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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF PLACER

AYEBAINATON EKINE, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

BURBERRY LIMITED, a New York
corporation; and DOES 1 through 100,

Defendants.

CASE NO. S-CV-0045602

**DECLARATION OF FLETCHER W.
SCHMIDT IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SETTLEMENT APPROVAL OF CLAIMS
BROUGHT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
REASONABLE ATTORNEYS' FEES AND
COSTS, AND ENHANCEMENT AWARDS**

Date: October 28, 2021
Time: 8:30 a.m.
Dept.: 42

Action Filed: September 23, 2020
Trial Date: None Set

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I, FLETCHER W. SCHMIDT, declare as follows:

1. I am a Partner at the Haines Law Group, APC, and counsel for the named Plaintiffs Plaintiffs Ayebainaton Ekine and Edward Castillo (“Plaintiffs”) in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I am a 2012 graduate of Loyola Law School, Los Angeles, where I graduated *cum laude* and was awarded membership in the Order of the Coif. Since graduating from law school, I worked as a law clerk for the law firm of Tredway, Lumsdaine & Doyle, where I was part of the defense team for two class actions, including one wage and hour class action in Los Angeles County Superior Court. From August 2013 to March 2016, I worked as an associate attorney at Boren, Osher & Luftman LLP. Since March 2016 I have worked at my current firm, Haines Law Group, APC, where, in 2018, I became a Partner.

3. During my time with Boren, Osher & Luftman LLP and Haines Law Group, APC, my practice has been solely devoted to litigating plaintiff-side wage and hour class actions in California state and federal court. I am currently responsible for managing a caseload of over seventy-five (75) active wage and hour class actions in which I am integrally involved in all aspects of the litigation.

4. The following is a non-exhaustive list of class action settlements in which I have been named as Class Counsel, and which have been granted final approval: *Julio v. Anthony, Inc.*, Case No. CV14-03172 AB (SHx), United States District Court, Central District of California, Honorable Judge Andre Birotte, Jr. presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015); *Litt v. Western Stone & Metal Corp.*, Case No. 3:14-cv-02804-PJH, United States District Court, Northern District of California, Honorable Judge Phyllis J. Hamilton presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015); *Rubalcava v. United Towing and Transport Burbank, et al.*, Case No. BC518468, California Superior Court, County of Los Angeles, Honorable Judge Kenneth Freeman

1 presiding (approving an hourly rate of \$350 for work performed in 2013, 2014 and 2015);
2 *Rivera Regalado v. Jaguar Farm Labor Contracting*, Case No. CV 130569, California Superior
3 Court, County of San Luis Obispo, Honorable Martin J. Tangeman presiding (approving an
4 hourly rate of \$350 for work performed in 2014 and 2015); *Sanchez v. Res-Care, Inc.*, Case No.
5 BC526175, California Superior Court, County of Los Angeles, Honorable John S. Wiley
6 presiding (approving an hourly rate of \$350 for work performed in 2013, 2014 and 2015);
7 *Rodas v. Gateways Hospital and Mental Health Center*, Case No. BC503179, California
8 Superior Court, County of Los Angeles, Honorable Judge Amy D. Hogue presiding (approving
9 an hourly rate of \$350 for work performed in 2014 and 2015); *Prado v. Warehouse Demo*
10 *Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of
11 California, Honorable Judge John F. Walter presiding (approving an hourly rate of \$350 for
12 work performed in 2014 and 2015); *Shaw v. Conant Auto Retail, San Diego*, Case No. 37-2014-
13 00044052-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Judge
14 Joan M. Lewis presiding (approving an hourly rate of \$375 for work performed in 2014, 2015,
15 and 2016); *Tirado v. Ricon Corp.*, Case No BC537042, California Superior Court, County of
16 Los Angeles, Honorable Judge John Shepard Wiley, Jr. presiding (approving an hourly rate of
17 \$375 for work performed in 2014, 2015, and 2016); *Tesla Motors Wage and Hour Litigation*,
18 JCCP 4792, California Superior Court, County of Santa Clara, Honorable Peter H. Kirwan
19 presiding (approving an hourly rate of \$375 for work performed in 2013, 2014, 2015, and
20 2016); *Lopez v. RM HQ LLC, et al.*, Case No. BC525592, California Superior Court, County of
21 Los Angeles, Honorable Elihu M. Berle presiding (approving an hourly rate of \$375 for work
22 performed in 2013, 2014, 2015, and 2016); *Horta v. Searles Valley Minerals, Inc.*, Case No.
23 CIVDS 1507615, California Superior Court, County of San Bernardino, Honorable Donald
24 Alvarez presiding (approving an hourly rate of \$375 for work performed in 2015 and 2016);
25 *Mansilla v. Haeco Americas Line Services, LLC, et al*, Case No. BC615310, Superior Court of
26 California, County of Los Angeles, Honorable Judge Elihu M. Berle presiding (approved at an
27 hourly rate of \$425 for work performed in 2016 and 2017); *Khosravi v. Enterprise Rent-A-Car*
28 *Company of Los Angeles, LLC, et al.*, Case No. 30-2016-00829923-CU-OE-CXC, Superior

1 Court of California, County of Orange, Honorable Judge Thierry Patrick Colaw presiding
2 (approved at an hourly rate of \$425 for work performed in 2016 and 2017); *Nieves v. Ta Chen*
3 *International, Inc.*, Case No. BC609005, Superior Court of California, County of Los Angeles,
4 Honorable Judge Kenneth R. Freeman presiding (approved at an hourly rate of \$425 for work
5 performed in 2016 and 2017); *Berkel v. Pride Bakeries, LLC*, Case No. 30-2017-00923148-CU-
6 OE-CXC, Superior Court of California, County of Orange, Honorable Judge William Claster
7 presiding (approved at an hourly rate of \$425 for work performed in 2017 and 2018); *Ruvalcaba*
8 *Quiroz v. Circle M Contractors, Inc.*, Case No. 30-2016-00885065-CU-OE-CXC, Superior
9 Court of California, County of Orange, Honorable William D. Claster presiding (approving an
10 hourly rate of \$425 for work performed in 2016, 2017 and 2018); *Armenta, et al., v. California*
11 *Friends Homes d/b/a Quaker Gardens*, Case No. 30-2016-00883282-CU-OE-CXC, Superior
12 Court of California, County of Orange, Honorable Randall J. Sherman presiding (approving an
13 hourly rate of \$425 for work performed in 2016, 2017 and 2018); *Sandra Zinnerman v.*
14 *Tumbleweed Educational Enterprises, Inc.*, Case No. BC673708, Superior Court of California,
15 County of Los Angeles, Honorable Maren E. Nelson presiding (approving an hourly rate of
16 \$425 for work performed in 2016, 2017, and 2018); *Tina Arellano v. Williams Sonoma Stores,*
17 *Inc.*, Case No. BC693760, Los Angeles County Superior Court, Honorable Daniel J. Buckley,
18 presiding; *William Cuellar v. UMA Enterprises, Inc.*, Case No. BC657146, Los Angeles County
19 Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly rate of \$475 for
20 work performed in 2017, 2018 and 2019); *Maria C. Garcia, et al. v. Simplified Labor Staffing*
21 *Solutions, Inc.*, Case No. BC696898, Los Angeles County Superior Court, Honorable Elihu M.
22 Berle, presiding (approving an hourly rate of \$475 for work performed in 2018 and 2019);
23 *Arturo Delgado v. Spears Manufacturing Co.*, Case No. BC709665, Los Angeles County
24 Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly rate of \$595 for
25 work performed in 2018, 2019 and 2020); *Soto v. L I Metal Systems*, Case No. 37-2017-
26 00009607-CU-OE-CTL, San Diego County Superior Court, Honorable Timothy Taylor,
27 presiding (approving an hourly rate of \$595 for work performed in 2017-2020); *Michael*
28 *Fishback v. Paragon Framing, Inc.*, Case No. CIVDS1906610, San Bernardino County

1 Superior Court, Honorable David Cohn, presiding (approving an hourly rate of \$595 for work
2 performed in 2019 and 2020); and *Francisco Garcia v. Searing Industries, Inc.*, Case No.
3 CIVDS1932477, San Bernardino County Superior Court, Honorable David Cohn, presiding
4 (approving an hourly rate of \$595 for work performed in 2019 and 2020).

