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8 Attorney for Plaintiff

9 LAURIE MUNNING, individually and on behalf of
10 all others similarly situated,

11 Plaintiff,

12 v.

13 THE GAP, INC.; GAP (APPAREL) LLC; GAP
14 INTERNATIONAL SALES, INC.; BANANA
15 REPUBLIC LLC; and BANANA REPUBLIC
16 (APPAREL) LLC,

17 Defendants.

Case No.: 3:16-cv-03804-TEH

CLASS ACTION

FIRST AMENDED COMPLAINT

JURY TRIAL DEMAND

18 Plaintiff Laurie Munning, individually and on behalf of all others similarly situated,
19 through her undersigned attorneys, files this class action First Amended Complaint against
20 Defendants and alleges as follows:

21 **NATURE OF THE ACTION**

22 1. Plaintiff brings this proposed class action against Defendants alleging violations
23 of federal pricing regulations and the consumer protection laws of California and New Jersey as
24 well as the common law.

25 2. Specifically, it is alleged that Defendants engaged in a systematic scheme of false
26 and misleading advertising, marketing, and sales practices with respect to the sale of apparel and
27 other personal items via their online Gap Factory and Banana Republic Factory store websites.

28 This scheme, which is set forth in more detail herein, may be summarized as follows.

3. First, Defendants had, and continue to have, a policy of listing an arbitrary base
price for every item offered for sale on their websites, which purports to be each item's

1 “original” or “regular,” non-discounted price. This practice is false and misleading because
2 most, if not all, items are never sold or offered for sale at the listed “original,” non-discounted
3 prices, and no items are ever consistently sold or offered for sale at their non-discounted prices.
4 Rather, the items on Defendants’ websites are regularly sold at prices that are lower than the
5 purported non-discounted prices.

6 4. Second, Defendants perpetually advertise the items for sale on their websites at
7 purported “discount” or “sale” prices, which Defendants represent to be reduced or discounted
8 by a specified percentage off the items’ “original” prices. For example, Defendants will offer a
9 dress for sale at a “discount” price of \$44.98, which they advertise as “50% off” the dress’s
10 purported “original” price of \$89.99. See, e.g., Exhibit A. This practice is false and misleading
11 because the advertised discount percentage and “sale” price do not represent an actual discount,
12 as the items were never sold or offered for sale at their listed “original” prices.

13 5. Because the vast majority – if not all – of the items on Defendants’ websites are
14 never offered for sale at their listed “original,” non-discounted prices, but rather are perpetually
15 offered for sale at purported “discount” or “sale” prices, the reduced prices advertised by
16 Defendants are not actually discounts at all, but rather the everyday, regular prices of the items.

17 6. Federal regulations prohibit the advertising of false, “phantom” price reductions
18 and discounts off inflated, fictitious “regular” prices that never actually existed. See 16 C.F.R. §
19 233.1.

20 7. Moreover, the consumer protection laws and common law of California and New
21 Jersey, prohibit deceptive advertising, marketing, and sales practices, including advertising and
22 selling items at purported discounts and offering price advantages that do not exist.

23 8. By advertising these purported discounts, which were never actually provided to
24 customers, and by selling items based on these non-existent discounts, Defendants have violated
25 certain state consumer protection laws as well as the common law and federal regulations, as
26 specifically alleged herein.

27 9. Plaintiff brings this lawsuit against Defendants to stop this unlawful practice, to
28 recover for the proposed classes of customers of the online Gap Factory and Banana Republic

1 Factory store websites the overcharges that they paid, and to obtain for customers the actual
2 discounts they were entitled to receive but did not due to Defendants' deceptive practices.

3 **PARTIES**

4 10. Plaintiff Laurie Munning is an individual and citizen of New Jersey. During the
5 class period, Plaintiff purchased goods from Defendants' online Gap Factory and Banana
6 Republic Factory store websites and suffered an ascertainable loss and monetary damages as a
7 result of Defendants' unlawful conduct alleged herein.

8 11. Defendant The Gap, Inc. is a for-profit corporation formed and existing under the
9 laws of the State of Delaware with its principal place of business at 2 Folsom Street, 13th Floor,
10 San Francisco, California 94105, and thus is a citizen of Delaware and California.

11 12. Defendant Gap (Apparel) LLC is a for-profit limited liability company formed
12 and existing under the laws of the State of California with its principal place of business at 2
13 Folsom Street, 13th Floor, San Francisco, California 94105, and thus is a citizen of California.

14 13. Defendant Gap International Sales, Inc. is a for-profit corporation formed and
15 existing under the laws of the State of Delaware with its principal place of business at 2 Folsom
16 Street, 13th Floor, San Francisco, California 94105, and thus is a citizen of Delaware and
17 California.

18 14. Defendant Banana Republic LLC is a for-profit limited liability company formed
19 and existing under the laws of the State of Delaware with its principal place of business at 2
20 Folsom Street, 13th Floor, San Francisco, California 94105, and thus is a citizen of Delaware and
21 California.

22 15. Defendant Banana Republic (Apparel) LLC is a for-profit limited liability
23 company formed and existing under the laws of the State of California with its principal place of
24 business at 2 Folsom Street, 13th Floor, San Francisco, California 94105, and thus is a citizen of
25 California.

26 16. Upon information and belief, all Defendants have a parent-subsiidiary relationship,
27 in that Defendants Gap (Apparel) LLC, Gap International Sales, Inc., Banana Republic LLC, and
28 Banana Republic (Apparel) LLC are each wholly-owned subsidiaries of Defendant The Gap, Inc.

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1 17. At all times during the relevant class period, Defendants together owned and
2 operated, and continue to own and operate, approximately 889 Gap and Gap Factory retail stores,
3 and approximately 540 Banana Republic and Banana Republic Factory retail stores, throughout
4 the United States.

5 18. Defendants also own and operate the online Gap, Gap Factory, Banana Republic,
6 and Banana Republic Factory store retail websites, which advertise, market, and sell retail
7 products in every state in the United States, and have done so throughout the relevant class
8 period.

9 19. The Gap Factory and Banana Republic Factory store retail websites are, in effect,
10 one single website, located at <http://www.bananarepublicfactory.gapfactory.com>. Consumers are
11 able – and in fact are encouraged – to purchase items from both websites via a single
12 transactions. In fact, Defendants advertise at the top of their websites: “Shop both brands.
13 Check out once.”

14 20. Defendants jointly operate the online Gap Factory and Banana Republic Factory
15 store websites out of their headquarters in California, which operation entails, *inter alia*, the
16 creation and implementation of the advertising, marketing, and sales policies described herein,
17 including the sale of items.

18 21. Defendants created the policies and procedures described herein and, at all times
19 during the relevant class period, participated in, endorsed, implemented, and performed the
20 conduct alleged herein.

21 JURISDICTION AND VENUE

22 22. This Court has in personam jurisdiction over the Defendants because, inter alia,
23 Defendants: (a) are headquartered in the State of California; (b) transacted business in this state;
24 (c) maintained continuous and systematic contacts in this state prior to and during the class
25 period; and (d) purposefully availed themselves of the benefits of doing business in this state.
26 Accordingly, the Defendants maintain minimum contacts with this state which are more than
27 sufficient to subject them to service of process and to comply with due process of law.

28 23. This Court has federal jurisdiction over the subject matter of this action by virtue

1 of the fact that this is a proposed class action where the amount in controversy, exclusive of
2 interest and costs, exceeds \$5,000,000 and Plaintiff and at least one Defendant are citizens of
3 different states.

4 24. Venue is proper in the County of San Francisco because Defendants were within
5 the relevant class period, and continue to be, citizens of this County, in that the principal place of
6 business for each Defendant is located in this County. Moreover, Defendants regularly
7 transacted and continue to transact business in this County, in that Defendants operate their
8 websites from this County and sell items on their websites from this County.

9 25. Moreover, the “**Terms of Use**” set forth on Defendants’ Gap Factory and Banana
10 Republic Factory online websites, which purport to give rise to a binding agreement between
11 Defendants and users of the sites, which include Plaintiff and the nationwide class members,
12 purport to require that any claims brought against Defendants regarding purchases made through
13 Defendants’ websites be resolved exclusively by the state and/or federal courts of the State of
14 California, County of San Francisco and/or Northern District of California.

15 FACTUAL ALLEGATIONS

16 26. Defendants are in the for-profit business of selling apparel and other personal
17 items in their Gap, Gap Factory, Banana Republic, and Banana Republic Factory retail stores, as
18 well as via their online Gap, Gap Factory, Banana Republic, and Banana Republic Factory store
19 retail websites.

20 27. This lawsuit concerns Defendants’ false and misleading advertising, marketing,
21 and sales practices with respect to their illusory “discounting” of items sold on their online Gap
22 Factory and Banana Republic Factory store websites.

23 28. Specifically, on both the Gap Factory and Banana Republic Factory store
24 websites, each item offered for sale is, and was during the class period, assigned a base price,
25 which is listed on Defendants’ websites and purports to be the “original” or “regular” price of
26 that item.

27 29. This “original” price is illusory, however, because most – if not all – of the items
28 on Defendants’ Gap Factory and Banana Republic Factory websites are never sold, or even

1 offered for sale, at their listed “original” prices.

2 30. Rather, each of these items is and has always been offered for sale at a
3 “discounted” price that is much lower than its listed “original” price.

4 31. For each such item, Defendants advertise that the “discounted” price represents a
5 certain percentage reduction off the “original” price.

6 32. Thus, Defendants represent to their customers that the base price is the “original”
7 or “regular,” non-discounted price of the item offered for sale, and the “sale” price is a
8 discounted price.

9 33. By way of example, Defendants will offer a dress for sale at a “discount” price of
10 \$44.98, and they will advertise – in red lettering – that this price is “50% off” the dress’s
11 purported “original” price of \$89.99. See Exhibit A.

12 34. The advertised price of the dress, which is set forth below its picture and
13 description on Defendants’ websites, appear as follows in Exhibit A:

14 ~~\$89.99~~ 50% off

15 **Now \$44.98**

16 35. Upon information and belief, the dress was never sold or offered for sale at the
17 advertised “original” price, or was never consistently sold or offered for sale at this price.

18 36. Because the dress was never sold or offered for sale at the advertised “original”
19 price, it is not actually discounted by 50%, and thus the 50% discount advertised by Defendants,
20 as well as the purported “sale” price, is false and misleading.

21 37. Defendants follow this identical advertising and sales procedure for the vast
22 majority – if not all – of the items offered for sale on their Gap Factory and Banana Republic
23 Factory store retail websites.

24 38. Indeed, the vast majority of the items offered for sale on Defendants’ websites are
25 never sold or offered for sale at their listed “original” prices, and the few items that are offered
26 for sale at their “original” prices are so offered only for a very limited amount of time.

