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

LAILA FAIZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

THE GAP, INC., a Delaware corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: **23CV057084**

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES FOR:**

- (1) VIOLATION OF CAL. LABOR CODE §§
201-203;**
- (2) VIOLATION OF CAL. LABOR CODE §
226; AND**
- (3) VIOLATION OF CAL. LABOR CODE §
2698, *ET SEQ.***

DEMAND OVER \$25,000.00

1 Plaintiff Laila Faiz (“Plaintiff”) hereby submits this class and representative action
2 complaint (“Complaint”) against Defendant The Gap, Inc. (“Defendant”), and Does 1 through 50
3 (collectively, “Defendants”), as an individual and on behalf of all other similarly situated current
4 and former employees of Defendants for penalties and/or damages under the California Labor
5 Code for failure to pay sick pay at the regular rate of pay and failure to provide accurate itemized
6 wage statements, as follows:

7 **INTRODUCTION**

8 1. This Complaint is within the Court’s jurisdiction under California Labor Code §§
9 201-204, 226, 246, and 2698 *et seq.*, the Private Attorneys General Act (“PAGA”), and the
10 California Industrial Welfare Commission’s (“IWC”) Wage Orders.

11 2. This Complaint challenges systemic illegal employment practices resulting in
12 violations of the California Labor Code against employees of Defendants.

13 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
14 jointly and severally, have acted intentionally and with deliberate indifference and conscious
15 disregard to the rights of all employees by failing to accurately pay sick pay wages, failing to
16 keep accurate records and failing to provide accurate itemized wage statements identifying all
17 required information.

18 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 have engaged in, among other things, a system of willful violations of the California Labor Code
20 and applicable IWC Wage Orders by creating and maintaining policies, practices, and customs
21 that knowingly deny employees the above stated rights and benefits.

22 **JURISDICTION AND VENUE**

23 5. The Court has jurisdiction over the violations of California Labor Code §§ 201-
24 204, 226, 246, and 2698 *et seq.*

25 6. Venue is proper in Alameda County because Defendants operate business
26 locations in this County, and Plaintiff worked for Defendants in Alameda County.

27 **PARTIES**

28 7. Plaintiff was employed by Defendants from about 2018, until on or about

1 September 1, 2023. Plaintiff worked as a Customer Service Sales Associate in Oakland,
2 California. Throughout her employment with Defendants, Plaintiff was a non-exempt, hourly
3 employee.

4 8. During her employment with Defendants, Plaintiff was routinely paid various
5 non-discretionary incentive wages, including without limitation, award/contest incentives.
6 Plaintiff was also paid wages for sick time during her employment with Defendants.

7 9. Plaintiff was and is the victim of the policies, practices, and customs of
8 Defendants complained of in this action in ways that have deprived her of the rights guaranteed
9 by California Labor Code §§ 201-204, 226, 246, and 2698 *et seq.*, and the applicable IWC Wage
10 Orders.

11 10. Plaintiff is informed and believes, and based thereon alleges, that Defendant The
12 Gap, Inc. was and is a Delaware corporation doing business in the State of California, and in the
13 County of Alameda. Plaintiff is informed and believes, and based thereon alleges, that
14 Defendant is engaged in the retail sales industry.

15 11. Plaintiff is informed and believes, and based thereon alleges, that at all times
16 herein mentioned, Defendant and Does 1 through 50 are and were business entities, individuals,
17 and partnerships, licensed to do business and actually doing business in the State of California.

18 12. As such, and based upon all the facts and circumstances incident to Defendants'
19 business in California, Defendants are subject to California Labor Code §§ 201-204, 226, 246,
20 and 2698, *et seq.*, and the IWC Wage Orders.

21 13. Plaintiff does not know the true names or capacities, whether individual, partner,
22 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
23 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
24 Complaint when the true names and capacities are known. Plaintiff is informed and believes and
25 based thereon alleges that each of said fictitious defendants was responsible in some way for the
26 matters alleged herein and proximately caused Plaintiff and members of the general public and
27 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

28 14. At all times herein mentioned, each of said Defendants participated in the doing

1 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
2 Defendants, and each of them, were the agents, servants, and employees of each of the other
3 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
4 acting within the course and scope of said agency and employment.

5 15. Plaintiff is informed and believes, and based thereon alleges, that at all times
6 material hereto, each of the Defendants named herein was the agent, employee, alter ego, and/or
7 joint venturer of, or working in concert with each of the other co-Defendants and was acting
8 within the course and scope of such agency, employment, joint venture, or concerted activity.
9 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
10 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
11 Defendants.

12 16. At all times herein mentioned, Defendants, and each of them, were members of,
13 and engaged in, a joint venture, partnership, and common enterprise, and acting within the course
14 and scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

15 17. At all times herein mentioned, the acts and omissions of various Defendants, and
16 each of them, concurred and contributed to the various acts and omissions of each and all of the
17 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
18 herein mentioned, Defendants, and each of them, ratified each and every act or omission
19 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
20 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
21 damages as herein alleged.

