

Daniel M. Hattis (SBN 232141)
Paul Karl Lukacs (SBN 197007)
HATTIS & LUKACS
1401 Twenty-First Street, Suite 400
Sacramento, CA 95811
Telephone: (425) 233-8650
Facsimile: (425) 412-7171
Email: dan@hattislaw.com
Email: pkl@hattislaw.com

Stephen P. DeNittis, Esq. (Pro Hac Vice forthcoming)
Shane T. Prince, Esq. (Pro Hac Vice forthcoming)
DENITTIS OSEFCHEN PRINCE, P.C.
5 Greentree Centre, Suite 410
525 Route 73 N.
Marlton, New Jersey 08057
Telephone: (856) 797-9951
Facsimile: (856) 797-9978
Email: sdenittis@denittislaw.com
Email: sprince@denittislaw.com

Attorneys for Plaintiffs and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL

FILED
San Francisco County Superior Court

JUL 18 2019

CLERK OF THE COURT
BY: *Sandra Schio*
Deputy Clerk

ANASTASHA BARBA and
BRENDA TRIPICCHIO,
for Themselves, as Private Attorney
Generals, and/or On Behalf Of All
Others Similarly Situated,

Plaintiffs,

v.

OLD NAVY, LLC;
OLD NAVY (APPAREL), LLC;
OLD NAVY HOLDINGS, LLC;
GPS SERVICES, INC.;
THE GAP, INC.;
and DOES 1-20, inclusive,

Defendants.

Case No.

CGC-19-577743

CLASS ACTION

COMPLAINT FOR:

1. Violation of Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*
2. Violation of False Advertising Law, Cal. Bus. & Prof. Code § 17500 *et seq.*
3. Violation of Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*
4. Permanent Public Injunctive Relief
5. Violation of New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, *et seq.*
6. Violation of the New Jersey Truth in Consumer Contract, Warranty and Notice Act, N.J.S.A. § 56:12-14, *et seq.*

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

1 Plaintiffs ANASTASHA BARBA and BRENDA TRIPICCHIO, individually, as private
 2 attorneys general, and/or on behalf of all others similarly situated, allege as follows, on
 3 personal knowledge and/or on the investigation of their counsel, against Defendants Old Navy,
 4 LLC, Old Navy (Apparel), LLC, Old Navy Holdings, LLC, GPS Services, Inc., and The Gap,
 5 Inc. (collectively, “Old Navy”), and Defendants Does 1-20, inclusive:

6 **I. INTRODUCTION AND SUMMARY**

7 1. Old Navy calls itself “one of the fastest-growing apparel brands in the U.S. and
 8 category leader in family apparel.” Almost all the items offered by Old Navy are branded as
 9 “Old Navy” products, and are exclusively offered by Old Navy. Approximately 80% of Old
 10 Navy’s \$7.2 billion annual U.S. sales are in its brick-and-mortar Old Navy and Old Navy
 11 Outlet stores, and the remaining 20% of its sales are online on its retail website.

12 2. For years, Old Navy has perpetrated a massive false discount advertising scheme
 13 across nearly all of its Old Navy-branded products, across all of its sales channels (i.e, in all of
 14 its brick-and-mortar Old Navy and Old Navy Outlet stores, and on the Old Navy website). Old
 15 Navy advertises perpetual or near perpetual discounts (typically a purported savings of 30% to
 16 60% off) from Old Navy’s self-created list prices for the products. Old Navy represents its list
 17 prices to be the “regular” and normal prices of the items, and the list prices function as
 18 reference prices from which the advertised discounts and percentage-off sales are calculated.

19 3. Old Navy’s discounts and reference prices are false, because Old Navy rarely if
 20 ever offers the products at the advertised list price. Old Navy invents inflated and fictitious list
 21 prices in order to enable it to advertise perpetual store-wide “sale” events and product discounts
 22 to induce customers to purchase its products. Old Navy’s marketing plan is to trick its
 23 customers into believing that its products are worth, and have a value equal to, the inflated list
 24 price, and that the lower advertised sale price represents a special bargain—when in reality and
 25 unbeknownst to the customer, the “sale” price is approximately equal to Old Navy’s usual and
 26 normal selling price for the product.

27 4. Old Navy’s nationwide fraudulent advertising scheme harms consumers like
 28 Plaintiffs Anastasha Barba and Brenda Tripicchio by causing them to pay more than they

otherwise would have paid and to buy more than they otherwise would have bought. Customers do not enjoy the actual discounts Old Navy represents to them, and the products are not in fact worth the inflated amount that Old Navy represents to them (i.e., the products are not actually worth the fictitious and invented list price).

5. Consequently, Plaintiffs bring this action each individually on their own behalves as deceived Old Navy customers; as private attorneys general seeking the imposition of public injunctive relief against Defendants; and as representative plaintiffs in this class action seeking, among other things, to recover damages and/or that Defendants be ordered to disgorge all revenues they have unjustly received from the proposed Class due to their intentional and unlawful pattern and practice of using false reference prices and false discounts.

II. PARTIES

6. Plaintiff Anastasha Barba is a citizen of the United States of America and a citizen of the State of California and an individual and a natural adult person who resides in Sacramento County, California.

7. Plaintiff Brenda Tripicchio is a citizen of the United States of America and a citizen of the State of New Jersey and an individual and a natural adult person who resides in Burlington County, New Jersey.

8. Defendant Old Navy, LLC, is a wholly-owned subsidiary of The Gap, Inc., and is a limited liability company chartered under the laws of the State of Delaware. Old Navy, LLC, currently has and at all relevant times in the past has had its headquarters, executive office, principal place of business, or nerve center in San Francisco, California.

9. Defendant Old Navy (Apparel), LLC, is a wholly-owned subsidiary of GPS Services, Inc., and is a limited liability company chartered under the laws of the State of California. Old Navy (Apparel), LLC, currently has and at all relevant times in the past has had its headquarters, executive office, principal place of business, or nerve center in San Francisco, California.

10. Defendant Old Navy Holdings, LLC, is a limited liability company chartered under the laws of the State of California. Old Navy Holdings, LLC, currently has and at all

1 relevant times in the past has had its headquarters, executive office, principal place of business,
2 or nerve center in San Francisco, California.

3 11. Defendant GPS Services, Inc., is a wholly-owned subsidiary of The Gap, Inc.,
4 and is a corporation chartered under the laws of the State of California. GPS Services, Inc.,
5 currently has and at all relevant times in the past has had its headquarters, executive office,
6 principal place of business, or nerve center in San Francisco, California.

7 12. Defendants Old Navy, LLC, Old Navy (Apparel), LLC, Old Navy Holdings,
8 LLC, GPS Services, Inc., and The Gap, Inc. (collectively, "Old Navy"), own and/or operate
9 approximately 1,100 brick-and-mortar Old Navy and Old Navy Outlet retail stores throughout
10 the United States, including California and New Jersey. Defendants also own and/or operate a
11 retail website <http://oldnavy.gap.com>, by which Defendants advertise and sell their goods, with
12 said website being regularly seen and used by consumers throughout the United States to
13 purchase goods from Old Navy.

14 13. Defendants Doe 1 through Doe 20, inclusive, aided and/or abetted Defendants
15 Old Navy, LLC, Old Navy (Apparel), LLC, Old Navy Holdings, LLC, GPS Services, Inc.,
16 and/or The Gap, Inc., in such a manner that Doe 1 through Doe 20, inclusive, are each directly,
17 contributorily, vicariously, derivatively and/or otherwise liable for the acts or omissions of Old
18 Navy pled herein. Plaintiffs are currently unaware of the true identities of Does 1 through Doe
19 20, inclusive; upon learning the true identities of Does 1 through Doe 20, inclusive, Plaintiffs
20 anticipate either freely amending the operative complaint or requesting leave from the Court to
21 amend the operative complaint.

22 **III. JURISDICTION AND VENUE**

23 14. **Subject Matter Jurisdiction.** This Court has subject matter jurisdiction over
24 this civil action pursuant to, among other bases, Section 10 of Article VI of the California
25 Constitution.

26 15. **Personal Jurisdiction.** This Court has personal jurisdiction over Defendants
27 pursuant to, among other bases, California Code of Civil Procedure Section 410.10 because: (1)
28 Defendants are headquartered in California and are authorized to do business and regularly

1 conduct business in California; (2) the claims alleged herein took place in California; and/or (3)
 2 Defendants have committed tortious acts within the State of California (as alleged, without
 3 limitation, throughout this Complaint).

4 16. Defendants own and/or operate approximately 96 brick-and-mortar Old Navy
 5 and Old Navy Outlet retail stores in California and operate the Old Navy website, by which Old
 6 Navy advertises and sells its goods, with said website being regularly seen by California
 7 consumers and being regularly used by California consumers to purchase goods from Old
 8 Navy.

9 **IV. REFERENCE PRICING OVERVIEW**

10 17. A “reference price” is a stated higher price presented alongside the retailer’s
 11 actual, and lower, offering price, which retailers use to convince consumers that they are
 12 getting a good deal. Retailers intend that consumers interpret the higher reference price to
 13 reflect the value of the product, such that the consumer believes he or she is getting a special
 14 bargain and paying less than what the product is worth and usually and normally sells for.

15 18. Over the past forty years, a substantial body of research on the effects of
 16 reference prices (also referred to in the relevant literature as “advertised reference prices,”
 17 “advertised former prices,” and “external reference prices”) shows that reference prices: (i)
 18 cause consumers to believe that the higher reference reflects the value of the product; (ii)
 19 increase consumers’ willingness to make the purchase; (iii) decrease consumers’ intentions to
 20 search for a lower price; and (iv) enable sellers that utilize reference prices to charge higher
 21 prices and make increased sales.

22 19. Consumers form an “internal reference price,” also known as an “expected
 23 price,” an “aspirational price” (a price the consumer would like to pay) or a “normative price”
 24 (a price that is “fair”). Consumers store and retrieve the “internal reference price” from memory
 25 to judge the merits of a specific price offer. Even where an advertised reference price is
 26 exaggerated and not itself completely believed, perceptions of value increase in comparison to
 27 a promotion with no advertised reference price. Thus, retailers’ use of reference prices
 28 influences consumers’ “internal reference price” and subsequently, increases consumers’

1 willingness to purchase the product.¹

2 20. When a reference price is bona fide and truthful, it may help consumers in
3 making informed purchasing decisions. In contrast, consumers are harmed when retailers
4 advertise their products with inflated and false reference prices, because the false reference
5 prices deceive consumers, deprive consumers of a fair opportunity to accurately evaluate the
6 offer, and result in purchasing decisions based on false pretenses.

7 21. False reference pricing causes consumers to pay more than they otherwise
8 would have paid for products. False reference pricing also fraudulently increases consumer
9 demand for products, enabling retailers to charge higher prices than they otherwise could have
10 charged.