27 39. Rather, nearly all of the items on Defendants’ websites are always advertised as
28 being “on sale” and offered to the public at purported discounts, which Defendants typically

1 claim to be between 10% off and 50% off the “original” prices.

2 40. Moreover, nearly all of the items on Defendants’ websites remain at identical or
3 substantially similar prices every day, and are always offered for sale to customers at the same or
4 substantially similar prices, which Defendants advertise to be the items’ “sale” or “discounted”
5 prices.

6 41. Because Defendants’ purported sale prices for these items never end, but rather
7 continue on a daily basis and are available anytime a customer visits Defendants’ websites, they
8 are not actually discounted or sale prices at all, but rather constitute the everyday, regular prices
9 of the items.

10 42. Upon information and belief, Defendants never significantly increase the price of
11 any item from its advertised sale price. Over time, however, Defendants may reduce the prices
12 of certain items – for example, to clear out excess inventory – resulting in an item being offered
13 for a lower price in a subsequent sale. The prices of such items are not raised back to the
14 original sale price, but remain at the reduced price (or eventually are reduced even further).

15 43. This practice violates 16 C.F.R. § 233.1, which specifically prohibits the
16 advertising of false, “phantom” price reductions and discounts off inflated, fictitious “regular”
17 prices that never actually existed. See 16 C.F.R. § 233.1., stating:

18 **“§ 233.1 Former price comparisons.**

19 (a) **One of the most commonly used forms of bargain advertising is to offer a**
20 **reduction from the advertiser’s own former price for an article. If the former**
21 **price is the actual, bona fide price at which the article was offered to the public**
22 **on a regular basis for a reasonably substantial period of time, it provides a**
23 **legitimate basis for the advertising of a price comparison. Where the former**
24 **price is genuine, the bargain being advertised is a true one. If, on the other hand,**
25 **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 a case,
the “reduced” price is, in reality, probably just the seller’s regular price.

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

deceptive comparison might be based. And the advertiser should scrupulously avoid any implication that a former price is a selling, not an asking price (for example, by use of such language as, “Formerly sold at \$ ___”), unless substantial sales at that price were actually made.

* * *

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

(e) If the former price is set forth in the advertisement, whether accompanied or not by descriptive terminology such as “Regularly,” “Usually,” “Formerly,” etc., the advertiser should make certain that the former price is not a fictitious one. If the former price, or the amount or percentage of reduction, is not stated in the advertisement, as when the ad merely states, “Sale,” the advertiser must take care that the amount of reduction is not so insignificant as to be meaningless. It should be sufficiently large that the consumer, if he knew what it was, would believe that a genuine bargain or saving was being offered. An advertiser who claims that an item has been “Reduced to \$9.99,” when the former price was \$10, is misleading the consumer, who will understand the claim to mean that a much greater, and not merely nominal, reduction was being offered.”(emphasis added)

44. Upon information and belief, the purported “original” prices of the items on Defendants’ websites are “**not bona fide but fictitious**” under 16 C.F.R. § 233.1 because the items were never sold or offered for sale at those prices.

45. Consequently, the purported “**reduced**” prices are “**in reality, ... [Defendants’] regular price[s]**” and “**the ‘bargain[s]’ being advertised**” by Defendants are “**false.**” 16 C.F.R. § 233.1.

46. What happened to Plaintiff Munning helps illustrate Defendants’ unlawful practices described herein.

47. On March 15, 2016, Plaintiff Munning purchased from the Gap Factory retail website a pair of “Factory multi-stripe swim trunks” (Item No. 8870110010002) for \$16.99. The swim trunks were advertised to be on sale at a “32% off” discount from the purported original retail price of \$24.99. See Exhibits A and B.

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1 48. The advertised price of the swim trunks, which was set forth below its picture and
2 description on Defendants’ Gap Factory website, appeared in Exhibit A as follows:

3 ~~\$24.99~~ 32% off

4 **Now \$16.99**

5 49. As part of the same transaction, Plaintiff Munning also purchased from the
6 Banana Republic Factory retail website a “Factory Colorblock Ponte Sheath” dress (Item No.
7 1824830010010) for \$44.98 and a “Factory Dolman Pontielle Sweater” (Item No.
8 1818810110002) for \$45.98. The dress was advertised to be on sale at a “50% off” discount
9 from the purported original retail price of \$89.99, and the sweater was advertised to be on sale at
10 a “16% off” discount from the purported original retail price of \$54.99. See Exhibit A.

11 50. The advertised price of the dress, which was set forth below its picture and
12 description on Defendants’ Banana Republic Factory website, appeared at Exhibit A as follows:

13 ~~\$89.99~~ 50% off

14 **Now \$44.98**

15 51. The advertised price of the sweater, which was set forth below its picture and
16 description on Defendants’ Banana Republic Factory website, appeared at Exhibit A as follows:

17 ~~\$54.99~~ 16% off

18 **Now \$45.98**

19 52. Plaintiff Munning purchased the three items from Defendants’ websites via a
20 single transaction on March 15, 2016 and paid a single payment to Defendants for the three items
21 that totaled \$107.95. See Exhibit B.

22 53. On the following day, March 16, 2016, the prices of the swim trunks, dress, and
23 sweater remained unchanged.

24 54. Indeed, the prices for the swim trunks, dress, and sweater remained unchanged for
25 the entire week following Plaintiff’s purchase, as did the advertisements on Defendants’ websites
26 related thereto. See Exhibit A.

27 55. Accordingly, during the week following Plaintiff’s purchase of the swim trunks
28 for “32% off,” the dress for “50% off,” and the sweater for “16% off,” none of the three items

1 was ever sold at its listed non-discounted, “original” price. Indeed, the prices of the three items
2 never exceeded the purported “discounted” or “sale” price that Plaintiff paid.

3 56. Moreover, over one month later, the price of the swim trunks that Plaintiff
4 purchased had only slightly increased (by one dollar) to \$17.99, which Defendants advertised to
5 be “28% off” the non-discounted, “original” price of \$24.99. The price and purported discount
6 of the dress did not change – it was still offered for sale at a price of \$44.98, which Defendants
7 advertised to be “50% off” the non-discounted, “original” price of \$89.99.

8 57. Upon information and belief, the three items purchased by Plaintiff were never
9 sold or offered for sale at the non-discounted, base prices listed on Defendants’ websites, or were
10 never consistently sold or offered for sell at their advertised base prices. Rather, the items were
11 always sold and offered for sale at a price at or near the purported “sale” price that Plaintiff paid.

12 58. As such, the items that Plaintiff purchased were not actually on sale or discounted
13 at all when Plaintiff purchased them, as represented by Defendants, and they certainly were not
14 discounted to the extent claimed by Defendants.

15 59. Moreover, the prices that Plaintiff paid for the items were not sale or discounted
16 prices at all, as represented by Defendants, but rather were the everyday, regular prices for the
17 items.

18 60. Defendants’ misrepresentations about the purported discounted prices of the items
19 were calculated and intended to, and did in fact, induce Plaintiff’s purchase thereof.

20 61. What happened to Plaintiff Munning was not an accident or an isolated incident.

21 62. Rather, it was part of a uniform policy in which Defendants engaged in a
22 systematic scheme of false and misleading advertising, marketing, and sales practices with the
23 purpose of persuading customers to purchase items from Defendants’ online Gap Factory and
24 Banana Republic Factory store websites.

25 63. Plaintiff and class member reliance upon Defendants’ false price comparison
26 advertising was not only reasonable, but entirely intended by Defendants. Indeed, empirical
27 marketing studies have provided an incentive for retailers to engage in this false and fraudulent
28 behavior:

1 [c]omparative price advertising offers consumers a basis for comparing the
 2 relative value of the product offering by suggesting a monetary worth of the
 3 product and any potential savings [A] comparative price advertisement
 4 can be construed as deceptive if it makes any representation, or involves
 5 any practice that may materially mislead a reasonable consumer.

6 *Comparative Price Advertising: Informative or Deceptive?*, Dhruv Grewal and Larry D.
 7 Compeau, *Journal of Public Policy & Marketing*, Vol. 11, No. 1, at 52 (Spring 1992). In short:

8 [b]y creating an impression of savings, the presence of a higher reference
 9 price enhances subjects' perceived value and willingness to buy the product. .
 10 . . Thus, if the reference price is not truthful, a consumer may be encouraged
 11 to purchase as a result of a false sense of value.

12 *Id.* at 55, 56

13 64. Defendants' specific unlawful practices include:

- 14 a. Setting and advertising an arbitrary base price for every item on their
 15 websites, which price purports to be the item's "original" or "regular"
 16 price despite the fact that the items are never sold or offered for sale at this
 17 price;
 18 b. Advertising and purporting to offer items for sale at a discount off their
 19 "original" prices, when the "discounted" sale prices do not actually
 20 represent the advertised savings since the items were never offered for sale
 21 at the "original" prices; and
 22 c. Representing that items are on sale and offered at discounted prices when
 23 in fact the items are being offered for sale at their everyday, regular prices.

24 65. These unlawful practices go well beyond the three items that Plaintiff purchased,
 25 and are applied by Defendants to the vast majority – if not all – of the items on Defendants'
 26 websites.

27 66. As described herein, the "sale" prices advertised by Defendants are not actually
 28 discounted prices at all, but rather are the everyday, regular prices of the items.

67. Indeed, Defendants' purported "discounts" advertised on their websites and
 described herein did not exist. Rather, Defendants always sold their items at, or very close to,

1 the “discounted” prices. As such, Defendants’ allegedly reduced, “sale” prices were and are, in
2 fact, Defendants’ regular prices.

3 68. These deceptive advertising, marketing, and sales practices were kept secret, and
4 were affirmatively and fraudulent concealed from customers by Defendants throughout the class
5 period. As a result, Plaintiff and her fellow Gap Factory and Banana Republic Factory online
6 store customers were unaware of Defendants’ unlawful conduct alleged herein and did not know
7 they were actually paying the everyday, regular prices for Defendants’ products, rather than the
8 advertised, purported discount prices.

9 69. Plaintiff and the class members did not discover, nor could they have discovered
10 through reasonable diligence, that Defendants were violating the law until shortly before this
11 litigation was initially commenced, because Defendants used methods to avoid detection and to
12 conceal their violations of the law.

13 70. Defendants did not tell or otherwise inform Plaintiff or the class members that
14 they were engaged in the deceptive advertising, marketing, and sales practices alleged herein.
15 By their very nature, Defendants’ unlawful practices were self-concealing.

16 71. In sum, Defendants induced Plaintiff and the class members to purchase items
17 from Defendants’ online websites, for Defendants’ profit, with the promise of discounts that
18 never existed. As a result of this unlawful, deceptive conduct, Plaintiff and the class members
19 have suffered damages set forth herein.