22 CLASS ACTION ALLEGATIONS

23 18. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
24 California Code of Civil Procedure § 382. Plaintiff proposes the following class: All non-
25 exempt employees of Defendants in the State of California who were paid non-discretionary
26 incentive remuneration, including without limitation, award/contest incentives, and sick pay in
27 the same workweek, and whose employment ended (either voluntarily or involuntarily) at any
28 time from November 28, 2020, through the present (the "Class").

1 19. Plaintiff reserves the right to propose additional classes and/or subclasses, and/or
2 amend the above class definition upon further discovery and investigation.

3 20. **Numerosity:** The members of the Class are so numerous that joinder of all
4 members would be impractical, if not impossible. The identity of the class members is readily
5 ascertainable by review of Defendants' records, including payroll records. Plaintiff is informed
6 and believes, and based thereon alleges, that Defendants failed to pay employees sick pay at the
7 regular rate of pay in violation of Labor Code §§ 201-203 and 246.

8 21. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
9 necessary steps to represent fairly and adequately the interests of the Class defined above.
10 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and
11 individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions
12 in the past and currently have a number of wage-and-hour class actions pending in California
13 state and federal courts.

14 22. Defendants uniformly administered a corporate policy and practice of failing to
15 pay employees sick pay at the regular rate of pay in violation of Labor Code §§ 201-203 and
16 246.

17 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
18 a consistent and uniform policy, practice, and procedure of willfully failing to comply with
19 Labor Code §§ 201-203 and 246, and the applicable IWC Wage Orders.

20 24. **Common Question of Law and Fact:** There are predominant common questions
21 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
22 concerning Defendants' policy and practice of failing to pay employees sick pay at the regular
23 rate of pay in violation of Labor Code §§ 201-203 and 246.

24 25. **Typicality:** The claims of Plaintiff are typical of the claims of all class members
25 in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner as
26 class members. As with other Class Members, Plaintiff routinely earned non-discretionary
27 incentive wages, such as award/contest incentives, that increased Plaintiff's regular rate of pay.
28 However, whenever sick pay was paid to Plaintiff, it was paid at Plaintiff's base rate of pay

1 rather than the correct, higher regular rate of pay that included any non-discretionary incentive
2 wages. To date, Plaintiff has yet to receive the underpaid wages owed to her. As such, Plaintiff
3 is a member of the Class and has suffered the alleged violations of California Labor Code
4 §§ 201-203 and 246.

5 26. The California Labor Code section upon which Plaintiff bases these claims is
6 broadly remedial in nature. These laws and labor standards serve an important public interest in
7 establishing minimum working conditions and standards in California. These laws and labor
8 standards protect the average working employee from exploitation by employers who may seek
9 to take advantage of superior economic and bargaining power in setting onerous terms and
10 conditions of employment.

11 27. The nature of this action and the format of laws available to Plaintiff and
12 members of the Class identified herein make the class action format a particularly efficient and
13 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
14 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
15 advantage since it would be able to exploit and overwhelm the limited resources of each
16 individual plaintiff with their vastly superior financial and legal resources. Requiring each class
17 member to pursue an individual remedy would also discourage the assertion of lawful claims by
18 employees who would be disinclined to file an action against their former and/or current
19 employer for real and justifiable fear of retaliation and permanent damage to their careers at
20 subsequent employment.

21 28. The prosecution of separate actions by the individual class members, even if
22 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
23 to individual class members against the Defendants and which would establish potentially
24 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
25 individual class members which would, as a practical matter, be dispositive of the interest of the
26 other class members not parties to the adjudications or which would substantially impair or
27 impede the ability of the class members to protect their interests. Further, the claims of the
28 individual class members are not sufficiently large to warrant vigorous individual prosecution

1 considering all of the concomitant costs and expenses.

2 29. Such a pattern, practice, and uniform administration of corporate policy regarding
3 illegal employee compensation described herein is unlawful and creates an entitlement to
4 recovery by Plaintiff and the Class identified herein, in a civil action, for applicable penalties
5 and/or damages, reasonable attorneys' fees, and costs of suit according to California Labor Code
6 §§ 201-204 and 218.5, and California Code of Civil Procedure § 1021.5.

7 30. Proof of a common business practice or factual pattern, which the named Plaintiff
8 experienced and is representative of, will establish the right of each of the class members to
9 recovery on the causes of action alleged herein.

10 **FIRST CAUSE OF ACTION**

11 **VIOLATION OF LABOR CODE §§ 201-203**

12 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

13 31. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
14 though fully set forth herein.

15 32. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees be
16 “calculated in the same manner as the regular rate of pay for the workweek in which the
17 employee uses paid sick time, whether or not the employee actually works overtime in that
18 workweek.”

19 33. Labor Code § 246(l)(2) further provides that paid sick time for non-exempt
20 employees be “calculated by dividing the employee’s total wages, not including overtime
21 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days
22 of employment.”

