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9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SOLANO**

12 AMANDA O'NEAL, as an individual, on  
behalf of herself, and all persons similarly  
situated,

13 Plaintiff,

14 v.

15 OLD NAVY, LLC, a Delaware limited liability  
company authorized to do business in the state  
of California; and DOES 1 through 50 inclusive,

16 Defendant.  
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Case No.: FCS056125

**CLASS AND REPRESENTATIVE ACTION**

**FIRST AMENDED COMPLAINT FOR  
DAMAGES, RESTITUTION, PENALTIES  
AND INJUNCTIVE RELIEF:**

- (1) **FAILURE TO TIMELY PAY  
MINIMUM, REGULAR, AND/OR  
OVERTIME WAGES  
(Labor Code §§ 204, 210, 510, 558, 1194,  
1194.2, 1197, 1197.1, 1198, and 1199);**
- (2) **FAILURE TO PROVIDE LEGALLY  
COMPLIANT MEAL PERIODS  
AND/OR TIMELY PAY PREMIUM  
WAGES  
(Labor Code §§ 204, 210, 226.7, 512, and  
558);**
- (3) **FAILURE TO PROVIDE LEGALLY  
COMPLIANT REST PERIODS  
AND/OR TIMELY PAY PREMIUM  
WAGES  
(Labor Code §§ 204, 210, and 226.7);**
- (4) **FAILURE TO TIMELY PAY ALL  
WAGES DUE AND OWING UPON  
SEPARATION OF EMPLOYMENT  
AND/OR PAY WAITING TIME  
PENALTIES  
(Labor Code §§ 201-203 and 210);**

- (5) **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES (Labor Code § 2802);**
- (6) **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS (Labor Code §§ 226 and 226.3);**
- (7) **FAILURE TO MAINTAIN ACCURATE RECORDS (Labor Code §§ 226, 1174, and 1174.5);**
- (8) **VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW (Bus. & Prof. Code §§ 17200 *et seq.*); and**
- (9) **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT (Labor Code §§ 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL**

Plaintiff Amanda O’Neal (“Plaintiff”) brings this class and representative action on behalf of herself and all persons similarly situated against Defendant Old Navy, LLC, and DOES 1 through 50, inclusive (collectively, “Old Navy” or “Defendants”), on the following grounds:

**INTRODUCTION**

1. This class and representative action is brought by Plaintiff on behalf of herself and all other current or former non-exempt employees of Old Navy who worked at an Old Navy retail store in the state of California during the relevant time period (referred to herein as “Old Navy Employees”).

2. Plaintiff asserts that during the relevant time period, Old Navy engaged in a common pattern and practice of wage and hour violations under the California Labor Code (“Labor Code”) and the California Industrial Welfare Commission’s (“IWC”) Wage Order No. 7-2001 to decrease its employment related costs and increase its profits by, among other things:

- a. Failing to timely compensate for all hours actually worked, including minimum, regular, and/or overtime wages;
- b. Failing to provide the opportunity to take legally compliant meal periods and/or timely pay premium wages for non-compliant meal periods;

- c. Failing to authorize and permit legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods;
- d. Failing to timely pay all wages due and owing upon separation of employment and/or the mandatory waiting time penalties;
- e. Failing to reimburse for necessary business expenses;
- f. Failing to furnish accurate itemized wage statements;
- g. Failing to maintain accurate records;
- h. Engaging in unlawful, unfair and/or fraudulent business practices; and
- i. Violating the Private Attorneys General Act of 2004 ("PAGA").

3. By and through this class and representative action, Plaintiff seeks to recover all available remedies, including, but not limited to, damages, restitution, penalties, and injunctive relief, as well as reasonable attorneys' fees and litigation costs, as provided under California law.

4. All allegations in this First Amended Complaint are based upon information and belief except those allegations that pertain to Plaintiff named herein and her counsel, which are based upon personal knowledge. Each allegation in this First Amended Complaint has evidentiary support or is likely to have evidentiary support after reasonable opportunity for further investigation and formal discovery.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure ("Code of Civil Procedure") section 410.10. Pursuant to Code of Civil Procedure section 382, California Business and Professions Code ("Business & Professions Code") section 17203, and Labor Code sections 2698 *et seq.*, Plaintiff brings this action on behalf of herself and all other Old Navy Employees.

6. This Court has personal jurisdiction over Old Navy because Old Navy conducts business in the state of California and has caused injuries in the county of Solano, as well as throughout the state of California, through its acts, omissions, and violations of the Labor Code and Business & Professions Code.

7. Venue as to Old Navy is proper in this judicial district pursuant to Code of Civil Procedure section 395(a). Old Navy transacts business in Solano County and is otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on

1 Plaintiff and all other Old Navy Employees within the county of Solano and throughout the state of  
2 California.

3 8. Pursuant to rule 3.400 of the California Rules of Court, this case shall be deemed a complex  
4 action because it is filed as a class action that involves specialized case management, extensive discovery  
5 and evidence, difficult and/or novel issues, and is likely to require extensive post-judgment supervision.

6 **THE PARTIES**

7 **I. PLAINTIFF**

8 9. Plaintiff Amanda O'Neal (formerly Amanda Martinez) at all material times mentioned  
9 herein:

- 10 a. Was and is a resident of the county of Solano, California;
- 11 b. Was employed by Old Navy from about May 13, 2018 to November 20, 2020 as an  
12 Assistant Store Manager at Old Navy's retail store located in Vacaville, California.  
13 Plaintiff also worked as a Product and Marketing Manager at Old Navy's retail  
14 store located in Vacaville, California from approximately November 26, 2017 to  
15 May 12, 2018; and as an Associate at Old Navy's retail stores located in Vacaville,  
16 California and Temecula, California on or around April 2, 2017 to November 25,  
17 2017;
- 18 c. Engaged in work for Old Navy in the counties of Riverside and Solano;
- 19 d. Earned an hourly wage;
- 20 e. Received non-discretionary bonuses;
- 21 f. Was to be paid on a bi-weekly basis;
- 22 g. Was typically scheduled to work five (5) days per week and forty (40) to fifty (50)  
23 hours per week;
- 24 h. Was classified by Old Navy as a non-exempt employee for purposes of the Labor  
25 Code and the IWC Wage Orders;
- 26 i. Was not timely compensated the appropriate minimum, regular, and/or overtime  
27 wages for all time engaged in work;
- 28

- j. Was not paid the appropriate rate of overtime wages because her non-discretionary bonuses were not factored into her regular rate of pay;
- k. Was not provided with the opportunity to take legally compliant meal periods and/or timely paid compensation in lieu thereof;
- l. Was not authorized and permitted to take legally compliant rest periods and/or timely paid compensation in lieu thereof;
- m. Was not timely paid all wages due and payable upon separation of employment and/or the required waiting time penalties for the late payment of wages;
- n. Was not reimbursed for all necessary business expenses that she incurred in the discharge of her job duties, including costs incurred using her personal cellphone and/or vehicle to complete work tasks;
- o. Was not furnished with accurate itemized wage statements;
- p. Contends her employee and/or payroll records were not accurately maintained by Old Navy;
- q. Was subject to Old Navy's unlawful, unfair, and fraudulent business practices;
- r. Is a member of the class and sub-class defined herein;
- s. Is an "aggrieved employee" as defined by Labor Code section 2699(c); and
- t. Has complied with all requirements outlined in Labor Code sections 2698 *et seq.*

## II. DEFENDANTS

10. Defendant Old Navy, LLC is organized in the state of Delaware and has its headquarters located in San Francisco, California. Old Navy, LLC is authorized to do business, and is actually doing business, in the state of California. Old Navy, LLC owns, operates and/or manages a nationwide chain of retail stores, including numerous stores throughout California, that specialize in retail clothing and accessories.

11. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of Defendant Does 1 through 50, inclusive, are unknown to Plaintiff, who therefore sues these defendants by such fictitious names pursuant to Code of Civil Procedure section 474. Plaintiff will amend this First Amended Complaint, setting forth the true names and capacities of these fictitiously

1 named defendants when their true names are ascertained. Plaintiff is informed and believes, and on that  
2 basis alleges, that each of the fictitious defendants have participated in the acts and/or omissions alleged  
3 in this First Amended Complaint.

4 12. At all times mentioned herein, the acts alleged to have been done and/or caused by each  
5 named defendant are also alleged to have been done and/or caused by each fictitiously named defendant,  
6 and by each of their agents and/or employees who acted within the scope of their agency and/or  
7 employment.

8 13. At all times mentioned herein, each named defendant, including each fictitiously named  
9 defendant, is believed to have acted individually or as an officer, agent, or employee of each of the other  
10 defendants.

11 14. At all times mentioned herein, each named defendant, including each fictitiously named  
12 defendant, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture of each of  
13 the other defendants, and in doing the things alleged herein acted within the course and scope of such  
14 agency, employment, alter-ego and/or in furtherance of the joint venture.

15 15. At all times mentioned herein, the acts and/or omissions of each of the named defendants,  
16 including each fictitiously named defendant, concurrently contributed to the various acts and/or omissions  
17 of each and every one of the other defendants, including each fictitiously named defendant, in proximately  
18 causing the wrongful conduct, harm, and/or damages alleged herein. Each of the named defendants,  
19 including each fictitiously named defendant, approved of, condoned, and/or otherwise ratified each and  
20 every one of the acts and/or omissions complained herein. Each named defendant, including each  
21 fictitiously named defendant, were and are acting with authority of each and every other defendant and/or  
22 are acting as agents of each and every other named defendant or Doe defendant.

23 16. At all times mentioned herein there was a unity of interest and ownership between each  
24 named defendant, including each fictitiously named defendant, such that all defendants acted as a single  
25 employer of Plaintiff and all other Old Navy Employees.

26 17. At all times mentioned herein each named defendant, including each fictitiously named  
27 defendant, exercised supervision and control over the working conditions of Plaintiff and all other Old  
28 Navy Employees, including, but not limited to, implementing standard policies and procedures.

**FACTUAL ALLEGATIONS**

18. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this First Amended Complaint.

19. Plaintiff was employed by, or otherwise performed work for, Old Navy from approximately April 2, 2017 through and including November 20, 2020 at Old Navy's retail stores located in Vacaville, California and Temecula, California. During her employment, Plaintiff performed work for Old Navy as an Associate, Product and Marketing Manager, and Assistant Store Manager. Plaintiff's job duties as an Associate included, but were not limited to, greeting and assisting customers, opening and closing the store, and performing register functions. As a Product and Marketing Manager, Plaintiff was responsible for maintaining product inventory, overseeing the shipment process, and supervising employees, among other things. As an Assistant Store Manager, Plaintiff's job duties included, but were not limited to, training and overseeing employees, ensuring sales and productivity targets were met, obtaining supplies, and providing excellent customer service.

20. During her employment, Plaintiff was classified by Old Navy as a non-exempt employee, earned an hourly rate, earned non-discretionary bonuses, and was to be paid on a bi-weekly basis. Plaintiff typically worked five (5) days per week and forty (40) to fifty (50) hours per week.

21. Plaintiff asserts that Old Navy has employed, and will continue to employ, several individuals in a non-exempt capacity in Solano County and throughout the state of California.

22. Plaintiff further alleges that throughout the relevant time period all Old Navy Employees earned an hourly wage, earned non-discretionary bonuses, and were to be paid on a bi-weekly basis.

23. Plaintiff contends that she and all other Old Navy Employees were subject to, and those currently employed continue to be subject to, the same and/or similar policies, practices, procedures guidelines and/or culture described herein.

24. Plaintiff further alleges that she and all other Old Navy Employees have suffered, and those currently employed will continue to suffer, the same and/or similar violations of law described herein.

25. Plaintiff asserts that Old Navy had, and continues to have, a policy, practice, procedure, guideline and/or culture of understaffing its retail stores in order to, among other things, decrease their employment related costs and increase their profits.