20 CLASS ACTION ALLEGATIONS

21 72. **Class Definition:** Plaintiff brings this action as a class action pursuant to
22 Fed.R.Civ.P. 23, seeking damages and injunctive relief on behalf of herself and all members of
23 the following two proposed classes (hereafter the “nationwide classes”):

24 **All persons in the United States who purchased any purportedly**
25 **discounted item from Defendants’ online Gap Factory store website**
26 **between May 24, 2010 and the present.**

27 and

28 **All persons in the United States who purchased any purportedly**
discounted item from Defendants’ online Banana Republic Factory

1 **store website between May 24, 2010 and the present.**

2 73. **Sub-Class Definition:** Plaintiff also brings this action as a class action pursuant
3 to Fed.R.Civ.P. 23, seeking damages and injunctive relief on behalf of herself and all members
4 of the following two proposed sub-classes(hereafter the “New Jersey sub-classes”):

5 **All persons in New Jersey who purchased any purportedly discounted**
6 **item from Defendants’ online Gap Factory store website between May**
7 **24, 2010 and the present.**

8 and

9 **All persons in New Jersey who purchased any purportedly discounted**
10 **item from Defendants’ online Banana Republic Factory store website**
11 **between May 24, 2010 and the present.**

12 74. The scope of the class definitions may be refined after discovery of Defendants’
13 and/or third party records.

14 75. Each of the classes for whose benefit this action is brought is so numerous that
15 joinder of all members is impracticable.

16 76. The exact number and identities of the persons who fit within each proposed class
17 are contained in Defendants’ records and can be easily ascertained from those records.

18 77. The proposed classes and subclasses are each composed of at least 10,000
19 persons.

20 78. Common questions of law and fact exist as to each class member.

21 79. All claims in this action arise exclusively from uniform policies and procedures of
22 Defendants as outlined herein.

23 80. No violations alleged in this Complaint are a result of any individualized oral
24 communications or individualized interaction of any kind between class members and
25 Defendants or anyone else.

26 81. There are common questions of law and fact affecting the rights of the class
27 members, including, inter alia, the following:

- 28
- a. whether the uniform advertising, marketing, and sales practices alleged herein exist;
 - b. whether Defendants ever sold items or offered items for sale at their listed base

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- 1 prices;
- 2 c. whether Defendants’ “sale” prices actually reflected the advertised savings;
- 3 d. whether Defendants deceptively advertised everyday, regular prices of their
- 4 items as “discount” or “sale” prices;
- 5 e. the length of time Defendants engaged in the practices alleged herein;
- 6 f. whether the alleged practices violated certain state consumer protection laws;
- 7 g. whether the alleged practices constituted a breach of contract;
- 8 h. whether the alleged practices constituted a breach of an express warranty;
- 9 i. the nature and extent of the injury to the classes and the measure of class-wide
- 10 damages; and
- 11 j. whether each class is entitled to injunctive relief in the form of an order directing
- 12 Defendant to send a court-approved notice to all class members, advising of the
- 13 conduct alleged herein, as well as an order enjoining the conduct alleged herein
- 14 and establishing a court-administered program to provide refunds of the
- 15 overcharges to all such class members.

16 82. Plaintiff is a member of the classes she seeks to represent.

17 83. The claims of Plaintiff are not only typical of all class members, they are
18 identical.

19 84. All claims of Plaintiff and the classes arise from the same course of conduct,
20 policy and procedures as outlined herein.

21 85. All claims of Plaintiff and the classes are based on the exact same legal theories.

22 86. Plaintiff seeks the same relief for herself as for every other class member.

23 87. Plaintiff has no interest antagonistic to or in conflict with the classes.

24 88. Plaintiff will thoroughly and adequately protect the interests of the classes, having
25 retained qualified and competent legal counsel to represent herself and the classes.

26 89. Defendant has acted and/or refused to act on grounds generally applicable to the
27 classes, thereby making appropriate injunctive and declaratory relief for each class as a whole.

28 90. The prosecution of separate actions by individual class members would create a

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1 risk of inconsistent or varying adjudications with respect to individual members of each class,
2 which would confront Defendant with incompatible standards of conduct.

3 91. Adjudications with respect to individual members of the classes would as a
4 practical matter be dispositive of the interests of other members not parties to the adjudications
5 and would substantially impair or impede their ability to protect their interests.

6 92. A class action is superior to other available methods for the fair and efficient
7 adjudication of the controversy since, inter alia, the damages suffered by each class member
8 were not great enough to enable them to maintain separate suits against Defendants and in most,
9 if not all, instances were less than \$500 per person.

10 93. Common questions will predominate, and there will be no unusual manageability
11 issues.

12 94. Without the proposed class action, Defendants will likely retain the benefit of
13 their wrongdoing and will continue the complained-of practices, which will result in further
14 damages to Plaintiff and class members.

15 **COUNT I**

16 **VIOLATION OF STATE CONSUMER PROTECTION STATUTES**

17 **(On Behalf of the Nationwide Classes)**

18 **(DISMISSED WITH PREJUDICE BY THE COURT’S ORDER**

19 **DATED OCTOBER 28, 2016)**

20 **COUNT II**

21 **VIOLATION OF THE CALIFORNIA CONSUMERS LEGAL REMEDIES ACT,**

22 **CAL. CIV. CODE § 1750, et seq.**

23 **(On Behalf of the Nationwide Classes)**

24 95. Plaintiff realleges and incorporates by reference all previous paragraphs of this
25 Complaint as if set forth fully herein.

26 96. Plaintiff brings this claim individually and on behalf of all other nationwide class
27 members who purchased items from Defendants’ website pursuant to the California Consumers
28 Legal Remedies Act, Cal. Civ. Code § 1750, et seq. (the “CCLRA”), because the actions of

1 Defendants, and their conduct described herein, constitute transactions that have resulted in the
2 sale of goods to consumers.

3 97. California law applies to the claims of Plaintiff and the nationwide classes
4 because Defendants are citizens of California and performed the acts complained of herein in
5 California, including advertising the fictitious price discounts and selling products based
6 thereupon. Moreover, the “Terms of Use” set forth on Defendants’ Gap Factory and Banana
7 Republic Factory online websites, which purport to give rise to a binding agreement between
8 Defendants and users of the sites, which include Plaintiff and the nationwide class members,
9 purport to apply California law to any claims brought against Defendants regarding purchases
10 made through Defendants’ websites.

11 98. Plaintiff and each class member are “consumers” as defined by California Civil
12 Code § 1761(d).

13 99. The items offered for sale on Defendants’ websites are “goods” within the
14 meaning of California Civil Code § 1761(a). The sale of these items to Plaintiff and the class
15 were “transactions” within the meaning of 1761(e). Defendants intended to, and did in fact, sell
16 these items to Plaintiff and the classes.

17 100. Defendants violated the CCLRA in at least the following respects:

- 18 a. in violation of § 1770(a)(5), Defendants represented that the items on their
19 websites have characteristics which they do not have (*i.e.*, that the items have an
20 “original” price when they do not, and are being offered for sale at a discounted
21 price when they are not);
- 22 b. in violation of § 1770(a)(9), Defendants advertised the items on their websites
23 with intent not to sell them as advertised (*i.e.*, the items were advertised as being
24 on sale when Defendants intended to, and did in fact, sell them at their regular
25 prices);
- 26 c. in violation of § 1770(a)(13), Defendants have made false and misleading
27 statements of fact concerning the existence and amounts of price reductions (*i.e.*,
28 by advertising discounts and offering sale prices that did not exist); and

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1 d. in violation of § 1770(a)(16), Defendants represented that the items on their
2 websites have been supplied in accordance with previous representations (*i.e.*, that
3 they were sold at a discounted price) when they were not.

4 101. By the acts alleged herein, Defendants have violated the CCLRA. Specifically,
5 Defendants:

6 a. Set and advertised an arbitrary base price for numerous items on their websites,
7 which price was represented to be the item’s “original” or “regular” price despite
8 the fact that such items were never sold or offered for sale at that price;

9 b. Continuously advertised and offered items for sale at a discount off their
10 purported base prices, when the “discounted” sale prices did not actually represent
11 the advertised savings since the items were never offered for sale at their base
12 prices;

13 c. Represented that items were on sale and offered at discounted prices when in fact
14 the items were being offered for sale at their everyday, regular prices; and

15 d. Charged their customers the full, regular price for the items on their websites
16 rather than the advertised sale or discounted price.

17 102. Defendants knew, or should have known, that their representations,
18 advertisements, and actions were false and misleading.

19 103. These acts and omissions constitute unfair, deceptive, and misleading business
20 practices in violation of California Civil Code § 1770(a).

21 104. On March 28, 2016, Plaintiff sent notice to Defendants in writing, by certified
22 mail, of the violations alleged herein and demanded that Defendants remedy those violations
23 with respect to herself and the classes.

24 105. On November 10, 2016 Plaintiff sent an additional notice to Defendants in
25 writing, by certified mail and UPS, of the violations alleged herein and demanded that
26 Defendants remedy those violations with respect to herself and the classes. See Exhibit C,
27 November 10, 2016 notice and certified mail receipt for same.

28 106. To date, Defendants have not remedied their practices complained of herein.

1 107. Defendants’ conduct was malicious, fraudulent, and wanton in that Defendants
2 intentionally and knowingly provided misleading information to the public.

3 108. Plaintiff and each nationwide class member were injured in fact and lost money
4 as a result of Defendants’ deceptive conduct.

5 109. Plaintiff now seeks actual, punitive, and statutory damages pursuant to the
6 CCLRA for herself and the nationwide classes.

7 **COUNT III**

8 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW,**

9 **CAL. BUS. & PROF. CODE § 17200, et seq.**

10 **(On Behalf of the Nationwide Classes)**

11 110. Plaintiff realleges and incorporates by reference all previous paragraphs of this
12 Complaint as if set forth fully herein.

13 111. Plaintiff brings this claim individually and on behalf of the nationwide classes.

14 112. The California Unfair Competition Law, California Business & Professions
15 Code § 17200, et seq. (the “CUCL”), prohibits acts of “**unfair competition,**” which is defined as
16 including “**any unlawful, unfair or fraudulent business act or practice**”

17 113. By the acts alleged herein, Defendants have engaged in unfair competition and
18 unfair, unlawful, or fraudulent business practices in violation of the CUCL. Specifically,
19 Defendants:

- 20 a. Set and advertised an arbitrary base price for numerous items on their websites,
21 which price was represented to be the item’s “original” or “regular” price despite
22 the fact that such items were never sold or offered for sale at that price;
- 23 b. Continuously advertised and offered items for sale at a discount off their
24 purported base prices, when the “discounted” sale prices did not actually represent
25 the advertised savings since the items were never offered for sale at their base
26 prices;
- 27 c. Represented that items were on sale and offered at discounted prices when in fact
28 the items were being offered for sale at their everyday, regular prices; and

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1 d. Charged their customers the full, regular price for the items on their websites
2 rather than the advertised sale or discounted price.