5 5. I have also moved to certify and have received an order certifying a class action
6 and/or conditionally certifying a collective action as Class Counsel in the following cases:
7 *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-CXC,
8 California Superior Court, County of Orange, Honorable Judge Gail A. Andler presiding
9 (certifying a class of employees who were misclassified as independent contractors); *Javine v.*
10 *San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United States District
11 Court, Central District of California, Honorable Judge Beverly Reid O'Connell presiding
12 (conditionally certifying an unpaid FLSA overtime wage class); *Prado v. Warehouse Demo*
13 *Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of
14 California, Honorable Judge John F. Walter presiding (certifying a rest period violation class
15 and conditionally certifying a FLSA unpaid overtime wage class); *Bower v. Cycle Gear, Inc.*,
16 Case No. CV14-2712 HSG, United States District Court, Northern District of California,
17 Honorable Judge Haywood S. Gilliam, Jr. presiding (conditionally certifying an unpaid FLSA
18 overtime wage class); *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-
19 JLT, United States District Court, Eastern District of California, Honorable Judge Jennifer L.
20 Thurston presiding (conditionally certifying an unpaid FLSA overtime wage class); *Galvan v.*
21 *AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California
22 Superior Court, County of Orange, Honorable Judge William Claster presiding (certifying
23 unpaid overtime wage class and waiting time penalty class); *Camacho v. Residential Fire*
24 *Systems, Inc.*, Case No. 30-2015-00775372-CU-OE-CXC, California Superior Court, County of
25 Orange, Honorable Judge Glenda Sanders presiding (certifying five separate classes for claims
26 for unpaid wages, unreimbursed expenses, failure to authorize and permit rest periods, and
27 derivative claims); *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG
28 (RAOx), United States District Court, Central District of California, Honorable Dolly M. Gee

1 presiding (certifying six classes of employees for rest period violations, wage statement
2 violations, meal period violations, and overtime and double-time violations); and *Staublein v.*
3 *Wells Fargo Bank, National Association*, Case No. CIVDS1712267, San Bernardino Superior
4 Court, Honorable David Cohn presiding (certifying a wage statement class).

5 6. In 2018-2021, Thomson Reuters and Los Angeles Magazine recognized me as a
6 Top Young Attorney in Southern California in the annual Rising Star Edition of Super Lawyers.
7 This is an honor awarded to no more than two-and-a-half percent (2.5%) of attorneys under the
8 age of forty in Southern California each year.

9 7. As counsel for Plaintiffs, I have been closely involved in all aspects of this
10 litigation since its inception and believe that the proposed Settlement is a fair and reasonable
11 result for the aggrieved employees and the State of California.

12 8. Attached hereto as **Exhibit A** is a true and correct copy of the Settlement
13 Agreement. The Notice of PAGA Settlement and Release of Claims is attached as Exhibit A to
14 the Settlement Agreement. The operative First Amended Complaint is attached as Exhibit B to
15 the Settlement Agreement.

16 9. Defendant Burberry Limited (“Defendant”) operates a luxury fashion brand
17 with several retail stores throughout California. Plaintiff Castillo was employed by Defendants
18 as a non-exempt Sales Associate from approximately November 24, 2015 to May 9, 2019.
19 Plaintiff Ekine was employed by Defendants as a non-exempt Sales Associate from
20 approximately March 17, 2017 to August 2019. Plaintiffs, like all aggrieved employees, were
21 employed by Defendant as non-exempt employees during the PAGA Period and were subject
22 to Defendant’s wage and hour policies and practices.

23 10. On March 26, 2020, Plaintiff Castillo filed a class action complaint titled
24 *Edward Castillo v. Burberry Limited*, Orange County Superior Court, Case No. 30-2020-
25 01139838-CU-OE-CXC. On March 30, 2020, Plaintiff Castillo provided written notice of his
26 intent to file a claim for civil penalties under PAGA to the LWDA and Defendant. On June 4,
27 2020, Plaintiff Castillo amended his complaint to add a cause of action under PAGA. On July
28 13, 2020, Defendant removed the Castillo Action to the United States District Court for the

Central District of California, whereupon the Castillo Action was assigned the following case number: 8:20-cv-01244-CJC-JDE. Attached hereto as **Exhibit B** is a true and correct copy of Plaintiff Castillo's March 30, 2020 PAGA Letter.

11. On July 20, 2020, Plaintiff Ekine provided written notice of his intent to file a claim for civil penalties under PAGA to the LWDA and Defendant. On September 23, 2020, Plaintiff Ekine filed his representative action complaint in the instant action, titled *Ayebainaton Ekine v. Burberry Limited*, Placer County Superior Court, Case No. S-CV-0045602 (the "*Ekine Action*"), alleging a sole cause of action under PAGA premised on the same and/or similar factual allegations as the Castillo Action. Attached hereto as **Exhibit C** is a true and correct copy of Plaintiff Ekine's July 20, 2020 PAGA Letter.

12. On November 30, 2020, Plaintiffs and Defendant participated in a private mediation with wage and hour mediator, Lisa Klerman, Esq. In connection with mediation, the Parties engaged in substantial informal discovery and information and agreed to refrain from engaging in formal written and deposition discovery until after mediation. Prior to mediation, Defendant produced the relevant portions from its employee handbook, as well as timekeeping and payroll records for a randomized sample group of allegedly aggrieved employees who worked during the PAGA period. Plaintiffs analyzed the employee records and created a comprehensive exposure analysis for the PAGA claim. During mediation, the parties debated the legal bases for their claims and defenses and their respective data analyses. At the conclusion of mediation, the parties accepted Ms. Klerman's mediator's proposal for a PAGA-only settlement, therefore resolving Plaintiffs' PAGA claims in the Castillo Action and the Ekine Action. Over the following months, the parties negotiated the final terms of the proposed Settlement now before this Court for approval.

13. On February 19, 2021, the Honorable Judge Cormac J. Carney dismissed the Castillo action without prejudice after being notified that the matter had settled on a PAGA-only basis and would be proceeding with settlement approval in Placer County Superior Court through the instant action. On May 24, 2021, Plaintiff Ekine filed the operative First Amended Complaint in the instant action adding Plaintiff Castillo as a PAGA representative in the Ekine

1 Action.

2 14. Plaintiffs allege that Defendant failed to pay Plaintiffs and other allegedly
3 aggrieved employees for all hours worked as a result of its policy and practice of requiring its
4 employees to respond to customer concerns and communicate with customers while off-the-
5 clock. In response, Defendant contends that it paid all minimum and overtime wages owed to
6 employees and that it does not have any formal or informal policy which requires employees to
7 respond to customer calls while off-the-clock. Instead, Defendant argues that its written
8 policies expressly inform employees not to work off-the-clock. *Id.* Defendant further maintains
9 that to the extent any employees were responding to customer calls after work hours without
10 recording their time worked, Defendant was not made aware of it and that this issue is not
11 manageable on a representative basis because each employee would need to be deposed to
12 determine whether they worked off-the-clock, why they worked off-the-clock, whether
13 Defendant had knowledge of any off-the-clock work, and during what pay periods the off-the-
14 clock work was performed, if at all.

15 15. Plaintiffs allege that Defendant failed to provide Plaintiffs and other allegedly
16 aggrieved employees with full, uninterrupted 30-minute meal periods before the end of the fifth
17 hour of work and failed to provide second meal periods when employees worked in excess of
18 10.0 hours. Plaintiff further alleges that in instances where Defendant paid its employees a
19 meal period premium, Defendant incorrectly paid the meal period premium at the employees'
20 base hourly rate of pay rather than the employees' "regular rates of compensation," which were
21 higher due to their receipt of commissions and non-discretionary bonuses (hereinafter
22 "incentive pay").

23 16. In response, Defendant contends that it has always provided its employees with
24 legally-compliant first and second meal periods and that any meal periods that did not meet
25 that standard were solely the result of employee choice and not as a result of Defendant's
26 policies and/or practices. Specifically, Defendant argues that employees, despite being relieved
27 for their meal periods, often chose to take their meal periods at a later time to complete sales
28 and earn commissions. Defendant argues that under *Brinker* it is only required to "provide" the

1 opportunity to take meal periods, not “ensure” meal periods are taken, which Defendant
2 contends it has always done. Moreover, Defendant contends that in instances where employees
3 were not able to take a compliant meal period, its payroll system automatically paid the
4 employee a meal period premium and that it was not required to include incentive pay in its
5 calculation of the “regular rate of compensation” for the purposes of meal and rest period
6 premiums. Finally, Defendant contends that Plaintiff’s meal period claim is not manageable on
7 a representative basis because individual inquiries would be required to assess which
8 employees received non-compliant meal periods or missed second meal periods, how many
9 meal periods were non-compliant or missed, and the reasons why a particular individual
10 recorded a non-compliant meal period or failed to record a compliant meal period on a
11 particular shift.

12 17. Plaintiffs further allege that Defendant’s failed to authorize and permit Plaintiffs
13 and other allegedly aggrieved employees to take all duty-free, 10-minute rest periods.
14 Specifically, Plaintiffs contend that employees were required to assist customers at all times,
15 even during the employees’ rest periods, and thus, Defendant failed to relinquish all control
16 over its employees in violation of California law. In response, Defendant asserts that it
17 authorized and permitted aggrieved employees to take all lawful rest periods and that it never
18 required employees to respond to customer requests during rest breaks. Defendant also
19 contends Plaintiffs’ rest break allegations are unmanageable since individual inquiries would
20 be required to assess whether rest periods were authorized and permitted but employees
21 nevertheless chose to work during their rest periods for their own reasons.

22 18. Plaintiffs further allege that Defendant required employees to utilize their
23 personal cell phones to communicate with customers, without reimbursing the employees for
24 any portion of their cell phone bills, in violation of Labor Code section 2802. In response,
25 Defendant contends that it did not require personal cell phone use, and that in fact, Defendant
26 provided its employees with company owned cell phones beginning in 2018, which is well
27 before the relevant time period in this action. Moreover, Defendant argues that to the extent
28 any employee used their personal cell phone rather than the company-provided cell phone,

1 such an expense was not reasonable and/or necessary.