26. Plaintiff contends that Old Navy had, and continues to have, a policy, practice, procedure, guideline, and/or culture of not compensating her and all other Old Navy Employees, on the designated pay days, all minimum, regular, and/or overtime wages for all time engaged in work on behalf of Old Navy.

27. Plaintiff alleges Old Navy failed to compensate Old Navy Employees, including Plaintiff, for work performed while off-the-clock. For instance, Plaintiff and other Old Navy Employees were required to undergo bag-checking procedures after clocking out for their shifts. Old Navy Employees, including Plaintiff, were also obligated to respond to work-related text messages and telephone calls from co-workers and supervisors while off-the-clock. Moreover, Plaintiff and other Old Navy Employees spent approximately five (5) to ten (10) minutes to clock in when opening Old Navy's retail stores and to clock out when closing such stores. Old Navy improperly considered the work that Plaintiff and other Old Navy Employees performed while off-the-clock as non-compensable time and failed to provide any remuneration.

28. Plaintiff also contends that due in part to Old Navy's policy, practice, procedure, guideline, and/or culture of requiring Plaintiff and other Old Navy Employees to remain on the work premises and be readily available during their meal periods unless another employee is available to relieve them, failing to provide adequate coverage for Old Navy Employees, and assigning workloads that cannot reasonably be completed within Old Navy Employees' scheduled hours, she and other Old Navy Employees were directed, encouraged, pressured, and/or otherwise coerced to perform their job duties while clocked out for their meal periods, and were not timely compensated for this work by Old Navy.

29. Plaintiff further contends that Old Navy had, and continues to have, a policy, practice, procedure, guideline, and/or culture of offering and subsequently paying non-discretionary bonuses to Old Navy Employees, such as Plaintiff. However, Plaintiff alleges that Old Navy had, and continues to have, a policy, practice, procedure, guideline, and/or culture of not including the non-discretionary bonuses into Old Navy Employees' regular rate of pay for purposes of computing overtime. Thus, Old Navy Employees were not paid all overtime wages no later than the payday for the next regular payroll period.

30. Plaintiff contends that Old Navy did not, and does not, have a policy, practice, procedure, guideline, and/or culture of providing all Old Navy Employees with the opportunity to take an

1 uninterrupted, thirty (30) minute off-duty meal period before the end of their fifth (5<sup>th</sup>) hour of work when  
2 they worked five (5) or more hours in a day. Similarly, Plaintiff contends that Old Navy did not, and does  
3 not, have a policy, practice, procedure, guideline, and/or culture of providing all Old Navy Employees  
4 with the opportunity to take a second uninterrupted, thirty (30) minute off-duty meal period when they  
5 worked more than ten (10) hours in a day.

6 31. Plaintiff alleges that she and other Old Navy Employees were not provided with the  
7 opportunity to take lawful meal periods because Old Navy had, and continues to have, a policy, practice,  
8 procedure, guideline, and/or culture of requiring Plaintiff and other Old Navy Employees to remain on the  
9 work premises and be readily available to perform work during their meal periods unless another employee  
10 is available to relieve them; failing to provide adequate coverage for Old Navy Employees; mandating  
11 Old Navy Employees to prioritize customer service, communication with co-workers, and other work  
12 duties over taking legally compliant meal periods; and assigning workloads that cannot reasonably be  
13 completed within Old Navy Employees' scheduled hours. As a result, Plaintiff and other Old Navy  
14 Employees regularly received meal periods that were not free from Old Navy's control, late, interrupted  
15 by work duties and/or less than thirty (30) minutes in length.

16 32. Plaintiff asserts that Old Navy knew or should have known that Plaintiff and other Old  
17 Navy Employees were not provided with the opportunity to take legally compliant meal periods due in  
18 part to Old Navy's policy, practice, procedure, guideline, and/or culture of assigning workloads that could  
19 not be reasonably completed within Old Navy Employees' scheduled hours and because Old Navy failed  
20 to adequately staff their retail stores so that Old Navy Employees could be relieved of all duties and Old  
21 Navy's control and leave the work premises for their meal periods. On multiple occasions Old Navy  
22 Employees missed, or were otherwise compelled to forgo, their meal periods.

23 33. Despite not being provided with legally compliant meal periods, Plaintiff alleges that Old  
24 Navy did not, and does not, have a policy, practice, procedure, guideline, and/or culture of timely paying  
25 meal period premium wages to Plaintiff and other Old Navy Employees for all meal periods that do not  
26 comply with California law.

27 34. Plaintiff further alleges that Old Navy did not, and does not, have a policy, practice,  
28 procedure, guideline, and/or culture of authorizing and permitting Plaintiff and other Old Navy Employees

1 to take uninterrupted off-duty rest periods of at least ten (10) minutes for every four (4) hours worked or  
2 major fraction thereof.

3 35. Plaintiff asserts that she and other Old Navy Employees were not authorized and permitted  
4 to take lawful rest periods because Old Navy had, and continues to have, a policy, practice, procedure,  
5 guideline and/or culture of requiring Plaintiff and other Old Navy Employees to remain on the work  
6 premises and be readily available for work during their rest periods unless another employee is available  
7 to relieve them; failing to provide adequate coverage for Old Navy Employees; mandating Old Navy  
8 Employees to prioritize customer service, communication with co-workers, and other work duties over  
9 taking legally compliant rest periods; and assigning workloads that cannot reasonably be completed within  
10 Old Navy Employees' scheduled hours. As a result, Plaintiff and other Old Navy Employees received rest  
11 periods that were not free from Old Navy's control, interrupted by work duties, and/or less than ten (10)  
12 minutes in length. On multiple occasions Old Navy Employees missed, or were otherwise compelled to  
13 forgo, their rest periods.

14 36. Plaintiff contends that Old Navy knew, or should have known, that Plaintiff and other Old  
15 Navy Employees were not authorized and permitted to take legally compliant rest periods due in part to  
16 Old Navy's policy, practice, procedure, guideline and/or culture of assigning workloads that could not be  
17 reasonably completed within Old Navy Employees' scheduled hours and because Old Navy failed to  
18 adequately staff their retail stores so that Old Navy Employees could be relieved of all duties and Old  
19 Navy's control and leave the work premises for their rest periods.

20 37. Despite not being provided with legally compliant rest periods, Plaintiff alleges that Old  
21 Navy did not, and does not, have a policy, practice, procedure, guideline, and/or culture of timely  
22 compensating Plaintiff and other Old Navy Employees premium wages for all unlawful rest periods.

23 38. Plaintiff alleges that Old Navy had, and continues to have, a policy, practice, procedure,  
24 guideline, and/or culture of willfully failing to timely pay former Old Navy Employees, such as herself,  
25 with all wages due and owing upon separation of employment and/or the mandated waiting time penalties  
26 for the late payment of such wages. For instance, despite being terminated from her employment on  
27 November 20, 2020, Plaintiff did not receive her final payment until November 26, 2020. Plaintiff's final  
28 payment did not include all her wages due and owing including, but not limited to, all unpaid minimum,

1 regular and/or overtime wages, premium wages, or compensation for bonding leave. Plaintiff's final  
2 payment also did not include any waiting time penalties. Although Plaintiff received payment for the  
3 remaining of her bonding leave on December 9, 2020, to date, Plaintiff has not received payment for all  
4 hours worked or the statutory waiting time penalties for the late payment of wages. Plaintiff further alleges,  
5 based on information and belief, that other former Old Navy Employees were not timely paid all wages  
6 due and owing upon separation of employment and/or paid the required waiting time penalties, in large  
7 part due to Old Navy's policy, practice, procedure, guideline, and/or culture of failing to properly pay all  
8 minimum, regular, overtime and/or premium wages.

9         39. Plaintiff asserts that Old Navy had, and continues to have, a policy, practice, procedure,  
10 guideline, and/or culture of failing to reimburse all Old Navy Employees, including Plaintiff, for all  
11 necessary business expenses that were incurred in the discharge of their job duties. For example, Old Navy  
12 required Plaintiff and other Old Navy Employees to use their personal cell phones to communicate with  
13 management and other co-workers. Moreover, Plaintiff and other Old Navy Employees were obligated to  
14 use their personal vehicles to go on work-related errands and obtain supplies, such as food, shelves, and  
15 other items needed at the retail stores. Despite the requirement that Old Navy Employees use their personal  
16 cell phones and/or vehicles for work purposes, Plaintiff and other Old Navy Employees did not receive  
17 any reimbursement for the use of their personal cell phones and/or vehicles in connection with the work  
18 performed on behalf of Old Navy.

19         40. Plaintiff asserts that Old Navy has a policy, practice, procedure, guideline, and/or culture  
20 of furnishing Old Navy Employees, including Plaintiff, with wage statements that do not comply with  
21 California law. Plaintiff contends that the wage statements furnished to her and other Old Navy Employees  
22 did not include, for instance, the total hours actually worked by the employee, all applicable hourly rates  
23 in effect during the pay period, including the proper overtime rate, the corresponding number of hours  
24 worked at each hourly rate by the employee, and the actual gross and net wages earned.

25         41. Due to the lack of information on the furnished wage statements, Old Navy Employees,  
26 such as Plaintiff, were unable to promptly and easily determine the total number of hours actually worked,  
27 the applicable hourly rates in effect during the pay period and/or the corresponding number of hours  
28 worked at each hourly rate, among other things.

42. As a result of Old Navy's policies, practices, procedures, guidelines, and/or culture described herein including, but not limited to, failing to compensate Old Navy Employees all minimum, regular, and/or overtime wages, failing to provide legally compliant meal periods or compensation in lieu thereof, and failing to furnish accurate itemized wage statements, Old Navy knowingly and intentionally failed to maintain accurate employee and payroll records, reflecting Old Navy Employees' actual time worked, the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, among other things, as required by California law.

43. On February 10, 2021, Plaintiff submitted written notice to the California Labor and Workforce Development Agency ("LWDA") and Old Navy as required by the Private Attorneys General Act of 2004 ("PAGA") informing them of Old Navy's alleged violations of the Labor Code. A true and correct copy of the February 10, 2021 written notice is attached hereto as **Exhibit 1** and incorporated herein by reference.

44. According to Labor Code section 2699.3 the LWDA had sixty-five (65) days from the date of submission to notify the parties of whether it intends to investigate the alleged violations. To date, the LWDA has not informed Plaintiff that it intends to investigate Plaintiff's allegations. Thus, pursuant to the PAGA, Plaintiff has the right to pursue, and does so pursue, the asserted claims in a representative action in her representative capacity on behalf of herself, all other Old Navy Employees, the general public and the state of California as permitted by Labor Code section 2699.3.

45. Plaintiff further believes that additional violations may be discovered and therefore reserves her right to allege additional violations of the law as investigation and discovery warrants. In the event Plaintiff discovers additional violations, Plaintiff will seek to amend the operative complaint as necessary.

#### **CLASS DEFINITIONS**

46. Plaintiff seeks to represent the following class and sub-class, which are defined as:

##### **The Non-Exempt Class**

All current or former non-exempt employees of Defendants who worked at an Old Navy retail store in California during the period commencing on the date that is within four years prior to the filing of the initial complaint through and including the last date of trial (hereinafter the "Class Period").

To the extent that California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims by the class against Defendants, the time period should be adjusted accordingly.

**The Non-Exempt Waiting Time Penalties Sub-Class**

All current or former non-exempt employees of Defendants who worked at an Old Navy retail store in California during the period commencing on the date that is within three years prior to the filing of the initial complaint through and including the last date of trial. To the extent that California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims by the sub-class against Defendants, the time period should be adjusted accordingly.

47. Members of the class and/or sub-class are all “employees” as the term is used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working conditions in the state of California.