3 114. Defendants intentionally and purposefully concealed these actions from Plaintiff
4 and the class members.

5 115. Defendants' conduct was unlawful in that it violates, without limitation, the
6 CCLRA, and California's False Advertising Law, California Business & Professions Code §
7 17500, et seq. (the "CFAL"). Defendants' conduct was unfair in that it offends established
8 public policy and/or is immoral, unethical, oppressive, unscrupulous, and substantially injurious
9 to Plaintiff and the class members. The harm to Plaintiff and the class members arising from
10 Defendants' conduct outweighs any legitimate benefit Defendants derived from the conduct.
11 Defendants' conduct undermines and violates the stated spirit and policies underlying the
12 CCLRA and the CFAL as alleged herein. Defendants' actions and practices constitute fraudulent
13 business practices in violation of the CUCL because, among other things, they are likely to
14 deceive reasonable consumers. Plaintiff and the class members justifiably relied on Defendants'
15 representations and omissions.

16 116. These acts and practices have deceived Plaintiff and the class members and are
17 likely to deceive persons targeted by such statements and omissions. In failing to disclose their
18 unlawful sales and marketing practices, Defendants breached their duties to disclose these facts,
19 violated the CUCL, and caused injuries to Plaintiff and the class members. The omissions and
20 acts of concealment by Defendants pertained to information that was material to Plaintiff and the
21 class members, as it would have been to all reasonable consumers.

22 117. Due to the deceptive nature of Defendants' actions, the injuries suffered by
23 Plaintiff and the class members were not reasonably avoidable.

24 118. Plaintiff seeks to enjoin further unlawful, unfair, and/or fraudulent acts or
25 practices by Defendants, to obtain restitutionary disgorgement of all monies and revenues
26 generated as a result of such practices, and all other relief allowed under the CUCL.

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COUNT IV

VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW,

CAL. BUS. & PROF. CODE § 17500, et seq.

(On Behalf of the Nationwide Classes)

119. Plaintiff realleges and incorporates by reference all previous paragraphs of this Complaint as if set forth fully herein.

120. Plaintiff brings this claim individually and on behalf of the nationwide classes.

121. By the acts alleged herein, Defendants have publicly disseminated untrue or misleading advertising and have intended not to sell the items on their websites as advertised, in violation of the CFAL. Specifically, Defendants:

- a. Set and advertised an arbitrary base price for numerous items on their websites, which price was represented to be the item’s “original” or “regular” price despite the fact that such items were never sold or offered for sale at that price;
- b. Continuously advertised and offered items for sale at a discount off their purported base prices, when the “discounted” sale prices did not actually represent the advertised savings since the items were never offered for sale at their base prices;
- c. Represented that items were on sale and offered at discounted prices when in fact the items were being offered for sale at their everyday, regular prices; and
- d. Charged their customers the full, regular price for the items on their websites rather than the advertised sale or discounted price.

122. Defendants committed such violations of the CFAL with actual knowledge that their advertising was untrue or misleading, or in the exercise of reasonable care should have known that their advertising was untrue or misleading.

123. Plaintiff and the class members reasonably relied on Defendants’ representations and/or omissions made in violation of the CFAL.

124. As a direct and proximate result of these violations, Plaintiff and the class members suffered injury and fact and lost money.

1 125. Plaintiff intends to purchase additional items from Defendants' website if she
 2 could be confident that the purported percentage "off" discounts and purported price
 3 comparisons were accurate.

4 126. Plaintiff, individually and on behalf of the class members, seeks equitable relief in
 5 the form of an order requiring Defendants to refund Plaintiff and all class members all monies
 6 they paid for the items they purchased via Defendants' websites, and injunctive relief in the form
 7 of an order prohibiting Defendants from engaging in the alleged misconduct and performing a
 8 corrective advertising campaign.

9 **COUNT V**

10 **VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT**

11 **N.J.S.A. 56:8-1, et seq.**

12 **(On Behalf of the New Jersey Subclasses)**

13 127. Plaintiff realleges and incorporates by reference all previous paragraphs of this
 14 Complaint as if fully set forth herein.

15 128. Plaintiff brings this claim individually and on behalf of all other New Jersey
 16 subclass members who were customers of Defendants' online Gap Factory and Banana Republic
 17 Factory store websites.

18 129. The New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, et seq. (the "NJCFA"),
 19 applies to all sales made by Defendants to New Jersey consumers from Defendants' Gap Factory
 20 and Banana Republic Factory store websites.

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

24 131. The NJCFA is a remedial statute which the New Jersey Supreme Court has
 25 repeatedly held must be construed liberally in favor of the consumer to accomplish its deterrent
 26 and protective purposes. See Furst v. Einstein Moomjy, Inc., 860 A.2d 435, 441 (N.J. 2004)
 27 **("The [NJCFA] is remedial legislation that we construe liberally to accomplish its broad**
 28 **purpose of safeguarding the public.").**

1 132. “The available legislative history demonstrates that the [NJCFCA] was
2 intended to be one of the strongest consumer protection laws in the nation.” New Mea
3 Const. Corp. v. Harper, 497 A.2d 534, 543 (App. Div.1985).

4 133. For this reason, the “history of the [NJCFCA] is one of constant expansion of
5 consumer protection.” Kavky v. Herbalife Int’l of Am., 820 A.2d 677, 681-82 (App. Div
6 2003).

7 134. The NJCFA was intended to protect consumers “by eliminating sharp practices
8 and dealings in the marketing of merchandise and real estate.” Lemelledo v. Beneficial
9 Mgmt. Corp., 696 A.2d 546, 550 (N.J. 1997).

10 135. Specifically, N.J.S.A. 56:8-2 prohibits “unlawful practices, ...” which are
11 defined as:

12 “The act, use or employment of any unconscionable commercial
13 practice, deception, fraud, false pretense, misrepresentation, or the
14 knowing, concealment, suppression, or omission of any material fact
15 with intent that others rely upon such concealment, suppression or
16 omission whether or not any person has in fact been misled, deceived or
17 damaged thereby.”

18 136. The catch-all term “unconscionable commercial practice” was added to the
19 NJCFA by amendment in 1971 to ensure that the Act covered, *inter alia*, “incomplete
20 disclosures.” Skeer v. EMK Motors, Inc., 455 A.2d 508, 512 (App.Div. 1982).

21 137. In describing what constitutes an “unconscionable commercial practice,” the
22 New Jersey Supreme Court has noted that it is an amorphous concept designed to establish a
23 broad business ethic. See Cox v. Sears Roebuck & Co., 647 A.2d 454, 462 (N.J. 1994).

24 138. In order to state a cause of action under the NJCFA, a plaintiff does not need to
25 show reliance by the consumer. See Varacallo v. Massachusetts Mut. Life Ins. Co., 752 A.2d
26 807 (App. Div. 2000); Gennari v. Weichert Co. Realtors, 691 A.2d 350 (N.J. 1997) (holding that
27 reliance is not required in suits under the NJCFA because liability results from
28 “misrepresentations whether 'any person has in fact been misled, deceived or damaged
thereby”).

139. Rather, the NJCFA requires merely a causal nexus between the false statement

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1 and the purchase, not actual reliance. See Lee v. Carter-Reed Co., L.L.C., 4 A.3d 561, 577
2 (2010) (“**causation under the [NJCFRA] is not the equivalent of reliance**”).

3 140. As stated by the New Jersey Supreme Court in Lee, 4 A.3d at 580: “**It bears**
4 **repeating that the [NJCFRA] does not require proof of reliance, but only a causal connection**
5 **between the unlawful practice and ascertainable loss.**”

6 141. By the acts alleged herein, Defendants have violated the NJCFA. Specifically,
7 Defendants:

- 8 a. Set and advertised an arbitrary base price for numerous items on their websites,
9 which price was represented to be the item’s “original” or “regular” price despite
10 the fact that such items were never sold or offered for sale at that price;
- 11 b. Continuously advertised and offered items for sale at a discount off their
12 purported base prices, when the “discounted” sale prices did not actually represent
13 the advertised savings since the items were never offered for sale at their base
14 prices;
- 15 c. Represented that items were on sale and offered at discounted prices when in fact
16 the items were being offered for sale at their everyday, regular prices; and
- 17 d. Charged their customers the full, regular price for the items on their websites
18 rather than the advertised sale or discounted price.

19 142. These uniform practices by Defendants constitute sharp and unconscionable
20 commercial practices relating to the sale of goods in violation of the NJCFA, N.J.S.A. § 56:8-1,
21 et seq.

22 143. As alleged herein, Defendant has engaged in deceptive conduct which creates a
23 likelihood of confusion or misunderstanding.

24 144. These actions also constitute “**omission[s] of any material fact with intent that**
25 **others rely upon such concealment,**” as Defendants did not inform Plaintiff and the class
26 members that the items offered for sale on their websites were not actually discounted at all, but
27 rather were being sold at their everyday, regular prices. Defendants purposefully omitted this
28

1 information so that their customers would believe that they were getting a discounted price on
2 the items they purchased from Defendants, when in fact they were not.

3 145. As such, Defendants have acted with knowledge that its conduct was deceptive
4 and with intent that such conduct deceive purchasers.

5 146. Further, the statements on Defendants' website that the purported "sale" price of
6 the item was a certain % discount "**off**" the stated, purported comparison price was a false,
7 affirmative statement of fact, since the items in question were never sold at that comparison price
8 and the purported "sale" price was actually Defendants' regular price for the item.

9 147. Moreover, because Defendant's conduct described herein is a violation of both
10 federal and New Jersey state regulations, such conduct constitutes a per se violation of the
11 NJCFA, N.J.S.A. § 56:8-1, et seq.

12 148. Specifically, Defendant's conduct violates 16 C.F.R. § 233.1 in that the purported
13 "original" prices of the items on Defendants' websites were "**not bona fide but fictitious**" under
14 16 C.F.R. § 233.1 because the items were never actually sold or offered for sale at those prices.
15 Thus, the purported "**reduced**" prices offered by Defendants were "**in reality, ... [Defendants']**
16 **regular price[s]**" and "the '**bargain[s]**' **being advertised**" by Defendants were "**false.**" 16
17 C.F.R. § 233.1.

18 149. Defendants' conduct also violated both N.J.A.C. 13:45A-9.3(a)(3) and
19 13:45A-9.4(a)(5) and (6). These regulations require, inter alia, that a seller advertising a
20 purported percentage "**off**" discount and/or price comparison must affirmatively state in writing
21 the basis for the purported discount and the source of the price which is being used for
22 comparison, including whether that price was previously charged by the seller or its competitors
23 and when and where that former price was previously charged. Defendant's website clearly does
24 not do any of this.