2 19. As a result of these alleged substantive violations, Plaintiffs contend that
3 Defendant failed to issue accurate itemized wage statement violations and failed to timely pay
4 its former employees all owed wages during employment and all final wages at the time of
5 their separation from employment. Additionally, Plaintiffs allege that Defendant issued facially
6 deficient wage statements as a result of its failure to accurately list the hourly rate and
7 corresponding number of hours worked for payments denoted as “OT ON COMM.” In
8 response, Defendant contends that it did not violate section 226, subdivision (a)(9) because the
9 “OT ON COMM” line item represents overtime pay for work performed on a previous pay
10 period, but which could not be calculated because the nondiscretionary bonus had not yet been
11 earned. Moreover, Defendant argues that there were no applicable hourly rates in effect during
12 the pay period that corresponded to “OT ON COMM” and therefore it did not have to provide
13 such information on the wage statement.

14 20. Additionally, with regard to Plaintiffs’ derivative allegations, Defendant
15 contends that it possesses strong, good faith defenses to Plaintiffs’ underlying claims, thus
16 precluding recovery of waiting time penalties (which are only available for the “willful” failure
17 to pay wages) and/or wage statements violations (which require the violations to be “knowing
18 and intentional”). Defendant also maintains that, given its good-faith defenses, this Court
19 would exercise its discretion to substantially reduce any PAGA penalties if it were to find
20 Defendant liable for any of Plaintiffs’ underlying claims and that at most Plaintiffs could only
21 seek PAGA penalties at the \$100 “initial” violation rate, as opposed to the \$200 “subsequent”
22 violation rate, since Defendant was not put on notice by a court or the Labor Commissioner
23 that its practices violated the Labor Code until Plaintiffs initiated this action.

24 21. Based on the alleged violations described above, Plaintiffs maintain that they
25 would be able to seek PAGA penalties for the Aggrieved Employees for each pay period in the
26 PAGA Period. Based on the data provided by Defendant, the Aggrieved Employees worked a
27 combined total of approximately 8,939 pay periods as of May 2021. Thus, assuming that
28 Plaintiffs could prove at least one underlying Labor Code violation in each pay period within

1 the PAGA period, Plaintiffs estimate a maximum PAGA exposure of \$893,900 for Defendant
2 (calculated as \$100 per violation). However, these penalties derive from the underlying wage
3 and hour violations discussed above, for which, as discussed above, Defendant presents several
4 viable defenses, including the Court's discretion to reduce any PAGA award where it views
5 them as duplicative. Plaintiffs therefore discounted the maximum figure by 30% for the risk of
6 being unable to proceed on a representative basis and an additional 15% to account for the risk
7 of losing on the merits and/or of this Court reducing penalties, to arrive at an estimated
8 exposure of \$531,871. The proposed Settlement of \$455,000 represents approximately 86% of
9 Plaintiffs' projected potential recovery, while avoiding the risks of proceeding through trial.

10 22. My office is requesting attorneys' fees of one-third of the Maximum Settlement
11 Amount (i.e., \$151,666.67). Based on my experience in similar wage and hour class and
12 representative actions in California state courts, fee awards in matters such as this one
13 generally equal about one-third of the gross recovery. In addition, and as explained below and
14 in the accompanying Motion, the requested fee is fair compensation for undertaking complex,
15 risky, expensive, and time-consuming litigation on a purely contingent basis. This case also
16 involved nuanced legal issues, including the legality of paying meal and rest period premiums
17 at the employee's base rate of pay rather than their "regular rate of compensation". Defendant
18 was also represented by experienced wage-and-hour litigation counsel. Thus, the requested fee
19 award is fair, reasonable and adequate and should be approved.

20 23. Since undertaking representation of Plaintiffs, my firm has dedicated substantial
21 resources to this litigation, including expending \$9,888.09 in litigation costs to date, without
22 receiving any compensation to date. My firm also expects to expense an additional \$160 for the
23 filing and service of this Motion. Attached hereto as **Exhibit D** is a summary of the costs
24 incurred by my office in connection with this case.

25 24. My firm's efforts include conducting pre-filing investigation, analyzing
26 Plaintiffs' claims, conducting extensive legal research regarding the merits and legal bases of
27 Plaintiffs' claims, drafting and filing Plaintiffs' initial and consolidated complaints and LWDA
28 notice letters, attending various court hearings, reviewing substantial documents and data

1 produced by Defendant, meeting and conferring with Defendant's counsel regarding
2 Defendant's informal document production, extensively evaluating the timekeeping and payroll
3 data prior to mediation, preparing for and attending mediation, drafting a mediation brief,
4 negotiating and drafting the PAGA Settlement Agreement and Notice, preparing this Motion
5 for settlement approval and all supporting documents hereto, and otherwise litigating the case.
6 I also expect that my firm will spend additional time attending the hearing on this Motion and
7 overseeing the settlement administration process.

8 25. I believe the requested \$10,000 enhancement payment to each Plaintiff is
9 reasonable given Plaintiffs' efforts in this case and the risks they undertook on behalf of the
10 PAGA Settlement Group Members and the State of California. Plaintiffs devoted significant
11 effort to searching for employment-related documents, provided substantial factual information
12 and documents to my office, and had multiple in-depth discussions with myself and others
13 from my office to discuss the facts, legal theories at issue, and general case strategy.

14 26. Plaintiffs also requests that the Court approve up to \$3,350.00 in administration
15 costs to the Settlement Administrator, Phoenix Settlement Administrators. As detailed in the
16 Settlement Agreement and declaration of Jodey Lawrence, submitted concurrently with this
17 Motion, Phoenix will perform duties in connection with this Settlement that are integral in
18 effectuating the Settlement and the Notice process. Among other things, Phoenix will calculate
19 each aggrieved employee's Individual PAGA Payment, update addresses contained in the
20 employee data supplied by Defendant, format the Notice Packets for mailing, mail Notice
21 Packets to all aggrieved employees, and otherwise administer the Settlement. Phoenix was
22 selected to administer this Settlement because it is an experienced and well-respected
23 settlement administrator and returned a bid at a competitive rate.

24 27. The parties have agreed to engage Phoenix Settlement Administrators
25 ("Phoenix") as the third-party settlement administrator. Plaintiff requests \$1,850 in
26 administration fees to be approved for Phoenix. This will cover all costs incurred by Phoenix in
27 connection with the settlement of this matter. Jodey Lawrence of Phoenix has executed a
28 declaration, submitted concurrently herewith, which describes Phoenix's extensive experience

1 as settlement administrator and includes a copy of the settlement administration bid that
2 Phoenix provided in this matter.

3 28. Concurrently with the filing of this motion, Plaintiff provided notice of the
4 proposed Settlement to the LWDA. Attached hereto as **Exhibit E** are true and correct copies of
5 Plaintiff's Settlement submission and the LWDA's confirmation of receipt.

6 I declare under penalty of perjury under the laws of the United States and the state of
7 California that the foregoing is true and correct. Executed on October 5, 2021, at El Segundo,
8 California.

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10 _____
11 Fletcher W. Schmidt
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EXHIBIT A

PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT AND RELEASE

This Private Attorneys' General Act ("PAGA") Settlement Agreement and Release ("Agreement") is made by and between Plaintiffs Ayebainaton Ekine ("Ekine") and Edward Castillo ("Castillo") (collectively, "Plaintiffs"), on behalf of themselves and as the authorized proxies and agents for the State of California and the Labor and Workforce Development Agency, and Defendant Burberry Limited ("Defendant") (Plaintiffs and Defendant are hereinafter collectively referred to as the "Parties").

1. THE CONDITIONAL NATURE OF THIS AGREEMENT

1.1 This Agreement and all associated exhibit(s) or attachment(s) are made for the purpose of settling the PAGA Released Claims, as described herein, in the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. The Parties enter into this Agreement and associated settlement on a conditional basis. If the Court does not enter the Approval Order and Judgment and/or the Effective Date does not occur or Defendant withdraws from the Agreement, this Agreement shall be deemed null and void *ab initio*, it shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose whatsoever, and the negotiation of the Agreement shall remain subject to the provisions of California Evidence Code section 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that are applicable, with the exception that the provisions concerning non-admission of wrongdoing by Defendant and confidentiality shall remain in effect.

1.2 Defendant denies all the allegations asserted in the Complaint and also denies any claims for relief, including claims for civil penalties, attorneys' fees, and costs of suit. Defendant has agreed to resolve Plaintiffs' claim for civil penalties pursuant to the Private Attorneys General Act [Labor Code §§ 2698 *et seq.*] via this Agreement, but to the extent this Agreement is not approved or the Effective Date does not occur, Defendant does not waive, but rather expressly reserves, all rights to challenge Plaintiffs' Complaint upon all procedural and factual grounds, as well as asserting any and all other potential defenses or privileges. Plaintiffs

and Plaintiffs' Counsel agree that Defendant retains and reserves these rights, and agree not to argue or present any argument, and hereby waive any argument that, based on this Agreement, Defendant cannot assert any and all potential defenses and privileges if this Action were to proceed.

2. DEFINITIONS

The following terms, when used in this Agreement, shall have the following meanings:

2.1 "Action" means the lawsuit entitled *Ayebainaton Ekine, et al., as individuals and on behalf of all others similarly situated, Plaintiffs, v. Burberry Limited, et al.*, Placer County Superior Court, Case No. S-CV-0045602, initially filed on September 23, 2020.