11 22. Beyond the adverse impact upon consumers' welfare, the practice of employing
12 false reference pricing also negatively affects the integrity of competition in retail markets. A
13 retailer's use of false reference prices constitutes an unfair method of competition, injuring
14 honest competitors that sell the same or similar products, or otherwise compete in the same
15 market, using valid and accurate reference prices. Businesses who play by the rules—and the
16 investors in those businesses—are penalized if the unlawful advertising practices of their
17 competitors go unchecked.

18
19
20 ¹ See, e.g., Rajesh Chandrashekar & Dhruv Grewal, *Assimilation of Advertised Reference*
21 *Prices: The Moderating Role of Involvement*, 79 J. Retailing 53 (2003); Pilsik Choi & Keith S.
22 *Coulter, It's Not All Relative: The Effects of Mental and Physical Positioning of Comparative*
23 *Prices on Absolute Versus Relative Discount Assessment*, 88 J. Retailing 512 (2012); Larry D.
24 *Compeau & Dhruv Grewal, Comparative Price Advertising: An Integrative Review*, 17 J. Pub.
25 *Pol'y & Mktg.* 257 (1998); Larry D. Compeau, Dhruv Grewal & Rajesh Chandrashekar,
26 *Comparative Price Advertising: Believe It or Not*, 36 J. Consumer Aff. 284 (2002); David
27 *Friedman, Reconsidering Fictitious Pricing*, 100 Minn. L. Rev. 921 (2016); Dhruv Grewal &
28 *Larry D. Compeau, Consumer Responses to Price and its Contextual Information Cues: A*
Synthesis of Past Research, a Conceptual Framework, and Avenues for Further Research, in 3
Rev. of Mktg. Res. 109 (Naresh K. Malhotra ed., 2007); Daniel J. Howard & Roger A. Kerin,
Broadening the Scope of Reference Price Advertising Research: A Field Study of Consumer
Shopping Involvement, 70 J. Mktg. 185 (2006); Aradhna Krishna, Richard Briesch, Donald R.
Lehmann & Hong Yuan, A Meta-Analysis of the Impact of Price Presentation on Perceived
Savings, 78 J. Retailing 101 (2002); Balaji C. Krishnan, Sujay Dutta & Subhash Jha,
Effectiveness of Exaggerated Advertised Reference Prices: The Role of Decision Time
Pressure, 89 J. Retailing 105 (2013); and Tridib Mazumdar, S. P. Raj & Indrahit Sinha,
Reference Price Research: Review and Propositions, 69 J. Mktg. 84 (2005).

V. **LAWS PROHIBITING FALSE REFERENCE PRICING**

23. The consumer protection laws of California, like those of other states as well as federal regulations, prohibit the advertising of false former prices and deceptive claims of percentage-off discounts and specified dollar discounts that are based on inflated and fictitious “regular” prices.

24. California’s Unfair Competition Law and False Advertising Law generally forbid unfair business practices and false advertising (i.e., Cal. Bus. and Prof. Code §§ 17200 *et seq.* and 17500 *et seq.*). Regarding sales to consumers for household purposes, the California Consumers Legal Remedies Act prohibits “[m]aking false or misleading statements of fact concerning reasons for, existence of, or amounts of, price reductions.” Cal. Civ. Code § 1770(a)(13).

25. California law specifically recognizes the abuses which can flow from the use of fictitious former prices and false claims of discounts based on such prices. *See e.g. Hinojos v. Kohl’s Corp.*, 718 F.3d 1098, 1101 (9th Cir. 2013):

Most consumers have, at some point, purchased merchandise that was marketed as being “on sale” because the proffered discount seemed too good to pass up. Retailers, well aware of consumers’ susceptibility to a bargain, therefore have an incentive to lie to their customers by falsely claiming that their products have previously sold at a far higher “original” price in order to induce customers to purchase merchandise at a purportedly marked-down “sale” price. Because such practices are misleading – and effective – the California legislature has prohibited them.

See also Hansen v. Newegg.com Americas, Inc., 25 Cal.App.5th 714, 730 (2018):

Our Legislature has adopted multiple statutes that specifically prohibit the use of deceptive former price information and misleading statements regarding the amount of a price reduction. ... These statutes make clear that ... our Legislature has concluded “reasonable people can and do attach importance to [a product’s former price] in their purchasing decisions.” (alterations in original) (quoting *Kwikset Corp. v. Superior Court*, 246 P.3d 877, 892 (Cal. 2011)).

26. Other states, including New Jersey, have similar laws forbidding deceptive advertising including advertising false former prices and false discounts. *See e.g.*, N.J.A.C. § 13:45A-9.6 (“Pricing; prohibition on fictitious pricing and methods of substantiation”) and § 13:45A-9.3(a)(3) (additional requirements regarding items with a price of less than \$100); New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, *et seq.*; and New Jersey Truth in Consumer

1 Contract, Warranty and Notice Act, N.J.S.A. § 56:12-16, *et seq.*

2 27. Federal regulations also prohibit false advertising of false former prices and
3 false discounts. The Federal Trade Commission ("FTC") describes false former price schemes,
4 similar to Old Navy's in all material respects, as deceptive:

5 (a) One of the most commonly used forms of bargain advertising is to offer a
6 reduction from the advertiser's own former price for an article. If the former
7 price is the actual, bona fide price at which the article was offered to the public
8 on a regular basis for a reasonably substantial period of time, it provides a
9 legitimate basis for the advertising of a price comparison. Where the former
10 price is genuine, the bargain being advertised is a true one. If, on the other hand,
the former price being advertised is not bona fide but fictitious—for example,
where an artificial, inflated price was established for the purpose of enabling the
subsequent offer of a large reduction—the "bargain" being advertised is a false
one; the purchaser is not receiving the unusual value he expects. In such cases,
the "reduced price" is, in reality, probably just the seller's regular price.

11 (b) A former price is not necessarily fictitious merely because no sales at the
12 advertised price were made. The advertiser should be especially careful,
13 however, in such a case, that the price is one at which the product was openly
14 and actively offered for sale, for a reasonably substantial period of time, in the
recent, regular course of his business, honestly and in good faith -- and, of
course, not for the purpose of establishing a fictitious higher price on which a
deceptive comparison might be based...

15 (c) The following is an example of a price comparison based on a fictitious
16 former price. John Doe is a retailer of Brand X fountain pens, which cost him \$5
17 each. His usual markup is 50 percent over cost; that is, his regular retail price is
18 \$7.50. In order subsequently to offer an unusual "bargain", Doe begins offering
19 Brand X at \$10 per pen. He realizes that he will be able to sell no, or very few,
pens at this inflated price. But he doesn't care, for he maintains that price for
only a few days. Then he "cuts" the price to its usual level – \$7.50 – and
advertises: "Terrific Bargain: X Pens, Were \$10, Now Only \$7.50!" This is
obviously a false claim. The advertised "bargain" is not genuine.

20 (d) Other illustrations of fictitious price comparisons could be given. An
21 advertiser might use a price at which he never offered the article at all; he might
22 feature a price which was not used in the regular course of business, or which
23 was not used in the recent past but at some remote period in the past, without
making disclosure of that fact; he might use a price that was not openly offered
to the public, or that was not maintained for a reasonable length of time, but was
immediately reduced.

24 16 C.F.R. § 233.1 (FTC Pricing Guides: Former Price Comparisons) (emphasis added).

1 **VI. FACTUAL ALLEGATIONS OF OLD NAVY'S NATIONWIDE SCHEME**

2 28. Old Navy, which is headquartered in San Francisco, California, is a popular
3 retailer which calls itself "one of the fastest-growing apparel brands in the U.S. and category
4 leader in family apparel."

5 29. Old Navy currently operates approximately 1,100 brick-and-mortar Old Navy
6 and Old Navy Outlet retail stores throughout the United States, including 96 in California and
7 at least 31 in New Jersey.

8 30. Old Navy also operates a retail website at <http://oldnavy.gap.com>, by which Old
9 Navy advertises and sells its goods, which is regularly seen and used to purchase goods from
10 Old Navy by consumers throughout the United States, including California and New Jersey.

11 31. Almost all the items offered by Old Navy are branded as "Old Navy" products
12 and are exclusively offered by Old Navy in its retail stores and on its website. I.e., the products
13 offered by Old Navy are not offered by, and are not available from, any other retailer.

14 32. Approximately 80% of Old Navy's \$7.2 billion annual U.S. sales are in its
15 brick-and-mortar Old Navy and Old Navy Outlet stores, and the remaining 20% of its sales are
16 online on its retail website.

17 33. For years, Old Navy has perpetrated a massive false reference pricing scheme
18 across almost all of its products, both in its brick-and-mortar stores and on its website. Old
19 Navy advertises perpetual or near perpetual discounts (typically a purported savings of 30% to
20 60% off) from Old Navy's self-created list prices for the products. Old Navy represents its list
21 prices to be the "regular" and normal prices of its products, and the list prices function as
22 reference prices from which the advertised discounts and percentage-off sales are calculated.

23 34. Old Navy's discounts and reference prices are false, because Old Navy rarely if
24 ever offers the products at the advertised list price. Old Navy invents inflated and fictitious list
25 prices out of thin air in order to enable it to advertise perpetual store-wide "sale" events and
26 product discounts to induce customers to purchase its products. Old Navy's marketing plan is
27 to trick its customers into believing that its products are worth and have a value equal to the
28 inflated list price, and that the lower advertised sale price represents a special bargain—when in

1 reality and unbeknownst to the customer, the “sale” price is approximately equal to Old Navy’s
2 usual and normal selling price for the product.

3 35. In short, Old Navy promises a bargain to its customers in which the customer
4 will receive a product worth the reference price printed in its advertising and on the product
5 price tag, and in which the customer will receive a monetary savings equal to the difference
6 between the reference price and the purchase price. In reality, however, the true value of the
7 product is less than the false and inflated reference price, and customers do not save the amount
8 of money advertised and represented by Old Navy.

9 36. For most days of the year, Old Navy advertises store-wide and website-wide
10 sales of most of its Old Navy-branded products at a fixed percentage-off (typically ranging
11 from 30% to 60% off) or at a specified dollar discount from an advertised—and self-created—
12 list price. The specific amounts of the dollar discount or percentage-off may slightly change
13 over time, but the existence of a significant discount is perpetual. Products are rarely if ever
14 offered, in any Old Navy sales channel, at the list price.

