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ENDORSED
FILED
ALAMEDA COUNTY

APR 2 - 2021

CLERK OF THE SUPERIOR COURT

By AMRIT KHAN Deputy

Attorneys for Plaintiff, Jessica Alvarez, an individual on her own behalf and in her representative capacity, on behalf of all others similarly-situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA**

JESSICA ALVAREZ, an individual on her own behalf and in her representative capacity, on behalf of all others similarly-situated

Plaintiff,

vs.

OLD NAVY, LLC, a Delaware limited liability company; and DOES 1 through 25, inclusive,

Defendant.

Case No.

RG21095677

**COMPLAINT FOR DAMAGES FOR
VIOLATION OF LABOR CODE §2698 Et
Seq. (Private Attorneys General Act of 2004)**

Plaintiff Jessica Alvarez ("Plaintiff Alvarez"), hereby files this Complaint against Defendant, Old Navy, LLC ("Old Navy" or "Defendant") and DOES 1 through 25, inclusive.

Plaintiff is informed and believes and on the basis of that information and belief, alleges as follows:

INTRODUCTION

1. This action is brought pursuant to Labor Code § 2698 *et seq.* (Private Attorneys General

1 Act of 2004) (the “PAGA”) for Defendant’ violations of Labor Code §§ 200-203, 204, 226(a),
2 226.7, 510, 512, 1174 (d), 1194 (a) and 2802 for unpaid wages, for missed and/or non-compliant,
3 rest and meal break violations, for unpaid premiums for meal and rest break violations, for failure
4 to record and maintain accurate records of all hours worked, failure to pay overtime, for failure to
5 pay all wages when due, for failure to reimburse expenses incurred in the discharge of work
6 related duties, for failure to issue accurately itemized wage statements and for failure to pay all
7 wages due upon discharge or termination of employment, as further detailed herein.

8 2. This complaint challenges Defendant’ systemic illegal employment practices resulting in
9 violations of the state provisions of the Labor Code against Plaintiff and similarly-situated,
10 current or former employees of Defendant, (“Aggrieved Employees”) during the relevant
11 statutory period.

12 3. Plaintiff is informed and believes and thereon alleges Defendant acted intentionally and
13 with deliberate indifference and conscious disregard to Plaintiff’s rights by failing to pay all
14 wages when due, failing to provide compliant rest and meal break, failing to pay meal period
15 wages and rest break premium, failing to record and maintain accurate records of time work,
16 including time worked while off the clock, failing to pay overtime wages, failing to provide
17 accurate wage statements, and failing to reimburse for expenses incurred in the discharge of work
18 related duties and failure to pay all wages due upon termination of employment.

19 **GENERAL ALLEGATIONS**

20 4. Defendant Old Navy, LLC, is a Delaware limited liability company, with its principal
21 place of business in San Francisco, California, located at 2 Folsom Street, San Francisco, CA
22 94105.

23 5. Old Navy, LLC is an organization that owns and operates Old Navy brand retail stores
24 across the United States, including the State of California.

25 6. Plaintiff is unaware of the true names and capacities of Defendants sued as DOES 1
26 through 25, inclusive, and therefore Plaintiff sue these Defendants by fictitious names. Plaintiff is
27 informed and believes and thereupon alleges that each of the fictitiously named Defendants is in
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1 some manner responsible for the wrongful acts and resulting damages to Plaintiff as alleged in
2 this Complaint. Plaintiff will amend this Complaint to show the true names and capacities of
3 these fictitiously named Defendants after their true names and capacities have been ascertained.

4 7. Plaintiff is further informed and believes that all of the acts and conduct described herein
5 below of each named Defendant and DOES 1 through 25, inclusive, were done in the capacity as
6 managing agents, employees, and/or representatives of each other Defendant, and each such
7 Defendant was acting within the scope of such agency, employment and/or representation in
8 doing the wrongful acts alleged herein below and with permission and consent.

9 **The Plaintiff**

10 8. Plaintiff, Jessica Alvarez was at all relevant times herein a resident of Modesto,
11 California. She was employed by Defendant as a full-time, hourly, non-exempt assistant
12 general manager for merchandising. Plaintiff provided customer service to clients, promoted
13 Defendants' products, and completed tasks delegated by managers.

14 **JURISDICTION AND VENUE**

15 9. This action is brought pursuant to the PAGA. The civil penalties sought by Plaintiff
16 exceed the minimum jurisdiction limits of the Alameda County Superior Court and will be
17 established according to proof at trial.

18 10. This Court has jurisdiction of this action pursuant to the California Constitution, Article
19 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those
20 given by statute to other courts. The statutes under which this action of brought do not specify any
21 other basis for jurisdiction.

