

Anna Hernandez and Lebrado Madrazo v. Old Navy, LLC, San Francisco Superior Court,
Case No. CGC-22-598893

SETTLEMENT AGREEMENT

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This Settlement Agreement (“Settlement” or “Settlement Agreement”) is made and entered into between Plaintiff Anna Hernandez (“Plaintiff”), acting in her capacity as private attorney general, and Defendant Old Navy, LLC (“Defendant”).

I. DEFINITIONS

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

1. “Action” means the action filed March 25, 2022 in San Francisco County Superior Court entitled *Anna Hernandez and Lebrado Madrazo v. Old Navy, LLC*, Case No. CGC-22-598893. Former plaintiff Lebrado Madrazo passed away in 2023, before the Parties reached this Settlement Agreement. Accordingly, on December 1, 2023, Plaintiff filed a Request for Dismissal dismissing Lebrado Madrazo from the Action.

2. “Court” means San Francisco County Superior Court.

3. “Effective Date” means the date upon which all of the following have occurred: (i) the Court, or other court assuming jurisdiction of this matter, enters a Judgment on its Order Granting Approval of the Settlement; (ii) Plaintiff serves notice of entry of the Court’s Judgment; and (iii) the Court’s Judgment becomes Final. For purposes of this Settlement, the Judgment “becomes Final” upon the latter of: (i) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from, or other challenge to, the Judgment; (ii) if an appeal is filed, the date affirmance of an appeal of the Judgment becomes final; or (iii) if an appeal is filed, the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to the Judgment.

4. “Ergonomist Fees” means the cost of a mutually agreeable ergonomic consultant pursuant to Paragraph III.3.e. below.

5. “Gross Settlement Amount” shall mean the total of Six Million Five-Hundred Thousand Dollars (\$ 6,500,000.00), which is the maximum that Defendant may be required to pay under this Settlement Agreement. The Gross Settlement Amount will pay Plaintiff’s Incentive Award, Administration Costs, Plaintiff’s Attorneys’ Fees, Plaintiff’s Litigation Costs, the PAGA Payment, Ergonomist Fees, and Seating Costs. The Gross Settlement Amount shall be all-in with no reversion to Defendant.

6. “Individual PAGA Payment” means the proportional pro rata share to be paid to each of the PAGA Settlement Employees out of 25% of the PAGA Payment attributable to civil penalties under Labor Code section 2699, with such individual shares to be based on the number of pay periods during which a PAGA Settlement Employee worked during the PAGA Period pursuant to the method identified in Paragraph IV.3 below. The PAGA Settlement Employees will be issued a form 1099 for their Individual PAGA Payments.

7. “LWDA” means the California Labor Workforce Development Agency.

8. “Order Granting Approval of the Settlement” means the Court’s order granting Plaintiff’s motion for approval of the Settlement.

9. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code sections 2698 *et seq.*

10. “PAGA Payment” means the Gross Settlement Amount less Plaintiff’s Incentive Award, Plaintiff’s Attorneys’ Fees, Plaintiff’s Litigation Costs, Administration Costs, Ergonomist Fees, and Seating Costs. 100% of the PAGA Payment shall be allocated to civil penalties under Labor Code section 2699, with 75% of the PAGA Payment going to the LWDA and 25% going to the Individual PAGA Payments.

11. “PAGA Period” means the time period from January 8, 2021 through the date of the Court Order Granting Approval of the Settlement.

12. “PAGA Settlement Employees” consists of all current and former non-exempt employees who worked in an Old Navy retail store in California during the PAGA Period.

13. “Parties” means Plaintiff Anna Hernandez and Defendant Old Navy, LLC.

14. “Plaintiff’s Attorneys’ Fees” and “Plaintiff’s Litigation Costs” mean, in accordance with Paragraph III.3.b below, the amounts awarded by the Court to Plaintiff’s Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

15. “Plaintiff’s Counsel” means the law firms Capstone Law APC and Kevin J. McInerney.