15 37. Below are photographs taken at a San Francisco Old Navy store on March 29,
16 2019, which are representative of in-store advertising at a typical store “sale” event:
17
18
19
20
21
22
23
24
25
26
27
28

1 **“Old Navy” Store, San Francisco, CA on March 28, 2019**



19 38. In this example, Old Navy advertises a store-wide “sale into spring” event with
20 “All Tees, Dresses & Jeans 40% off.” Signage on the racks above the clothing items
21 prominently advertises “SALE” and “NOW 40% off”, with the “NOW” in bold red lettering.
22 The signage also explicitly represents the list price as being the “REG.” (i.e., regular) price for
23 the clothing items. The temporal nature of the advertising (e.g., the products are “NOW” on
24 sale from the “REG.” price) is intended by Old Navy to trick its customers into believing that
25 the products have a value of, and are usually sold at, the list prices printed on the product tags
26 and on the in-store signage, and that the purported “sale” price represents a special and limited-
27 time bargain.

28 39. In fact, the price and discount representations on the signage and on the product

1 price tags are false and misleading, because the purportedly “sale” prices are in fact
2 approximately equal to Old Navy’s usual selling prices for the items and the products are not in
3 fact worth the higher list price as Old Navy falsely represents.

4 40. Plaintiffs’ counsel has been monitoring Old Navy’s website since October 15,
5 2017, and has assembled a comprehensive historical database of daily prices and time-stamped
6 screenshots of approximately 5.1 million daily offerings for approximately 41,605 products
7 over this nearly three-year period.

8 41. Plaintiffs’ counsel’s data demonstrates that Old Navy’s advertised store-wide
9 “sale” events and advertised percentage-off and dollar discounts are false, and that its list prices
10 (i.e., reference prices) from which the discounts are calculated are false and inflated. For many
11 products, Old Navy never or almost never offers the products at the list price. For the rest of its
12 products, Old Navy typically offers the products at the list price less than ten percent of the
13 time.

14 42. Old Navy’s false discounting scheme is for all intents and purposes identical to
15 that which the FTC Pricing Guides describe as false and misleading. *See* 16 C.F.R. § 233.1
16 “Former Price Comparisons.”

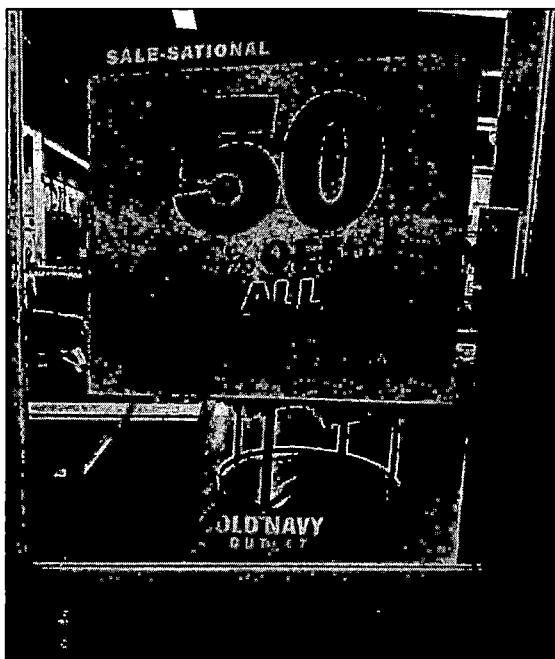
17 43. Based on investigation of Plaintiffs’ counsel, on those rare occasions that Old
18 Navy offers its near-perpetually discounted products at the list price, it does so in bad faith,
19 solely for the purpose of “establishing” its list price to attempt to exculpate itself from legal
20 liability for its illegal pricing scheme. It is Old Navy’s intent to sell few if any products at list
21 price, and in fact Old Navy sells few if any products at list price.

22 44. Based on investigation of Plaintiffs’ counsel, brick-and-mortar Old Navy
23 mainline stores and Old Navy Outlet stores are substantially identical and are for all intents and
24 purposes the same. The mainline and outlet stores typically advertise the same store-wide
25 “sale” events, and consistently offer identical products with identical list prices at substantially
26 the same sales prices. In addition, the Old Navy mainline stores and the Old Navy Outlet stores
27 have substantially the same physical layout and offer substantially the same the customer
28 experience. Plaintiffs’ counsel’s findings are consistent with the findings of investigative

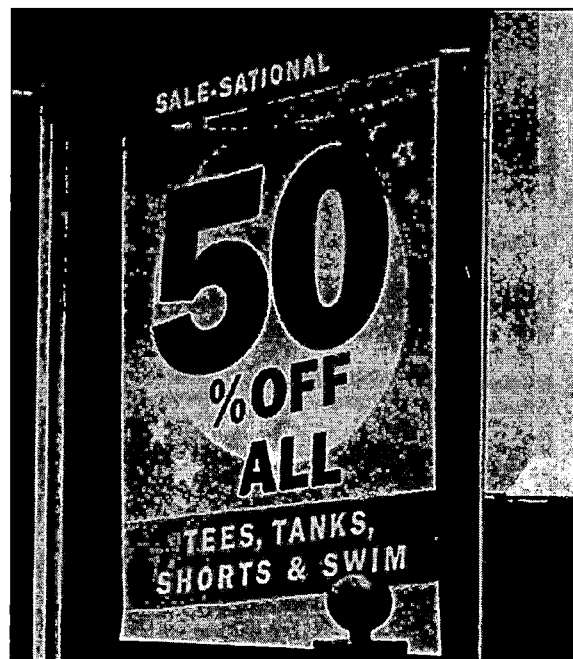
1 journalists in Pittsburg, Pennsylvania, who compared products and prices at Old Navy and Old
2 Navy Outlet stores and found them to be the same. *See* Highfield, David, “Outlet v. Retail
3 Shopping: Experts Compare, Contrast Quality & Price,” CBS Pittsburgh, February 19, 2016.²

4 45. Below are two photographs which illustrate how the mainline Old Navy stores
5 and the Old Navy Outlet stores advertise the identical sales events and utilize the same sale
6 event signage. The left photograph was taken on May 22, 2019, of the window signage at the
7 Old Navy Outlet store in Auburn, Washington; the right photograph was taken the next day,
8 May 23, 2019, of the window signage at the Old Navy store in Marlton, New Jersey. The
9 signage is virtually identical, and advertises the same “SALE-SATIONAL” store event during
10 which Old Navy is purportedly offering “50% OFF ALL TEES, TANKS, SHORTS & SWIM”:

11 **“Old Navy Outlet” Store**
12 **Auburn, WA on May 22, 2019**



11 **“Old Navy” Store**
12 **Marlton, NJ on May 23, 2019**



24 46. Substantially the same products are available and advertised at “50% OFF” at,
25 simultaneously, both this mainline Old Navy store and this Old Navy Outlet store, which are
26 across the country from each other. But in fact, the advertised discount at both stores of “50%
27

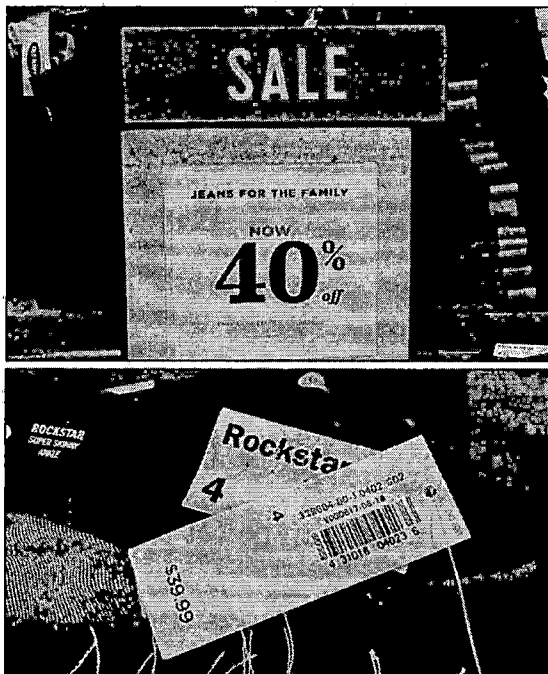
28 ² Available at <https://pittsburgh.cbslocal.com/2016/02/19/outlets-vs-retail-shopping-experts-compare-contrast-quality-price/>.

OFF” is false and misleading, because the products are not in fact discounted 50% from their normal and usual prices. Old Navy consistently and perpetually offers the products at a significant discount from their inflated and fictitious list prices at both the Old Navy store and the Old Navy Outlet store.

47. Also, based on investigation of Plaintiffs’ counsel, Old Navy offers the same products and pricing both online and in-store. Old Navy offers identical products with identical list prices at substantially the same sales prices—and advertised with the same purported discounts—in all of its sales channels (i.e., online on the Old Navy website, and in-store at the Old Navy and Old Navy Outlet brick-and-mortar stores). The photographs below demonstrate how Old Navy’s list prices, sales prices, and advertised purported discounts are substantially the same both online and in-store:

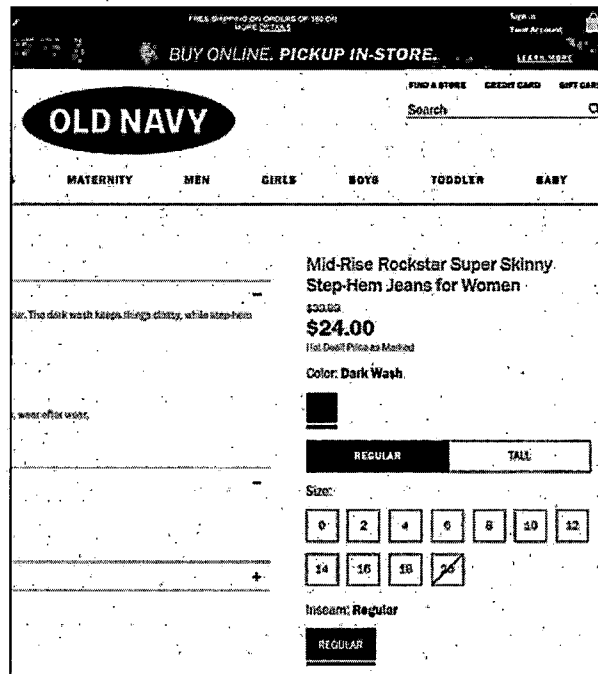
**“Old Navy” Store
San Francisco on May 22, 2019**

Mid-Rise Rockstar Super Skinny Step-Hem Jeans
Sale Price: \$24.00; List Price \$39.99



**Old Navy Website
May 22, 2019**

Mid-Rise Rockstar Super Skinny Step-Hem Jeans
Sale Price: \$24.00; List Price \$39.99



48. The left photograph was taken at the Old Navy mainline store in San Francisco, California, on May 22, 2019. It shows Old Navy was offering the Mid-Rise Rockstar Super

1 Skinny Step-Hem Jeans “NOW 40% off” from the “REG.” price of \$39.99. The purported
2 regular price, i.e., the list price, of \$39.99 is printed on both the signage and on the price tag
3 attached to the jeans. The right screenshot was taken the same day on May 22, 2019, on the Old
4 Navy website on the product webpage for the same pair of jeans. On the website, Old Navy
5 advertises the identical \$39.99 reference price (with a strike-through), and advertises the
6 identical \$24.00 “sale” price (calling it a “Hot Deal!”).