22 11. This Court has jurisdiction over the violations of the PAGA and Cal. *Lab. Cod.* §§ 200-
23 203, 204, 226(a), 226.7, 510, 512, 1174 (d), 1194 (a) and 2802 and applicable Wage Order No. 7-
24 2001 of the Industrial Wage Commission ("IWC No. 7").

25 12. This Court has jurisdiction over Defendant and Does 1 – 25, inclusive, because upon
26 information and belief, each party has sufficient minimum contacts in California or otherwise
27 intentionally avails itself of California law so as to render the exercise of jurisdiction over it by
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1 the California courts consistent with traditional notions of fair play and substantial justice.

2 13. Venue is proper in this Court because, upon information and belief, the named Defendant
3 transacts business and/or has offices in this county and the acts and omissions alleged herein took
4 place in this county.

5 **GENERAL ALLEGATIONS**

6 14. Plaintiff realleges and incorporates by reference each and every allegation contained
7 in the preceding paragraphs as though fully set forth herein.

8 15. Plaintiff was employed by Defendant from November 26, 2018 to September 23,
9 2020. During the relevant statutory period, Plaintiff worked for Defendant as a full-time,
10 hourly, non-exempt employee at the Old Navy retail location at 2831 Countryside Drive,
11 Turlock, California.

12 16. Throughout the PAGA liability period, Plaintiff and similarly situated current or
13 former employees of Defendant work/worked at Old Navy retail locations throughout the
14 State of California ("the Aggrieved Employees"). Typical job duties included activities
15 related to sales, customer service and merchandising Old Navy-branded products and
16 promotions.

17 17. Plaintiff and those similarly situated are/were hourly, non-exempt employees. As a
18 full-time non-exempt employee Plaintiff worked regularly scheduled shifts of eight hours,
19 five days per workweek.

20 18. Plaintiff and the Aggrieved Employees were routinely prohibited from receiving proper,
21 timely, and compliant meal and rest breaks. Indeed, during the first year of her employment,
22 Plaintiff, Alvarez never once was able to take rest break period at all.

23 19. As a matter of operational and store policy, Defendant requires that at least one
24 manager or assistant manager remain on the floor at all times. As a result of this policy,
25 Plaintiff and the Aggrieved Employees were prohibited from taking rest or meal breaks,
26 particularly when, no other managers or assistant managers were on schedule to provide
27 coverage. This lack of coverage was a routine occurrence, especially during closing shifts.
28

1 20. Defendant is/was well aware that there was inadequate coverage and that Plaintiff
2 and the Aggrieved Employees were foregoing their rest break periods.

3 21. In addition, on many occasions when the store was particularly busy, Plaintiff and
4 similarly situated Aggrieved Employees would have to forego their meal breaks as well.

5 22. At no time did Plaintiff ever sign a valid meal break waiver.

6 23. Upon information and belief, Plaintiff also alleges thereon that similarly situated
7 Aggrieved Employees have likewise never agreed to waive their meal breaks nor did or
8 have they signed a valid meal break waiver.

9 24. Although Defendant has written rest and meal break policies, due to the foregoing
10 described policies and working conditions, Defendant actively impeded and failed to
11 relieve Plaintiff and the Aggrieved Employees of all duties and relinquish all control, to
12 allow them the opportunity to take a 10-minute rest break for every four hours or major
13 fraction thereof worked, let alone a 30-minute duty free meal break after each five hour
14 work period.

15 25. Furthermore, although Defendant is/was aware of the rest and meal break violations,
16 Defendant failed to pay Plaintiff and the Aggrieved Employees the obligatory premium pay
17 wage equal to one hour of pay at their regular hourly rate of pay for each missed rest or
18 meal break during each and every pay period during the statutory period.

19 26. Missed breaks, or on duty breaks also meant Plaintiff and the Aggrieved Employees
20 were oftentimes working – even if technically “off-the-clock.” Consequently, overtime
21 hours worked and overtime wages due are/were never recorded or compensated.

22 27. Accordingly, actual hours worked and corresponding wages due are/were not
23 accurately itemized or reflected on Plaintiff and the Aggrieved Employees’ wage
24 statements every two weeks . during the statutory period.

25 28. Furthermore, Plaintiff and the Aggrieved Employees are/were daily required to
26 utilize their personal cell phones to communicate and text managers and colleagues
27 throughout their working shifts. Personal cell phones were used to communicate shift
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1 changes, scheduling or other work-related issues. In addition Plaintiff and the Aggrieved
2 Employees used their personal cell phones to take photos of their in-store displays and
3 assigned workstations and departments to send to their managers.

4 29. Additionally, Defendant required Plaintiff and certain of the Aggrieved Employees to
5 travel to different store locations for training. The training programs lasted approximately a
6 week or longer. Defendants have never reimbursed Plaintiff and certain of the Aggrieved
7 Employees for the mileage or travel expenses associated with the employer-mandated work-
8 related travel to attend training at different store locations.