16. “Plaintiff’s Incentive Award” means a sum of \$25,000 to Plaintiff Anna Hernandez as an incentive award.

17. “Released Parties” means Defendant, including past, present, and future divisions, affiliates, parents, subsidiaries, predecessors, successors, assigns, shareholders, members, owners, officers, directors, managers, employees, agents, trustees, attorneys, representatives, administrators, fiduciaries, beneficiaries, subrogees, executors, partners, insurers and privies.

18. “Seating Costs” means the cost for Defendant to purchase new seats, selected following consultation with an ergonomist, to supply to each Old Navy store in California one seat not to exceed \$200, pursuant to Paragraph III.3.f. below.

19. “Settlement Administrator” means CPT Group, which will administer the settlement and shall be paid for settlement administration costs (“Administration Costs”), which are estimated to be Eighty-One Thousand One Hundred Thirty-Nine Dollars and 45 Cents (\$81,139.45).

II. RECITALS

1. Plaintiff was employed by Defendant Old Navy, LLC as a brand associate in California during the PAGA Period.

2. On January 18, 2022, Plaintiff's Counsel, on behalf of Plaintiff, sent a letter to the LWDA notifying the LWDA that Plaintiff intended to pursue claims against Defendant under PAGA for violation of Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14) ("Section 14").

3. On March 25, 2022, Plaintiff filed a complaint in the San Francisco County Superior Court, which asserted claims for penalties under PAGA for violation of Labor Code section 1198 and Section 14.

4. On September 18, 2023, the Parties participated in an arm's length mediation before mediator Lou Marlin. The Parties did not reach resolution that day.

5. On September 27, 2023, the Parties agreed to fully and finally resolve the Action.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission and Denial of Liability.** Nothing in this Settlement Agreement shall be construed to be an admission by Plaintiff that her representative claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, the PAGA Settlement Employees, or any other person. Defendant specifically disclaims and denies any such liability or wrongdoing alleged in the Action. The Parties have entered into this Settlement Agreement solely to avoid further disputes and litigation with the attendant inconvenience, nuisance, expenses, and risks. This Settlement Agreement and any related court documents or orders are not and may not be cited or admitted as evidence of liability or notice of a violation. The Parties agree that an express condition of this Settlement Agreement is that there has been no finding of liability on the merits, and that this Settlement Agreement therefore cannot be a basis to assert offensive collateral estoppel against Defendant or to seek heightened penalties under Labor Code section 2699 for alleged "subsequent" violations. Notwithstanding the foregoing, nothing in this Settlement Agreement shall limit Defendant's use of the Judgment or any papers in the Action to establish defensive collateral estoppel or res judicata in any other action.

2. **Deposit of Gross Settlement Amount.** Within fifteen (15) business days after the Effective Date, Defendant shall deposit with the Settlement Administrator the Gross Settlement Amount.

3. **Components of the Gross Settlement Amount.** The Parties agree to the following allocations to be paid from the Gross Settlement Amount:

a. **PAGA Payment:** The PAGA Payment shall be paid in settlement of the PAGA Released Claims. Should the amount of the PAGA Payment increase or decrease, the

amount to be distributed shall be adjusted accordingly. The PAGA Payment will be subject to Court approval consistent with Labor Code section 2699. The PAGA Payment shall be distributed as follows:

- (1) The LWDA shall receive 75% of the PAGA payment; and
- (2) The PAGA Settlement Employees shall receive 25% of the PAGA payment, which shall be allocated pro rata pursuant to the method identified in Paragraph IV.3 below.

