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7 THE GAP, INC., GAP (APPAREL) LLC; GAP
INTERNATIONAL SALES, INC.; BANANA
8 REPUBLIC LLC; and BANANA REPUBLIC
(APPAREL) LLC
9

10 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
11

12 LAURIE MUNNING, on behalf of herself and
all others similarly situated,

13 Plaintiff,

14 vs.

15 THE GAP, INC., GAP (APPAREL) LLC;
GAP INTERNATIONAL SALES, INC.;
16 BANANA REPUBLIC LLC; and BANANA
REPUBLIC (APPAREL) LLC,
17

18 Defendants.
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Case No. _____

**DEFENDANTS THE GAP, INC., GAP
(APPAREL) LLC, GAP
INTERNATIONAL SALES, INC.,
BANANA REPUBLIC LLC, AND
BANANA REPUBLIC (APPAREL) LLC'S
NOTICE OF REMOVAL**

COMPLAINT FILED IN SAN FRANCISCO
SUPERIOR COURT: MAY 25, 2016

COMPLAINT SERVED ON
DEFENDANTS: JUNE 7, 2016

NOTICE OF REMOVAL FILED: JULY 7,
2016

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendants The Gap, Inc., Gap (Apparel) LLC, Gap International Sales, Inc., Banana Republic LLC, and Banana Republic (Apparel) LLC, (“Defendants”), by and through their attorneys, remove to this Court the action entitled *Laurie Munning v. The Gap Inc., et al.*, Case No. CGC-16-552215 (the “Action”), which was originally filed in the Superior Court of the State of California for the County of San Francisco.

I. INTRODUCTION

1. As set forth below, this Action is properly removed to this Court pursuant to 28 U.S.C. § 1441 because this Court has jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d) (“CAFA”), in that this Action is a civil action in which the amount in controversy exceeds the sum of \$5,000,000 exclusive of costs and interest, has more than 100 members in the proposed putative class, and is between citizens of different states.

2. By filing this notice of removal, Defendants do not intend to waive, and hereby reserve, any objection as to venue, the legal sufficiency of the claims alleged in the Action, and all other defenses. Defendants reserve the right to supplement and amend this notice of removal.

II. BACKGROUND

3. On May 25, 2016, plaintiff Laurie Munning (“Plaintiff”) commenced this putative class action by filing a Complaint in the San Francisco Superior Court.

4. The Complaint alleges violations of the Federal Guides Against Deceptive Pricing, 16 C.F.R. § 233.1, the California Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*, the California Unfair Competition Law, Cal. Bus. & Prof. Code. § 17200, *et seq.*, the California False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.*, the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*, the New Jersey Truth in Consumer Contract, Warranty and Notice Act, N.J.S.A. § 56:12-14, and violations of various consumer protection statutes in 49 states and the District of Columbia, against Defendants arising out of the sale of merchandise at Defendants’ online Gap Factory store website and Banana Republic Factory store website. The Complaint further alleges claims for Breach of Contract, Breach of Contract Under the Implied Covenant of Good Faith and Fair Dealing, Breach of Express

Warranty, Unjust Enrichment, and Negligent Misrepresentation. The Complaint seeks an order certifying the proposed classes, a declaration that Defendants are financially responsible for notification of class members, disgorgement of profits, a finding that Defendants' conduct be adjudged and decreed in violation of all the state laws cited above, injunctive relief, declaratory relief, damages, including economic, compensatory, punitive, and exemplary damages, interest, and attorneys' fees.

5. The proposed putative classes consists of "[a]ll United States citizens who purchased any discounted item from Defendants' online Gap Factory store website between May 24, 2010 and the present" and "[a]ll United States citizens who purchased any discounted item from Defendants' online Banana Republic Factory store website between May 24, 2010 and the present." Complaint ¶ 71. Plaintiff also proposes a New Jersey subclass, which has identical features as the two proposed classes, except it includes only New Jersey citizens that purchased merchandise from Defendants' online Gap Factory store website and Banana Republic Factory store website. *Id.* ¶ 72.

6. Process was served on Defendants on June 7, 2016, by delivery to an agent authorized by Defendants to receive process.¹

7. Defendants have not filed an answer or responsive pleading to the Complaint.

III. JURISDICTION

8. CAFA creates federal jurisdiction over lawsuits in which "the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant," and involves a putative class that consists of more than 100 members. 28 U.S.C. §§ 1332(d)(2)(A) and (d)(5). All of these requirements are met here.

A. Minimal Diversity Exists

9. CAFA requires only minimal diversity, and in class action lawsuits, "[t]he district courts shall have original jurisdiction of any civil action in which . . . any member of a class of

¹ The Summons and Complaint, which together comprise "all process, pleadings, and orders served" on Defendants in this Action, 28 U.S.C. § 1446(a), are attached hereto as Exhibit A.

1 plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).
 2 Diversity of citizenship exists here.

3 10. Plaintiff is a citizen of New Jersey. Complaint ¶ 10 (“Plaintiff Laurie Munning is
 4 an individual and a resident and citizen of New Jersey.”).

5 11. For purposes of diversity, a corporation is deemed to be a citizen of (1) the state
 6 under whose laws it is organized; and (2) the state of its “principal place of business.” 28 U.S.C.
 7 § 1332(c)(1). Defendant The Gap, Inc. is a Delaware corporation with its principal place of
 8 business in the State of California. Complaint ¶ 11. Thus, for purposes of CAFA jurisdiction,
 9 Gap, Inc. is a citizen of Delaware and California, and no other state. 28 U.S.C. § 1332(c)(1).

10 12. Accordingly, the minimal diversity requirement is satisfied given that Plaintiff is a
 11 citizen of New Jersey and The Gap, Inc. is a citizen of Delaware and California.

12 **B. The Amount In Controversy Exceeds \$5,000,000**

13 13. Although Defendants deny all liability alleged in the Complaint and deny that
 14 class treatment is appropriate for this Action, if damages or restitution were awarded on
 15 Plaintiff’s claims, the aggregate amount as to the putative class would exceed \$5,000,000
 16 exclusive of interests and costs.

17 14. Defendants deny Plaintiff’s substantive allegations, deny that Plaintiff is entitled
 18 to any of the relief sought in her Complaint, and do not waive any defense with respect to any of
 19 Plaintiff’s claims. Nonetheless, the amount in controversy is determined by accepting Plaintiff’s
 20 allegations as true. *See, e.g., Cain v. Hartford Life & Accident Ins. Co.*, 890 F. Supp. 2d 1246,
 21 1249 (C.D. Cal. 2012) (citing *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F.
 22 Supp. 2d 993, 1001 (C.D. Cal. 2002) (“In measuring the amount in controversy, a court must
 23 assume that the allegations of the complaint are true and assume that a jury will return a verdict
 24 for the plaintiff on all claims made in the complaint.”)); *accord Gyorke-Takatri v. Nestle USA,*
 25 *Inc.*, Case No. 15-cv-03702-YGR, 2015 WL 6828258, at *2 (N.D. Cal. Nov. 6, 2015); *Asturias*
 26 *v. Nationstar Mortgage, LLC*, Case No. 15-CV-3861 YGR, 2015 WL 6602022, at *1 (N.D. Cal.
 27 Oct. 30, 2015).

1 15. Case law is clear that “[t]he amount-in-controversy allegation of a plaintiff
2 invoking federal-court jurisdiction is accepted if made in good faith. Similarly, the amount-in-
3 controversy allegation of a defendant seeking federal-court adjudication should be accepted
4 when not contested by the plaintiff or questioned by the court.” *Dart Cherokee Basin Operating*
5 *Co., LLC v. Owens*, 135 S. Ct. 547, 549-50 (2014).

6 16. Here, Plaintiff seeks economic, compensatory, punitive, and exemplary damages,
7 and requests the Court to “[d]eclare that Defendants must disgorge...all or part of the ill-gotten
8 profits they received...or order Defendants to make full restitution to Plaintiffs and the members
9 of the classes.” Complaint, Prayer for Relief. In seeking restitution, Plaintiff seeks to represent
10 “[a]ll United States citizens who purchased any discounted item from Defendants’ online Gap
11 Factory store website between May 24, 2010 and the present” and “[a]ll United States citizens
12 who purchased any discounted item from Defendants’ online Banana Republic Factory store
13 website between May 24, 2010 and the present.” Complaint ¶ 71.