9 30. As a further and additional consequence of the above-described actions and working
10 conditions, Plaintiff and the Aggrieved Employees are/were not being properly paid all of
11 the wages they were due twice monthly on the pay dates set by Defendants, for each and
12 every pay period, during the statutory period, as none of their pay stubs ever reflected all
13 the wages they earned, including time worked during their rest and meal breaks and
14 overtime hours worked as a result. In addition to the failure to accurately itemize such
15 earnings, Defendant failed to include premium pay penalties to which Plaintiff and the
16 Aggrieved Employees were entitled for the rest and meal break violations.

17 31. Plaintiff and a substantial number of the Aggrieved Employees' employment with
18 Defendant ended during the statutory period. When Plaintiff's employment with Defendant
19 ended on September 23, 2020, she was not provided her pay check until ten days after she
20 was terminated and was not paid all outstanding wages she was due in accordance with
21 Labor Code Section 201.

22 32. Upon information and belief, Plaintiff alleges thereon, that at the time of separation
23 of employment of similarly situated Aggrieved Employees, they were not paid their full
24 wages due in accord with Labor Code Sections 201-202, either, immediately upon
25 termination or discharge or, for such employees not having a written contract for a definite
26 period of time, and who quit, no later than 72 hours thereafter, as applicable.
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28

1 33. As a result of Defendants' failure to properly compensate Plaintiff and the
2 Aggrieved Employees proper compensation for all hours worked, including overtime pay,
3 for premiums for missed rest periods and meal breaks and for the cell phone expenses they
4 necessarily incurred in the performance of their job duties, Plaintiff and the Aggrieved
5 Employees have been denied the use and enjoyment of the monies they are owed by
6 Defendant, and have been forced to incur attorney's fees and costs of suit.

7 **FIRST CAUSE OF ACTION**
8 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT OF 2004,**
9 **LABOR CODE § 2698 ET SEQ.**

10 **(Against Defendants and DOES 1 through 25, inclusive)**

11 34. Plaintiff realleges and incorporates by reference, all of the foregoing paragraphs, as
12 though fully set forth herein.

13 35. The Private Attorney Generals Act of 2004 (the "PAGA") expressly establishes that any
14 provision of the California Labor Code which provides for a civil penalty to be assessed and
15 collected by the Labor and Workforce Development Agency (the "LWDA"), or any of its
16 departments, divisions, commissions, boards, agencies or employees for a violation of the
17 California Labor Code, may be recovered through a civil action brought by an aggrieved
18 employee on behalf of himself or herself, and other current or former employees.

19 36. On January 27, 2021, Plaintiff provided written notice to the LWDA and Defendant of
20 the specific provisions of the Labor Code Plaintiff contend were violated, and the theories
21 supporting their contentions. A true and correct copy of the January 27, 2021 notice is attached
22 hereto as **Exhibit A**. More than sixty-five days have elapsed since Plaintiff provided notice to the
23 Defendant and the LWDA. To date, Plaintiff has not received a response from the LWDA
24 indicating its intent to investigate Plaintiff's claims.

25 37. Plaintiff and the similarly situated employees are/ were non-exempt, hourly compensated
26 employees and are "aggrieved employees" as defined by California Labor Code § 2699(c) in that
27 they are all former employees of Defendant, and one or more of the alleged violations was
28 committed against them.

1 **Failure to Pay Wages**

2 38. Labor Code § 200(a) defines “wages” as “all amounts for labor performed by employees
3 of every description, whether the amount is fixed or ascertained by the standard of time, task,
4 piece, commission basis, or other method of calculation.”

5 39. Under Labor Code § 1194, employees must be separately paid an hourly wage for each
6 and every hour worked, including time worked while off the clock.

7 40. Plaintiff was at all times subject to California’s laws and regulations protecting
8 employees’ entitlement to be paid and presumption to be paid all wages earned for labor
9 performed, including an hourly wage for each and every hour worked.

10 41. As set forth above, California law requires employers, such as Defendant to pay a
11 separate hourly wage to all nonexempt employees for each and every hour worked. Labor Code
12 § 1194 provides that employees are entitled to wages and compensation for work performed, at
13 the legal rate, including straight time, overtime, and double time.

14 42. At all relevant times herein, Defendant was required to compensate Plaintiff for all hours
15 worked pursuant to Labor Code § 1194.

16 43. By uniformly impeding Plaintiff and the Aggrieved Employees from taking their
17 lawfully entitled rest and meal breaks, through which they were forced to work, yet failing to
18 record and compensate them for such hours they worked, including overtime, Defendant was
19 able to skim wages from Plaintiff and the Aggrieved Employees by not paying them a separate
20 hourly wage for each and every hour worked.

