



FILED
San Francisco County Superior Court

FEB 18 2021

CLERK OF THE COURT

By: [Signature]
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DEPARTMENT 613

BRITTANI SIMPKINS, individually and on
behalf of all similarly situated and/or aggrieved
employees of Defendants in the State of
California,

Plaintiff,

v.

GPS CONSUMER DIRECT, INC.; GPS
SERVICES, INC.; THE GAP, INC.; GAP
SERVICES, INC.; and DOES 1 through 50,
inclusive,

Defendants.

Case No. CGC-18-570781

ORDER GRANTING FINAL APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT

Plaintiff Brittani Simpkins ("Plaintiff") and defendant GPS Consumer Direct, Inc. ("Defendant") have entered into a settlement subject to this Court's approval. The terms of the settlement, including the releases of claims, are set forth in the parties' Stipulation of Settlement and Release, and amendments thereto (collectively the "Settlement Agreement")¹, attached as Exhibit 1 to this Order. Plaintiff moved for final approval of the settlement, which was previously set for hearing on November 18, 2020. On

¹ Unless otherwise indicated, capitalized terms correspond with those set forth in the Settlement Agreement.

1 November 17, 2020, the Court issued a tentative ruling regarding Plaintiff's (1) motion for final approval
2 of class action and PAGA Settlement, enhancement award, and administration costs and (2) application
3 for attorneys' fees. In the tentative ruling, the Court outlined its concerns regarding the motions, and
4 continued the motions for further briefing. The supplemental briefing deadline was December 18, 2020.
5 Plaintiff timely submitted supplemental briefing.

6 Having considered the papers filed in support of Plaintiff's motion for final approval, and for good
7 cause appearing, the Court finds and orders as follows:

8 1. The Court approves the Settlement as fair, reasonable, and adequate. The Settlement shall
9 be consummated in accordance with the terms and provisions of the Settlement Agreement.

10 2. The Court certifies, for settlement purposes only, a Settlement Class consisting of:

11 All current and former non-exempt employees who worked for GPS
12 Consumer Direct, Inc. in the state of California as a Customer Service
13 Representative or a similar job title at any time from October 22, 2014
through June 23, 2020.

14 3. For the reasons set forth in the Court's Order Granting Preliminary Approval of Class Action
15 and PAGA Settlement ("Preliminary Approval Order"), the Court finds that the applicable requirements of
16 California Code of Civil Procedure section 382 and California Rule of Court 3.769 have been satisfied for
17 the purposes of this settlement in that common questions of law and fact predominate, the Settlement Class
18 is so numerous that a class action is superior to other available means for the fair and efficient adjudication
19 of the controversy, Plaintiff's claims are typical of those in the Settlement Class, and Plaintiff has fairly and
20 adequately represented and protected the interests of the Settlement Class.

21 4. The Court appoints Plaintiff Brittani Simpkins as the Class Representative.

22 5. The Court appoints Graham S.P. Hollis, Vilmarie Cordero and Monique R. Rodriguez of
23 GrahamHollis, APC as Class Counsel.

24 6. The Court appoints CPT Group, Inc. as the Settlement Administrator.

25 7. No objections were filed. Irene Ramos filed a valid and timely request for exclusion and
26 shall therefore be excluded from the Settlement.

27 8. The manner and form of the notice as previously approved and ordered by the Court in its
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1 Preliminary Approval Order was reasonably calculated to fully and accurately inform members of the
2 Settlement Class of all material elements of the settlement and of their opportunity to object or comment
3 thereon or to exclude themselves from the Settlement Class, was the best notice practicable under the
4 circumstances, was valid, due, and sufficient notice to all members of the Settlement Class, and complied
5 fully with California law and due process.

6 9. The manner of providing notice substantially complied with the Court's Preliminary
7 Approval Order.

8 10. All members of the Settlement Class with the exception of those who submitted a valid and
9 timely request for exclusion shall be prohibited and permanently enjoined from pursuing the Class
10 Released Claims against the Released Parties.

11 11. In accordance with California Labor Code § 2699(1)(2), the Court has reviewed the
12 Settlement Agreement as it relates to the allocation of civil penalties under the Private Attorneys General
13 Act of 2004 (codified in Labor Code §§ 2698 *et seq.*) The Court finds that the allocation of \$40,000 in
14 civil penalties from the Maximum Settlement Amount for claims under the Private Attorneys General Act
15 of 2004 is fair, reasonable and appropriate. The Court approves the \$40,000 settlement of civil penalties
16 for claims under the Private Attorneys General Act of 2004.

17 12. Thirty thousand dollars (\$30,000), 75% of \$40,000, from the PAGA Amount shall be paid
18 to the California Labor and Workforce Development Agency as required by the statute. Ten thousand
19 dollars (\$10,000), 25% of \$40,000, shall be allocated to the Net Settlement Amount for distribution to
20 members of the Settlement Class.

21 13. Defendant shall deposit the Maximum Settlement Amount of \$1,600,000 within twenty-
22 one (21) calendar days of service of the Notice of Entry of Order Granting Plaintiffs' Motion for Final
23 Approval of Class Action and PAGA Settlement.

24 14. CPT Group, Inc. shall distribute the settlement funds as outlined in the Settlement
25 Agreement and this Order within fourteen (14) calendar days following receipt of the Maximum
26 Settlement Amount.

