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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

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

PLAINTIFFS,

v.

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

DEFENDANTS.

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

PLAINTIFF,

v.

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

DEFENDANTS.

CONSOLIDATED CASE NO. CIVDS1929684

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

**DECLARATION OF DAVID MARA, ESQ.
IN SUPPORT OF MOTION TO APPROVE
PAGA SETTLEMENT**

Judge: Hon. David Cohn
Dept.: S26

Complaint Filed: October 3, 2019

1 I, DAVID MARA, declare as follows:

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

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

10. Mara Law Firm, PC (formerly The Turley & Mara Law Firm, APLC) devotes a significant portion of its practice specifically to wage and hour class actions. A majority of the cases I handle are wage and hour class actions and actions filed pursuant to the Private Attorneys General Act of 2004 ("PAGA"). Ms. Serb and Mr. Roberts solely handle wage and hour class actions and PAGA actions. Mara Law Firm, PC, has been appointed class counsel in numerous federal and state class actions. Mara Law Firm, PC, and its lawyers have handled over three hundred and fifty (350) class action and PAGA lawsuits. Mara Law Firm, PC, and its lawyers have successfully settled over one hundred (100) cases over a period of approximately fifteen (15) years, resulting in the recovery of millions of dollars for class members.

11. Mara Law Firm, PC, is well versed in wage and hour class action law. Specifically, Mara Law Firm, PC, has obtained class certification and has been certified as class counsel in the following cases: *Mario Norona v. B&G Delivery System, Inc.* (Sacramento County Superior Court, Case No. 34-2015-00186826-CU-OE-GDS); *Jerald Schroeder v. YRC,*

1 *Inc.; YRC Worldwide, Inc.* (Central District of California, Case No. 12-cv-01374-TJH);
2 *John Martin v. Sysco Corporation; Sysco Central California, Inc.* (Eastern District of
3 California, Case No. 1:16-cv-00990-DAD-SAB); *William Smith v. Werner Enterprises,*
4 *Inc. d/b/a C.L. Werner, Inc.* (District of Nebraska, Case No. 8:15-cv-287); and *Thomas*
5 *Perez v. City of San Diego* (San Diego County Superior Court, Case No. 37-2014-
6 00016621-CU-OE-CTL).

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

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

20 14. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.* (San Diego County
21 Superior Court, Case No. GIC834348) which was the underlying case in the California
22 Supreme Court's landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012)
23 53 Cal.4th 1004, in which the California Supreme Court delineated the scope of employer
24 obligations to provide, and employee rights to receive, meal and rest periods under
25 California law. I also wrote the Amicus Curiae brief on behalf of Consumer Attorneys of
26 California ("CAOC") in the decision by the California Supreme Court in *Augustus v. ABM*
27 *Security Services, Inc.* (2016) 2 Cal.5th 257 (rest breaks must be duty-free and time spent
28 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 four (4) years and has handled over one hundred (100) class action and PAGA lawsuits. Ms. Serb received her training in

1 wage and hour class action and PAGA lawsuits while at Mara Law Firm, PC. Ms. Serb
2 has been at the Mara Law Firm, PC, for over four (4) years. She also co-wrote an amicus
3 brief on behalf of CAOC in *Williams v. Superior Court* (2017) 3 Cal.5th 531.

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

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

19 20. Tony Roberts solely handles wage and hour class actions and PAGA lawsuits. Mr.
20 Roberts graduated from the University of San Diego School of Law where he merited
21 honors in class action studies and performed independent studies on class actions. Mr.
22 Roberts externed at the United States District Court for the Honorable Mitchell D.
23 Dembin. Mr. Roberts was admitted to practice law in California in June 2017. In June
24 2017, Mr. Roberts joined the Mara Law Firm, PC, litigating wage and hour class and
25 PAGA actions. Mr. Roberts received his training in wage and hour class action and PAGA
26 lawsuits while at Mara Law Firm, PC. Mr. Roberts is also an adjunct professor of law at
27 the University of San Diego School of Law.

