

**FILED**

Superior Court of California  
County of San Francisco

DEC 30 2019

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**BOWMAN LIU**

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*Attorneys for Plaintiff and the Proposed Class*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**CITY AND COUNTY OF SAN FRANCISCO**

**UNLIMITED CIVIL**

**ANASTASHA BARBA,**  
for Herself,  
as a Private Attorney General, and/or  
On Behalf Of All Others Similarly  
Situating,

Plaintiff,

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-19-581937**

**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**

**JURY TRIAL DEMANDED**

**BY FAX**

Plaintiff ANASTASHA BARBA, individually, as a private attorney general, and/or on behalf of all others similarly situated, alleges as follows, on personal knowledge and/or on the

**CLASS ACTION COMPLAINT**

1 investigation of her counsel, against Defendants Old Navy, LLC, Old Navy (Apparel), LLC,  
2 Old Navy Holdings, LLC, GPS Services, Inc., and The Gap, Inc. (collectively, "Old Navy"),  
3 and Defendants Does 1-20, inclusive:

4 **I. INTRODUCTION AND SUMMARY**

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

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

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

25 4. Old Navy's nationwide fraudulent advertising scheme harms consumers like  
26 Plaintiff Anastasha Barba, who purchased falsely discounted products on Old Navy's website  
27 from her home in California, by causing them to pay more than they otherwise would have paid  
28 and to buy more than they otherwise would have bought. Customers do not enjoy the actual

1 discounts Old Navy represents to them, and the products are not in fact worth the inflated  
2 amount that Old Navy represents to them (i.e., the products are not actually worth the fictitious  
3 and invented list price).

4 5. Consequently, Plaintiff brings this action individually on her own behalf as a  
5 deceived Old Navy customer; as a private attorney general seeking the imposition of public  
6 injunctive relief against Defendants; and as a representative plaintiff on behalf of a class of  
7 California consumers who purchased falsely discounted products on Old Navy's website  
8 seeking, among other things, to recover damages and/or that Defendants be ordered to disgorge  
9 all revenues they have unjustly received from the proposed Class due to their intentional and  
10 unlawful pattern and practice of using false reference prices and false discounts.

## 11 **II. PARTIES**

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

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

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

24 9. Defendant Old Navy Holdings, LLC, is a limited liability company chartered  
25 under the laws of the State of California. Old Navy Holdings, LLC, currently has and at all  
26 relevant times in the past has had its headquarters, executive office, principal place of business,  
27 or nerve center in San Francisco, California.

28 10. Defendant GPS Services, Inc., is a wholly-owned subsidiary of The Gap, Inc.,

1 and is a corporation chartered under the laws of the State of California. GPS Services, Inc.,  
2 currently has and at all relevant times in the past has had its headquarters, executive office,  
3 principal place of business, or nerve center in San Francisco, California.

4 11. Defendants Old Navy, LLC, Old Navy (Apparel), LLC, Old Navy Holdings,  
5 LLC, GPS Services, Inc., and The Gap, Inc. (collectively, "Old Navy"), own and/or operate the  
6 retail website <http://oldnavy.gap.com>, by which Defendants advertise and sell their goods, with  
7 said website being regularly seen and used by consumers throughout California to purchase  
8 goods from Old Navy. Defendants also own and/or operate approximately 1,100 brick-and-  
9 mortar Old Navy and Old Navy Outlet retail stores throughout the United States, including 96  
10 in California.

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

### 19 **III. JURISDICTION AND VENUE**

20 13. **Subject Matter Jurisdiction.** This Court has subject matter jurisdiction over  
21 this civil action pursuant to, among other bases, Section 10 of Article VI of the California  
22 Constitution.

23 14. **Personal Jurisdiction.** This Court has personal jurisdiction over Defendants  
24 pursuant to, among other bases, California Code of Civil Procedure Section 410.10 because: (1)  
25 Defendants are headquartered in California and are authorized to do business and regularly  
26 conduct business in California; (2) the claims alleged herein took place in California; and/or (3)  
27 Defendants have committed tortious acts within the State of California (as alleged, without  
28 limitation, throughout this Complaint).

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

6 **IV. FACTUAL ALLEGATIONS OF OLD NAVY'S NATIONWIDE SCHEME**

7           16. Old Navy, which is headquartered in San Francisco, California, is a popular  
8 retailer which calls itself "one of the fastest-growing apparel brands in the U.S. and category  
9 leader in family apparel." Old Navy currently operates approximately 1,100 brick-and-mortar  
10 Old Navy and Old Navy Outlet retail stores throughout the United States, including 96 in the  
11 State of California. Old Navy also operates a retail website at <http://oldnavy.gap.com>, by which  
12 Old Navy advertises and sells its goods, which is regularly seen and used to purchase goods  
13 from Old Navy by consumers throughout the United States, including California.

14           17. Almost all the items offered by Old Navy are branded as "Old Navy" products  
15 and are exclusively offered by Old Navy in its retail stores and on its website. I.e., the products  
16 offered by Old Navy are not offered by, and are not available from, any other retailer. Old  
17 Navy markets its products via its company-owned retail stores, its website, Internet advertising,  
18 email campaigns, television advertising, print newspaper and magazine advertising, and direct  
19 mail.