b. **Plaintiff's Attorneys' Fees and Plaintiff's Litigation Costs.** Subject to court approval, one-third (33.33%) of the Gross Settlement Amount shall be paid to Plaintiff's Counsel for payment of attorneys' fees, and up to Thirty Thousand Three Hundred Sixty-Eight Dollars and Eighteen Cents (\$30,368.18) shall be paid to Plaintiff's Counsel for actual litigation costs incurred (pursuant to a Declaration of Costs by Plaintiff's Counsel) in prosecuting the PAGA claim. This payment of Plaintiff's Attorneys' Fees and Plaintiff's Litigation Costs constitutes full satisfaction of any obligation to pay any amounts to any attorney or law firm for attorneys' fees, expenses or costs incurred by any attorney on behalf of Plaintiff, PAGA Settlement Employees and/or the State of California in connection with the Action, and shall relieve Defendant and Defendant's counsel of any other claims or liability to any other attorney or law firm for attorneys' fees, expenses and/or costs to which any of them may claim to be entitled on behalf of Plaintiff, PAGA Settlement Employees and/or the State of California in connection with the Action. Plaintiff's attorneys will apply for an award of fees and costs but whether the Court grants such request is immaterial to the approval of the Settlement. If the Court approves less than the amount of the Plaintiff's Attorneys' Fees and Plaintiff's Litigation Costs that Plaintiff's Counsel requests, the difference between the requested and awarded amounts will be reallocated to the PAGA Payment. This payment will be reported on an IRS Form 1099 issued to Plaintiff's Counsel. Except as set forth herein, each Party shall bear their own costs and fees of this Action.

c. **Administration Costs.** Administration Costs shall include the cost of the fees by the Settlement Administrator selected by the Parties to administer the settlement in the amount of up to Eighty-One Thousand One Hundred Thirty-Nine Dollars and 45 Cents (\$81,139.45). In the event that Court approval of these payments is required and a payment of less than Eighty-One Thousand One Hundred Thirty-Nine Dollars and 45 Cents (\$81,139.45) is approved, or if the actual cost to administer the settlement is less than Eighty-One Thousand One Hundred Thirty-Nine Dollars and 45 Cents (\$81,139.45), the difference between the requested and awarded amounts, or the difference between the requested and actual costs, will be reallocated to the PAGA Payment.

d. **Plaintiff's Incentive Award.** Subject to court approval, and consistent with Paragraph I.16. above, \$25,000 shall be paid to Plaintiff Anna Hernandez. In the event the Court approves less than the amount of the Plaintiff's Incentive Award that Plaintiff's Counsel requests, the difference between the requested and awarded amounts will be reallocated to the PAGA Payment.

e. **Ergonomist Fees.** Subject to court approval, the cost of any Ergonomist Fees for purposes of advising Defendant as to recommended seating options Paragraph III.4 below are to be paid out of the Gross Settlement Amount. If the Court approves less than the amount of the Ergonomist Fees that Plaintiff's Counsel requests, the difference between the requested and awarded amounts will be reallocated to the PAGA Payment. The Ergonomist Fees will be reported on an IRS Form 1099 issued to the ergonomist.

f. **Seating Costs.** Subject to court approval, the Seating Costs are to be paid out of the Gross Settlement Amount. There shall be one seat sent to every California Old Navy retail store with a sum not to exceed \$200 per seat. Seats purchased subsequently as replacements or additional seats for stores shall not be deducted from the Gross Settlement Amount. If the Court approves less than the amount of the Seating Costs that Plaintiff's Counsel requests, the difference between the requested and awarded amounts will be reallocated to the PAGA Payment.

4. **Non-Monetary Consideration.** Upon Court approval of this Settlement Agreement, the Parties agree that Defendant will meet all its suitable seating obligations under Section 14 by, in addition to its existing measures, taking the following supplemental steps:

a. The Parties will identify a mutually agreed upon ergonomic consultant whose services Defendant will engage to assess the type of additional suitable seating, including with respect to adjustable height and swivel, that Defendant should provide for use in Defendant's retail stores in California, and which are available for purchase for less than \$200 per seat. The cost of the ergonomic consultant's services shall be deducted from the Gross Settlement Amount, as set forth above.

b. Taking into consideration the recommendation by the ergonomic consultant, Defendant will supply its Old Navy retail stores in California with at least one (1) supplemental seat per store for its nonexempt employees to use that is available through the brand catalog from which Defendant's stores may purchase additional supply, if needed. The cost to purchase the seats shall be deducted from the Gross Settlement Amount, as set forth above.