48. A more precise definition of the class and/or sub-class may be determined after further investigation and discovery. Plaintiff reserves her right to redefine the class, sub-class and/or create additional sub-classes at any time prior to the court’s order on Plaintiff’s class certification motion as provided by law. (Cal. Rules Ct., R. 3.765(b).)

**CLASS ALLEGATIONS**

49. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this First Amended Complaint.

50. Plaintiff brings this action on behalf of herself and on behalf of all persons within the class and/or sub-class defined herein.

51. This class action meets the statutory prerequisites for the maintenance of a class action, as set forth in Code of Civil Procedure section 382 and California Civil Code (“Civil Code”) section 1781, in that:

- a. The persons who comprise the class and/or sub-class are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this First Amended Complaint are common to the class and/or sub-class and will apply uniformly to every member of the class and/or sub-class, and as a practical matter, be dispositive of the interests of the other members not party to

the adjudication;

- c. The parties opposing the class and/or sub-class have acted or have refused to act on grounds generally applicable to the class, thereby making final injunctive relief or declaratory relief appropriate with respect to the class as a whole; and
- d. Common questions of law and fact exist as to the members of the class and/or sub-class and predominate over any question affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
  - i. The interests of class members and/or sub-class members in individually controlling the prosecution or defense of separate actions;
  - ii. The extent and nature of any litigation concerning the controversy already commenced by or against members of the class and/or sub-class;
  - iii. The desirability or undesirability of concentrating the litigation of the claims in this particular forum; and
  - iv. The likely difficulties in the managing a class action.

52. The Court should permit this action to be maintained as a class action pursuant to Code of Civil Procedure 382 and Civil Code section 1781 because:

- a. Questions of law and fact common to the class and/or sub-class are substantially similar and predominate over any questions affecting only individual members;
- b. A class action is superior to any other available method for the fair and efficient adjudication of class members' and/or sub-class members' claims;
- c. The members of the class and/or sub-class are so numerous that it is impractical to bring all class members before the Court;
- d. Plaintiff's claims are typical of the claims of the class and/or sub-class;
- e. Class members and/or sub-class members will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- f. There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties alleged, and

in obtaining adequate compensation for the damages that Defendants' actions have inflicted upon the class and/or sub-class;

- g. Plaintiff can fairly and adequately protect the interests of the class and/or sub-class;
- h. There is a community of interest in ensuring that the combined assets and available insurance of Defendants are sufficient to adequately compensate the members of the class and/or sub-class for the injuries sustained; and
- i. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making final injunctive relief appropriate with respect to the class and/or sub-class as a whole.

### **CAUSES OF ACTION**

#### **FIRST CAUSE OF ACTION**

**(By Plaintiff Individually and Behalf of the Class Against Defendant and Does 1-50)**

#### **FAILURE TO TIMELY PAY MINIMUM, REGULAR, AND/OR OVERTIME WAGES**

**[Labor Code §§ 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and the "Minimum Wages" and "Hours and Days of Work" Sections of IWC Wage Order No. 7-2001]**

53. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this First Amended Complaint.

54. Labor Code section 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. (Labor Code § 204(a).) Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).) Thus, Labor Code section 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work.

55. Labor Code section 1197 states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." (*See Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44 [providing that an employer may not pay "less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise"].)

///

1 56. Labor Code section 1198 mandates,

2  
3 [t]he maximum hours of work and the standard conditions of labor fixed by  
4 the commission shall be the maximum hours of work and the standard  
5 conditions of labor for employees. The employment of any employee for  
6 longer hours than those fixed by the order or under conditions of labor  
7 prohibited by the order is unlawful.

8 57. The “Minimum Wages” section of IWC Wage Order No. 7-2001 also states that, “[e]very  
9 employer shall pay to each employee, on the established payday for the period involved, not less than the  
10 applicable minimum wage for all hours worked in the payroll period, whether the remuneration is  
11 measured by time, piece, commission, or otherwise.”

12 58. Codifying an employee’s right to overtime compensation, Labor Code section 510  
13 provides:

14 Eight hours of labor constitutes a day’s work. Any work in excess of eight  
15 hours in one workday and any work in excess of 40 hours in any one  
16 workweek and the first eight hours worked on the seventh day of work in  
17 any one workweek shall be compensated at the rate of no less than one and  
18 one-half times the regular rate of pay for an employee. Any work in excess  
19 of 12 hours in one day shall be compensated at the rate of no less than twice  
20 the regular rate of pay for an employee. In addition, any work in excess of  
21 eight hours on any seventh day of a workweek shall be compensated at the  
22 rate of no less than twice the regular rate of pay of an employee.

23 59. The “Hours and Days of Work” and “Minimum Wages” sections of the IWC Wage Order  
24 No. 7-2001 mandate the same requirements as Labor Code section 510.

25 60. An employee may not waive his or her right to overtime compensation and any agreement  
26 by the employee to accept less than the statutorily required rate is unenforceable as a matter of law. (*Early*  
27 *v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

28 61. Labor Code section 1194(a) mandates:

...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.

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62. Labor Code section 1197.1 further provides,

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

63. For actions brought under Labor Code section 1194 or 1197.1, Labor Code section 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

64. Labor Code section 1199 imposes “a fine of not less than one hundred dollars (\$100)” for any employer who violates the provisions set forth in Labor Code section 1198.

65. Labor Code section 210 provides that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

66. Labor Code section 558 provides that “any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty” of \$50 for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation in addition to an amount sufficient to recover unpaid wages.

67. Plaintiff alleges that she and other Old Navy Employees, earned an hourly wage, earned non-discretionary bonuses, and were to be paid on a bi-weekly basis.

68. Plaintiff alleges that Old Navy had, and continues to have, a policy, practice, procedure, guideline, and/or culture of not compensating her and all other Old Navy Employees, on the days designated in advance by the employer as regular pay days, all minimum, regular, and/or overtime wages for all the time engaged in work on behalf of Old Navy. For example, Plaintiff and other Old Navy Employees were instructed to perform work duties before clocking in and/or after clocking out for their shifts, such as undergoing bag checking procedures and opening and/or closing Old Navy’s retail stores.

Moreover, Old Navy Employees, including Plaintiff, were required to respond to work-related text messages and telephone calls from other co-workers and supervisors while off-the-clock. Plaintiff and other Old Navy Employees were also directed, encouraged, pressured, and/or otherwise coerced to perform job duties during their meal periods, such as assisting employees and providing customer service. Old Navy improperly considered the work that Plaintiff and other Old Navy Employees performed while off-the-clock as non-compensable time and failed to provide any remuneration.

69. Additionally, Plaintiff asserts that Old Navy had, and continues to have, a policy, practice, procedure, guideline, and/or culture of failing to consider non-discretionary bonuses when calculating Old Navy Employees' respective overtime rate of pay. Consequently, Old Navy failed to timely pay Plaintiff and all other Old Navy Employees the appropriate overtime wages owed to them.

70. By virtue of Old Navy's unlawful failure to compensate Plaintiff and other Old Navy Employees minimum, regular, and/or overtime wages for all of their time actually worked, Old Navy Employees have suffered, and will continue to suffer, damages in amounts which are presently unknown, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

71. Having received less than the legal minimum wage and/or applicable rate of overtime compensation, Plaintiff and other Old Navy Employees are entitled to, and now seek to recover, all wages and penalties owed including, but not limited to, penalties and liquidated damages available under Labor Code sections 210, 558, 1194.2, 1197.1, and 1199, as well as interest and reasonable attorneys' fees and costs pursuant to Labor Code sections 218.5, 1194, and Code of Civil Procedure section 1021.5.

72. Plaintiff, on behalf of herself and other Old Navy Employees, requests further relief as described in the below prayer.

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SECOND CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Class Against Defendant and Does 1-50)

FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS

AND/OR TIMELY PAY PREMIUM WAGES FOR NON-COMPLIANT MEAL PERIODS

[Labor Code §§ 204, 210, 226.7, 512, 558, and the “Meal Periods” Section of IWC Wage Order No. 7-2001]

73. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this First Amended Complaint.

74. Labor Code section 512(a) mandates,

An employer may 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 may 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. (Emphasis added.)

75. The “Meal Periods” section of IWC Wage Order No. 7-2001 provides, in pertinent part,

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.

(B) An employer may not employ an employee for a work period of more than ten (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....

(D) If an employer fails to provide an employee a meal 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 meal period is not provided.

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1 76. The “Meal Periods” section of IWC Wage Order No. 7-2001 also states,

2 Unless the employee is relieved of all duty during a 30-minute meal period,  
3 the meal period shall be considered an ‘on duty’ meal period and counted  
4 as time worked. An ‘on duty’ meal period shall be permitted only when the  
5 nature of the work prevents an employee from being relieved of all duty  
6 and when by written agreement between the parties an on-the-job meal  
7 period is agreed to. The written agreement shall state that the employee  
8 may, in writing, revoke the agreement at any time.

9 77. A meal period generally comports with the requirements under California law if the  
10 employee (1) has at least thirty (30) minutes uninterrupted, (2) is free to leave the premises, and (3) is  
11 relieved of all duty for the entire period. (See *Brinker Restaurant Corp. v. Superior Court* (2012) 53  
12 Cal.4th 1004, 1036.) Additionally, “an employer may not undermine formal policy of providing meal  
13 breaks by pressuring employees to perform their duties in ways that omit breaks.” (*Id.* at 1040.)

14 78. Labor Code section 226.7(b) states, “[a]n employer shall not require an employee to work  
15 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable  
16 regulation, standard, or order of the Industrial Welfare Commission...” Labor Code section 226.7(c)  
17 further provides,

18 If an employer fails to provide an employee a meal or rest or recovery  
19 period in accordance with a state law... the employer shall pay the  
20 employee one additional hour of pay at the employee’s regular rate of  
21 compensation for each workday that the meal or rest or recovery period is  
22 not provided.

23 79. Labor Code section 204 establishes an employee’s fundamental right in the state of  
24 California to be paid wages in a timely manner for their work. Premium wages under Labor Code section  
25 226.7 are wages that are due payable in accordance with Labor Code section 204. (*Murphy v. Kenneth*  
26 *Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

27 80. Labor Code section 210 provides that, “every person who fails to pay the wages of an  
28 employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation  
and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

81. Labor Code section 558 subjects any employer or any person acting on behalf of an  
employer who violates Labor Code Part 2, Chapter 1, of the Labor Code (Labor Code sections 500-558)

1 or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as  
2 follows: “[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period  
3 for which the employee was underpaid. For each subsequent violation, one hundred dollars (\$100) for  
4 each underpaid employee for each pay period for which the employee was underpaid.”

5 82. Plaintiff alleges that Old Navy did not, and does not, have a policy, practice, procedure,  
6 guideline and/or culture of providing all Old Navy Employees with the opportunity to take a thirty (30)  
7 minute, uninterrupted, off-duty meal period before the end of their fifth (5<sup>th</sup>) hour of work when they  
8 worked five (5) or more hours in a day, and/or the opportunity to take a second thirty (30) minute,  
9 uninterrupted, off-duty meal period when they worked more than ten (10) hours in a day.

10 83. Plaintiff alleges that she and other Old Navy Employees did not receive lawful meal  
11 periods due to Old Navy’s policy, practice, procedure, guideline, and/or culture of requiring Plaintiff and  
12 other Old Navy Employees to remain on the work premises and be readily available to perform work  
13 during their meal periods unless another employee is available to relieve them; failing to provide adequate  
14 coverage for Old Navy Employees; mandating Old Navy Employees to prioritize customer service,  
15 communication with co-workers, and other work duties over taking legally compliant meal periods; and  
16 assigning workloads that cannot reasonably be completed within Old Navy Employees’ scheduled hours.  
17 As a result, Plaintiff and other Old Navy Employees regularly received meal periods that were missed,  
18 not free from Old Navy’s control, late, interrupted by work duties and/or less than thirty (30) minutes in  
19 length. Old Navy Employees, such as Plaintiff, also frequently missed, or were otherwise compelled to  
20 forgo their meal periods.