21 44. Through this unlawful and illegal policy and practice, Defendant failed to pay Plaintiff
22 and similarly situated Aggrieved Employees all wages they were owed.

23 **Failure to Timely Pay Wages When Due**

24 45. Pursuant to Labor Code Section 204, all wages earned by Plaintiffs and the Aggrieved
25 Employees were and are "due and payable twice du ring each calendar month, on days
26 designated in advance by the employer as regular paydays." For "[l]abor performed between
27 the 1st and 15th days, inclusive of any calendar month" payment is due no later than the 26th
28 day of the month. "...For labor performed between the 16th and the last day, inclusive, of any

1 calendar month, payment is due no later than the 10th day of the following month..." By failing
2 to pay Plaintiffs and the Aggrieved Employees properly, Defendant deprived them of timely
3 payment of all wages earn, when due and owing at these regularly scheduled intervals
4 throughout their employment in violation of Labor Code Section 204.

5 **Failure to Pay Overtime Wages**

6 46. At all times relevant herein, Defendant was required to compensate its non-exempt
7 employees' wages for all hours worked, including overtime wages for all hours worked in excess
8 of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the statutory mandates
9 of Labor Code §§ 510, 1194, 1198 and IWC No. 7.

10 47. At all times relevant herein, Defendant was required to compensate non-exempt
11 employees at a rate of one and one-half times their respective regular rates of pay for hours
12 worked in excess of eight hours in a single day, or for the first eight hours worked on the seventh
13 workday in a workweek, and twice the respective regular rates of pay for any work in excess of
14 eight hours on the seventh workday in a workweek, pursuant to Labor Code §§ 510 and 1198.

15 48. As a pattern and practice, Defendant failed to compensate Plaintiff and the Aggrieved
16 Employees for all hours worked, including hours worked during rest and meal break periods,
17 resulting in a failure to pay all wages due, including overtime wages earned.

18 **Failure to Provide Meal Periods and Rest Breaks**

19 49. In accordance with Labor Code §§ 226.7, 512 and IWC No. 7 Sections 11 and 12,
20 Defendant was required to authorize and permit their non-exempt employees to take a 10-minute
21 rest break for every four (4) hours worked or major fraction thereof and were further required
22 to provide their non-exempt employees with a 30-minute meal period for every five (5) hours
23 worked. Failure to provide an employee with their rest and meal breaks under these provisions
24 requires an employer to pay the employee one (1) hour of pay at the employee's regular rate of
25 compensation for each workday that the rest or meal break periods are not provided.

26 50. As a pattern and practice, Defendant failed to provide Plaintiff and the Aggrieved
27 Employees with lawful, labor code compliant timely, duty-free meal periods and rest breaks and
28

1 failed to comply with the labor code and IWC No. 7 requirements to pay proper premium pay
2 penalties for the violations that occurred throughout the statutory period.

3 **Failure to Maintain Accurate Records of Hours Worked and Wages Paid**

4 51. California Labor Code § 1174 (d), which was in force and effect at all relevant times
5 herein, provides in pertinent part, that “Every person employing labor in this state shall keep...
6 “at a central location in the state or at the plants or establishments at which employees are
7 employed, payroll records showing the hours worked daily by and the wages paid to, and the
8 number of piece-rate units earned by and any applicable piece rate paid to, employees
9 employed at the respective plants or establishments. These records shall be kept in accordance
10 with rules established for this purpose by the commission, but in any case shall be kept on file
11 for not less than three years. An employer shall not prohibit an employee from maintaining a
12 personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

13 52. Defendants failed to maintain accurate records of all hours that the Plaintiff and the
14 Aggrieved Employees worked, by failing to track and record the hours they were working
15 during rest and meal break periods while off the clock in violation of their statutory obligation
16 to maintain accurate records showing all hours worked daily and the corresponding wages paid
17 for all hours worked in violation of section 1174(d).

18 **Failure to Provide Accurate Wage Statements**

19 53. At all times relevant herein, Defendant was required to keep *accurate* records regarding
20 their California employees pursuant to the mandates of Labor Code § 1174(d) as discussed supra.

21 54. Furthermore, at all relevant times hereto, Labor Code section 226(a) was in full force and
22 effect and provides that, semimonthly or at the time of each payment of wages an employer shall,
23 “furnish each of [its] employees, either as a detachable part of the check, draft, or voucher
24 paying the employee’s wages, or separately when wages are paid by personal check or cash, an
25 itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the
26 employee, ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is
27 paid, and (9) all applicable hourly rates in effect during the pay period and the corresponding
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1 *number of hours worked at each hourly rate by the employee.”*

2 55. As a result of Defendant’s failure record and maintain accurate records of all hours
3 worked and wages earned in violation of Labor Code Section 1174 (d) Defendant, consequently,
4 also failed in its affirmative obligation issue accurately itemized wage statements each and every
5 pay period that reflected gross wages earned, the total hours worked, at the correct respective
6 rates of pay in violation of Labor Code Section 226(a).

