et seq. (“PAGA”), as well as any and all state or federal claims that are derivative or directly related to the foregoing claims, including any claims for wages, penalties, premium pay, punitive damages, and interest, and/or under the common law, such as conversion and unjust enrichment, and any claims under the California Business & Professions Code. All Participating Class Members shall be bound by the release, unless they formally opt-out. The PAGA Group shall be bound by the release as to any PAGA claims even if they have formally opted-out of the Class.

10. *How Much Can I Expect to Receive From This Settlement?*

¹ “Released Parties” means each and all of Burlington Coat Factory Warehouse Corporation, Lyneer Staffing Solutions (as defined below), and each of their respective predecessors, successors and assigns, their current and former direct and indirect parents, affiliates, subsidiaries, divisions, and related business entities, and their current and former officers, directors, shareholders, employees, agents, representatives and employee benefit programs (including the trustees, administrators, fiduciaries and insurers of such programs). “Lyneer Staffing Solutions” means Lyneer Staffing Solutions, Infinity Staffing Solutions, LLC dba Lyneer Staffing Solutions, Staff4Jobs, LLC dba Lyneer Staffing Solutions, Employers HR LLC, Ciera Staffing, LLC, Lyneer Staffing Solutions, LLC, and all of their members, predecessors, successors, affiliates, and related companies, including but not limited to, Gary Spinner, Todd McNulty, James Radvany, Bryan Smith, Brian Henderson, Marti White and Greg Lomonaco.

The total maximum amount that Burlington could be required to pay under this Settlement is no more than \$3,000,000.00 (“Maximum Settlement Amount” or “MSA”).

The “Net Settlement Amount” or “NSA” means the portion of the MSA available for distribution to Class Members after the deduction of (1) the Class Representative Service Enhancements to Plaintiffs in an amount not to exceed \$7,500.00 to each plaintiff, for prosecution of the Action and risks undertaken for the payment of attorneys’ fees and costs; (2) the Settlement Administration Expenses to the Settlement Administrator in an amount estimated not to exceed \$45,000.00; (3) payment to Class Counsel in an amount not to exceed \$750,000.00 (25% the MSA) for attorneys’ fees and an amount not to exceed \$50,000.00 for litigation costs; and, (4) a payment of \$225,000 (75% of \$300,000 allocated to the Labor Code Private Attorneys General Act of 2004 claims) to the California Labor Workforce Development Agency (“LWDA”); (5) a payment of \$75,000 proportionately distributed amongst all PAGA Group Members (25% allocated to the Labor Code Private Attorneys General Act of 2004 claims), and (6) any employee- and employer-side payroll taxes for wages. All of these payments are subject to court approval.

A. How Your Payment Is Calculated.

After deducting the above-referenced items, the remaining NSA, will be proportionately distributed amongst all Class Members who have not opted out. The Settlement Administrator shall pay each Participating Class Member² a pro rata portion of the NSA based on the number of weeks he or she worked as a Class Member. That pro rata portion shall be determined by dividing the total number of weeks worked as a Class Member by all members of the Class into the amount of the NSA to arrive at an amount per week; then, for each eligible Class Member, multiplying that amount times the number of weeks the Settlement Administrator determines that such individual was working as a Class Member. The PAGA Group Payment³ is calculated and paid separate from the Class Members Settlement payment.

B. Your Estimated Settlement Payment.

Your exact share of the NSA cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes. However, based upon the calculation above, your *estimated* share of the Net Settlement Amount is: \$ [REDACTED], less taxes. This is based on records relating to your employment with Lyneer Staffing Solutions or one of its affiliates that show you worked [REDACTED] workweeks during the Class Period.

C. Tax Treatment

One-Third (1/3) of each Settlement Payment is intended to settle each Class Member’s claims for alleged unpaid wages. This wage portion will be reduced by applicable payroll tax withholdings and deductions and employer payroll taxes. The Settlement Administrator will issue an IRS Form W-2 to each Participating Class Member with respect to the wage portion of his/her Settlement Payment.

Two-Thirds (2/3) of the Settlement Payment is intended to settle each Class Member’s claims for interest and penalties. This non-wage portion will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue to each Participating Class Member an IRS Form 1099 with respect to this non-wage

² A Participating Class Member is a Class Member who does not opt out of the Settlement or who opts out but subsequently rescinds the opt-out in a timely manner.

³ The PAGA Group Payment is based on the number of pay periods each PAGA Group Member worked that qualify them for membership in the PAGA Group.

portion of his/her Settlement Payment. All PAGA Group Payments will be allocated entirely to penalties and reported on IRS 1099 Forms.

What Happens If I Don't Cash My Check?

If any checks remain uncashed or not deposited by the expiration of the 180-day period, the Settlement Administrator will pay the uncashed amounts to the United Way of California. The United Way is a non-profit organization that supports projects that benefit employees and applicants throughout the State of California.

11. How Will Class Counsel Be Paid?

Subject to Court approval, Class Counsel (the attorneys for Plaintiffs and the Class) shall be paid an amount not to exceed 25% of the MSA (\$750,000.00) for attorney fees and up to \$50,000.00 for litigation costs. Subject to Court approval, Plaintiffs will be paid an amount not to exceed \$7,500.00 each, for the initiation of and prosecution of this case, the risks undertaken for the payment of costs in the event this case had been lost, and risks of being blacklisted from future employment.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact Class Counsel listed above, or the Settlement Administrator at the telephone number listed below, toll free.

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at www.INSERT.com, you can also receive a copy of the settlement agreement by contacting Class Counsel at (619) 234-2833, or by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Central District of California, 3470 12th Street, Riverside, California 92501. You may also ask Class Counsel for a copy of any of the case documents to be mailed to you free of charge. Please refer to the *Amanda Gonzalez et al v. Burlington Coat Factory Warehouse Corporation* Class Action Settlement when calling the settlement administrator or Class Counsel.

To view the case documents on the Court's PACER site, access the website <http://www.pacer.gov>. Once at this website, click on the "Login" tab in the upper right-hand corner of the webpage. Then click on the link which reads "Log in to PACER now." Then, click on the link "Need an Account?" and create an account. Once you have created an account, log into PACER and click the link "PACER Case Locator" under the heading "FIND A CASE" on the left-hand side of the webpage. Then, click on the button "Search the PACER Case Locator Now." On the next page, type the case number "18-cv-00666" into the box next to the words "Case Number." Then, click the "Search" button. You will be directed to a screen with case names. Find the case name "*Amanda Gonzalez et al v. Burlington Coat Factory Warehouse Corporation*" and click on the case number associated with this case (5:18-cv-00666-JGB-SP). Then, click on the link for "Docket Report." On the next page, click "Run Report." This will take you to the case information. If you scroll down on this page you will be able to access all of the documents filed in the case while it was pending in the Central District of California for a small fee.

PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.

Exhibit B

David Mara, Esq. (230498)
Jamie Serb, Esq. (289601)
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Attorneys for AMANDA GONZALEZ and AUDRIANA GONZALEZ, on behalf of themselves,
all others similarly situated, and on behalf of the general public.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

AMANDA GONZALEZ and AUDRIANA
GONZALEZ on behalf of themselves, all
others similarly situated, and on behalf of
the general public,

Plaintiffs,

v.

BURLINGTON COAT FACTORY
WAREHOUSE CORPORATION; and
DOES 1-10,

Defendants.

Case No. 5:18-cv-00666-JGB-SP

**PLAINTIFFS' AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, DECLARATORY
RELIEF, AND RESTITUTION**

- 1) Failure to Pay All Straight Time Wages;**
- 2) Failure to Pay All Overtime Wages;**
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, IWC Wage Order No. 9-2001(11); Cal. Code Regs., tit. 8 § 11090);**
- 4) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 9-2001(12); Cal. Code Regs. Title 8 § 11090);**
- 5) Failure to Authorize and Permit Recovery Periods (Lab. Code § 226.7; Cal. Code Regs. Title 8 § 3395);**
- 6) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175);**
- 7) Failure to Pay All Wages Due at the Time of Termination of Employment (Lab. Code §§201-203);**
- 8) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.);**
- 9) Failure to Produce Personnel Records (Lab. Code § 1198.5);**
- 10) Failure to Produce Wage Records (Lab. Code § 226(f)); and**
- 11) Violation of the Labor Code Private Attorneys General Act of 2004 ("PAGA")**

DEMAND FOR JURY TRIAL

1 Plaintiffs AMANDA GONZALEZ AND AUDRIANA GONZALEZ, on behalf of
2 themselves, all others similarly situated, and on behalf of the general public, complains of
3 Defendant BURLINGTON COAT FACTORY WAREHOUSE CORPORATION (“Burlington”
4 or “Defendant”) and/or DOES and for causes of action and alleges:

5 1. This is a class action pursuant to Federal Rule of Civil Procedure, Rule 23 on behalf of
6 Plaintiffs, AMANDA GONZALEZ AND AUDRIANA GONZALEZ, and all current
7 and/or former non-exempt, non-union, hourly employees provided as temporary workers
8 by Lyneer Staffing Solutions¹ who worked one or more shifts in a workweek at
9 Burlington’s distribution centers located in California at any time during the relevant time
10 period.

11 2. At all times mentioned herein, BURLINGTON COAT FACTORY WAREHOUSE
12 CORPORATION and/or DOES have conducted business in San Bernardino County and
13 elsewhere within California.

14 3. At all times mentioned herein, BURLINGTON COAT FACTORY WAREHOUSE
15 CORPORATION and/or subsidiaries or affiliated companies and/or DOES, within the
16 State of California, have, among other things, employed current and former non-exempt
17 employees.

18 4. At all times mentioned herein, the common policies and practices of BURLINGTON
19 COAT FACTORY WAREHOUSE CORPORATION and/or DOES were a direct cause
20 of Defendant’s and/or DOES’ failure to comply with California’s wage and hours laws,
21 Wage Orders, and/or the California Labor Code, as set forth more fully within.