21 84. Plaintiff further contends that Old Navy knew or should have known that Plaintiff and other  
22 Old Navy Employees were not provided with the opportunity to take legally compliant meal periods due  
23 in part to Old Navy’s policy, practice, procedure, guideline and/or culture of assigning workloads that  
24 could not be reasonably completed within Old Navy Employees’ scheduled hours and because Old Navy  
25 failed to adequately staff their retail stores so that Old Navy Employees could be relieved and leave the  
26 work premises for their meal periods.

27 85. Plaintiff asserts that Old Navy had, and continues to have, a policy, practice, procedure,  
28 guideline, and/or culture of not timely paying the required meal period premiums when a lawful meal

1 period was not provided. Plaintiff contends that despite not being provided with legally compliant meal  
2 periods, she and other Old Navy Employees did not receive timely premium wages for unlawful meal  
3 periods.

4 86. Old Navy's unlawful conduct caused Plaintiff and other Old Navy Employees to suffer,  
5 and current Old Navy Employees will continue to suffer, damages in an amount which is presently  
6 unknown, but which exceeds the jurisdictional limits of this Court and which will be ascertained according  
7 to proof at trial.

8 87. Pursuant to Labor Code section 226.7(c) and IWC Order No. 7-2001, Plaintiff and other  
9 Old Navy Employees are entitled to, and seek to recover the full amount of unpaid premium wages for  
10 unlawful meal periods.

11 88. Pursuant to Labor Code section 218.6, Plaintiff and other Old Navy Employees are entitled  
12 to, and now seek to recover, prejudgment interest on the amount of premium wages owed.

13 89. Plaintiff and all other Old Navy Employees are entitled to, and therefore seek, the penalty  
14 outlined in Labor Code section 210 for the late payment of premium wages.

15 90. Plaintiff, on behalf of herself and other Old Navy Employees, is entitled to and seeks  
16 recovery of reasonable attorneys' fees and costs as permitted by Labor Code section 218.5 and Code of  
17 Civil Procedure section 1021.5.

18 91. Plaintiff, on behalf of herself and other Old Navy Employees, requests further relief as  
19 described in the below prayer.

20 **THIRD CAUSE OF ACTION**

21 **(By Plaintiff Individually and Behalf of the Class Against Defendant and Does 1-50)**

22 **FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS**

23 **AND/OR TIMELY PAY PREMIUM WAGES. FOR NON-COMPLIANT REST. PERIODS**

24 **[Labor Code §§ 204, 210, 226.7, and the "Rest Periods" Section of IWC Wage Order No. 7-2001]**

25 92. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all  
26 paragraphs of this First Amended Complaint.

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93. The “Rest Periods” section of IWC Wage Order No. 7-2001 provides,

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) 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.

94. During rest periods, California law requires employers to relinquish all control over their employees and relieve their employees of all duties. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 267, 269.)

95. In pertinent part, Labor Code section 226.7 states,

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for workday that the meal or rest or recovery period is not provided.

96. Labor Code section 204 establishes an employee’s fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code section 226.7 are wages that are due payable in accordance with Labor Code section 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

97. Labor Code section 210 provides that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

1           98. Plaintiff alleges Old Navy did not, and does not, have a policy, practice, procedure,  
2 guideline, and/or culture of authorizing and permitting Plaintiff and other Old Navy Employees to take a  
3 ten (10) minute, uninterrupted, off-duty rest period for every four (4) hours worked or major fraction  
4 thereof.

5           99. Plaintiff also alleges that she and other Old Navy Employees were not authorized and  
6 permitted to take lawful rest periods because Old Navy had, and continues to have, a policy, practice,  
7 procedure, guideline, and/or culture of requiring Plaintiff and other Old Navy Employees to remain on the  
8 work premises and be readily available to perform work during their rest periods unless another employee  
9 is available to relieve them; failing to provide adequate coverage for Old Navy Employees; mandating  
10 Old Navy Employees to prioritize customer service, communication with co-workers, and other work  
11 duties over taking legally compliant rest periods; and assigning workloads that cannot reasonably be  
12 completed within Old Navy Employees' scheduled hours. As a result, Plaintiff and other Old Navy  
13 Employees received rest periods that were not free from Old Navy's control, interrupted by work duties,  
14 and/or less than ten (10) minutes in length. Additionally, Plaintiff and other Old Navy Employees,  
15 frequently missed, or were otherwise compelled to forgo, their rest periods.

16           100. Plaintiff further contends that Old Navy knew or should have known that Plaintiff and other  
17 Old Navy Employees were not authorized and permitted to take legally compliant rest periods due in part  
18 to Old Navy's policy, practice, procedure, guideline, and/or culture of assigning workloads that could not  
19 be reasonably completed within Old Navy Employees' scheduled hours and because Old Navy failed to  
20 adequately staff their retail stores so that Old Navy Employees could be relieved and leave the work  
21 premises for their rest periods.

22           101. Plaintiff alleges that Old Navy does not have, and did not have, a policy, practice,  
23 procedure, guideline, and/or culture of timely paying premium wages for unlawful rest periods. Plaintiff  
24 asserts that despite not being provided with legally compliant rest periods, she and other Old Navy  
25 Employees did not receive timely premium wages for unlawful rest periods.

26           102. Due to Old Navy's unlawful conduct, Plaintiff and other Old Navy Employees have  
27 suffered, and will continue to suffer, damages in an amount which is presently unknown, but which  
28 exceeds the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

104. Plaintiff and all other Old Navy Employees are entitled to, and therefore seek, the penalty outlined in Labor Code section 210 for the late payment of premium wages.

105. Pursuant to Labor Code section 218.6, Plaintiff and other Old Navy Employees are entitled to, and now seek to recover, prejudgment interest on the amount of premium wages owed.

106. Plaintiff, on behalf of herself and other Old Navy Employees, is entitled to and seeks recovery of reasonable attorneys' fees and costs as provided by Labor Code section 218.5 and Code of Civil Procedure section 1021.5.

107. Plaintiff, on behalf of herself and other Old Navy Employees, requests further relief as described in the below prayer.

**(By Plaintiff Individually and Behalf of the Sub-Class Against Defendant and Does 1-50)**

## UPON SEPARATION OF EMPLOYMENT AND/OR PAY WAITING TIME PENALTIES

**[Labor Code §§ 201-203 and 210]**

108. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this First Amended Complaint.

109. Labor Code section 201 states, in pertinent part, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

110. In pertinent part, Labor Code section 202 provides,

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

111. Labor Code section 203(a) further mandates,

If an employer willfully fails to pay, without abatement or reduction, in

accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, 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.

112. Labor Code section 210 provides that, “every person who fails to pay the wages of an employee as provided in Sections...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

113. Old Navy had, and continues to have, a policy, practice, procedure, guideline, and/or culture of failing to timely pay all wages due and owing upon separation of employment to all Old Navy Employees. For instance, despite being terminated on November 20, 2020, Old Navy did not immediately pay Plaintiff her final wages, but instead furnished Plaintiff with her final paycheck on November 26, 2020, which did not include all minimum, regular, overtime, and/or premium wages owed to her. The final payment also did not include any waiting time penalties.

114. As a result of Old Navy’s failure to timely and appropriately compensate Old Navy Employees, including Plaintiff, for all minimum, regular, overtime, and premium wages, Plaintiff contends that Old Navy has a policy, practice, procedure, guideline, and/or culture of willfully failing to timely pay all wages due and owed to Plaintiff and other former Old Navy Employees who separated from their employment during the relevant statutory period.

115. Plaintiff further contends that Old Navy had, and continues to have, a policy, practice, procedure, guideline, and/or culture of failing to pay the appropriate waiting time penalties to Old Navy Employees as provided under California law. For example, Plaintiff has not yet received the required waiting time penalties for Old Navy’s failure to immediately pay all wages due and owing to her upon separation of employment.

116. Old Navy knowingly failed to timely and appropriately compensate Plaintiff and other Old Navy Employees for all minimum, regular, and overtime wages and meal and/or rest period premium wages, as described herein.

117. Although Old Navy no longer employs a number of Old Navy Employees, including Plaintiff, Old Navy has yet to pay all wages owed to former Old Navy Employees, including Plaintiff, as required under California law, as well as the required waiting time penalties.

118. As a consequence of Old Navy's willful and deliberate refusal to render such wages, Plaintiff and other former Old Navy Employees are entitled to, and thus seek a maximum of thirty (30) days' wages at their daily rate of pay as a waiting time penalty, pursuant to Labor Code section 203, as well as penalties pursuant to Labor Code section 210.

119. Plaintiff, on behalf of herself and other former Old Navy Employees, is also entitled to, and seeks recovery of reasonable attorneys' fees and costs as permitted by Labor Code section 218.5 and Code of Civil Procedure section 1021.5.

120. Plaintiff, on behalf of herself and other former Old Navy Employees, requests further relief as described in the below prayer.

#### **FIFTH CAUSE OF ACTION**

**(By Plaintiff Individually and Behalf of the Class Against Defendant and Does 1-50)**

#### **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES**

#### **[Labor Code § 2802]**

121. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this First Amended Complaint.

122. Labor Code section 2802(a) provides in pertinent part, "[a]n 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."

123. Labor Code section 2802(b) mandates,

[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.

124. Labor Code section 2802(c) further states, "[f]or purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section."

125. Old Navy had, and continues to have, a policy, practice, procedure, guideline, and/or culture of requiring Old Navy Employees, including Plaintiff, to use their personal cell phones in the

1 discharge of their job duties, including, but not limited to, responding to text messages and telephone calls  
2 from management and other co-workers regarding work-related issues. Plaintiff contends Old Navy failed,  
3 and continues to fail, to reimburse Old Navy Employees a reasonable percentage of their personal cellular  
4 bill as required by California law.

5 126. Plaintiff further alleges Old Navy had, and continues to have, a policy, practice, procedure,  
6 guideline, and/or culture of requiring Plaintiff and other Old Navy Employees to use their personal  
7 vehicles for work-related purposes. For instance, Plaintiff frequently used her personal vehicle to go on  
8 errands and acquire supplies from other stores. Despite mandating Old Navy Employees, including  
9 Plaintiff, to use their personal vehicles to fulfill their job responsibilities, Old Navy did not have a policy,  
10 practice, procedure, guideline, and/or culture of reimbursing Old Navy Employees for mileage in violation  
11 of California law.

12 127. Plaintiff and other Old Navy Employees are entitled to, and now seek to recover,  
13 reimbursement of their necessary expenditures, plus interest on the applicable amount, pursuant to Labor  
14 Code section 2802(b).

15 128. Plaintiff and other Old Navy Employees are also entitled to, and seek recovery of  
16 reasonable attorneys' fees and costs under Labor Code sections 218.5 and 2802(c) and Code of Civil  
17 Procedure section 1021.5.

18 129. Plaintiff, on behalf of herself and other Old Navy Employees, requests further relief as  
19 described in the below prayer.

20 **SIXTH CAUSE OF ACTION**

21 **(By Plaintiff Individually and Behalf of the Class Against Defendant and Does 1-50)**

22 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

23 **[Labor Code §§ 226, 226.3, and the "Records" Section of IWC Wage Order No. 7-2001]**

24 130. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all  
25 paragraphs of this First Amended Complaint.

26 131. Labor Code section 226(a) states, in pertinent part,

27 An employer, semimonthly or at the time of each payment of wages, shall  
28 furnish each of his or her employee, either as 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 accurate 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, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number... (8) the name and address of the legal entity that is the employer, and... (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee...

132. The "Records" section of IWC Wage Order No. 7-2001 provides, in pertinent part,

Every employer shall semimonthly or at the time of each payment of wages furnish to each employee...an itemized wage statement in writing showing (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee and the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregate and shown as one item.