2.2 "Approval Date" means the date that the Court enters the Approval Order.

2.3 "Approval Order" means an Order from the Court approving this Private Attorneys General Act Settlement Agreement and Release.

2.4 "Complaint" means the Complaint Ekine filed on September 23, 2020, initiating the Action, and thereafter amended on or about May 24, 2021.

2.5 "Court" means the Superior Court of the State of California for the County of Placer.

2.6 "Defendant's Counsel" means Morgan, Lewis & Bockius LLP.

2.7 "Effective Date" means the latest of: (i) if an appeal, review, or writ is not sought from the Approval Order and Judgment, the 61st day after service of notice of entry of the Approval Order and Judgment; or (ii) if an appeal, review, or writ is sought from the Approval Order and Judgment, the day after the Approval Order and Judgment is affirmed or the appeal, review, or writ is dismissed or denied, and the Approval Order and Judgment is no longer subject to further judicial review.

2.8 "Enhancement Payment" means the amount up to \$10,000.00 to be approved by the Court to be paid to each of the PAGA Representatives in recognition of the PAGA Representatives' efforts in coming forward as PAGA Representatives and participating in the Action.

2.9 “Judgment” means the judgment to be executed and entered by the Court pursuant to this Agreement.

2.10 “Maximum Settlement Amount” is the sum of Four Hundred and Fifty-Five Thousand Dollars and Zero Cents (\$455,000.00), which represents the maximum amount payable pursuant to this settlement by Defendant, and which includes the PAGA Payment (as defined below), Plaintiffs’ Counsel’s attorneys’ fees (not to exceed 33 and 1/3 percent of the Maximum Settlement Amount) and costs (not to exceed \$20,000), Settlement Administration Costs, and an Enhancement Payment to each of the PAGA Representatives.

2.11 “PAGA” means the California Labor Code Private Attorneys General Act of 2004, codified at Cal. Lab. Code § 2698 *et seq.*

2.12 “PAGA Pay Periods” means the number of pay periods during which each PAGA Settlement Employee was employed by Defendant as a non-exempt employee from March 30, 2019 through the date on which the Court grants approval of the Parties’ settlement as set forth in this Agreement.

2.13 “PAGA Payment” means the portion of the Maximum Settlement Amount (after excluding Plaintiffs’ Counsel’s attorneys’ fees and costs, the Settlement Administrator’s costs, and the Enhancement Payment to each of the PAGA Representatives) that represents the amount payable in this settlement for PAGA civil penalties, 75% of which will be paid to the Labor and Workforce Development Agency (“LWDA”) and 25% of which will be paid to the PAGA Settlement Employees. All PAGA Settlement Employees will receive a monetary payment from the PAGA Payment.

2.14 “PAGA Release Period” means the period from March 30, 2019 through the date on which the Court grants approval of the Parties’ settlement as set forth in this Agreement.

2.15 “PAGA Released Claims” means any and all claims demands, rights, liabilities, and causes of action against Releasees that have or could have been asserted under PAGA based on the allegations and/or claims set forth in the Complaint and any amendments thereto and/or any Labor and Workforce Development Agency (“LWDA”) PAGA notice letters sent on behalf

of Plaintiffs, whether known or unknown, and whether anticipated or unanticipated, that accrued through and including the period from March 30, 2019 through the date on which the Court grants approval of the Parties' settlement as set forth in this Agreement, including, but not limited to, the alleged failure to: (a) pay minimum wage for all hours worked under Labor Code §§ 1182.12, 1194, 1194.2, and 1197; (b) pay all overtime compensation earned under Labor Code §§ 204, 510, 558, 1194, and 1198; (c) provide meal periods and/or pay meal period premiums at the correct rate under Labor Code §§ 226.7, 512, and 558; (d) provide rest periods and/or pay rest period premiums at the correct rate under Labor Code §§ 226.7, 516, and 558; (e) reimburse business expenses under Labor Code §§ 2802 and 2804; (f) furnish accurate, itemized or otherwise complaint wage statements under Labor Code § 226; (g) pay wages earned and unpaid at the time of an employee's discharge under Labor Code §§ 201-203; (h) pay all wages earned at least twice during each calendar month under Labor Code § 204; and (i) maintain accurate employment records under Labor Code §§ 558, 1174, and 1198, and any alleged violation of any provision of Industrial Welfare Commission Wage Order 7, as well as any other alleged violations of the Labor Code or any other applicable Industrial Welfare Commission Wage Order provisions that could have been asserted based on the allegations and/or claims set forth in the Complaint and any amendments made thereto and/or any LWDA PAGA notice letters sent on behalf of Plaintiffs. These claims are released by Plaintiffs Ekine and Castillo in their representative capacities as authorized proxies and agents for the State of California and the LWDA and as private attorneys general "aggrieved employees" acting on behalf of themselves and the PAGA Settlement Employees, for civil penalties under the PAGA.

2.16 "PAGA Representatives" and/or "Plaintiffs" mean Plaintiff Ayebainaton Ekine and Plaintiff Edward Castillo.

2.17 "PAGA Settlement Employees" means and includes all non-exempt employees who worked for Defendant in California during the period from March 30, 2019 through the date on which the Court grants approval of the Parties' settlement as set forth in this Agreement.

2.18 "Plaintiffs' Counsel" means Haines Law Group, APC.

2.19 “Qualified Settlement Fund” or “QSF” means a qualified settlement fund established by the Settlement Administrator for the purpose of administering the settlement.

2.20 “Releasees” means Burberry Limited, and its parents, subsidiaries, affiliates, owners, predecessors, successors, and associated organizations, and each of their respective trustees, directors, officers, agents, joint employers, attorneys, managing agents, employees, contractors, insurers, representatives, assigns, all persons acting by, through, under, or in concert with any of them, and/or all persons acting on behalf of them, past and present.

2.21 “Settlement Administration Costs” means the amount to be paid to the Settlement Administrator for the cost of administering this settlement, which are currently estimated to be approximately \$3,350.00.

2.22 “Settlement Administrator” shall be Phoenix Settlement Administrators, or any other third-party settlement administrator that the Parties jointly select, subject to Court approval.

3. RECITALS

3.1 Plaintiff Ekine was employed by Defendant as a non-exempt Sales Associate from approximately March 21, 2017 through approximately August 6, 2019. Plaintiff Castillo was employed by Defendant as a non-exempt Sales Associate from approximately November 2015 through approximately May 9, 2019.

3.2 On March 26, 2020, Plaintiff Castillo filed a class action complaint against Defendant in the Orange County Superior Court, Case No. 30-2020-01139838, alleging eight causes of action: (1) failure to pay minimum wages for all hours worked; (2) failure to pay all overtime compensation; (3) failure to reimburse business expenses; (4) failure to provide meal periods and/or pay meal period premiums at the correct rate; (5) failure to provide rest periods; (6) failure to provide accurate, itemized wage statements; (7) failure to pay wages earned and unpaid at the time of an employee’s discharge; and (8) unfair business practices. On June 4, 2020, Plaintiff Castillo filed a first amended class action complaint in which he reasserted the same eight causes of action alleged in the initial complaint and added a ninth cause of action for civil penalties under PAGA for the following alleged violations of the Labor Code: (a) failure to

pay minimum wage for all hours worked; (b) failure to pay all overtime compensation earned; (c) failure to provide meal periods and/or pay meal period premiums at the correct rate; (d) failure to provide rest periods and/or pay rest period premiums at the correct rate; (e) failure to reimburse business expenses; (f) failure to provide accurate, itemized wage statements; (g) failure to pay wages earned and unpaid at the time of an employee's discharge; (h) pay all wages earned at least twice during each calendar month; and (i) maintain accurate employment records. On July 13, 2020, Defendant removed the action to the United States District Court for the Central District of California pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, whereupon the action was assigned the following case number: 8:20-cv-01244-CJC-JDE (the "Castillo Action").

3.3 On September 23, 2020, Plaintiff Ekine filed the Complaint in this Action against Defendant in the Placer County Superior Court, Case No. S-CV-0045602, alleging a single cause of action for civil penalties under the PAGA for the same alleged Labor Code violations alleged in the Castillo Action.

3.4 On May 24, 2021, Plaintiff Ekine amended his Complaint in this Action to add Plaintiff Castillo as a PAGA Representative in this Action. A copy of the amended Complaint is attached hereto as Exhibit B.

3.5 Defendant denies all of the allegations in the Complaint (and the action filed by Castillo), and maintains that it did not violate any section of the Labor Code or applicable Industrial Welfare Commission Wage Order(s) or committed any misconduct, statutory, or regulatory violation, wrongdoing, or any other actionable conduct of any kind. Defendant denies that this Action may be maintained as a representative action on behalf of the PAGA Settlement Employees or any other employees of Defendant.

3.6 The Parties understand, acknowledge, and agree that this Agreement constitutes a compromise of Plaintiffs' representative PAGA claims, and that it is the desire and intention of the Parties to affect a final and complete resolution of the representative PAGA claim (on behalf of the State of California) against Defendant in the Action. The Parties also acknowledge and agree that this Agreement completely extinguishes and bars any recovery of civil penalties,

attorneys' fees, or costs on behalf of the State of California and any allegedly aggrieved employee for the PAGA Released Claims in the Castillo Action. Therefore, the Parties agree that within seven (7) calendar days of the Court's Approval Order and Judgment, Plaintiff Castillo and Plaintiffs' Counsel will notify the court in the Castillo Action of the Court's Approval Order and Judgment in this Action and will file a joint stipulation to dismiss all claims in the Castillo Action with prejudice, or whatever other documents are necessary to effectuate said dismissal. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission by Defendant of liability.