c. Defendant will implement training and employee education on its suitable seating policy, including the ability to use the ADA cashwrap as practicable, as part of its new hire process.

d. Defendant will direct each of its Old Navy stores in California to keep the seat in the store in an area visible and accessible to nonexempt employees, including in the breakroom or back of the store, to post in the breakroom and at or around the cashwrap for employee viewing, a plain English notice, substantially in the form of **Exhibit A**, advising brand associates that they may use seats and providing examples of circumstances in which it is and is not appropriate to sit.

Defendant's obligation to provide suitable seats for brand associates' use in Defendant's stores in California is an ongoing obligation provided, however, that if, in the exercise of good faith business judgment, Defendant determines that the provision of suitable seats: (a) results in increased injuries or accidents to its brand associates or customers; (b) unduly interferes with the standing tasks of

brand associates; (c) results in interference with the work because of the frequency of transitioning from sitting to standing; (d) negatively impacts the quality and effectiveness of the brand associates' overall job performance; or (e) is no longer applicable due to a change in the law, Defendant has the option to stop providing suitable seats in accordance with this paragraph due to the reasons described above, Defendant will communicate its decisions to the LWDA and the brand associates who will no longer be provided suitable seats, and, if within two years following final approval of this Settlement, to Plaintiff's counsel.

5. Releases.

a. **Release by Plaintiff on Behalf of the LWDA.** In her capacity as private attorney general "aggrieved employee" acting on behalf of herself and as proxy or agent of the LWDA, Plaintiff agrees to release the Released Parties, from any and all PAGA Released Claims for the PAGA Period. The express purposes of this Settlement Agreement and the Judgment to be entered by the Court following approval of this Settlement Agreement is to forever bar Plaintiff, the LWDA, and any other individual or entity acting on behalf of or purporting to act on behalf of the LWDA from asserting any of the PAGA Released Claims in any future litigation. It is the intent of the Parties that, to the greatest extent provided by law, including under the holding of *Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009), the ability of Plaintiff, the State of California and any PAGA Settlement Employee (which includes any legal heirs and/or successors in interest of each and every PAGA Settlement Employee, including Anna Hernandez) to bring a PAGA Released Claim on behalf of the LWDA is completely and forever foreclosed. Any Party to this Settlement Agreement may use the Settlement Agreement to assert that this Settlement Agreement and the Judgment to be entered by the Court following approval of this Settlement Agreement bars any later-filed action asserting any of the PAGA Released Claims against any of the Released Parties. The provisions of this paragraph apply regardless of whether Plaintiff and/or the PAGA Settlement Employees cash their Individual PAGA Payment checks, so long as the Gross Settlement Amount is administered and carried out according to this Settlement Agreement.

b. **PAGA Released Claims.** "PAGA Released Claims" means any and all claims that were alleged, or that could have been alleged, causes of action, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorneys' fees, damages, or interest that were alleged or could have been alleged in the Action that are based on the alleged failure to provide "suitable seating" under Section 14 or any other seating-related law through the end of the PAGA Period (the "PAGA Released Claims"). The Parties agree that, beyond the Gross Settlement Amount, Defendant shall not owe any further monies to the PAGA Settlement Employees, the LWDA, or to Plaintiff's counsel based on the PAGA Released Claims.