133. An injury occurs where the employer fails to provide accurate information and the employee cannot "promptly and easily determine" the total number of hours worked or the "applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate." (Labor Code § 226(a)(9)-(e)(2)(B)(i).)

134. Labor Code section 226(e)(2)(c) explains that the phrase "promptly and easily determine" means that "a reasonable person would be able to readily ascertain the information without reference to documents or information."

135. Labor Code section 226(e)(1) further provides,

An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees.

136. According to Labor Code section 226(h), "an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys' fees."

1           137. Labor Code section 226.3 imposes an additional civil penalty on the employer of \$250.00  
2 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000 per employee  
3 for each violation in a subsequent citation.

4           138. Plaintiff asserts that Old Navy had, and continues to have, a policy, practice, procedure,  
5 guideline, and/or culture of furnishing Old Navy Employees, including Plaintiff, with wage statements  
6 that do not comply with California law. Plaintiff contends that the wage statements furnished to her and  
7 other Old Navy Employees did not include, for instance, the total hours actually worked by the employee,  
8 all applicable hourly rates in effect during the pay period, the corresponding number of hours worked at  
9 each hourly rate by the employee, and the actual gross and net wages earned.

10           139. Plaintiff further asserts the wage statements furnished to Old Navy Employees were  
11 inaccurate. The wage statements, for example, did not include all applicable hourly rates that were actually  
12 in effect during the pay period, including the proper overtime rate, the corresponding number of hours  
13 actually worked at each hourly rate by the employee, and the actual gross and/or net wages earned and  
14 paid. Plaintiff alleges that the inaccuracies were largely due to Old Navy's failure to appropriately pay  
15 minimum, regular, and/or overtime wages, failure to pay meal and/or rest period premiums, and failure to  
16 include non-discretionary bonuses into Old Navy Employees' regular rate for purposes of calculating  
17 overtime.

18           140. Due to the incorrect information on the furnished wage statements, Old Navy Employees,  
19 such as Plaintiff, were unable to promptly and easily determine the total number of hours actually worked,  
20 the applicable hourly rates in effect during the pay period, including the proper overtime rate, and/or the  
21 corresponding number of hours worked at each hourly rate, among other things.

22           141. Plaintiff and other Old Navy Employees are entitled to, and now seek to recover, civil  
23 penalties pursuant to Labor Code section 226.3 for violations of Labor Code section 226(a).

24           142. Plaintiff and other Old Navy Employees are also entitled to, and seek recovery of liquidated  
25 damages as provided by Labor Code section 226(e).

26           143. Furthermore, pursuant to Labor Code section 226(h), Plaintiff and other Old Navy  
27 Employees are entitled to, and therefore seek injunctive relief in order to ensure that Old Navy complies  
28 with Labor Code section 226.

1 144. Plaintiff and other Old Navy Employees are further entitled to, and seek recovery of  
2 reasonable attorneys' fees and costs as provided under Labor Code section 226(e)(1) and 226(h) and Code  
3 of Civil Procedure section 1021.5.

4 145. Plaintiff, on behalf of herself and other Old Navy Employees, requests further relief as  
5 described in the below prayer.

6 **SEVENTH CAUSE OF ACTION**

7 **(By Plaintiff Individually and Behalf of the Class Against Defendant and Does 1-50)**

8 **FAILURE TO MAINTAIN ACCURATE RECORDS**

9 **[Labor Code §§ 226, 1174, 1174.5, and the "Records" Section of IWC Wage Order No. 7-2001]**

10 146. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all  
11 paragraphs of this First Amended Complaint.

12 147. Labor Code section 226(a) provides, in pertinent part,

13  
14 The deductions made from payment of wages shall be recorded in ink or  
15 other indelible form, properly dated, showing the month, day, and year, and  
16 a copy of the statement and the record of the deductions shall be kept on  
17 file by the employer for at least three years at the place of employment or  
18 at a central location within the State of California.

19 148. Labor Code section 1174(c) requires every employer to "keep a recording showing the  
20 names and addresses of all employees employed...." Labor Code section 1174(d) further provides, in  
21 pertinent part, "[e]very person employing labor in this state shall...[k]eep, at a central location in the state  
22 or at the plants or establishments at which employees are employed, payroll records showing the hours  
23 worked daily by and the wages paid to, ..., employees employed at the respective plants or  
24 establishments."

25 149. The "Records" section of IWC Wage Order No. 7-2001 states that every employer shall  
26 keep accurate information with respect to each one of its employees, including time records showing when  
27 the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid  
28 each payroll period, and total hours worked in the payroll period and applicable rates of pay.

150. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to  
maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per

1 pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a  
2 violation of Labor Code section 1174(d).

3 151. Labor Code section 226(e)(1) further provides,

4  
5 An employee suffering injury as a result of a knowing and intentional  
6 failure by an employer to comply with subdivision (a) [of Labor Code §  
7 226] is entitled to recover the greater of all actual damages or fifty dollars  
8 (\$50) for the initial pay period in which a violation occurs and one hundred  
9 dollars (\$100) per employee for each violation in a subsequent pay period,  
10 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and  
11 is entitled to an award of costs and reasonable attorney's fees.

12 152. Plaintiff alleges that Old Navy, as described herein, had, and continues to have, a policy,  
13 practice, procedure, guideline, and/or culture of intentionally and willfully failing to maintain accurate  
14 payroll and/or employee records that properly show, among other things, the total number of hours  
15 actually worked by Old Navy Employees, the proper beginning and end of each work period, the beginning  
16 and end of each meal period, all earned wages, and all wages paid to Plaintiff and other Old Navy  
17 Employees.

18 153. Plaintiff and other Old Navy Employees have suffered, and continue to suffer, injuries and  
19 damages as a consequence of Old Navy's deliberate failure to maintain accurate records as required by  
20 the Labor Code. Specifically, Plaintiff and other Old Navy Employees were denied their legal right and  
21 protected interest in having accurate and complete payroll and employment records available to them.

22 154. Plaintiff and other Old Navy Employees are entitled to, and now seek damages and  
23 penalties, as outlined in Labor Code section 226(e)(1) and 1174.5.

24 155. Plaintiff, on behalf of herself and other Old Navy Employees, is entitled to, and seeks  
25 recovery of reasonable attorneys' fees and costs as provided by Labor Code section 226(e)(1) and Code  
26 of Civil Procedure section 1021.5.

27 156. Plaintiff, on behalf of herself and other Old Navy Employees, requests further relief as  
28 described in the below prayer.

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///

**EIGHTH CAUSE OF ACTION**

**(By Plaintiff Individually and on Behalf of the Class Against Defendant and Does 1-50)**

**VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**

**[Bus. & Prof. Code §§ 17200 *et seq.*]**

157. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this First Amended Complaint.

158. As codified in Business & Professions Code sections 17200 *et seq.*, California's Unfair Competition Law ("UCL") broadly prohibits "any unlawful, unfair or fraudulent business act or practice."

159. A cause of action may be brought under the UCL if a practice violates some other law. The "unlawful" prong of the UCL effectively deems a violation of the underlying law a per se violation of Business & Professions Code sections 17200 *et seq.* (*Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal.4th 163, 180.) Virtually any law or regulation – federal or state, statutory, or common law – can serve as a predicate for a section 17200 "unlawful" violation. (*Farmers Ins. Exch. v. Superior Court* (1992) 2 Cal.4th 377, 383.)

160. The "unfair" prong of the UCL does not require a practice to be specifically proscribed by any law. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 20 Cal.4th 1134, 1143.) Pursuant to the California Supreme Court, the "unfair standard" is intentionally broad to give maximum discretion to courts in prohibiting new schemes to defraud. (*Cel-Tech Commc'ns, Inc.*, 20 Cal.4th at 180-81.)

161. Under the UCL, a "fraudulent" business act or practice is one where "members of the public are likely to be deceived." (*Blakemore v. Superior Court* (2005) 129 Cal.App.4th 36, 49.) A showing of actual deception, reasonable reliance, or damages is not required. (*Ibid.*) The fraudulent prong may be used to attack the deceptive manner in which otherwise lawful contract terms are presented to an individual. (*Boschma v. Home Loan Ctr., Inc.* (2011) 198 Cal.App.4th 230, 253.) As such, even a true statement may be unlawful under section 17200 if it is "couched in such a manner that is likely to mislead or deceive..., such as by failing to disclose other relevant information." (*Ibid.*)

162. As discussed herein, Old Navy's business practices violate all three prongs of California's UCL.

///

Unlawful

163. As described herein, Old Navy violated the Labor Code by, among other things, refusing to properly compensate Old Navy Employees for all time worked, including overtime wages. Failing to compensate employees for all time worked is a clear violation of California law, and thus a per se violation of the UCL. (*Cel-Tech Commc'ns, Inc.*, *supra*, 20 Cal.4th at 180.) Old Navy further violated California law by failing to include nondiscretionary bonuses in the employee's regular rate for purposes of overtime; failing to provide legally compliant meal and/or rest periods and/or pay premium wages in lieu thereof; failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties; failing to reimburse employees for necessary business expenditures; failing to furnish accurate itemized wage statements; and failing to maintain accurate records. Therefore, Old Navy has clearly engaged in unlawful business practices pursuant to Business & Professions Code sections 17200 *et seq.*

Unfair

164. Old Navy's policy, practice, procedure, guideline, and/or culture of requiring Old Navy Employees to respond to work-related communications, assist customers, and perform other job duties while off-the-clock is inherently unfair because Old Navy knowingly prevents Old Navy Employees from receiving adequate compensation for all time actually worked, in violation of California's policy of prompt payment of wages.

165. Old Navy's policy, practice, procedure, guideline, and/or culture of failing to provide Old Navy Employees, including Plaintiff, with legally compliant meal and/or rest periods, as a result of requiring Old Navy Employees to remain on the work premises and be readily available during their meal and/or rest periods, constitutes an unfair practice because Old Navy knowingly strips Old Navy Employees of their rights under the Labor Code.

166. Old Navy also violates the unfair prong of the UCL by failing to pay premium wages to Old Navy Employees for unlawful meal and/or rest periods because Old Navy knowingly denied Old Navy Employees, including Claimant, their legal right to one additional hour of pay at their regular rate of pay for each workday a meal period was not provided.

1 167. Old Navy's policy, practice, procedure, guideline, and/or culture of requiring Old Navy  
2 Employees to use their personal cell phones and/or vehicles in the discharge of their job duties without  
3 reimbursement is inherently unfair because Old Navy Employees, including Plaintiff, incurred significant  
4 costs in connection with the work performed on behalf of Old Navy.

5 168. Old Navy's policy, practice, procedure, guideline, and/or culture of failing to provide Old  
6 Navy Employees with accurate itemized wage statements is a violation of the unfair prong of the UCL  
7 because Old Navy knowingly denies Old Navy Employees their legal right and protected interest in readily  
8 ascertaining their total number of hours worked and the applicable hourly rates in effect during the pay  
9 period.

10 169. Additionally, Old Navy's failure to timely pay Plaintiff and other Old Navy Employees all  
11 minimum, regular, and/or overtime wages and/or premium wages upon separation of employment violates  
12 the unfair prong of the UCL because Old Navy knowingly deprived Old Navy Employees of timely  
13 compensation of their final earned wages, in violation of California law.

14 Fraudulent

15 170. Old Navy's policy, practice, procedure, guideline, and/or culture of improperly considering  
16 the work that Old Navy Employees, including Plaintiff, performed while off-the-clock as non-  
17 compensable time constitutes a fraudulent business practice as it knowingly and intentionally caused Old  
18 Navy Employees to not receive all minimum, regular, and/or overtime wages earned for all time actually  
19 worked as mandated by California law, as well as premium wages for non-compliant meal and/or rest  
20 periods.