22 5. For at least four (4) years prior to the filing of this action and through to the present,
23 Defendant BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or
24

25 ¹ “Lyneer Staffing Solutions” means Lyneer Staffing Solutions, Infinity Staffing Solutions, LLC
26 dba Lyneer Staffing Solutions, Staff4Jobs, LLC dba Lyneer Staffing Solutions, Employers HR
27 LLC, Ciera Staffing, LLC, Lyneer Staffing Solutions, LLC, and all of their members,
28 predecessors, successors, affiliates, and related companies, including but not limited to, Gary
Spinner, Todd McNulty, James Radvany, Bryan Smith, Brian Henderson, Marti White and Greg
Lomonaco.

- 1 DOES have had a consistent policy and/or practice of not paying Plaintiffs and its Non-
2 Exempt Employees for all of the hours they worked.
- 3 6. For at least four (4) years prior to the filing of this action and through to the present,
4 Defendant BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or
5 DOES have had a continuous and widespread policy of not paying Plaintiffs and those
6 similarly situated for all hours they worked, including before clocking in for their work
7 shift, after clocking out for their work shift, and during unpaid meal periods. Further,
8 Defendant BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or
9 DOES have had a continuous and widespread policy to shave the time Plaintiffs and
10 those similarly situated worked (referred to as “time shaving”).
- 11 7. For at least four (4) years prior to the filing of this action and through to the present,
12 Defendant BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or
13 DOES have had a continuous and widespread policy of “clocking-out” Plaintiffs and
14 those similarly situated for thirty (30) minute meal periods, even though Plaintiffs and
15 those similarly situated were suffered and/or permitted to work during these deduction
16 periods, thereby deducting thirty (30) minutes of paid time, including straight time and
17 overtime.
- 18 8. For at least four (4) years prior to the filing of this action and through to the present,
19 Defendant BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or
20 DOES have had a consistent policy and/or practice of failing to provide all straight time
21 and overtime wages owed to Non-Exempt Employees, as mandated under the California
22 Labor Code and the implementing rules and regulations of the Industrial Welfare
23 Commission’s (“IWC”) California Wage Orders.
- 24 9. For at least four (4) years prior to the filing of this action and through to the present,
25 Defendant BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or
26 DOES have had a consistent policy of requiring Non-Exempt Employees within the State
27 of California, including Plaintiffs, to work through meal periods and work at least five (5)
28 hours without a meal period and failing to pay such employees one (1) hour of pay at the

1 employees' regular rate of compensation for each workday that the meal period is not
2 provided, or other compensation, as required by California's state wage and hour laws,
3 and automatically deducting a half hours pay from their wages.

4 10. For at least four (4) years prior to filing of this action and through the present, Defendant
5 BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES did
6 not have a policy of allowing its hourly employees working shifts of ten (10) or more
7 hours in a day to take a second meal period of not less than thirty (30) minutes as
8 required by the applicable Wage Order of the IWC.

9 11. For at least four (4) years prior to the filing of this action and through to the present,
10 Defendant BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or
11 DOES have had a consistent policy of requiring Non-Exempt Employees within the State
12 of California, including Plaintiffs, to work over ten (10) hours without providing an
13 additional, uninterrupted meal period of thirty (30) minutes and failing to pay such
14 employees one (1) hour of pay at the employees' regular rate of compensation for each
15 workday that the meal period is not provided, or other compensation, as required by
16 California's state wage and hour laws.

17 12. For at least four (4) years prior to the filing of this action and through to the present,
18 Defendant BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or
19 DOES have had a consistent policy and/or practice of requiring its Non-Exempt
20 Employees within the State of California, including Plaintiffs, to work for over four
21 hours, or a major fraction thereof, without a 10 minute rest period, and failing to pay such
22 employees one (1) hour of pay at the employees' regular rate of compensation for each
23 workday that the rest period is not provide, or other compensation, as required by
24 California's state wage and hour laws.

25 13. For at least four (4) years prior to the filing of this action and through to the present,
26 Defendant BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or
27 DOES have had a consistent policy and/or practice of failing to provide Plaintiffs and its
28 Non-Exempt Employees with cool down recovery periods in accordance with California

1 Code of Regulations, Title 8, section 3395.

2 14. For at least four (4) years prior to the filing of this action and through to the present,
3 Defendant BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or
4 DOES and/or their officers and/or managing agents have had a consistent policy and/or
5 practice of willfully failing to provide to Plaintiffs and its Non-Exempt Employees,
6 accurate itemized employee wage statements.

7 15. For at least four (4) years prior to the filing of this action and through to the present,
8 Defendant BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or
9 DOES and/or their officers and/or managing agents have had a consistent policy and/or
10 practice of willfully failing to timely pay wages owed to Plaintiffs and those Non-Exempt
11 Employees who left Defendant BURLINGTON COAT FACTORY WAREHOUSE
12 CORPORATION and/or DOES employ or who were terminated.

13 16. For at least four (4) years prior to the filing of this action and through to the present,
14 BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES, by
15 failing to lawfully pay Plaintiffs and those similarly situated all the wages they are owed,
16 engaged in false, unfair, fraudulent, and deceptive business practices within the meaning
17 of the Business and Professions Code section 17200, et seq.

18 17. Throughout the statutory period, BURLINGTON COAT FACTORY WAREHOUSE
19 CORPORATION'S and/or DOES' employees, including Plaintiffs and similarly situated
20 Non-Exempt Employees, were not provided all straight time and overtime wages owed,
21 meal periods and rest periods, or compensation in lieu thereof, as mandated under the
22 California Labor Code, and the implementing rules and regulations of the Industrial
23 Welfare Commissions ("IWC") California Wage Orders.

24 18. Throughout the statutory period, BURLINGTON COAT FACTORY WAREHOUSE
25 CORPORATION and/or DOES employees, including Plaintiffs and similarly situated
26 Non-Exempt Employees were not provided with accurate and itemized employee wage
27 statements.

28 19. BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES

1 failed to comply with Labor Code section 226, subdivision (a), by itemizing in wage
2 statements all hourly compensation and accurately reporting total hours worked by
3 Plaintiffs and the members of the proposed class. Plaintiffs and members of the proposed
4 class are entitled to penalties not to exceed \$4,000 for each employee pursuant to Labor
5 Code section 226(b).

6 20. BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES
7 have failed to comply with IWC Wage Order 9-2001(7) by failing to maintain accurate
8 time records showing hourly compensation, when the employee begins and ends each
9 work day and total daily hours worked by itemizing in wage statements and accurately
10 reporting total hours worked by Plaintiffs and members of the proposed class.

11 21. BURLINGTON COAT FACTORY WAREHOUSE CORPORATION'S and/or DOES'
12 failure to retain accurate records of total hours worked by Plaintiffs and the proposed
13 class was willful and deliberate, was a continuous breach of BURLINGTON COAT
14 FACTORY WAREHOUSE CORPORATION'S and/or DOES' duty owed to Plaintiffs
15 and the proposed class.

16 22. Throughout the statutory period, BURLINGTON COAT FACTORY WAREHOUSE
17 CORPORATION'S and/or DOES' employees, including Plaintiffs and similarly situated
18 Non-Exempt Employees, were not timely paid all wages owed to them at the time of
19 termination.

20 23. Throughout the statutory period, BURLINGTON COAT FACTORY WAREHOUSE
21 CORPORATION'S and/or DOES' employees, including Plaintiffs and similarly situated
22 Non-Exempt Employees, were not provided with a copy of their personnel records when
23 requested.

24 24. Throughout the statutory period, BURLINGTON COAT FACTORY WAREHOUSE
25 CORPORATION'S and/or DOES' employees, including Plaintiffs and similarly situated
26 Non-Exempt Employees, were not provided with a copy of their wage records when
27 requested.

28 25. Defendant BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or

DOES are and were aware that Plaintiffs and members of the proposed class were not paid all straight time and overtime wages owed, nor provided meal and rest periods. Defendant BURLINGTON COAT FACTORY WAREHOUSE CORPORATION'S and/or DOES' denial of wages and other compensation due to Plaintiffs and members of the proposed class was willful and deliberate.

26. California follows a broad definition of employer. Specifically, California defines the employer as "any person...who directly or indirectly, through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of [an employee]." *Martinez v. Combs* (2010) 49 Cal. 4th 35, 39. This broad definition of who the employer is "has the obvious utility of reaching situations in which multiple entities control different aspects of the employment relationship, as when one entity, which hires and pays workers, places them with other entities that supervise the work." *Id.* In fact, California's broad definition of employer is "specifically intended to include both temporary employment agencies and employers who contract with such agencies to obtain employees..." *Martinez*, 49 Cal.4th at 59. Throughout the statutory period, Lyneer Staffing Solutions, a temporary employment agency, placed Plaintiffs and members of the proposed class at Burlington distribution centers. Defendant BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES, each and collectively, controlled the wages, hours, and working conditions of Plaintiffs and the proposed class, creating a joint-employer relationship over Plaintiffs and the proposed class. Thus, BURLINGTON COAT FACTORY WAREHOUSE CORPORATION is financially responsible as a joint employer for any unpaid wages, penalties, interest or other damages owed to the Lyneer Staffing Solutions workers for activities defined as work under California law.

27. Plaintiffs AMANDA GONZALEZ AND AUDRIANA GONZALEZ, on behalf of themselves and all of BURLINGTON COAT FACTORY WAREHOUSE CORPORATION'S and/or DOES' Non-Exempt Employees, brings this action pursuant to California Labor Code sections 226, subd. (b), 226.7. 510, 512, 515, 558, 1194, and

1 California Code of Regulations, Title 8, sections 11090 and 3395, seeking unpaid wages,
2 overtime, meal and rest period compensation, penalties, injunctive and other equitable
3 relief, and reasonable attorneys' fees and costs.

