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

12 AMANDA GONZALEZ and
13 AUDRIANA GONZALEZ on behalf
14 of themselves, all others similarly
15 situated and on behalf of the general
16 public,
17 Plaintiffs,
18 v.
19 BURLINGTON COAT FACTORY
20 WAREHOUSE CORPORATION
21 and DOES 1-10,
22 Defendants.

CASE NO. 5:18-cv-00666-JGB-SP
Honorable Jesus G. Bernal

PRELIMINARY APPROVAL ORDER

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

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

1 WHEREAS, this action is pending before the Court as a class action (the
2 "Action"); and

3 WHEREAS, the Parties have jointly applied to this Court for an order
4 preliminarily approving the settlement of the Action in accordance with a Joint
5 Stipulation of Class Action and PAGA Representative Action Settlement and
6 Release (the "Joint Stipulation" or "Settlement"), which, together with the exhibits
7 annexed thereto, sets forth the terms and conditions for a proposed settlement and
8 dismissal of the Action with prejudice upon the terms and conditions set forth
9 therein; and the Court having read and considered the Joint Stipulation and the
10 exhibits annexed thereto;

11 NOW, THEREFORE, IT IS HEREBY ORDERED:

12 1. This Order incorporates by reference the definitions in the Joint
13 Stipulation, and all terms defined therein shall have the same meaning in this Order
14 as set forth in the Joint Stipulation.

15 2. The Court grants preliminary approval to the Joint Stipulation. The
16 Court preliminarily finds that the Joint Stipulation is fair, adequate and reasonable,
17 and preliminarily approves the terms of the settlement.

18 3. The Court recognizes that the Class Members, Participating Class
19 Members, and Defendant stipulate and agree to certification of a class for
20 settlement purposes only. This stipulation will not be deemed admissible in this or
21 any other proceeding should this Settlement not become final. For settlement
22 purposes only, the Court conditionally certifies the following settlement class (the
23 "Class"): "All current and/or former non-exempt, non-union, hourly employees
24 provided as temporary workers by Lyneer Staffing Solutions who worked one or
25 more shifts in a workweek at Burlington's distribution centers located in California
26 at any time between February 27, 2014 and [August 22, 2020 or the Date of
27 Preliminary Approval of this settlement, inclusive, whichever is earliest]." The
28 Court finds, for settlement purposes only, the requirements of Federal Rule of Civil

1 Procedure 23(a) and Federal Rule of Civil Procedure 23(b)(3) are satisfied, with
2 the exception of the manageability requirement of Rule 23(b)(3) that the Court
3 need not address for purposes the settlement. The term “Participating Class
4 Members Class Member” means a Class Member who does not opt-out of the
5 Settlement or who opts-out but subsequently rescinds the opt-out in a timely
6 manner.

7 4. Named Plaintiffs Amanda Gonzalez and Audriana Gonzalez
8 (“Plaintiffs”) are hereby appointed and designated, for all purposes, as the
9 representatives of the class, and the following attorneys are hereby appointed and
10 designated as counsel for Plaintiffs and the Class (“Class Counsel”):

11 David Mara, Esq.
12 Jamie Serb, Esq.
13 Tony Roberts, Esq.
14 MARA LAW FIRM, PC
15 2650 Camino Del Rio North, Suite 205
16 San Diego, California 92108

17 Class Counsel is authorized to act on behalf of Class Members, Participating Class
18 Members, and PAGA Group Members with respect to all acts or consents required
19 by, or which may be given pursuant to, the Settlement, and such other acts
20 reasonably necessary to consummate the Settlement. Any Class Member and
21 Participating Class Members may enter an appearance through counsel of such
22 Class Member and Participating Class Member's own choosing and at such Class
23 Member and Participating Class Member's own expense. Any Class Member and
24 Participating Class Member who does not enter an appearance or appear on his or
25 her own will be represented by Class Counsel.