14 17. Given the volume of sales on Defendants’ online Gap Factory store website and
15 Banana Republic Factory store website, and the amount of potential class members who made
16 purchases through these websites, the amount in controversy, exclusive of interests and costs,
17 well exceeds \$5,000,000.²

18 **C. The Putative Class Exceeds 100 Members**

19 18. Plaintiff alleges that “[e]ach of the classes...is *so numerous* that joinder of all
20 members is impracticable.” Complaint ¶ 74 (emphasis added).

21 19. Plaintiff further alleges that “[t]he proposed classes and subclasses are each
22 composed of at least 10,000 persons.” Complaint ¶ 76.

23 20. Because the Complaint clearly pleads that more than 100 individuals from the
24 State of California purchased merchandise from Defendants’ online Gap Factory store website
25 and Banana Republic Factory store website during the putative class period, the size of the
26 putative class well exceeds 100 members.

27 ² The amount in controversy is satisfied, in part, by an examination of Defendant The Gap, Inc.’s Form 10-K
28 filings. *See, e.g.*, The Gap, Inc., Annual Report (Form 10-K) at 16 (Mar. 21, 2016), *available at*
http://investors.gapinc.com/phoenix.zhtml?c=111302&p=irol-sec&secCat01.1_rs=1&secCat01.1_rc=10.

1 **IV. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED**

2 21. This Court is the proper venue for removal because the Action is pending in the
3 County of San Francisco, California, and the United States District Court for the Northern
4 District of California, San Francisco Division is the “district and division embracing the place
5 where such action is pending.” 28 U.S.C. § 1441(a).

6 22. Defendants timely filed this notice of removal. Defendants were served with the
7 Complaint on June 7, 2016. Accordingly, Defendants filed this Notice of Removal within 30
8 days of being served. 28 U.S.C. §§ 1446(b); 1453(b).

9 23. As required by 28 U.S.C. § 1446(d), a copy of this notice of removal is being
10 promptly served upon counsel for Plaintiff and a copy is being filed with the Clerk of the
11 Superior Court of the State of California for the County of San Francisco.

12
13 Dated: July 7, 2016

MORGAN, LEWIS & BOCKIUS LLP

14
15
16 By /s/ Joseph Duffy
Joseph Duffy
17 Esther K. Ro
Attorneys for Defendants
18 THE GAP, INC., GAP (APPAREL) LLC, GAP
INTERNATIONAL SALES, INC., BANANA
19 REPUBLIC LLC, and BANANA REPUBLIC
(APPAREL) LLC
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**Service of Process
Transmittal**

06/07/2016

CT Log Number 529293008

TO: Amanda Ferguson
The Gap, Inc.
2 Folsom St Dept Law
San Francisco, CA 94105-1205

RE: Process Served in California

FOR: THE GAP, INC. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: LAURIE MUNNING, individually and on behalf of all others similarly situated,
Pltf. vs. THE GAP, INC., et al., Dfts.
Name discrepancy noted.

DOCUMENT(S) SERVED: Complaint, Exhibit(s), Summons, Cover Sheet(s), Notice(s)

COURT/AGENCY: San Francisco County - Superior Court - San Francisco, CA
Case # CGC16552215

NATURE OF ACTION: VIOLATION OF STATE CONSUMER PROTECTION STATUTES, VIOLATION OF THE
CALIFORNIA CONSUMERS LEGAL REMEDIES ACT and IOLATION OF THE CALIFORNIA
UNFAIR COMPETITION LAW

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 06/07/2016 at 11:53

JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: Within 30 days after service (Document(s) may contain additional answer dates)

ATTORNEY(S) / SENDER(S): Todd M. Friedman
Law Offices of Todd M. Friedman
324 S. Beverly Dr.
#725
Beverly Hills, CA 90212
877-2026-4741

ACTION ITEMS: CT has retained the current log, Retain Date: 06/08/2016, Expected Purge Date:
06/13/2016

Image SOP

Email Notification, Octavia Cruz Octavia_Cruz@gap.com

Email Notification, Emiko Gatineau Emiko_gatineau@gap.com

Email Notification, Amanda Ferguson Amanda_Ferguson@gap.com

SIGNED: C T Corporation System

ADDRESS: 818 West Seventh Street
Los Angeles, CA 90017

TELEPHONE: 213-337-4615

COPY**BY FAX****SUM-100****SUMMONS
(CITACION JUDICIAL)****NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

The Gap, Inc.; Gap (Apparel) LLC; Gap International Sales, Inc.;
Banana Republic LLC; and Banana Republic (Apparel) LLC

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

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

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es) Superior Court of San Francisco
400 McAllister St.
San Francisco, CA 94102

CASE NUMBER
(Número del caso)**CGC-16-552215**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Todd M. Friedman, 324 S. Beverly Dr., #725, Beverly Hills, CA 90212, 877-206-4741

DATE MAY 25 2016 CLERK OF THE COURT

Clerk, by
(Secretario)**ARLENE RAMOS**Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010)).
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

- 1 ☐ as an individual defendant.
2 ☐ as the person sued under the fictitious name of (specify)

3. ☐ on behalf of (specify)

- under ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify).

4. ☐ by personal delivery on (date)

Page 1 of 1

COPY

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Todd M. Friedman, Esq. SBN 216752 Law Offices of Todd M. Friedman 324 S. Beverly Dr., #725 Beverly Hills, CA 90212 TELEPHONE NO. 877-206-4741 FAX NO. 866-633-0228 ATTORNEY FOR (Name) Plaintiff, Laurie Munning		FOR COURT USE ONLY ENDORSED FILED Superior Court of California County of San Francisco MAY 25 2016 CLERK OF THE COURT BY: ARLENE RAMOS Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS 400 McAllister St. MAILING ADDRESS CITY AND ZIP CODE San Francisco, 94102 BRANCH NAME		
CASE NAME Laurie Munning, et al v. The Gap, Inc., et al		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		
		CASE NUMBER CGC-16-552215 JUDGE DEPT.

Items 1-6 below must be completed (see instructions on page 2)

1 Check one box below for the case type that best describes this case.		
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/DP/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/DP/WD (23) Non-P/DP/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input checked="" type="checkbox"/> Other non-P/DP/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If this case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
- 3 Remedies sought (check all that apply): a ☒ monetary b ☒ nonmonetary, declaratory or injunctive relief c ☐ punitive
- 4 Number of causes of action (specify): 11
5. This case ☒ is ☐ is not a class action suit
- 6 If there are any known related cases, file and serve a notice of related case (You may use form CM-015.)

Date May 24, 2016
 Todd M. Friedman

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code) (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

Form Adopted for Mandatory Use
 Judicial Council of California
 CM-010 (Rev. July 1, 2007)

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400-3.403, 3.740-
 Cal. Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov

American LegalNet, Inc.
www.FormsWorkflow.com

BY FAX

COPY

1 Law Offices of Todd M. Friedman, P.C.
 2 Todd M. Friedman, Esq. (SBN 216752)
 3 tfriedman@toddfllaw.com
 4 324 South Beverly Drive #725
 5 Beverly Hills, CA 90212
 6 Tel: 877-206-4741
 7 Fax: 866-633-0228
 8 Attorney for Plaintiff

ENDORSED
 FILED
 Superior Court of California
 County of San Francisco

MAY 25 2016

CLERK OF THE COURT
 BY: ARLENE RAMOS
 Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN FRANCISCO
 UNLIMITED JURISDICTION

JUN 07 2016

10:30

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

Plaintiff,

v.

THE GAP, INC.; GAP (APPAREL) LLC; GAP
 INTERNATIONAL SALES, INC.; BANANA
 REPUBLIC LLC; and BANANA REPUBLIC
 (APPAREL) LLC,

Defendants.

Case No.:

CGC-16-552215

CLASS ACTION

COMPLAINT FOR DAMAGES,
 INJUNCTIVE & DECLARATORY
 RELIEF FOR VIOLATIONS OF
 CONSUMER FRAUD STATUTES
 AND COMMON LAW

JURY TRIAL DEMAND

(Amount to Exceed \$25,000)

BY FAX

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

NATURE OF THE ACTION

1. Plaintiff brings this nationwide class action against Defendants alleging violations
 of federal pricing regulations and the consumer protection laws and common law of numerous
 states.