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

23           19. In significant part, however, Old Navy's growth and profitability have been the  
24 product of a massive false discount advertising scheme. Old Navy advertises perpetual or near  
25 perpetual discounts (typically a purported savings of 30% to 60% off) from Old Navy's self-  
26 created list prices for its products. Old Navy represents its list prices to be the "regular" and  
27 normal prices of its products, and the list prices function as reference prices from which the  
28 advertised discounts and percentage-off sales are calculated.

1           20.     Old Navy's discounts and reference prices are false, because Old Navy rarely if  
2 ever offers the products at the advertised list price. Old Navy invents inflated and fictitious list  
3 prices out of thin air in order to enable it to advertise perpetual website-wide and store-wide  
4 "sale" events and product discounts to induce customers to purchase its products. Old Navy's  
5 marketing plan is to trick its customers into believing that its products are worth and have a  
6 value equal to the inflated list price, and that the lower advertised sale price represents a special  
7 bargain—when in reality and unbeknownst to the customer, the "sale" price is approximately  
8 equal to Old Navy's usual and normal selling price for the product.

9           21.     Decades of academic research has established that the use of reference prices,  
10 such as those utilized by Old Navy, materially impacts consumers' behavior. A reference price  
11 affects a consumer's perception of the value of the transaction, the consumer's willingness to  
12 make the purchase, and the amount of money the consumer is willing to pay for the product.<sup>1</sup>

13           22.     When a reference price is bona fide and truthful, it may help consumers in  
14 making informed purchasing decisions. In contrast, consumers are harmed when retailers, such  
15 as Old Navy, advertise their products with inflated false reference prices. The false reference  
16 prices deceive consumers, deprive consumers of a fair opportunity to accurately evaluate the  
17 offer, and result in purchasing decisions based on false pretenses.

18           23.     False reference pricing such as that employed by Old Navy causes consumers to

19 \_\_\_\_\_  
20 <sup>1</sup> 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, *Comparative Price Advertising: Believe It or Not*, 36 J. Consumer Aff. 284 (2002); David  
26 Friedman, *Reconsidering Fictitious Pricing*, 100 Minn. L. Rev. 921 (2016); Dhruv Grewal &  
27 Larry D. Compeau, *Consumer Responses to Price and its Contextual Information Cues: A*  
28 *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).

1 pay more than they otherwise would have paid for products. False reference pricing also  
2 fraudulently increases consumer demand for products, enabling retailers to charge higher prices  
3 than they otherwise could have charged.

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

11 25. California law, as well as federal regulations, prohibit false reference pricing  
12 practices such as those perpetrated by Old Navy. California's Unfair Competition Law and  
13 False Advertising Law forbid unfair business practices and false advertising (i.e., Cal. Bus. and  
14 Prof. Code §§ 17200 *et seq.* and 17500 *et seq.*). Regarding sales to consumers for household  
15 purposes, the California Consumers Legal Remedies Act prohibits "[m]aking false or  
16 misleading statements of fact concerning reasons for, existence of, or amounts of, price  
17 reductions." Cal. Civ. Code § 1770(a)(13).

18 26. The United States Court of Appeals for the Ninth Circuit has recognized the  
19 abuses that flow from false reference pricing practices: "Most consumers have, at some point,  
20 purchased merchandise that was marketed as being 'on sale' because the proffered discount  
21 seemed too good to pass up. Retailers, well aware of consumers' susceptibility to a bargain,  
22 therefore have an incentive to lie to their customers by falsely claiming that their products have  
23 previously sold at a far higher 'original' price in order to induce customers to purchase  
24 merchandise at a purportedly marked-down 'sale' price. Because such practices are  
25 misleading—and effective—the California legislature has prohibited them." *Hinojos v. Kohl's*  
26 *Corp.*, 718 F.3d 1098, 1101 (9th Cir. 2013).

27 27. The California Court of Appeal has likewise recognized the importance of false  
28 reference price advertising statutes in protecting consumers: "Our Legislature has adopted

1 multiple statutes that specifically prohibit the use of deceptive former price information and  
2 misleading statements regarding the amount of a price reduction. ... These statutes make clear  
3 that ... our Legislature has concluded 'reasonable people can and do attach importance to [a  
4 product's former price] in their purchasing decisions.' (alterations in original) (quoting *Kwikset*  
5 *Corp. v. Superior Court*, 246 P.3d 877, 892 (Cal. 2011))." *Hansen v. Newegg.com Americas,*  
6 *Inc.*, 25 Cal.App.5th 714, 730 (2018).

7 28. The Federal Trade Commission ("FTC") has also described what constitutes  
8 false reference pricing practices:

9 (a) One of the most commonly used forms of bargain advertising is to offer a  
10 reduction from the advertiser's own former price for an article. If the former  
11 price is the actual, bona fide price at which the article was offered to the public  
12 on a regular basis for a reasonably substantial period of time, it provides a  
13 legitimate basis for the advertising of a price comparison. Where the former  
14 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.

15 16 C.F.R. § 233.1.