3.7 The Parties believe and agree that this Agreement provides for a fair, adequate, and reasonable resolution of the PAGA Released Claims, given the strengths and weaknesses of Plaintiffs' claims, Defendant's defenses to any liability, and the risk that the Court would significantly reduce any penalties that could be awarded under Labor Code section 2699(e)(2). The Parties have arrived at this settlement after extensive, arm's-length negotiations, taking into account all relevant factors, present and potential.

4. OPERATIVE TERMS OF THE PAGA SETTLEMENT

The Parties to the Action agree as follows:

4.1 **Maximum Settlement Amount.** Defendant shall pay a Maximum Settlement Amount of Four Hundred and Fifty-Five Thousand Dollars and Zero Cents (\$455,000.00) to resolve the representative PAGA claim in this Action. The Maximum Settlement Amount includes the PAGA Payment, Plaintiffs' Counsel's attorneys' fees (not to exceed 33 and 1/3 percent (33 1/3%) of the Maximum Settlement Amount) and costs (not to exceed \$20,000), costs of settlement administration by a third-party settlement administrator (not to exceed \$3,350.00), an Enhancement Payment of up to \$10,000 to each of the PAGA Representatives. Defendant will not be required under any circumstances to increase the Maximum Settlement Amount.

4.2 **First Amended Complaint.** As a condition of settlement, Plaintiff Ekine will file a First Amended Complaint ("FAC") to add Edward Castillo as a PAGA Representative/named

plaintiff in the Action. Defendant will not be required to file an answer or other responsive pleading to the FAC. If, for any reason, the Court does not approve the Parties' settlement as set forth in the Agreement, or if the Agreement does not become final and effective for any reason, then the FAC will be deemed withdrawn and the original complaint filed in the Action will again become the operative complaint without prejudice to Plaintiff Ekine's right to seek leave to file another amended complaint. Defendant does not impliedly or expressly waive any arguments or defenses to the FAC.

4.3 Settlement Administrator.

4.3.1 The Settlement Administration Costs shall include: all costs of administering the Settlement, including, but not limited to, administering the Qualified Settlement Fund; all tax document preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees associated with preparing, issuing and mailing any and all communications to PAGA Settlement Employees; all costs and fees associated with issuing the Individual PAGA Payments and the payments to the State of California LWDA; and all costs and fees associated with issuing IRS Form 1099s (to the extent any are required by applicable law), relating to payments made under the settlement; all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering the settlement, and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement.

4.3.2 The actions of the Settlement Administrator shall be governed by the terms of this Agreement, any Orders from the Court, and any agreement by counsel of record regarding communications with the Settlement Administrator.

4.3.3 In the event that either Defendant's Counsel or Plaintiffs' Counsel takes the position that the Settlement Administrator is not acting in accordance with the terms of the

Agreement, such party shall meet and confer first with opposing counsel and/or, if necessary, with the Settlement Administrator or the Court to attempt to resolve the issue.

4.4 Calculation of Individual PAGA Payments.

4.4.1 Each PAGA Settlement Employee, including Plaintiffs Ekine and Castillo, will be entitled to receive an Individual PAGA Payment which shall be defined and calculated as follows:

(a) Based on its business records, Defendant will calculate, and provide to the Settlement Administrator, the number of individual PAGA Settlement Employees and the number of PAGA Pay Periods worked by each PAGA Settlement Employee. If any PAGA Settlement Employee raises a dispute about their Individual PAGA Payment (as defined below), including after receiving a settlement check, that dispute will be reviewed by Defendant and any payment made will be at Defendant's discretion. Defendant has no obligation to make any such payments.

(b) The Settlement Administrator will determine each PAGA Settlement Employee's PAGA Settlement Percentage, defined and calculated as the individual pro rata percentage of PAGA Pay Periods worked by each PAGA Settlement Employee during the PAGA Release Period out of the total number of PAGA Pay Periods worked by PAGA Settlement Employees during the PAGA Release Period.

(c) Each PAGA Settlement Employee will be paid from the 25% of the PAGA Payment allocated to the PAGA Settlement Employees based on their own PAGA Settlement Percentage according to the following formula: *(25% of the PAGA Payment) x (individual employee's PAGA Settlement Percentage) = Individual PAGA Payment.*

4.4.2 Because the Individual PAGA Payment is a payment in compromise and settlement of a claim for alleged civil penalties, the Individual PAGA Payment will be treated as nonwage income with no tax withholdings to be made, and will be reported, if required, by applicable tax laws, by the Settlement Administrator on IRS Form 1099s to the respective PAGA Settlement Employee and applicable governmental authorities. The Settlement Administrator

will issue an IRS Form 1099 to Plaintiffs' Counsel and applicable governmental authorities for the payment of attorney's fees and costs in the amount approved by the Court. Plaintiffs and Plaintiffs' Counsel each agree to indemnify and hold Defendant harmless from and against any damage or penalty incurred by Defendant as a result of any taxing authority assessing any tax or penalty upon Defendant as a consequence of any tax being due and unpaid on each of their portions of the Maximum Settlement Amount.

4.5 **Enhancement Payment.** Subject to Court approval, the Enhancement Payment to the PAGA Representatives, Ekine and Castillo, will be paid in an amount not to exceed a total of Twenty Thousand Dollars and Zero Cents (\$20,000.00, \$10,000 each for Ekine and Castillo) from the Maximum Settlement Amount for the PAGA Representatives' service and assistance in this Action, which Defendant will not oppose provided the requested Enhancement Payment to the PAGA Representatives does not exceed these total or individual amounts. The Enhancement Payment to the PAGA Representatives will be in addition to their respective Individual PAGA Payments. Because the Enhancement Payment represents payment to the PAGA Representatives for service in this Action, payroll taxes will not be withheld from the Enhancement Payment. The Settlement Administrator will report the Enhancement Payment on a Form 1099, and any other required tax forms, and will provide the form(s) to the PAGA Representatives and to the pertinent taxing authorities as required by law. The PAGA Representatives assume full responsibility for paying all taxes, federal and state, if any, due as a result of the Enhancement Payment and agree to indemnify Defendant for any such taxes owed. An award by the Court of less than the amount of the requested Enhancement Payment shall not be a basis upon which Plaintiffs' Counsel may void this Agreement, and any amount not awarded shall remain included in the amount available for distribution to the PAGA Settlement Employees.

4.6 **Releases.**

4.6.1 Upon the Effective Date, each PAGA Settlement Employee, including the PAGA Representatives, the State of California and the LWDA shall be deemed to have fully,

finally, and forever released the Releasees from the PAGA Released Claims that accrued during the PAGA Release Period.

4.7 **Settlement Payment Procedures.**

4.7.1 Within seven (7) calendar days after the Approval Date, the Settlement Administrator shall send counsel for Defendant electronic wiring instructions to fund the Qualified Settlement Fund established by the Settlement Administrator through Defendant's payment of the Maximum Settlement Amount.

4.7.2 Within twenty-one (21) calendar days after the Approval Date, Defendant will send to the Settlement Administrator a list of information in electronic form that, for each PAGA Settlement Employee, includes that employee's name and last known address. Defendant also agrees to provide any social security number needed for the Settlement Administrator to issue tax forms as set forth in this Agreement. This information shall be treated as and remain confidential by the Settlement Administrator and shall be used solely to manage the notice and payment process described herein, shall not be disclosed to anyone (including Plaintiffs or Plaintiffs' counsel) other than the Settlement Administrator, except to applicable taxing authorities if required, or pursuant to express written authorization of Defendant, the individual in question, or by order of the Court.

4.7.3 Within thirty (30) calendar days after the Approval Date, Defendant will wire to the Settlement Administrator the Maximum Settlement Amount to fund the QSF.

4.7.4 Three (3) calendar days following the Effective Date, the Settlement Administrator shall mail a Notice (substantially in the form attached hereto as **Exhibit A**) and a settlement check to each PAGA Settlement Employee in the amount of their respective Individual PAGA Payment.

4.7.5 Prior to mailing the Notice and settlement check, the Settlement Administrator shall check the addresses provided by Defendant using the National Change of Address database and shall update any addresses accordingly. Should any of the Notices be returned as undeliverable, the Settlement Administrator will conduct a search for a more current

address (via a skip trace or other reasonable method) and re-mail the Notice and settlement check to the more current address, if any.

4.7.6 **Expiration of Settlement Checks.** Individual PAGA Payment checks issued to PAGA Settlement Employees pursuant to this Agreement will expire 180 calendar days from the date they are issued by the Settlement Administrator. After the 180-day period, the Settlement Administrator shall remit any unclaimed funds to United Ways of California.