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

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

LAW OFFICES OF TODD M. FRIEDMAN, P.C.
324 SOUTH BEVERLY DRIVE #725
BEVERLY HILLS, CA 90212

1 3. First, Defendants had, and continue to have, a policy of listing an arbitrary base
2 price for every item offered for sale on their websites, which purports to be each item's
3 "original" or "regular," non-discounted price. This practice is false and misleading because
4 most, if not all, items are never sold or offered for sale at the listed "original," non-discounted
5 prices, and no items are ever consistently sold or offered for sale at their non-discounted prices.
6 Rather, the items on Defendants' websites are regularly sold at prices that are lower than the
7 purported non-discounted prices.

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

15 5. Because the vast majority – if not all – of the items on Defendants' websites are
16 never offered for sale at their listed "original," non-discounted prices, but rather are perpetually
17 offered for sale at purported "discount" or "sale" prices, the reduced prices advertised by
18 Defendants are not actually discounts at all, but rather the everyday, regular prices of the items.
19 6. Federal regulations prohibit the advertising of false, "phantom" price reductions
20 and discounts off inflated, fictitious "regular" prices that never actually existed. *See* 16 C.F.R. §
21 233.1.

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

26 8. By advertising these purported discounts, which were never actually provided to
27 customers, and by selling items based on these non-existent discounts, Defendants have violated
28 numerous state consumer protection laws as well as the common law and federal regulations, as

1 set forth herein.

2 9. Plaintiff brings this lawsuit against Defendants to stop this unlawful practice, to
3 recover for the proposed classes of customers of the online Gap Factory and Banana Republic
4 Factory store websites the overcharges that they paid, and to obtain for customers the actual
5 discounts they were entitled to receive but did not due to Defendants' deceptive practices.

6 PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

JURISDICTION AND VENUE

22. This Court has *in personam* jurisdiction over the Defendants because, *inter alia*, Defendants: (a) are headquartered in the State of California; (b) transacted business in this state; (c) maintained continuous and systematic contacts in this state prior to and during the class period; and (d) purposefully availed themselves of the benefits of doing business in this state.

1 Accordingly, the Defendants maintain minimum contacts with this state which are more than
2 sufficient to subject them to service of process and to comply with due process of law.

3 23. This Court has jurisdiction over the subject matter of this action by virtue of the
4 fact that this is a civil action where in the matter in controversy, exclusive of interest and costs,
5 exceeds the jurisdictional minimum of the Court. The actions and omissions complained of took
6 place in the State of California, County of San Francisco.

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

12 25. Moreover, the "Terms of Use" set forth on Defendants' Gap Factory and Banana
13 Republic Factory online websites, which purport to give rise to a binding agreement between
14 Defendants and users of the sites, which include Plaintiff and the nationwide class members,
15 purport to require that any claims brought against Defendants regarding purchases made through
16 Defendants' websites be resolved by Courts of the State of California, County of San Francisco.

17 **FACTUAL ALLEGATIONS**

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

22 27. This lawsuit concerns Defendants' false and misleading advertising, marketing,
23 and sales practices with respect to their illusory "discounting" of items sold on their online Gap
24 Factory and Banana Republic Factory store websites.

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

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1 29. This "original" price is illusory, however, because most – if not all – of the items
2 on Defendants' Gap Factory and Banana Republic Factory websites are never sold, or even
3 offered for sale, at their listed "original" prices.

4 30. Rather, each of these items is and has always been offered for sale at a
5 "discounted" price that is much lower than its listed "original" price.

6 31. For each such item, Defendants advertise that the "discounted" price represents a
7 certain percentage reduction off the "original" price.

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

11 33. By way of example, Defendants will offer a dress for sale at a "discount" price of
12 \$44.98, and they will advertise – in red lettering – that this price is "50% off" the dress's
13 purported "original" price of \$89.99. See Exhibit A.

14 34. The advertised price of the dress, which is set forth below its picture and
15 description on Defendants' websites, appear as follows:

16 \$89.99 50% off

17 Now \$44.98

18 See id.

19 35. Upon information and belief, the dress was never sold or offered for sale at the
20 advertised "original" price, or was never consistently sold or offered for sale at this price.

21 36. Because the dress was never sold or offered for sale at the advertised "original"
22 price, it is not actually discounted by 50%, and thus the 50% discount advertised by Defendants,
23 as well as the purported "sale" price, is false and misleading.

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

27 38. Indeed, the vast majority of the items offered for sale on Defendants' websites are
28 never sold or offered for sale at their listed "original" prices, and the few items that are offered

1 for sale at their "original" prices are so offered only for a very limited amount of time.

2 39. Rather, nearly all of the items on Defendants' websites are always advertised as
3 being "on sale" and offered to the public at purported discounts, which Defendants typically
4 claim to be between 10% off and 50% off the "original" prices.

5 40. Moreover, nearly all of the items on Defendants' websites remain at identical or
6 substantially similar prices every day, and are always offered for sale to customers at the same or
7 substantially similar prices, which Defendants advertise to be the items' "sale" or "discounted"
8 prices.

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

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

18 43. This practice violates 16 C.F.R. § 233.1, which specifically prohibits the
19 advertising of false, "phantom" price reductions and discounts off inflated, fictitious "regular"
20 prices that never actually existed. *See id.*, stating:

21 **§ 233.1 Former price comparisons.**

22 **(a) One of the most commonly used forms of bargain advertising is to offer a**
23 **reduction from the advertiser's own former price for an article. If the former**
24 **price is the actual, bona fide price at which the article was offered to the**
25 **public on a regular basis for a reasonably substantial period of time, it**
26 **provides a legitimate basis for the advertising of a price comparison. Where**
27 **the former price is genuine, the bargain being advertised is a true one. If, on**
28 **the other hand, the former price being advertised is not bona fide but**

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1 fictitious – for example, where an artificial, inflated price was established for
2 the purpose of enabling the subsequent offer of a large reduction – the
3 “bargain” being advertised is a false one; the purchaser is not receiving the
4 unusual value he expects. In such a case, the “reduced” price is, in reality,
5 probably just the seller’s regular price.

6 (b) A former price is not necessarily fictitious merely because no sales at the
7 advertised price were made. The advertiser should be especially careful,
8 however, in such a case, that the price is one at which the product was openly
9 and actively offered for sale, for a reasonably substantial period of time, in
10 the recent, regular course of his business, honestly and in good faith – and, of
11 course, not for the purpose of establishing a fictitious higher price on which a
12 deceptive comparison might be based. And the advertiser should
13 scrupulously avoid any implication that a former price is a selling, not an
14 asking price (for example, by use of such language as, “Formerly sold at
15 \$ ____”), unless substantial sales at that price were actually made.

16 * * *

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

24 (e) If the former price is set forth in the advertisement, whether accompanied
25 or not by descriptive terminology such as “Regularly,” “Usually,”
26 “Formerly,” etc., the advertiser should make certain that the former price is
27 not a fictitious one. If the former price, or the amount or percentage of
28 reduction, is not stated in the advertisement, as when the ad merely states,

1 “Sale,” the advertiser must take care that the amount of reduction is not so
 2 insignificant as to be meaningless. It should be sufficiently large that the
 3 consumer, if he knew what it was, would believe that a genuine bargain or
 4 saving was being offered. An advertiser who claims that an item has been
 5 “Reduced to \$9.99,” when the former price was \$10, is misleading the
 6 consumer, who will understand the claim to mean that a much greater, and
 7 not merely nominal, reduction was being offered.

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

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

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

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

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

22 \$24.99 32% off

23 Now \$16.99

24 See id.

25 49. As part of the same transaction, Plaintiff Munning also purchased from the
 26 Banana Republic Factory retail website a “Factory Colorblock Ponte Sheath” dress (Item No.
 27 1824830010010) for \$44.98 and a “Factory Dolman Pontielle Sweater” (Item No.
 28 1818810110002) for \$45.98. The dress was advertised to be on sale at a “50% off” discount

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1 from the purported original retail price of \$89.99, and the sweater was advertised to be on sale at
2 a "16% off" discount from the purported original retail price of \$54.99. See id.

