

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

Amanda O'Neal v. Old Navy, LLC

Solano County Superior Court, Case No. FCS056125

This Class Action and PAGA Settlement Agreement (“Settlement” or “Agreement”) is made by and between Plaintiff Amanda O’Neal (“Plaintiff” or “Class Representative”), as an individual, on behalf of herself and all persons similarly situated, and Defendant Old Navy, LLC (“Defendant” or “Old Navy”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. **DEFINITIONS.**

- 1.1. “Action” means Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Amanda O’Neal v. Old Navy, LLC*, Case No. FCS056125, initiated on February 26, 2021, as amended by the operative First Amended Complaint (the “Operative Complaint”), and pending in Superior Court of the State of California, County of Solano.
- 1.2. “Administrator” means CPT Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Class” means all current or former non-exempt employees of Defendant who worked at an Old Navy retail store in California at any time during the Class Period.
- 1.5. “Class Counsel” means Hali M. Anderson, Dawn M. Berry and Alyssa L. Smith of GRAHAMHOLLIS APC.
- 1.6. “Class Counsel Fees Payment” and “Class Counsel Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and actual and documented litigation expenses, respectively, incurred in prosecuting the Action.
- 1.7. “Class Data” means Class Member identifying information in Defendant’s possession, including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.8. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as a PAGA Employee).
- 1.9. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

- 1.10. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in the form, without material variation except as may be ordered by the Court, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.11. “Class Period” means the period from June 14, 2019 and the date of Preliminary Approval, or December 31, 2022, whichever occurs first.
- 1.12. “Class Representative” means Amanda O’Neal, the named Plaintiff in the Operative Complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.13. “Class Representative Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.14. “Court” means the Superior Court of California, County of Solano.
- 1.15. “Defendant” means Old Navy, LLC, the named defendant in the Action.
- 1.16. “Defense Counsel” means Jessica Perry, Kathryn G. Mantoan and Mariam Bicknell of ORRICK, HERRINGTON & SUTCLIFFE, LLP.
- 1.17. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.18. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.19. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.20. “Gross Settlement Amount” means \$2,500,000.00, which is the maximum total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, the Class Counsel Fees Payment, the Class Counsel Expenses Payment, the Class Representative Payment, and the Administration Expenses Payment.
- 1.21. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.22. “Individual PAGA Payment” means the PAGA Employee’s pro rata share of 25% of the

PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.

- 1.23. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.24. “LWDA” means the California Labor and Workforce Development Agency, the agency to receive a share of PAGA Penalties under Labor Code § 2699, subd. (i).
- 1.25. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code § 2699, subd. (i).
- 1.26. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Payment, Class Counsel Fees Payment, Class Counsel Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.27. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.28. “PAGA Employee” means a current or former non-exempt employee of Defendant who worked at an Old Navy retail store in California during the PAGA Period.
- 1.29. “PAGA Pay Period” means any pay period during the PAGA Period during which a PAGA Employee worked for Defendant as a non-exempt employee at an Old Navy retail store in California for at least one day (less any pay periods during which the PAGA Employee was entirely on a leave of absence).
- 1.30. “PAGA Period” means the period between February 10, 2020 and the date of Preliminary Approval, or December 31, 2022, whichever occurs first.
- 1.31. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.32. “PAGA Notice” means Plaintiff’s February 10, 2021 letter to Defendant and the LWDA providing notice pursuant to Labor Code § 2699.3, subd.(a).
- 1.33. “PAGA Penalties” means \$62,500.00, the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the PAGA Employees (\$15,625.00) and 75% to the LWDA (\$46,875.00) in settlement of PAGA claims.
- 1.34. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.35. “Plaintiff” means Amanda O’Neal, the named plaintiff in the Action.
- 1.36. “Preliminary Approval” means the Court’s order granting preliminary approval of the Settlement.

- 1.37. “Released Class Claims” means the claims being released as described in Paragraph 5.1 below.
- 1.38. “Released PAGA Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.39. “Released Parties” means: Defendant Old Navy, LLC each of its past, present, and future officers, directors, employees, agents, representatives, attorneys, insurers, investors, shareholders, consultants, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint ventures.
- 1.40. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.41. “Response Deadline” means 60 calendar days after the Administrator mails Notice to Class Members and PAGA Employees and shall be the last date on which Class Members may: (a) fax or mail Requests for Exclusion from the Settlement, or (b) fax or mail his or her Objection to the Settlement.
- 1.42. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.43. “Workweek” means the number of weeks during which a Class Member worked for Defendant during the Class Period, calculated by dividing the total number of calendar days in which a Class Member worked for Defendant during the Class Period as a non-exempt employee at an Old Navy retail store in California (less any days on a leave of absence) by seven.