4.8 **Attorneys' Fees and Costs.** The Settlement Administrator shall pay to Plaintiffs' Counsel from the Maximum Settlement Amount the amount of attorneys' fees (not to exceed 33 and 1/3 percent (33 1/3%) of the Maximum Settlement Amount) and costs (not to exceed \$20,000) awarded by the Court. Defendant's Counsel will not oppose Plaintiffs' Counsel's request for attorneys' fees and for costs so long as that request is consistent with this Agreement. An award by the Court of less than the amount of requested attorneys' fees and/or costs shall not be a basis upon which Plaintiffs' Counsel may void this Agreement, and any amounts of requested fees or costs not awarded shall remain included in the amount available for distribution to the PAGA Settlement Employees. The Settlement Administrator will issue an IRS Form 1099 to Plaintiffs' Counsel as required by IRS regulations. The Settlement Administrator shall pay the amount awarded by the Court to Plaintiffs' Counsel no later than three (3) calendar days following the Effective Date. This payment shall include and satisfy all past and future fees and costs incurred to prosecute, settle, and administer this Action, including obtaining approval of the settlement and securing dismissals required by the settlement. Plaintiffs and Plaintiffs' Counsel represent that they are not aware of and have no knowledge of any liens filed or placed on this Action by any person.

4.9 **Non-Reversionary.** This settlement is non-reversionary. Any portion(s) of the requested Enhancement Payment to the PAGA Representatives or the requested attorneys' fees or costs not awarded by the Court shall become part of the PAGA Payment.

4.10 **Tax Liability.** Defendant, Defendant's Counsel, and Plaintiffs' Counsel make no representation as to the tax treatment or legal effect of the payments called for in this Settlement

Agreement, and Plaintiffs and PAGA Settlement Employees are not relying on any statement, representation, or calculation by Defendant, Defendant's Counsel, Plaintiffs' Counsel, or the Settlement Administrator in this regard. Plaintiffs and PAGA Settlement Employees understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on the payments described herein.

4.11 **Circular 230 Disclaimer.** EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" IS EACH PARTY TO THIS AGREEMENT, AND AN "OTHER PARTY" IS ANY PARTY OTHER THAN THE ACKNOWLEDGING PARTY) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE SETTLING PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY TO ANY OTHER PARTY OR ANY ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF

THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

4.12 **Judgment Dismissing This Action.** Along with Plaintiffs' motion to approve the PAGA settlement ("Motion"), the Parties will submit a proposed Approval Order granting the Motion, which will dismiss this Action in its entirety with prejudice and enter Judgment thereon consistent with the terms of this settlement. The Court will retain continuing jurisdiction over this Action and over all Parties, to the fullest extent necessary to enforce and effectuate the terms and intent of this Agreement.

4.13 **Impact of Non-Approval by Court.** This Agreement is expressly conditioned upon the Court's granting the Motion and entering the Approval Order and Judgment. If the Parties cannot obtain approval from the Court, or if the Effective Date does not occur, the Parties shall be restored to their litigation positions prior to execution of this Agreement, and this Agreement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not be referred to or used in this or any other action.

4.14 **Defendant's Right to Withdraw.** Defendant may withdraw from the Agreement if: (a) the Agreement is construed in such a fashion that Defendant is required to pay more than the Maximum Settlement Amount, except as set forth below; (b) the Court does not approve the release of the PAGA Released Claims; (c) Plaintiffs or their counsel materially breach this Agreement; or (d) the LWDA or any other state or government agency seeks to intervene in the action and/or commence an enforcement action. Defendant represents that there are approximately 6,806 PAGA Pay Periods worked by PAGA Settlement Employees as of October 31, 2020. If the data reported by Defendant to the Settlement Administrator for the relevant period ending October 31, 2020 reflects an increase of more than 10% of the 6,806 approximation, Defendant shall have the option to increase the Maximum Settlement Amount in proportion to the increase in PAGA Pay Periods worked by PAGA Settlement Employees above 7,146 (*i.e.*, if there is a 12% increase in PAGA Pay Periods, Defendant would need to increase the Maximum Settlement Amount by 7%). If Defendant elects not to increase the Maximum

Settlement Amount accordingly, Plaintiffs may withdraw from the Agreement. If Plaintiffs or Defendant withdraw from the Agreement, the Agreement shall be deemed null and void *ab initio*, with the exception that the provisions concerning non-admission of wrongdoing by Defendant (Paragraph 4.16) and confidentiality (Paragraph 4.18) shall remain in effect.

4.15 **No Right to Object or Opt Out.** Since this is not a settlement of a class action, but a PAGA settlement on behalf of the State of California, no person can (a) object to the settlement after the Court's Approval Order is made, or (b) opt out from being covered by a release of claims at any time before or after the Approval Order is made. Accordingly, all portions of the PAGA Payment will be paid out under this Agreement.

4.16 **No Admission of Wrongdoing.** Neither the acceptance nor the performance by Defendant of the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to be, construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in the Complaint, the appropriateness or manageability of the PAGA Released Claims or the Action, the validity of any of the claims that were or could have been asserted by Plaintiffs and/or any PAGA Settlement Employee in the Action, or of any liability or wrongdoing of Defendant. Defendant specifically disclaims any liability, culpability, negligence, or wrongdoing toward each and all of them. Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and contingencies. Except for the purposes of effectuating and enforcing the terms of this Agreement, which includes barring claims that are released pursuant to this Agreement, neither this Agreement nor any of its terms nor the settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant and/or any of the Releasees, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Releasees of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against Defendant and/or any of the Releasees in any other civil, criminal, or administrative action or proceeding.

4.17 **Dispute Resolution.** The Parties agree to cooperate fully with one another to accomplish and implement the terms of this settlement. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other action as may reasonably be necessary to fulfill the terms of this Agreement. The Parties to this settlement shall exercise reasonable efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by Court order, or otherwise, to effectuate this Agreement and the terms set forth herein.

4.18 **Confidentiality.** The Parties and their Counsel agree not to disclose the terms of this settlement except in papers filed with the Court and the LWDA in seeking approval of the Agreement or as required by legal process. Neither Plaintiffs nor Plaintiffs' Counsel, directly or indirectly, shall issue a press release or hold a press conference, publish information about the settlement on any website, or otherwise publicize the settlement. Plaintiffs and Plaintiffs' Counsel agree not to respond to any press inquiries concerning the settlement except to respond, if necessary, that the matter was resolved and Plaintiffs agree not to disparage Defendant, its products, business affairs or employees.

4.19 **Entire Agreement.** This Agreement sets forth the entire agreement between the Parties hereto and fully supersedes any and all prior and/or supplemental understandings, whether written or oral, between the Parties concerning the subject matter of this Agreement. Any modification to this Agreement must be in writing and signed by Plaintiffs or Plaintiffs' Counsel and an authorized officer of Defendant or Defendant's Counsel. This Agreement may not be changed, altered, or modified, except in writing signed by the Parties hereto and approved by the Court.

4.20 **Choice of Law.** The rights and obligations of the Parties under this Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of California. California law shall govern the interpretation of this Agreement even if a choice-of-law analysis under state or federal law would dictate that another forum's law be applied. To the extent any Party seeks to enforce the terms of this Agreement with the Court, the prevailing party

to any such enforcement action shall be entitled to its reasonable attorneys' fees and costs incurred in connection with any such enforcement action. Before bringing an enforcement action, the Parties agree to meet and confer in good faith in an attempt to resolve any issues related to the terms of this Agreement prior to the filing of any enforcement action.

4.21 **Severability.** Except as provided below, if any provision of this Agreement is held to be invalid by a court of competent jurisdiction, that provision shall be deemed severed and deleted from this Agreement, and neither that provision nor its severance and deletion shall affect the validity of the remaining provisions. If the Court invalidates or amends a provision that either of the Parties in good faith considers to be a material term of this Agreement, then that Party shall have the option to send a written notice to the other Party no later than fourteen (14) calendar days after the applicable Court order that it wishes to void the entire Agreement and to restore the Parties to their litigation positions prior to the execution of this Agreement. If the Parties are thereafter unable to resolve the issue by reasonable efforts, this Agreement in its entirety shall be deemed null and void, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever. Notwithstanding the foregoing, no portion of any release contained herein may be deemed severed or deleted from this Agreement except upon express agreement in writing by the applicable Releasee(s).

4.22 **Additional Terms.**

4.22.1 Plaintiffs' Counsel shall be responsible for preparing and filing the Motion. At least five (5) business days prior to filing the Motion, Plaintiffs' Counsel shall send the Motion to Defendant's Counsel for their review and comment and the Parties shall work cooperatively to finalize the Motion.

4.22.2 The Parties agree to work cooperatively to comply with the notice requirements to the LWDA pursuant to Labor Code sections 2699(1)(2) and 2699(1)(3).

4.22.3 Neither Plaintiffs' Counsel nor any other attorneys acting for, formerly acting for, or purporting to act for, Plaintiffs, may recover or seek to recover any amounts for

fees, costs, or disbursements from Defendant or the Maximum Settlement Amount except as expressly provided herein.

4.22.4 This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective heirs, trustees, executors, administrators, successors, and assigns.

4.22.5 This Agreement shall become effective upon its execution by all of the undersigned and may be executed in counterparts which shall have the same force and effect as if all signatories had signed the same instrument.

4.22.6 Paragraph titles or captions contained in the Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement, or any provision thereof.

4.22.7 This Agreement shall be construed and interpreted as if all of its language were prepared jointly by the Parties. No language in this Agreement shall be construed against a Party on the ground that such Party drafted or proposed that language.