3 50. The advertised price of the dress, which was set forth below its picture and
4 description on Defendants' Banana Republic Factory website, appeared as follows:

5 \$89.99 50% off

6 Now \$44.98

7 See id.

8 51. The advertised price of the sweater, which was set forth below its picture and
9 description on Defendants' Banana Republic Factory website, appeared as follows:

10 \$54.99 16% off

11 Now \$45.98

12 See id.

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

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

18 54. Indeed, the prices for the swim trunks, dress, and sweater remained unchanged for
19 the entire week following Plaintiff's purchase, as did the advertisements on Defendants' websites
20 related thereto. See Exhibit A.

21 55. Accordingly, during the week following Plaintiff's purchase of the swim trunks
22 for "32% off," the dress for "50% off," and the sweater for "16% off," none of the three items
23 was ever sold at its listed non-discounted, "original" price. Indeed, the prices of the three items
24 never exceeded the purported "discounted" or "sale" price that Plaintiff paid.

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

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1 advertised to be "50% off" the non-discounted, "original" price of \$89.99.

2 57. Upon information and belief, the three items purchased by Plaintiff were never
3 sold or offered for sale at the non-discounted, base prices listed on Defendants' websites, or were
4 never consistently sold or offered for sale at their advertised base prices. Rather, the items were
5 always sold and offered for sale at a price at or near the purported "sale" price that Plaintiff paid.

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

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

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

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

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

19 63. Defendants' specific unlawful practices include:

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

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

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

66. 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, the "discounted" prices. As such, Defendants' allegedly reduced, "sale" prices were and are, in fact, Defendants' regular prices.

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

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

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

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

CLASS ACTION ALLEGATIONS

71. **Class Definition:** Plaintiff brings this action as a class action pursuant to

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1 California Code of Civil Procedure Section 382, seeking damages and injunctive relief under
2 state consumer protection statutes and common law on behalf of herself and all members of the
3 following two proposed classes:

4 **All United States citizens who purchased any discounted item from Defendants'**
5 **online Gap Factory store website between May 24, 2010 and the present.**

6 and

7 **All United States citizens who purchased any discounted item from Defendants'**
8 **online Banana Republic Factory store website between May 24, 2010 and the**
9 **present.**

10 72. **Sub-Class Definition:** Plaintiff brings this action as a class action pursuant to
11 California Code of Civil Procedure Section 382, seeking damages and injunctive relief under
12 state consumer protection statutes and common law on behalf of herself and all members of the
13 following two proposed Sub-classes:

14 **All New Jersey citizens who purchased any discounted item from Defendants'**
15 **online Gap Factory store website between May 24, 2010 and the present.**

16 and

17 **All New Jersey citizens who purchased any discounted item from Defendants'**
18 **online Banana Republic Factory store website between May 24, 2010 and the**
19 **present.**

20 73. The scope of the class definitions may be refined after discovery of Defendants'
21 and/or third party records.

22 74. Each of the classes for whose benefit this action is brought is so numerous that
23 joinder of all members is impracticable.

24 75. The exact number and identities of the persons who fit within each proposed class
25 are contained in Defendants' records and can be easily ascertained from those records.

26 76. The proposed classes and subclasses are each composed of at least 10,000
27 persons.

28 77. Common questions of law and fact exist as to each class member.

1 78. All claims in this action arise exclusively from uniform policies and procedures of
2 Defendants as outlined herein.

3 79. No violations alleged in this Complaint are a result of any individualized oral
4 communications or individualized interaction of any kind between class members and
5 Defendants or anyone else.

6 80. There are common questions of law and fact affecting the rights of the class
7 members, including, inter alia, the following:

- 8 a. whether the uniform advertising, marketing, and sales practices alleged herein
- 9 exist;
- 10 b. whether Defendants ever sold items or offered items for sale at their listed base
- 11 prices;
- 12 c. whether Defendants' "sale" prices actually reflected the advertised savings;
- 13 d. whether Defendants deceptively advertised everyday, regular prices of their
- 14 items as "discount" or "sale" prices;
- 15 e. the length of time Defendants engaged in the practices alleged herein;
- 16 f. whether the alleged practices violated state consumer protection laws;
- 17 g. whether the alleged practices constituted a breach of contract;
- 18 h. whether the alleged practices constituted a breach of the implied covenant of
- 19 good faith and fair dealing;
- 20 i. whether the alleged practices constituted a breach of an express warranty;
- 21 j. whether Defendants were unjustly enriched by the alleged practices;
- 22 k. the nature and extent of the injury to the classes and the measure of class-wide
- 23 damages; and
- 24 l. whether each class is entitled to injunctive relief in the form of an order directing
- 25 Defendant to send a court-approved notice to all class members, advising of the
- 26 conduct alleged herein, as well as an order enjoining the conduct alleged herein
- 27 and establishing a court-administered program to provide refunds of the
- 28 overcharges to all such class members.

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1 81. Plaintiff is a member of the classes she seeks to represent.

2 82. The claims of Plaintiff are not only typical of all class members, they are
3 identical.

4 83. All claims of Plaintiff and the classes arise from the same course of conduct,
5 policy and procedures as outlined herein.

6 84. All claims of Plaintiff and the classes are based on the exact same legal theories.

7 85. Plaintiff seeks the same relief for herself as for every other class member.

8 86. Plaintiff has no interest antagonistic to or in conflict with the classes.

9 87. Plaintiff will thoroughly and adequately protect the interests of the classes, having
10 retained qualified and competent legal counsel to represent herself and the classes.

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

13 89. The prosecution of separate actions by individual class members would create a
14 risk of inconsistent or varying adjudications with respect to individual members of each class,
15 which would confront Defendant with incompatible standards of conduct.

16 90. Adjudications with respect to individual members of the classes would as a
17 practical matter be dispositive of the interests of other members not parties to the adjudications
18 and would substantially impair or impede their ability to protect their interests.

19 91. A class action is superior to other available methods for the fair and efficient
20 adjudication of the controversy since, *inter alia*, the damages suffered by each class member
21 were not great enough to enable them to maintain separate suits against Defendants and in most,
22 if not all, instances were less than \$5,000 per person.

23 92. Common questions will predominate, and there will be no unusual manageability
24 issues.

25 93. Without the proposed class action, Defendants will likely retain the benefit of
26 their wrongdoing and will continue the complained-of practices, which will result in further
27 damages to Plaintiff and class members.

28

COUNT I

VIOLATION OF STATE CONSUMER PROTECTION STATUTES

(On Behalf of the Nationwide Classes)

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

95. The state consumer protection statutes and deceptive trade practices acts were enacted by the various states following the passage of the Federal Trade Commission Act ("FTC Act"), which prohibits deceptive acts and practices in the sale of products to consumers. The state laws in this area are modeled on the FTC Act and are therefore very similar in content and effect.

96. Defendants' advertising, marketing, and sales practices, as set out more fully above, were unfair and deceptive, and violated the consumer protection statutes and deceptive trade practices acts of the various states, in that they:

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.

97. Defendants' deceptive representations of discounted sale prices impacted the consumer transactions between Defendants and Plaintiff and the class members, in that the deceptive representations: (a) deceived Plaintiffs and the class members into believing that they were receiving the advertised discounts when they purchased items from Defendants' websites; and (b) caused Plaintiff and the class members to purchase items from Defendants' websites with

1 the reasonable understanding that they would be receiving the advertised discounts.

2 98. Plaintiff and every class member suffered an actual injury and monetary damages
3 because they did not receive the advertised discounts on their purchases.