25 150. Plaintiff and the class members reasonably and justifiably expected Defendants to
26 comply with applicable law, but Defendants failed to do so.

1 151. As a direct and proximate result of these unlawful actions by Defendants, Plaintiff
2 and the New Jersey subclasses have been injured and have suffered an ascertainable loss of
3 money.

4 152. As with other terms of the NJCFA, the term “ascertainable loss” is to be construed
5 liberally in favor of the consumer in order to carry out the NJCFA’s broad remedial purposes.
6 Cox v. Sears Roebuck & Co., 138 N.J. 2, 21-22 (1994); In Union Ink Co., Inc. v. AT&T Corp.,
7 352 N.J. Super. 617, 646 (App. Div. 2002)(holding that the ascertainable loss **“requirement has
8 been broadly defined as embracing more than a monetary loss”**).

9 153. The NJCFA does not require a plaintiff to have suffered any out-of-pocket loss.
10 See Union Ink, 352 N.J. Super. at 646:

11 **“a victim of consumer fraud must prove an ‘ascertainable loss,’**
12 **N.J.S.A. 56:8-19, but that requirement has been broadly defined as**
13 **embracing more than a monetary loss. (emphasis added)**

14 154. Indeed, a consumer has experienced an “ascertainable loss” within the meaning of
15 the NJCFA whenever the consumer fails to receive the bargain which was promised by the seller.
16 See International Union v. Merck & Co, 384 N.J. Super. 275, 291 (App. Div. 2006):

17 **“Ascertainable loss ‘has been broadly defined as more than a monetary**
18 **loss’ and encompasses situations where ‘a consumer receives less than**
19 **what was promised.’” (emphasis added)**

20 155. Indeed, in Furst v. Einstein Moomjy, 182 N.J. 1 (2004), the New Jersey Supreme
21 Court rejected the argument that the concept of “ascertainable loss” under the NJCFA is limited
22 to the current out-of-pocket dollar loss suffered by the consumer and held that the term included
23 a situation where a consumer had not received the benefit of a discount promised by the seller.
24 See Furst, 192 N.J. at 13-14:

25 **“In light of the Legislature's clear intent [in passing the Consumer**
26 **Fraud Act], it would be incongruous to provide consumers with a form**
27 **of damages less than what is available in an ordinary breach-of-**
28 **contract case. The ‘expectation interest’ of the consumer who**
purchases merchandise at a discount is the benefit of the bargain. The

1 **statute cannot be construed to allow an offending merchant to benefit**
2 **from his own deception.” (emphasis added)**

3 156. Plaintiff suffered an ascertainable loss within the meaning of the
4 NJCFA when she failed to receive the full benefit of the purported discount offered by
5 Defendants and when she was lulled into making a purchase of \$107.95 by the promise of the
6 illusory discounts promised by Defendants.

7 157. Specifically, Plaintiff Munning was promised by Defendants’ website that she was
8 receiving a “**32% off**” discount on her purchase of the swim trunks, a “**50% off**” discount on
9 her purchase of the dress and “**16% off**” discount on her purchase of the sweater. As outlined
10 herein, she did not receive any of these promised discounts, since the merchandise was being
11 sold at Defendants’ normal, everyday prices.

12 158. Moreover, in exchange for her payment of \$107.95, Defendants’ website
13 promised Plaintiff in writing that she would receive three items of merchandise that, together,
14 had previously sold for a total of \$169.97. In actuality, these three items had never sold for
15 \$169.97. Thus, Plaintiff did not receive the promised total discount of \$62.02 off the purported
16 prior prices.

17 159. Finally, Plaintiff would not have made any purchase from Defendants’ website at
18 all on the day in question but for the false promise by Defendants that she was receiving
19 discounted merchandise and thus Plaintiff’s entire payment of \$107.95 was a loss caused by
20 Defendants’ misconduct.

21 160. Plaintiff would purchase items from Defendants’ website in the future if she could
22 be confident that the purported % “off” discounts and purported price comparisons listed on that
23 website were truthful and accurate.

24 161. Pursuant to N.J.S.A. 56:8-19 of the NJCFA, Plaintiffs seeks, inter alia, actual
25 damages, treble damages and injunctive relief for herself and the New Jersey sub-classes.
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COUNT VI

**VIOLATION OF THE NEW JERSEY TRUTH IN CONSUMER CONTRACT,
WARRANTY AND NOTICE ACT, N.J.S.A. § 56:12-14, et seq.**

(On Behalf of the New Jersey Subclasses)

162. Plaintiff realleges and incorporates by reference all previous paragraphs of this Complaint as if fully set forth herein.

163. Plaintiff brings this claim individually and on behalf of all other New Jersey subclass members who were customers of Defendants’ online Gap Factory and Banana Republic Factory stores.

164. Plaintiff and the New Jersey subclass members are “consumers” within the meaning of N.J.S.A. §§ 56:12-15 and 16.

165. Defendants are “sellers” within the meaning of N.J.S.A. §§ 56:12-15 and 16.

166. The advertisements and representations on Defendants’ websites, stating, *e.g.*, that the items on the websites are being offered for sale at a discounted price, is both a consumer “notice” and “warranty” within the meaning of N.J.S.A. §§ 56:12-15 and 16.

167. By the acts alleged herein, Defendants have violated N.J.S.A. § 56:12-16 because, in the course of Defendants’ business, Defendants have offered written consumer notices and warranties to Plaintiff and the New Jersey subclass members which contained provisions that violated their clearly established legal rights under state law and federal regulations, within the meaning of N.J.S.A. § 56:12-15.

168. Specifically, Defendants’ website is a consumer “notice” and/or “sign” within the meaning of N.J.S.A. § 56:12-15.

169. The website which was presented and shown by Defendants to Plaintiff and the New Jersey class violated their clearly established rights under 16 C.F.R. § 233.1 to be free of false purported discounts and the use of fictitious former prices in advertising, as well as their rights under N.J.A.C. 13:45A-9.3(a)(3) and 13:45A-9.4(a)(5) and (6), which require a seller advertising a purported percentage “off” discount and/or a price comparison to affirmatively state in writing the basis for the discount and the source of the price which is being used for

1 comparison, including whether that price was charged by the seller or its competitors and when
2 and where that former price was previously charged.

3 170. Pursuant to N.J.S.A. § 56:12-17, Plaintiff seeks a statutory penalty of \$100 for
4 each New Jersey subclass member, as well as actual damages and attorneys' fees and costs.

5 **COUNT VII**

6 **BREACH OF CONTRACT**

7 **(On Behalf of the Nationwide Classes and New Jersey Subclasses)**

8 171. Plaintiff realleges and incorporates by reference all previous paragraphs of this
9 Complaint as if fully set forth herein.

10 172. Plaintiff and the class members entered into contracts with Defendants.

11 173. The contracts provided that Plaintiff and the class members would pay
12 Defendants for their products.

13 174. The contracts further provided that Defendants would provide Plaintiff and the
14 class members a specific discount on the price of their purchases. This specified discount was a
15 specific and material term of each contract.

16 175. Plaintiff and the class members paid Defendants for the products they purchased,
17 and satisfied all other conditions of the contracts.

18 176. Defendants breached the contracts with Plaintiff and the class members by
19 failing to comply with the material term of providing the promised discount, and instead charged
20 Plaintiff and the class members the full price of the products they purchased.

21 177. As a direct and proximate result of Defendants' breach, Plaintiff and the class
22 members have been injured and have suffered actual damages in an amount to be established at
23 trial.

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COUNT VIII

**BREACH OF CONTRACT UNDER THE IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING**

(On Behalf of the Nationwide Classes and New Jersey Subclasses)

(DISMISSED WITH PREJUDICE BY THE COURT’S ORDER

DATED OCTOBER 28, 2016)

COUNT IX

BREACH OF EXPRESS WARRANTY

(On Behalf of the Nationwide Classes and New Jersey Subclasses)

178. Plaintiff realleges and incorporates by reference all previous paragraphs of this Complaint as if fully set forth herein.

179. Plaintiff and the class members formed contracts with Defendants at the time they purchased items from Defendants’ websites. The terms of such contracts included the promises and affirmations of fact made by Defendants through their marketing campaign, as alleged herein, including, but not limited to, representing that the items for sale on Defendants’ Gap Factory and Banana Republic Factory websites were being discounted.

180. This product advertising constitutes express warranties, became part of the basis of the bargain, and is part of the contracts between Defendants and Plaintiff and the class members.

181. The affirmations of fact made by Defendants were made to induce Plaintiff and the class members to purchase items from Defendants’ websites.

182. Defendants intended that Plaintiff and the class members would rely on those representations in making their purchases, and Plaintiff and the class members did so.

183. All conditions precedent to Defendants’ liability under these express warranties have been fulfilled by Plaintiff and the class members in terms of paying for the goods at issue, or have been waived. Defendants had actual and/or constructive notice of their own false advertising, marketing, and sales practices but to date have taken no action to remedy their breaches of express warranty.

1 184. Defendants breached the terms of the express warranty because the items
2 purchased by Plaintiff and the class members did not conform to the description provided by
3 Defendants – that they were being sold at a discounted price. In fact, they were not.

4 185. As a direct and proximate result of Defendants’ breach of express warranty,
5 Plaintiff and the class members have been injured and have suffered actual damages in an
6 amount to be established at trial.

7 **COUNT X**

8 **UNJUST ENRICHMENT**

9 **(On Behalf of the Nationwide Classes and New Jersey Subclasses)**

10 **(DISMISSED WITH PREJUDICE BY THE COURT’S ORDER**

11 **DATED OCTOBER 28, 2016)**

12 **COUNT XI**

13 **NEGLIGENT MISREPRESENTATION**

14 **(On Behalf of the Nationwide Classes and the New Jersey Subclasses)**

15 **(DISMISSED WITH PREJUDICE BY THE COURT’S ORDER**

16 **DATED OCTOBER 28, 2016)**

17 **PRAYER FOR RELIEF**

18
19
20 WHEREFORE, Plaintiffs pray that this case be certified and maintained as a class action
21 and for judgment to be entered in favor of Plaintiff and the classes against Defendants as follows:

22 A. Enter an order certifying the proposed classes, designating Plaintiff as the
23 representative for each class, and designating the undersigned as class counsel;

24 B. Declare that Defendants are financially responsible for notifying all class
25 members of their deceptive advertising, sales, and marketing practices alleged herein;

26 C. Declare that Defendants must disgorge, for the benefit of the classes, all or
27 part of the ill-gotten profits they received from their deceptive advertising, sales, and
28 marketing practices alleged herein, or order Defendants to make full restitution to Plaintiffs

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1 and the members of the classes;

2 D. Find that Defendants’ conduct alleged herein be adjudged and decreed in
3 violation of the state laws cited above;

4 E. Grant economic and compensatory damages on behalf of Plaintiff and all
5 members of the classes, to the maximum extent permitted by applicable law;

6 F. Grant punitive or exemplary damages as permitted by law;

7 G. Grant the requested injunctive and declaratory relief;

8 H. Award interest as permitted by law;

9 I. Grant reasonable attorneys’ fees pursuant to California Civil Code § 1780 (d),
10 Code of Civil Procedure § 1021.5 and as otherwise permitted by statute, and reimbursement
11 all costs incurred in the prosecution of this action; and

12 J. Grant such other relief as this Court deems just and proper.

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff hereby demands a trial by jury as to all issues so triable.