21 171. Old Navy's failure to consider nondiscretionary bonuses when calculating each employee's  
22 regular rate for purposes of overtime constitutes a fraudulent business practice as it knowingly and  
23 intentionally causes Old Navy Employees to not receive appropriate compensation for hours worked in  
24 excess of eight (8) each day and/or forty (40) each workweek and/or for non-compliant meal and/or rest  
25 periods.

26 172. Additionally, Old Navy's policy, practice, procedure, guideline, and/or culture of  
27 providing Plaintiff and other Old Navy Employees with inaccurate wage statements constitutes a  
28

1 fraudulent business practice as Plaintiff and other Old Navy Employees are likely to be, and were actually  
2 deceived, as to whether they were paid for all time worked.

3 173. Old Navy's practice of failing to maintain accurate employee and/or payroll records is also  
4 a fraudulent business practice as the inaccuracies intentionally misled Old Navy Employees as to their  
5 total hours worked, wages earned, and signed agreements.

6 174. As a direct and proximate result of Old Navy's unlawful, unfair, and fraudulent business  
7 practices, Plaintiff and other Old Navy Employees have suffered injury-in-fact and have lost wages  
8 rightfully owed to them.

9 175. Through its unlawful, unfair, and fraudulent conduct, Old Navy has been unjustly enriched  
10 by receiving and continuing to receive benefits and profits at the expense of Old Navy Employees.  
11 Therefore, pursuant to Business & Professions Code sections 17200 *et seq.*, Old Navy should be enjoined  
12 from this activity and made to disgorge all ill-gotten gains and restore Plaintiff and other Old Navy  
13 Employees the wages wrongfully withheld from them.

14 176. Moreover, the unlawful, unfair, and fraudulent conduct alleged herein has continued, and  
15 there is no indication that Old Navy will refrain from such activity in the future. Plaintiff believes and  
16 alleges that if Old Navy is not enjoined from the conduct described herein, Old Navy will continue to  
17 violate California law at the expense of Old Navy Employees. Accordingly, Plaintiff requests that the  
18 court issue a preliminary and permanent injunction against Old Navy.

19 177. Plaintiff, on behalf of herself and other Old Navy Employees, requests further relief as  
20 described in the below prayer.

21 **NINTH CAUSE OF ACTION**

22 **(By Plaintiff in her Representative Capacity Against Defendant and Does 1-50)**

23 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

24 **[Labor Code §§ 2698 *et seq.*]**

25 178. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all  
26 paragraphs of this First Amended Complaint.

27 179. Pursuant to Labor Code sections 2698 *et seq.*, any provision of the Labor Code that  
28 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions,

1 commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered  
2 through a civil action brought by an aggrieved employee on behalf of himself or herself and other current  
3 or former employees pursuant to the procedures specified in Labor Code section 2699.3. Such civil  
4 penalties are in addition to any other relief provided for under the Labor Code and must be allocated  
5 seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the aggrieved employees,  
6 pursuant to section 2699(i).

7 180. During all, or a portion of, the one-year and sixty-five day period before Plaintiff filed  
8 notice of her claims with LWDA, Old Navy was Plaintiff's and all other Old Navy Employees' employer  
9 or person acting on behalf of Old Navy Employees' employer either individually or as an officer, agent,  
10 or employee of another person, within the meaning of Labor Code sections 558(a) and 1197.1, who paid  
11 or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as  
12 such, is subject to civil penalties for each underpaid employee, as well as liquidated damages pursuant to  
13 Labor Code section 1194.2, and any applicable penalties imposed pursuant to Labor Code section 203.

14 181. Plaintiff is an "aggrieved employee" under the PAGA because she was employed by the  
15 alleged violator, Old Navy, and had one or more of the alleged violations committed against her, and  
16 therefore is properly suited to represent the interests of other Old Navy Employees. (See *Huff v. Securitas*  
17 *Security Services, USA, Inc.* (2018) 23 Cal.App.5th 745, 751, 761; *Carrington v. Starbucks Corp.* (2018)  
18 30 Cal.App.5th 504, 519.)

19 182. Plaintiff alleges that all other Old Navy Employees are also "aggrieved employees" under  
20 the PAGA as Old Navy employed them and all Old Navy Employees experienced one or more of the  
21 alleged violations outlined herein.

22 183. Pursuant to Labor Code sections 2698 *et seq.*, Plaintiff has exhausted her administrative  
23 remedies because she complied with the notice requirements outlined in Labor Code section 2699.3. On  
24 February 10, 2021, Plaintiff submitted notice to the LWDA and Old Navy informing them of Old Navy's  
25 alleged Labor Code violations pursuant to PAGA. (Exhibit 1.) Under the statute, the LWDA had 65 days  
26 to provide notice of whether it intended to investigate the alleged violations. To date, the LWDA has not  
27 notified Plaintiff of its intent investigate the alleged violations. Plaintiff thus has the right to pursue, and  
28

1 does pursue, her claims under PAGA in a representative capacity pursuant to Labor Code sections 2698  
2 *et seq.*

3 184. In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, 975, the claims brought  
4 under the PAGA are not subject to the requirements for class certification and thus Plaintiff does not seek  
5 to certify the claims brought under the PAGA.

6 185. As set forth herein, Old Navy has committed, and continues to commit, numerous  
7 violations for which the Labor Code and IWC Wage Order No. 7-2001 entitles Plaintiff in her  
8 representative capacity, to recover civil penalties, on behalf of herself and all other Old Navy Employees  
9 and the general public, as well as attorneys' fees and costs, against Old Navy for the alleged violations of  
10 the Labor Code, described herein.

11 186. Plaintiff, in her representative capacity, on behalf of herself and all other Old Navy  
12 Employees, is entitled to and thus seeks to recover civil penalties through a representative action based on  
13 Old Navy's violations of the following Labor Code and/or IWC Wage Order provisions:

- 14 a. Failure to timely pay minimum, regular, and/or overtime wages in violation of  
15 Labor Code sections 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199  
16 and the "Minimum Wages" and "Hours and Days of Work" sections of IWC Wage  
17 Order No. 7-2001;
  - 18 b. Failure to provide the opportunity to take legally compliant meal periods and/or  
19 timely pay premium wages for non-compliant meal periods in violation of Labor  
20 Code sections 204, 210, 226.7, 512, and the "Meal Periods" section of IWC Wage  
21 Order No. 7-2001;
  - 22 c. Failure to authorize and permit legally compliant rest periods and/or timely pay  
23 premium wages for non-compliant rest periods in violation of Labor Code sections  
24 204, 210, 226.7 and the "Rest Periods" section of IWC Wage Order No. 7-2001;
  - 25 d. Failure to timely pay all wages due and owed upon separation of employment  
26 and/or pay waiting time penalties in violation of Labor Code sections 201-203, and  
27 210;
- 28

- e. Failure to reimburse for necessary business expenses in violation of Labor Code section 2802;
- f. Failure to furnish accurate itemized wage statements in violation of Labor Code sections 226, 226.3, and the “Records” section of IWC Wage Order No. 7-2001; and
- g. Failure to maintain accurate records in violation of Labor Code sections 226, 1174, 1174.5 and the “Records” section of IWC Wage Order No. 7-2001.

187. Labor Code section 210 provides that any person who fails to pay wages as provided in Labor Code sections 201.3, 204, 204(b), 204.1, 204.2, 205, 205.5 and 1197.5 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% if the amount unlawfully withheld, in addition to any other penalty. Plaintiff, in her representative capacity, seeks the civil penalty imposed by Labor Code section 210 on behalf of herself and all other Old Navy Employees.

188. Labor Code section 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation for violations of Labor Code section 226(a). Plaintiff, in her representative capacity, seeks the civil penalty imposed by Labor Code section 226.3 on behalf of herself and all other Old Navy Employees.

189. For violations of Labor Code sections 510 and 512, in addition to any other recovery provided by law, Labor Code section 558 imposes a civil penalty of \$50 per pay period for each underpaid employee for the initial violation and \$100 per pay period for each underpaid employee for each subsequent violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any provision regulating hours and days of work in any order of the IWC.<sup>1</sup> Plaintiff, in her representative capacity, seeks the civil penalty imposed by Labor Code section 558 on behalf of herself and all other Old Navy Employees.

<sup>1</sup> Plaintiff expressly disclaims the recovery of underpaid wages on behalf of himself and all other Jetro Employees.

190. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per employee that would be imposed pursuant to Labor Code section 2699(f) for a violation of Labor Code section 1174(d). Plaintiff, in her representative capacity, seeks the civil penalty imposed by Labor Code section 1174.5 on behalf of herself and all other Old Navy Employees.

191. Labor Code section 1197.1 imposes a civil penalty of \$100 for each underpaid employee for each pay period for which the employee is underpaid and a subsequent civil penalty of \$250 for each underpaid employee for each pay period for which the employee is underpaid for paying or causing an employee to be paid a wage less than the minimum wage. Plaintiff, in her representative capacity, seeks the civil penalty imposed by Labor Code section 1197.1 on behalf of herself and all other Old Navy Employees.

192. Labor Code section 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 1174(c) and (d), 1194, 1194.2, 1197, 1198, and 1199. Plaintiff and other Old Navy Employees are entitled to, and therefore seek the above-described civil penalty.

193. Labor Code section 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff, in her representative capacity on behalf of herself and all other Old Navy Employees, is entitled to, and therefore seeks attorneys' fees and costs.

194. Plaintiff, in her representative capacity on behalf of herself and all other Old Navy Employees, is entitled to and seeks recovery of reasonable attorneys' fees as provided by Labor Code section 218.5 and Code of Civil Procedure section 1021.5.

195. Plaintiff, in her representative capacity on behalf of herself and all other Old Navy Employees, requests further relief as described in the prayer below.

**PRAYER FOR RELIEF**

Plaintiff prays for judgement against Defendants in favor of the class and the representative action as follows:

- a. For an order determining that this action may be maintained as a class action with the named Plaintiff as the class representative;
- b. For the attorneys appearing on the above caption to be named class counsel;
- c. For an order determining that Plaintiff is entitled to recover a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation as provided in Labor Code section 2699(f);
- d. For all wages and benefits due to Plaintiff and all other Old Navy Employees pursuant to California law;
- e. For damages, pursuant to Labor Code section 226(e)(1), Civil Code section 3281, and/or other applicable law;
- f. For all minimum, regular, and/or overtime wages owed pursuant to Labor Code sections 510, 558, 1194, 1197.1, and/or other applicable law;
- g. For premium wages pursuant to Labor Code section 226.7, and/or other applicable law;
- h. For waiting time penalties pursuant to Labor Code section 203, and/or other applicable law;
- i. For reimbursement of necessary business expenditures pursuant to Labor Code section 2802, and/or other applicable law;
- j. For all liquidated damages, pursuant to Labor Code sections 1194.2, 1197.1, and/or other applicable law;
- k. For any and all penalties available for the Labor Code violations alleged herein, including but not limited to penalties under Labor Code sections 203, 210, 226(e)(1), 226.3, 558, 1174.5, 1197.1, 1199, and/or other applicable law;
- l. For any and all civil penalties available for the Labor Code violations alleged herein including, but not limited to, civil penalties under Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, 2699(f), and/or other applicable law;
- m. For injunctive relief, pursuant to Labor Code section 226(h) and Business &

- 1 Professions Code section 17203, and/or other applicable law;
- 2 n. For restitution for Defendants' unfair, unlawful, and fraudulent business practices
- 3 as provided by Labor Code section 1197.1 and Business & Professions Code
- 4 section 17203 and/or other applicable law;
- 5 o. For reasonable attorneys' fees and costs of suit pursuant to Labor Code sections
- 6 210, 218.5, 218.6, 226(e)(1), 226(h), 558, 1194(a), 1194.2, 1197.1, 2802,
- 7 2699(g)(1), Code of Civil Procedure section 1021.5, the "common fund" theory,
- 8 the "substantial benefit" theory, and/or other applicable law, theory or doctrine;
- 9 p. For a declaratory judgment that Defendants violated Labor Code sections 201-204,
- 10 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1,
- 11 1198, 2802 and 2698 *et seq.*; the "Hours and Days of Work," "Minimum Wages,"
- 12 "Records," "Meal Periods," and "Rest Periods" sections of IWC Wage Order 7-
- 13 2001; and Business and Professions Code sections 17200 *et seq.*;
- 14 q. For pre- and post- judgment interest as provided by California law;
- 15 r. For appropriate equitable relief pursuant to California law; and
- 16 s. For any other relief, the Court may deem as just and proper.