4 99. Defendants' deceptive advertising, marketing, and sales practices described herein
5 violated the following consumer protection statutes and deceptive trade practices acts, as well as
6 their related administrative regulations:

- 7 a. Alabama Deceptive Trade Practices Act, Ala. Code §§ 8-19-1, *et seq.*;
- 8 b. Alaska Unfair Trade Practices and Consumer Protection Act, Alaska Stat. §§
9 45.50.471, *et seq.*;
- 10 c. Arizona Consumer Fraud Act, A.R.S. §§ 44-1522, *et seq.*;
- 11 d. Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §§ 4-88-101, *et seq.*;
- 12 e. California Consumers Legal Remedy Act, Cal. Civ. Code §§ 1750, *et seq.*, California
13 Unfair Competition Law, Cal. Bus. & Prof Code §§ 17200, *et seq.*, and California
14 False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*;
- 15 f. Colorado Consumer Protection Act, Col. Rev. Stat. §§ 6-1-101, *et seq.*;
- 16 g. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. §§ 42-110a, *et seq.*;
- 17 h. Delaware Consumer Fraud Act, 6 Del. Code Ann. Tit. 6, §§ 2511, *et seq.*;
- 18 i. Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201, *et seq.*,
19 Florida Misleading Advertising Statute, Fla. Stat. § 817.41, *et seq.*;
- 20 j. Georgia Uniform Deceptive Trade Practices Act, Ga. Code Ann. §§ 10-1-370, *et seq.*,
21 Fair Business Practices Act, Ga. Code Ann. §§ 10-1-390, *et seq.*, and False
22 Advertising Statute, Ga. Code Ann. §§ 10-1-420, *et seq.*;
- 23 k. Hawaii Federal Trade Commission Act, Haw Rev. Stat. §§ 480, *et seq.* and Uniform
24 Deceptive Trade Practice Act, Hawaii Rev. Stat. §§ 481A, *et seq.*;
- 25 l. Idaho Consumer Protection Act, Idaho Code §§ 48-601, *et seq.*;
- 26 m. Illinois Consumer Fraud and Deceptive Practices Act, 815 ILCS 505/1, *et seq.*;
- 27 n. Indiana Deceptive Consumer Sales Act, Ind. Code §§ 24-5-0.5-1, *et seq.*;
- 28 o. Private Right of Action for Consumer Frauds Act, Iowa Code §§ 714H, *et seq.* and

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- 1 Iowa Consumer Fraud Act, Iowa Code §§ 714.16 *et seq.*;
- 2 p. Kansas Consumer Protection Act, Kan. Stat. Ann. §§ 50-623, *et seq.*;
- 3 q. Kentucky Consumer Protection Act, K.R.S. §§ 367.110, *et seq.*;
- 4 r. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann.
5 § 51:1401;
- 6 s. Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 205-A-214, *et seq.*, Uniform
7 Deceptive Trade Practices Act, 10 M.R.S.A. §§ 1211, *et seq.*;
- 8 t. Maryland Consumer Protection Act, Md. Code Ann. Com. Law §§ 13-101, *et seq.*;
- 9 u. Massachusetts Regulation of Business Practice and Consumer Protection Act, Mass.
10 Gen. L. Ch. 93A, §§ 9, *et seq.*;
- 11 v. Michigan Consumer Protection Act, M.C.L. §§ 445.901, *et seq.*;
- 12 w. Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325 D. 44, *et seq.*,
13 Consumer Fraud Act, Minn. Stat. § 325 F. 69, False Statement in Advertisement
14 Statute, Minn. Stat. § 325 F. 67, and Unlawful Trade Practices Act, Minn. Stat. § 325
15 D. 13;
- 16 x. Missouri Merchandising Practices Act, Mo. Rev. Stat. §§ 407-C10, *et seq.*;
- 17 y. Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code Ann. §§
18 30-14-101, *et seq.* and Statutory Deceit Statute, Mont. Code Ann. § 27-1-712;
- 19 z. Nebraska Consumer Protection Act, Neb. Rev. Stat. §§ 59-1601, *et seq.* and Uniform
20 Deceptive Trade Practices Act, Neb. Rev. Stat. §§ 87-301, *et seq.*;
- 21 aa. Nevada Deceptive Trade Statutes, Nev. Rev. Stat. §§ 598.0903, *et seq.*, §§ 41.600, *et seq.*;
- 22 bb. New Hampshire Regulation of Business Practices for Consumer Protection Act, N.H.
23 Rev. Stat. Ann. §§ 358-A:1, *et seq.*;
- 24 cc. New Jersey Consumer Fraud Act, N.J.S.A. §§ 56:8-1, *et seq.*;
- 25 dd. New Mexico Unfair Trade Practices Act, N.M. Stat. §§ 57-12-1, *et seq.*;
- 26 ee. New York General Business Law §§ 349 and 350;
- 27 ff. North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-1.1,
28 *et seq.*;

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- 1 gg. North Dakota Unfair Trade Practices Law, N.D. Cent. Code §§ 51-15-01, *et seq.*;
- 2 hh. Ohio Consumer Sales Practices Act, ORC §§ 1345.01, *et seq.*;
- 3 ii. Oklahoma Consumer Protection Act, Okla. Stat. Tit. 15, §§ 751, *et seq.* and
- 4 Deceptive Trade Practices Act, Okla. Stat. Tit. 78, § 51, *et seq.*;
- 5 jj. Oregon Unlawful Trade Practices Act, Or. Rev. Stat. §§ 646.605, *et seq.* and Food
- 6 and Other Commodities Act, Or. Rev. Stat. §§ 616.005, *et seq.*;
- 7 kk. Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. Stat. Ann.
- 8 §§ 201-1, *et seq.*;
- 9 ll. Rhode Island Unfair Trade Practices and Consumer Protection Act, R.I. Gen. Law §§
- 10 6-13.1-1, *et seq.*;
- 11 mm. South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10, *et seq.*;
- 12 nn. South Dakota Deceptive Trade Practices and Consumer Protection Act, S.D. Codified
- 13 Laws §§ 37-24-1, *et seq.*;
- 14 oo. Texas Deceptive Trade Practices Consumer Protection Act, Tex. Bus. & Com. Code
- 15 §§ 17.41, *et seq.*;
- 16 pp. Tennessee Consumer Protection Act, Tenn. Code Ann. §§ 47-18-101, *et seq.*;
- 17 qq. Utah Consumer Sales Practices Act, Utah Code Ann. §§ 13-11-1, *et seq.* and Truth in
- 18 Advertising Act, Utah Code Ann. §§ 13-11a-1, *et seq.*;
- 19 rr. Vermont Consumer Fraud Act, 9 V.S.A. §§ 2451, *et seq.*;
- 20 ss. Virginia Consumer Protection Act, Va. Code §§ 59.1-196, *et seq.*;
- 21 tt. Washington Consumer Protection Act, Wash. Rev. Code Ann. §§ 19.86.010, *et seq.*;
- 22 uu. West Virginia Consumer Credit and Protection Act, W.Va. Code §§ 46A-6-101, *et*
- 23 *seq.*;
- 24 vv. Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100.18(1), *et seq.*;
- 25 ww. Wyoming Consumer Protection Law, Wyo. Stat. §§ 40-12-101, *et seq.*; and
- 26 xx. District of Columbia's Consumer Protection Act, D.C. Code § 28-3901, *et seq.*
- 27 100. At all relevant times hereto, including at all times during the transactions between
- 28 Defendants and Plaintiff and the class members, Defendants' advertising, marketing, and sales

1 practices were subject to these statutes.

2 101. Defendants' violations of these statutes directly, foreseeably, and proximately
3 caused damages to Plaintiffs and the nationwide classes in amounts yet to be determined.

4 102. Plaintiff and class members in each of the above states have been injured as a
5 result of Defendants' unlawful advertising, marketing, and sales practices, in that they were
6 deceived and induced into paying full price for products that Defendants represented were on
7 sale or discounted. These injuries are precisely the type that the above-cited laws were designed
8 to prevent.

9 103. Moreover, because Defendant's conduct described herein is a violation of 16
10 C.F.R. § 233.1, as set forth above, such conduct constitutes a *per se* violation of the above-cited
11 laws.

12 104. Plaintiff and the class members reasonably and justifiably expected Defendants to
13 comply with applicable law, but Defendants failed to do so.

14 105. In addition, Defendants have profited significantly from their illicit advertising,
15 marketing, and sales practices identified herein. Defendants' profits derived from these practices
16 come at the expense and to the detriment of Plaintiff and the class members.

17 106. As a direct and proximate result of Defendants' violations, Plaintiff and the class
18 members have been injured and have suffered actual damages for which Defendants are liable, in
19 an amount to be established at trial.

20 107. Accordingly, Plaintiff and the class members in each of the above jurisdictions
21 seek damages (including statutory damages where applicable), to be trebled or otherwise
22 increased as permitted by the respective jurisdiction's applicable law, and costs of suit, including
23 reasonable attorney's fees and costs, to the extent permitted by the respective state laws.

24 COUNT II

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

26 **CAL. CIV. CODE § 1750, *et seq.***

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

28 108. Plaintiff realleges and incorporates by reference all previous paragraphs of this

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1 Complaint as if set forth fully herein.