7 49. The price and discount representations regarding the jeans on the in-store
8 signage and price tag, and on the product webpage on the Old Navy website, are false and
9 misleading because the purported “sale” price is in fact approximately equal to Old Navy’s
10 usual selling price for the jeans, and the jeans are not in fact worth, and do not have a value
11 equal to, the \$39.99 list price.

12 50. Below is another example demonstrating how Old Navy’s list prices, sales
13 prices, and advertised purported discounts are substantially the same both online and in-store:
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**"Old Navy" Store
Bellevue, WA on April 19, 2019**

Flutter-Sleeve Jersey Swing Dress
Sale Price: \$15.00; List Price \$29.99



**Old Navy Website
April 19, 2019**

Flutter-Sleeve Jersey Swing Dress
Sale Price: \$15.00; List Price \$29.99



51. The left photograph was taken at the Old Navy mainline store in Bellevue, Washington, on April 19, 2019. It shows Old Navy was offering the Flutter-Sleeve Jersey Swing Dress "NOW 50% OFF" from the reference price of \$29.99 printed on the tag. The right screenshot was taken the same day on April 19, 2019, on the Old Navy website on the product webpage for the same dress. On the website, Old Navy advertises the identical \$29.99 list price (with a strike-through), and offers the identical stated "50% Off" discount and \$15.00 "sale" price.

52. The price and discount representations regarding the dress on the in-store signage and price tag, and on the product webpage on the Old Navy website, are false and misleading because the purported "50% Off" sale price is in fact approximately equal to Old

1 Navy's usual selling price for the dress, and the dress is not in fact worth, and does not have a
2 value equal to, the \$29.99 list price.

3 53. Old Navy perpetrates this false discount and false reference price scheme across
4 all of its retail channels and across nearly all of its products in order to induce customers to
5 purchase its products.

6 54. As a direct and proximate result of Old Navy's acts and omissions, all
7 consumers who have purchased a product from Old Navy that was advertised with a false
8 reference price and/or false discount have been harmed, have suffered an injury-in-fact, and
9 have lost money or property.

10 55. Old Navy's false advertising scheme has harmed all of its customers by
11 fraudulently increasing demand for its products, thereby shifting the demand curve and
12 enabling Old Navy to charge its customers more than it otherwise could have charged and to
13 generate more sales than it otherwise would have generated.

14 56. Customers did not enjoy the actual discounts Old Navy represented to them, and
15 the products were not in fact worth the inflated amount that Old Navy represented to them (i.e.,
16 the products were not actually worth the fictitious and invented list price).

17 57. The false or misleading nature of Old Navy's reference prices and purported
18 discounts were at all relevant times masked or concealed or hidden such that an ordinary
19 consumer exercising reasonable care under all the circumstances would not have known of or
20 discovered their false or misleading nature.

21 58. Old Navy continues to advertise false reference prices and false percentage-off
22 and dollar discounts to this day. There is no reason to believe that Old Navy will voluntarily
23 and permanently cease its unlawful practices. Moreover, in the unlikely event that Old Navy
24 were to cease its unlawful practices, Old Navy can and/or is likely to recommence these
25 unlawful practices.

26 59. In acting toward consumers and the general public in the manner alleged herein,
27 Old Navy acted with and was guilty of malice, fraud, and/or oppression and/or acted in a
28 manner with a strong and negative impact upon Plaintiffs, the Class and the public.

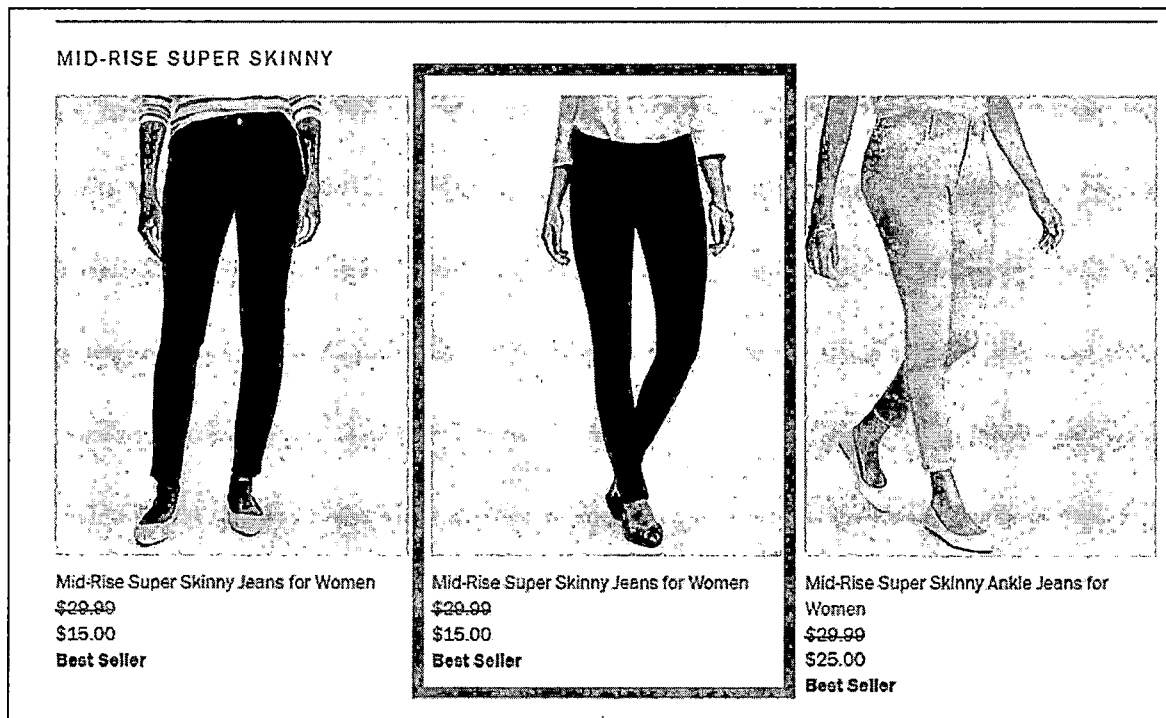
VII. PLAINTIFFS' FACTUAL ALLEGATIONS

Plaintiff Anastasha Barba

60. Plaintiff Anastasha Barba is, and at all relevant times has been, a California resident.

61. Ms. Barba has been a regular shopper at Old Navy for many years. Ms. Barba has made many purchases on Old Navy's website. For example, on March 5, 2019, Ms. Barba visited the Old Navy website (<http://oldnavy.gap.com>) to shop for clothing items. That day, Ms. Barba viewed and ultimately purchased several items from the Old Navy website.

62. **Jeans.** For example, while browsing the Old Navy website, Ms. Barba viewed webpages advertising the Mid-Rise Super Skinny Jeans for Women ("Jeans"), Item #715218002. Below is partial screenshot of a webpage viewed by Ms. Barba on March 5, 2019; the particular Jeans she purchased are identified in an added red box:



63. On this Jeans webpage, Ms. Barba viewed several representations, including a reference price and a sale price for the Jeans. Ms. Barba viewed a black strike-through reference price of "\$29.99". Directly below the reference price, Ms. Barba viewed the sale

1 price in red text "\$15.00." Directly below the sale price, Ms. Barba viewed the phrase "Best
2 Seller."

3 64. Ms. Barba clicked on the Jeans product listing on the webpage, and then viewed
4 a product webpage for the Jeans, which contained the same strike-through, sale price, and "Best
5 Seller" representations.

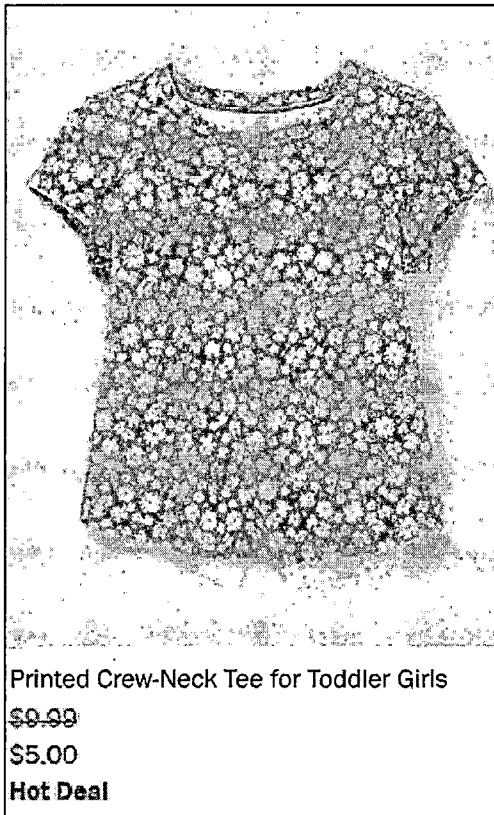
6 65. Relying on Old Navy's representations, Ms. Barba reasonably believed that
7 these purportedly best-selling Jeans were normally offered and sold by Old Navy for the \$29.99
8 list price. Ms. Barba reasonably believed that the Jeans were thereby worth and had a value of
9 \$29.99. Ms. Barba reasonably believed that the advertised sale price of \$15.00 represented a
10 special bargain, where Old Navy was temporarily offering the Jeans at 50% off the regular and
11 normal selling price of \$29.99. Relying on Old Navy's representations, Ms. Barba selected the
12 size of the Jeans and then added the Jeans to her online shopping cart.

13 66. However, Old Navy's representations and advertised discounts were false and
14 deceptive. In reality, and unbeknownst to Ms. Barba, Old Navy had offered these Jeans at the
15 purported regular price of \$29.99 for only 12 out of the past 486 days prior to her purchase on
16 March 5, 2019. I.e., from November 4, 2017 through March 4, 2019, Old Navy had previously
17 offered the Jeans at the purported "regular" price only 2.47% of the time. And after Ms.
18 Barba's purchase on March 5, 2019, through to the present day, Old Navy *never* offered the
19 Jeans at the \$29.99 purported regular price. In fact, on June 5, 2019, Old Navy raised the
20 purported regular price of the product to \$34.99, despite this new reference price having no
21 foundation whatsoever—consistent with Old Navy's policy of inventing reference prices out of
22 thin air.

23 67. Old Navy had fooled Ms. Barba. The Jeans were not in fact worth the \$29.99
24 price that Old Navy had led her to believe. Contrary to Old Navy's representations, Ms. Barba
25 did not receive any deal at all. The \$15.00 price she paid was in fact simply Old Navy's usual
26 and normal selling price for the Jeans.