2. RECITALS.

- 2.1 On February 26, 2021, Plaintiff commenced this Action by filing a complaint alleging causes of action against Defendant for: (1) failure to timely pay minimum, regular, and overtime wages in violation of Labor Code §§ 510, 1194, 1197, and 1198, and IWC Wage Order No. 7-2001, §§ 3 and 4; (2) failure to provide meal periods and/or timely pay meal period premium pay in violation of Labor Code §§ 226.7, 512, and 1198, and IWC Wage Order No. 7-2001, § 11; (3) failure to provide rest breaks and/or timely pay rest break premium pay in violation of Labor Code §§ 226.7 and 1198, and IWC Wage Order No. 7-2001, § 12; (4) failure to timely pay all wages due upon separation of employment and/or pay waiting time penalties in violation of Labor Code §§ 201, 202, and 203; (5) failure to indemnify and/or reimburse reasonable and necessary business expenses in violation of Labor Code § 2802; (6) failure to provide accurate itemized wage statements in violation of Labor Code §§ 226 and 226.3, and IWC Wage Order No. 7-2001, § 7; (7) failure to maintain accurate records in violation of Labor Code § 1174 and 1174.5, and IWC Wage Order No. 7-2001, § 7; and (8) violation of Business and Professions Code § 17200. On April 19, 2021, Plaintiff filed a First Amended Complaint asserting an additional claim

against Defendant for civil penalties pursuant to PAGA. The First Amended Complaint is the operative complaint in the Action (“Operative Complaint”).

- 2.2 Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and denies any and all liability for the causes of action that are or reasonably could have been alleged based on the facts in the Operative Complaint.
- 2.3 Pursuant to Labor Code § 2699.3, subd.(a), Plaintiff gave written notice to Defendant and the LWDA by sending the PAGA Notice on February 10, 2021.
- 2.4 On September 21, 2022, the Parties participated in an all-day private mediation presided over by Tripper Ortman, which led to this Agreement to settle the Action. The Settlement is the product of arm’s length negotiations by highly skilled and well-informed counsel.
- 2.5 Prior to mediation, Plaintiff obtained, through formal and informal discovery, the identity of and contact information for members of the putative class, Defendant’s policies and procedures related to the claims asserted, and timekeeping and payroll records for a random 20% sample of Class Members.
- 2.6 The Parties, Class Counsel, and Defense Counsel are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. **MONETARY TERMS.**

- 3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant agrees to pay a maximum total amount of \$2,500,000.00 (two million five hundred thousand dollars) as the Gross Settlement Amount, and to separately pay the applicable employer-side payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount or any applicable payroll taxes prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or PAGA Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
 - 3.2.1 To Plaintiff: A Class Representative Payment to the Class Representative of not more than \$10,000.00 as approved by the Court (in addition to any Individual Class Payment she is entitled to receive as a Participating Class Member and any Individual PAGA Payment she is entitled to receive) as a service award to Plaintiff for her participation in this Action and in exchange for her execution of general release of all claims against Defendant in her individual capacity and Civil Code section 1542, as outlined in Paragraph 5.3 of this Agreement. Defendant will not oppose Plaintiff’s request for a Class Representative Payment that does not exceed

this amount. If the Court approves a Class Representative Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Payment.

- 3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than 33% of the Gross Settlement Amount, which is currently estimated to be \$833,333.33, and a Class Counsel Expenses Payment of not more than \$50,000.00 as reimbursement of Class Counsel's actual and documented litigation costs, both as approved by the Court. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff will file a motion for Class Counsel Fees Payment and Class Counsel Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Expenses Payment less than the amounts requested, the Administrator will retain the remainder in the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fees Payment and/or Class Counsel Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Expenses Payment.
- 3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$75,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$75,000.00, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4 To the LWDA and PAGA Employees: PAGA Penalties allocated to the LWDA PAGA Payment and to the Individual PAGA Payments.
- 3.2.4.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the PAGA Employees' 25% share of PAGA Penalties (\$15,625.00) by the total number of PAGA Period Pay Periods worked by all PAGA Employees during the PAGA Period and (b) multiplying the result by each PAGA Employee's PAGA Period Pay Periods. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4.2 The Administrator will report the Individual PAGA Payments on IRS 1099 Forms, if applicable. PAGA Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
- 3.2.5 To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked

by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.5.1 Tax Allocation of Individual Class Payments. The Parties agree that 30% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions will be subject to tax withholding and reported on an IRS W-2 Form. The remaining 70% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions will not be subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on any portion of their Individual Class Payment.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1 Workweeks and PAGA Employee Pay Periods. Based on a review of its records to date, Defendant estimates there were approximately 19,719 Class Members who collectively worked approximately 876,298 Workweeks between June 14, 2019 and the September 21, 2022 mediation, and approximately 15,625 PAGA Employees who worked a total of 354,726 PAGA Pay Periods between February 10, 2020 and the September 21, 2022 mediation.
- 4.2 Class Data. Not later than 30 calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. The Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3 Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of applicable payroll taxes, by transmitting the funds to the Administrator no later than 14 calendar days after the Effective Date.
- 4.4 Payments from the Gross Settlement Amount. Within 21 calendar days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Expenses Payment, and the Class Representative Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Expenses Payment, and the Class Representative Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.4.1 The Administrator will issue checks for the Individual Class Payments and

Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members. The Administrator will send checks for Individual PAGA Payments to all PAGA Employees including Non-Participating Class Members who qualify as PAGA Employees. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database.

- 4.4.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without a USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
- 4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is cancelled on the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member or PAGA Member thereby leaving no "unpaid residue" subject to the requirements of Code of Civil Procedure § 384, subd. (b).
- 4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. **RELEASES OF CLAIMS.**

- 5.1 Released Class Claims. Upon the Effective Date, and except as to the right to enforce the terms and conditions of this Agreement, each Participating Class Member will release the Released Parties of all claims, actions, demands, causes of action, suits, debts, obligations, demands, rights, liabilities, or legal theories of relief, that were or could have been pleaded under local, state or federal law arising out of or reasonably related to any facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions, or failures to act pleaded in the Operative Complaint, including but not limited to claims for (1) failure to timely pay wages at the appropriate rate; (2) failure to timely pay minimum, regular, and overtime wages; (3) failure to provide meal periods and/or timely pay meal period premium pay; (4) failure to provide rest breaks and/or timely pay rest break premium pay; (5) failure to timely pay all wages due upon separation of employment and/or pay waiting time penalties; (6) failure to indemnify and/or reimburse reasonable and

necessary business expenses; (7) failure to provide accurate itemized wage statements; (8) failure to maintain accurate records; and (9) unfair business practices.

- 5.2 Released PAGA Claims: Upon the Effective Date, each PAGA Employee will release the Released Parties of all claims pursuant to the Private Attorneys General Act (codified in Labor Code § 2698 *et seq.*) arising out of or reasonably related to any facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions, or failures to act pleaded in the Operative Complaint against Defendant and/or the LWDA Notice dated February 10, 2021 (Case No. LWDA-CM-821309-21), including PAGA claims for (1) failure to timely pay wages at the appropriate rate; (2) failure to timely pay minimum, regular, and overtime wages in violation of Labor Code §§ 510, 1194, 1197, and 1198, and IWC Wage Order No. 7-2001, §§ 3 and 4; (3) failure to provide meal periods and/or timely pay meal period premium pay in violation of Labor Code §§ 226.7, 512, and 1198, and IWC Wage Order No. 7-2001, § 11; (4) failure to provide rest breaks and/or timely pay rest break premium pay in violation of Labor Code §§ 226.7 and 1198, and IWC Wage Order No. 7-2001, § 12; (5) failure to timely pay all wages due upon separation of employment and/or pay waiting time penalties in violation of Labor Code §§ 201, 202, and 203; (6) failure to indemnify and/or reimburse reasonable and necessary business expenses in violation of Labor Code § 2802; (7) failure to provide accurate itemized wage statements in violation of Labor Code §§ 226 and 226.3, and IWC Wage Order No. 7-2001, § 7; and (8) failure to maintain accurate records in violation of Labor Code § 1174 and 1174.5, and IWC Wage Order No. 7-2001, § 7.
- 5.3 General Release by Plaintiff. In exchange for the Class Representative Payment, upon the Effective Date, and except as to the right to enforce the terms and conditions of this Agreement, Plaintiff releases the Released Parties from any and all charges, complaints, claims, causes of action, demands, disputes, damages, business expenses, attorneys' fees, costs, losses, and liabilities of any kind or nature whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, which Plaintiff, at any time, had, claimed to have, or Plaintiff may have, including but not limited to any and all claims arising out of, relating to, or resulting from her employment with and separation of employment with Released Parties, including any claims arising under any federal, state, or local law relating to employment, including, but in no way limited to, any claim under Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. § 1981; the Americans with Disabilities Act ("ADA"); the Family and Medical Leave Act ("FMLA"); the Employee Retirement Income Security Act ("ERISA"); the California Family Rights Act ("CFRA"); the California Fair Employment and Housing Act ("FEHA"); all claims for wages or penalties under the Fair Labor Standards Act ("FLSA"); all claims for wages or penalties under the California Labor Code; Business and Professions Code §§ 17200 *et seq.*; all laws relating to violation of public policy, retaliation, or interference with legal rights; any and all other employment or discrimination laws; whistleblower claims; any tort, fraud, or constitutional claims; and any breach of contract claims or claims of promissory estoppel. It is agreed that this is a general release and is to be broadly construed as a release of all claims; provided that, notwithstanding the foregoing, this paragraph expressly does not include a release of any claims that cannot be released hereunder by law. Nothing in this Agreement prohibits Plaintiff from filing a charge or complaint or communicating with a government agency where, as a matter of law, Defendant may not restrict Plaintiff's ability