c. **General Release by Plaintiff.** In consideration for receiving Plaintiff's Incentive Award, Plaintiff provides the following general release of claims: Plaintiff (on her own behalf and on behalf of her heirs, beneficiaries, trustees, executors, administrators, assigns, agents, insurers, representatives, and successors) knowingly, voluntarily, irrevocably, and unconditionally fully and forever waives, releases, and discharges the Released Parties from, and acknowledges full accord and satisfaction of, any and all debts, penalties, agreements, promises, liabilities, claims, damages, actions, causes of action, or demands of any kind or nature whatsoever (upon any legal or equitable theory, whether contractual, common law or statutory, under federal, state

or local law or otherwise), whether known or unknown, asserted or unasserted, by reason of any act, omission, transaction, agreement or occurrence, that Plaintiff has ever had, now has, or hereafter may have against the Released Parties taking place on or before the signing of this Settlement Agreement. This release specifically includes any and all claims, demands, obligations and/or causes of action for damages, restitution, penalties, interest, and attorneys' fees and costs relating or in any way connected with the matters referred to herein, whether or not known or suspected to exist, and whether or not specifically or particularly described herein.

d. **Waiver of Civil Code Section 1542 by Plaintiff.** Plaintiff represents that she is not aware of any claims she may have against the Defendant and/or Released Parties other than the claims that are released by this Settlement Agreement. Plaintiff, on behalf of herself and her respective heirs, beneficiaries, trustees, executors, administrators, assigns, agents, insurers, representatives, and successors (but not on behalf of the Aggrieved Employees or the State of California), expressly waives any and all rights and benefits conferred by the provisions of Section 1542 of the Civil Code of the State of California and any similar law of any state or territory of the United States or other jurisdiction. This section provides 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.

Plaintiff understands and acknowledges that this Settlement Agreement is meant to release any and all claims, including claims that Plaintiff does not know or suspects to exist against Defendant and Released Parties.

6. **Covenants and Representations by Plaintiff and Plaintiff's Counsel.**

a. Plaintiff represents and warrants that she has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement Agreement.

b. Plaintiff acknowledges that she has read this Settlement Agreement, that she fully understands her rights, privileges and duties under the Settlement Agreement, and enters into this Settlement Agreement freely and voluntarily. Plaintiff further acknowledges that she has had the opportunity to consult with her attorneys to explain the terms of this Settlement Agreement and the consequences of signing this Settlement Agreement.

7. **No Press Releases.** Neither Party nor their counsel shall issue a press release concerning the settlement and/or this Settlement Agreement except as required by law. This does not preclude the Parties from filing with the Court documents (including this Settlement Agreement) necessary to obtain Court approval pursuant to PAGA.

8. **Court Approval.** Subject to Defendant's review and approval prior to filing, Plaintiff's Counsel shall be responsible for preparing and filing a Motion for Approval of the

Settlement Agreement and taking any steps necessary for the Court to enter Judgment. Plaintiff's Counsel will provide Defendant's counsel with a draft of that Motion at least five (5) business days prior to filing the Motion to provide Defendant with an opportunity to propose revisions to that Motion before it is filed. That Motion shall also be served on the LWDA when filed with the Court.

9. **Non-Approval of Settlement Agreement.** Because settlement of the Action requires Court approval pursuant to Labor Code section 2699(1)(2), the Settlement Agreement is conditional and contingent upon approval and entry of Judgment. If the Court does not approve this Settlement Agreement, or if appellate review is sought and on such review the Court's decision is materially modified or reversed, then each of the Parties by and through Counsel, will cooperate with each other and use their best efforts to revise the affected term(s) of the Settlement Agreement. If, however, the Court does not approve the Gross Settlement Amount or any language in Paragraph III.4, either Party shall have the right within ten (10) days of written notice thereof to elect to terminate the Settlement Agreement, in which event it shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement Agreement. A reduction by the Court or on appeal as to the amount of attorneys' fees and costs, and/or to the amount of Plaintiff's Incentive Award allocated herein does not provide a basis for terminating this Settlement Agreement.

IV. ADMINISTRATION OF SETTLEMENT

1. **Motion for Approval of Settlement Agreement.** After the execution of this Settlement Agreement, Plaintiff shall file a Motion for Approval of the Settlement Agreement and will serve the Motion and this Settlement Agreement on the LWDA consistent with Labor Code section 2699(1)(2). As part of this, Plaintiff agrees to undertake any efforts necessary for the Court to enter Judgment. Within ten (10) days of the Judgment, Plaintiff shall submit a copy of the Judgment to the LWDA consistent with Labor Code section 2699(1)(3).