27 68. **Toddler Tee.** In the same web browsing session, Ms. Barba also viewed
28 webpages advertising the Printed Crew-Neck Tee for Toddler ("Toddler Tee"), Item

1 #392277142. Below is partial screenshot of a webpage of the Toddler Tee viewed by Ms.
 2 Barba on March 5, 2019:



17 69. On this Toddler Tee webpage, Ms. Barba viewed several representations,
 18 including a reference price and a sale price for the Toddler Tee. Ms. Barba viewed a black
 19 strike-through reference price of “\$9.99.” Directly below the reference price, Ms. Barba viewed
 20 the sale price in red text “\$5.00”. Directly below the sale price, Ms. Barba viewed the phrase
 21 “Hot Deal”.

22 70. Ms. Barba clicked on the Toddler Tee product listing on the webpage, and then
 23 viewed a product webpage for the Toddler Tee, which contained the same strike-through, sale
 24 price, and “Hot Deal” representations.

25 71. Relying on Old Navy’s representations, Ms. Barba reasonably believed that the
 26 \$5.00 sale price for the Toddler Tee represented a special “Hot Deal,” and that the Toddler Tee
 27 was normally offered and sold by Old Navy for the \$9.99 list price. Ms. Barba reasonably
 28 believed that the Toddler Tee was thereby worth and had a value of \$9.99. Ms. Barba

1 reasonably believed that the advertised sale price of \$5.00 represented a special bargain (a “Hot
2 Deal”), where Old Navy was temporarily offering the Toddler Tee at 50% off the regular and
3 normal selling price of \$9.99. Relying on Old Navy’s representations, Ms. Barba selected the
4 size of the Toddler Tee and then added it to her online shopping cart.

5 72. However, Old Navy’s representations and advertised discounts were false and
6 deceptive. In reality, and unbeknownst to Ms. Barba, Old Navy had *never* offered the Toddler
7 Tee at the purported regular price of \$9.99 in the prior 60 days. And after Ms. Barba’s purchase
8 on March 5, 2019, through to the present day, Old Navy continued to *never* offer the Toddler
9 Tee at the \$9.99 reference price.

10 73. Old Navy had fooled Ms. Barba. The Toddler Tee was not in fact worth the
11 \$9.99 price that Old Navy had led her to believe. Contrary to Old Navy’s representations, Ms.
12 Barba did not receive any deal at all, let alone a “Hot Deal.” The \$5.00 price she paid was in
13 fact simply Old Navy’s usual and normal selling price for the Toddler Tee.

14 74. After Ms. Barba added these items to her online shopping cart she went through
15 Old Navy’s online checkout process, where Old Navy made additional false discount
16 representations. For example, Old Navy represented that she was enjoying a “My Savings”
17 dollar amount which was calculated by totaling the false discounts from the inflated reference
18 prices for the items in her cart. Relying on Old Navy’s misrepresentations, Ms. Barba
19 purchased the products.

20 75. Old Navy’s advertised false reference prices and false discounts were material
21 misrepresentations and inducements to Ms. Barba’s purchases.

22 76. Ms. Barba reasonably relied on Old Navy’s material misrepresentations. If Ms.
23 Barba had known the truth, she would have acted differently and/or would not have purchased
24 the Jeans and the Toddler Tee from Old Navy.

25 77. These misrepresentations by Old Navy are material misrepresentations, in that
26 they are the type of representations on which an ordinary prudent person would rely upon in
27 conducting his or her affairs.

28 78. As a direct and proximate result of Old Navy’s acts and omissions, Ms. Barba

1 was harmed, suffered an injury-in-fact, and lost money or property.

2 79. Old Navy's false advertising harmed Ms. Barba by causing her to pay more than
3 she otherwise would have paid and to buy more than she otherwise would have bought. Ms.
4 Barba did not enjoy the stated discounts from the purported regular price that Old Navy
5 represented to her, and the products were not, in fact, worth as much as Old Navy represented
6 them to be worth (i.e., the products were not worth the inflated and fictitious reference price).

7 80. Ms. Barba has a legal right to rely now, and in the future, on the truthfulness and
8 accuracy of Old Navy's representations regarding its advertised reference prices and discounts.

9 81. Ms. Barba was a regular shopper on Old Navy's website, and would likely shop
10 there again if she could have confidence regarding the truth of Old Navy's prices and the value
11 of its products.

12 82. Ms. Barba will be harmed if, in the future, she is left to guess as to whether Old
13 Navy is providing a legitimate sale or not, and whether products are actually worth the amount
14 that Old Navy is representing.

15 83. If Ms. Barba were to purchase again from Old Navy without Old Navy having
16 changed its unlawful and deceptive conduct alleged herein, Ms. Barba would be harmed on an
17 ongoing basis and/or would be harmed once or more in the future

18 **Plaintiff Brenda Tripicchio**

19 84. Plaintiff Brenda Tripicchio is, and at all relevant times has been, a New Jersey
20 resident.

21 85. Ms. Tripicchio has been a regular shopper at Old Navy for many years. She has
22 made many purchases in Old Navy's brick-and-mortar stores, including in Old Navy mainline
23 stores and in Old Navy Outlet stores.

24 86. For example, on March 24, 2019, Ms. Tripicchio visited the Old Navy Outlet
25 store located at 100 Premium Outlets Drive, Blackwood, New Jersey. While at the store, Ms.
26 Tripicchio saw prominent signs that advertised significant sales and percentage-off discounts
27 throughout the store. Ms. Tripicchio purchased several items that day.

28 87. **Dress.** For example, Ms. Tripicchio saw and purchased a Jersey Swing Dress for

1 Women ("Dress"), Item #390760051. Ms. Tripicchio viewed signage adjacent to the Dress
2 advertising that the Dress was on sale for \$20.00. Ms. Barba viewed the price tag attached to
3 the Dress, which showed a price of \$29.99.

4 88. Relying on Old Navy's representations, Ms. Tripicchio reasonably believed that
5 the Dress was normally offered and sold by Old Navy for the \$29.99 list price. Ms. Tripicchio
6 reasonably believed that the Dress was thereby worth and had a value of \$29.99. Ms. Tripicchio
7 reasonably believed that the advertised sale price of \$20.00 represented a special bargain,
8 where Old Navy was temporarily offering the Dress for \$9.99 off (i.e., 33% off) of the regular
9 and normal selling price of \$29.99. Relying on Old Navy's representations, Ms. Tripicchio
10 purchased the Dress.

11 89. However, Old Navy's \$29.99 reference price and advertised discounts of \$9.99
12 off and 33% off were false and deceptive. In reality, and unbeknownst to Ms. Tripicchio, Old
13 Navy had rarely if ever offered the Dress for \$29.99.

14 90. Old Navy had fooled Ms. Tripicchio. The Dress was not in fact worth the \$29.99
15 price that Old Navy had led her to believe. Contrary to Old Navy's representations, Ms.
16 Tripicchio did not receive any deal at all. The \$20.00 price she paid for the Dress was in fact
17 approximately equal to Old Navy's usual and normal selling price for the Dress.

18 91. **Hoodie.** Also while at the Old Navy Outlet on March 24, 2019, Ms. Tripicchio
19 saw and purchased a Zip-Front Hoodie for Boys ("Hoodie"), Item #287720301. Ms. Tripicchio
20 viewed signage adjacent to the Hoodie advertising that the Hoodie was "20% Off." Ms.
21 Tripicchio viewed the price tag attached to the Hoodie, which showed a price of \$19.99.

22 92. Relying on Old Navy's representations, Ms. Tripicchio reasonably believed that
23 the Hoodie was normally offered and sold by Old Navy for the \$19.99 list price. Ms. Tripicchio
24 reasonably believed that the Hoodie was thereby worth and had a value of \$19.99. Ms.
25 Tripicchio reasonably believed that the advertised savings of 20% off represented a special
26 bargain, where Old Navy was temporarily offering the Hoodie for \$4 off of the regular and
27 normal selling price of \$19.99. Relying on Old Navy's representations, Ms. Tripicchio
28 purchased the Hoodie.

93. However, Old Navy's \$19.99 reference price and advertised discounts of 20% off and \$4.00 off were false and deceptive. In reality, and unbeknownst to Ms. Tripicchio, Old Navy had rarely if ever offered the Hoodie for \$19.99.

94. Old Navy had fooled Ms. Tripicchio. The Hoodie was not in fact worth the \$19.99 price that Old Navy had led her to believe. Contrary to Old Navy's representations, Ms. Tripicchio did not receive any deal at all. In fact, the \$15.99 price Ms. Tripicchio paid for the supposedly discounted Hoodie was *higher* than the true regular selling price for the Hoodie.

95. On the paper receipt Ms. Tripicchio received at the cash register and which Ms. Tripicchio viewed, Old Navy made additional product pricing and value representations regarding the Dress and the Hoodie. Old Navy printed on the receipt that the price for the Dress was "1 @ 29.99", and directly below that Old Navy printed "Item Discount. -9.99". Old Navy printed on the receipt that the price for the Hoodie was "1 @ 19.99", and directly below that Old Navy printed "Item Discount 20% -4.00". At the bottom of the receipt, Old Navy printed in large text (which was nearly twice the font size of the text on the rest of the receipt) the phrase "You Saved XXX.XX", where XXX.XX was the total dollar amount of all the purported "Item Discount[s]" for the products she purchased that day, including the \$9.99 discount she purportedly received on the Dress and the \$4.00 discount she purportedly received on the Hoodie. These representations on the receipt further indicated to Ms. Tripicchio that the Dress had a value of, and was normally and usually offered for, \$29.99, and that the lower \$20.00 price she paid was a bargain price after Old Navy applied a special \$9.99 discount. These representations on the receipt likewise indicated to Ms. Tripicchio that the Hoodie had a value of, and was normally and usually offered for, \$19.99, and that the lower \$15.99 price she paid was a bargain price after Old Navy applied a special \$4.00 (20% off) discount.

96. Old Navy's advertised false reference prices and advertised false discounts were material misrepresentations and inducements to Ms. Tripicchio's purchases.

97. Ms. Tripicchio reasonably relied on Old Navy's material misrepresentations. If Ms. Tripicchio had known the truth, she would have acted differently and/or would not have purchased the products from Old Navy.

1 98. These misrepresentations by Old Navy are material misrepresentations, in that
2 they are the type of representations on which an ordinary prudent person would rely upon in
3 conducting his or her affairs.

4 99. As a direct and proximate result of Old Navy's acts and omissions, Ms.
5 Tripicchio was harmed, suffered an injury-in-fact, and lost money or property.

6 100. Old Navy's false advertising harmed Ms. Tripicchio by causing her to pay more
7 than she otherwise would have paid and to buy more than she otherwise would have bought.
8 Ms. Tripicchio did not enjoy the stated discounts from the purported "regular" price that Old
9 Navy represented to her (i.e., the reference price), and the products were not, in fact, worth as
10 much as Old Navy represented them to be worth (i.e., the products were not worth the inflated
11 and fictitious reference price).

