JONES, BELL, ABBOTT, FLEMING & FITZGERALD L.L.P.
William M. Turner (State Bar No. 199526)
Asha Dhillon (State Bar No. 205461)
601 South Figueroa Street, Suite 3460
Los Angeles, California 90017-5759
Telephone: (213) 485-1555

Attorneys for Plaintiffs Cherilyn DeAguero, Rakhee Bose, Sean Bose, and Alexandra Boggio

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE

SAJID VEERA,

Plaintiff,

v.

BANANA REPUBLIC, LLC, *et al.*,

Defendants.

AND CONSOLIDATED ACTION

Case No. BC541146
[Consolidated for limited purposes with BC547161]

PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

[Settlement Agreement (Not Executed), Notices to Classes, and Claim Form attached]

Judge: Hon. Amy D. Hogue
Dept.: SS-9
Date: January 23, 2019
Time: 10:00 a.m.

Complaint filed: April 1, 2014
Trial date: Not set

TO THE COURT, AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 23, 2019, at 10:00 a.m., or as soon thereafter as the matter may be heard in Department 9 of the above-referenced court, located at 312 N. Spring Street, Los Angeles, Plaintiffs Cherilyn DeAguero, Rakhee Bose, Sean Bose, and Alexandra Boggio, will, and hereby do, move the Court, pursuant to California Rule of Court 3.769, for an order: 1) preliminarily approving the class action settlement; 2) provisionally certifying settlement classes;

3) scheduling a hearing on final approval of the settlement; and 4) directing that notice of the proposed settlement be sent to the members of the settlement classes. This motion is made on grounds that Plaintiffs and Defendants have agreed to settle the above-captioned class action and the consolidated class action, *Etman v. The Gap, Inc.*, Case No. BC547161 (the "Etman Action"), that the requirements for provisional certification of settlement classes are satisfied, that the proposed settlement requires that notice of the proposed settlement be given to the members of the settlement classes, that a hearing be set to consider final approval of the settlement and that notice of the final approval hearing and the process for objecting to, or opting out of, the settlement be given to the settlement class members.

This motion is based on this notice of motion, the attached memorandum of points and authorities, the declarations and exhibits attached and/or filed concurrently herewith, the records and files herein (including the papers and evidence submitted in support of class certification) and in the Etman Action, and upon other such evidence as may be considered at the hearing on this motion.

DATED: January 9, 2019

Jones, Bell, Abbott, Fleming & Fitzgerald L.L.P.

By:_____
WILLIAM M. TURNER
Attorneys for Plaintiffs Cherilyn DeAguero, Rakhee Bose, Sean Bose, and Alexandra Boggio

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Cherilyn DeAguero, Rakhee Bose, Sean Bose, and Alexandra Boggio and Defendants Banana Republic, LLC and The Gap, Inc. (Gap) have agreed to settle the class claims and individual claims in this action and in *Etman v. The Gap, Inc.*, L.A.S.C. Case No. BC547161 (the "Etman Action").[1] The key terms of the settlement are:

1. Gap will provide a one-time coupon for the purchase of up to four items (excluding third-party merchandise) in a Banana Republic or Gap store at 30% off regular price as follows:
    a. To persons who can be identified from Banana Republic's records as purchasing any item that was not subject to a 20-50% discount on a day when such a discount was advertised in the store's windows during any of the periods of time identified in response to Third Supplemental Interrogatory Response, the coupon will be provided to the individual without any action by that individual;
    b. To persons who can be identified from Gap's records as purchasing any item at a price above the promotional price being offered for that product category on that particular day, the coupon will be provided to the individual without any action by that individual;
    c. For all other putative class members, the individual will need to make a claim to receive the coupon. The claims process would be online. Claimant would not need to provide any proof of purchase or other written documentation but each Claimant would be required to state under penalty of perjury on the claim form the approximate shopping date(s) he or she shopped. The claims process would be subject to some fraud protection protocols;

[1] Banana Republic, LLC is a subsidiary of Gap and they are represented by the same legal counsel.