2. **Settlement Administrator.** CPT Group will administer the settlement and shall be paid for Administration Costs, which are estimated to be up to Eighty-One Thousand One Hundred Thirty-Nine Dollars and 45 Cents (\$81,139.45). The Settlement Administrator's duties shall include the following: update addresses for PAGA Settlement Employees via the USPS National Change of Address database and perform a skip tracing process to determine the best, most recent address prior to distribution of the Gross Settlement Amount; determine Individual PAGA Payment amounts for each PAGA Settlement Employee; distribute Individual PAGA Payments to PAGA Settlement Employees; re-mail undeliverable Individual PAGA Payment checks; distribute payments for attorneys' fees and costs to Plaintiff's Counsel; distribute Plaintiff's Incentive Award to Plaintiff; make payment to the LWDA for its 75% share of the PAGA Payment; redistribute uncashed checks for Individual PAGA Payments; and perform related tax, accounting, and administration services.

3. **Individual PAGA Payments.** The Settlement Administrator will pay PAGA Settlement Employees 25% of the PAGA Payment as their portion of the recovery of civil penalties under PAGA. Each PAGA Settlement Employee's Individual PAGA Payment will be calculated as follows:

- a. For each pay period that Old Navy's records show that a PAGA Settlement Employee worked in an Old Navy store in California and conducted a register transaction at the cashwrap during the PAGA Period, the PAGA Settlement Employee will be credited with 4 units.
- b. For each pay period that Old Navy's records show that a PAGA Settlement Employee worked in an Old Navy Store in California and performed work that did not include a register transaction at the cashwrap during the PAGA Period, the PAGA Settlement Employee will be credited with 1 unit.
- c. For each pay period that Old Navy's records show that a PAGA Settlement Employee was employed to work in an Old Navy store in California, but performed no work for Old Navy, the PAGA Settlement Employee will not receive any units.
- d. Each PAGA Settlement Employee's Individual PAGA Payment will equal (i) the ratio of the Employee's total units to the total number of all PAGA Settlement Employee units times (ii) 25% of the PAGA Payment.

4. **PAGA Settlement Employee Information.** Defendant will provide the necessary information about the PAGA Settlement Employees (*i.e.*, full name, last known address, and number of Pay Periods worked during the PAGA Period that (a) include a register transaction at the cashwrap and (b) that do not include a register transaction at the cashwrap) to the Settlement Administrator within fifteen (15) business days after the Effective Date.

5. **Distribution of Gross Settlement Amount.**

a. Within ten (10) business days after receipt of the Gross Settlement Amount from Defendant, the Settlement Administrator will issue to each PAGA Settlement Employee at their last known address a check for their Individual PAGA Payment, along with an explanatory letter substantially in the form of Exhibit B. Checks will remain negotiable for one hundred eighty (180) days. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address or Social Security number of the PAGA Settlement Employee involved, and will then perform a single re-mailing. The Settlement Administrator shall mail a check-cashing reminder postcard to those PAGA Settlement Employees who have not negotiated their Individual PAGA Payment checks within ninety (90) days of mailing. Funds represented by settlement checks returned as undeliverable and those settlement checks remaining uncashed for more than 180 days after issuance shall be deposited by the Settlement Administrator with the California State Controller to be deposited in the Unclaimed Property Fund in the name of the PAGA Settlement Employee. A PAGA Settlement Employee's failure to claim or deposit any check issued by the Settlement Administrator shall

have no effect on that PAGA Settlement Employee's release of all Released Claims set forth herein.

b. Within five (5) days after receipt of the Gross Settlement Amount from Defendant, the Settlement Administrator will distribute to Plaintiff at her last known address the Plaintiff's Incentive Award from the Gross Settlement Amount.

c. Within five (5) days after receipt of the Gross Settlement Amount from Defendant, the Settlement Administrator will pay from the Gross Settlement Amount to the LWDA the amount allocated to the LWDA and will pay to Plaintiff's Counsel the attorneys' fees and costs as approved by the Court. The Settlement Administrator shall use the Administration Costs to pay for any fees and costs associated with the administration of this settlement and distribution of the Gross Settlement Amount.