5. REPRESENTATIONS BY PLAINTIFFS

5.1.1 Plaintiffs, by and through their counsel, represent and warrant that they each have the right and exclusive authority to execute this Agreement on their own behalves and that they have each carefully read and understand the full contents of this Agreement and are voluntarily entering into this Agreement after having received legal advice from Plaintiffs' Counsel with respect to the advisability of making the settlement provided for herein and the advisability of executing this Agreement.

Plaintiffs represent and warrant that they have not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Agreement.

IN WITNESS WHEREOF, this PAGA Settlement Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

Dated: June __, 2021

Dated: June __, 2021

Dated: June __, 2021

Jul 8, 2021

Dated: June __, 2021
July 20, 2021

Dated: July 8, 2021

AYEBAINATON EKINE



Edward Castillo (Jul 8, 2021 19:04 PDT)

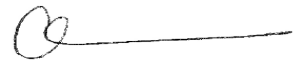
EDWARD CASTILLO



BURBERRY LIMITED
By: Melissa Roth Mendez
Its: Director / Company Secretary

On: 20 July 2021

MORGAN, LEWIS & BOCKIUS LLP

By 

Carrie A. Gonell
David J. Rashe
Attorneys for Defendant
Burberry Limited

By 

Paul K. Haines
Fletcher W. Schmidt
Alexandra McIntosh
Attorneys for Plaintiffs
Ayebainaton Ekine and Edward Castillo

Dated: June 21, 2021


AyeBainaton Ekine (Jun 21, 2021 11:01 PDT)

AYEBAINATON EKINE

Dated: June __, 2021

EDWARD CASTILLO

Dated: June __, 2021

BURBERRY LIMITED
By: _____
Its: _____

Dated: June __, 2021

MORGAN, LEWIS & BOCKIUS LLP

By _____
Carrie A. Gonell
David J. Rashe
Attorneys for Defendant
Burberry Limited

Dated: June __, 2021

By _____
Paul K. Haines
Fletcher W. Schmidt
Alexandra McIntosh
Attorneys for Plaintiffs
AyeBainaton Ekine and Edward Castillo

EXHIBIT A

<<FIRST_NAME>><<LAST_NAME>>
<<ADDRESS1>>
<<ADDRESS2>>

Re: Settlement Payment from *Ekine, et al. v. Burberry Limited* Lawsuit

Enclosed is your settlement payment from the settlement of the lawsuit entitled *Ekine, et al. v. Burberry Limited*, Placer County Superior Court Case No. S-CV-0045602.

In the lawsuit, the plaintiffs bring claims against Burberry Limited (“Burberry”) pursuant to the Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.* (called “PAGA”). The lawsuit was brought on behalf of the State of California and seeks penalties with respect to all similarly situated “aggrieved employees” of Burberry who worked as non-exempt employees in California.

The plaintiffs in the case claimed that Burberry owed penalties under PAGA for certain California Labor Code violations because Burberry allegedly did not pay all wages for all hours worked, including minimum wage and overtime; provide meal and/or rest periods and/or did not pay premium payments at the correct rate; reimburse employees for necessary business expenses; provide accurate, itemized wage statements or maintain accurate employment records; pay wages earned and unpaid at the time of employees’ discharge; and pay all wages earned at least twice during each calendar month. Burberry denies that it did anything wrong and denies that it owes any penalties. The parties agreed to resolve the case, and as part of that settlement, Burberry agreed to pay a certain amount of money categorized as PAGA penalties. Under the PAGA statute, penalties are divided between the State and aggrieved employees.

You have been identified as one of the employees on whose behalf the case was brought because you were employed by Burberry as a non-exempt employee in California during the period from March 30, 2019 through [fill in with settlement approval date].

Enclosed is a check made out to you. The check represents your share of the settlement for PAGA civil penalties (\$), for which you may receive a Form 1099. Whether you cash or deposit that check, you are waiving and releasing any PAGA claim that, from March 30, 2019, through [fill in with settlement approval date], Burberry did not pay you all wages for all hours worked, including minimum wage and overtime; provide you meal and/or rest periods and/or did not pay you premium payments at the correct rate; reimburse you for necessary business expenses; provide you accurate, itemized wage statements or maintain accurate employment records; pay you wages earned and unpaid at the time of your discharge (if applicable); and pay you all wages earned at least twice during each calendar month.

If you have any questions, you can contact the settlement administrator (whose contact information is at the top of this letter), or visit the Court’s website at the address below, where you can type in the case number “S-CV-0045602”:

<https://webportal.placerco.org/eCourtPublic/?q=node/48>

Sincerely,

[Administrator]

EXHIBIT B

1 **HAINES LAW GROUP, APC**
2 Paul K. Haines (SBN 248226)
3 phaines@haineslawgroup.com
4 Fletcher W. Schmidt (SBN 286462)
5 fschmidt@haineslawgroup.com
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7 amcintosh@haineslawgroup.com
8 2155 Campus Drive, Suite 180
9 El Segundo, California 90245
10 Tel: (424) 292-2350
11 Fax: (424) 292-2355

12 Attorneys for Plaintiff

ELECTRONICALLY FILED

Superior Court of California,
County of Placer

05/24/2021 at 12:40:54 PM

By: Olivia C Lucatuorto, Deputy Clerk

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF PLACER**

13 AYEBAINATON EKINE, as an individual and
14 on behalf of all others similarly situated,

15 Plaintiff,

16 vs.

17 BURBERRY LIMITED, a New York
18 corporation; and DOES 1 through 100,

19 Defendants.

CASE NO. S-CV-0045602

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

1 Plaintiffs Ayebainaton Ekine and Edward Castillo (“Plaintiffs”), on behalf of themselves
2 and all others aggrieved employees, hereby bring this First Amended Representative Action
3 Complaint (“FAC”) against Burberry Limited, a New York corporation, and Does 1 through 100,
4 inclusive (collectively “Defendants”), and on information and belief allege as follows:

5 **JURISDICTION**

6 1. Plaintiffs, on behalf of themselves and all other aggrieved employees, hereby bring
7 this representative action for recovery of civil penalties under Labor Code § 2698 *et seq.* This
8 Court has jurisdiction over Defendants’ violations of the California Labor Code because the
9 amount in controversy exceeds this Court's jurisdictional minimum.

10 **VENUE**

11 2. Venue as to each Defendant is proper in this judicial district pursuant to California
12 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
13 complained of herein occurred in the County of Placer. Defendants own, maintain offices,
14 transact business, have an agent or agents within the County of Placer, and/or otherwise are
15 found within the County of Placer, and Defendants are within the jurisdiction of this Court for
16 purposes of service of process.

17 **PARTIES**

18 3. Plaintiffs are, and at all times relevant herein were, competent individuals over
19 the age of eighteen (18) residing in the state of California. During the statute of limitations
20 period, Plaintiffs were employed by Defendants as non-exempt employees in California, and
21 performed services for Defendants in Placer County and Orange County.

22 4. Plaintiffs are informed and believe, and based thereon allege, that at all times
23 mentioned herein, Defendants did (and do) business by manufacturing cosmetics. Defendants
24 employed Plaintiffs and other aggrieved employees within the State of California, specifically
25 the County of Placer and County of Orange, and therefore, were (and are) doing business in the
26 County of Placer, County of Orange, and the State of California.

27 5. Plaintiffs are informed and believe, and based thereon allege, that at all times
28 mentioned herein, Defendants were licensed to do business in the State of California, the County

of Orange, and the County of Placer.

6. Plaintiffs do not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 through 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to amend this FAC when such true names and capacities are discovered. Plaintiffs are informed and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partner, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiffs and aggrieved employees to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

7. Plaintiffs are informed and believes, and based thereon alleges, that at all times mentioned herein, Defendants were and are the employer of Plaintiffs and all similarly situated employees.

8. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

9. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiffs allege that all Defendants were joint employers for all purposes of Plaintiffs and the aggrieved employees.

REPRESENTATIVE ACTION ALLEGATIONS

10. Defendants operate a luxury fashion brand with several retail stores throughout California. Plaintiff Castillo was employed by Defendants as a non-exempt Sales Associate from approximately November 24, 2015, to May 9, 2019. Plaintiff Ekine was employed by

1 Defendants as a non-exempt Sales Associate from approximately March 17, 2017 to August
2 2019. During Plaintiffs' employment, Defendants required Plaintiffs and other non-exempt
3 employees to clock in and other for the start of their work shift, as well as record all meal periods
4 and rest periods, using an electronic timeclock system.

5 11. Defendants' timekeeping policies and/or practices resulted in Plaintiffs and other
6 aggrieved employees not being compensated for all hours actually worked. Specifically,
7 Defendants required Plaintiffs and other aggrieved employees to respond to customer concerns
8 and communicate with customers throughout the day in order to provide a better customer
9 experience, even when Plaintiffs and other aggrieved employees were not scheduled to work or
10 were not on the clock. As a result of Defendants' unlawful policy and/or practice, Plaintiffs and
11 other aggrieved employees were not compensated for all hours that they actually worked and
12 were deprived of all minimum and overtime wages owed.