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff hereby demands a jury trial on issues triable to a jury.

19

20 Dated: April 19, 2021

GRAHAMHOLLIS APC

21

22 By: Monique R. Rodriguez

23 Graham S.P. Hollis

24 Vilmarie Cordero

25 Monique R. Rodriguez

26 *Attorneys for Plaintiff Amanda O'Neal*

27

28

# **EXHIBIT 1**

February 10, 2021

**Attorneys at Law**

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619.692.0800 voice  
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**VIA ONLINE ELECTRONIC FILING**

California Labor and Workforce Development Agency  
Attn: PAGA Administrator  
1515 Clay Street, Suite 801  
Oakland, CA 94612

**CERTIFIED MAIL (RETURN RECEIPT)**

Old Navy, LLC  
2 Folsom Street  
San Francisco, CA 94015

Old Navy, LLC  
PO Box 27809  
Albuquerque, NM 87125

Old Navy, LLC  
c/o CT Corporation System,  
Agent for Service of Process  
818 West Seventh Street, Suite 930  
Los Angeles, CA 90017

**Re: Amanda O'Neal's Wage and Hour Claims Against Old Navy, LLC**

Dear California Labor and Workforce Development Agency, and Old Navy, LLC:

Please be advised that Amanda O'Neal (formerly Amanda Martinez) ("Claimant") has retained our firm, Graham**Hollis** APC, to represent her for various claims against Old Navy, LLC (the "Company").

Please be advised that this letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA") and the Company of the alleged California Labor Code ("Labor Code") violations Claimant claims that the Company committed against her and all other current or former non-exempt employees of the Company who worked at an Old Navy retail store in California during the relevant statutory period. Claimant provides this notice, which includes the facts and theories to support her Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, "PAGA"), Labor Code § 2699.3.

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erik Dos Santos

Alex Kuner

Monique Rodriguez

Ridgeway Woulfe

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant intends to represent herself and all other current or former non-exempt employees of the Company who worked at an Old Navy retail store in California during the relevant time period (referred to herein as the “Old Navy Employees”). All Old Navy Employees, including Claimant, are believed to have suffered at least one of the Labor Code violations described herein. Claimant contends that she and all other Old Navy Employees are “aggrieved employees” as defined by the PAGA.

### **FACTUAL BACKGROUND**

Old Navy, LLC is a retail clothing and accessories company with thousands of store locations across the United States, including in California. Old Navy, LLC is organized in the state of Delaware and has its headquarters in San Francisco, California.

Claimant was employed by the Company from approximately April 2, 2017 to November 20, 2020. At all relevant times, Claimant was classified as a non-exempt employee, earned an hourly rate, and was paid on a biweekly basis. Claimant initially worked part-time as an associate at the Company’s retail store located in Temecula, California from approximately April 2, 2017 to September 15, 2017. On September 18, 2017, Claimant was transferred to the Company’s retail store located in Vacaville, California, where she worked part-time as an associate. As an associate, Claimant was paid an hourly rate of \$10.50 and she worked around twenty (20) hours per week. Claimant’s job duties as an associate included, but were not limited to, greeting and assisting customers, opening and closing the store, and performing register functions.

Claimant was promoted to Product and Marketing Manager on or about November 26, 2017 at the Company’s Temecula, California retail location. As a Product and Marketing Manager, Claimant worked between forty (40) to forty-five (45) hours per week and was paid an hourly rate of \$12.60. Claimant frequently worked the overnight shift and was responsible for maintaining product inventory, overseeing the shipment process, and supervising employees, among other things.

On or about May 13, 2018, Claimant was promoted to Assistant Store Manager at the Company’s Temecula, California retail location. In this position, Claimant typically worked forty (40) to fifty (50) hours per week and was paid an hourly rate of \$21.90. Claimant’s job responsibilities included, but were not limited to, training and overseeing employees, ensuring sales and productivity targets were met, obtaining supplies, and providing excellent customer service. On or about July 2, 2020, Claimant went on bonding leave for the birth of her child and was expected to return to work on December 3, 2020. However, Claimant was terminated by the Company on November 20, 2020.

Claimant contends that at all relevant times, the Company employed, and continues to employ, Old Navy Employees at its retail store locations in California in various non-exempt positions. Claimant also contends that all policies, practices, procedures, and/or guidelines of the Company applicable to Claimant were also applicable to all other Old Navy Employees throughout the relevant time period. Claimant further contends that she and all other Old Navy Employees suffered, and current Old Navy Employees will continue to suffer, the same and/or similar violations of law described herein.

Claimant alleges that the Company denied, and continues to deny, Claimant and other Old Navy Employees the specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order. Specifically, the Company failed, and continues to fail, to timely pay all minimum, regular, and/or overtime wages to all Old Navy Employees, including Claimant; failed, and continues to fail, to provide Claimant and other Old Navy Employees with legally compliant meal and/or rest periods and/or pay them compensation in lieu thereof; failed to timely pay former Old Navy Employees, including Claimant, all wages due and owing upon separation of employment and/or pay the required waiting time penalties; failed, and continues to fail, to reimburse Claimant and other Old Navy Employees for necessary work expenditures; failed, and continues to fail, to furnish all Old Navy Employees, including Claimant, with accurate itemized wage statements; and failed, and continues to fail, to maintain accurate employment records.

Claimant asserts that the Company had, and continues to have, a policy, practice, procedure, and/or guideline of not timely paying Old Navy Employees all minimum, regular, and/or overtime wages for all time actually worked on the designated pay days. For instance, the Company failed to compensate Claimant and, on information and belief, other Old Navy Employees for work performed while off-the-clock. As an associate, Claimant and other Old Navy Employees were required to wait for their bags to be checked upon leaving the store after clocking out for their shifts. In addition, as an Assistant Manager, Claimant was required to respond to text messages and telephone calls from her co-workers and supervisors regarding work-related issues while off-the-clock. Claimant and other Old Navy Employees also performed job duties during her meal periods, such as answering customer questions and assisting employees, due in part to the Company’s policy of requiring managers and supervisors to remain on the store premises during their meal periods. Moreover, throughout her employment, Claimant spent approximately five (5) to ten (10) minutes waiting to clock in when opening the store and to clock out when closing the store. The Company improperly considered the work that Claimant and, on information and belief, other Old Navy Employees performed while off-the-clock as non-compensable time and failed to provide any remuneration on the Company’s designated pay days. Additionally, the Company had, and continues to have, a policy, practice, procedure and/or guideline of failing to include non-discretionary bonuses into Old Navy Employees’ regular rate of pay for purposes of calculating overtime. Therefore, the Company has failed to timely pay Old Navy Employees, including Claimant, all overtime wages no later than the payday for the next regular payroll period. Based on the foregoing, Claimant contends that she and, on information and belief, all other Old Navy Employees were not timely paid all minimum, regular, and/or overtime wages for all hours actually worked.

Claimant contends that the Company had, and continues to have, a policy, practice, procedure and/or guideline of not providing Old Navy Employees, including Claimant, with the opportunity to take timely 30-minute, off-duty, uninterrupted meal periods that are free from the employer’s control when they work more than six (6) hours in a day. Claimant also alleges that the Company has a policy, practice, procedure, and/or guideline of failing to provide Claimant and other Old Navy Employees with the opportunity to take a timely second 30-minute, off-duty, uninterrupted meal period that is free from the employer’s control when they work more than ten (10) hours in a day. For instance, Claimant asserts that the Company required her and, on information and belief, other Old Navy Employees to remain at the store and be available to assist other employees during their meal periods if they are the “only manager on duty.” However, the Company also had, and continues to have, a policy, practice, procedure, and/or

guideline of not sufficiently staffing their retail stores with enough managers/supervisors to permit Old Navy Employees, including Claimant, to leave the work premises during their meal periods. As a result, Claimant and other Old Navy Employees were consistently interrupted during their meal periods by questions from customers and/or co-workers. Claimant also contends that, as an Assistant Manager, she frequently took meal periods after the end of her fifth hour of work to meet the demands of her position. Consequently, Claimant and other Old Navy Employees received meal periods that were late, interrupted by work duties, and/or less than thirty (30) minutes in length.

Claimant further alleges that the Company had, and continues to have, a policy, practice, procedure and/or guideline of not authorizing and permitting Old Navy Employees to take an off-duty, uninterrupted, 10-minute rest period for every four (4) hours worked or major fraction thereof. Claimant alleges that Old Navy Employees, such as herself, were not authorized and permitted to take lawful rest periods because the Company had, and continues to have, a policy, practice, procedure, and/or guideline of requiring Claimant and other Old Navy Employees to remain on the store premises during their rest periods unless another manager is on duty to relieve them. However, the Company had, and continues to have, a policy, practice, procedure and/or guideline of failing to adequately staff managers/supervisors at their retail stores. Thus, Old Navy Employees, including Claimant, were not permitted to leave the work premises during their rest periods, and accordingly, were not freed from the Company's control over how they spent their rest periods. Claimant further contends that she received rest periods that were consistently interrupted by customer and/or employee questions and/or text messages from her supervisor and other managers. Moreover, as an Assistant Manager, Claimant was unable to take any rest periods during the majority of her shifts due to the amount of work duties assigned to her and the Company's understaffing of its retail stores. As a result, Claimant and other Old Navy Employees received rest periods that were not timely, free from the Company's control, interrupted by work duties, and/or less than ten (10) minutes in length.

Claimant asserts that the Company had, and continues to have, a policy, practice, procedure, and/or guideline of not timely paying premium wages for non-compliant meal and/or rest periods during the relevant time period. For instance, despite not regularly receiving legally compliant meal and/or rest periods as described herein, Claimant and, on information and belief, other Old Navy Employees did not timely receive premium wages on the designated pay days for unlawful meal and/or rest periods.

Claimant asserts that the Company had, and continues to have, a policy, practice, procedure, and/or guideline of not timely paying former Old Navy Employees all wages due and payable upon separation of employment and/or the required waiting time penalties for the late payment of wages. For instance, the Company failed to timely pay Claimant and, on information and belief, other former Old Navy Employees all minimum, regular, and/or overtime wages for all hours worked and meal and/or rest period premium wages, in part due to the aforementioned Labor Code violations. Additionally, Claimant was terminated by the Company on November 20, 2020, however, she did not receive her final payment from the Company until November 26, 2020. Claimant's final payment did not include all wages owed for Claimant's off-the-clock work, meal and/or rest period premiums, or compensation for bonding leave. The final payment also did not include any waiting time penalties. Claimant received another payment from the Company on December 9, 2020 for her bonding leave, but to date, has not yet received payment for all hours worked or the required waiting time penalties for the Company's failure to immediately pay all wages due and owing upon separation of employment.

Claimant alleges that the Company had, and continues to have, a policy, practice, procedure, and/or guideline of not reimbursing Claimant and, on information and belief, other Old Navy Employees for all necessary business expenses that were incurred in the discharge of their job duties. For instance, Claimant was required to use her personal cell phone to communicate with other managers and her supervisors regarding work-related issues. Moreover, Claimant was required to use her personal vehicle to obtain supplies from other stores. Despite mandating Old Navy Employees, including Claimant, to use their personal cell phones and/or vehicles in the discharge of their work duties, the Company did not have a policy, practice, procedure, and/or guideline of reimbursing its employees in violation of California law.