2 109. Plaintiff brings this claim individually and on behalf of all other nationwide class
3 members who purchased items from Defendants' website pursuant to the California Consumers
4 Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.* (the "CCLRA"), because the actions of
5 Defendants, and their conduct described herein, constitute transactions that have resulted in the
6 sale of goods to consumers.

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

15 111. Plaintiff and each class member are consumers as defined by California Civil
16 Code § 1761(d).

17 112. The items offered for sale on Defendants' websites are goods within the meaning
18 of California Civil Code § 1761(a). Defendants intended to, and did in fact, sell these items to
19 Plaintiff and the classes.

20 113. Defendants violated the CCLRA in at least the following respects:

21 a. in violation of § 1770(a)(5), Defendants represented that the items on their
22 websites have characteristics which they do not have (*i.e.*, that the items have an
23 "original" price when they do not, and are being offered for sale at a discounted price
24 when they are not);

25 b. in violation of § 1770(a)(9), Defendants advertised the items on their websites
26 with intent not to sell them as advertised (*i.e.*, the items were advertised as being on sale
27 when Defendants intended to, and did in fact, sell them at their regular prices);
28

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c. 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

d. 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.

114. By the acts alleged herein, Defendants have violated the CCLRA. 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.

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

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

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

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

119. Defendants' conduct was malicious, fraudulent, and wanton in that Defendants intentionally and knowingly provided misleading information to the public.

1 120. Plaintiff and each nationwide class member were injured in fact and lost money
2 as a result of Defendants' deceptive conduct.

3 121. Plaintiff now seeks actual, punitive, and statutory damages pursuant to the
4 CCLRA for herself and the nationwide classes.

5 COUNT III

6 VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW,

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

8 (On Behalf of the Nationwide Classes)

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

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

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

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

18 a. Set and advertised an arbitrary base price for numerous items on their websites,
19 which price was represented to be the item's "original" or "regular" price despite the fact
20 that such items were never sold or offered for sale at that price;

21 b. Continuously advertised and offered items for sale at a discount off their
22 purported base prices, when the "discounted" sale prices did not actually represent the
23 advertised savings since the items were never offered for sale at their base prices;

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

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

28 126. Defendants intentionally and purposefully concealed these actions from Plaintiff

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1 and the class members.

2 127. Defendants' conduct was unlawful in that it violates, without limitation, the
3 CCLRA, and California's False Advertising Law, California Business & Professions Code §
4 17500, *et seq.* (the "CFAL"). Defendants' conduct was unfair in that it offends established
5 public policy and/or is immoral, unethical, oppressive, unscrupulous, and substantially injurious
6 to Plaintiff and the class members. The harm to Plaintiff and the class members arising from
7 Defendants' conduct outweighs any legitimate benefit Defendants derived from the conduct.
8 Defendants' conduct undermines and violates the stated spirit and policies underlying the
9 CCLRA and the CFAL as alleged herein. Defendants' actions and practices constitute fraudulent
10 business practices in violation of the CUCL because, among other things, they are likely to
11 deceive reasonable consumers. Plaintiff and the class members justifiably relied on Defendants'
12 representations and omissions.

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

19 129. Due to the deceptive nature of Defendants' actions, the injuries suffered by
20 Plaintiff and the class members were not reasonably avoidable.

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

24 COUNT IV

25 VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW,

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

27 (On Behalf of the Nationwide Classes)

28 131. Plaintiff realleges and incorporates by reference all previous paragraphs of this

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1 Complaint as if set forth fully herein.

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

3 133. By the acts alleged herein, Defendants have publicly disseminated untrue or
4 misleading advertising and have intended not to sell the items on their websites as advertised, in
5 violation of the CFAL. Specifically, 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 the fact
8 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 the
11 advertised savings since the items were never offered for sale at their base prices;

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

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

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

19 135. Plaintiff and the class members reasonably relied on Defendants' representations
20 and/or omissions made in violation of the CFAL.

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

23 137. Plaintiff, individually and on behalf of the class members, seeks equitable relief in
24 the form of an order requiring Defendants to refund Plaintiff and all class members all monies
25 they paid for the items they purchased via Defendants' websites, and injunctive relief in the form
26 of an order prohibiting Defendants from engaging in the alleged misconduct and performing a
27 corrective advertising campaign.
28

COUNT V

VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT

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

(On Behalf of the New Jersey Subclasses)

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

139. 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 store websites.

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

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

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

143. "The available legislative history demonstrates that the [NJCFA] was intended to be one of the strongest consumer protection laws in the nation." *New Mea Const. Corp. v. Harper*, 497 A.2d 534, 543 (N.J. Ct. App. 1985).

144. For this reason, the "history of the [NJCFA] is one of constant expansion of consumer protection." *Kavky v. Herbalife Int'l of Am.*, 820 A.2d 677, 681-82 (N.J. Ct. App. 2003).

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1 145. The NJCFA was intended to protect consumers "by eliminating sharp practices
2 and dealings in the marketing of merchandise and real estate." *Lemelledo v. Beneficial Mgmt.*
3 *Corp.*, 696 A.2d 546, 550 (N.J. 1997).

4 146. Specifically, N.J.S.A. 56:8-2 prohibits "unlawful practices, ..." which are defined
5 as:

6 **The act, use or employment of any unconscionable commercial practice,**
7 **deception, fraud, false pretense, misrepresentation, or the knowing,**
8 **concealment, suppression, or omission of any material fact with intent that**
9 **others rely upon such concealment, suppression or omission whether or not**
10 **any person has in fact been misled, deceived or damaged thereby.**

11 147. The catch-all term "unconscionable commercial practice" was added to the
12 NJCFA by amendment in 1971 to ensure that the Act covered, *inter alia*, "incomplete
13 disclosures." *Skeer v. EMK Motors, Inc.*, 455 A.2d 508, 512 (N.J. Ct. App. 1982).

14 148. In describing what constitutes an "unconscionable commercial practice," the New
15 Jersey Supreme Court has noted that it is an amorphous concept designed to establish a broad
16 business ethic. *See Cox v. Sears Roebuck & Co.*, 647 A.2d 454, 462 (N.J. 1994).

17 149. In order to state a cause of action under the NJCFA, a plaintiff does not need to
18 show reliance by the consumer. *See Varacallo v. Massachusetts Mut. Life Ins. Co.*, 752 A.2d
19 807 (N.J. App. Div. 2000); *Gennari v. Weichert Co. Realtors*, 691 A.2d 350 (N.J. 1997) (holding
20 that reliance is not required in suits under the NJCFA because liability results from
21 "misrepresentations whether 'any person has in fact been misled, deceived or damaged thereby'").

22 150. Rather, the NJCFA requires merely a causal nexus between the false statement
23 and the purchase, not actual reliance. *See Lee, supra*, 4 A.3d at 579 ("causation under the
24 [NJCFA] is not the equivalent of reliance").

25 151. As stated by the New Jersey Supreme Court in *Lee, supra*, 4 A.3d at 580, "It bears
26 repeating that the [NJCFA] does not require proof of reliance, but only a causal connection
27 between the unlawful practice and ascertainable loss."
28

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1 152. By the acts alleged herein, Defendants have violated the NJCFA. Specifically,
2 Defendants:

3 a. Set and advertised an arbitrary base price for numerous items on their websites,
4 which price was represented to be the item's "original" or "regular" price despite the fact
5 that such items were never sold or offered for sale at that price;

6 b. Continuously advertised and offered items for sale at a discount off their
7 purported base prices, when the "discounted" sale prices did not actually represent the
8 advertised savings since the items were never offered for sale at their base prices;

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

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

13 153. These uniform practices by Defendants constitute sharp and unconscionable
14 commercial practices relating to the sale of goods in violation of the NJCFA, N.J.S.A. § 56:8-1,
15 *et seq.*

16 154. As alleged herein, Defendant has engaged in deceptive conduct which creates a
17 likelihood of confusion or misunderstanding.

18 155. These actions also constitute "omission[s] of any material fact with intent that
19 others rely upon such concealment," as Defendants did not inform Plaintiff and the class
20 members that the items offered for sale on their websites were not actually discounted at all, but
21 rather were being sold at their everyday, regular prices. Defendants purposefully omitted this
22 information so that their customers would believe that they were getting a discounted price on
23 the items they purchased from Defendants, when in fact they were not.