13 12. Throughout Plaintiffs' employment with Defendants, Defendants maintained an
14 unlawful meal period policy and/or practice that failed to provide Plaintiffs and other aggrieved
15 employees with timely, uninterrupted, duty-free 30-minute meal periods commencing before the
16 end of the fifth hour of work. Specifically, Plaintiffs and other aggrieved employees were
17 frequently unable to take their meal periods prior to the end of the fifth hour of work due to work
18 demands and a lack of employee coverage. Additionally, meal periods were frequently
19 interrupted or cut short due to customer demands. Although Defendants had a policy of paying
20 meal period premiums in the event of missed, short, or late meal periods, Defendants paid all
21 meal period premiums at the employee's base hourly rate of pay, despite the fact that Plaintiffs
22 and other aggrieved employees' regular rates of pay were substantially higher than their base
23 rates of pay due to their receipt of commissions and other incentive pay, including forms of pay
24 listed as "INCENTIVE" and "INCENT. KICKER" (these forms of pay are referred to herein
25 collectively as "Incentive Pay"). Additionally, upon information and belief, in the event that a
26 timely meal period was started by an employee, but was interrupted and completed at a later
27 time, Defendants did not pay the employee a meal period premium at all, in violation of Labor
28 Code section 226.7.

1 13. Defendants also failed to authorize and permit Plaintiffs to take all duty-free 10-
2 minute rest periods for every four hours worked, or major fraction thereof, due to Defendants'
3 unlawful rest period policies/practices. Since Defendants expected Plaintiffs to assist customers
4 at all times, Plaintiffs' rest periods were often interrupted if a customer needed assistance.
5 Furthermore, Defendants' work demand frequently prevented Plaintiffs and other aggrieved
6 employees from taking all their rest periods, due to a lack of employee coverage. Despite
7 Defendants' failure to authorize and permit Plaintiffs and other aggrieved employees to take all
8 legally-required rest periods to which they were entitled, and despite the fact that Defendants
9 required employees to record their rest periods which placed Defendants on notice of rest period
10 violations, Defendants failed to compensate Plaintiffs and other aggrieved employees with an
11 additional hour of premium pay at their respective regular rates of pay for each workday in which
12 a rest period violation occurred, as required by Labor Code section 226.7.

13 14. Upon information and belief, during at least a portion of the relevant time period,
14 Defendants failed to maintain pay codes for the payment of rest period premium payments as
15 required by Labor Code section 226.7.

16 15. Defendants encouraged Plaintiffs and other non-exempt employees to utilize their
17 personal cellular phones to communicate with customers through telephone calls, emails, and text
18 messages. In approximately 2018, Defendants introduced company-provided cellular phones, but
19 even after this time, customers who were accustomed to contacting employees on their personal
20 cellular phones and continued to do so frequently. Despite requiring Plaintiffs and other aggrieved
21 employees to utilize their personal cell phones to communicate with customers, Defendants failed
22 to reimburse these aggrieved employees for any portion of their cellular phone bill, in violation
23 of Labor Code section 2802.

24 16. As a result of Defendants' failure to pay all minimum wages owed, overtime wages
25 owed, and meal and rest period premium wages owed, Defendants failed to timely pay Plaintiffs
26 and other aggrieved employees all wages owed at the time of their respective separations from
27 employment, maintained inaccurate payroll records, and issued inaccurate wage statements to
28 Plaintiffs and other aggrieved employees. Defendants also maintained facially deficient wage

statements that failed to list the total hours and rates of pay associated with commission overtime payments, denoted on wage statements as “OT ON COMM.”

17. On March 30, 2020, Plaintiff Castillo notified Defendant Burberry Limited via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via e-mail of Defendants’ violations of the California Labor Code and Plaintiff Castillo’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 19 (a)-(i). Accordingly, the relevant time period for each cause of action pled herein has been calculated based on a March 30, 2020 date.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

18. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though fully set forth herein.

19. Defendants have committed several Labor Code violations against Plaintiffs and other aggrieved employees. Plaintiffs, “aggrieved employees” within the meaning of Labor Code § 2698 *et seq.* (“PAGA”), acting on behalf of themselves and other aggrieved employees, bring this representative action against Defendants to recover the civil penalties due to Plaintiffs, other aggrieved employees, and the State of California according to proof, pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation of Lab. Code § 226 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per

1 employee per pay period for those violations of the Labor Code for which no civil penalty is
2 specifically provided, based on the following Labor Code violations:

- 3 a. Failing to pay Plaintiffs and other aggrieved employees the statutory
4 minimum wage for all hours worked in violation of Labor Code §§
5 1182.12, 1194, 1194.2, 1197;
- 6 b. Failing to pay Plaintiffs and other aggrieved employees all overtime
7 compensation earned Labor Code §§ 204, 510, 558, 1194, and 1198;
- 8 c. Failing to provide meal periods as required by law and failing to pay meal
9 period premiums to Plaintiffs and other aggrieved employees at the
10 employees' respective regular rates of compensation for meal period
11 violations in violation of Labor Code §§ 226.7, 512, and 558;
- 12 d. Failing to authorize and permit Plaintiffs and other aggrieved employees
13 to take all required rest periods and failing to pay rest period premiums to
14 Plaintiff and other aggrieved employees at these employees' respective
15 regular rates of compensation for rest period violations in violation of
16 Labor Code §§ 226.7, 516, and 558;
- 17 e. Failing to reimburse Plaintiffs and other aggrieved employees for all
18 necessary business expenditures incurred in violation of Labor Code §§
19 2802 and 2804;
- 20 f. Failing to furnish Plaintiffs and other aggrieved employees with accurate
21 and itemized wage statements in violation of Labor Code § 226;
- 22 g. Failing to timely pay all final wages due to Plaintiffs and other aggrieved
23 employees in violation of Labor Code §§ 201, 202, and 203;
- 24 h. Failing to pay Plaintiffs and other aggrieved employees all wages earned
25 at least twice during each calendar month in violation of Labor Code §
26 204; and
- 27 i. Failing to maintain accurate records on behalf of Plaintiffs and other
28 aggrieved employees in violation of Labor Code §§ 1174 and 1198.

20. On March 30, 2020, Plaintiff Castillo notified Defendant Burberry Limited via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via e-mail of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 19 (a)-(i).

21. On July 20, 2020, Plaintiff Ekine notified Defendant Burberry Limited via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via e-mail of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 19 (a)-(i).

22. Now that sixty-five days have passed from Plaintiffs notifying Defendants of these violations, Plaintiffs have exhausted their administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

23. Plaintiffs were compelled to retain the services of counsel to file this court action to protect his interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiffs have thereby incurred attorneys' fees and costs, which he is entitled to receive under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiffs pray for judgment for themselves and for all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. Upon the First Cause of Action, for civil penalties due to Plaintiffs, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: 1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per

1 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
2 violation of Lab. Code § 226 pursuant to Labor Code § 226.3 per employee per pay period; and/or
3 (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per
4 pay period for those violations of the Labor Code for which no civil penalty is specifically
5 provided, based on the violations of Labor Code sections cited in Paragraph 19 (a)-(i) above;

6 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
7 2699., and Code of Civil Procedure § 1021.5; and

8 3. For such other and further relief the Court may deem just and proper.

9
10 Dated: May 11, 2021 Respectfully submitted,
HAINES LAW GROUP, APC

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12 By: 
13 Fletcher W. Schmidt
14 Attorney for Plaintiffs
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PROOF OF SERVICE

Ayebainaton Ekine v. Burberry Limited
Placer County Superior Court Case No. S-CV-0045602

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is [X] 2155 Campus Drive, Suite 180, El Segundo, California 90245.

On May 24, 2021, I served the foregoing document(s) described as:

FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT

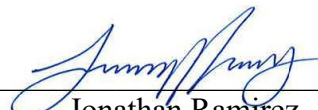
on the interested party(ies) in this action as follows:

Carrie A. Gonell, Esq.
Email: carrie.gonell@morganlewis.com
David J. Rashe, Esq.
Email: david.rashe@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
600 Anton Boulevard, Suite 1800
Costa Mesa, CA 92626-7653
Attorneys for Defendant BURBERRY LIMITED

[X] (VIA ELECTRONIC MAIL) Based on court order or an agreement of the parties to accept electronic service, I caused the document described above to be sent to the persons at the electronic service addresses listed above via third party cloud service First Legal.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 24, 2021, at El Segundo, California.



Jonathan Ramirez

EXHIBIT B

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Jonathan Ramirez](#)
Subject: Thank you for submission of your PAGA Case.
Date: Monday, March 30, 2020 9:37:02 AM

3/30/2020

LWDA Case No. LWDA-CM-780859-20
Law Firm : Haines Law Group, APC
Plaintiff Name : Edward Castillo
Employer: Burberry Limited

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT C

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Jonathan Ramirez](#)
Subject: Thank you for submission of your PAGA Case.
Date: Monday, July 20, 2020 12:55:42 PM

7/20/2020

LWDA Case No. LWDA-CM-799228-20
Law Firm : Haines Law Group, APC
Plaintiff Name : Ayebainaton Ekine
Employer: Burberry Limited

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT D

Haines Law Group, APC

Expense Summary

Ayebainaton Ekine, et al. v. Burberry Limited

EXPENSE	AMOUNT
Copying, Postage, and FedEx Costs	\$73.66
Filing, Service, Jury and Messenger Fees	\$2,596.82
Mediation Costs	\$7,000.00
Westlaw Charges	\$377.61
TOTAL:	\$10,048.09

EXHIBIT E