16 29. Old Navy's false discounting scheme is similar in all material respects to the  
17 deceptive practices described and prohibited by these false reference pricing laws and  
18 regulations.

19 30. Plaintiff's allegations concerning Old Navy's false discount advertising scheme  
20 are based on a comprehensive investigation by Plaintiff's counsel of Old Navy's pricing  
21 practices for several years. Plaintiff's counsel has been monitoring and scraping Old Navy's  
22 website on an automated daily basis with a proprietary software program since October 15,  
23 2017. Plaintiff's counsel has compiled and extracted daily pricing and marketing data from the  
24 website for nearly all of the products Old Navy has offered during this time. In total, Plaintiff's  
25 counsel has assembled and analyzed a comprehensive historical database of daily prices and  
26 time-stamped screenshots of approximately 6.2 million daily offerings for approximately  
27 49,379 products over this more than two-year period. For the earlier period 2015 through  
28 October 2017, Plaintiff's counsel has also reviewed hundreds of historical screenshots at the



1 Internet Archive (also called the Wayback Machine) at [www.archive.org](http://www.archive.org). Plaintiff's counsel's  
2 review of historical Old Navy screenshots at the Internet Archive shows that Old Navy's false  
3 advertising practices were substantially the same during the 2015 through October 2017 period  
4 as they were for the period since October 2017 which Plaintiff's counsel comprehensively  
5 tracked with its proprietary software.

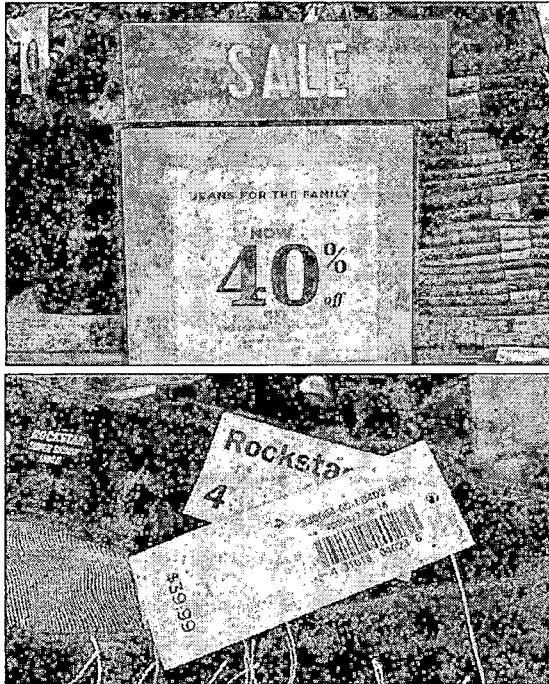
6 31. Plaintiff's counsel's exhaustive big-data analysis of millions of data points over  
7 a several-year period for approximately 50 thousand products shows that Old Navy's advertised  
8 website-wide "sale" events and advertised percentage-off and dollar discounts are false, and  
9 that its list prices (i.e., reference prices) from which the discounts are calculated are false and  
10 inflated. For many products, Old Navy never or almost never offers the products at the list  
11 price. For most of its products, Old Navy typically offers the products at the list price less than  
12 ten percent of the time.

13 32. Plaintiff anticipates that Old Navy may argue that while Old Navy may have  
14 rarely or never offered its products at the list price (i.e., at the purported "regular" price) on its  
15 website which Plaintiff's counsel has exhaustively tracked, Old Navy may nonetheless have, in  
16 theory, "established" the list price in its brick-and-mortar retail stores. However, this defense  
17 does not hold water. Plaintiff's counsel has also investigated brick-and-mortar Old Navy and  
18 Old Navy Outlet retail stores and has found that Old Navy's false discount practices and  
19 product pricing are substantially the same both online and in-store. Virtually all the products  
20 that Old Navy offers in its brick-and-mortar retail stores are also available and advertised on  
21 the Old Navy website. Based on the investigation of Plaintiff's counsel, Old Navy offers and  
22 advertises these products with identical list prices and at substantially the same sale prices both  
23 on the Old Navy website and in Old Navy and Old Navy Outlet brick-and-mortar stores in  
24 California and throughout the nation.

25 33. For example, the images below demonstrate how Old Navy's list prices, sales  
26 prices, and advertised purported discounts are substantially the same both online and in-store:  
27  
28

**"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



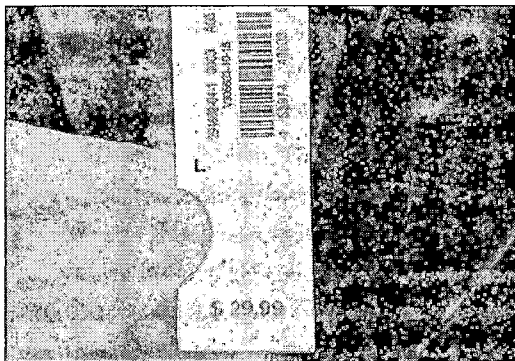
34. The left photograph was taken at a brick-and-mortar Old Navy store in San Francisco, California, on May 22, 2019. It shows Old Navy was offering the Mid-Rise Rockstar Super Skinny Step-Hem Jeans "NOW 40% off" from the "REG." price of \$39.99. The purported regular price, i.e., the list price, of \$39.99 is printed on both the signage and on the price tag attached to the jeans. The right screenshot was taken the same day on May 22, 2019, on the Old Navy website on the product webpage for the same pair of jeans. On the website, Old Navy advertises the identical \$39.99 reference price (with a strike-through), and advertises the identical \$24.00 "sale" price (calling it a "Hot Deal!").

35. The price and discount representations regarding the jeans on the in-store signage and price tag, and on the product webpage on the Old Navy website, are false and misleading because based on Plaintiff's counsel's data, the purported "sale" price is in fact approximately equal to Old Navy's usual selling price for the jeans, and the jeans are not in fact worth, and do not have a value equal to, the \$39.99 list price.

36. Below is another example demonstrating how Old Navy's list prices, sales prices, and advertised purported discounts are substantially the same both online and in-store:

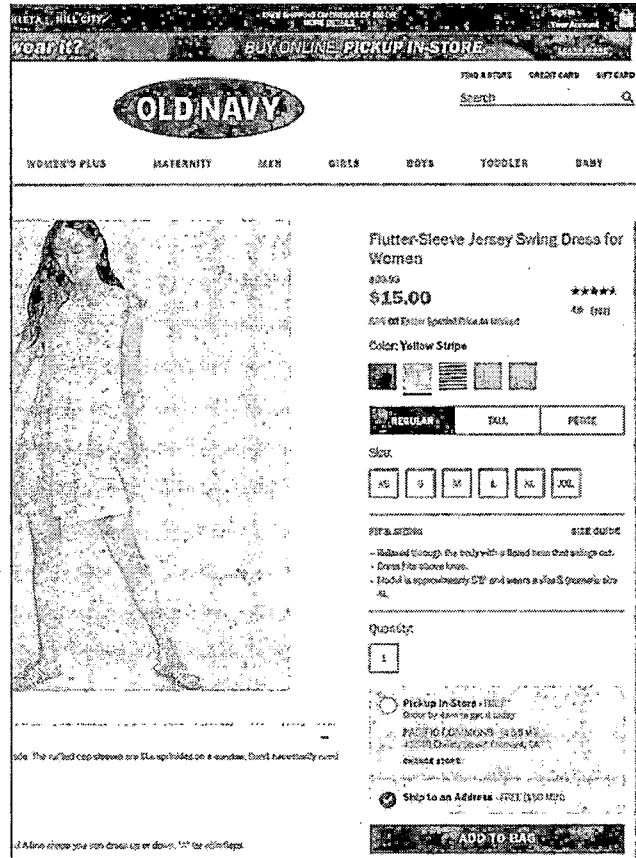
**"Old Navy" Store  
Bellevue, WA on April 19, 2019**

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



37. The left photograph was taken at a brick-and-mortar Old Navy 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.

38. The price and discount representations regarding the dress on the in-store

1 signage and price tag, and on the product webpage on the Old Navy website, are false and  
2 misleading because based on Plaintiff's counsel's data, the purported "50% Off" sale price is in  
3 fact approximately equal to Old Navy's usual selling price for the dress, and the dress is not in  
4 fact worth, and does not have a value equal to, the \$29.99 list price.

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

11 40. Based on investigation of Plaintiff's counsel, on those rare occasions that Old  
12 Navy offers its near-perpetually discounted products at the list price, it does so in bad faith,  
13 solely for the purpose of "establishing" its list price to attempt to exculpate itself from legal  
14 liability for its illegal pricing scheme. It is Old Navy's intent to sell few if any products at list  
15 price, and in fact Old Navy sells few if any of its products at list price.

16 41. As a direct and proximate result of Old Navy's acts and omissions, all California  
17 consumers who have purchased a product on the Old Navy website that was advertised with a  
18 false reference price and/or false discount have been harmed, have suffered an injury-in-fact,  
19 and have lost money or property.

20 42. Old Navy's false advertising scheme has harmed all of its California customers  
21 who purchased a falsely discounted product on the Old Navy website by fraudulently  
22 increasing demand for its products, thereby shifting the demand curve and enabling Old Navy  
23 to charge its customers more than it otherwise could have charged and to generate more sales  
24 than it otherwise would have generated.

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

28 44. The false or misleading nature of Old Navy's reference prices and purported

1 discounts were at all relevant times masked or concealed or hidden such that an ordinary  
2 consumer exercising reasonable care under all the circumstances would not have known of or  
3 discovered their false or misleading nature.

4 45. Old Navy continues to advertise false reference prices and false percentage-off  
5 and dollar discounts on its website to this day. There is no reason to believe that Old Navy will  
6 voluntarily and permanently cease its unlawful practices. Moreover, in the unlikely event that  
7 Old Navy were to cease its unlawful practices, Old Navy can and/or is likely to recommence  
8 these unlawful practices.

9 46. In acting toward consumers and the general public in the manner alleged herein,  
10 Old Navy acted with and was guilty of malice, fraud, and/or oppression and/or acted in a  
11 manner with a strong and negative impact upon Plaintiff, the Class and the public.

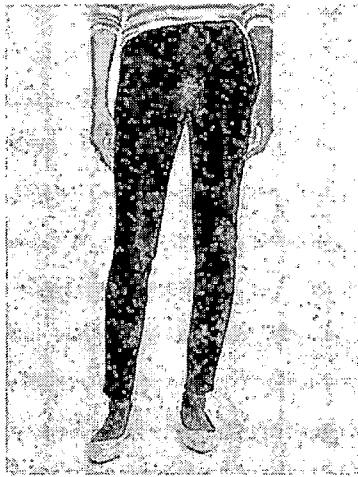
12 **V. PLAINTIFF'S FACTUAL ALLEGATIONS**

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

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

19 49. **Jeans.** For example, while browsing the Old Navy website, Ms. Barba viewed  
20 webpages advertising the Mid-Rise Super Skinny Jeans for Women ("Jeans"), Item  
21 #715218002. Below is partial screenshot of a webpage viewed by Ms. Barba on March 5, 2019;  
22 the particular Jeans she purchased are identified in an added red box:  
23  
24  
25  
26  
27  
28

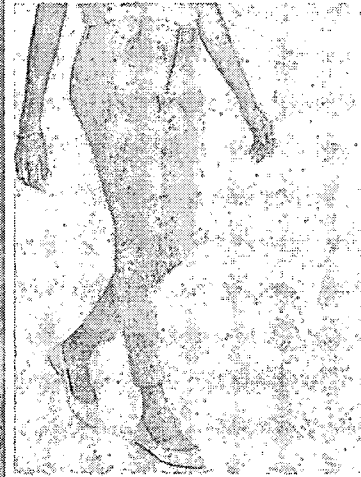
MID-RISE SUPER SKINNY



Mid-Rise Super Skinny Jeans for Women  
~~\$29.99~~  
\$15.00  
Best Seller



Mid-Rise Super Skinny Jeans for Women  
~~\$29.99~~  
\$15.00  
Best Seller



Mid-Rise Super Skinny Ankle Jeans for Women  
~~\$29.99~~  
\$25.00  
Best Seller

50. 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 price in red text “\$15.00.” Directly below the sale price, Ms. Barba viewed the phrase “Best Seller.”

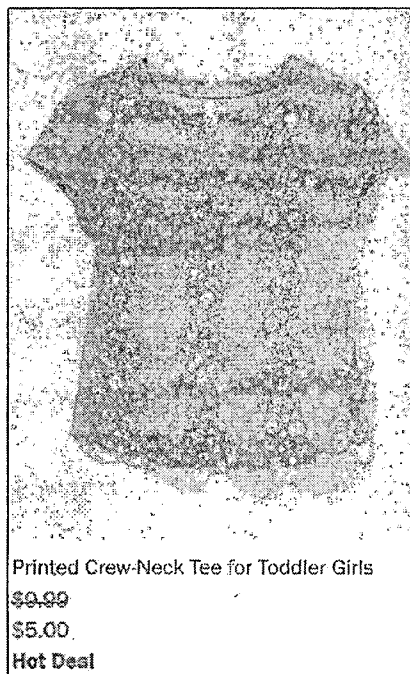
51. Ms. Barba clicked on the Jeans product listing on the webpage, and then viewed a product webpage for the Jeans, which contained the same strike-through, sale price, and “Best Seller” representations.

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

1        53.     However, Old Navy's representations and advertised discounts were false and  
2 deceptive. In reality, and unbeknownst to Ms. Barba, Old Navy had offered these Jeans at the  
3 purported regular price of \$29.99 for only 12 out of the past 486 days prior to her purchase on  
4 March 5, 2019. I.e., from November 4, 2017 through March 4, 2019, Old Navy had previously  
5 offered the Jeans at the purported "regular" price only 2.47% of the time. And after Ms.  
6 Barba's purchase, from March 6, 2019, through July 5, 2019, Old Navy *never* offered the Jeans  
7 at the \$29.99 purported regular price. In fact, on June 5, 2019, Old Navy raised the purported  
8 regular price of the product to \$34.99, despite this new reference price having no foundation  
9 whatsoever—consistent with Old Navy's policy of inventing reference prices out of thin air.

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

14        55.     **Toddler Tee.** In the same web browsing session, Ms. Barba also viewed  
15 webpages advertising the Printed Crew-Neck Tee for Toddler ("Toddler Tee"), Item  
16 #392277142. Below is partial screenshot of a webpage of the Toddler Tee viewed by Ms.  
17 Barba on March 5, 2019:



1           56.     On this Toddler Tee webpage, Ms. Barba viewed several representations,  
2 including a reference price and a sale price for the Toddler Tee. Ms. Barba viewed a black  
3 strike-through reference price of “\$9.99.” Directly below the reference price, Ms. Barba viewed  
4 the sale price in red text “\$5.00”. Directly below the sale price, Ms. Barba viewed the phrase  
5 “Hot Deal”.

6           57.     Ms. Barba clicked on the Toddler Tee product listing on the webpage, and then  
7 viewed a product webpage for the Toddler Tee, which contained the same strike-through, sale  
8 price, and “Hot Deal” representations.

9           58.     Relying on Old Navy’s representations, Ms. Barba reasonably believed that the  
10 \$5.00 sale price for the Toddler Tee represented a special “Hot Deal,” and that the Toddler Tee  
11 was normally offered and sold by Old Navy for the \$9.99 list price. Ms. Barba reasonably  
12 believed that the Toddler Tee was thereby worth and had a value of \$9.99. Ms. Barba  
13 reasonably believed that the advertised sale price of \$5.00 represented a special bargain (a “Hot  
14 Deal”), where Old Navy was temporarily offering the Toddler Tee at 50% off the regular and  
15 normal selling price of \$9.99. Relying on Old Navy’s representations, Ms. Barba selected the  
16 size of the Toddler Tee and then added it to her online shopping cart.

17           59.     However, Old Navy’s representations and advertised discounts were false and  
18 deceptive. In reality, and unbeknownst to Ms. Barba, Old Navy had *never* offered the Toddler  
19 Tee at the purported regular price of \$9.99 in the prior 60 days. And after Ms. Barba’s purchase  
20 on March 5, 2019, through the last day the Toddler Tee was offered on Old Navy’s website on  
21 October 19, 2019, Old Navy continued to *never* offer the Toddler Tee at the \$9.99 reference  
22 price.

23           60.     Old Navy had fooled Ms. Barba. The Toddler Tee was not in fact worth the  
24 \$9.99 price that Old Navy had led her to believe. Contrary to Old Navy’s representations, Ms.  
25 Barba did not receive any deal at all, let alone a “Hot Deal.” The \$5.00 price she paid was in  
26 fact simply Old Navy’s usual and normal selling price for the Toddler Tee.

27           61.     After Ms. Barba added these items to her online shopping cart she went through  
28 Old Navy’s online checkout process, where Old Navy made additional false discount



1 representations. For example, Old Navy represented that she was enjoying a “My Savings”  
2 dollar amount which was calculated by totaling the false discounts from the inflated reference  
3 prices for the items in her cart. Relying on Old Navy’s misrepresentations, Ms. Barba  
4 purchased the products.

5 62. Old Navy’s advertised false reference prices and false discounts were material  
6 misrepresentations and inducements to Ms. Barba’s purchases.

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

10 64. These misrepresentations by Old Navy are material misrepresentations, in that  
11 they are the type of representations on which an ordinary prudent person would rely upon in  
12 conducting his or her affairs.

13 65. As a direct and proximate result of Old Navy’s acts and omissions, Ms. Barba  
14 was harmed, suffered an injury-in-fact, and lost money or property.

15 66. Old Navy’s false advertising harmed Ms. Barba by causing her to pay more than  
16 she otherwise would have paid and to buy more than she otherwise would have bought. Ms.  
17 Barba did not enjoy the stated discounts from the purported regular price that Old Navy  
18 represented to her, and the products were not, in fact, worth as much as Old Navy represented  
19 them to be worth (i.e., the products were not worth the inflated and fictitious reference price).

20 67. Ms. Barba has a legal right to rely now, and in the future, on the truthfulness and  
21 accuracy of Old Navy’s representations regarding its advertised reference prices and discounts.

22 68. Ms. Barba was a regular shopper on Old Navy’s website, and would likely shop  
23 there again if she could have confidence regarding the truth of Old Navy’s prices and the value  
24 of its products.

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

28 70. If Ms. Barba were to purchase again from Old Navy without Old Navy having

1 changed its unlawful and deceptive conduct alleged herein, Ms. Barba would be harmed on an  
2 ongoing basis and/or would be harmed once or more in the future

3 71. The deceptive practices and policies alleged herein, and experienced directly by  
4 Plaintiff Barba, are not limited to any single product or group of products. Rather, Old Navy's  
5 deceptive advertising, sales practices, and printed sales receipts, which advertise and state false  
6 "regular" prices and false percentage-off and dollar discounts, were, and continue to be,  
7 systematic and pervasive across nearly all of Old Navy's products across all of Old Navy's  
8 sales channels.

9 **VI. CLASS ACTION ALLEGATIONS**

10 72. Plaintiff brings this class-action lawsuit on behalf of herself and the members of  
11 the following class (the "Class"):

12 **All residents of the State of California who, within the applicable**  
13 **limitations period, purchased from the Old Navy website one or**  
14 **more products which was advertised or promoted by displaying or**  
15 **disseminating a reference price or discount.**

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

20 74. *Numerosity.* Plaintiff does not know the exact number of Class members but is  
21 informed and believe that the Class easily comprises hundreds of thousands of individuals. As  
22 such, Class members are so numerous that joinder of all members is impracticable.

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

- 27 a. Old Navy's policies and actions regarding its advertising;
- 28 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

1 Business & Professions Code § 17200 *et seq.*;

2 d. Whether Plaintiff and the Class have suffered injury and have lost money  
3 or property as a result of such false or misleading discounts and reference prices;

4 e. Whether Defendants should be ordered to disgorge their unjust  
5 enrichment; and

6 f. Whether Old Navy should be enjoined from further engaging in the  
7 misconduct alleged herein.

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

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

15 78. **Typicality.** Plaintiff's claims are typical of Class members' claims. Plaintiff and  
16 Class members all sustained injury as a result of Defendants' practices and schemes.

17 79. **Adequacy.** Plaintiff will fairly and adequately protect Class members' interests.  
18 Plaintiff has no interests antagonistic to Class members' interests. Plaintiff has retained counsel  
19 who have considerable experience and success in prosecuting complex class action and  
20 consumer protection cases.

21 80. Further, a class action is superior to all other available methods for fairly and  
22 efficiently adjudicating this controversy. Each Class member's interests are small compared to  
23 the burden and expense required to litigate each of their claims individually, so it would be  
24 impractical and would not make economic sense for Class members to seek individual redress  
25 for Old Navy's conduct. Individual litigation would add administrative burden on the courts,  
26 increasing the delay and expense to all parties and to the court system. Individual litigation  
27 would also create the potential for inconsistent or contradictory judgments regarding the same  
28 uniform conduct. A single adjudication would create economies of scale and comprehensive

1 supervision by a single judge. Moreover, Plaintiff does not anticipate any difficulties in  
2 managing a class action trial.

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

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

### 13 CAUSES OF ACTION

#### 14 COUNT I

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

16 83. Plaintiff realleges and incorporates by reference all paragraphs alleged  
17 hereinbefore.

18 84. Plaintiff brings this claim in her individual capacity, in her capacity as a private  
19 attorney general seeking the imposition of public injunctive relief, and/or as a representative of  
20 a putative class.

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

24 86. Plaintiff Anastasha Barba is a "consumer," as defined by California Civil Code  
25 § 1761(d).

26 87. The products purchased by Plaintiff from Old Navy are "goods" as defined by  
27 California Civil Code § 1761(a).

28 88. Plaintiff's purchases from Old Navy constitutes a "transaction," as defined by

1 California Civil Code § 1761(e).

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

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

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

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

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

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

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

22 92. With respect to omissions, Old Navy at all relevant times had a duty to disclose  
23 the information in question because, *inter alia*: (a) Old Navy had exclusive knowledge of  
24 material information that was not known to Plaintiff and the Class; (b) Old Navy concealed  
25 material information from Plaintiff and the Class; and/or (c) Old Navy made partial  
26 representations which were false and misleading absent the omitted information.

27 93. Old Navy's misrepresentations and nondisclosures deceive and have a tendency  
28 to deceive the general public.

1        94.     Old Navy's misrepresentations and nondisclosures are material, in that a  
2 reasonable person would attach importance to the information and would be induced to act on  
3 the information in making purchase decisions.

4        95.     As a direct and proximate result of these violations, Plaintiff and the Class  
5 suffered injury-in-fact and lost money.

6        96.     Plaintiff and the Class paid more than they otherwise would have paid for the  
7 products they purchased from Old Navy and they bought more than they otherwise would have  
8 bought from Old Navy.

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

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

16       99.     Old Navy's conduct alleged herein caused substantial injury to Plaintiff, the  
17 Class, and the public. Old Navy's conduct is ongoing and is likely to continue and recur absent  
18 a permanent injunction. Accordingly, Plaintiff seeks an order enjoining Old Navy from  
19 committing such practices. Plaintiff also seeks attorneys' fees and costs.

20       100.    Plaintiff individually seeks public injunctive relief, under the CLRA, to protect  
21 the general public from Old Navy's false discount advertising and omissions.

22       101.    In accordance with California Civil Code § 1782(a), on July 18, 2019, Plaintiff's  
23 counsel served Old Navy with notice of its CLRA violations by certified mail, return receipt  
24 requested. A true and correct copy of that notice is attached hereto as **Exhibit B**.

25       102.    Old Navy has refused or failed to timely respond to the CLRA demand notice.

26       103.    Old Navy has failed to provide appropriate relief for its violations of the CLRA  
27 within 30 days of its receipt of Plaintiff's demand notice. Accordingly, pursuant to  
28 Sections 1780 and 1782(b) of the CLRA, Plaintiff is entitled to recover actual damages,

1 punitive damages, attorneys' fees and costs, and any other relief the Court deems proper.

2 **COUNT II**

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

5 104. Plaintiff realleges and incorporates by reference all paragraphs alleged  
6 hereinbefore.

7 105. Plaintiff brings this claim in her individual capacity, in her capacity as a private  
8 attorney general seeking the imposition of public injunctive relief, and/or as a representative of  
9 a putative class.

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

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

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

109. Independently, Old Navy has made or disseminated or caused to be so made or

1 disseminated any such statement as part of a plan or scheme with the intent not to sell that  
2 personal property or those services, professional or otherwise, so advertised at the price stated  
3 therein, or as so advertised.

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

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

12 112. Plaintiff and the Class reasonably relied on Old Navy's representations and/or  
13 omissions made in violation of the False Advertising Law.

14 113. As a direct and proximate result of these violations, Plaintiff and the Class  
15 suffered injury-in-fact and lost money.

16 114. Old Navy should be ordered to disgorge or make restitution of all monies  
17 improperly accepted, received or retained.

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

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

27 117. Plaintiff individually seeks public injunctive relief, under the FAL, to protect the  
28 general public from Old Navy's false discount advertising and omissions.



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

118. Plaintiff realleges and incorporates by reference all paragraphs alleged hereinbefore.

119. Plaintiff brings this claim in her individual capacity, in her capacity as a private attorney general seeking the imposition of public injunctive relief, and/or as a representative of a putative class.

120. 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").

121. Old Navy's conduct and omissions alleged herein are immoral, unethical, oppressive, unscrupulous, unconscionable, and/or substantially injurious to Plaintiff 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.

122. 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 §§ 1709-1710.

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

124. Old Navy has violated the "fraudulent" prong of the UCL by advertising its products with a false and inflated reference price and with a false discount.

125. 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 Plaintiff and the Class; (b) Old Navy concealed

1 material information from Plaintiff and the Class; and/or (c) Old Navy made partial  
2 representations which were false and misleading absent the omitted information.

3 126. Old Navy's material misrepresentations and nondisclosures were likely to  
4 mislead reasonable consumers, existing and potential customers, and the public.

5 127. Old Navy's misrepresentations and nondisclosures deceive and have a tendency  
6 to deceive the general public and reasonable consumers.

7 128. Old Navy's misrepresentations and nondisclosures are material, such that a  
8 reasonable person would attach importance to the information and would be induced to act on  
9 the information in making purchase decisions.

10 129. Plaintiff and the Class reasonably relied on Old Navy's material  
11 misrepresentations and nondisclosures, and would have acted differently if they had known the  
12 truth.

13 130. By its conduct and omissions alleged herein, Old Navy received more money  
14 from Plaintiff and the Class than it should have received, and that money is subject to  
15 restitution.

16 131. As a direct and proximate result of Old Navy's unfair, unlawful, and fraudulent  
17 conduct, Plaintiff and the Class lost money.

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

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

27 134. Plaintiff individually seeks public injunctive relief, under the UCL, to protect  
28 the general public from Old Navy's false discount advertising and omissions.

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

135. Plaintiff realleges and incorporates by reference all paragraphs alleged hereinbefore.

136. Plaintiff brings this claim in her individual capacity.

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

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

139. If not enjoined by order of this Court, Old Navy is free to resume its unlawful behavior and injure Plaintiff and California consumers purchasing products on the Old Navy website through the misconduct alleged herein once more. Old Navy has a duty to speak truthfully or in a non-misleading manner.

140. Plaintiff would shop at Old Navy again if she could have confidence regarding the truth of Old Navy’s prices and the value of its products.

1 141. Plaintiff will be harmed if, in the future, she is left to guess as to whether Old  
2 Navy is providing a legitimate sale or not, and whether products are actually worth the amount  
3 that Old Navy is representing.

4 142. If Plaintiff was to purchase again from the Old Navy website without Old Navy  
5 having changed its unlawful and deceptive conduct alleged herein, Plaintiff would be harmed  
6 on an ongoing basis and/or would be harmed once or more in the future.

7 143. The balance of the equities favors the entry of permanent injunctive relief  
8 against Old Navy. Plaintiff and the general public will be irreparably harmed absent the entry  
9 of permanent injunctive relief against Old Navy. Plaintiff and the general public lack an  
10 adequate remedy at law. A permanent injunction against Old Navy is in the public interest. Old  
11 Navy's unlawful behavior is capable of repetition or re-occurrence absent the entry of a  
12 permanent injunction.

13 **PRAYER FOR RELIEF**

14 144. In order to prevent injury to the general public, Plaintiff Anastasha Barba  
15 individually requests that the Court enter a public injunction enjoining Defendants from  
16 advertising false reference prices and/or false discounts;

17 145. Further, on behalf of herself and the proposed Class, Plaintiff requests that the  
18 Court order relief and enter judgment against Defendants as follows:

19 a. Declare this action to be a proper class action, certify the Class, and  
20 appoint Plaintiff and her counsel to represent the Class;

21 b. Order disgorgement or restitution, including, without limitation,  
22 disgorgement of all revenues, profits and/or unjust enrichment that each Defendant obtained,  
23 directly or indirectly, from Plaintiff and the members of the Class or otherwise as a result of the  
24 unlawful conduct alleged herein;

25 c. Permanently enjoin each Defendant from the unlawful conduct alleged  
26 herein;

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

1 e. Order each Defendant to pay damages and restitution to Plaintiff and the  
2 Class in an amount to be proven at trial;

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

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

7 h. Provide all other relief to which Plaintiff and the Class may show  
8 themselves justly entitled.

9 **JURY DEMAND**

10 Plaintiff ANASTASHA BARBA, on behalf of herself and on behalf of the Class,  
11 demands a trial by jury on all issues so triable.

12 DATED this 27th day of December, 2019.

13 Presented by:

14 HATTIS & LUKACS

15 By: 

16 Daniel M. Hattis (SBN 232141)  
17 Paul Karl Lukacs (SBN 197007)  
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*\*Pro hac vice application to be submitted*