12 101. Ms. Tripicchio has a legal right to rely now, and in the future, on the truthfulness
13 and accuracy of Old Navy's representations regarding its advertised reference prices and
14 discounts.

15 102. Ms. Trippichio was a regular shopper at Old Navy, and would likely shop there
16 again if she could have confidence regarding the truth of Old Navy's prices and the value of its
17 products.

18 103. Ms. Trippichio will be harmed if, in the future, she is left to guess as to whether
19 Old Navy is providing a legitimate sale or not, and whether products are actually worth the
20 amount that Old Navy is representing.

21 104. If Ms. Trippichio were to purchase again from Old Navy without Old Navy
22 having changed its unlawful and deceptive conduct alleged herein, Ms. Trippichio would be
23 harmed on an ongoing basis and/or would be harmed once or more in the future.

24 105. The deceptive practices and policies alleged herein, and experienced directly by
25 Plaintiffs Barba and Tripicchio, are not limited to any single product or group of products.
26 Rather, Old Navy's deceptive advertising, sales practices, and printed sales receipts, which
27 advertise and state false "regular" prices and false percentage-off and dollar discounts, were,
28 and continue to be, systematic and pervasive across nearly all of Old Navy's products across all

of Old Navy's sales channels.

VIII. CLASS ACTION ALLEGATIONS

106. Plaintiffs bring this class-action lawsuit on behalf of themselves and the members of the following class (the "Nationwide Online Class"):

All persons in the United States of America who, within the applicable limitations period, purchased from the Old Navy website one or more products which was advertised or promoted by displaying or disseminating a reference price or discount.

107. Plaintiff Brenda Tripicchio also brings this class-action lawsuit on behalf of herself and the members of the following class (the "New Jersey In-Store Class"):

All persons in the State of New Jersey who, within the applicable limitations period, purchased from an Old Navy or Old Navy Outlet brick-and-mortar store one or more products which was advertised or promoted by displaying or disseminating a reference price or discount.

108. The Nationwide Online Class and the New Jersey In-Store Class are collectively referred to herein as the "Class."

109. Specifically excluded from the Class are the Defendants, any entity in which a Defendant has a controlling interest or which has a controlling interest in a Defendant, each Defendant's agents and employees and attorneys, the bench officers to whom this civil action is assigned, and the members of each bench officer's staff and immediate family.

110. *Numerosity.* Plaintiffs do not know the exact number of Class members but are informed and believe that the Class easily comprises hundreds of thousands of individuals. As such, Class members are so numerous that joinder of all members is impracticable.

111. *Commonality and Predominance.* Well-defined, nearly identical legal or factual questions affect the members of the Class. These questions predominate over questions that might affect individual Class members. These common questions include, but are not limited to, the following:

- a. Old Navy's policies and actions regarding its advertising;
- b. The accuracy of Old Navy's advertised reference prices and discounts;
- c. Whether the alleged conduct of Old Navy violates California Civil Code

§ 1750 *et seq.*, California Business & Professions Code § 17500 *et seq.*, and/or California Business & Professions Code § 17200 *et seq.*;

d. Whether the alleged conduct of Old Navy violates N.J.A.C. § 13:45A-9.3(a)(3), N.J.A.C. § 13:45A-9.6, N.J.S.A. § 56:8-1, and/or N.J.S.A. § 56:12-16, *et seq.*;

e. Whether Plaintiffs and the Class have suffered injury and have lost money or property as a result of such false or misleading discounts and reference prices;

f. Whether Defendants should be ordered to disgorge their unjust enrichment; and

g. Whether Old Navy should be enjoined from further engaging in the misconduct alleged herein.

112. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the party opposing the Class.

113. The party opposing the Class has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

114. **Typicality.** Plaintiffs' claims are typical of Class members' claims. Plaintiffs and Class members all sustained injury as a result of Defendants' practices and schemes.

115. **Adequacy.** Plaintiffs will fairly and adequately protect Class members' interests. Plaintiffs have no interests antagonistic to Class members' interests. Plaintiffs have retained counsel who have considerable experience and success in prosecuting complex class action and consumer protection cases.

116. Further, a class action is superior to all other available methods for fairly and efficiently adjudicating this controversy. Each Class member's interests are small compared to the burden and expense required to litigate each of their claims individually, so it would be impractical and would not make economic sense for Class members to seek individual redress for Old Navy's conduct. Individual litigation would add administrative burden on the courts,

1 increasing the delay and expense to all parties and to the court system. Individual litigation
 2 would also create the potential for inconsistent or contradictory judgments regarding the same
 3 uniform conduct. A single adjudication would create economies of scale and comprehensive
 4 supervision by a single judge. Moreover, Plaintiffs do not anticipate any difficulties in
 5 managing a class action trial.

6 117. By its conduct and omissions alleged herein, Old Navy has acted and refused to
 7 act on grounds that apply generally to Class, such that final injunctive relief and/or declaratory
 8 relief is appropriate respecting the Class as a whole.

9 118. The nature of Old Navy's misconduct is non-obvious and/or obscured from
 10 public view, and neither Plaintiffs nor the members of the Class could have, through the use of
 11 reasonable diligence, learned of the accrual of their claims against Old Navy at an earlier time.
 12 This Court should, at the appropriate time, apply the discovery rule to extend any applicable
 13 limitations period (and the corresponding class period) to the date on which Old Navy first
 14 began perpetrating the false reference price and false discount advertising scheme alleged
 15 herein.

16 **CAUSES OF ACTION**

17 **COUNT I**

18 **Violation of the Consumers Legal Remedies Act California Civil Code § 1750 *et seq.***

19 119. Plaintiffs reallege and incorporate by reference all paragraphs alleged
 20 hereinbefore.

21 120. Plaintiffs each bring this claim in their individual capacity, in their capacity as a
 22 private attorney general seeking the imposition of public injunctive relief, and/or as a
 23 representative of a putative class.

24 121. Each of Defendants Old Navy, LLC, Old Navy (Apparel), LLC, Old Navy
 25 Holdings, LLC, GPS Services, Inc., The Gap, Inc., and each Doe defendant is a "person," as
 26 defined by California Civil Code § 1761(c).

27 122. Plaintiffs Anastasha Barba and Brenda Tripicchio are each a "consumer," as
 28 defined by California Civil Code § 1761(d).

123. The clothing items purchased by Plaintiffs from Old Navy are “goods” as defined by California Civil Code § 1761(a).

124. Plaintiffs’ purchases from Old Navy constitutes a “transaction,” as defined by California Civil Code § 1761(e).

125. The unlawful methods, acts or practices alleged herein to have been undertaken by Old Navy were all committed intentionally. The unlawful methods, acts or practices alleged herein to have been undertaken by Old Navy did not result from a bona fide error notwithstanding the use of reasonable procedures adopted to avoid such error.

126. With regard to this count of the pleading which alleges one or more violations of the CLRA, venue is proper in the San Francisco Superior Court because, without limitation, the County of San Francisco is the county in which Defendant Old Navy, Inc., has its principal place of business. A declaration establishing that this Court has proper venue for this count is attached hereto as **Exhibit A**.

127. Old Navy’s methods, acts and/or practices, including Old Navy’s misrepresentations, active concealment, and/or failures to disclose, violated and continue to violate the CLRA in ways including, but not limited to, the following:

1. Old Navy misrepresented that its products had characteristics, benefits, or uses that they did not have (Cal. Civ. Code § 1770(a)(5));

2. Old Navy advertised its products with an intent not to sell them as advertised (Cal. Civ. Code § 1770(a)(9));

3. Old Navy made false or misleading statements of fact concerning reasons for, existence of, or amounts of, price reductions. (Cal. Civ. Code § 1770(a)(13)); and

4. Old Navy represented that its products were supplied in accordance with previous representations when they were not (Cal. Civ. Code § 1770(a)(16)).

128. With respect to omissions, Old Navy at all relevant times had a duty to disclose the information in question because, *inter alia*: (a) Old Navy had exclusive knowledge of material information that was not known to Plaintiffs and the Class; (b) Old Navy concealed material information from Plaintiffs and the Class; and/or (c) Old Navy made partial

1 representations which were false and misleading absent the omitted information.

2 129. Old Navy's misrepresentations and nondisclosures deceive and have a tendency
3 to deceive the general public.

4 130. Old Navy's misrepresentations and nondisclosures are material, in that a
5 reasonable person would attach importance to the information and would be induced to act on
6 the information in making purchase decisions.

7 131. As a direct and proximate result of these violations, Plaintiffs and the Class
8 suffered injury-in-fact and lost money.

9 132. Plaintiffs and the Class paid more than they otherwise would have paid for the
10 products they purchased from Old Navy and they bought more than they otherwise would have
11 bought from Old Navy.

12 133. Plaintiffs and the Class did not enjoy the actual discounts Old Navy represented
13 to them, and the products were not in fact worth the inflated amount that Old Navy represented
14 to them (i.e., the products were not actually worth the fictitious and invented list price).

15 134. Old Navy's false advertising scheme has harmed all of its customers by
16 fraudulently increasing demand for its products, thereby shifting the demand curve and
17 enabling Old Navy to charge its customers more than it otherwise could have charged and to
18 generate more sales than it otherwise would have generated.

19 135. Old Navy's conduct alleged herein caused substantial injury to Plaintiffs, the
20 Class, and the public. Old Navy's conduct is ongoing and is likely to continue and recur absent
21 a permanent injunction. Accordingly, Plaintiffs seek an order enjoining Old Navy from
22 committing such practices. Plaintiffs also seek attorneys' fees and costs.

23 136. Plaintiffs individually seek public injunctive relief, under the CLRA, to protect
24 the general public from Old Navy's false advertisements and omissions.

25 137. In accordance with California Civil Code § 1782(a), on July 18, 2019, Plaintiffs'
26 counsel served Old Navy with notice of its CLRA violations by certified mail, return receipt
27 requested. A true and correct copy of that notice is attached hereto as **Exhibit B**. If Old Navy
28 fails to provide appropriate relief for its CLRA violations within 30 days of Plaintiffs'

1 notification letter, Plaintiffs will amend this complaint to seek compensatory and exemplary
2 damages as permitted by Cal. Civ. Code §§ 1780 and 1782(b).

3 **COUNT II**
4 **Violation of California's False Advertising Law**
5 **California Business and Professions Code § 17500 et seq.**

6 138. Plaintiffs reallege and incorporate by reference all paragraphs alleged
7 hereinbefore.

8 139. Plaintiffs each bring this claim in their individual capacity, in their capacity as a
9 private attorney general seeking the imposition of public injunctive relief, and/or as a
10 representative of a putative class.