28 21. Mr. Roberts drafts complaints; engages in the discovery process; communicates with

clients; communicates with class members and PAGA 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; routinely writes and opposes motions, appears before the Court at law and motion and settlement hearings; creates exhibits for use in cases; reviews documents produced by employers; deposes employer witnesses; defends client depositions; attends mediations; drafts, reviews, and revises settlement approval motions; argues at hearings on settlement motions; and oversees day to day work in his cases.

22. On February 7, 2019, Plaintiff Spivey provided notice to the LWDA of the California Labor Code violations she alleged against Defendants, pursuant to California Labor Code § 2699.3. Pursuant to California Labor Code § 2699.3, subsection (a)(1)(A), an aggrieved employee or representative is to give written notice to the LWDA “of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation” before filing a PAGA claim, to allow the LWDA to determine whether it intends to investigate. Cal. Lab. Code § 2699.3(a)(1)(A).

23. On April 19, 2019, Plaintiff Spivey filed an action under the Private Attorneys General Act of 2004 (“PAGA”) on behalf of herself and similarly aggrieved employees against Defendants in San Bernardino Superior Court, No. CIVDS1911341. Plaintiff Spivey provided this Complaint to the LWDA by uploading it to the LWDA’s online website.

24. On July 16, 2019, Plaintiff Spivey provided amended notice to the LWDA of the California Labor Code violations she alleged against Defendant, pursuant to California Labor Code § 2699.3. Plaintiff Spivey provided this notice to the LWDA by uploading the notice to the LWDA’s online website.

25. On June 1, 2020, Plaintiff Spivey’s case was consolidated with *Smith et al. v. Burlington Merchandising Corporation et al.* in San Bernardino Superior Court, No. CIVDS1929684.

26. I devoted 188 hours to this case. The following is a summary of my tasks and the activities I performed in this litigation: pre-filing investigation and legal research; communicate and meet with the PAGA representative, Jasmine Spivey; numerous

1 interviews of aggrieved employees; research and investigation in California's ever-
2 evolving wage and hour laws regarding compensation, overtime, meal and rest periods,
3 itemized wage statements, waiting time penalties, and California's Unfair Competition
4 Law as well as into the authority cited by Defendants' in their Demurrer; investigation
5 into Defendants' corporate structure, pay-structure, policies, and security screening
6 procedures; edit PAGA notices to the LWDA and Defendants; draft and file pleadings;
7 numerous inner-office conferences as well as conferences with co-counsel regarding a
8 variety of issues throughout the litigation, mediation, and settlement; analyze records
9 produced by Defendants relating to its policies, pay-structures, and time keeping; review
10 Ms. Spivey's responses to Defendants' Request for Production of Documents (Set One);
11 review and/or edit motions, oppositions, and or replies as well as evidentiary objections;
12 draft mediation brief and exposure model; discuss litigation strategy with associates;
13 prepare for and attend full-day mediations; review Joint Stipulation to Consolidate and
14 Stay; review and edit settlement agreement and approval motion; review and negotiate
15 memorandum of understanding; draft declaration in support of approval motion; review
16 explanatory letter to aggrieved employees; review and edit settlement administrator's
17 declaration; and it is anticipated that I will prepare for and attend the settlement approval
18 hearing.

19 27. My hourly rate is \$800. Based on my hourly rate and the hours expended thus far (188),
20 my fee is \$150,400, which was reasonable and necessary to the successful litigation of this
21 matter.

22 28. Ms. Serb devoted 42 hours to this case. The following is a summary of her tasks and
23 activities performed in the litigation of this matter: interviewing numerous aggrieved
24 employees; communicating with the PAGA representative; review discovery responses;
25 review and edit motions, oppositions, and replies; edit and review Joint Stipulations; inter-
26 office discussions re: strategy, litigation, mediation, and settlement; review documents and
27 data produced by Defendant; review explanatory letter to aggrieved employees.

28 29. Ms. Serb's hourly rate is \$500. Based on her hourly rate and the hours expended (42), her

lodestar fee is \$21,000, which was reasonable and necessary to the successful litigation of this matter.