24 156. As such, Defendants have acted with knowledge that its conduct was deceptive
25 and with intent that such conduct deceive purchasers.

26 157. Moreover, because Defendant's conduct described herein is a violation of 16
27 C.F.R. § 233.1, such conduct constitutes a *per se* violation of the CFA, N.J.S.A. § 56:8-1, *et seq.*
28

1 158. Plaintiff and the class members reasonably and justifiably expected Defendants to
2 comply with applicable law, but Defendants failed to do so.

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

6 COUNT VI

7 **VIOLATION OF THE NEW JERSEY TRUTH IN CONSUMER CONTRACT, 8 WARRANTY AND NOTICE ACT, N.J.S.A. § 56:12-14, *et seq.***

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

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

12 161. Plaintiff brings this claim individually and on behalf of all other New Jersey
13 subclass members who were customers of Defendants' online Gap Factory and Banana Republic
14 Factory stores.

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

17 163. Defendants are "sellers" within the meaning of N.J.S.A. §§ 56:12-15 and 16.

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

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

26 166. Specifically, the clearly established rights of Plaintiff and the New Jersey
27 subclasses under state law include the right not to be subjected to unconscionable commercial
28

1 practices and false written affirmative statements of fact in the sale of goods, as described herein,
 2 which acts are prohibited by the NJCFA, N.J.S.A. § 56:8-2.

3 167. Further, the clearly established rights of Plaintiff and the New Jersey subclasses
 4 under federal law include the right not to be subjected to false advertising in violation of 16
 5 C.F.R. § 233.1.

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

8 COUNT VII

9 **BREACH OF CONTRACT**

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

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

13 170. Plaintiff and the class members entered into contracts with Defendants.

14 171. The contracts provided that Plaintiff and the class members would pay
 15 Defendants for their products.

16 172. The contracts further provided that Defendants would provide Plaintiff and the
 17 class members a specific discount on the price of their purchases. This specified discount was a
 18 specific and material term of each contract.

19 173. Plaintiff and the class members paid Defendants for the products they purchased,
 20 and satisfied all other conditions of the contracts.

21 174. Defendants breached the contracts with Plaintiff and the class members by
 22 failing to comply with the material term of providing the promised discount, and instead charged
 23 Plaintiff and the class members the full price of the products they purchased.

24 175. As a direct and proximate result of Defendants' breach, Plaintiff and the class
 25 members have been injured and have suffered actual damages in an amount to be established at
 26 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)**

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

177. There was no written contract between Defendants and their customers, including Plaintiff and the class members.

178. Rather, by operation of the law of each state, there existed an implied contract for the sale of goods between each customer who purchased items from Defendants' Gap Factory and Banana Republic Factory store websites.

179. By operation of the law of each state, there also existed an implied duty of good faith and fair dealing in each such contract.

180. By the acts alleged herein, Defendants have violated that duty of good faith and fair dealing, thereby breaching the implied contract between Defendant and each class member.

181. Specifically, it was a violation of the duty of good faith and fair dealing for Defendants to represent that the items on their websites were discounted when in fact they were offered for sale at their regular prices, and to charge Plaintiff and class members the regular prices for such items instead of the advertised, discounted prices.

182. As a direct and proximate result of Defendants' breach of the implied covenant of good faith and fair dealing, Plaintiff and the class members have been injured and have suffered actual damages in an amount to be established at trial.

COUNT IX**BREACH OF EXPRESS WARRANTY****(On Behalf of the Nationwide Classes and New Jersey Subclasses)**

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

184. Plaintiff and the class members formed contracts with Defendants at the time they

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1 purchased items from Defendants' websites. The terms of such contracts included the promises
2 and affirmations of fact made by Defendants through their marketing campaign, as alleged
3 herein, including, but not limited to, representing that the items for sale on Defendants' Gap
4 Factory and Banana Republic Factory websites were being discounted.

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

8 186. The affirmations of fact made by Defendants were made to induce Plaintiff and
9 the class members to purchase items from Defendants' websites.

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

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

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

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

23 COUNT X

24 UNJUST ENRICHMENT

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

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

28 192. This claim is asserted in the alternative to a finding of breach of contract. This

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1 claim asserts that it is unjust to allow Defendants to retain profits from their deceptive,
2 misleading, and unlawful conduct alleged herein.

3 193. Plaintiff and the class members were charged by -- and paid -- Defendants for the
4 items they purchased from Defendants' websites. Consequently, Plaintiffs and the classes have
5 conferred substantial benefits on Defendants by purchasing the items, and Defendants have
6 knowingly and willingly accepted and enjoyed these benefits.

7 194. Defendants represented that these items were discounted, with the specific intent
8 that such representation would induce customers to purchase said items.

9 195. As detailed herein, the items purchased by Plaintiff and the class members were
10 not discounted.

11 196. Because the items were advertised as being discounted when they actually were
12 not, Defendants collected more money than they would have if the items were discounted as
13 promised.

14 197. As a result of these complained-of actions by Defendants, Defendants received
15 benefits under circumstances where it would be unjust for them to retain these benefits.

16 198. Defendants have knowledge or an appreciation of the benefit conferred upon them
17 by Plaintiff and the class members.

18 199. Equity demands disgorgement of Defendants' ill-gotten gains. Defendants will be
19 unjustly enriched unless Defendants are ordered to disgorge those profits for the benefit of
20 Plaintiff and the class members.

21 200. Plaintiff and the class members are entitled to restitution and/or disgorgement of
22 all profits, benefits, and other compensation obtained and retained by the Defendants from their
23 deceptive, misleading, and unlawful conduct described herein.

24 COUNT XI

25 **NEGLIGENT MISREPRESENTATION**

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

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

1 202. Defendants have negligently represented that the items offered for sale on their
2 Gap Factory and Banana Republic Factory store websites are discounted, when in fact they are
3 not.

4 203. This is a material fact that Defendants have misrepresented to the public,
5 including Plaintiff and the class members.

6 204. Defendants know that the prices of the items offered for sale on their websites –
7 and specifically whether such prices are discounted or sale prices – are material to the reasonable
8 consumer, and Defendants intend for consumers to rely upon such misstatements when choosing
9 to purchase items from their websites.

10 205. Defendants knew or should have known that these misstatements or omissions
11 would materially affect Plaintiff's and the class members' decisions to purchase items from their
12 websites.

13 206. Plaintiff and other reasonable consumers, including the class members,
14 reasonably relied on Defendants' representations set forth herein, and, in reliance thereon,
15 purchased items from Defendants' websites.

16 207. The reliance by Plaintiff and the class members was reasonable and justified in
17 that Defendants appeared to be, and represented themselves to be, a reputable business.

18 208. Plaintiff and the class members would not have been willing to pay for the items
19 they purchased, or would not have paid what they paid for the items they purchased, if they knew
20 that such items were not in fact discounted from their everyday, regular prices.

21 209. As a direct and proximate result of Defendants' misrepresentations, Plaintiff and
22 the class members were induced to purchase items from Defendants' websites, and have suffered
23 damages to be determined at trial, in that, among other things, they have been deprived of the
24 benefit of their bargain in that they bought a items that were purported to be discounted, when in
25 fact they were not.