7 **Failure to Reimburse Expenses Incurred in the Discharge of Work-Related Duties**

8 56. At all times relevant, California Labor Code section 2802 was in force and effect. Section
9 2802(a) provides in pertinent part that: *“An employer shall indemnify his or her employee for all*
10 *necessary expenditures or losses incurred by the employee in direct consequence of the discharge*
11 *of his or her duties ... ”*

12 57. As alleged above, Defendant required Plaintiff and the Aggrieved Employees to utilize
13 their personal cell phones to communicate with supervisors, managers and colleagues and in
14 conducting work related duties and communications, without reimbursement for their cell phone
15 expenses. Further, Plaintiff and certain of the Aggrieved Employees also incurred travel expenses
16 to drive to and attend trainings at other Old Navy store locations. The daily travel for such
17 trainings was often for a week or more, yet Defendant never reimbursed them for their
18 travel/work-related mileage expenses.

19 58. Defendant’s wrongful acts as alleged above constitute a continuing and ongoing unlawful
20 activity prohibited by the California Labor Code.

21 59. Plaintiff and the Aggrieved Employees seek reimbursement for all business-related
22 expenses they incurred in the performance of their job duties for Defendant, all applicable PAGA
23 civil penalties, together with interest thereon, as well as their attorneys’ fees and costs.

24 60. All unreimbursed expenses and penalties owed by Defendant to Plaintiff and the
25 Aggrieved Employees may be recovered through this PAGA action; no class certification is
26 required for Plaintiff to obtain a recovery on behalf of himself and on behalf of the Aggrieved
27 Employees. (See *Arias v. Superior Court* (2009) 46 Cal.4th 969, 970-975.)

28 **Failure to Pay Wages Due Upon Termination or Separation**

1 61. Labor Code §§ 201 and 202 require employers such as Defendant to pay their employees
2 all wages due within the time specified by law. California Labor Code § 203 provides that if an
3 employer willfully fails to timely pay such wages, the employer must continue to pay the
4 employee's subject wages until the back wages are paid in full or an action is commenced, up to
5 a maximum of 30 calendar days of wages.

6 62. As alleged supra, Plaintiff did not receive her final pay at the time she was terminated on
7 September 23, 2020. She did not receive her final paycheck and all outstanding wages due until
8 ten days after her final date of employment. Plaintiff and the Aggrieved Employees who ceased
9 employment with Defendant during the statutory period were entitled to be timely and fully paid
10 all wages each was due upon separation or termination of employment.

11 63. More than 30 days have passed since such Aggrieved Employees have left Defendant's
12 employ.

13 64. As a consequence of Defendant's willful conduct in not paying such Aggrieved
14 Employees their full compensation due upon separation of employment for all hours worked,
15 each is each entitled to an amount equal to 30 days' wages under Labor Code § 203, together
16 with interest thereon as well as their attorneys' fees and costs.

17 **Damages**

18 65. Defendant's actions constitute continuing and ongoing unlawful activity prohibited by
19 the California Labor Code, as alleged and therefore these acts constitute violations of the PAGA.

20 66. Pursuant to California Labor Code § 2699, Plaintiff requests and is entitled to recover
21 from Defendant civil penalties in the amount of a hundred dollars (\$100) for each aggrieved
22 employee per pay period for the initial violation, and two hundred dollars (\$200) for each
23 aggrieved employee per pay period for each subsequent violation; and

24 67. Attorneys' fees and costs pursuant to Labor Code § 2699(g) and any other applicable
25 statute.

26 68. As alleged supra, notice of these violations were provided pursuant to Labor Code
27 §2699.3 asking the LWDA if it intends to investigate the alleged violations. More than 65 days
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1 have passed since notice was provided and Plaintiff has not received any notification from the
2 LWDA that it intends to investigate the alleged violations. Therefore, the representative
3 Plaintiff is entitled to prosecute the PAGA claims under Labor Code §2699, et seq.

4 69. The proper measure of damages and penalties under the PAGA is as to all Aggrieved
5 Employees, whether a part of this action or not. Further this claim needs no certification to
6 proceed with recovery. See *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 970-975.

7 70. Accordingly, Plaintiff respectfully requests that the Court award judgment and relief in
8 her favor including civil penalties under California Labor Code §2699 in the amount of one
9 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation,
10 and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each
11 subsequent violation during the relevant period, according to proof.

12 71. Plaintiff as the personal representatives of the Aggrieved Employees, will and does seek
13 to recover any and all penalties for each and every violation shown to exist or to have occurred
14 during the liability period, in an amount according to proof, as to those penalties that are
15 otherwise only available to public agencies. Said fund recovered will be distributed in
16 accordance with the PAGA, with at least 75% of said PAGA penalty recovery being reimbursed
17 to the State of California and the LWDA.