30. Mr. Roberts devoted 142 hours to this case. The following is a summary of his tasks and activities performed in the litigation of this matter: communicate with the PAGA representative; draft PAGA notices to LWDA and Defendants; draft and review motions, oppositions, and replies; communications with Defense counsel and co-counsel; draft evidentiary objections; inter-office discussions re: strategy, litigation, mediation, and settlement; attend mediation; meet and confer over depositions; prepare Plaintiff Spivey for deposition and object to deposition notice; assist Plaintiff Spivey in drafting discovery responses to Defendants' Request for Production of Documents (Set One); draft Joint Case Management Conference Statement; interview aggrieved employees; review documents and data produced by Defendant; review and edit mediation brief and exposure model; review and edit settlement administrator's declaration; and, analyze records produced by Defendants relating to their policies, pay-structures, and time keeping.

31. Mr. Roberts' hourly rate is \$400. Based on his hourly rate and the hours expended (142), his lodestar fee is \$56,800, which was reasonable and necessary to the successful litigation of this matter.

32. Here, Counsel applies for an award of attorneys' fees in the sum of \$666,666.67 (which is 33% of the settlement amount). The requested fee falls in the mid-range of percentage class fee awards, which commonly range from 20% to 50% of a common fund, and constitutes fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis and compensates our firms for our efforts, as well as the result achieved for the benefit of the State of California and the Covered Employees.

33. My firm has worked 372 hours to date on this case and have calculated the lodestar fee on those hours at \$228,200 at rates reflecting those currently earned in the market place. A summary of my firm's time is attached as **Exhibit 1**.

34. In addition, my firm seeks reimbursement of the litigation costs and expenses of

1 \$6,099.58. These costs were all reasonable and necessary to the prosecution of this case
2 and the results achieved and are fair, reasonable, and unopposed by Defendant. A
3 summary of my firm's costs are attached as **Exhibit 1**.

4 35. This was a highly-contested matter which required a significant amount of time and labor.
5 My firm investigated and analyzed documents and data relating to Plaintiff's state-wide
6 claims. In addition, my firm had to marshal the evidence in a manner in which it could be
7 adjudicated on a state-wide basis, an endeavor which cannot be underscored. Here, my
8 firm has considerable experience in PAGA litigation and, from the beginning of this case,
9 marshalled the evidence with a sharp focus on state-wide proof. This filtering of evidence
10 into state-wide proof while keeping an eye on the merits of the litigation resulted in a
11 considerable amount of attorney time and skill.

12 36. Most importantly, all services were performed by my firm on a contingent basis. Both
13 California and federal courts recognize that attorneys should be compensated for taking on
14 such contingent risks and provided with financial incentives to enforce important rights
15 and protections like those at issue in this case.

16 37. PAGA Counsel's hourly rates are between \$400 and \$800 and are in line with rates
17 typically approved in wage and hour class action and PAGA litigation and which rates
18 have been approved by Courts in California in the Los Angeles, Sacramento, San
19 Francisco, Alameda, Kern, and San Diego County Superior Courts.

20 38. PAGA Counsel's skill and experience support their hourly rates. Their practice is limited
21 exclusively to litigation, focusing on the representation of employees in wage and hour
22 class action and PAGA matters. As prominent attorneys in the field of wage and hour
23 employment litigation, Plaintiffs' counsel continually monitors the prevailing market rates
24 charged by both defense and plaintiff law firms and set the billing rates of their attorneys
25 and paralegals/law clerks to be consistent with the prevailing market rates in the private
26 sector for attorneys and staff of comparable skill, qualifications and experience. Other
27 wage and hour attorneys working as class counsel before California courts charge
28 comparable if not higher rates.

1 39. The proposed PAGA settlement here of \$2,000,000 takes into account the realistic
2 exposure, the very real impediments of succeeding on the merits and reflects an
3 appropriate, balanced, and reasonable settlement value of the PAGA claims. The
4 settlement amount fits squarely within the “remedial purpose” of PAGA of enforcing
5 compliance with important employee protections in the Labor Code and Wage Order. In
6 addition, it should be noted that the LWDA has been provided with a copy of the Parties’
7 Settlement Agreement. To date, the LWDA has not expressed concern about the amount
8 of the settlement.