to do so. However, Plaintiff hereby waives her right to any monetary benefits or recovery in connection with any such claim, charge or proceeding, except this Agreement does not limit Plaintiff's right to receive an award for information provided to any government agencies. Nothing in this Agreement waives Plaintiff's right to testify or prohibits her from testifying in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or alleged sexual harassment when she has been required or requested to attend the proceeding pursuant to a court order, subpoena or written request from an administrative agency or the California state legislature. Plaintiff understands and expressly agrees that this Agreement extends to claims that she has against Released Parties, of whatever nature and kind, known or unknown, suspected or unsuspected, vested or contingent, past, present, or future, arising from or attributable to an incident or event, occurring in whole or in part, on or before the Effective Date of this Agreement. Any and all rights granted under any state or federal law or regulation limiting the effect of this Settlement Agreement, including the provisions of section 1542 of the California Civil Code, are hereby expressly waived. Section 1542 of the California Civil Code reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

6. MOTION FOR PRELIMINARY APPROVAL.

6.1 Plaintiff's Responsibilities. Class Counsel will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code § 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; and (iv) a signed declaration from Class Counsel attesting to its competency to represent the Class Members and its timely transmission to the LWDA of all necessary PAGA documents. Class Counsel will provide the drafts in (i) to (iii) to Defense Counsel at least ten (10) calendar days before filing for review and comment.

6.1.1 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected CPT Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, CPT Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Notice to Class Members.
- 7.2.1 Using best efforts to perform as soon as possible, and in no event later than 21 calendar days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- 7.2.2 Not later than three business (3) days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 7.2.3 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 10 calendar days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.2.4 If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send a Class Notice requiring them to exercise options under this Agreement not later than 10 calendar days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever is later.

7.3 Requests for Exclusion.

7.3.1 Class Members who wish to exclude themselves from the Class Settlement must send the Administrator, by fax or mail, a signed written Request for Exclusion not later than 60 calendar days after the Administrator mails the Class Notice (plus an additional 10 calendar days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that clearly communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name and address. To be valid, a Request for Exclusion must be timely faxed or postmarked by the Response Deadline.

7.3.2 The Administrator shall accept any Request for Exclusion as valid if the Administrator can clearly ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

7.3.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Release under Paragraph 5.1 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.3.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Non-Participating Class Members who are PAGA Employees are deemed to release the claims identified in Paragraph 5.2 of this Agreement and are eligible for an Individual PAGA Payment.

7.4 Challenges to Calculation of Workweeks. Each Class Member shall have 60 calendar days after the Administrator mails the Class Notice (plus an additional 10 calendar days for Class Members whose Class Notice is re-mailed) to challenge the number of Workweeks and/or PAGA Pay Periods allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the administrator via fax or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks and PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The

Administrator shall promptly provide copies of all challenges to the calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination of the challenges.

7.5 Objections to Settlement.

7.5.1 Only Participating Class Members may object to the class action components of the Settlement, including contesting the fairness of the Settlement and/or the amounts requested for the Class Counsel Fees Payment, the Class Counsel Expenses Payment, and/or the Class Representative Payment.

7.5.2 Participating Class Members may send written objections to the Administrator by fax or mail. In the alternative, Participating Class Members may appear in Court (or retain an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 calendar days after the Administrator's mailing of the Class Notice (plus an additional 10 calendar days for Class Members whose Class Notice was re-mailed).

7.5.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.6 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.6.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Expenses Payment and Class Representative Payment, and the Final Approval and the Judgment. The Administrator will also maintain and monitor a toll-free telephone number to receive Class Member calls and faxes.

7.6.2 Requests for Exclusion and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing: (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; and (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

7.6.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the

number of Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion received, objections received, and challenges to Workweeks and/or Pay Periods received (“Weekly Report”).