2. Gap will pay all the costs of administering the class settlements, including the notice. Gap will have control over methods of notice so long as it can obtain a declaration from an experienced notice administrator that the notice plan meets constitutional minimums;
3. Gap will join in motions for preliminary and final approval of the settlement;
4. Gap will pay each of the Plaintiffs $8,000 as class representative service awards; and
5. Gap will pay a total of $1,000,000 in fees and costs without objection.

These cases, particularly this case, have been intensively litigated for more than four years. The parties' settlement is the result of "arm's-length" negotiations over a period of three months, and the settlement was reached just a few hours before the hearing on Plaintiffs' motion for class certification in this action. There is no reason to believe the settlement is not fair to the members of the proposed provisional settlement classes and there is no reason to conclude that the settlement will not be granted final approval, particularly given that it is exactly the type of settlement that Judge John Shepard Wiley, Jr. informed the parties he believes is warranted for this case; therefore, it should be preliminarily approved.

II. SUMMARY OF THE CASES

A. This Action

i. *The Complaint*

Sajid Veera initiated the Veera case on April 1, 2014. Mr. Veera alleged that Banana Republic engaged in a false advertising scheme that involved displaying unqualified "X%-off-your-purchase" signs in the windows of its stores in California that did not disclose that the advertised discount would not be applied to all purchases. Mr. Veera asserted causes of action for: (1) violations of California's False Advertising Law (Cal. Bus. & Prof. Cod. § 17500) (the "FAL"); (2) violations of the California's Unfair Competition Law (Cal. Bus. & Prof. Code § 17200) (the "UCL"); and (3) violations of the Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750 et seq.) (the "CLRA").

Because Mr. Veera had a Gap co-branded credit card and the credit card agreement contained an arbitration provision, on February 2, 2015, Mr. Veera was replaced as the putative class

representative by Plaintiffs Cherilyn DeAguero, Sean Bose, and Rakhee Bose, who filed a First Amended Complaint.

Banana Republic demurred to the First Amended Complaint, causing Plaintiffs to file a Second Amended Complaint, to which Banana Republic also demurred. Banana Republic's demurrer was overruled.

Banana Republic subsequently filed a pre-certification motion for summary judgment. This Court granted Banana Republic's motion and entered judgment against Plaintiffs on February 24, 2016. Plaintiffs appealed, and the judgment was reversed—*Veera v. Banana Republic, LLC*, 6 Cal. App. 5th 907 (2016). Banana Republic filed a petition for review by the California Supreme Court, which was denied. The remittitur issued on May 1, 2017.

After the remittitur issued, Plaintiffs filed a Third Amended Complaint, adding a cause of action for violations of the UCL based upon alleged violations of Business and Professions Code section 12024.2 (overcharging customers).

Also after the remittitur issued, Plaintiffs Rakhee Bose and Sean Bose filed a motion for summary adjudication, which was denied.

On March 21, 2018, Plaintiffs filed their motion for class certification. Banana Republic opposed the motion. The motion was set to be heard on September 11, 2018 at 2:00 p.m.

On September 11, 2018, at approximately 11:00 a.m., the parties reached a settlement.

ii. *Discovery*

Plaintiffs propounded 38 Requests for Production of Documents (4 sets), and 76 Special Interrogatories (5 sets). (Turner Decl. ¶ 2.) Plaintiffs also conducted *Belaire-West* discovery, obtaining the names of more than 1,000 percipient witnesses (including putative class members and employees of Banana Republic who worked in Banana Republic stores). (Turner Decl. ¶ 2.)