26 5. The Court hereby approves on a preliminary basis the Joint
27 Stipulation and settlement contained therein, including the definition and
28 disposition of the Maximum Settlement Amount and related matters provided for
in the Joint Stipulation. It appears to the Court on a preliminary basis that the
settlement amount and terms are fair, adequate and reasonable as to all potential
Class Members, Participating Class Members, and PAGA Group Members when

1 balanced against the probable outcome of further litigation relating to liability and
2 damages issues. It further appears that extensive and costly investigation and
3 research have been conducted such that counsel for the Parties at this time are able
4 to reasonably evaluate their respective positions. It further appears to the Court that
5 settlement at this time will avoid substantial additional costs by all Parties, as well
6 as avoid the delay and risks that would be presented by further prosecution of the
7 Action. It further appears that the Settlement has been reached as the result of
8 intensive, serious and non-collusive, arms-length negotiations.

9 6. A hearing (the "Settlement Hearing") shall be held before this Court
10 on _____, at _____.m. at the United States District Court for the
11 Central District of California (Eastern Division), located at 3470 Twelfth Street,
12 Riverside, CA 92501, in Courtroom No. 1, to determine all necessary matters
13 concerning the Settlement, including: whether the proposed settlement of the
14 Action on the terms and conditions provided for in the Joint Stipulation is fair,
15 adequate and reasonable and should be finally approved by the Court; whether a
16 Judgment, as provided in the Joint Stipulation, should be entered herein; whether
17 the plan of allocation contained in the Joint Stipulation should be approved as fair,
18 adequate and reasonable to the Class Members, Participating Class Members, and
19 PAGA Group Members; and to finally approve Class Counsel's Fees and Litigation
20 Costs Award, the Plaintiffs' Service Enhancements, the PAGA payment to the
21 LWDA, and the settlement administration expenses. The Final Approval hearing
22 may be continued without further notice to Plaintiffs.

23 7. The Joint Stipulation specifies a Fees Award in an amount not to
24 exceed \$750,000, Litigation Costs in an amount not to exceed \$50,000.00, Service
25 Enhancements of \$7,500 to each of the named Plaintiffs, \$45,000 for Settlement
26 Administration Costs, and \$225,000 to the Labor and Workforce Development
27 Agency ("LWDA") as the LWDA's 75% share of the \$300,000 allocated to Private
28 Attorney General Act ("PAGA") claims in this Action. However, the Court will

1 not approve the amount of attorneys' fees and costs until the Final Approval
2 Hearing. Similarly, the Court will not decide the amount of the Service
3 Enhancements until the Final Approval Hearing. If the Court decides to award less
4 than the amounts set forth above, then the unawarded Fees, Costs, Service
5 Enhancements, and Settlement Administration Costs will become part of the Net
6 Settlement Amount, distributable to Participating Class Members. It appears to the
7 Court that this provision is appropriate, fair, and reasonable.

8 8. The Court hereby grants Plaintiffs leave to file the Second Amended
9 Complaint attached to the Joint Stipulation as Exhibit B.

10 9. The Court hereby approves, as to form and content, the Notice
11 annexed as Exhibit A to the Joint Stipulation (Class Notice). The Court finds that
12 the distribution of the Notice substantially in the manner and form set forth in the
13 Joint Stipulation and this Order meets the requirements of due process, is the best
14 notice practicable under the circumstances, and shall constitute due and sufficient
15 notice to all persons entitled thereto.

16 10. The Court hereby appoints CPT Group, Inc., as Settlement
17 Administrator and hereby directs the Settlement Administrator to mail or cause to
18 be mailed to Class Members/PAGA Group Members the Notice by first class mail
19 within fourteen (14) days of receiving the class data from Defendant using the
20 procedures set forth in the Joint Stipulation. Participating Class Members and
21 PAGA Group Members will automatically receive their share of the Settlement.