11 140. Old Navy has engaged in false or misleading advertising in violation of
12 California's statutory False Advertising Law ("FAL").

13 141. Old Navy has advertised reference prices and corresponding discounts that are
14 false, misleading, and/or have a capacity, likelihood or tendency to deceive reasonable
15 consumers. *See, e.g., Kasky*, 27 Cal.4th at 951 (UCL and FAL prohibit "not only advertising
16 which is false, but also advertising which, although true, is either actually misleading or which
17 has a capacity, likelihood or tendency to deceive or confuse the public" (citation omitted));
18 *Hansen v. Newegg.com Americas, Inc.*, 25 Cal.App. 5th 714, 722 (2018) (same);
19 *Overstock.com, Inc.*, 2014 WL 657516, at *23 (same).

20 142. Old Navy, with intent directly or indirectly to dispose of personal property or to
21 perform services, or to induce the public to enter into any obligation relating thereto, makes,
22 disseminates, has made or disseminated, causes to be made or disseminated, and/or has caused
23 to be made or disseminated, before the public in the State of California and throughout the
24 United States, in any newspaper or other publication, or any advertising device, or by public
25 outcry or by proclamation, or in any other manner or means, including over the Internet,
26 statements concerning that personal property or those services, and/or concerning any
27 circumstance or matter of fact connected with the proposed performance or disposition thereof,
28 which are untrue or misleading and which are known (or which by the exercise of reasonable
care should be known) to be untrue or misleading.

1 143. Independently, Old Navy has made or disseminated or caused to be so made or
2 disseminated any such statement as part of a plan or scheme with the intent not to sell that
3 personal property or those services, professional or otherwise, so advertised at the price stated
4 therein, or as so advertised.

5 144. With respect to omissions, Old Navy at all relevant times had a duty to disclose
6 the information in question because, *inter alia*: (a) Old Navy had exclusive knowledge of
7 material information that was not known to Plaintiffs and the Class; (b) Old Navy concealed
8 material information from Plaintiffs and the Class; and/or (c) Old Navy made partial
9 representations which were false and misleading absent the omitted information.

10 145. Old Navy committed such violations of the False Advertising Law with actual
11 knowledge that its advertising was untrue or misleading, or Old Navy, in the exercise of
12 reasonable care, should have known that its advertising was untrue or misleading.

13 146. Plaintiffs and the Class reasonably relied on Old Navy's representations and/or
14 omissions made in violation of the False Advertising Law.

15 147. As a direct and proximate result of these violations, Plaintiffs and the Class
16 suffered injury-in-fact and lost money.

17 148. Plaintiffs and the Class paid more than they otherwise would have paid for the
18 products they purchased from Old Navy and they bought more than they otherwise would have
19 bought from Old Navy.

20 149. Plaintiffs and the Class did not enjoy the actual discounts Old Navy represented
21 to them, and the products were not in fact worth the inflated amount that Old Navy represented
22 to them (i.e., the products were not actually worth the fictitious and invented list price).

23 150. Old Navy's false advertising scheme has harmed all of its customers by
24 fraudulently increasing demand for its products, thereby shifting the demand curve and
25 enabling Old Navy to charge its customers more than it otherwise could have charged and to
26 generate more sales than it otherwise would have generated.

27 151. Old Navy should be ordered to disgorge or make restitution of all monies
28 improperly accepted, received or retained.

152. Old Navy's conduct has caused substantial injury to Plaintiffs, the Class, and the public. Old Navy's conduct is ongoing and is likely to continue and recur absent a permanent injunction. Accordingly, Plaintiffs seek an order enjoining Old Navy from committing such violations of the FAL. Plaintiffs further seek an order granting restitution to Plaintiffs and the Class in an amount to be proven at trial. Plaintiffs further seek an award of attorneys' fees and costs under Cal. Code Civ. Proc. § 1021.5.

153. Absent injunctive relief, Old Navy will continue to injure Plaintiffs and the Class. Old Navy's misrepresentations and omissions are ongoing. Even if such conduct were to cease, it is behavior that is capable of repetition or reoccurrence by Old Navy.

154. Plaintiffs each individually seek public injunctive relief, under the FAL, to protect the general public from Old Navy's false reference price advertising and omissions.

COUNT III
Violation of California's Unfair Competition Law
California Business and Professions Code § 17200 *et seq.*

155. Plaintiffs reallege and incorporate by reference all paragraphs alleged hereinbefore.

156. Plaintiffs each bring this claim in their individual capacity, in their capacity as a private attorney general seeking the imposition of public injunctive relief, and/or as a representative of a putative class.

157. Defendant Old Navy's acts and omissions alleged herein constitute unfair competition and/or unlawful, unfair, or fraudulent business practices in violation of California Business and Professions Code § 17200 *et seq.* (the "Unfair Competition Law" or "UCL").

158. Old Navy's conduct and omissions alleged herein are immoral, unethical, oppressive, unscrupulous, unconscionable, and/or substantially injurious to Plaintiffs and the Class. There is no utility to Old Navy's conduct, and even if there were any utility, it would be significantly outweighed by the gravity of the harm to consumers caused by Old Navy's conduct alleged herein.

159. Old Navy's conduct and omissions alleged herein also violate California public policy, including as such policy is reflected in Cal. Civ. Code § 1750 *et seq.* and Cal. Civ. Code

1 §§ 1709-1710.

2 160. By its conduct and omissions alleged herein, Old Navy has violated the
3 “unlawful” prong of the UCL, including by making material misrepresentations and omissions
4 in violation of Cal. Bus. & Prof. Code § 17500 *et seq.* and Cal. Civ. Code § 1750, *et seq.*;
5 engaging in deceit in violation of Cal Civ. Code §§ 1709-1710; and employing deceptive
6 reference price advertisements as identified by 16 C.F.R § 233.1 *et seq.*

7 161. Old Navy has violated the “fraudulent” prong of the UCL by advertising its
8 products with a false and inflated reference price and with a false discount.

9 162. With respect to omissions, Old Navy at all relevant times had a duty to disclose
10 the information in question because, *inter alia*: (a) Old Navy had exclusive knowledge of
11 material information that was not known to Plaintiffs and the Class; (b) Old Navy concealed
12 material information from Plaintiffs and the Class; and/or (c) Old Navy made partial
13 representations which were false and misleading absent the omitted information.

14 163. Old Navy’s material misrepresentations and nondisclosures were likely to
15 mislead reasonable consumers, existing and potential customers, and the public.

16 164. Old Navy’s misrepresentations and nondisclosures deceive and have a tendency
17 to deceive the general public and reasonable consumers.

18 165. Old Navy’s misrepresentations and nondisclosures are material, such that a
19 reasonable person would attach importance to the information and would be induced to act on
20 the information in making purchase decisions.

21 166. Plaintiffs and the Class reasonably relied on Old Navy’s material
22 misrepresentations and nondisclosures, and would have acted differently if they had known the
23 truth.

24 167. By its conduct and omissions alleged herein, Old Navy received more money
25 from Plaintiffs and the Class than it should have received, and that money is subject to
26 restitution.

27 168. As a direct and proximate result of Old Navy’s unfair, unlawful, and fraudulent
28 conduct, Plaintiffs and the Class lost money.

169. Plaintiffs and the Class paid more than they otherwise would have paid for the products they purchased from Old Navy and they bought more than they otherwise would have bought from Old Navy.

170. Plaintiffs and the Class did not enjoy the actual discounts Old Navy represented to them, and the products were not in fact worth the inflated amount that Old Navy represented to them (i.e., the products were not actually worth the fictitious and invented list price).

171. Old Navy's false advertising scheme has harmed all of its customers by fraudulently increasing demand for its products, thereby shifting the demand curve and enabling Old Navy to charge its customers more than it otherwise could have charged and to generate more sales than it otherwise would have generated.

172. Old Navy's conduct has caused substantial injury to Plaintiffs, Class members, and the public. Old Navy's conduct is ongoing and is likely to continue and recur absent a permanent injunction. Accordingly, Plaintiffs seek an order enjoining Old Navy from committing such unlawful, unfair, and fraudulent business practices. Plaintiffs further seek an order granting restitution to Plaintiffs and the Class in an amount to be proven at trial. Plaintiffs further seek an award of attorneys' fees and costs under Cal. Code Civ. Proc. § 1021.5.

173. Absent injunctive relief, Old Navy will continue to injure Plaintiffs and the Class. Old Navy's misrepresentations and omissions are ongoing. Even if such conduct were to cease, it is behavior that is capable of repetition or reoccurrence by Old Navy.

174. Plaintiffs each individually seek public injunctive relief, under the UCL, to protect the general public from Old Navy's false reference price advertising.

COUNT IV
Permanent Public Injunctive Relief
All Statutory, Inherent and Other Authority
(Individually)

175. Plaintiffs reallege and incorporate by reference all paragraphs alleged hereinbefore.

176. Plaintiffs each bring this claim in their individual capacity.

177. Public injunctive relief is a remedy which is authorized and recognized by the

1 laws of California. Public injunctive relief is defined as an injunction which seeks “not to
 2 resolve a private dispute but to remedy a public wrong.” *Broughton v. Cigna Healthplans of*
 3 *California*, 21 Cal. 4th 1066, 1080 (1999). “Whatever the individual motive of the party
 4 requesting injunctive relief, the benefits of granting injunctive relief by and large do not accrue
 5 to that party, but to the general public in danger of being victimized by the same deceptive
 6 practices as the plaintiff suffered. . . . In other words, the plaintiff in a CLRA damages action
 7 is playing the role of a bona fide private attorney general.” *Ibid*.

8 178. Three of Plaintiffs’ claims are brought under California statutes which empower
 9 the Court to craft wide-ranging injunctions to benefit consumers at large. “In previous
 10 decisions, this court has said that the statutory remedies available for a violation of the
 11 Consumers Legal Remedies Act (CLRA; Civ. Code, § 1750 *et seq.*), the unfair competition law
 12 (UCL; Bus. & Prof. Code, § 17200 *et seq.*), and the false advertising law (*id.*, § 17500 *et seq.*)
 13 include public injunctive relief, i.e., injunctive relief that has the primary purpose and effect of
 14 prohibiting unlawful acts that threaten future injury to the general public.” *McGill v. Citibank,*
 15 *N.A.*, 2 Cal. 5th 945, 951 (2017).

16 179. If not enjoined by order of this Court, Old Navy is free to resume its unlawful
 17 behavior and injure Plaintiffs and consumers through the misconduct alleged herein once more.
 18 Old Navy has a duty to speak truthfully or in a non-misleading manner.

19 180. Plaintiffs are regular shoppers at Old Navy, and would likely shop there again if
 20 they could have confidence regarding the truth of Old Navy’s prices and the value of its
 21 products.

22 181. Plaintiffs will be harmed if, in the future, they are left to guess as to whether Old
 23 Navy is providing a legitimate sale or not, and whether products are actually worth the amount
 24 that Old Navy is representing.