- 7.6.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final, decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.6.5 Administrator’s Declaration. Not later than 10 calendar days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the number of Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections, and the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration in Court
- 7.6.6 Final Report by Administrator. Within 10 calendar days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 10 calendar days before any deadline set by the Court, the Administrator will prepare, and will submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. **PRO RATA INCREASE.** The Gross Settlement Amount was calculated with, and is premised on, the Parties’ understanding that there are approximately 19,719 Class Members who worked approximately 876,298 Workweeks between June 14, 2019 and the date of mediation (September 21, 2022), The Parties agree that if the total number of actual Workweeks exceeds 10% of the estimated number as of the date of the mediation, then the Gross Settlement Amount will be increased by the same proportion above 10%.
9. **DEFENDANT’S RIGHT TO WITHDRAW.** If either (1) the number of valid Requests for Exclusion exceeds 5% of the total of all Class Members or (2) the Court materially alters the scope of the Released Class Claims and/or Released PAGA Claims that it will approve, Defendant may, but is not obligated to, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio and shall have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to

withdraw not later than seven (7) calendar days after the Administrator sends the final Exclusion List to Defense Counsel.

10. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code § 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven (7) calendar days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.
 - 10.1 **Response to Objections.** Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
 - 10.2 **Duty to Cooperate.** If the Court does not grant Final Approval or conditions Final Approval on any material modification of the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval, but consistent with Defendant’s right to withdraw as set forth in Section 9 above. The Court’s decision to award less than the amounts requested for the Class Representative Payment, Class Counsel Fees Payment, Class Counsel Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
 - 10.3 **Continuing Jurisdiction of the Court.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
 - 10.4 **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs, or appeals. If an objector appeals the Judgment, the Parties’ obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
 - 10.5 **Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment.** If the

reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires any material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. **AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure § 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. **ADDITIONAL PROVISIONS.**

12.1 **No Admission of Liability, Class Certification or Representative Manageability for Other Purposes.** This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended to or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint and/or the LWDA letter have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree to class certification and representative treatment for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, does not grant Final Approval, or does not enter Judgment, Defendant reserves the right to contest certification of any class and/or the appropriateness of a PAGA representative action for any reason, Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement, and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2 **Confidentiality Prior to Preliminary Approval.** Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) to the extent necessary to report income to appropriate taxing authorities; (3) in response to a court order or subpoena; or (4) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the

filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

- 12.3 No Publicity. Neither Plaintiff nor Class Counsel shall hold a press conference or otherwise seek to affirmatively publicize the Settlement in the media or on social media. If contacted by the media regarding the Settlement, Plaintiff and Class counsel will state only “It was a fair settlement and we are happy with the results,” or something to that effect. Nothing in this Agreement shall prohibit Plaintiff from exercising protected rights under California law, the National Labor Relations Act, or the federal securities laws to the extent that these rights cannot be waived by agreement, or from complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency, provided that such compliance does not exceed that required by the law, regulation, or order. Further, nothing in this Agreement shall prohibit Plaintiff from providing truthful information as required by law in a legal proceeding or a government investigation or proceeding.
- 12.4 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or to appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.
- 12.5 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibit shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.6 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.7 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.8 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause

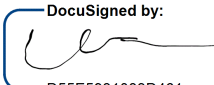
of action, or right released and discharged by the Party in this Settlement.

- 12.9 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended) or otherwise.
- 12.10 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.11 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.12 Applicable Law. All terms and conditions of this Agreement and its exhibit will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.13 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.14 Confidentiality. To the extent permitted by law, all agreements made and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or California state court legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (e.g., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 12.18 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to Code of Civil Procedure § 583.330 to extend the date to bring a case to trial under Code of Civil Procedure § 583.310 for the entire period of this settlement process.

ACCEPTED AND AGREED:

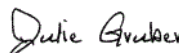
Dated: 12/15/2022

PLAINTIFF

By:  DocuSigned by:
Amanda O'Neal D55E5931083D461...

OLD NAVY, LLC

Dated: 1/4/2023



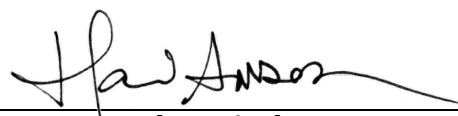
By: Gap Inc.

Its: EVP, Chief Legal Officer

APPROVED AS TO FORM:

GRAHAMHOLLIS APC

Dated: December 15, 2022

By: 
Hali M. Anderson
Dawn M. Berry
Alyssa L. Smith
Attorneys for Plaintiff Amanda O'Neal

ORRICK, HERRINGTON & SUTCLIFFE, LLP

Dated: 1/4/2023

By: 
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