15
16 Dated: December 12, 2016

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

17
18 By: s/Todd M. Friedman
19 Todd M. Friedman, Esq.

20
21 and

22 PARIS ACKERMAN & SCHMIERER LLP
23 Ross H. Schmierer, Esq.
24 *Admitted Pro Hac Vice*
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103 Eisenhower Parkway
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21550 OXNARD ST., STE 780
WOODLAND HILLS, CA 91367

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and

DeNITTIS OSEFCHEN, P.C.
Stephen P. DeNittis, Esq.
Admitted Pro Hac Vice
sdenittis@denittislaw.com
5 Greentree Centre
525 Route 73 North, Suite 410
Marlton, NJ 08053
Tel.: (856) 797-9951
Fax: (856) 797-9978

Attorneys for Plaintiff

Exhibit A

3/21/2016

Factory multi-stripe swim trunks | Gap Fact.



We've redirected you to this page to help you find 8870110010002.



Factory multi-stripe swim trunks

\$24.99 **32% off**

3/21/2016

Factory multi-stripe swim trunks | Gap Fact.

Now \$16.99

Color: **multi 1cc**



Size:

[XS](#) [S](#) [M](#) [L](#) [XL](#) [XXL](#)

Fit & Sizing

[SIZE GUIDE](#)

Quantity:

1

[ADD TO BAG](#)

fabric & care

- 100% Polyester.
- Machine wash.
- Imported.

product details

shipping & returns

[STORE LOCATOR](#)

[CUSTOMER SERVICE](#)

[ORDERS & RETURNS](#)

[GIFT CARDS](#)

[GAP CREDIT CARD](#)

[EMAIL SIGN UP](#)

3/21/2016

Factory multi-stripe swim trunks | Gap Fact

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[Americans with Disabilities Act](#)

[Gap Factory](#)

[Banana Republic Factory](#)

3/21/2016

Factory Dolman Pontielle Sweater | Banana Republic Factory



You have been redirected to this page as a result of your search for "1818810110002".



Factory Dolman Pontielle Sweater

\$54.99 **16% off**

3/21/2016

Factory Dolman Ponille Sweater | Banana Republic Factory

Now \$45.98

Color: Blue fairy
clearance



Size:

XS ~~S~~ ~~M~~ ~~L~~ ~~XL~~

FIT & SIZING

- Hits at the hip.

SIZE GUIDE

Quantity:

1

ADD TO BAG

FABRIC & CARE

- 50% Acrylic, 50% Viscose.
- Machine wash.
- Imported.

PRODUCT DETAILS

SHIPPING & RETURNS

**BANANA REPUBLIC FACTORY
EXCLUSIVE PRODUCTS,
EXCEPTIONAL SAVINGS**

Love what you see?

Find even more great styles in store.

Deals straight to your phone!

TEXT DEAL TO 28500

Receive a coupon &
future offers to your phone!

[DETAILS](#)

[STORE LOCATOR](#)

[CUSTOMER SERVICE](#)

[ORDERS & RETURNS](#)

[BANANA REPUBLIC CREDIT CARD](#)

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[Americans with Disabilities Act](#)

[Gap Factory](#) [Banana Republic Factory](#)

3/21/2016

Factory Colorblock Ponte Sheath | Banana Republic Factory



You have been redirected to this page as a result of your search for "1824830010010".



Factory Colorblock Ponte Sheath

~~\$89.99~~ **50% off**

3/21/2016

Factory Colorblock Ponte Sheath | Banana Republic Factory

Now \$44.98

Color: Maroon



Size:

0 2 4 6 8 10 12 14

FIT & SIZING

- Hits at the knee.

SIZE GUIDE

Quantity:

1

ADD TO BAG

FABRIC & CARE

- 66% Rayon, 29% Nylon, 5% Spandex.
- Dry clean.
- Imported.

PRODUCT DETAILS

SHIPPING & RETURNS

**BANANA REPUBLIC FACTORY
EXCLUSIVE PRODUCTS,
EXCEPTIONAL SAVINGS**

Love what you see?
Find even more great styles in store.

Deals straight to your phone!

TEXT DEAL TO 28500

Receive a coupon &
future offers to your phone!

DETAILS

STORE LOCATOR

CUSTOMER SERVICE

ORDERS & RETURNS

BANANA REPUBLIC CREDIT CARD

EMAIL SIGN UP

SHOP GAP FACTORY

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Americans with Disabilities Act

Gap Factory Banana Republic Factory

Exhibit B

3/15/2016

Order Details | Gap Factory



Order #TQVB4B6

Ordered on: March 15, 2016 10:46 PM (EDT) from gapfactory.com

Status: In Process

[Returns](#) [Order history](#) [Order status help](#)

Order details

ORDERED BY

Laurie Munning

REDACTED

8

Payment method:

REDACTED

SHIPPED TO

Laurie Munning

REDACTED

8

Shipping method:

SUMMARY OF CHARGES

Merchandise	\$107.95
Shipping & handling	FREE
Tax	\$0.00
Total:	\$107.95

▼ In stock: Available to ship

3/15/2016

Order Details | Gap Factory



Factory multi-stripe swim trunks

#8870110010002

Color multi 1cc
Size XS
Unit price ~~\$24.99~~ **\$16.99**
Qty 1
Cost \$16.99



Factory Colorblock Ponte Sheath

#1824830010010

Color Maroon
Size 10
Unit price ~~\$89.99~~ **\$44.98**
Qty 1
Cost \$44.98



Factory Dolman Pontielle Sweater

#1818810110002

Color Blue fairy
Size M
Unit price ~~\$54.99~~ **\$45.98**
Qty 1
Cost \$45.98

STORE LOCATOR

CUSTOMER SERVICE

ORDERS & RETURNS

GIFT CARDS

GAP CREDIT CARD

EMAIL SIGN UP

SHOP BANANA REPUBLIC FACTORY

3/15/2016

Order Details | Gap Factory

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Americans with Disabilities Act

Exhibit C



105 Eisenhower Parkway
Roseland, NJ 07068
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F: 973.629.1246
www.paslawfirm.com

November 10, 2016

VIA UPS & CERTIFIED U.S. MAIL

Julie G. Gruber, Esq.
EVP, Global General Counsel, Corporate Secretary, Chief Compliance Officer
Gap Inc.
2 Folsom Street
San Francisco, CA 94105

Re: **Notice of Violations of Consumers Legal Remedies Act, California Civil Code Sections 1750 through 1784**

Dear Ms. Gruber:

Please be advised that our office represents Laurie Munning and other similarly-situated persons in the United States who purchased goods from the Gap Factory and Banana Republic Factory store online websites, in pursuing class action legal claims against The Gap, Inc.; Gap (Apparel) LLC; Gap International Sales, Inc.; Banana Republic LLC; and Banana Republic (Apparel) LLC (collectively, “Defendants”) for violations of: (i) federal pricing regulations; (ii) the common law; (iii) consumer protection laws of various states, including the State of California; and (iv) specifically, the Consumers Legal Remedies Act, California Civil Code Section 1750 through 1784 (the “CLRA”).

Please accept this correspondence as written notice pursuant to the “Terms of Use” as posted on the Gap Factory and Banana Republic Factory store websites during the relevant time period as well as Cal Civ. Code § 1783.

Facts

Defendants are in the for-profit business of selling apparel and other personal items in their Gap, Gap Factory, Banana Republic, and Banana Republic Factory retail stores, as well as via their online Gap, Gap Factory, Banana Republic, and Banana Republic Factory store retail websites. As outlined in greater detail below, Defendants engage in a scheme involving false and misleading advertising, marketing, and sales practices with respect to their illusory “discounting” of items sold on their online Gap Factory and Banana Republic Factory store websites.

Julie G. Gruber
November 10, 2016
Page 2

Specifically, on both the Gap Factory and Banana Republic Factory store websites, each item offered for sale is, and was during the class period, assigned a base price, which is listed on Defendants' websites and purports to be the "original" or "regular" price of that item. This "original" price is illusory, however, because most – if not all – of the items on Defendants' Gap Factory and Banana Republic Factory websites are never sold, or even offered for sale, at their listed "original" prices. Rather, each of these items is and has always been offered for sale at a "discounted" price that is much lower than its listed "original" price. For each such item, Defendants advertise that the "discounted" price represents a certain percentage reduction off the "original" price. Thus, Defendants represent to their customers that the base price is the "original" or "regular," non-discounted price of the item offered for sale, and the "sale" price is a discounted price.

By way of example, Defendants will offer a dress for sale at a "discount" price of \$44.98, and they will advertise – in red lettering – that this price is "50% off" the dress's purported "original" price of \$89.99. See Exhibit A. The advertised price of the dress, which is set forth below its picture and description on Defendants' websites, appears as follows: "\$89.99 50% off Now \$44.98". See Exhibit A. The dress was never sold or offered for sale at the advertised "original" price, or was never consistently sold or offered for sale at this price. Because the dress was never sold or offered for sale at the advertised "original" price, it is not actually discounted by 50%, and thus the 50% discount advertised by Defendants, as well as the purported "sale" price, is false and misleading.

Defendants follow this identical advertising and sales procedure for the vast majority – if not all – of the items offered for sale on their Gap Factory and Banana Republic Factory store retail websites. Indeed, the vast majority of the items offered for sale on Defendants' websites are never sold or offered for sale at their listed "original" prices, and the few items that are offered for sale at their "original" prices are so offered only for a very limited amount of time. Rather, nearly all of the items on Defendants' websites are always advertised as being "on sale" and offered to the public at purported discounts, which Defendants typically claim to be between 10% off and 50% off the "original" prices.

Moreover, nearly all of the items on Defendants' websites remain at identical or substantially similar prices every day, and are always offered for sale to customers at the same or substantially similar prices, which Defendants advertise to be the items' "sale" or "discounted" prices. Because Defendants' purported sale prices for these items never end, but rather continue on a daily basis and are available anytime a customer visits Defendants' websites, they are not actually discounted or sale prices at all, but rather constitute the everyday, regular prices of the items. Indeed, Defendants never significantly increase the price of any item from its advertised sale price. Over time, however, Defendants may reduce the prices of certain items – for example, to clear out excess inventory – resulting in an item being offered for a lower price in a subsequent sale. The prices of such items are not raised back to the original sale price, but remain at the reduced price (or eventually are reduced even further).