6. **Objections to Settlement.** Because the Action is a PAGA action and Plaintiff is pursuing the Action on behalf of the State of California, the Parties agree that PAGA Settlement Employees have no right to object to the Settlement.

7. **No Right to Opt Out.** Because the Action is a PAGA action and Plaintiff is pursuing the Action on behalf of the State of California, no PAGA Settlement Employee has the right to opt out of the Settlement.

8. **Accounting.** The Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid out.

9. **No Tax Representations.** The Parties agree that all tax obligations, if any, which may arise from the payments set forth above shall be the sole obligation of Plaintiff and/or PAGA Settlement Employees. Plaintiff acknowledges that Defendant makes no representations or warranties with respect to any tax consequences or characterization of the nature of any payment under this Settlement Agreement

V. MISCELLANEOUS PROVISIONS

1. **Temporary Discovery Stay.** The Parties will endeavor to seek approval of the Settlement on the earliest mutually available hearing date. The Parties agree to stay all discovery deadlines until January 15, 2023, at the earliest. Should the Settlement not be approved by January 15, 2023, the Parties will consider a further stay of discovery, the agreement to which will not be unreasonably withheld.

2. **Drafting.** The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party.

3. **Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and her/its respective heirs, trustees, executors, administrators, successors, and assigns.

4. **Costs and Fees.** The Parties shall each bear their own costs, attorneys' fees, and other fees incurred in connection with this Settlement Agreement and in connection with the Action, except as otherwise set forth specifically herein.

5. **Authority.** Defendant represents and warrants that the undersigned has the authority to act on behalf of Defendant and to bind Defendant to the terms of this Settlement Agreement. Plaintiff represents and warrants that she has the capacity to act on her own behalf and on behalf of all who might claim through her to bind them to the terms and conditions of this Settlement Agreement, including each and every PAGA Settlement Employee (which includes any legal heirs and/or successors-in-interest of each and every PAGA Settlement Employee) and the LWDA.

6. **Governing Law.** This Settlement Agreement shall be construed under and governed by the laws of the State of California. This Settlement Agreement shall be deemed to have been entered into in California and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the parties to this Settlement Agreement shall be governed by California law. If any legal or equitable action or arbitration is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the Court.

7. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them and acknowledge and represent that this Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the claims. This Settlement Agreement cannot be amended or modified except by a writing signed by the Parties hereto or their successors-in-interest.

8. **Nullification of Settlement Agreement.** In the event that: (i) the Court does not approve the Settlement Agreement and enter Judgment as provided herein; or (ii) the Settlement Agreement does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.

9. **Judgment and Continued Jurisdiction.** Following the Judgment, the Court will have continuing jurisdiction solely for purposes of enforcing the Judgment.

10. **Authorization to Enter Into Settlement Agreement.** Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement.

11. **Execution and Counterparts.** This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including electronic, facsimile, and scanned copies of the signature page, will be deemed to be one and the same instrument.

12. **Acknowledgement That the Settlement is Fair and Reasonable.** The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action, acknowledging that the Court “may award a lesser amount than the maximum civil penalty amount specified by” PAGA “if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(e)(2). The Parties have arrived at this Settlement Agreement after arm’s-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement Agreement.

13. **Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to find all provisions of this Settlement Agreement valid and enforceable.

14. **Waiver.** No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

15. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed, and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Settlement Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

16. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

17. **Cooperation, Execution of Necessary Documents and Disputes.** The Parties and their counsel will cooperate with each other in good faith and use their best efforts to effectuate the implementation of the Settlement Agreement and receive approval from the Court. The Court will retain continuing jurisdiction as to the implementation of the Settlement Agreement, interpretation of the Settlement Agreement, the form or content of any document needed to implement the Settlement Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement Agreement.