26 210. Plaintiffs seek all available remedies, damages, and awards as a result of
27 Defendants' negligent misrepresentations.
28

LAW OFFICES OF TODD M. FRIEDMAN, P.C.
324 SOUTH BEVERLY DRIVE #725
BEVERLY HILLS, CA 90212

PRAYER FOR RELIEF

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

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

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

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

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

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

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

G. Grant the requested injunctive and declaratory relief;

H. Award interest as permitted by law;

I. Grant reasonable attorneys' fees and reimbursement all costs incurred in the prosecution of this action; and

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

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324 SOUTH BEVERLY DRIVE #725
BEVERLY HILLS, CA 90212

DEMAND FOR JURY TRIAL

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

Dated: May 24, 2016

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

By: 
Todd M. Friedman, Esq.

and

PARIS ACKERMAN & SCHMIERER LLP
Ross H. Schmierer, Esq. (*pro hac vice* pending)
ross@paslawfirm.com
103 Eisenhower Parkway
Roseland, NJ 07068
Tel: 973-228-4860
Fax: 973-629-1246

and

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Fax: (856) 797-9978

Attorneys for Plaintiff

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BEVERLY HILLS, CA 90212

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BEVERLY HILLS, CA 90212

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EXHIBIT A

3/21/2016

Factory multi-stripe swim trunks | Gap Factory



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 Factory

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](#)

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3/21/2016

Factory multi-stripe swim trunks | Gap Factory

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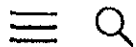
[Americans with Disabilities Act](#)

[Gap Factory](#)

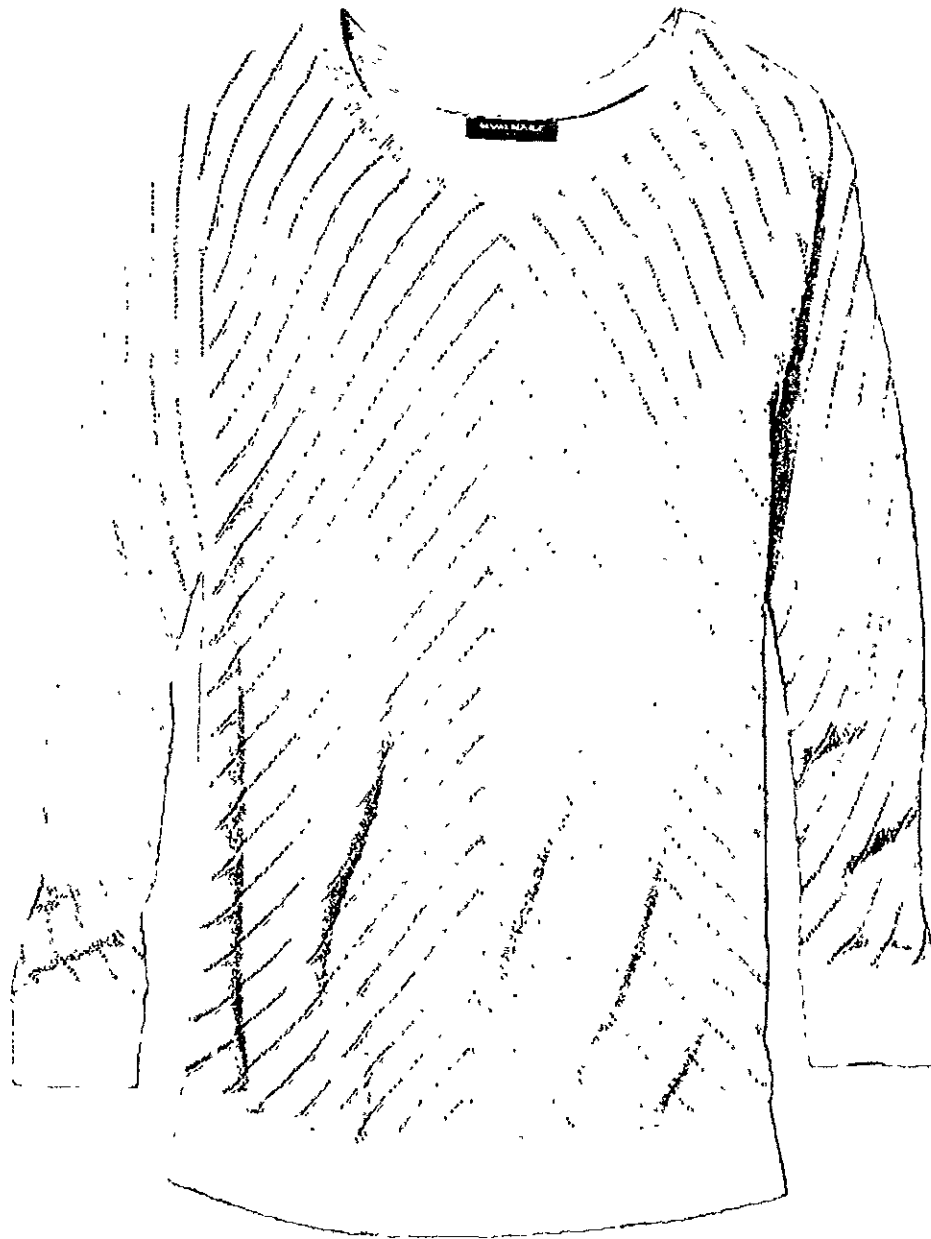
[Banana Republic Factory](#)

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

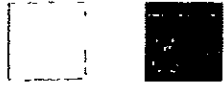
3/21/2016

Factory Dolman Poncho 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.

3/21/2016

Factory Dolman Pontrille 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

BANANA REPUBLIC CREDIT CARD

EMAIL SIGN UP

SHOP GAP FACTORY

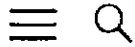
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Americans with Disabilities Act

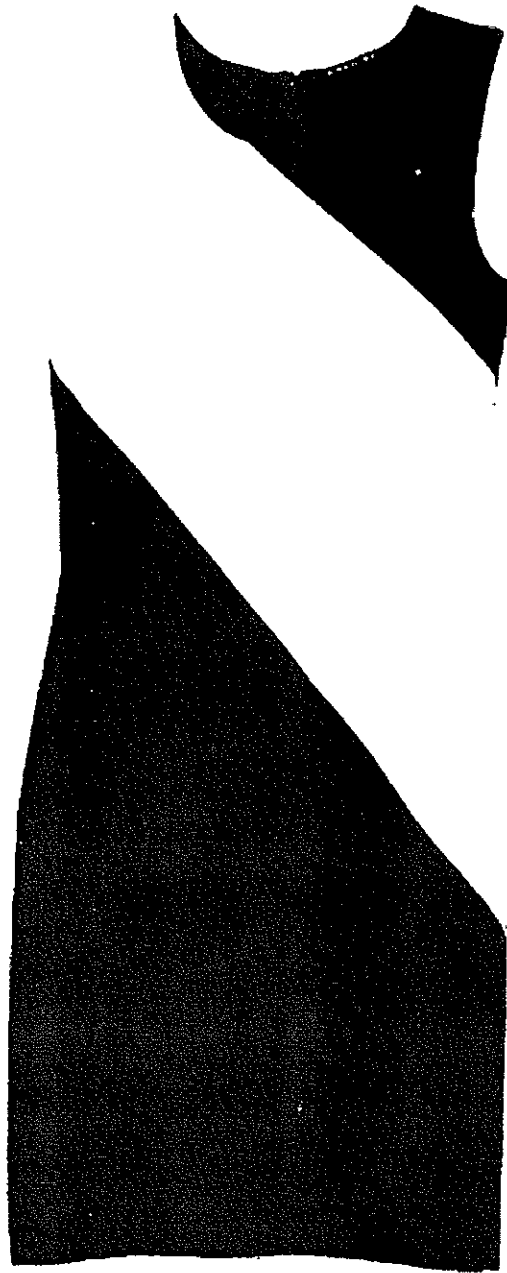
Gap Factory Banana Republic Factory

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.

3/21/2016

Factory Colorblock Ponte Sheath | 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

BANANA REPUBLIC CREDIT CARD

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Gap Factory Banana Republic Factory

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BEVERLY HILLS, CA 90212

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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

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3/15/2016

[Order Details](#) | [Gap Factory](#)

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[Americans with Disabilities Act](#)

CASE NUMBER: CGC-16-552215 LAURIE MUNNING VS. THE GAP, INC. ET AL

NOTICE TO PLAINTIFF

A Case Management Conference is set for:

DATE: OCT-26-2016

TIME: 10:30AM

**PLACE: Department 610
400 McAllister Street
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference. However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state. **This case is eligible for electronic filing and service per Local Rule 2.11. For more information, please visit the Court's website at www.sfsuperiorcourt.org under Online Services.**

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

**IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A TRIAL.
(SEE LOCAL RULE 4)**

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3869

See Local Rules 3.3, 6.0 C and 10 B re stipulation to judge pro tem.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause: Plaintiff, on behalf of herself and proposed classes, complains for damages, injunctive relief,

VII. REQUESTED IN COMPLAINT:

- ☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

KZ0FKKHQPCN'CUH PO GPV'EklN0f05/4+

(Place an "X" in One Box Only)

() SAN FRANCISCO/OAKLAND () SAN JOSE () EUREKA

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.