18
19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff pursuant to PAGA, prays for judgment as follows:

21 1. Upon the Cause of Action, for civil penalties and wages pursuant to statute as set forth in
22 Labor Code § 2698 *et seq.*, for Defendant's violations of Labor Code §§ 201-204, 226(a), 226.7,
23 510, 512(a), 1174(d), 1194, and 2802 and applicable IWC No. 7-2001.

24 2. Upon the PAGA Cause of Action, for attorneys' fees and costs pursuant to Labor Code §
25 2699.3 and any other applicable statute; and

26 3. For such other and further relief the court may deem just and proper.
27
28

1 Dated: March 31, 2021

WHITEHEAD EMPLOYMENT LAW

2
3 By:



Jacob N. Whitehead, Esq.
Meghan Higday, Esq.
Attorneys for Plaintiff and
Aggrieved Employees

EXHIBIT A



January 27, 2021

Via Online Filing

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

Via USPS First Class Mail

The Gap, Inc., Manager of
Old Navy, LLC
2 Folsom Street
San Francisco, California 94105

Via Certified Mail

CT Corporation System
Registered Agent for
Old Navy, LLC
818 West Seventh Street, Suite 930
Los Angeles, California 90017

Re: Notice Pursuant to the Private Attorneys General Act, California Labor
Code § 2699.3 (the "PAGA")

Dear Sir(s) and/or Madam:

Please be advised that representative plaintiff, Jessica Alvarez ("Plaintiff") has retained Whitehead Employment Law to represent her and other similarly situated current and former employees (collectively, the "Aggrieved Employees") of Old Navy, LLC, a Delaware limited liability company, duly registered with the California Secretary of State to conduct business in California and Does 1 through 20 (hereinafter "Defendants") regarding claims of violation of the California Labor Code.

Defendants currently or formerly employed Plaintiff and other Aggrieved Employees, who work or have worked as a non-exempt, hourly and/or salary, fulltime and/or part time employees, including but not limited to Assistant Managers, Managers, Brand Associates, and Loss Prevention Agents (the "Covered Positions"). This notice formally serves to inform Defendants of Plaintiff's intent to file a PAGA complaint against Defendants and bring causes of action for violations of the PAGA and for injunctive relief including, but not limited to claims for Defendants' failure to provide compliant rest/meal breaks; failure to pay overtime; failure to maintain accurate records of all hours worked; failure to reimburse job-related expenses; failure to furnish accurately itemized wage statements; and failure to timely pay all wages due to Aggrieved Employees who ceased employment with Defendant during the statutory period upon their separation or termination of employment.

As further detailed below, Defendants violated the provisions of California Labor Codes §§ 201-203, 204, 226(a), 226.7, 510, 512, 1174 (d), 2802, and Industrial Welfare Commission Wage Order No. 9-2001 (IWC No. 7).

Plaintiff was hired by Defendants on approximately November 26, 2018 and was employed until approximately September 23, 2020, as a full-time, hourly, non-exempt Assistant General Manager for Merchandising. Plaintiff provided customer service to clients, promoted Defendants' products, and completed tasks delegated by managers.

During the relevant statutory period, Plaintiff and the Aggrieved Employees were routinely prohibited from receiving proper, timely, and compliant meal and rest breaks. As a matter of policy, Defendants required that at least one manager or assistant manager be on the floor at all times. As a result of this policy, Plaintiff and certain of the Aggrieved Employees were prohibited from and unable to take rest or meal breaks when, other than themselves, no other managers or assistant managers were on schedule. This lack of coverage was a routine occurrence, especially during closing shifts at most of Defendants' California store locations. Defendants were aware of the lack of coverage, but nevertheless required Plaintiff and the Aggrieved Employees to skip their lawfully entitled meal and rest breaks if there was no coverage or if their store was busy at the time they should have been permitted to take their rest or meal breaks. Moreover, Defendants routinely interrupted Plaintiff and the Aggrieved Employees during meal and rest breaks to ask them work related questions or asked them to perform work-related tasks. Defendants have never paid Plaintiff and the Aggrieved Employees for the time they worked off the clock during their breaks, nor the premium pay to which they are/were entitled for the missed and non-compliant rest and meal breaks. Further, at no time have Plaintiff or the Aggrieved Employees ever validly waived their rest and meal break periods.

Defendant also intentionally failed to properly pay Plaintiff and the Aggrieved Employees the overtime wages that they were due. Due to Plaintiff and the Aggrieved Employees working off the clock during meal breaks, in many instances the unrecorded time that they were working, resulted in their laboring in excess of 8 hours a day or over 40 hours in a week. Plaintiff and the Aggrieved Employees were never compensated by Defendants for the overtime they worked due to working off the clock.