Julie G. Gruber
November 10, 2016
Page 3

Thus, the advertised discounts on these items, as well as the advertised discounts on all other items listed for sale on Defendants' Gap Factory and Banana Republic Factory websites, are false and misleading because the advertised percentage discount and "sale" price do not represent an actual discount, as the items were never sold or offered for sale at their listed original retail prices. Indeed, because the vast majority – if not all – of the items on Defendants' Gap Factory and Banana Republic Factory websites are never offered for sale at their listed "original" retail prices, but rather are perpetually offered for sale at the purported "discount" or "sale" prices, the advertised discounts and reduced prices are not actually discounts at all, but rather the everyday, regular prices of the items.

Our client, Laurie Munning, has been victimized by this scheme. On March 15, 2016, Ms. Munning purchased from the Gap Factory retail website a pair of "Factory multi-stripe swim trunks" (Item No. 8870110010002) for \$16.99. The swim trunks were advertised to be on sale at a "32% off" discount from the purported original retail price of \$24.99. See Exhibits A and B. The advertised price of the swim trunks, which was set forth below its picture and description on Defendants' Gap Factory website, appeared as follows: "\$24.99 32% off Now \$16.99". Id. As part of the same transaction, Ms. Munning also purchased from the Banana Republic Factory retail website a "Factory Colorblock Ponte Sheath" dress (Item No. 1824830010010) for \$44.98 and a "Factory Dolman Pontielle Sweater" (Item No. 1818810110002) for \$45.98. The dress was advertised to be on sale at a "50% off" discount from the purported original retail price of \$89.99, and the sweater was advertised to be on sale at a "16% off" discount from the purported original retail price of \$54.99. Id. The advertised price of the dress, which was set forth below its picture and description on Defendants' Banana Republic Factory website, appeared as follows: "\$89.99 50% off Now \$44.98". Id. The advertised price of the sweater, which was set forth below its picture and description on Defendants' Banana Republic Factory website, appeared as follows: "\$54.99-16% off Now \$45.98". Id. Ms. Munning purchased the three items from Defendants' websites via a single transaction on March 15, 2016 and paid a single payment to Defendants for the three items that totaled \$107.95. See Exhibit B.

On the following day, March 16, 2016, the prices of the swim trunks, dress, and sweater remained unchanged. See Exhibit A. Indeed, the prices for the swim trunks, dress, and sweater remained unchanged for the entire week following Ms. Munning's purchase, as did the advertisements on Defendants' websites related thereto. Accordingly, during the week following Ms. Munning's purchase of the swim trunks for "32% off," the dress for "50% off," and the sweater for "16% off," none of the three items was ever sold at its listed non-discounted, "original" price. Indeed, the prices of the three items never exceeded the purported "discounted" or "sale" price that Ms. Munning paid. The three items purchased by Ms. Munning were never sold or offered for sale at the non-discounted, base prices listed on Defendants' websites, or were never consistently sold or offered for sell at their advertised base prices. Rather, the items were always sold and offered for sale at a price at or near the purported "sale" price that Ms. Munning paid. As such, the items that Ms. Munning purchased were not actually on sale or discounted at all when Ms. Munning purchased them, as represented by Defendants, and they certainly were not discounted to the extent claimed by Defendants. Moreover, the prices that Ms. Munning paid for the items were not sale or discounted prices at all, as represented by Defendants, but rather were the everyday, regular prices for the items. Defendants' misrepresentations about the

Julie G. Gruber
November 10, 2016
Page 4

purported discounted prices of the items were calculated and intended to, and did in fact, induce Ms. Munning's purchase thereof.

What happened to Ms. Munning was not an accident or an isolated incident. Rather, it was part of a uniform policy in which Defendants engaged in a systematic scheme of false and misleading advertising, marketing, and sales practices with the purpose of persuading customers to purchase items from Defendants' online Gap Factory and Banana Republic Factory store websites.

Legal Claims

Federal regulations prohibit the advertising of false, "**phantom**" price reductions and discounts off inflated, fictitious "**regular**" prices that never actually existed. See 16 C.F.R. § 233.1. The purported "**original**" prices of the items on Defendants' websites are "**not bona fide but fictitious**" under 16 C.F.R. § 233.1 because the items were never sold or offered for sale at those prices. Consequently, the purported "reduced" prices are "**in reality, [Defendants'] regular price[s]**" and "**the 'bargain[s]' being advertised**" by Defendants are "**false**" within the meaning of 16 C.F.R. § 233.1.

Moreover, the consumer protection laws of California and New Jersey, prohibit deceptive advertising, marketing, and sales practices, including advertising and selling items at purported discounts and offering price advantages that do not exist. By advertising these purported discounts, which were never actually provided to Ms. Munning and her fellow customers of the Gap Factory and Banana Republic Factory store websites, and by selling items based on these non-existent discounts, Defendants have violated and continue to violate numerous state consumer protection laws as well as the common law.

Specifically, Defendants have violated the provisions of the California Business & Professions Code § 17200, *et seq.*, which prohibit unlawful business acts and practices; the provisions of the California Business & Professions Code § 17500, *et seq.*, which prohibit misleading, deceptive, and untrue advertising; the CLRA, California Civil Code § 1750, *et seq.*; and California common law regarding breach of contract and breach of express warranty. California law applies because Defendants are citizens of California and performed the acts complained of herein in California. Moreover, the "Terms of Use" set forth on the Gap Factory and Banana Republic Factory online websites, which to give rise to a binding agreement between Defendants and users of the sites, to apply California law to any claims brought against Defendants regarding purchases made through Defendants' websites.

With regard to the violations of the CLRA, the actions of Defendants, and their conduct described herein, constitute transactions that have resulted in the sale of goods to consumers. Ms. Munning and each class member are consumers as defined by California Civil Code § 1761(d). The items offered for sale on Defendants' websites are goods within the meaning of California Civil Code § 1761(a). Defendants intended to, and did in fact, sell these items to Ms. Munning and the other consumers victimized by Defendants' scheme. These consumers have suffered damage as a result of the use and employment by Defendant of methods, acts and

Julie G. Gruber
November 10, 2016
Page 5

practices described with specificity herein that are declared to be unlawful by Section 1770. Specifically, Defendants have violated the following particular sections of Section 1770:

- in violation of § 1770(a)(5), Defendants represented that the items on their websites have characteristics which they do not have (*i.e.*, that the items have an “original” price when they do not, and are being offered for sale at a discounted price when they are not);
- in violation of § 1770(a)(9), Defendants advertised the items on their websites with intent not to sell them as advertised (*i.e.*, the items were advertised as being on sale when Defendants intended to, and did in fact, sell them at their regular prices);
- in violation of § 1770(a)(13), Defendants have made false and misleading statements of fact concerning the existence and amounts of price reductions (*i.e.*, by advertising discounts and offering sale prices that did not exist); and
- in violation of § 1770(a)(16), Defendants represented that the items on their websites have been supplied in accordance with previous representations (*i.e.*, that they were sold at a discounted price) when they were not.

To the extent California law does not apply to all claims, Defendants have also violated the consumer protection laws of New Jersey, including the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, *et seq.*, which prohibits deceptive and misleading commercial business practices, and the New Jersey Truth in Consumer Contract, Warranty and Notice Act, N.J.S.A. § 56:12-16, *et seq.*, which prohibits offers of notices that violate the legal rights of consumers. Defendants have further violated numerous states’ common law regarding breach of contract and breach of express warranty.

Ms. Munning intends to bring the above claims against Defendants to stop Defendants’ unlawful practices described herein, to recover for the class of customers of the online Gap Factory and Banana Republic Factory store websites the overcharges that they paid, and to obtain for the customers the actual discounts they were entitled to receive but did not due to Defendants’ deceptive practices. Please be advised that you have thirty (30) calendar days from the date of receipt of this notice to correct, repair, replace, or otherwise rectify these violations, as further outlined below.

Class Potential

The fraudulent and deceptive business practices of Defendants in operating the Gap Factory and Banana Republic Factory store websites, and in advertising and selling products therefrom, have impacted thousands of customers who purchased purportedly discounted products that in fact were not. Such conduct by Defendants is systematic and uniform in nature, and applies equally to all of Defendants’ customers. These thousands of customers will together comprise one or more classes, which we will seek to have certified, and which Ms. Munning will more than adequately represent. Upon certifying these classes, we will seek not only actual damages, but punitive damages and statutory damages, in addition to attorney’s fees and costs.

Julie G. Gruber
November 10, 2016
Page 6

Demand

We intend to pursue this matter as a class action, and therefore expect that any consensual resolution of this case must contemplate class-wide relief which approximates the full amount of actual, statutory and punitive damages available under applicable law. Please contact our offices within thirty (30) days of your receipt of this correspondence to discuss this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "R. Schmierer".

Ross H. Schmierer

cc: Joseph Duffy, Esq. (via email & regular mail)

EXHIBIT A

3/21/2016

Factory multi-stripe swim trunks | Gap Fact



We've redirected you to this page to help you find 8870110010002.