27 15. The Court finds that the costs of the administration of the Settlement is reasonable. The
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1 Court awards and therefore orders that the Settlement Administrator issue to CPT Group, Inc. after the
2 Individual Settlement Payments have been mailed to all Settlement Class Members administration costs in
3 the amount of thirty-two thousand dollars (\$32,000) from the Maximum Settlement Amount for services
4 performed and the costs incurred in the administration of the settlement.


5 16. The Court awards the named plaintiff, Brittani Simpkins, a service award of \$5,000 from
6 the Maximum Settlement Amount. This award is reasonable and justified in light of Plaintiff's
7 contributions to the case and the risks Plaintiff undertook in serving as class representative. The Class
8 Representative Enhancement Award is separate and in addition to Plaintiff Brittani Simpkins' respective
9 Individual Settlement Payment.

10 17. The Court sets a Compliance Hearing for **April 19, 2021, at 2:00 p.m.** in Department 613
11 of this Court. No later than **April 12, 2021**, Class Counsel and CPT Group, Inc. shall submit a summary
12 accounting, identifying distributions made as ordered herein, the number and value of any uncashed
13 settlement checks, the status of any unresolved issues, if any, and any other matters appropriate to bring to
14 the Court's attention.

15 18. Without affecting the finality of this Order in any way, this Court retains continuing
16 jurisdiction over: (a) implementation of this Settlement and any award or distribution of the Maximum
17 Settlement Amount, including interest earned thereon; (b) disposition of the Maximum Settlement
18 Amount; (c) hearing and determining applications for attorneys' fees, interest and expenses in the Action;
19 and (d) all Parties hereto for the purpose of construing, enforcing, and administering the Settlement
20 Agreement.

21
22 IT IS SO ORDERED.

23
24 Dated: February 18, 2021



25 ANDREW Y.S. CHENG
26 Judge of the Superior Court
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EXHIBIT 1

STIPULATION OF SETTLEMENT AND RELEASE

This Stipulation of Settlement and Release ("**Settlement Agreement**" or "**Settlement**") is reached by and between Plaintiff Brittani Simpkins ("**Plaintiff**"), individually and on behalf of all members of the Settlement Class (defined below), and Defendant GPS Consumer Direct, Inc. ("**Defendant**") (Plaintiff and Defendant are collectively referred to herein as the "**Parties**").

Plaintiff and the Settlement Class are represented by Graham S.P. Hollis and Vilmarie Cordero of GrahamHollis APC, who are designated as "**Class Counsel**". Defendant is represented by Jessica Perry, Allison Riechert Giese, and Alexandra Guerra of Orrick, Herrington & Sutcliffe LLP ("**Defendant's Counsel**").

Plaintiff filed a Class and Representative Action Complaint on October 22, 2018 in San Francisco County Superior Court, entitled Brittani Simpkins v. GPS Consumer Direct, et al, Case No. CGC-18-57081 (the "**Lawsuit**").

The Lawsuit alleges that Defendant: (i) failed to pay all overtime wages owed; (ii) failed to pay minimum and regular wages; (iii) failed to provide meal periods; (iv) failed to authorize and permit rest periods; (v) failed to provide required sick leave; (vi) failed to provide accurate wage statements and written notice of sick leave; (vii) failed to pay all final wages owed upon separation from employment; (viii) engaged in unlawful business practices pursuant to California Business and Professions Code sections 17200, *et seq.*; and (ix) is liable for civil penalties under the Private Attorneys General Act ("**PAGA**"), Labor Code section 2698, *et seq.* After the exchange of documents and information, including class member contact information, the Parties participated in a mediation with neutral third party, Tripper Ortman of Ortman Mediation (the "**Mediator**"), which ultimately led to the resolution of the Lawsuit.

Defendant denies any liability and wrongdoing of any kind associated with the claims alleged in the Lawsuit, and further denies that the Lawsuit is appropriate for class treatment for any purpose other than this Settlement. Defendant contends, among other things, that it has complied at all times with the California Labor Code, the applicable Wage Orders, and the California Business and Professions Code. In addition, it is Defendant's position that, if this case were to be litigated, class certification would be inappropriate. This Settlement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Settlement is intended or will be construed as an admission of liability or wrongdoing by Defendant.

Given the uncertainty of litigation, the Parties wish to settle Plaintiff's claims, both individually and on behalf of the Settlement Class. Accordingly, the Parties agree as follows:

1. Settlement Class. For purposes of this Settlement Agreement only, the Parties stipulate to certification of the following "**Settlement Class**" or "**Settlement Class Members**":

All current and former non-exempt employees who worked for GPS Consumer Direct, Inc. in the State of California as Customer Service Representatives or similar job title at any time from October 22, 2014 through the date of Preliminary Approval (the "**Class Period**").

The Parties agree that certification for the purpose of settlement is not an admission that class certification is proper under Section 382 of the California Code of Civil Procedure. Should, for whatever reason, the Court not grant Final Approval, the Parties' stipulation to class certification as part of the Settlement shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification would be inappropriate in a non-settlement context.

2. **Release.** Plaintiff and every member of the Settlement Class (except those who opt out of the Settlement), will release and discharge Defendant, its past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys ("**Released Parties**") from any and all claims, demands, rights, liabilities and causes of action that were or could have been pleaded under local, state or federal law arising out of, relating to, or based on any facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions, or failures to act pleaded in the operative complaint against GPS Consumer Direct, Inc. through the date of preliminary approval, including but not limited to claims related to unpaid wages and overtime compensation, meal and rest breaks, sick leave, untimely final paychecks, inaccurate itemized wage statements, business expenses, unfair business practices, and for penalties and unpaid wages under PAGA ("**Class Released Claims**").

The aforementioned Release shall be printed on the back of the settlement checks issued to participating members of the Settlement Class.

3. **Maximum Settlement Amount.** As consideration, Defendant agrees to pay a non-reversionary maximum amount ("**Maximum Settlement Amount**") of one million, six hundred thousand dollars and no cents (\$1,600,000.00) in full and complete settlement of this matter, as follows:

- A. The Parties agree to engage CPT Group as the "**Settlement Administrator**" to administer the Settlement.
- B. The Maximum Settlement Amount shall be deposited with the Settlement Administrator within twenty-one (21) calendar days after the Payment Obligation and Class Release Date. The "**Payment Obligation and Class Release Date**" is defined as the date the Notice of Entry of Order granting final approval is served, or, solely in the event that there are any objections to the settlement (the filing of an objection being a prerequisite to the filing of an appeal), the later of (a) the last date on which any appeal might be filed, or (b) the date of successful resolution of any appeal(s) – including expiration of any time to seek reconsideration or further review.
- C. The Maximum Settlement Amount includes:
 - (1) All payments to the Settlement Class;
 - (2) All costs of the Settlement Administrator associated with the administration of the Settlement, which are anticipated to be no greater than \$29,000;

- (3) Up to \$7,500 for Plaintiff Simpkins as a Named Plaintiff Enhancement Payment, in recognition of Plaintiff's contributions to the action and her service to the Settlement Class. Even in the event that the Court reduces the requested Named Plaintiff Enhancement Payment, Plaintiff and the Settlement Class shall not have the right to revoke the Settlement for that reason, and it will remain binding.
- (4) Up to one-third of the Maximum Settlement Amount in attorneys' fees, which is currently estimated at \$533,333.33, plus actual reasonable costs and expenses related to the action, which are not to exceed \$18,000, as supported by declaration. Should the Court award a lesser sum for attorneys' fees and costs, the residual shall be included in the Net Settlement Amount for the Settlement Class. In the event that the Court reduces the requested attorneys' fees and costs, Plaintiff and the Settlement Class shall not have the right to revoke this Settlement for that reason, and it will remain binding, although Plaintiff reserves all rights to appeal any such ruling; and
- (5) \$40,000 of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code section 2699(i), 75% of such penalties, or \$30,000, will be payable to the Labor & Workforce Development Agency ("**LWDA**") for its share of PAGA penalties, and the remaining 25%, or \$10,000, will be payable to the members of the Settlement Class who worked for Defendant from the period August 18, 2017 to the date of preliminary approval as the "**PAGA Amount**." Even if the Court reduces or increases the requested PAGA civil penalties, Plaintiff and the Settlement Class shall not have the right to revoke this Settlement for that reason, and it will remain binding.

E. **Corporate Payroll Taxes.** The Maximum Settlement Amount does not include Corporate Payroll Taxes, which shall be paid by Defendant separate and apart from the Maximum Settlement Amount. The Corporate Payroll Taxes will be computed by the Settlement Administrator based on the amounts to be paid as wages to the Settlement Class Members. The Settlement Administrator shall be responsible for making all necessary payments and government filings in connection with such payments.

4. **Payments to the Settlement Class.** Settlement Class Members are not required to submit a claim form to receive a payment ("**Individual Settlement Payment**") from the Settlement. Individual Settlement Payments will be determined and paid as follows:

- A. The Settlement Administrator shall first determine based on Defendant's records (a) the number of "**Non-Shift Differential Pay Periods**" worked by each Settlement Class Member during the Class Period that do not include both (i) a lead or second shift differential and (ii) overtime payment, (b) the number of "**Shift Differential Pay Periods**" worked by each Settlement Class Member during the Class Period that include both (i) a lead or second shift differential and (ii) overtime payment and (c) number of "**PAGA Pay Periods**" worked by each Settlement Class Member during the PAGA Period. The Settlement Administrator shall multiply the

Shift Differential Pay Periods by 2 for the purposes of calculating Individual Settlement Payments. Collectively the Non-Shift Differential Pay Periods and Shift Differential Pay Periods shall be called "**Pay Periods**".

- B. The Settlement Administrator shall then deduct from the Maximum Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, the Named Plaintiff Enhancement Payment, the Settlement Administrator's costs, and the LWDA's share of the PAGA payment. The remaining amount shall be known as the "**Net Settlement Amount**."
- C. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class Member's Individual Settlement Payment based on the following formula:
 - i. PAGA Amount: The sum of \$10,000 (representing the employees' share of the PAGA Payment) shall be designated as the "**PAGA Amount**." Each participating Settlement Class Member who was employed by Defendant at any time between August 18, 2017 and the date of preliminary approval (the "**PAGA Period**") shall receive a portion of PAGA Pay Periods. To determine the amount of each participating Settlement Class Member's portion of the PAGA Amount, the Settlement Administrator shall multiply the PAGA Amount by a fraction, the numerator of which is the Settlement Class Member's total PAGA Pay Periods and the denominator of which is the PAGA Pay Periods worked by all participating Settlement Class Members.
 - ii. Other Claims Amount. The remainder of the Net Settlement Amount shall be designated as the "**Other Claims Amount**." The Other Claims Amount will be distributed to each participating Settlement Class Member based on their proportionate number of Pay Periods worked during the relevant Class Periods (exclusive of leaves of absence), by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class Member's total Pay Periods worked during the relevant Class Period, and the denominator of which is the total number of Pay Periods worked by all participating Settlement Class Members during the relevant Class Period.
- D. Within fourteen (14) calendar days following the deposit of the Maximum Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate each Settlement Class Member's Individual Settlement Payment and will prepare and mail Individual Settlement Payments to Settlement Class Members.
- E. The entire PAGA Amount distributed to the Settlement Class Members shall be allocated as a 100% penalties.

- F. In light of the claims asserted and their relative strength in the Litigation, the Other Claims Amount distributed to each participating Settlement Class Member shall be allocated as (60%) penalties and interest and (40%) wages.
- G. The Settlement Administrator will issue each participating Settlement Class Member an IRS Form 1099 (for amounts paid as penalties and interest) and an IRS Form W-2 (for amounts paid as wages).
- H. The Individual Settlement Payments paid to Settlement Class Members and the Named Plaintiff Enhancement Payment shall be deemed not to be "pensionable" earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*i.e.* vacation, retirement plans, etc.) of Settlement Class Members or Plaintiff. The Parties agree that any Individual Settlement Payments or Named Plaintiff Enhancement Payment paid to Settlement Class Members or Plaintiff under the terms of this Settlement Agreement do not represent any modification of Settlement Class Members' or Plaintiff's previously credited hours of service or other eligibility criteria under any employee pension benefit plan, employee welfare benefit plan, or any other plan or program. Further, any Individual Settlement Payments or Named Plaintiff Enhancement Payment paid hereunder shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan, employee welfare benefit plan, or any other plan or program sponsored by Defendant. No benefit, including but not limited to 401k benefits, shall increase or accrue as a result of any payment made as a result of this Settlement.
- I. It shall be the responsibility of the Settlement Administrator to timely and properly withhold from Individual Settlement Payments payable to Settlement Class Members all applicable payroll and employment taxes, but not Corporate Payroll Taxes, and to prepare and deliver the necessary tax documentation and, thereafter, to cause the appropriate deposits of withholding taxes and informational and other tax return filing to occur. Each Settlement Class Member's share of all applicable payroll and employment taxes (excluding Corporate Payroll Taxes) withheld and deposited with the applicable governmental authorities in accordance with this Settlement Agreement shall be a part of, and paid out of, the Individual Settlement Payment to each Settlement Class Member. Each Settlement Class Member will be responsible for paying all applicable state, local, and federal income taxes on all amounts the Settlement Class Member receives pursuant to this Settlement Agreement (excluding Corporate Payroll Taxes).
- J. The Individual Settlement Payments shall be paid to Settlement Class Members specifically in exchange for the release of the Released Parties from the Class Released Claims and the covenant not to sue concerning the Class Released Claims.

5. **Attorneys' Fees and Costs.** Plaintiff shall be permitted to make a request for Class Counsel's attorneys' fees amounting to one-third of the Maximum Settlement Amount, which is currently estimated to be \$533,333.33, plus actual reasonable costs and expenses, which are not to exceed \$18,000. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation all work performed and all

costs incurred to date, and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator at the time the Settlement Administrator distributes the fee award approved by the Court.

6. Named Plaintiff Enhancement Payment. Plaintiff may make a request for a Named Plaintiff Enhancement Payment of \$7,500 to Plaintiff for her time and risks in prosecuting this litigation and service to the Settlement Class. This award will be in addition to Plaintiff's Individual Settlement Payment as a Settlement Class Member and shall be reported on IRS Forms 1099 by the Settlement Administrator.

7. Settlement Administrator. The parties agree to the appointment of CPT Group as Settlement Administrator, and to request approval to pay an amount not anticipated to exceed \$29,000 for its services from the Maximum Settlement Amount. The Settlement Administrator shall be responsible for sending notices to the Settlement Class Members, for calculating Individual Settlement Payments, and for preparing all checks and mailings. The Settlement Administrator shall be authorized to pay itself from the Maximum Settlement Amount only after Individual Settlement Payments have been mailed to all Settlement Class Members.

8. Preliminary Approval. Upon execution of this Settlement Agreement, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Graham S.P. Hollis and Vilmarie Cordero of GrahamHollis APC as Class Counsel;
- C. Appointing Plaintiff Simpkins as Class Representative for the Settlement Class;
- D. Approving CPT Group as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Class Notice and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

9. Notice to Settlement Class. Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within thirty (30) calendar days after entry of an order preliminarily approving this Settlement, Defendant will provide the Settlement Administrator with the names, last known addresses, last known telephone numbers, social security numbers, and the number of Non-Shift Differential Pay Periods, Shift Differential Pay Periods and PAGA Pay Periods during the relevant time periods, as reflected by

Defendant's corporate and business records, exclusive of leaves of absence (in electronic format). Approximations and averages used to cover periods where data is missing or otherwise not available.

- B. Within fourteen (14) calendar days from receipt of this information, the Settlement Administrator shall: (i) run the names of all Settlement Class Members through the National Change of Address ("NCOA") database to determine any updated addresses and also perform an Accurint (or substantially similar) in-depth skip trace to obtain the best possible address for Class Members prior to the mailing; (ii) update the addresses of any Settlement Class Member for whom an updated address was found through the NCOA search or the Accruing skip trace; and (iii) mail a "Notice Packet" to each Settlement Class Member at his or her last known address or at the updated address found through the NCOA search and/or skip trace, and retain proof of mailing. Each Notice Packet mailed to Settlement Class Members shall contain a Notice of Settlement Award, which shall disclose the amount of the Settlement Class Member's estimated Individual Settlement Payment, the number of Pay Periods and Shift Differential Pay Periods worked during the relevant Class Period, and the number of Pay Periods worked during the PAGA Period. At least ten (10) days prior to the final approval hearing, the Settlement Administrator will provide a declaration of due diligence and proof of mailing with regard to the mailing of the Notice Packet.
- C. Any Notice Packets returned to the Settlement Administrator as undelivered on or before the Response Deadline (defined below) shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a Experian (or substantially similar) in-depth skip trace or mass search on LexisNexis databases based on set criteria to obtain an updated mailing address and if an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class Member promptly, within five (5) business days of receiving the returned Notice Packet. Settlement Class Members to whom Notice Packets are re-sent after having been returned as undeliverable to the Settlement Administrator shall have until the Response Deadline to mail a Request for Exclusion, objection, or dispute.
- D. Settlement Award Disputes. The Parties will handle any disputes about the Individual Settlement Payments as follows:
- i. To the extent a Settlement Class Member disputes the Pay Periods, Shift Differential Pay Periods and/or PAGA Pay Periods shown in his or her Notice, he or she may produce evidence to the Settlement Administrator establishing the dates he or she contends to have worked during the Class Period prior to the Response Deadline. Defendant's records will be presumed determinative. The Settlement Administrator shall notify counsel for the Parties of any disputes. Defendant shall review its records and provide further information to the Settlement Administrator, if necessary. The Settlement Administrator shall resolve any disputes and notify counsel for the Parties of its decision.

- ii. The Settlement Administrator's determination of eligibility for any Individual Settlement Payment under the terms of this Settlement Agreement shall be conclusive, final and binding on all Parties and all Settlement Class Members, so long as the Settlement Administrator has first consulted with the Parties regarding any disputes or questions as to eligibility.
- E. Requests for Exclusion. Any Settlement Class Member who wishes to opt out of the Settlement must complete and mail a Request for Exclusion to the Settlement Administrator by the "**Response Deadline**" which is sixty (60) calendar days from the date of the initial mailing of the Notice Packets.
- i. The Request for Exclusion must: (1) contain the name, address, telephone number and last four digits of the social security number of the Settlement Class Member; (2) be signed by the Settlement Class Member; and (3) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not comply with (2) and/or (3), it will not be deemed valid for exclusion from this Settlement. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any person who validly requests to be excluded from the Settlement will no longer be a member of the Settlement Class, will not be entitled to any recovery under this Settlement Agreement, and will not be bound by the terms of the Settlement or have any right to object, appeal, or comment thereon. Settlement Class Members who fail to submit a valid and timely Request for Exclusion shall be bound by all terms of the Settlement Agreement and any judgment entered in the Lawsuit if the Settlement is approved by the Court.
 - ii. If (a) 50 or more Settlement Class Members submit a valid Request for Exclusion, (b) there is a change to the scope of the Release, or (c) the Court finds the Maximum Settlement Amount is insufficient to warrant approval, Defendant may, at its discretion, elect to rescind the Settlement.
 - iii. The Parties agree to leave the choice of whether to participate in the Settlement up to the Settlement Class. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class Member to object to the Settlement or opt out of the Settlement Class, or encourage any Settlement Class Member to appeal from the final judgment. At no time will Plaintiff or her counsel hold a press conference or otherwise seek to affirmatively publicize the settlement in the media or on social media. If contacted by the media about the Settlement, Plaintiff and her counsel will state "It was a fair settlement and we are happy with the results" or something to that effect. Additionally, neither Plaintiff nor her counsel shall engage in any disparagement of any type related to this Settlement.

- F. **Objections.** Settlement Class Members who do not opt out may object to this Settlement Agreement as explained in the Class Notice by submitting a written objection to the Settlement Administrator (who shall provide all objections as received to Class Counsel and Defendant's Counsel, as well as file all such objections with the Court). To be valid, any objection must be postmarked no later than the Response Deadline. Defendant's counsel and Class Counsel shall submit any responses to objections no later than five days before the Final Approval Hearing. Any Settlement Class Member who does not opt out of the Settlement may appear in person or through their own counsel and raise an objection at the Final Approval Hearing.

10. Final Approval. Following preliminary approval and the close of the period for filing Requests for Exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of a Final Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees and costs, the Named Plaintiff Enhancement Payment, Settlement Administrator costs, and payment to the LWDA for its share of PAGA penalties; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

Plaintiff shall timely file the motion for final approval and request entry of the Final Approval Order and Judgment. Class Counsel shall provide Defendant's Counsel a copy of the Final Approval Motion for review at least three business days prior to filing.

11. Mailing of Checks. The Settlement Administrator will mail all required payments no later than fourteen (14) calendar days after the Payment Obligation and Class Release Date. If a Settlement Class Member's check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the Settlement Class Member at his or her correct address. It is expressly understood and agreed that the checks for the Individual Settlement Payments will become void and no longer available if not cashed within 180 days from the date the Settlement Administrator mails it. The amounts represented by checks remaining uncashed after the 180-day deadline will be deposited by the Settlement Administrator with the California State Controller to be deposited in the Unclaimed Property Fund in the name of the Settlement Class Member. Upon completion of administration of the Settlement, the Settlement Administrator shall provide written certification of such completion to the Court, Class Counsel and Defendant's Counsel.

No person shall have any claim against Defendant, Defendant's Counsel, the Plaintiff, the Settlement Class, Class Counsel or the Settlement Administrator based on mailings, distributions and payments made in accordance with this Settlement Agreement.

12. Non-Admission of Liability. Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. The Parties have entered into this Settlement Agreement to avoid the

burden and expense of further litigation. Pursuant to California Evidence Code section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code section 1152.

13. Employment Status. Plaintiff agrees never to apply for or accept employment with Defendant or any of The Gap, Inc.'s brands, including but not limited to Gap, Banana Republic, Old Navy, Athleta, and Intermix.

14. Parties' Authority. The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties to the terms and conditions hereof.

15. Mutual Full Cooperation. The Parties and their counsel agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions or actions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties shall seek first the assistance of the Mediator and then the Court to resolve such disagreement.

16. Privacy of Documents and Information. Plaintiff and Class Counsel agree that they will destroy all confidential documents and information provided to them by Defendant within thirty (30) days of the Payment Obligation and Class Release Date, except for documents that must be saved for malpractice purposes or ethical rules governing attorney conduct in California and the United States. Plaintiff and Class Counsel further agree that none of the documents and information provided to them by Defendant shall be used for any purpose other than prosecution of this Lawsuit or the defense or prosecution of a malpractice action or defense of any state bar complaint.

17. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Settlement Agreement.

18. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any of the Parties by reason of the extent to which any Party or their or its counsel participated in the drafting of this Settlement Agreement.

19. Jurisdiction of the Court. Except for those matters to be resolved by the Mediator or the Settlement Administrator as expressly stated, any dispute regarding the interpretation or validity of or otherwise arising out of this Settlement Agreement, or relating to the Lawsuit or the Class Released Claims, shall be subject to the exclusive jurisdiction of the Court, and Plaintiff,

Settlement Class Members, and Defendant agree to submit to the personal and exclusive jurisdiction of the Court. The Court shall retain jurisdiction solely with respect to the interpretation, implementation and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement embodied in this Settlement Agreement and all orders and judgments entered in connection therewith.

20. Final Judgment. The Parties shall provide the Settlement Administrator with a copy of the Final Judgment once it is entered by the Court, and the Settlement Administrator shall post the Final Judgment to its website within 3 business days of receipt.

21. California Law Governs. All terms of this Settlement Agreement and the exhibit hereto shall be governed and interpreted according to the laws of the State of California, regardless of its conflict of laws.

21. Invalidity of Any Provision. The Parties request that before declaring any provision of this Settlement Agreement invalid, the Court shall first attempt to construe all provisions valid to the fullest extent possible consistent with applicable precedents

22. Headings. The headings contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof.

23. Waiver and Amendment. The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

24. Notices. All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendant: Allison Riechert Giese
Orrick, Herrington & Sutcliffe LLP
1000 Marsh Road
Menlo Park, California 94025-1015
agiese@orrick.com

if to Plaintiff: Villmarie Cordero
GrahamHollis APC
3555 Fifth Avenue Suite 200
San Diego, CA 92103
vcordero@grahamhollis.com

25. Entire Agreement. This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations,

presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

26. Binding on Assigns. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

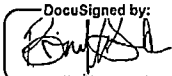
27. Interim Stay of Proceedings. The Parties agree to hold in abeyance all proceedings in the Lawsuit, except such proceedings necessary to implement and complete the Settlement, pending the final approval hearing to be conducted by the Court.

28. Counterparts. This Settlement Agreement may be executed by one or more Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

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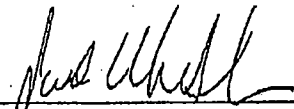
DATED: 11/13/2019

BRITTANI SIMPKINS

DocuSigned by:
By: 
6247297700E446B
Plaintiff & Settlement Class Representative

DATED: 10/23/19

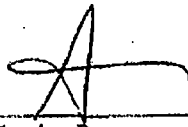
GPS CONSUMER DIRECT, INC.

By: 
Paul Adams
Senior Vice President, General Counsel at
The Gap, Inc.

APPROVED AS TO FORM:

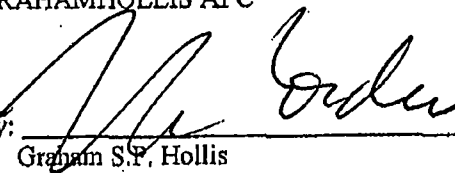
DATED: 10/23/19

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: 
Jessica Perry
Allison Riechert Giese
Alexandra Guerra
Attorneys for GPS Consumer Direct, Inc.

DATED: 11/05/19

GRAHAMHOLLIS APC

By: 
Graham S.P. Hollis
Vilmarie Cordero
Attorneys for Plaintiff

AMENDMENTS TO STIPULATION OF SETTLEMENT AND RELEASE

Plaintiff Brittani Simpkins ("Plaintiff"), individually and on behalf of all members of the Settlement Class, and Defendant GPS Consumer Direct, Inc. ("Defendant") (Plaintiff and Defendant are collectively referred to herein as "Parties").

I. RECITALS

This agreement is made with reference to the following recital of essential facts:

1. On December 11, 2019, the Court issued a tentative ruling re Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement, wherein the Court asked for further briefing and identified concerns about some of the provisions of the Settlement Agreement.
2. On December 12, 2019, the Parties submitted to the tentative ruling.
3. On December 13, 2019, the Court issued an order adopting the tentative and ordered the Parties to file supplemental briefing no later than March 17, 2020.
4. The Parties have met and conferred and agreed to amend the Stipulation of Settlement and Release as outlined herein.

II. AMENDMENTS TO STIPULATION OF SETTLEMENT AND RELEASE

1. Paragraph 9(E)(i) Request for Exclusion shall be modified, amended and replaced by this Agreement to read as follows:

The Request for Exclusion must include the following information: (1) the Class Member's name and last four digits of his or her social security number; (2) clearly state that the Class Member wants to opt out of the settlement; (3) be signed by the Class Member; and (4) be postmarked by the Response Deadline. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. If a Class Member submits a Request for Exclusion that does not comply with requirements (1)-(3) the Settlement Administrator will notify the Class Member of the deficiency within five (5) business days of receipt. Any Class Member who submits a deficient Request for Exclusion shall have until the Response Deadline or ten (10) days after the cure notice is sent, whichever is later, to cure any deficiencies, at which point the Class Member's Request for Exclusion will be rejected if not cured. If the Request for Exclusion does not comply with requirement (4), it will not be deemed a valid request for exclusion. Any person who validly requests to be excluded from the settlement will no longer be a member of the Settlement Class, will not be entitled to any recovery under this Settlement Agreement, and will not be bound by the terms of the Settlement or have any right to object, appeal, or comment thereon. Settlement Class Members who fail to submit a valid and timely

Request for Exclusion shall be bound by all terms of the Settlement Agreement and any judgment entered in the Lawsuit in the Settlement is approved by the Court.

2. Paragraph 9(F) Objections shall be modified, amended and replaced by this Agreement to read as follows:

Objections. Settlement Class Members who do not opt out may object to this Settlement Agreement as explained in the Class Notice by submitting a written objection to the Settlement Administrator. An objection must: (1) clearly identify the case name and number (*Brittani Simpkins v. GPS Consumer Direct, Inc.*, Case No. CGC-18-570781); (2) state the grounds for the objection; (3) include the Class Member's name, address and phone number or the Class Member's name and address and phone number for the Class Member's attorney; (4) be signed by the Class Member or the Class Member's attorney; (5) be mailed to the Settlement Administrator; and (5) be postmarked no later than the Response Deadline. The Settlement Administrator shall provide all objections received to Class Counsel and Defendant's counsel within three (3) calendar days of receipt. Upon receipt Class Counsel shall promptly file all objections received with the Court. Class Counsel and Defendant's counsel shall submit any responses to objections no later than five (5) court days before the Final Approval Hearing. Any Settlement Class Member who does not opt out of the Settlement may appear in person or through their own counsel to raise an objection at the Final Approval Hearing. If a Class Member submits both a Request for Exclusion and Objection, the Request for Exclusion will be deemed valid and the Objection will be deemed invalid.

III. EXECUTION

Dated _____, 2020

Brittani Simpkins
Plaintiff & Settlement Class Representative

Dated _____, 2020

GPS Consumer Direct, Inc.
Paul Adams
Senior Vice President,
General Counsel at The Gap, Inc.

Approved as to Form:

Dated _____, 2020

ORRICK, HERRINGTON & SUTCLIFFE LLP
Jessica Perry
Allison Riechert Giese
Alexandra Guerra
Attorneys for GPS Consumer Direct, Inc.

Dated _____, 2020

GRAHAMHOLLIS APC
Graham S.SP. Hollis
Vilmarie Cordero
Attorneys for Plaintiff

FURTHER AMENDMENTS TO STIPULATION OF SETTLEMENT AND RELEASE

Plaintiff Brittani Simpkins ("Plaintiff"), individually and on behalf of all members of the Settlement Class, and Defendant GPS Consumer Direct, Inc. ("Defendant") (Plaintiff and Defendant are collectively referred to herein as "Parties").

I. RECITALS

This Further Amendments to Stipulation of Settlement and Release ("Agreement") is made with reference to the following recital of essential facts:

1. On December 11, 2019, the Court issued a tentative ruling re Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement, wherein the Court asked for further briefing and identified concerns about some of the provisions of the Settlement Agreement.
2. On December 12, 2019, the Parties submitted to the tentative ruling.
3. On December 13, 2019, the Court issued an order adopting the tentative and ordered the Parties to file supplemental briefing no later than March 17, 2020.
4. On March 17, 2020 the Parties submitted supplemental briefing to the Court.
5. On or about May 8, 2020, the Court issued a tentative ruling ordering the Parties to modify the Settlement Agreement as well as to submit further supplemental briefing to the Court.
6. The Parties have met and conferred and agreed to further amend the Stipulation of Settlement and Release as outlined herein.

II. FURTHER AMENDMENTS TO STIPULATION OF SETTLEMENT AND RELEASE

1. Paragraph 9(E)(i) Request for Exclusion shall be modified, amended and replaced by this Agreement to read as follows:

The Request for Exclusion must include the following information in order to be valid: (1) the Class Member's name; (2) clearly state that the Class Member wants to opt out of the settlement; (3) be signed by the Class Member; and (4) be postmarked by the Response Deadline. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. If a Class Member submits a Request for Exclusion that does not comply with requirements (1)-(3) the Settlement Administrator will notify the Class Member of the deficiency within five (5) days of receipt. Any Class Member who submits a deficient Request for Exclusion shall have until the Response Deadline or ten (10) days after the cure notice is sent, whichever is later, to cure any deficiencies, at which point the Class Member's Request

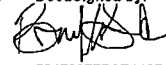
for Exclusion will be rejected if not cured. If the Request for Exclusion does not comply with requirement (4), it will not be deemed a valid request for exclusion. Any person who validly requests to be excluded from the settlement will no longer be a member of the Settlement Class, will not be entitled to any recovery under this Settlement Agreement, and will not be bound by the terms of the Settlement or have any right to object, appeal, or comment thereon. Settlement Class Members who fail to submit a valid and timely Request for Exclusion shall be bound by all terms of the Settlement Agreement and any judgment entered in the Lawsuit in the Settlement is approved by the Court. The provisions outlined in this paragraph will be strictly enforced.

2. Paragraph 9(F) Objections shall be modified, amended and replaced by this Agreement to read as follows:

Objections. Settlement Class Members who do not opt out may object to this Settlement Agreement as explained in the Class Notice by submitting a written objection to the Settlement Administrator. An objection must: (1) clearly identify the case name and number (*Brittani Simpkins v. GPS Consumer Direct, Inc.*, Case No. CGC-18-570781); (2) state the grounds for the objection; (3) include the Class Member's name, address and phone number or the Class Member's name and address and phone number for the Class Member's attorney; (4) be signed by the Class Member or the Class Member's attorney; (5) be mailed to the Settlement Administrator; and (6) be postmarked no later than the Response Deadline in order to be valid. If a Class Member submits an Objection that does not comply with requirements (1)-(4), the Settlement Administrator will notify the Class Member of the deficiency within five (5) days of receipt. Any Class Member who submits a deficient Objection shall have until the Response Deadline or ten (10) days after the cure notice is sent, whichever is later, to cure any deficiencies. The Response Deadline will be strictly enforced. The Settlement Administrator shall provide all objections received to Class Counsel and Defendant's counsel within three (3) calendar days of receipt. Upon receipt Class Counsel shall promptly file all objections received with the Court. Class Counsel and Defendant's counsel shall submit any responses to objections no later than five (5) court days before the Final Approval Hearing. Any Settlement Class Member who does not opt out of the Settlement may appear in person or through their own counsel to raise an objection at the Final Approval Hearing. If a Class Member submits both a Request for Exclusion and Objection, the Request for Exclusion will be deemed valid and the Objection will be deemed invalid.

III. EXECUTION

Dated 6/15/2020, 2020

DocuSigned by:

52472977D0E446B...

Brittani Simpkins
Plaintiff & Settlement Class Representative

Dated _____, 2020


GPS Consumer Direct, Inc.
Paul Adams
Senior Vice President,
General Counsel at The Gap, Inc.

Approved as to Form:

Dated _____, 2020

ORRICK, HERRINGTON & SUTCLIFFE LLP
Jessica Perry
Allison Riechert Giese
Alexandra Guerra
Attorneys for GPS Consumer Direct, Inc.

Dated June 15, 2020



GRAHAMHOLLIS APC
Graham S.P. Hollis
Vilmarie Cordero
Attorneys for Plaintiff

III. EXECUTION

Dated _____, 2020

Brittani Simpkins
Plaintiff & Settlement Class Representative

Dated June 9 _____, 2020

Paul Adams

GPS Consumer Direct, Inc.
Paul Adams
Senior Vice President,
General Counsel at The Gap, Inc.

Approved as to Form:

Dated June 9, 2020



ORRICK, HERRINGTON & SUTCLIFFE LLP
Jessica Perry
Allison Riechert Giese
Alexandra Guerra
Attorneys for GPS Consumer Direct, Inc.

Dated _____, 2020

GRAHAMHOLLIS APC
Graham S.P. Hollis
Vilmarie Cordero
Attorneys for Plaintiff


CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, KEITH TOM, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On February 18, 2021, I electronically served the ATTACHED DOCUMENT(S) via File&ServeXpress on the recipients designated on the Transaction Receipt located on the File&ServeXpress website.

Dated: February 18, 2021

T. Michael Yuen, Clerk

By: 
KEITH TOM, Deputy Clerk