4 28. Plaintiffs AMANDA GONZALEZ AND AUDRIANA GONZALEZ, on behalf of
5 themselves all putative Class members, brings this action pursuant to California Labor
6 Code sections 218, 218.5, 222, 223, 224, 226, subd. (b), 226.3, 226.7, 227.3, 512, 515,
7 558, 1194, 1194.2, 1197, and California Code of Regulations, Title 8, sections 11090 and
8 3395, seeking unpaid wages, meal and rest period compensation, penalties, injunctive and
9 other equitable relief, relief under the Labor Code Private Attorneys General Act of 2004
10 ("PAGA"), and reasonable attorneys' fees and costs.

11 29. A notice of correspondence showing compliance with Labor Code Section 2699.3 was
12 sent to the Labor and Workforce Development Agency ("LWDA") and Defendant. This
13 notice demonstrates that Plaintiffs have standing to bring a representative action on
14 behalf of the LWDA and as private attorney generals. No notice of cure by
15 BURLINGTON COAT FACTORY WAREHOUSE CORPORATION was provided and
16 no notice of investigation was received from the LWDA in the statutorily proscribed
17 sixty-five (65) day period since the mailing of the notices of the action. Accordingly,
18 Plaintiffs file this action as authorized by Labor Code section 2699.3(a)(2)(C).

19 30. Plaintiffs AMANDA GONZALEZ AND AUDRIANA GONZALEZ, on behalf of
20 themselves and all putative Class members made up of BURLINGTON COAT
21 FACTORY WAREHOUSE CORPORATION'S and/or DOES' non-exempt employees,
22 pursuant to California Business and Professions Code sections 17200-17208, also seeks
23 injunctive relief, restitution, and disgorgement of all benefits BURLINGTON COAT
24 FACTORY WAREHOUSE CORPORATION and/or DOES enjoyed from their failure to
25 pay all straight time wages, overtime wages, and meal and rest period compensation.

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1 I. VENUE

2 31. Venue as to each Defendant, BURLINGTON COAT FACTORY WAREHOUSE
3 CORPORATION and/or DOES, is proper in this judicial district. Defendant
4 BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES
5 conduct business and commit Labor Code violations within San Bernardino County, and
6 each Defendant and/or DOE is within California for service of process purposes. The
7 unlawful acts alleged herein have a direct effect on Plaintiffs and those similarly situated
8 within the State of California and within San Bernardino County. Defendant
9 BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES
10 employ numerous Class members who work in San Bernardino County, in California.

11 II. PARTIES

12 A. Plaintiffs.

13 32. At all relevant times, herein, Plaintiffs AMANDA GONZALEZ AND AUDRIANA
14 GONZALEZ are and were residents of California. At all relevant times, herein, they were
15 employed by Defendant BURLINGTON COAT FACTORY WAREHOUSE
16 CORPORATION and/or DOES within the last four (4) years as a non-exempt, hourly
17 warehouse worker in California.

18 33. On information and belief, Plaintiffs and all other members of the proposed class
19 experienced Defendant BURLINGTON COAT FACTORY WAREHOUSE
20 CORPORATION'S and/or DOES' common company policies of failing to pay all
21 straight time and overtime wages owed.

22 34. On information and belief, Plaintiffs and all other members of the proposed class
23 experienced Defendant BURLINGTON COAT FACTORY WAREHOUSE
24 CORPORATION'S and/or DOES' common company policies of illegally deducting
25 wages from employees for meal periods during which they were performing work.

26 35. On information and belief, Plaintiffs and all other members of the proposed class
27 experienced Defendant BURLINGTON COAT FACTORY WAREHOUSE
28 CORPORATION'S and/or DOES' common company policies and/or practices of failing

1 to pay all straight time and overtime wages owed, and failing to provide compliant meal
2 periods to employees before the end of their fifth hour of work or a second meal period
3 before the end of the tenth hour or work, or compensation in lieu thereof.

4 36. On information and belief, Plaintiffs and all other members of the proposed class
5 experienced Defendant BURLINGTON COAT FACTORY WAREHOUSE
6 CORPORATION'S and/or DOES' common company policies of failing to provide ten
7 (10) minute paid rest breaks to employees whom worked four (4) hours or major fractions
8 thereof.

9 37. On information and belief, Plaintiffs and all other members of the proposed class
10 experienced Defendant BURLINGTON COAT FACTORY WAREHOUSE
11 CORPORATION'S and/or DOES' common company policies of failing to provide cool
12 down recovery periods.

13 38. On information and belief, Plaintiffs and all other members of the proposed class
14 experienced Defendant BURLINGTON COAT FACTORY WAREHOUSE
15 CORPORATION'S and/or DOES' common company policies of failing to provide
16 personnel files when requested.

17 39. On information and belief, Plaintiffs and all other members of the proposed class
18 experienced Defendant BURLINGTON COAT FACTORY WAREHOUSE
19 CORPORATION'S and/or DOES' common company policies of failing to provide wage
20 records when requested.

21 40. On information and belief, Plaintiffs and all other members of the proposed class
22 experienced Defendant BURLINGTON COAT FACTORY WAREHOUSE
23 CORPORATION'S and/or DOES' common company policies of failing to provide Non-
24 Exempt Employees with accurate itemized wage statements. On information and belief,
25 Defendants and/or DOES failure to provide to their Non-Exempt Employees, including
26 Plaintiffs, with accurate itemized wage statements was willful.

27 41. On information and belief, Plaintiffs and all other members of the proposed class
28 experienced Defendant BURLINGTON COAT FACTORY WAREHOUSE

CORPORATION’S and/or DOES’ common company policies of failing to timely compensate Non-Exempt Employees all wages owed upon termination. On information and belief, Defendant’s and/or DOES’ failure to pay, in a timely manner, compensation owed to Non-Exempt Employees, including Plaintiffs, upon termination of their employment with BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES was willful.

42. On information and belief, Plaintiffs and all other members of the proposed class experienced Defendant BURLINGTON COAT FACTORY WAREHOUSE CORPORATION’S and/or DOES’ fraudulent and deceptive business practices within the meaning of the Business and Professions Code section 17200, et seq.

43. Plaintiffs and the proposed class are covered by, inter alia, California IWC Occupational Wage Order No. 9-2001, and Title 8, California Code of Regulations, §§ 11090 and 3395.

B. Defendants.

44. At all relevant times herein, BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES engage in the ownership and operation of facilities which provide clothing, shoes, merchandise and other retail products in the State of California.

45. According to the Burlington Coat Factory website, “Burlington is a leading off-price apparel and home product retailer”. BURLINGTON COAT FACTORY, www.burlingtoncoatfactory.com (Last visited Jan. 22, 2018). Burlington Coat Factory claims to “operate 567 stores in 45 states and Puerto Rico, where you’ll find a large assortment of current, high-quality, designer and name-brand merchandise at up to 65% off other retailers’ prices”. *Id.*

46. Burlington Coat factory boasts the “Our Burlington” philosophy, which creates “a supportive, results-driven, diverse and fun place ... to work, learn and grow”. *Id.*

47. They claim to support this philosophy with an “annual ‘Your Voice’ survey helps [them] understand the associate experience, evaluate [their] performance, identify [their] strengths, and pinpoint areas of opportunity for improvement”. *Id.*

1 48. Burlington Coat Factory claims that this annual survey recently resulted in “over 70% of
2 associates who participated would recommend Burlington as a great place to work!” *Id.*

3 49. With this “Our Burlington” philosophy and “Your Voice” survey, it appears that
4 Burlington Coat Factory values their employees and their employees’ well-being.
5 However, this favorable appearance is fractured when Burlington’s valuing of their
6 employees doesn’t extend to paying those same employees their full deserved wages.

7 50. On information and belief, BURLINGTON COAT FACTORY WAREHOUSE
8 CORPORATION and/or DOES exercised control over the wages, hours, and/or working
9 conditions of Plaintiffs and members of the proposed class throughout the liability period.

10 51. BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES
11 principal place of business is in the State of California.

12 52. The true names and capacities, whether individual, corporate, associate, or otherwise, of
13 Defendants DOES 1-10, inclusive, are presently unknown to Plaintiffs, who therefore
14 sue these Defendants by such fictitious names. Plaintiffs are informed and believe, and
15 based thereon allege, that each of the Defendants designated herein as a DOE is legally
16 responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek
17 leave of court to amend this Complaint to reflect the true names and capacities of the
18 Defendants designated hereinafter as DOES when such identities become known.

19 53. Plaintiffs are informed and believe, and based thereon allege, that each Defendant and/or
20 DOE acted in all respects pertinent to this action as the agent of the other Defendants
21 and/or DOES, carried out a joint scheme, business plan or policy in all respects pertinent
22 hereto, and the acts of each Defendants and/or DOES are legally attributable to the other
23 Defendants and/or DOES.

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hours.

All Class Members who worked one (1) or more shifts in excess of six (6) hours, but less than or equal to ten (10) hours.

All Class Members who worked one (1) or more shifts in excess of ten (10) hours.

All Class Members who separated their employment from Defendant.

All Class Members who worked one (1) or more shifts in which they received a wage statement for the corresponding pay period.

All Class Members who were deducted wages for meal periods.

55. Plaintiffs reserves the right to amend or modify the Class description with greater specificity or further division into subclasses or limitation to particular issues.

56. This action has been brought and may properly be maintained as a class action under the provisions of Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

A. Numerosity.

57. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class members has not been determined at this time, Plaintiffs are informed and believe that BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES currently employ, and during the liability period employed, over one hundred (100) employees, all in the

1 State of California, in positions as hourly non-exempt employees.

2 58. Accounting for employee turnover during the relevant periods increases this number
3 substantially. Upon information and belief, Plaintiffs alleges BURLINGTON COAT
4 FACTORY WAREHOUSE CORPORATION'S and/or DOES' employment records will
5 provide information as to the number and location of all Class members. Joinder of all
6 members of the proposed Class is not practicable.

7 **B. Commonality.**

8 59. There are questions of law and fact common to the Class that predominate over any
9 questions affecting only individual Class members. These common questions of law and
10 fact include, without limitation:

11 (1) Whether BURLINGTON COAT FACTORY
12 WAREHOUSE CORPORATION and/or DOES violated the Labor Code
13 and/or applicable IWC Wage Orders in failing to pay its non-exempt
14 workers all earned wages at the regular rate for all hours worked.