22 11. Class Members will have 60 days from the mailing date of the Notice
23 of settlement to opt-out or object to the Settlement.

24 12. Any Class Member may choose to opt-out of and be excluded from
25 the Class as provided in the Notice by following the instructions for requesting
26 exclusion from the Class that are set forth in the Notice. Any Class Member who
27 returns a timely, valid, and executed Request for Exclusion will not participate in
28 or be bound by the Settlement and subsequent judgment and will not receive a

1 Settlement Payment from the Net Settlement Amount. Class Members are still
2 bound by the release of PAGA claims even if they submit a valid Request for
3 Exclusion and will receive a check with his or her PAGA Group Payment
4 allocation from the \$75,000.00 in PAGA penalties if he or she is a member of the
5 PAGA Group.

6 13. Any Class Member who has submitted written objections may, but is
7 not required to appear, himself or herself or through counsel, at the Final
8 Approval/Fairness Hearing and object to the approval of the Joint Stipulation or
9 the award of attorneys' fees and reimbursement of expenses to Class Counsel. No
10 Class Member, or any other person, shall be heard or entitled to contest the
11 approval of the proposed Joint Stipulation, the judgment to be entered approving
12 the same, or the award of attorneys' fees and reimbursement of expenses to Class
13 Counsel, unless that Class Member has submitted written objections in the manner
14 set forth in the Notice and the Joint Stipulation. The Parties may file any response
15 to the objections submitted by objecting Class Members, if any, no later than seven
16 (7) days before the Final Approval/Fairness Hearing.

17 14. Any Class Member who does not make his or her objection(s) in the
18 manner so provided in the Notice and in the Joint Stipulation shall be deemed to
19 have waived such objection(s) and shall forever be foreclosed from making any
20 objection(s) to the fairness or adequacy of the proposed settlement as incorporated
21 in the Joint Stipulation and the award of attorneys' fees and reimbursement of
22 expenses to counsel and the right to appeal any orders that are entered relating
23 thereto, unless otherwise ordered by the Court.

24 15. All settlement administration expenses shall be paid from the
25 Maximum Settlement Amount.

26 14. As of the date this Order is signed, all dates and deadlines associated
27 with the Action shall continue to be stayed, other than those related to the
28 administration of the Settlement of the Action.

1 15. If for any reason the Settlement is not approved by the Court, or if
2 Defendant withdraws from the Settlement, the Settlement Agreement and any
3 related settlement documents will be null and void, other than the confidentiality
4 and non-disclosure provisions and the non-admission provisions in the Settlement
5 Agreement, and any class action certified for settlement purposes will be vacated.
6 In such an event, neither the Settlement Agreement, nor the settlement documents,
7 nor the negotiations leading to the Settlement may be used as evidence, and
8 Defendant shall retain the right to challenge all claims and allegations in the action,
9 to assert all applicable defenses, and to dispute the propriety of class or collective
10 certification on all applicable grounds.

11 16. The Court reserves the right to adjourn or continue the date of the
12 Settlement Hearing and all dates provided for in the Joint Stipulation without
13 further notice to Class Members or PAGA Group Members, and retains
14 jurisdiction to consider all further applications arising out of or connected with the
15 proposed Settlement.

16 **II. ADMINISTRATION TIMELINE**

17 The Court adopts the following administration timeline:

18 Within 40 days after 19 the Date of Preliminary 20 Approval.	Defendant to provide the Settlement Administrator Class Members/PAGA Group Members Data.
21 14 days after receipt of 22 class data from 23 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.
24 5 business days before 25 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.
26 60 days after mailing 27 Class Notice.	Response Deadline for Class Members to opt-out or object.
28 1 business day prior to the Fairness Hearing.	Last day to rescind opt-outs.
30 days after entry of	Settlement Effective Date.

the Court's Final Approval Order, if no appeals are filed.	
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.

IT IS SO ORDERED.

Dated: _____

HON. JESUS G. BERNAL
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA