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Stephen P. DeNittis, Esq. (admitted *pro hac vice*)
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

Daniel M. Hattis, Esq. (SBN 232141)
Paul Karl Lukacs, Esq. (SBN 197007)
HATTIS & LUKACS
400 108th Avenue NE, Suite 400
Bellevue, Washington 98004
Tel.: (425) 233-8628
Fax: (425) 412-7171
dan@hattislaw.com
pkl@hattislaw.com

*Attorneys for Plaintiffs
and the Proposed Class*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

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

Plaintiff,

vs.

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

Defendants.

FILED
San Francisco County Superior Court

DEC - 2 2021

CLERK OF THE COURT

BY: [Signature]
Deputy Clerk

Case No. CGC-19-581937

**[PROPOSED] ORDER FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AND
PROVISIONAL CERTIFICATION OF
A SETTLEMENT CLASS**

1 On _____ (month) ____ (day), 2021, this Court heard Plaintiff Anastasha Barba's
2 motion for preliminary approval of class settlement and provisional class certification under
3 California Rule of Court 3.769(c) and (d). This Court reviewed the motion, including the
4 Settlement Agreement and Release and the Amendment to the Agreement of Settlement and
5 Release (collectively, the "Agreement" or "Settlement"). Having received and considered
6 Plaintiff's submissions and oral arguments (summarized below), and based on this review and the
7 findings below, the Court finds good cause to GRANT the motion.

8 **FINDINGS:**

9 1. Unless otherwise specified, defined terms in this Preliminary Approval Order have
10 the same definitions as the terms in the Agreement.

11 2. The Agreement falls within the range of possible approval as fair, reasonable and
12 adequate.

13 3. The Court finds that (a) the Full Notice, Email Notice, and Publication Notice
14 constitute the best notice practicable under the circumstances, (b) they constitute valid, due, and
15 sufficient notice to all members of the Class, and (c) they comply fully with the requirements of
16 California Code of Civil Procedure section 382, California Rules of Court 3.766 and 3.769, the
17 California and United States Constitutions, and other applicable law.

18 4. For settlement purposes only, the Class is so numerous that joinder of all Class
19 members is impracticable, Plaintiff's claims are typical of the Class's claims, there are questions
20 of law and fact common to the Class which predominate over any questions affecting only
21 individual Class members, and Class certification is superior to other available methods for the
22 fair and efficient adjudication of the controversy.

23 5. **Realistic Range of Recovery.** Plaintiff demonstrates that, even if she were to win
24 at trial on liability, she and the Class might have no damages under case law. This is so because it
25 is not alleged that the purchased items were defective, and Plaintiff does not necessarily contend
26 that the items purchased were not worth the price which Plaintiff or Class members actually paid.

1 **IT IS ORDERED THAT:**

2 **1. Settlement Approval.** The Agreement, including the Full Notice, Email Notice,
3 Publication Notice, Claim Form, and Exemplar Purchase Certificate attached to the Agreement as
4 Exhibits B-F, is preliminarily approved.

5 **2. Provisional Certification.** The Class is provisionally certified for settlement
6 purposes only as a class of all United States citizens who made one or more purchases at an Old
7 Navy Store or Old Navy Outlet Store or from the Old Navy website, excluding purchases made
8 while in Missouri, between November 12, 2015 and the date of entry of the Preliminary Approval
9 Order.

10 **3. Leave to File Amended Complaint.** To effectuate the terms of the proposed
11 settlement, Plaintiff Barba is granted leave to file a First Amended Complaint which is attached
12 as Exhibit B to Mr. DeNittis' Declaration which adds to this action Plaintiffs James Andrews,
13 Anna Nemykina and Brenda Tripicchio.

14 **4. Appointment of Class Representative and Class Counsel.** Plaintiffs Anastasha
15 Barba, James Andrews, Anna Nemykina and Brenda Tripicchio are conditionally certified as the
16 class representatives to implement the Parties' Settlement in accordance with the Agreement.
17 DeNittis Osefchen Prince, P.C. and Hattis & Lukacs are conditionally appointed as Class
18 Counsel. Plaintiffs and Class Counsel must fairly and adequately protect the Class's interests.

19 **5. Appointment of Claims Administrator.** Angeion Group is appointed as the
20 Claims Administrator. Pursuant to Section 2.5(a) of the Amendment to the Agreement of
21 Settlement and Release, Defendants shall pay Angeion Group \$825,000 from the Cash Fund
22 within twenty (20) days of this Order being entered.

23 **6. Provision of Class Notice.** The Claims Administrator will notify Class Members
24 of the Settlement in the manner specified under Section 3.3 of the Agreement and will pay all
25 costs associated with claims administration and providing notice to Class Members as set forth in
26 the Settlement Agreement.

27 **7. Objection to Settlement.** Class Members who have not submitted a timely
28 written exclusion request pursuant to paragraph 9 below and who want to object to the Agreement