15 (2) Whether BURLINGTON COAT FACTORY
16 WAREHOUSE CORPORATION'S and/or DOES' uniform policies
17 and/or practices whereby non-exempt workers were pressured and/or
18 incentivized to forego taking meal and/or rest periods.

19 (3) Whether BURLINGTON COAT FACTORY
20 WAREHOUSE CORPORATION and/or DOES violated Labor Code
21 section 226.7, IWC Wage Order No. 9-2001 or other applicable IWC
22 Wage Orders, and/or California Code of Regulations, Title 8, section
23 11090, by failing to authorize, permit, and/or provide rest periods to its
24 hourly, non-exempt employees for every four (4) hours or major fraction
25 thereof worked and/or failing to pay said employees one (1) hour of pay at
26 the employee's regular rate of compensation for each work day that the
27 rest period was not authorized, permitted and/or provided.

28 (4) Whether BURLINGTON COAT FACTORY

1 WAREHOUSE CORPORATION and/or DOES violated Labor Code
2 section 226.7 and/or California Code of Regulations, Title 8, section 3395,
3 by failing to authorize, permit, and/or provide recovery periods to its
4 hourly, non-exempt employees in accordance with section 3395.

5 (5) Whether BURLINGTON COAT FACTORY
6 WAREHOUSE CORPORATION and/or DOES willfully failed to pay, in
7 a timely manner, wages owed to members of the proposed Class who left
8 BURLINGTON COAT FACTORY WAREHOUSE CORPORATION'S
9 and/or DOES' employ or who were terminated.

10 (6) Whether BURLINGTON COAT FACTORY
11 WAREHOUSE CORPORATION and/or DOES violated Labor Code
12 section 203, which provides for the assessment of a penalty against the
13 employer, by willfully failing to timely pay all wages owed to employees
14 who left BURLINGTON COAT FACTORY WAREHOUSE
15 CORPORATION'S and/or DOES' employ or who were terminated.

16 (7) Whether BURLINGTON COAT FACTORY
17 WAREHOUSE CORPORATION and/or DOES had uniform policies
18 and/or practices of failing to provide employees accurate and itemized
19 wage statements.

20 (8) Whether BURLINGTON COAT FACTORY
21 WAREHOUSE CORPORATION and/or DOES had uniform policies
22 and/or practices of failing to timely pay all wages owed to employees who
23 left BURLINGTON COAT FACTORY WAREHOUSE
24 CORPORATION'S and/or DOES' employ or who were terminated.

25 60. The answer to each of these respective questions will generate a common answer capable
26 of resolving class-wide liability in one stroke.

27 61. Said common questions predominate over any individualized issues and/or questions
28 affecting only individual members.

1 **C. Typicality.**

2 62. The claims of the named Plaintiffs are typical of the claims of the proposed class.
3 Plaintiffs and all members of the proposed class sustained injuries and damages arising
4 out of and caused by BURLINGTON COAT FACTORY WAREHOUSE
5 CORPORATION'S and/or DOES' common course of conduct in violation of laws and
6 regulations that have the force and effect of law and statutes as alleged.

7 63. Plaintiffs AMANDA GONZALEZ AND AUDRIANA GONZALEZ were subjected to
8 the same uniform policies and/or practices complained of herein that affected all such
9 employees. Thus, as AMANDA GONZALEZ AND AUDRIANA GONZALEZ were
10 subjected to the same unlawful policies and practices as all hourly non-exempt
11 employees, their claims are typical of the class they seek to represent.

12 **D. Adequacy of Representation.**

13 64. Plaintiffs will fairly and adequately represent and protect the interests of the members of
14 the Class.

15 65. Plaintiffs are ready and willing to take the time necessary to help litigate this case.

16 66. Plaintiffs have no conflicts that will disallow them to fairly and adequately represent and
17 protect the interests of the members of the Class.

18 67. Counsel who represent Plaintiffs are competent and experienced in litigating large
19 employment class actions.

20 68. Specifically, David Mara, Esq., Jamie Serb, Esq., Tony Roberts, Esq., are California
21 lawyers in good standing.

22 69. Mr. Mara frequently authors amicus briefs in important appellate and California Supreme
23 Court cases affecting workers in the State of California, which includes the following
24 California Supreme Court cases: *Augustus v. ABM Security Servs.* (2016) 2 Cal.5th 257
25 and *Williams v. Superior Court* (decided July 13, 2017), *Brinker Restaurant Corp. v.*
26 *Superior Court* (2012) 53 Cal.4th 1004; and *Frlekin v. Apple*, Cal.Sup.Case No. S243805.

27 70. Mr. Mara has been appointed class counsel in numerous California wage and hour class
28 actions such as this.

71. Mara Law Firm, PC has the resources to take this case to trial and judgment, if necessary.

72. Mara Law Firm, PC has the experience, ability, and ways and means to vigorously prosecute this case.

E. Superiority of Class Action.

73. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of BURLINGTON COAT FACTORY WAREHOUSE CORPORATION'S and/or DOES' illegal policies and/or practices of failing to pay all straight time and overtime wages owed, failing to permit or authorize rest periods, failing to provide meal periods, failing to provide personnel records, failing to produce wage records, knowingly and intentionally failing to comply with wage statement requirements, and failing to pay all wages due at termination.

74. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

75. Because such common questions predominate over any individualized issues and/or questions affecting only individual members, class resolution is superior to other methods for fair and efficient adjudication.

IV. CAUSES OF ACTION

First Cause of Action Against BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES: Failure to Pay All Straight Time Wages

76. Plaintiffs and those similarly situated Class members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

77. Defendant and/or DOES have had a continuous policy of not paying Plaintiffs and those similarly situated for all hours worked.

1 78. It is fundamental that an employer must pay its employees for all time worked. California
2 Labor Code sections 218 and 218.5 provides a right of action for nonpayment of wages.
3 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section
4 223 prohibits the pay of less than a statutory or contractual wage scale. Labor Code
5 section 1197 prohibits the payment of less than the minimum wage. Labor Code section
6 224 only permits deductions from wages when the employer is required or empowered to
7 do so by state or federal law or when the deduction is expressly authorized in writing by
8 the employee for specified purposes that do not have the effect of reducing the agreed
9 upon wage.

10 79. Plaintiffs and those similarly situated Class members were employed by BURLINGTON
11 COAT FACTORY WAREHOUSE CORPORATION and/or DOES at all relevant times.
12 BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES
13 were required to compensate Plaintiffs for all hours worked and were prohibited from
14 making deductions that had the effect of reducing the agreed upon wage.

15 80. Defendant and/or DOES have a continuous and consistent policy of clocking-out
16 Plaintiffs and those similarly situated for a thirty (30) minute meal period, even though
17 Plaintiffs and all members of the Class work through their meal periods. Thus,
18 BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES do
19 not pay Plaintiffs and each and every member of the Class for all time worked each and
20 every day they work without a meal period and have time deducted.

21 81. Plaintiffs and those similarly situated Class members are informed and believe and
22 thereon allege that BURLINGTON COAT FACTORY WAREHOUSE CORPORATION
23 and/or DOES breached the legal duty to pay full wages to Plaintiffs by deducting a
24 portion of the wages earned when Plaintiffs' and the Class members' actual time records
25 indicate that a meal period was not taken. BURLINGTON COAT FACTORY
26 WAREHOUSE CORPORATION and/or DOES did not make reasonable efforts to
27 determine whether the time deducted was actually worked as reported by Plaintiffs and
28 Class members. BURLINGTON COAT FACTORY WAREHOUSE CORPORATION

1 and/or DOES, without a reasonable basis, presumed that actual reported hours had not
2 been accurately reported. The conduct complained of is a form of what is sometimes
3 called “dinging,” “shaving,” or “scrubbing” and is prohibited by law.

4 82. Defendant and/or DOES have a continuous and consistent policy of not paying Plaintiffs
5 and those similarly situated for all time worked, including before Plaintiffs and those
6 similarly situated clock in for work shifts and after they clock out after work shifts.

7 83. Defendant and/or DOES have a continuous and consistent policy of shaving the time
8 Plaintiffs and those similarly situated work (referred to as “time shaving”).

9 84. Thus, BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or
10 DOES shave/steal earned wages from Plaintiffs and each and every member of the Class
11 each and every day they work. BURLINGTON COAT FACTORY WAREHOUSE
12 CORPORATION and/or DOES have not paid Plaintiffs and the members of the Class all
13 straight time wages owed.

14 85. BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES
15 have required off-the-clock work by forcing Plaintiffs and class members to undergo a
16 security check when entering or exiting the building pre-shift, post-shift, and during rest
17 periods and unpaid meal periods. Plaintiffs and class members have been forced to wait
18 through long-lines for BURLINGTON COAT FACTORY WAREHOUSE
19 CORPORATION and/or DOES to inspect their clothes and/or check their bags. As such,
20 BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES
21 have exercised compensable control over Plaintiffs and class members subject to
22 mandatory searches and owe Plaintiffs and class members wages for time spent
23 undergoing the security process.

24 86. Plaintiffs and the Class members are informed and believe and thereon allege that as a
25 direct result of Defendant’s and/or DOES’ uniform policies and/or practices, Plaintiffs
26 and the Class members have suffered, and continue to suffer, substantial unpaid wages,
27 and lost interest on such wages, and expenses and attorneys’ fees in seeking to compel
28 BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES to

1 fully perform their obligations under state law, all to their respective damage in amounts,
2 according to proof at trial.

3 87. As a direct result of BURLINGTON COAT FACTORY WAREHOUSE
4 CORPORATION'S and/or DOES' policy of illegal wage theft, Plaintiffs and those
5 similarly situated have been damaged in an amount to be proven at trial.

6 88. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
7 below.

8 **Second Cause of Action Against BURLINGTON COAT FACTORY WAREHOUSE**
9 **CORPORATION and/or DOES: Failure to Pay All Overtime Wages**

10 89. Plaintiffs and those similarly situated Class members hereby incorporate by reference
11 each and every other paragraph in this Complaint herein as if fully plead.

12 90. It is fundamental that an employer must pay its employees for all time worked. California
13 Labor Code sections 218 and 218.5 provides a right of action for nonpayment of wages.
14 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section
15 223 prohibits the pay of less than a statutory or contractual wage scale. Labor Code
16 section 1197 prohibits the payment of less than the minimum wage. Labor Code section
17 224 only permits deductions from wages when the employer is required or empowered to
18 do so by state or federal law or when the deduction is expressly authorized in writing by
19 the employee for specified purposes that do not have the effect of reducing the agreed
20 upon wage.

21 91. BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES
22 failed to pay overtime when employees worked over eight (8) hours per day and when
23 employees worked over forty (40) hours per week.

24 92. Plaintiffs and those similarly situated Class members were employed by BURLINGTON
25 COAT FACTORY WAREHOUSE CORPORATION and/or DOES at all relevant times.
26 BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES
27 were required to compensate Plaintiffs for all overtime hours worked and were prohibited
28 from making deductions that had the effect of reducing the agreed upon wage.

- 1 93. BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES
2 failed to pay for the overtime that was due, pursuant to IWC Wage Order No. 9-2001,
3 item 3(A).
- 4 94. BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES
5 have required off-the-clock work by forcing Plaintiffs and class members to undergo a
6 security check when entering or exiting the building pre-shift, post-shift, and during rest
7 periods and unpaid meal periods. Plaintiffs and class members have been forced to wait
8 through long-lines for BURLINGTON COAT FACTORY WAREHOUSE
9 CORPORATION and/or DOES to inspect their clothes and/or check their bags. As such,
10 BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES
11 have exercised compensable control over Plaintiffs and class members subject to
12 mandatory searches and owe Plaintiffs and class members wages for time spent
13 undergoing the security process. These unpaid time wages have also resulted in unpaid
14 overtime in qualifying shifts.
- 15 95. Plaintiffs and the Class members are informed and believe and thereon allege that as a
16 direct result of Defendant's and/or DOES' uniform policies and/or practices, Plaintiffs
17 and the Class members have suffered, and continue to suffer, substantial unpaid overtime
18 wages, and lost interest on such overtime wages, and expenses and attorneys' fees in
19 seeking to compel BURLINGTON COAT FACTORY WAREHOUSE CORPORATION
20 and/or DOES to fully perform their obligations under state law, all to their respective
21 damage in amounts according to proof at time of trial. BURLINGTON COAT
22 FACTORY WAREHOUSE CORPORATION and/or DOES committed the acts alleged
23 herein knowingly and willfully, with the wrongful and deliberate intention on injuring
24 Plaintiffs and the Class members. BURLINGTON COAT FACTORY WAREHOUSE
25 CORPORATION and/or DOES acted with malice or in conscious disregard of Plaintiffs'
26 and the Class Member's rights. In addition to compensation, Plaintiffs are also entitled to
27 any penalties allowed by law.
- 28 96. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described

below.

Third Cause of Action Against BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES: Failure to Provide Meal Periods, or Compensation in Lieu Thereof (Lab. Code §§ 226.7, 512, IWC Wage Order No. 9-2001(11); Cal. Code Regs., tit. 8, § 11090)

97. Plaintiffs and those similarly situated Class members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

98. Under California Labor Code section 512 and IWC Wage Order No. 9, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal periods of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

99. In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of less than thirty (30) minutes.

100. Under California Labor Code section 226.7, if the employer does not provide an employee a meal period in accordance with the above requirements, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

101. BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES failed to provide thirty (30) minute, uninterrupted meal periods to its Non-Exempt Employees who worked for work periods of more than five (5) consecutive hours. As such, BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES non-exempt employees were required to work over five (5) consecutive hours at a time without being provided a thirty (30) minute uninterrupted meal period within that

1 time.

2 102. BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES
3 failed to provide thirty (30) minute, uninterrupted meal periods to its Non-Exempt
4 Employees for every five (5) continuous hours worked.

5 103. BURLINGTON COAT FACTORY WAREHOUSE CORPORATION'S and/or DOES'
6 business model is such that Non-Exempt Employees were assigned too much work and
7 insufficient help due to chronic understaffing to be able to take meal periods. Thus, Non-
8 Exempt Employees are not able to take meal periods.

9 104. Throughout the statutory period, BURLINGTON COAT FACTORY WAREHOUSE
10 CORPORATION and/or DOES had a pattern and practice of assigning too much work to
11 be completed in too short of time frames, resulting in Plaintiffs and those similarly
12 situated not being able to take meal periods.

13 105. BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES
14 would not permit Plaintiffs and the Class to take 30-minute meal periods unless
15 specifically scheduled by Defendant and/or DOES or unless Plaintiffs and the Class were
16 expressly told to by Defendant and/or DOES. This routinely resulted in Plaintiffs and the
17 Class members not being able to take a meal period, if at all, until after the fifth hour.

18 106. BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES did
19 not have a policy of providing a second meal period before the end of the tenth hour.

20 107. In the alternative, BURLINGTON COAT FACTORY WAREHOUSE CORPORATION
21 and/or DOES have implemented a policy requiring Plaintiffs and class members to
22 undergo a security check when entering or exiting the distribution centers, including
23 during meal periods. Plaintiffs and class members have been forced to wait through long-
24 lines for BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or
25 DOES to inspect their clothes and/or check their bags. The security check process has
26 resulted in BURLINGTON COAT FACTORY WAREHOUSE CORPORATION's
27 and/or DOES' failing to provide meal periods—much less full thirty-minute meal
28 periods. As such, BURLINGTON COAT FACTORY WAREHOUSE

1 CORPORATION's and/or DOES' have prevented Plaintiffs and class members from
2 using meal period time effectively for their own purposes free from the employer control.
3 108. Failing to provide compensation for such unprovided or improperly provided meal
4 periods, as alleged above, BURLINGTON COAT FACTORY WAREHOUSE
5 CORPORATION and/or DOES willfully violated the provisions of Labor Code sections
6 226.7, 512, and IWC Wage Order No. 9.

7 109. As a result of the unlawful acts of BURLINGTON COAT FACTORY WAREHOUSE
8 CORPORATION and/or DOES, Plaintiffs and the Class they seek to represent have been
9 deprived of premium wages, in amounts to be determined at trial, and are entitled to
10 recovery of such amounts, plus interest and penalties thereon, attorneys' fees and costs,
11 pursuant to Labor Code section 226.7, and IWC Wage Order No. 9-2001. Plaintiffs and
12 the Class they seek to represent did not willfully waive their right to take meal periods
13 through mutual consent with BURLINGTON COAT FACTORY WAREHOUSE
14 CORPORATION and/or DOES.

15 110. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
16 below.

17 **Fourth Cause of Action Against BURLINGTON COAT FACTORY WAREHOUSE**
18 **CORPORATION and/or DOES: Failure to Authorize and Permit Rest Periods (Lab. Code**
19 **§ 226.7; IWC Wage Order No. 9-2001(12); Cal. Code Regs. Title 8 § 11090)**

20 111. Plaintiffs and those similarly situated Class members hereby incorporate by reference
21 each and every other paragraph in this Complaint herein, as if fully plead.

22 112. Under IWC Wage Order No. 9, every employer shall authorize and permit all employees
23 to take rest periods, "[t]he authorized rest period time shall be based on the total hours
24 worked daily at the rate of ten (10) minutes net rest time per four (4) hours worked or
25 major fraction thereof." IWC Wage Order 9-2001(12). The time spent on rest periods
26 "shall be counted as hours worked for which there shall be no deduction from wages." *Id.*

27 113. Under California Labor Code section 226.7, if the employer does not provide an
28 employee a rest period in accordance with the above requirements, the employer shall

1 pay the employee one (1) hour of pay at the employee's regular rate of compensation for
2 each workday that the meal period is not provided.

3 114. At all relevant times, Defendant and/or DOES failed to authorize and/or permit rest
4 period time based upon the total hours worked daily at the rate of ten (10) minutes net
5 rest time per four (4) hours or major fraction thereof.

6 115. In the alternative, BURLINGTON COAT FACTORY WAREHOUSE CORPORATION
7 and/or DOES business model was such that Non-Exempt Employees were assigned too
8 much work with insufficient help due to chronic understaffing whereby Plaintiffs and the
9 Class had to work through their rest periods.

10 116. Throughout the statutory period, BURLINGTON COAT FACTORY WAREHOUSE
11 CORPORATION and/or DOES had a pattern and practice of assigning too much work to
12 be completed in too short of time frames, resulting in Plaintiffs and those similarly
13 situated not being able to take rest periods.

14 117. In the alternative, BURLINGTON COAT FACTORY WAREHOUSE CORPORATION
15 and/or DOES have implemented a policy requiring Plaintiffs and class members to
16 undergo a security check when entering or exiting the distribution centers, including
17 during rest breaks. Plaintiffs and the class members have been forced to wait through
18 long-lines for BURLINGTON COAT FACTORY WAREHOUSE CORPORATION
19 and/or DOES to inspect the clothes on their body and/or conduct bag-checks. As such,
20 Plaintiffs and class members have not been able to leave the distribution center's
21 premises and use their break time effectively for their own purposes free from the
22 employer control. If Plaintiffs and class members leave during a rest period, they must
23 submit themselves to the company's controlling and invasive searches. BURLINGTON
24 COAT FACTORY WAREHOUSE CORPORATION and/or DOES have thereby, as a
25 matter of policy and practice, prevented Plaintiffs and class members from using all their
26 break time free of employer control for off-plant pursuits.

27 118. As a result of the unlawful acts of BURLINGTON COAT FACTORY WAREHOUSE
28 CORPORATION and/or DOES, Plaintiffs and the Class they seek to represent have been

1 deprived of premium wages, in amounts to be determined at trial, and are entitled to
2 recovery of such amounts, plus interest and penalties thereon, attorneys' fees and costs,
3 pursuant to Labor Code section 226.7, and IWC Wage Order No. 9-2001.

4 119. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
5 below.

6 **Fifth Cause of Action Against BURLINGTON COAT FACTORY WAREHOUSE**
7 **CORPORATION and/or DOES: Failure to Provide Recovery Periods (Lab. Code § 226.7;**
8 **Cal. Code Regs. Title 8 § 3395)**

9 120. Plaintiffs and those similarly situated Class members hereby incorporate by reference
10 each and every other paragraph in this Complaint herein, as if fully plead.

11 121. Under California Code of Regulations, Title 8, section 3395(d)(1), “[w]hen the outdoor
12 temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and
13 maintain one or more areas with shade at all times while employees are present that are
14 either open to the air or provided with ventilation or cooling.” Cal. Code of Reg. Title 8,
15 § 3395(d)(1). Furthermore, “[t]he amount of shade present shall be at least enough to
16 accommodate the number of employees on recovery or rest periods, so that they can sit in
17 a normal posture fully in the shade without having to be in physical contact with each
18 other.” *Id.*

19 122. “Employees shall be allowed and encouraged to take a preventative cool-down rest in the
20 shade when they feel need to do so to protect themselves from overheating.” Cal. Code of
21 Reg. Title 8, § 3395(d)(3). “Such access to shade shall be permitted at all times.” *Id.*

22 123. BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES
23 failed to permit access to shade and preventative cool down rest and/or recovery periods
24 to Plaintiffs and the Class members when the temperature reached eighty (80) degrees
25 Fahrenheit. However, DEFENDANTS BURLINGTON COAT FACTORY
26 WAREHOUSE CORPORATION and/or DOES do not allow and encourage Plaintiffs
27 and the Class members to take preventative cool-down rest recovery periods in shaded
28 areas when the applicable temperatures are reached. Thus, DEFENDANTS

1 BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES
2 failed to permit, allow, or encourage Plaintiffs and the Class members to take
3 preventative cool down recovery periods in the shade to protect against overheating when
4 the temperature exceeds eighty (80) degrees Fahrenheit.

5 124. DEFENDANTS BURLINGTON COAT FACTORY WAREHOUSE CORPORATION
6 and/or DOES failed to utilize any alternative procedures for providing access to shade or
7 equivalent protection to Plaintiffs and the Class members. DEFENDANTS
8 BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES
9 failed to implement other cooling measures in lieu of shade at least as effective as shade
10 in allowing employees to cool.

11 125. Therefore, BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or
12 DOES failed to provide preventative cool down rest and/or recovery periods to Plaintiffs
13 and the Class members in accordance with California Code of Regulations, Title 8,
14 section 3395.

15 126. As a result of the unlawful acts of BURLINGTON COAT FACTORY WAREHOUSE
16 CORPORATION and/or DOES, Plaintiffs and the Class they seek e seeks to represent
17 have been deprived of premium wages, in amounts to be determined at trial, and are
18 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees
19 and costs, pursuant to Labor Code section 226.7.

20 127. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
21 below.

22 **Sixth Cause of Action Against BURLINGTON COAT FACTORY WAREHOUSE**
23 **CORPORATION and/or DOES: Knowing and Intentional Failure to Comply with**
24 **Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175; IWC Wage**
25 **Order No. 9; Cal. Code Regs., Title 8, § 11040)**

26 128. Plaintiffs and those similarly situated Class members hereby incorporate by reference
27 each and every other paragraph in this Complaint herein as if fully plead.

28 129. Labor Code section 226 subdivision (a) requires Defendant and/or DOES to, inter alia,

1 itemize in wage statements and accurately report the total hours worked and total wages
2 earned. BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or
3 DOES have knowingly and intentionally failed to comply with Labor Code section 226,
4 subdivision (a), on each and every wage statement provided to Plaintiffs AMANDA
5 GONZALEZ AND AUDRIANA GONZALEZ and members of the proposed Class.

6 130. Labor Code section 1174 requires BURLINGTON COAT FACTORY WAREHOUSE
7 CORPORATION and/or DOES to maintain and preserve, in a centralized location,
8 records showing the daily hours worked by and the wages paid to its employees.
9 BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES
10 have knowingly and intentionally failed to comply with Labor Code section 1174. The
11 failure of BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or
12 DOES, and each of them, to comply with Labor Code section 1174 is unlawful pursuant
13 to Labor Code section 1175.

14 131. BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES
15 failed to maintain accurate time records - as required by IWC Wage Order No. 9-2001(7),
16 and Cal. Code Regs., Title 8 section 11090 - showing, among other things, when the
17 employee begins and ends each work period, the total daily hours worked in itemized
18 wage statements, total wages, bonuses and/or incentives earned, and all deductions made.

19 132. BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES
20 have knowingly and intentionally failed to provide Plaintiffs and the Class members with
21 accurate itemized wage statements which show: “(1) gross wages earned, (2) total hours
22 worked by the employee, . . . (4) all deductions, provided that all deductions made on
23 written orders of the employee may be aggregated and shown as one item, (5) net wages
24 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
25 of the employee and only the last four digits of his or her social security number or an
26 employee identification number other than a social security number, (8) the name and
27 address of the legal entity that is the employer and, if the employer is a farm labor
28 contractor, as defined in subdivision (b) of Section 1682, the name and address of the

1 legal entity that secured the services of the employer, and (9) all applicable hourly rates
2 in effect during the pay period and the corresponding number of hours worked at each
3 hourly rate by the employee[.]” Labor Code section 226(a).

4 133. As a direct result of BURLINGTON COAT FACTORY WAREHOUSE
5 CORPORATION and/or DOES unlawful acts, Plaintiffs and the Class they intend to
6 represent have been damaged and are entitled to recovery of such amounts, plus interest
7 thereon, attorneys’ fees, and costs, pursuant to Labor Code section 226.

8 134. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
9 below.

10 **Seventh Cause of Action Against BURLINGTON COAT FACTORY WAREHOUSE**
11 **CORPORATION and/or DOES: Failure to Pay All Wages Due at the Time of Termination**
12 **from Employment (Lab. Code §§ 201-203)**

13 135. Plaintiffs and those similarly situated Class members hereby incorporate by reference
14 each and every other paragraph in this Complaint herein as if fully plead.

15 136. Plaintiffs AMANDA GONZALEZ AND AUDRIANA GONZALEZ terminated their
16 employment with BURLINGTON COAT FACTORY WAREHOUSE CORPORATION
17 and/or DOES.

18 137. Whether Plaintiffs AMANDA GONZALEZ AND AUDRIANA GONZALEZ voluntarily
19 or involuntarily terminated their employment with BURLINGTON COAT FACTORY
20 WAREHOUSE CORPORATION and/or DOES, Defendant and/or DOES did not timely
21 pay their straight time wages owed at the time of their termination.

22 138. Whether Plaintiffs AMANDA GONZALEZ AND AUDRIANA GONZALEZ voluntarily
23 or involuntarily terminated their employment with BURLINGTON COAT FACTORY
24 WAREHOUSE CORPORATION and/or DOES, Defendant and/or DOES did not timely
25 pay their overtime wages owed at the time of their termination.

26 139. Whether Plaintiffs AMANDA GONZALEZ AND AUDRIANA GONZALEZ voluntarily
27 or involuntarily terminated their employment with BURLINGTON COAT FACTORY
28 WAREHOUSE CORPORATION and/or DOES, Defendant and/or DOES did not timely

1 pay their meal and/or rest period premiums owed at the time of their termination.

2 140. Numerous members of the Class are no longer employed by BURLINGTON COAT
3 FACTORY WAREHOUSE CORPORATION and/or DOES. They were either fired or
4 quit BURLINGTON COAT FACTORY WAREHOUSE CORPORATION'S and/or
5 DOES' employ. BURLINGTON COAT FACTORY WAREHOUSE CORPORATION
6 and/or DOES did not pay all timely wages owed at the time of their termination.
7 BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES did
8 not pay all premium wages owed at the time of their termination.

9 141. Labor Code section 203 provides that, if an employer willfully fails to pay, without
10 abatement or reduction, in accordance with Labor Code sections 201, 201.5, 202 and
11 205.5, any wages of an employee who is discharged or who quits, the wages of the
12 employee shall continue at the same rate, for up to thirty (30) days from the due date
13 thereof, until paid or until an action therefore is commenced.

14 142. BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES
15 failed to pay Plaintiffs AMANDA GONZALEZ AND AUDRIANA GONZALEZ a sum
16 certain at the time of their termination or within seventy-two (72) hours of their
17 resignation, and have failed to pay those sums for thirty (30) days thereafter. Pursuant to
18 the provisions of Labor Code section 203, Plaintiffs AMANDA GONZALEZ AND
19 AUDRIANA GONZALEZ are entitled to a penalty in the amount of their daily wage,
20 multiplied by thirty (30) days.

21 143. When Plaintiffs and those members of the Class who are former employees of
22 BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES
23 separated from Defendant's and/or DOES' employ, Defendant and/or DOES willfully
24 failed to pay all straight time wages, overtime wages, meal period premiums, and/or rest
25 period premiums owed at the time of termination.

26 144. BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES
27 failure to pay said wages to Plaintiffs AMANDA GONZALEZ AND AUDRIANA
28 GONZALEZ and members of the Class they seek to represent, was willful in that

1 BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES and
2 each of them knew the wages to be due, but failed to pay them.

3 145. As a consequence of BURLINGTON COAT FACTORY WAREHOUSE
4 CORPORATION'S and/or DOES' willful conduct in not paying wages owed at the time
5 of separation from employment, Plaintiffs AMANDA GONZALEZ AND AUDRIANA
6 GONZALEZ and members of the proposed Class are entitled to thirty (30) days' worth of
7 wages as a penalty under Labor Code section 203, together with interest thereon and
8 attorneys' fees and costs.

9 146. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
10 below.