Factory multi-stripe swim trunks

\$24.99 32% off

<http://www.gapfactory.com/browse/product.do?userSearchText=8870110010002&pid=887011001>

3/21/2016

Factory multi-stripe swim trunks | Gap Factor

Now \$16.99

Color: multi 1cc



Size:

XS

S

M

L

XL

XXL

Fit & Sizing

SIZE GUIDE

Quantity

1

ADD TO BAG

fabric & care

- 100% Polyester.
- Machine wash
- Imported.

product details

shipping & returns

STORE LOCATOR

CUSTOMER SERVICE

ORDERS & RETURNS

GIFT CARDS

GAP CREDIT CARD

EMAIL SIGN UP

3/21/2016

Factory multi-stripe swim trunks | Gap Factory

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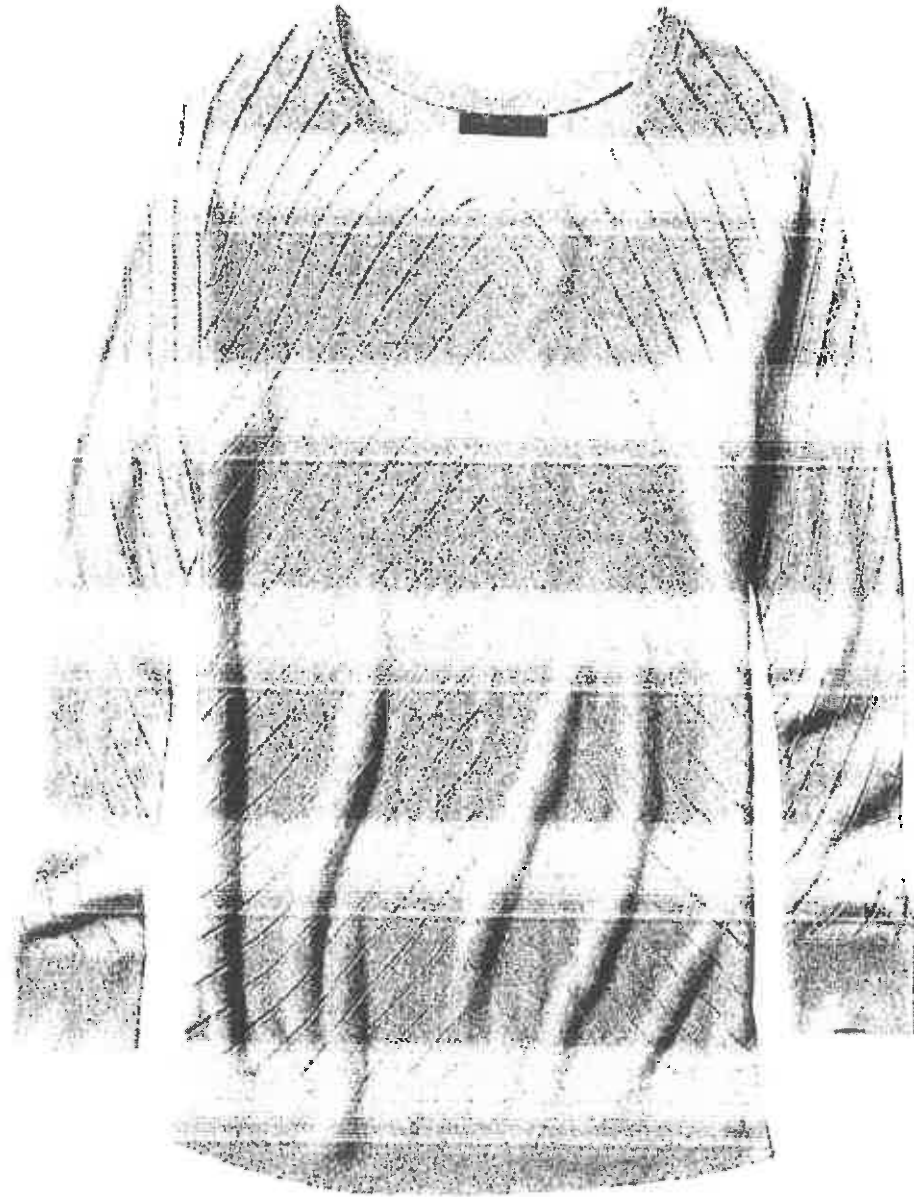
Gap Factory Banana Republic Factory

3/21/2016

Factory Dolman Pontielle Sweater | Banana Republic



You have been redirected to this page as a result of your search for "1818810110002".



Factory Dolman Pontielle Sweater

\$54.99 16% off

3/21/2016

Factory Dolmen Ponille Sweater | Banana Republic Factory

Now \$45.98

Color: Blue fairy
clearance



Size:

XS ~~S~~ ~~M~~ ~~L~~ ~~XL~~

FIT & SIZING

- Hits at the hip.

SIZE GUIDE

Quantity:

1

Product ID: 181881011

FABRIC & CARE

- 50% Acrylic, 50% Viscose.
- Machine wash.
- Imported.

PRODUCT DETAILS

SHIPPING & RETURNS

**BANANA REPUBLIC FACTORY
EXCLUSIVE PRODUCTS,
EXCEPTIONAL SAVINGS**

Love what you see?

Find even more great styles in store.

3/21/2016

FactoryDolman Ponfelle Sweater | Banana Republic Factory

Deals straight to your phone!

TEXT DEAL TO 28500

Receive a coupon &
future offers to your phone!

DETAILS

STORE LOCATOR

CUSTOMER SERVICE

ORDERS & RETURNS

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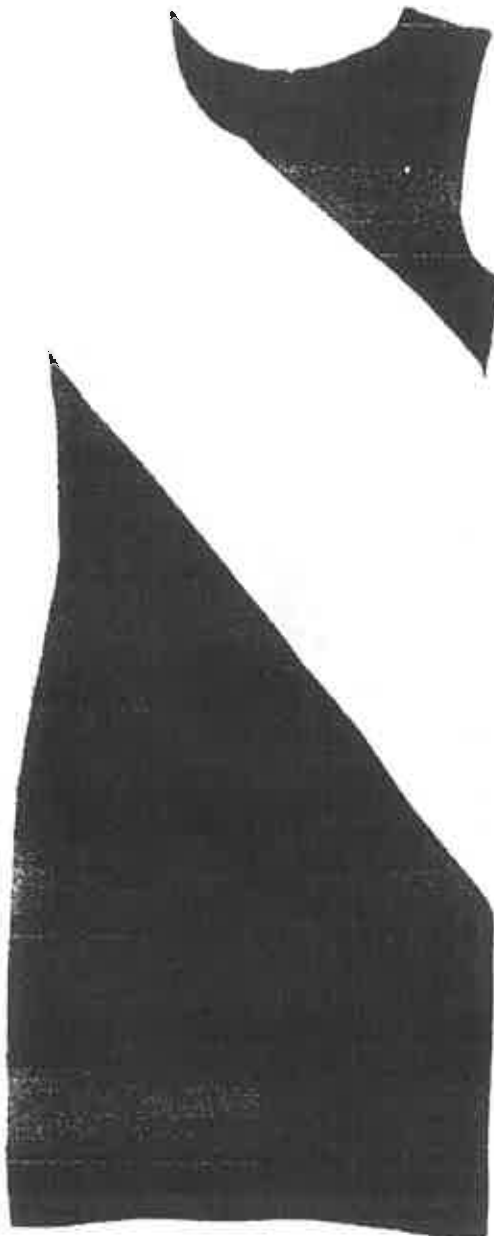
Gap Factory Banana Republic Factory

3/21/2016

Factory Colorblock Ponte Sheath | Banana Republic



You have been redirected to this page as a result of your search for "1824830010010".



Factory Colorblock Ponte Sheath

\$89.99 50% off

3/21/2016

Factory Colorblock Ponte Sheath | Banana Republic Factory

Now \$44.98

Color: Maroon



Size:

0 2 4 6 8 10 12 14

FIT & SIZING

SIZE GUIDE

- Hits at the knee.

Quantity:

1

FABRIC & CARE

- 66% Rayon, 29% Nylon, 5% Spandex
- Dry clean.
- Imported.

PRODUCT DETAILS

SHIPPING & RETURNS

**BANANA REPUBLIC FACTORY
EXCLUSIVE PRODUCTS,
EXCEPTIONAL SAVINGS**

Love what you see?
Find even more great styles in store.

3/21/2016

Factory Colorblock Ponte Sheath | Banana Republic Factory

Deals straight to your phone!

TEXT DEAL TO 28500

Receive a coupon &
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[Gap Factory](#) [Banana Republic Factory](#)

EXHIBIT B

3/15/2016

Order Details | Gap Factory



Order #TQVB4B6

Ordered on: March 15, 2016 10:46 PM (EDT) from gapfactory.com

Status: In Process

[Returns](#) [Order history](#) [Order status help](#)

Order details

ORDERED BY

Laurie Munning

REDACTED 8

Payment method:

REDACTED

SHIPPED TO

Laurie Munning

REDACTED 8

Shipping method:

SUMMARY OF CHARGES

Merchandise	\$107.95
Shipping & handling	FREE
Tax	\$0.00
Total:	\$107.95

▼ In stock: Available to ship

3/15/2016

Order Details | Gap Factory



Factory multi-stripe swim trunks

#8870110010002

Color multi 1cc

Size XS

Unit price ~~\$24.99~~ \$16.99

Qty 1

Cost \$16.99



Factory Colorblock Ponte Sheath

#1824830010010

Color Maroon

Size 10

Unit price ~~\$89.99~~ \$44.98

Qty 1

Cost \$44.98



Factory Dolman Pontielle Sweater

#1818810110002

Color Blue fairy

Size M

Unit price ~~\$54.99~~ \$45.98

Qty 1

Cost \$45.98

STORE LOCATOR

CUSTOMER SERVICE

ORDERS & RETURNS

GIFT CARDS

GAP CREDIT CARD

EMAIL SIGN UP


SHOP BANANA REPUBLIC FACTORY

3/15/2016

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<ul style="list-style-type: none"> <input type="checkbox"/> Complete items 1, 2, and 3. <input type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature X <i>10 masRui's</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>		
<p>1. Article Addressed to:</p> <p style="font-size: 1.2em; margin-left: 20px;"><i>Julie G. Gruber, Esq.</i></p> <p style="margin-left: 20px;"><i>Gap Inc.</i></p> <p style="margin-left: 20px;"><i>2 Folsom Street</i></p> <p style="margin-left: 20px;"><i>San Francisco, CA 94105</i></p>  <p style="text-align: center; font-weight: bold; margin-top: 5px;">9590 9402 1438 5329 1680 53</p>	<p>B. Received by (Printed Name) _____ C. Date of Delivery _____</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>		
<p>2. Article Number (Transfer from service label)</p> <p style="font-size: 1.2em; margin-left: 20px;">7016 0600 0000 5561 8766</p>	<p>3. Service Type</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) </td> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery </td> </tr> </table>	<input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	<input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery
<input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	<input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery		
<p>PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt</p>			

USPS TRACKING#



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USPS
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9590 9402 1438 5329 3630 53

United States
Postal Service

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Paris Ackerman & Schmierer
103 Eisenhower Park Way
Roseland, NJ 07068
Attn: Amber Horn

PROOF OF SERVICE

1
2 I, the undersigned, certify and declare that I am over the age of 18 years,
3 employed in the County of Los Angeles, State of California, and not a party to the
4 above-entitled cause. On December 12, 2016, I electronically filed with the Court
5 through its CM/ECF program and served a true copy through the same program the
6 following documents: First Amended Complaint on the interested parties in said
7 case as follows:
8
9

10 [x] ELECTRONICALLY, Pursuant to the CM/ECF system, registration as a
11 CM/ECF user constitutes consent to electronic service through the Court's
12 transmission facilities. The Court's CM/ECF system sends an email notification of
13 the filing to the parties and counsel of record who are registered with the Court's
14 CM/ECF system.

14 Place of Filing: 21550 Oxnard St., Suite 780, Woodland Hills, CA 91367.

15 Executed on December 12, 2016, at Woodland Hills, CA

16
17 [x] I hereby certify under the penalty of perjury that the foregoing is true and
18 correct.

19 By: s/ Todd M. Friedman
20 Todd M. Friedman
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28