1 may file a written objection with the Court and deliver such objection to Class Counsel and
2 Defendants' Counsel no later than seventy-five (75) calendar days after entry of this Order. The
3 delivery date is deemed to be the date the objection is deposited in the U.S. Mail as evidenced by
4 the postmark, the date set forth on an email or the date time stamp via facsimile machine. Written
5 objections are required to state: (1) the name and case number of the Action; (2) the Class
6 member's full name, address, and telephone number; (3) the words "Notice of Objection" or
7 "Formal Objection"; (4) in clear and concise terms, the legal and factual arguments supporting the
8 objection; (5) facts supporting the person's status as a Class member (e.g., either any unique
9 identifier included by the Claims Administrator in his/her notice, or the date and location of
10 his/her relevant purchases); (6) the Class member's signature and the date; and (7) the following
11 language immediately above the Class member's signature and date: "I declare under penalty of
12 perjury under the laws of the State of California that the foregoing statements regarding class
13 membership are true and correct to the best of my knowledge." Class members have the option to
14 appear at the Fairness Hearing, either in person or through personal counsel hired at the Class
15 member's expense, to object to the fairness, reasonableness, or adequacy of the Settlement
16 Agreement or the proposed Settlement, or to the award of attorneys' fees. However, Class
17 Members (with or without their attorneys) intending to make an appearance at the Fairness
18 Hearing must so-inform the Parties and the Court no later than seventy-five (75) calendar days
19 after entry of this Order by providing a "Notice of Intention to Appear" to the Claims
20 Administrator. Only Class Members who file and serve timely Notices of Intention to Appear
21 may speak at the Fairness Hearing.

22 **8. Failure to Object to Settlement.** Class Members who fail to object to the
23 Agreement in the manner specified above will: (1) be deemed to have waived their right to object
24 to the Agreement; (2) be foreclosed from objecting (whether by a subsequent objection,
25 intervention, appeal, or any other process) to the Agreement; and (3) not be entitled to speak at
26 the Fairness Hearing.

27 **9. Requesting Exclusion.** Class Members who want to be excluded from the
28 Settlement must send a letter, email, fax or postcard to the Settlement Administrator stating: (a)

1 the name and case number of the Action; (b) the full name, address, and telephone number of the
2 person requesting exclusion; and (c) a statement that he/she does not wish to participate in the
3 Settlement, postmarked no later than seventy-five (75) calendar days after entry of this Order. If
4 a Class member submits a Claim Form and a request for exclusion, the request for exclusion will
5 be deemed invalid.

6 **10. Claim Form.** Class members must submit complete, valid and sufficient Claim
7 Forms no later than one hundred and eighty (180) calendar days after entry of this Order in order
8 to be included in the distribution of the Settlement Purchase Certificates. Class Members may
9 also be required to provide proof of Qualifying Purchase(s) as described in Sections 2.1 and 2.2
10 of the Agreement. The Claim Form shall have a space for Class members to elect the number of
11 Settlement Purchase Certificates he or she wishes to obtain that corresponds with his/or her tier as
12 described in Sections 2.1 and 2.2 of the Agreement.

13 **11. Termination.** If the Agreement terminates for any reason, the following will
14 occur: (a) this Order and all of its provisions will be vacated, including, but not limited to,
15 vacating conditional certification of the Class, conditional appointment of Plaintiffs as class
16 representatives, and conditional appointment of Plaintiffs' Counsel as Class Counsel; (b) the
17 Action will revert to the status that existed before Plaintiff Barba filed her motion for Preliminary
18 Approval of Class Action Settlement; and (c) no term or draft of the Settlement Agreement, or
19 any part of the Parties' settlement discussions, negotiations or documentation will have any effect
20 or be admissible into evidence for any purpose in the Action or any other proceeding. This Order
21 will not waive or otherwise impact the Parties' rights or arguments.

22 **12. No Admissions.** Nothing in this Order is, or may be construed as, an admission or
23 concession on any point of fact or law by or against any Party.

24 **13. Stay of Dates and Deadlines.** All discovery and pretrial proceedings and
25 deadlines are stayed and suspended until further notice from the Court, except for such actions as
26 are necessary to implement the Agreement and this Order.

27 **14. Release.** For clarity, and to avoid any ambiguity, it is the intent of the Parties that
28 the Agreement of Settlement, as amended, and the Settlement (including its definition of "Class

Released Claims”) do not and will not release any claims asserted by, or on behalf, consumers (whether individually or as members of a proposed class), concerning purchases they made in-store or online while in Missouri, and which are the subject of the separate lawsuit *Hennessey v. The Gap, Inc. and Old Navy, LLC*, Case No. 4:19-cv-1867-SEP, pending in the United States District Court of Missouri, Eastern Division.

15. Fairness Hearing. On March 16, 2022, at 9:30am this Court will hold a Fairness Hearing to determine whether the Agreement should be finally approved as fair, reasonable, and adequate. All papers supporting Plaintiffs’ request for attorneys’ fees and costs and Plaintiffs’ incentive awards must be filed no later than fourteen (14) calendar days before the deadline for Class members to object to the Settlement. All papers supporting final approval of the Agreement must be filed no later than seven (7) calendar days before the Fairness Hearing. Based on the date of this Order and the date of the Fairness Hearing, the following are the certain associated dates in this Settlement:

Event	Timing	Date
Last day for Defendants, through the Claims Administrator, to send Email Notice and Publication Notice, and start operating Settlement Website	30 days after entry of this Order	January 1, 2022
Last day for Defendants, through the Claims Administrator to send 2 nd Email Notice	44 days after entry of this Order	January 15, 2022
Last day for Plaintiffs to file fee petition	61 days after entry of this Order	February 1, 2022
Last day for Class Members to request exclusion or object to the Settlement	75 days after entry of this Order	February 16, 2022
Last day for Class Members to file a claim	180 days after entry of this Order	May 31, 2022

Event	Timing	Date
Last day for Parties to file briefs in support of the Final Order and Judgment	7 days before Fairness Hearing	March 9, 2022

This Court may order the Fairness Hearing to be postponed, adjourned, or continued. If that occurs, the updated hearing date shall be posted on the Settlement Website but other than the website posting, Old Navy will not be required to provide any additional notice to Class Members.

IT IS SO ORDERED.

Dated:

Dec. 2, 2021



JUDGE OF THE SUPERIOR COURT

ETHAN P. SCHULMAN