25 182. If Plaintiffs were to purchase again from Old Navy without Old Navy having
 26 changed its unlawful and deceptive conduct alleged herein, Plaintiffs would be harmed on an
 27 ongoing basis and/or would be harmed once or more in the future

28 183. The balance of the equities favors the entry of permanent injunctive relief

1 against Old Navy. Plaintiffs and the general public will be irreparably harmed absent the entry
 2 of permanent injunctive relief against Old Navy. Plaintiffs and the general public lack an
 3 adequate remedy at law. A permanent injunction against Old Navy is in the public interest. Old
 4 Navy's unlawful behavior is capable of repetition or re-occurrence absent the entry of a
 5 permanent injunction.

6 **COUNT V**
 7 **Violation of the New Jersey Consumer Fraud Act**
 8 **N.J.S.A. § 56:8-1, et seq.**
 9 **(On Behalf of the New Jersey In-Store Class)**

10 184. Plaintiff Brenda Tripicchio realleges and incorporates Paragraphs 1 – 118.

11 185. This count is pleaded in the alternative by Plaintiff Brenda Tripicchio on behalf
 12 of herself and the New Jersey In-Store Class.

13 186. The New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, et seq. (the "NJCFA")
 14 applies to all sales made by Defendants to New Jersey consumers from Defendants' Old Navy
 15 and Old Navy Outlet retail brick-and-mortar stores.

16 187. The NJCFA was enacted to protect consumers against sharp and unconscionable
 17 commercial practices by persons engaged in the sale of goods or services. *See Marascio v.*
 18 *Campanella*, 689 A.2d 852, 857 (App. Div. 1997).

19 188. The NJCFA is a remedial statute which the New Jersey Supreme Court has
 20 repeatedly held must be construed liberally in favor of the consumer to accomplish its deterrent
 21 and protective purposes. *See Furst v. Einstein Moomjy, Inc.*, 860 A.2d 435, 441 (N.J. 2004).

22 189. Defendants violated the NJCFA by engaging in the act, use or employment of an
 23 unconscionable commercial practice, deception, fraud, false pretense, misrepresentation, or the
 24 knowing concealment, suppression, or omission of any material fact with intent that others rely
 25 upon such concealment, suppression or omission whether or not any person has in fact been
 26 misled, deceived or damaged thereby.

27 190. Moreover, because Defendants' conduct described herein is a violation of both
 28 federal regulations and New Jersey state regulations, such conduct constitutes a *per se* violation
 of the NJCFA. Defendants' conduct concerning false former prices and false discounts violated

1 16 C.F.R. § 233.1 *et seq.* Defendants' conduct also violated both N.J.A.C. § 13:45A-9.3(a)(3)
2 and § 13:45A-9.4(a)(5) and (6), which require, *inter alia*, that a seller advertising a purported
3 percentage-off discount and/or price comparison must affirmatively state in writing the basis
4 for the purported discount and the source of the price which is being used for comparison,
5 including whether that price was previously charged by the seller or its competitors and when
6 and where that former price was previously charged. Defendants' reference price and discount
7 advertising clearly does not do any of this.

8 191. Plaintiff Tripicchio and the New Jersey In-Store Class reasonably and justifiably
9 expected Defendants to comply with applicable law, but Defendants failed to do so.

10 192. As a direct and proximate result of these unlawful actions by Defendants,
11 Plaintiff Tripicchio and the New Jersey In-Store Class have been injured and have suffered an
12 ascertainable loss of money.

13 193. Under New Jersey law, the value of an item is presumed to be the price listed on
14 its price tag as the regular, typical price at which it was sold or offered for sale in the recent
15 past.

16 194. By stating that the reference price of each product (i.e., the Dress and the
17 Hoodie) purchased by Plaintiff Tripicchio was higher than the price at which the item was
18 typically sold or offered for sale, Defendants promised a bargain to Ms. Tripicchio in which she
19 would receive an item worth the reference price claimed on Defendants' tag and in which she
20 would realize monetary savings equal to the difference between the reference price and the
21 purchase price.

22 195. In actuality, however, the true value of each of the products purchased by Ms.
23 Tripicchio was less than the false and inflated reference price listed on its price tag, and Ms.
24 Tripicchio did not save the amount of money claimed by Defendants.

25 196. Moreover, Plaintiff Tripicchio suffered an out-of-pocket loss of money in that
26 she was induced to pay Defendants money based on the misleading and deceptive statements of
27 Defendants. But for those misleading and deceptive statements, Plaintiff would have acted
28 differently and/or would not have paid Defendants money to purchase the Dress and the

1 Hoodie.

2 197. Old Navy's false advertising scheme has harmed all of its New Jersey customers
3 by fraudulently increasing demand for its products, thereby shifting the demand curve and
4 enabling Old Navy to charge its customers more than it otherwise could have charged and to
5 generate more sales than it otherwise would have generated.

6 198. Plaintiff Tripicchio and the New Jersey In-Store Class did not enjoy the actual
7 discounts Old Navy represented to them, and the products were not in fact worth the inflated
8 amount that Old Navy represented to them (i.e., the products were not actually worth the
9 fictitious and invented list price).

10 199. Pursuant to N.J.S.A. § 56:8-10 of the NJCFA, Plaintiff Tripicchio seeks, *inter*
11 *alia*, actual damages, treble damages, and injunctive relief for herself and the New Jersey In-
12 Store Class.

13 **COUNT VI**
14 **Violation of the New Jersey Truth in Consumer Contract, Warranty and Notice Act**
15 **N.J.S.A. § 56:12-14, *et seq.***
(On Behalf of the New Jersey In-Store Class)

16 200. Plaintiff Brenda Tripicchio realleges and incorporates Paragraphs 1 – 118 and
17 184 – 199.

18 201. This count is pleaded in the alternative by Plaintiff Brenda Tripicchio on behalf
19 of herself and the New Jersey In-Store Class.

20 202. Plaintiff Tripicchio and the New Jersey In-Store Class members are
21 “consumers” within the meaning of N.J.S.A. §§ 56:12-15 and 16.

22 203. Defendants Old Navy, LLC, Old Navy (Apparel), LLC, Old Navy Holdings,
23 LLC, GPS Services, Inc., The Gap, Inc., and each Doe defendant are “sellers” within the
24 meaning of N.J.S.A. §§ 56:12-15 and 16.

25 204. The advertisements and representations of reference prices and discounts in the
26 Old Navy and Old Navy Outlet brick-and-mortar stores are both a consumer “notice” and
27 “warranty” within the meaning of N.J.S.A. §§ 56:12-15 and 16.

28 205. By the acts alleged herein, Defendants have violated N.J.S.A. § 56:12-16

1 because, in the course of Defendants' business, Defendants have offered written consumer
 2 notices and warranties to Plaintiff Tripicchio and the New Jersey In-Store Class which
 3 contained provisions that violated their clearly established legal rights under state law and
 4 federal regulations, within the meaning of N.J.S.A. § 56:12-15. Specifically, Defendants' in-
 5 store discount signage and reference prices are a consumer "notice" and/or "sign" within the
 6 meaning of N.J.S.A. § 56:12-15.

7 206. The in-store discount signage and reference prices which were presented and
 8 shown by Defendants to Plaintiff Tripicchio and the New Jersey In-Store Class violated their
 9 clearly established rights under 16 C.F.R. § 233.1 to be free of false discounts and the use of
 10 fictitious former prices in advertising, as well as their rights under N.J.A.C. 13:45A-9.3(a)(3)
 11 and 13:45A-9.4(a)(5) and (6), which require a seller advertising a purported percentage-off
 12 discount and/or a price comparison to affirmatively state in writing the basis for the discount
 13 and the source of the price which is being used for comparison, including whether that price
 14 was charged by the seller or its competitors and when and where that former price was
 15 previously charged.

16 207. Pursuant to N.J.S.A. § 56:12-17, Plaintiff Tripicchio seeks a statutory penalty of
 17 \$100 for herself and each New Jersey In-Store Class member, as well as actual damages and
 18 attorneys' fees and costs.

19 **PRAYER FOR RELIEF**

20 208. In order to prevent injury to the general public, Plaintiffs Anastasha Barba and
 21 Brenda Tripicchio each individually request that the Court enter a public injunction enjoining
 22 Defendants from advertising false reference prices and/or false discounts;

23 209. Further, on behalf of themselves and the proposed Class, Plaintiffs request that
 24 the Court order relief and enter judgment against Defendants as follows:

25 a. Declare this action to be a proper class action, certify the Class, and
 26 appoint Plaintiffs and their counsel to represent the Class;

27 b. Order disgorgement or restitution, including, without limitation,
 28 disgorgement of all revenues, profits and/or unjust enrichment that each Defendant obtained,

1 directly or indirectly, from Plaintiffs and the members of the Class or otherwise as a result of
2 the unlawful conduct alleged herein;

3 c. Permanently enjoin each Defendant from the unlawful conduct alleged
4 herein;

5 d. Retain jurisdiction to police each Defendant's compliance with the
6 permanent injunctive relief;

7 e. Order each Defendant to pay damages and restitution to Plaintiffs and
8 the Class in an amount to be proven at trial;

9 f. Order each Defendant to pay punitive and exemplary damages to the
10 extent allowed by law;

11 g. Order each Defendant to pay attorneys' fees, costs, and pre-judgment
12 and post-judgment interest to the extent allowed by law; and

13 h. Provide all other relief to which Plaintiffs and the Class may show
14 themselves justly entitled.

15
16 **JURY DEMAND**

17 Plaintiffs ANASTASHA BARBA and BRENDA TRIPICCHIO, on behalf of
18 themselves and on behalf of the Class, demand a trial by jury on all issues so triable.

19
20 DATED this 18th day of July, 2019.

21 Presented by:

22 HATTIS & LUKACS

23 By: 

24 Daniel M. Hattis (SBN 232141)
25 Paul Karl Lukacs (SBN 197007)
26 HATTIS & LUKACS
27 1401 Twenty-First Street, Suite 400
28 Sacramento, California 95811
Telephone: (425) 233-8650
Facsimile: (425) 412-7171
Email: dan@hattislaw.com
Email: pkl@hattislaw.com

1 Stephen P. DeNittis, Esq.*
2 Shane T. Prince, Esq.*
3 DENITTIS OSEFCHEN PRINCE, P.C.
4 5 Greentree Centre, Suite 410
5 525 Route 73 N.
6 Marlton, New Jersey 08057
7 Telephone: (856) 797-9951
8 Facsimile: (856) 797-9978
9 Email: sdenittis@denittislaw.com
10 Email: sprince@denittislaw.com

11 *Attorneys for Plaintiffs and the Proposed Class*

12 **Pro hac vice application to be submitted*