Further, during the relevant statutory period, Plaintiff and certain of the Aggrieved Employees were required to utilize their personal cell phones for work related duties and work-related communications. Utilization of Plaintiff's and the Aggrieved Employees' personal cell phones was an essential part of the job. Plaintiff and the Aggrieved Employees used their personal cell phones to contact supervisors, to communicate with other employees on shift, to text supervisors and co-workers, and to send photographs of the store to the General Managers and their supervisors. Plaintiff and the Aggrieved Employees also used their personal cell phones to communicate with co-workers and supervisors regarding schedules, shift changes, and coverage of shifts. At no time have Defendants ever reimbursed Plaintiff or the Aggrieved Employees for the expenses they incurred in the utilization of their personal cell phones.

During the relevant statutory period, Plaintiff and certain of the Aggrieved Employees also had to travel to different store locations for training, with training lasting approximately a week or longer. Defendants never reimbursed Plaintiff and certain of the Aggrieved Employees for the mileage or travel expenses associated with training at a different store.

Plaintiff is informed and believes that the said violations are ongoing, systematic and uniform. Plaintiff intends to bring an action against Defendants under the PAGA to recover wages and penalties and for injunctive relief as provided by California law.¹

¹ Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency ("LWDA"). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of § 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of § 96, § s 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205,

Rest/M meal Break Violations

Under Labor Code § 226.7 “(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

Further, under Labor Code § 512 (a) “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

Per the IWC Wage Order No. 7, Section 12(A) & B “Employers of California employees covered by the rest period provisions of the Industrial Welfare Commission Wage Orders must authorize and permit a net 10-minute paid rest period for every four hours worked or major fraction thereof. If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

As stated, during the relevant statutory period, Plaintiff and the Aggrieved Employees, were rarely able to take Labor Code compliant, timely and duty-free rest breaks. Plaintiff and Aggrieved Employees were also rarely provided an uninterrupted meal breaks due to lack of staffing and Defendants interrupting their meal breaks. Defendants actively failed to relinquish control to permit Plaintiff and the Aggrieved Employees opportunities for lawful breaks. Defendants have not paid premium pay penalties for the missed and non-compliant rest and meal breaks. This is a clear violation of the provisions of the Labor Code and the IWC No. 7 which set forth California employers’ affirmative obligation to provide timely, duty-free rest and meal break periods.

Pursuant to §§ 226.7 and 512 of the Labor Code and Section 12 (B) of IWC No. 7, Plaintiff and the Aggrieved Employees are owed premium pay penalties for each missed rest and meal break for which they were not paid during the statutory period.

205.5 , 206 , 206.5 , 208 , 209 , and 212, subdivision (d) of § 213 , § s 221 , 222 , 222.5 , 223 , and 224 , paragraphs (1) to (5) , inclusive, (7) , and (9) of subdivision (a) of § 226 , § s 226.7 , 227 , 227.3 , 230 , 230.1 , 230.2 , 230.3 , 230.4 , 230.7 , 230.8 , and 231, subdivision (c) of § 232 , subdivision (c) of § 232.5 , § s 233 , 234 , 351 , 353 , and 403, subdivision (b) of § 404 , § s 432.2 , 432.5 , 432.7 , 435 , 450 , 510 , 511 , 512 , 513 , 551 , 552 , 601 , 602 , 603 , 604 , 750 , 751.8 , 800 , 850 , 851 , 851.5 , 852 , 921 , 922 , 923 , 970 , 973 , 976 , 1021 , 1021.5 , 1025 , 1026 , 1101 , 1102 , 1102.5 , and 1153, subdivisions (c) and (d) of § 1174 , § s 1194 , 1197 , 1197.1 , 1197.5 , and 1198, subdivision (b) of § 1198.3 , § s 1199 , 1199.5 , 1290 , 1292 , 1293 , 1293.1 , 1294 , 1294.1 , 1294.5 , 1296 , 1297 , 1298 , 1301 , 1308 , 1308.1 , 1308.7 , 1309 , 1309.5 , 1391 , 1391.1 , 1391.2 , 1392 , 1683 , and 1695, subdivision (a) of § 1695.5 , § s 1695.55 , 1695.6 , 1695.7 , 1695.8 , 1695.9 , 1696 , 1696.5 , 1696.6 , 1697.1 , 1700.25 , 1700.26 , 1700.31 , 1700.32 , 1700.40 , and 1700.47 , § s 1735 , 1771 , 1774 , 1776 , 1777.5 , 1811 , 1815 , 2651 , and 2673, subdivision (a) of § 2673.1 , § s 2695.2 , 2800 , 2801 , 2802 , 2806 , and 2810, subdivision (b) of § 2929 , and § s 3073.4 , 6310 , 6311, and 6399.7.