23 34. Defendants violated Labor Code § 246 by failing to pay sick pay at the regular
24 rate of pay. Plaintiff and Class Members routinely earned non-discretionary incentive wages,
25 including without limitation, award/contest incentives, thereby increasing their regular rates of
26 pay to amounts that were higher than their base rates of pay. However, whenever sick pay was
27 paid to Plaintiff and Class Members, it was paid at their base rates of pay rather than the correct,
28 higher regular rates of pay, as required under Labor Code § 246.

1 35. As a pattern and practice, Defendants regularly failed to pay Plaintiff and Class
2 Members their correct wages and accordingly owe waiting time penalties pursuant to Labor
3 Code § 203. Further, Plaintiff is informed and believes, and based thereon alleges, that such
4 failure to pay sick pay at the correct regular rate was willful, such that Plaintiff and Class
5 Members whose employment has separated are entitled to waiting time penalties pursuant to
6 Labor Code §§ 201-203.

7 36. Such a pattern, practice, and uniform administration of corporate policy regarding
8 illegal employee compensation as described herein is unlawful and creates an entitlement to
9 recovery by Plaintiff and Class Members identified herein, in a civil action, for the unpaid
10 balance of the full amount of damages and penalties, attorneys' fees, and costs of suit according
11 to the mandate of California Labor Code §§ 201-203 and 218.5.

12 **SECOND CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE § 226(a)**

14 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

15 37. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
16 though fully set for herein.

17 38. Defendants failed in its affirmative obligation to provide accurate itemized wage
18 statements in violation of Labor Code § 226(a). Plaintiff was not provided accurate itemized
19 wage statements required by Labor Code § 226(a). Specifically, Defendants violated Labor
20 Code § 226(a) as to Plaintiff and Class Members by not accurately identifying gross and net
21 wages earned and hourly rates of pay, as a result of Defendants' sick pay regular rate violations
22 alleged herein.

23 39. Such a pattern, practice and uniform administration of corporate policy as
24 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class
25 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,
26 including interest thereon, attorneys' fees, and costs of suit according to the mandate of
27 California Labor Code § 226.

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1 **THIRD CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE §§ 2698, *ET SEQ.***

3 **(BY PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL**
4 **DEFENDANTS)**

5 40. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
6 though fully set forth herein.

7 41. Plaintiff brings this cause of action as a proxy for the State of California and in
8 this capacity, seeks penalties on behalf of all Aggrieved Employees from September 18, 2022,
9 through the present, for Defendants' violations of Labor Code §§ 201-204, 226, and 246, arising
10 from Defendants' following misconduct as alleged above: (a) failure to pay Plaintiff and
11 Aggrieved Employees sick pay at the regular rate of pay, in violation of Labor Code §§ 201-204
12 and 246; and (b) failure to provide accurate itemized wage statements to Plaintiff and Aggrieved
13 Employees, in violation of Labor Code § 226.

14 42. Based on the above-stated Labor Code violations, Plaintiff is an "aggrieved
15 employee" as defined in Labor Code § 2699(a). As such, Plaintiff brings this cause of action on
16 behalf of the State of California for violations committed against all similarly situated Aggrieved
17 Employees of Defendants.

18 43. On or about September 18, 2023, Plaintiff sent written notice to the California
19 Labor & Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code
20 §§ 201-204, 226, and 246, pursuant to Labor Code § 2698, *et seq.* As of the date of the filing of
21 this Complaint, the LWDA has yet to provide notice to Plaintiff as to whether it intends to
22 investigate the Labor Code violations provided for in Plaintiff's written notice. In addition to the
23 LWDA, Plaintiff also sent her written notice to Defendants via certified mail according to Labor
24 Code § 2699.3.

25 44. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all
26 applicable civil penalties for Defendants' violations of Labor Code §§ 201-204, 226, and 246, for
27 the time period described above, on behalf of herself and other Aggrieved Employees.

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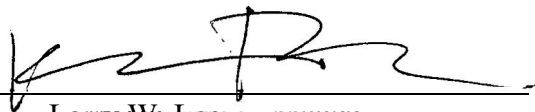
1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf
3 this suit is brought against Defendants, jointly and severally, as follows:

- 4 1. For an order certifying the proposed Class;
- 5 2. For an order appointing Plaintiff as the representative of the Class as described
6 herein;
- 7 3. For an order appointing Counsel for Plaintiff as Class counsel;
- 8 4. Upon the First Cause of Action, for damages and/or penalties pursuant to
9 California Labor Code §§ 201-203 and 246, and for costs and attorneys' fees;
- 10 5. Upon the Second Cause of Action, for penalties pursuant to California Labor
11 Code § 226, and for costs and attorneys' fees;
- 12 6. Upon the Third Cause of Action, for the full amount of civil penalties according
13 to the PAGA, California Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys'
14 fees;
- 15 7. On all causes of action, for attorneys' fees and costs as provided by California
16 Labor Code §§ 218.5 and 2699, and California Code of Civil Procedure § 1021.5; and
- 17 8. For such other and further relief the Court may deem just and proper.
- 18

19 DATED: November 28, 2023

DIVERSITY LAW GROUP, P.C.

20
21 By: 

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Kwanporn "Mai" Tulyathan

22 Attorneys for Plaintiff, the Class, and Aggrieved
23 Employees
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