11 **Eighth Cause of Action Against BURLINGTON COAT FACTORY WAREHOUSE**
12 **CORPORATION and/or DOES: Violation of Unfair Competition Law (California Bus. &**
13 **Prof. Code, § 17200, et seq.)**

14 147. Plaintiffs and those similarly situated Class members hereby incorporate by reference
15 each and every other paragraph in this Complaint herein as if fully plead.

16 148. BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES
17 failure to pay all straight time and overtime wages earned, failure to provide compliant
18 meal and/or rest breaks and/or compensation in lieu thereof, failure to itemize and keep
19 accurate records, failure to pay all wages due at time of termination, as alleged herein,
20 constitutes unlawful activity prohibited by California Business and Professions Code
21 section 17200, et seq.

22 149. The actions of BURLINGTON COAT FACTORY WAREHOUSE CORPORATION
23 and/or DOES in failing to pay Plaintiffs and members of the proposed Class in a lawful
24 manner, as alleged herein, constitutes false, unfair, fraudulent and deceptive business
25 practices, within the meaning of California Business and Professions Code section 17200,
26 et seq.

27 150. Plaintiffs are entitled to an injunction and other equitable relief against such unlawful
28 practices in order to prevent future damage, for which there is no adequate remedy at law,

1 and to avoid a multiplicity of lawsuits. Plaintiffs bring this cause individually and as
2 members of the general public actually harmed and as a representative of all others
3 subject to BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or
4 DOES unlawful acts and practices.

5 151. As a result of their unlawful acts, BURLINGTON COAT FACTORY WAREHOUSE
6 CORPORATION and/or DOES have reaped and continue to reap unfair benefits at the
7 expense of Plaintiffs and the proposed Class they seek to represent. BURLINGTON
8 COAT FACTORY WAREHOUSE CORPORATION and/or DOES should be enjoined
9 from this activity and made to disgorge these ill-gotten gains and restore Plaintiffs and
10 the members of the proposed Class pursuant to Business and Professions Code section
11 17203. Plaintiffs are informed and believe, and thereon alleges, that Defendants and/or
12 DOES are unjustly enriched through their policy of not all wages owed to Plaintiffs and
13 members of the proposed Class.

14 152. Plaintiffs are informed and believe, and thereon alleges, that Plaintiffs and members of
15 the proposed class are prejudiced BURLINGTON COAT FACTORY WAREHOUSE
16 CORPORATION and/or DOES unfair trade practices.

17 153. As a direct and proximate result of the unfair business practices of BURLINGTON
18 COAT FACTORY WAREHOUSE CORPORATION and/or DOES, and each of them,
19 Plaintiffs, individually and on behalf of all employees similarly situated, are entitled to
20 equitable and injunctive relief, including full restitution and/or disgorgement of all wages
21 and premium pay which have been unlawfully withheld from Plaintiffs and members of
22 the proposed Class as a result of the business acts and practices described herein and
23 enjoining BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or
24 DOES from engaging in the practices described herein.

25 154. The illegal conduct alleged herein is continuing, and there is no indication that
26 BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES will
27 cease and desist from such activity in the future. Plaintiffs alleges that if BURLINGTON
28 COAT FACTORY WAREHOUSE CORPORATION and/or DOES are not enjoined

1 from the conduct set forth in this Complaint, they will continue the unlawful activity
2 discussed herein.

3 155. Plaintiffs further requests that the Court issue a preliminary and permanent injunction
4 prohibiting BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or
5 DOES from continuing to not pay Plaintiffs and the members of the proposed Class
6 overtime wages as discussed herein.

7 156. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
8 below.

9 **Ninth Cause of Action Against BURLINGTON COAT FACTORY WAREHOUSE**
10 **CORPORATION and/or DOES: Failure to Provide Personnel Records Within 30 Days of**
11 **Receiving Personnel File Requests from Employees (Lab. Code § 1198.5)**

12 157. Plaintiffs and those similarly situated Class members hereby incorporate by reference
13 each and every other paragraph in this Complaint herein as if fully plead.

14 158. Plaintiffs AMANDA GONZALEZ AND AUDRIANA GONZALEZ requested their
15 personnel records and did not receive them.

16 159. California law provides that current and former employees, as a matter of right, are
17 entitled to inspect and receive a copy of their personnel files and records. Pursuant to
18 Labor Code Section 1198.5, upon a written request from a current or former employee, or
19 a representative, the employer shall provide a copy of the personnel records not less than
20 30 calendar days from the date the employer receives the request.

21 (a) Every current and former employee, or his or her
22 representative, has the right to inspect and receive a copy of the
23 personnel records that the employer maintains relating to the
employee's performance or to any grievance concerning the
employee.

24 (b) (1) The employer shall make the contents of those personnel
25 records available for inspection to the current or former employee,
26 or his or her representative, at reasonable intervals and at
reasonable times, but not later than 30 calendar days from the date
27 the employer receives a written request, unless the current or
former employee, or his or her representative, and the employer
28 agree in writing to a date beyond 30 calendar days to inspect the
records, and the agreed-upon date does not exceed 35 calendar

1 days from the employer's receipt of the written request. Upon a
2 written request from a current or former employee, or his or her
3 representative, the employer shall also provide a copy of the
4 personnel records, at a charge not to exceed the actual cost of
5 reproduction, not later than 30 calendar days from the date the
6 employer receives the request, unless the current or former
7 employee, or his or her representative, and the employer agree in
8 writing to a date beyond 30 calendar days to produce a copy of the
9 records, as long as the agreed-upon date does not exceed 35
10 calendar days from the employer's receipt of the written request.

11 (Lab. Code § 1198.5)

12 160. Plaintiffs AMANDA GONZALEZ AND AUDRIANA GONZALEZ submitted a written
13 Personal File Request to BURLINGTON COAT FACTORY WAREHOUSE
14 CORPORATION on October 2, 2017 and September 27, 2017, respectively, via U.S.
15 Mail. To date, Plaintiffs have not received their personnel files from Defendants
16 BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES.

17 161. By failing to provide employees with personnel records within thirty (30) days of
18 receiving an employee's personnel file request, BURLINGTON COAT FACTORY
19 WAREHOUSE CORPORATION and/or DOES willfully violated the provisions of
20 *Labor Code* section 1198.5.

21 162. Pursuant to *California Labor Code* section 1198.5(k), "[i]f an employer fails to permit a
22 current or former employee, or his or her representative, to inspect or copy personnel
23 records within the times specified in this section, or times agreed to by mutual agreement
24 as provided in this section, the current or former employee or the Labor Commissioner
25 may recover a penalty of seven hundred fifty dollars (\$750) from the employer."

26 163. As a consequence of BURLINGTON COAT FACTORY WAREHOUSE
27 CORPORATION'S and/or DOES' willful conduct in not providing personnel records
28 within 30 days of the request for the records, Plaintiffs AMANDA GONZALEZ AND
AUDRIANA GONZALEZ and members of the proposed Class are entitled to penalties
as set forth in *Labor Code* section 2699.5 for violations of section 1198.5.

WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
below.

Tenth Cause of Action Against BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES: Failure to Provide Wage Records Within 21 Days of Receiving Requests from Employees (Lab. Code § 226(f))

165. Plaintiffs and those similarly situated Class members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

166. Plaintiffs AMANDA GONZALEZ AND AUDRIANA GONZALEZ requested their wage records and did not receive them.

167. California law provides that current and former employees, as a matter of right, are entitled to inspect and receive a copy of their wage records. Pursuant to Labor Code Section 226(f), upon a written request from a current or former employee, or a representative, the employer shall provide a copy of the personnel records not less than 21 calendar days from the date the employer receives the request.

168. Pursuant to *California Labor Code* section 226(f), “A failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.”

169. Plaintiffs AMANDA GONZALEZ AND AUDRIANA GONZALEZ submitted a written Wage Records Request to BURLINGTON COAT FACTORY WAREHOUSE CORPORATION on October 2, 2017 and September 27, 2017, respectively, via U.S. Mail. To date, Plaintiffs have not received their wage records from Defendants BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES.

170. By failing to provide employees with wage records within thirty (21) days of receiving an employee’s request, BURLINGTON COAT FACTORY WAREHOUSE CORPORATION and/or DOES willfully violated the provisions of *Labor Code* section 226(f).

171. As a consequence of BURLINGTON COAT FACTORY WAREHOUSE CORPORATION’S and/or DOES’ willful conduct in not providing wage records within 21 days of the request for the records, Plaintiffs AMANDA GONZALEZ AND

1 AUDRIANA GONZALEZ and members of the proposed Class are entitled to penalties
2 as set forth in *Labor Code* section 226(f).

3 172. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
4 below.

5 **Eleventh Cause of Action Against BURLINGTON COAT FACTORY WAREHOUSE**
6 **CORPORATION and/or DOES: Violations of The Private Attorneys General Act of 2004**
7 **(“PAGA”) (Labor Code §2698 et seq.)**

8 173. Plaintiffs and those similarly situated Class members hereby incorporate by reference
9 each paragraph in this Complaint herein as if fully plead.

10 174. Plaintiffs, by virtue of their services provided to BURLINGTON COAT FACTORY
11 WAREHOUSE CORPORATION and/or DOES, and BURLINGTON COAT FACTORY
12 WAREHOUSE CORPORATION’S and/or DOES’ failure to provide meal and rest
13 periods, all wages for all work performed at the statutory minimum agreed upon rate, and
14 all wages due at termination, are aggrieved employees with standing to bring an action
15 under the Private Attorney General Act (“PAGA”). Plaintiffs, as representative of the
16 people of the State of California, will seek any and all penalties otherwise capable of
17 being collected by the Labor Commission and/or the Department of Labor Standards
18 Enforcement (DLSE). This includes each of the following, as set forth in Labor Code
19 Section 2699.5, which provides that Section 2699.3(a) applies to any alleged violation of
20 the following provisions: Sections 201 through 203, 204, 205.5, 221, 222, 223, 226,
21 226.7, 227.3, 512, 558, 1174, 1194, 1197, 1197.1, and 1199.