Claimant contends that the Company had, and continues to have, a policy, practice, procedure, and/or guideline of furnishing Old Navy Employees, including Claimant, with wage statements that do not comply with California law. Claimant alleges that the wage statements furnished to her and other Old Navy Employees did not correctly show the information required by California law including, but not limited to, the total hours actually worked by the employee, all applicable hourly rates in effect during the pay period, including the proper overtime rate, and the corresponding number of hours worked at each hourly rate by the employee, the gross wages actually earned, and the net actual wages earned. Due to the missing and/or incorrect information, Claimant and other Old Navy Employees were unable to promptly and easily determine the total number of hours worked or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Claimant attests that the Company had, and continues to have, a policy, practice, procedure and/or guideline of not maintaining accurate employment records. The Company's illegal policies, practices, procedures and/or guidelines, such as those described herein, have resulted in the Company's failure to maintain accurate records reflecting Old Navy Employees' actual time worked, the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, among other things, in violation of California law.

Due to the foregoing Labor Code violations, the Company denied, and continues to deny, Claimant and other Old Navy Employees certain rights afforded to them under the Labor Code and the applicable IWC Wage Order. Claimant makes these claims against the Company on behalf of herself and all other Old Navy Employees.

All facts, claims and/or legal theories contained within this written notice are alleged and/or asserted on behalf of Claimant and all other Old Navy Employees. The facts and/or claims contained in this written notice are based on information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves her right to assert any and all related facts, claims, and/or legal theories discovered after the sending of this letter on behalf of herself and other current or former Old Navy Employees against the Company and/or other persons that may be discovered after the sending of this letter. Such other persons include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Company, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Company, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained of herein, and those who were acting within the authority and/or scope of the

Company. Claimant reserves the right to revise these facts and/or add any new claims by amending this letter and/or by adding facts and/or claims to her civil complaint.

**FAILURE TO TIMELY PAY ALL MINIMUM, REGULAR, AND/OR OVERTIME WAGES**

(Labor Code §§ 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, and the “Minimum Wages” and “Hours and Days of Work” sections of IWC Wage Order No. 7-2001)

Labor Code § 204 establishes an employee’s fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).)

Labor Code § 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” (See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44 [providing that an employer may not pay “less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise”].)

The “Minimum Wages” section of IWC Wage Order No. 7-2001 further provides that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code § 1197.1 provides:

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Labor Code § 1199 imposes “a fine of not less than one hundred dollars (\$100)” for any employer who violates the provisions set forth in Labor Code § 1198.

Labor Code § 510(a), which codifies an employee’s right to overtime compensation, 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.

The "Hours and Days of Work" and "Minimum Wages" sections of IWC Wage Order No. 7-2001 mandate the same requirements as Labor Code § 510. Under California law, an employee may not waive his or her right to overtime compensation. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

Labor Code § 1194(a) provides:

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 § 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

Labor Code § 210 states that, "every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Labor Code section 558 provides that "any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty" of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Company has a policy, practice, procedure, and/or guideline of failing to timely pay all minimum, regular, and/or overtime wages to Claimant and, on information and belief, other Old Navy Employees for all hours actually worked. For instance, the Company required Claimant and other Old Navy Employees to undergo bag check procedures, respond to telephone calls and text messages, and perform other work duties while off-the-clock without compensation. The Company also required Old Navy Employees, including Claimant, to work off-the-clock during their meal periods and/or when opening and/or closing its retail stores. Moreover, the Company failed to include non-

discretionary bonuses into Old Navy Employees' regular rate for purposes of calculating overtime compensation. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all Old Navy Employees to the extent permitted by law.

**FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS  
AND/OR COMPENSATION IN LIEU THEREOF**

(Labor Code §§ 204, 226.7, 512, and 558, and the "Meal Periods" section of IWC Wage Order No. 7-2001)

Labor Code § 512(a) provides:

An employer may 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 may 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.

In pertinent part, the "Meal Periods" section of IWC Wage Order No. 7-2001 states:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal is agreed to.

(B) An employer may not employ an employee for a work period of more than ten (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....

(D) If an employer fails to provide an employee a meal 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 meal period is not provided.

A meal period generally comports with the requirements of California law if the employee has at least 30 minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) California law further prohibits employers from "...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks." (*Id.* at 1040.)

Pursuant to Labor Code § 226.7(c),

[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

Labor Code section 558 provides that "any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty" of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Company has a policy, practice, procedure, guideline, and/or culture of failing to provide Claimant and, on information and belief, other Old Navy Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth (6<sup>th</sup>) hour of work and/or a second off-duty 30-minute meal period when they worked in excess of ten (10) hours. Consequently, Claimant and other Old Navy Employees are entitled to receive, and did not receive, one-hour of premium wages for each day a compliant meal period was not provided on the payday designated by the Company. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all Old Navy Employees to the extent permitted by law.

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**FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS  
AND/OR COMPENSATION IN LIEU THEREOF**

(Labor Code §§ 204, 226.7, and the “Rest Periods” section of IWC Wage Order No. 7-2001)

The “Rest Periods” section of IWC Wage Order No. 7-2001 provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) 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.

During rest periods, California law requires employers to relinquish all control over their employees and relieve their employees of all duties. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 273.)

In pertinent part, Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Labor Code § 204 establishes an employee’s fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the

employer as regular pay days. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

As discussed herein, the Company has a policy, practice, procedure, guideline, and/or culture of failing to authorize and permit Claimant and, on information and belief, other Old Navy Employees to take an off-duty, uninterrupted 10-minute rest period for every four hours worked or major fraction thereof. Therefore, Claimant and other Old Navy Employees are entitled to receive, and did not receive, one-hour of premium wages on the designated payday for each day a legally compliant rest period was not provided. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all Old Navy Employees to the extent allowed by law.

**FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING UPON SEPARATION OF EMPLOYMENT**

(Labor Code §§ 201, 202, 203 and 210)

Labor Code § 201 states, in pertinent part, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202 provides, in pertinent part,

[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Labor Code § 203(a) further states:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, 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.

Labor Code § 210 provides that, “every person who fails to pay the wages of an employee as provided in Sections...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.”

As discussed herein, the Company violated these Labor Code sections by not timely paying to Claimant and other former Old Navy Employees all minimum, regular, and/or overtime wages and/or meal and/or rest period premium wages, within the required time upon separation of their employment. For instance, Claimant received her final wages six days after being terminated by the Company. The Company also did not pay Claimant and, on information and belief, other former Old Navy Employees the required waiting time penalties for the late payment of wages. Thus, the Company violated California

law. Claimant will pursue all available remedies against the Company for its violations of California law on behalf of herself and all former Old Navy Employees to the extent allowed by law.

**FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES**

(Labor Code § 2802)

Labor Code § 2802(a) provides in pertinent part, “[a]n 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.”

Labor Code § 2802(b) states, “[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.” Accordingly, Claimant will request that she receives interest on the applicable amount.

Furthermore, Labor Code § 2802(c) states, “[f]or purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.” Consequently, Claimant will also request reimbursement of the attorney’s fees incurred in pursuing this matter.

As set forth above, the Company required Claimant and other Old Navy Employees to use their personal cell phones and/or vehicles in the discharge of their job duties without reimbursement. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all Old Navy Employees to the extent allowed by law.

**FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226 and 226.3, and the “Records” section of IWC Wage Order No. 7-2001)

Labor Code § 226(a) states in pertinent part:

An employer, semimonthly or at the time of each payment of wages, shall furnish each of his or her employee, either as 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 accurate 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, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number...(8) the name and address of the legal entity that is the employer, and... (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee...

The “Records” section of IWC Wage Order No. 7-2001 further provides, in pertinent part:

Every employer shall semimonthly or at the time of each payment of wages furnish to each employee...an itemized wage statement in writing showing (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee and the employee’s social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregate and shown as one item.

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorneys’ fees.

Labor Code § 226(h) states, “an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys’ fees.”

Labor Code § 226.3 imposes an additional civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code § 226(a).

As discussed above, the Company failed to furnish Claimant and other Old Navy Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements did not, among other things, include the total hours actually worked by the employee, all applicable hourly rates in effect during the pay period, including the proper overtime rate, and the corresponding number of hours worked at each hourly rate by the employee, the gross actual wages earned, and the net wages actually earned. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all Old Navy Employees to the extent allowed by law.

#### **FAILURE TO MAINTAIN ACCURATE RECORDS**

(Labor Code §§ 226(a), 226(e), 1174, and 1174.5, and the “Records” section of IWC Wage Order No. 7-2001)

Labor Code § 226(a) mandates, in pertinent part:

The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year,

and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

Labor Code § 1174(c) requires every employer to “keep a recording showing the names and addresses of all employees employed....” Labor Code § 1174(d) further requires:

Every person employing labor in this state shall...[k]eep, 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...employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.

The “Records” section of IWC Wage Order No. 7-2001 provides that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.

As set forth above, the Company violated its record keeping requirements by failing to accurately record employee hours actually worked, including, but not limited to, failing to record the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, and the actual wages earned and paid. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all Old Navy Employees to the extent allowed by law.

**CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND APPLICABLE IWC  
WAGE ORDER**

(Labor Code §§ 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699(f))

Labor Code § 210 provides that any person who fails to pay wages as provided in section 204 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25 % if the amount unlawfully withheld, in addition to any other penalty.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code section 558 subjects an employer or any person acting on behalf of an employer who violates Labor Code Labor Code §§ 500-558, or any provision regulating the hours and days of work in any IWC Wage Order, to a civil penalty of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation. Labor Code § 558.1(a) states that,

“[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

Pursuant to Labor Code § 558.1(b), Labor Code § 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

For violations of Labor Code § 1174 subdivisions (c) and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty

dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1197.1, 1198, 2802 and relevant IWC Wage Orders.

As set forth above, the Company violated the Labor Code and IWC Wage Order No. 7-2001 by failing to timely pay Claimant and all Old Navy Employees all regular, minimum, and/or overtime wages for all time actually worked; failing to timely pay all meal and/or rest period premium wages; failing to reimburse for necessary business expenses; failing to furnish accurate itemized wage statements; and failing to maintain accurate employee records, as required under the Labor Code and the applicable sections of IWC Wage Order No. 7-2001. As a result, the Company is liable for civil penalties under the Labor Code and Claimant will pursue all available remedies including, but not limited to, those stated herein, for the Company's violations on behalf of herself and all Old Navy Employees to the extent allowed by law.

**ATTORNEYS' FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES**

(Labor Code §§ 210, 218.5, 218.6, 226(e)(1), 226(h), 558, 1194, 1194.2, 1197.1, 2698 *et seq.*, and 2802)

Labor Code §§ 210, 218.5, 218.6, 226(e)(1), 226(h), 558, 1194, 1194.2, 1197.1, 2802 and 2698 *et seq.*, among others, give employees, such as Claimant, the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorneys' fees and costs.

Under Labor Code § 2699(g)(1) an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs and attorney's fees and she will continue to incur such costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies against the Company, including those provided under the PAGA, on behalf of herself and other Old Navy Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

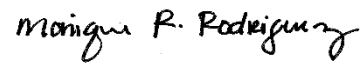
**CONCLUSION**

Based on the foregoing, the Company has violated the Labor Code and IWC Wage Order No. 7-2001, thereby depriving Claimant and other Old Navy Employees of the rights and protections afforded to

them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all Old Navy Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the California agency declines to intervene or act within the time prescribed by the PAGA, Claimant may elect to initiate and/or amend a civil action, on behalf of herself and all other Old Navy Employees, as permitted by the PAGA.

Sincerely,



Monique R. Rodriguez