9 40. The proposed settlement is the product of serious, informed, non-collusive negotiations,
10 has no obvious defects, does not improperly grant preferential treatment to the PAGA
11 representative or segments of the aggrieved employees and falls within the range of fair
12 and reasonable settlements. I believe that this non-reversionary settlement is in the best
13 interests of the settlement group as fair, reasonable, and adequate. Therefore, I
14 recommend approval of the settlement.

15
16 I hereby declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct.

18
19 Dated: September 14, 2020

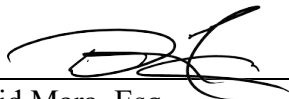
20
21 
22 _____
23 David Mara, Esq.

Exhibit 1

SUMMARY OF TIME AND COSTS

Latoia Smith et al. v. Burlington Merchandising Corporation et al.
Consolidated with Jasmine Spivey v. Burlington Coat Factory of Texas, Inc. et al.
San Bernardino Case No. CIVDS1929684

Attorneys' Hours: 372
Lodestar Fees: \$ 228,200.00
Costs: \$ 6,099.58

As of September 14, 2020

FIRM/ ATTORNEYS	YEAR ADMITTED	HOURS	HOURLY RATE	TOTAL
MARA LAW FIRM, PC				
David Mara	2004 (16)	188	\$800	\$150,400
Jamie Serb	2013 (7)	42	\$500	\$21,000
Tony Roberts	2017 (3)	142	\$400	\$56,800
MARA LAW FIRM, PC TOTAL:		372		\$228,200

LITIGATION EXPENSES	
MARA LAW FIRM, PC	\$6,099.58
TOTAL COSTS	\$6,099.58

Latoia Smith et al. v. Burlington Merchandising Corporation et al.

Costs Summary

Attorney Service:	\$	1,293.00
Court Fees:	\$	2,473.25
Mediation:	\$	2,333.33
TOTAL COSTS	\$	<u>6,099.58</u>

Latoia Smith et al. v. Burlington Merchandising Corporation et al.

Attorney Service

Date:	Description:	Amount:	
3/2/2019	One Legal - PAGA Letter Service	12876144	\$ 125.00
5/17/2019	One Legal - Complaint Service	13204563	\$ 140.00
6/24/2019	One Legal - Proof of service of Sum	13404861	\$ 85.00
6/3/2019	Court Call	9833983	\$ 94.00
8/12/2019	Court Call	9981036	\$ 94.00
7/8/2020	Case Anywhere	193871	\$ 120.00
4/9/2020	Case Anywhere	186550	\$ 120.00
1/8/2020	Case Anywhere	179129	\$ 198.00
10/3/2019	Case Anywhere	171916	\$ 129.00
8/13/2020	Court Call	10768305	\$ 94.00
TBD	Court Call Settlement Approval Hearing		\$ 94.00
TOTAL		<u><u>\$ 1,293.00</u></u>	

Latoia Smith et al. v. Burlington Merchandising Corporation et al.

Court Fees

Date:	Description:	Invoice/Check No.:	Amount:
4/15/19	One Legal - Complaint filing	13085769	\$ 1,570.00
5/18/19	One Legal - Notice of Change of Attorney	13242502	\$ 85.00
8/13/19	One Legal - Evidatiary Objections	13630707	\$ 178.25
8/13/19	One Legal - Opposition to Demurrer	13630575	\$ 195.50
10/30/19	One Legal - Motion to File FAC	13855719	\$ 308.25
11/22/19	One Legal - Joint Stipulaiton	14076895	\$ 136.25
TOTAL			<u>\$ 2,473.25</u>

Latoia Smith et al. v. Burlington Merchandising Corporation et al.

Mediation

Date:	Description:	Description:	Amount:
2/20/2020	Jeffrey Ross - mediation 6/18/2020	Check 1037	\$ 2,333.33
TOTAL			<u>\$ 2,333.33</u>