Failure to Compensate Employees For Every Hour Worked

Labor Code § 204 (a) states *“All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”*

Under Labor Code § 1194 (a) *“Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”*

Labor Code §§ 204 and 1194 (a) have been violated and Plaintiff and the Aggrieved Employees are entitled to recover payment for all hours worked, including time worked off the clock, and for late payment of wages with penalties and interest thereon, as well as their attorney’s fees and costs.

Failure to Pay Overtime Pay

Labor Code § 510 (a) provides, *“Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”*

As indicated above, the Plaintiff and the Aggrieved Employees worked off the clock during their rest and meal break periods, which meant they were routinely working more than an eight-hour shifts but were not paid overtime wages. Plaintiff and the Aggrieved Employees were working more than eight hours in a day and more than forty hours in a week throughout the relevant statutory period.

Labor Code § 510 (a) has been violated Plaintiff and the Aggrieved Employees are entitled to recover unpaid overtime for all hours worked, plus penalties and interest, as well as their attorney’s fees.

Failure To Maintain Records of Hours Worked

Labor Code § 1174(d) provides, *“Every person employing labor in this state shall:... (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”*

As indicated above, Plaintiff and the Aggrieved Employees were often required to work during their rest or meal breaks due to Defendants’ policies. The time Plaintiff and the Aggrieved Employees spent working while off the clock is/was not ever tracked or recorded by the Defendants in violation of Lab. Cod. § 1174(d).

Failure to Furnish Accurate Wage Statements

As a direct consequence of Defendants' unlawful business and compensation practices under the Labor Code and IWC No. 7, Plaintiff and the Aggrieved Employees were/are not provided with accurately itemized wage statements.

At all times relevant, Labor Code § 226 requires Defendants to *"furnish each of [its] employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."*

As indicated above, Plaintiff and the Aggrieved Employees often work/worked during their meal breaks, due to Defendants' unlawful instructions forcing them to work while off the clock. The imposition of overtime hours they worked was/are not recorded and not paid during the statutory period.

In failing to account, record and compensate with accuracy, all of the hours worked by the Plaintiff and the Aggrieved Employees, and by failing to accurately set forth the net and gross wages earned, Defendants violated the wage statement requirements of Labor Code § 226 by failing to accurately record the Plaintiff and the Aggrieved Employees' respective (1) gross wages earned, (2) net wages earned, and (3) all applicable hourly rates and the corresponding number of hours worked at each applicable hourly rate.

Failure to Timely Pay all Wages Due Upon Separation or Termination of Employment

At all times relevant, Labor Code § 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

At all times relevant, Labor Code § 202 provides that if employees not having a written contract for a definite period quits their employment, their wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

At all times relevant, Labor Code § 203 provides that an employer who willfully fails to pay, without abatement or reduction, in accordance with §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than 30 days.

During the statutory period, when Plaintiff and certain of the Aggrieved Employees' employment relationships with Defendants terminated, Defendants failed to pay them all of their earned wages (as set forth above), immediately upon their discharge or within 72 hours thereafter. In addition, Defendants have failed to pay the waiting time penalties to which such Aggrieved Employees are lawfully entitled under Labor Code § 203.

To date, Defendants has failed to pay the Plaintiff and the Aggrieved Employees all of their earned wages, overtime, accrued interest thereon, and failed to remit the Labor Code penalties to be imposed as a consequence of said violations of the Labor Code.

Failure To Reimburse Work-Related Expenses

Labor Code § 2802(a) provides, “*An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.*”

As described above, during the relevant statutory period, Plaintiff and Aggrieved Employees daily utilize or utilized their personal cell phones to call and text co-workers and supervisors, as well as, to take and send pictures of the store and displays to Managers. Plaintiff and certain of the Aggrieved Employees also utilized their vehicles to travel to different store locations for training with no reimbursement from Defendants. Defendants violated Labor Code § 2802 and Plaintiff and the Aggrieved Employees seek reimbursement of these work-related expenses incurred, as well as their attorney’s fees, penalties and interest thereon as permitted by § 2802.

Conclusion

In sum, as has been factually alleged, Defendants violated among other statutes and regulations Labor Code §§ 201-203, 204, 226, 226.7, 510, 512, 1174(d), 2802, and IWC No. 7. Plaintiff on her own behalf and on behalf of all similarly situated Aggrieved Employees, seeks to recover any and all applicable statutory penalties, and interest as provided by California law, as well as attorneys’ fees and civil penalties as provided for under Labor Code § 2699.

Plaintiff requests the LWDA to investigate the above claims and to provide notice of the agency’s intent to investigate under the PAGA’s provisions. Alternatively, Plaintiff requests the agency please inform her if it does not intend to investigate these violations so that she may bring a civil action under the PAGA for the violations alleged herein.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW



Jacob N. Whitehead

JNW/mnh