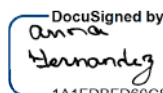
18. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms. The Parties further agree that, as of the Effective Date, Plaintiff, all other PAGA Settlement Employees, the LWDA, and Defendant shall be bound by this Settlement Agreement as to the Action.

19. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of the Settlement Agreement, Plaintiff, PAGA Settlement Employees, the LWDA, and Defendant, inclusive, hereby waive any and all rights to appeal in connection with the Judgment, with the exception that Plaintiff and/or Plaintiff's Counsel may appeal any order denying or reducing their requested attorneys' fees and/or costs and/or Plaintiff's Incentive Award.

IN WITNESS THEREOF, the Parties each acknowledge that she/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement and hereby executes it voluntarily and with full understanding of its consequences.

Dated: 12/3/2023

ANNA HERNANDEZ

By:  1A1F0BFD0600403...
Plaintiff

Dated: 12/21/2023

OLD NAVY, LLC

By: 
Julie Gruber
Executive Vice President, Global
General Counsel, Corporate Secretary, &
Chief Compliance Officer of The Gap, Inc.

APPROVED AS TO FORM:

Dated: December 21, 2023

ORRICK HERRINGTON & SUTCLIFFE LLP

By: 
Jessica R. Perry
Katie E. Briscoe
Attorneys for Defendant

Dated: December 3, 2023

KEVIN J. MCINERNEY

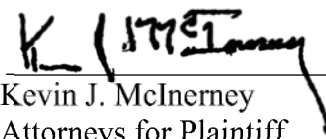
By: 
Kevin J. McInerney
Attorneys for Plaintiff

EXHIBIT A

NOTICE: EMPLOYEES MAY SIT

Old Navy provides seats for all employees to use if they wish to do so:

Sitting While You Work

You may sit while doing tasks, including tasks at the cashwraps, that, at times, may be performed seated. Examples: interacting with customers, scanning, taking payment, removing sensors, bagging items, reticketing, etc. The ADA cashwrap has knee room underneath; you may use the ADA cashwrap while working seated so long as it is not needed by an employee who requires a wheelchair or who must sit due to a medical accommodation.

Sitting When There is No Work to Do

You may sit when there is no work to be done, such as when there is a temporary lull in customers at the cashwrap or fitting room and there aren't other duties that you should be doing. Old Navy will make seats available to be used in or near work areas.

If you're not able to use or find a seat (because, for example, available seats are already in use), please promptly notify your manager or contact HR.

Employees who work while seated must still provide good customer service and meet company efficiency standards.

EXHIBIT B

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

**Re: Payment From *Hernandez, et al. v. Old Navy, LLC*, No. CGC-22-598893
(San Francisco County Superior Court)**

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled *Hernandez, et al. v. Old Navy, LLC*, No. CGC-22-598893 (San Francisco County Superior Court) (the “Action”), which the Court approved on [insert date].

The Action was filed against Defendant Old Navy, LLC (“Old Navy”) by former employees on behalf of the State of California pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (“PAGA”) for alleged violation of Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14). Plaintiffs sought civil penalties and other relief on behalf of themselves, the State of California, and other allegedly “aggrieved employees” who are or were employed by Old Navy in California as non-exempt, hourly paid employees in an Old Navy store from January 8, 2021 to [insert date of the Court’s approval of the settlement]. You have been identified as one of the “allegedly aggrieved” employees.

Old Navy denies that it violated the Labor Code or California Wage Orders, denies that it is liable in any way for any penalties, and contends that it complied with all applicable law. The Court has not ruled on the merits of the Action. The Court has approved the settlement, of which 75% will be paid to the California Labor and Workforce Development Agency, and the remaining 25% will be paid to all “allegedly aggrieved” employees.

You are not a party to the Action, but you and the State of California will be bound by the settlement. If you have any questions, you can contact the settlement administrator (whose contact information is at the top of this letter).

Very Truly Yours,

[Administrator]