22 175. Plaintiffs are informed and believe that BURLINGTON COAT FACTORY
23 WAREHOUSE CORPORATION and/or DOES has violated and continues to violate
24 provisions of the California Labor Code and applicable Wage Orders related to straight
25 time, overtime, minimum wage, meal and rest breaks, recovery periods, wage statements,
26 waiting time penalties.

27 176. Plaintiffs, as personal representatives of the general public, will and do seek to recover
28 any and all penalties for each and every violation shown to exist or to have occurred

1 during the one-year period of filing this action, in an amount according to proof, as to
2 those penalties that are otherwise only available to public agency enforcement actions.
3 Funds recovered will be distributed in accordance with PAGA, with at least 75% of the
4 penalties recovered being reimbursed to the State of California and the Labor and
5 Workforce Development Agency (LWDA).

6 **V. PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs prays for judgment as follows:

- 8 1. That the Court determine that this action may be maintained as a class action;
- 9 2. For compensatory damages, in an amount according to proof at trial, with interest
10 thereon;
- 11 3. For economic and/or special damages in an amount according to proof with
12 interest thereon;
- 13 4. For unpaid straight time and overtime wages, in an amount according to proof at
14 trial, with interest thereon;
- 15 5. For compensation for all time worked;
- 16 6. For compensation for not being provided paid rest breaks;
- 17 7. For compensation for not being provided paid meal periods;
- 18 8. For damages and/or monies owed for failure to comply with itemized employee
19 wage statement provisions;
- 20 9. For all waiting time penalties owed;
- 21 10. For penalties as stated in *Labor Code* section 2699.5 for violations of section
22 1198.5, for not being provided personnel files within 30 days of the request;
- 23 11. For penalties as stated in *Labor Code* section 226(f) for not being provided wage
24 records within 21 days of the request;
- 25 12. That Defendant be found to have engaged in unfair competition in violation of
26 sections 17200 et seq. of the California Business and Professions Code;
- 27 13. That Defendant be ordered and enjoined to make restitution to the Class due to
28 their unfair competition, including disgorgement of their wrongfully withheld

wages pursuant to California Business and Professions Code sections 17203 and 17204;

14. That an order of specific performance of all penalties owed be issued under Business and Professions Code sections 17202;

15. That Defendant be enjoined from continuing the illegal course of conduct, alleged herein;

16. That Defendant further be enjoined to cease and desist from unfair competition in violation of section 17200 et seq. of the California Business and Professions Code;

17. That Defendant be enjoined from further acts of restraint of trade or unfair competition;

18. For attorneys' fees;

19. For interest accrued to date;

20. For penalties for each violation of the Labor Code Private Attorneys General Act of 2004 ("PAGA");

21. For costs of suit and expenses incurred herein; and

22. For any such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

Dated: June 17, 2020

MARA LAW FIRM, PC

/s/ David Mara

David Mara, Esq.

Jamie Serb, Esq.

Tony Roberts, Esq.

Representing Plaintiffs AMANDA GONZALEZ
AND AUDRIANA GONZALEZ on behalf of
themselves, all others similarly situated,
and on behalf of the general public.

Exhibit 2

Case Name: Gonzalez v Burlington Coat Factory

Date: November 26, 2019

All-In Settlement

Requesting Attorney: **Tony Roberts**

* Class Members: **5,750**

Plaintiff or Defense: **Plaintiff**

** Opt-Out Rate: **1.5%**

Firm Name: **Mara Law Firm**

Opt-Outs Received: **86**

Telephone: **(619) 234-2833**

Postage Total: **\$7,382.35**

Email: troberts@maralawfirm.com

Grand Total: **\$49,459.35**

***** DISCOUNTED FLAT FEE: \$45,000.00**

* This number is an estimate provided by counsel. If the actual number is different, our cost estimate will change accordingly.

** For ease of comparison, in the event competing estimates use an alternate filing rate to calculate estimated cost, please advise us so that we may modify the estimate accordingly.

*** This price is valid for administration of a maximum of 86 opt-out's filed. Any additional opt-out's filed above 86 will be billed at the rate of \$8.00 per member.

Case Setup

Case Setup / Data Management / Create a Unified Mailing List / TFN Establish & Setup

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager	\$95.00	7	\$665.00
System Programming/Data Base Setup	\$150.00	7	\$1,050.00
Toll-Free Number Establish/Setup*	\$150.00	2	\$300.00
Skip Trace (Former Employees)	\$1.00	1725	\$1,725.00
Static Website	\$500.00	1	\$500.00
Total			\$4,240.00

* Up to 120 days after disbursement

Notification Procedures

National Change of Address (NCOA) / 7-Page Class Notice / Postage (up to 1 oz.)

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
NCOA	\$150.00	1	\$150.00
Project Manager-Opt-Out/Notice Format	\$95.00	2	\$190.00
Merged Data	\$0.25	5,750	\$1,437.50
Mailing of Notice Pack	\$1.00	5,750	\$5,750.00
Estimated Postage (up to 1 oz.)*	\$0.50	5,750	\$2,875.00
Total			\$10,402.50

*Additional charges will apply if the postage exceeds 1 oz. The final rate will be determined at the time of mailing.

Returned Mail

Notices Returned as Undeliverable / Skip Traces / Remail Notice Packets / Postage

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Update Undeliverable	\$0.35	575	\$201.25
Skip Traces	\$1.00	460	\$460.00
Remail Packs	\$1.25	575	\$718.75
Estimated Postage	\$0.50	575	\$287.50
Clerical Staff	\$60.00	5	\$300.00
Total			\$1,967.50

Opt-Out Processing

Process Opt-Outs, Deficiencies & Other Requests from Class Members / Call Center Support

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming of Opt-Out Data Base	\$150.00	4	\$600.00
Opt-Out Processing	\$15.00	86	\$1,290.00
Clerical Staff	\$60.00	2	\$120.00
Deficiency/Dispute Letters	\$20.00	5	\$100.00
Estimated Postage	\$0.55	5	\$2.75
Project Manager	\$95.00	1	\$95.00
Call Center Support	\$2.50	1,150	\$2,875.00
		Total	\$5,082.75

SSN Verification

Verify SSN for Validity with IRS / Send Deficiency Letters to "No-Match" Class Members

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming for SSN Selection	\$150.00	1	\$150.00
Project Manager	\$95.00	3	\$285.00
SSN Verification	\$0.10	5,664	\$566.40
Follow up on Mis-Matches	\$10.00	57	\$570.00
Estimated Postage	\$0.55	57	\$31.35
		Total	\$1,602.75

Disbursement

Calculations / Data Management / Create & Manage QSF / Print & Mail Checks, 1099/W-2

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$150.00	3	\$450.00
Project Supervisor Review of Distribution	\$150.00	9	\$1,350.00
Project Manager-Correspond w/ Attorney	\$95.00	5	\$475.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Programming/Setup & Printing of Checks	\$150.00	6	\$900.00
Print Mail Checks, W-2/ 1099 (8x10 sheet)	\$2.00	5,664	\$11,328.00
Estimated Postage	\$0.50	5,664	\$2,832.00
Reminder Postcard	\$0.30	3,682	\$1,104.60
Postage for Postcard	\$0.30	3,682	\$1,104.60
		Total	\$19,994.20

Post-Disbursement & Tax Reporting

Account Recons / Skip Trace / Reissue Checks / Annual Tax Reporting / Final Reporting & Declaration

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Re-Issue Checks as Required	\$5.00	57	\$285.00
Project Supervisor -Account Recons	\$150.00	6	\$900.00
Skip Trace	\$1.00	453	\$453.00
Remail Undeliverable Checks	\$2.50	453	\$1,132.50
Estimated Postage	\$0.55	453	\$249.15
Project Supervisor-Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming- Final Reports	\$150.00	2	\$300.00
Project Manager - Acnt Files Sent to Atty	\$150.00	2	\$300.00
Project Supervisor - Final Declaration	\$150.00	2	\$300.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
Unclaimed Funds Sent to Cy Pres	No Fee	1	No Fee
		Total	\$6,169.65

*CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

Grand Total: \$49,459.35

TERMS AND CONDITIONS

These Terms and Conditions are made a part of and incorporated by reference into the CPT Group, Inc. Terms and Conditions Agreement by and between Client and CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606 ("CPT").

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with, another party.
- b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
- c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
- d) **"Claims Administrator"** means CPT Group, Inc. a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
- e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
- f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, objections, and the like which contain Client Data.
- g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
- h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
- i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
- j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
- k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
- l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
- m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
- n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
- o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
- p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
- q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
- r) **"Products"** means any and all CPT Services, and work product resulting from Services.
- s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds

are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.

- t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
 - w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
 - x) **"Term"** means the term of the Agreement, as set forth in the Order.
 - y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
 - z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. **Client Obligations.** Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement, and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. **Security.** The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement, and shall promptly inform the other Parties of such breaches.
4. **CPT Obligations.** Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.
5. **Mutual Obligations.**
- a) **Resources.** Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service. If there

is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b) **Incident Notification.** Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. **Qualified Settlement Fund Account.** At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. **Fees and Payment.** Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and /or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only, and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. **Term and Termination.**
- a) **Term.** The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
- b) **Termination for Cause.** Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- c) **Bankruptcy Events.** A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
- d) **Effect of Termination.** Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
- e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.

Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

- a. **Compelled Disclosure.** If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the

other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.

- b. **Remedies.** If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. **Intellectual Property.** As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, "Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. **Warranties.** Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
13. **Liability.**
- a. **Liability Cap.** EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
- b. **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. **Communications.** CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.
15. **Miscellaneous Provisions.**
- a. **Governing Law; Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of California and

the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.

- b. Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c. Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d. Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e. Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f. Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g. No Third Party Beneficiaries. The representations, warranties and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns, and shall not be construed as conferring any rights on any other persons.
- h. Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT

from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i. Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce, and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j. Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k. Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l. Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m. Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n. Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret or construe its meaning, scope or intent.
- o. Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power or remedy.
- p. Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.