Plaintiffs took depositions of Debbie Cotton (the person who verified Banana Republic's discovery responses that Plaintiffs deemed most important) and of Michael Fahlman (Banana Republic's expert that analyzed its sales data and provided a declaration in opposition to class certification). (Turner Decl. ¶ 2.) Defendants took depositions of Plaintiff DeAguero, Plaintiff Rakhee Bose, and Plaintiff Sean Bose. (Turner Decl. ¶ 2.)

The parties exchanged and analyzed thousands of pages of documents (paper and electronic). (Turner Decl. ¶ 2.)

The parties had several discovery disputes, resulting in more than 6 informal discovery conferences, over which this Court presided. (Turner Decl. ¶ 2.)

iii. *Plaintiffs' Motion for Class Certification*

The parties fully briefed the issue of class certification and they reached a settlement just a few hours before the hearing on Plaintiffs' motion for class certification.

B. The Etman Action

i. *The Complaint*

Misbah Etman initiated the Etman Action on May 29, 2014. Ms. Etman alleged that Gap engaged in a false advertising scheme that involved displaying signs promoting a class of merchandise for sale at a stated price or subject to a stated discount without clearly and conspicuously identifying the items within the class of merchandise that were not for sale at the stated price or subject to the stated discount. Ms. Etman asserted causes of action for: (1) violations of the FAL; (2) violations of the UCL; (3) violations of Business and Professions Code section 17507; and (4) violations of the CLRA.

Because Ms. Etman had a Gap co-branded credit card and the credit card agreement contained an arbitration provision, on March 25, 2015, Ms. Etman was replaced as the putative class representative by Plaintiff Alexandra Boggio, who filed a First Amended Complaint.

Gap demurred to the First Amended Complaint. The court sustained Gap's demurrer, with leave to amend. Plaintiff Boggio filed a Second Amended Complaint asserting the same causes of action. Gap again demurred. Before the hearing on Gap's demurrer, Plaintiff Boggio filed a Third Amended Complaint (TAC), adding a cause of action for violation of the unlawful prong of the UCL based on alleged violations of Business and Professions Code section 12024.2.

Gap demurred to the TAC. In support of its demurrer, Gap cited this Court's order in this action granting Banana Republic's motion for summary judgment. Gap took the position that this Court's reasoning in granting summary judgment in this action applied to the Etman Action and supported Gap's demurrer. Gap's demurrer was sustained, with prejudice. However, before the court

entered judgment against Plaintiff Boggio, the parties requested that the court stay the Etman Action while the appeal from the order granting summary judgment in this action was pending.

After *Veera v. Banana Republic, LLC*, 6 Cal. App. 5th 907 (2016) became final, Plaintiff Boggio requested that the court in the Etman Action vacate its order sustaining Gap's demurrer and enter an order overruling the demurrer. The court granted Plaintiff Boggio's request.

ii. *Discovery*

Plaintiff Boggio propounded 14 Requests for Production of Documents (1 set), 19 Special Interrogatories (1 set), 11 Requests for Admission (1 set), and 2 sets of Form Interrogatories. (Turner Decl. ¶ 3.) Plaintiff Boggio also conducted *Belaire-West* discovery regarding 400 percipient witnesses. (Turner Decl. ¶ 3.)

Plaintiff Boggio took depositions of Gap's person most qualified to testify concerning the topics on which her individual and putative class action claims turn. (Turner Decl. ¶ 3.) Gap took Plaintiff Boggio's deposition. (Turner Decl. ¶ 3.)

The parties exchanged and analyzed hundreds of pages of documents. (Turner Decl. ¶ 3.)

The parties had several discovery disputes, and the participated in two informal discovery conferences that resulted in stipulated discovery orders. (Turner Decl. ¶ 3.)

iii. *Plaintiff's Motion for Class Certification*

The court in the Etman Action set a deadline of Monday, July 9, 2018, for Plaintiff Boggio to file her motion for class certification. On June 5, 2018, the parties submitted a stipulation and proposed order continuing the due date for the motion to later in the year so that Plaintiff Boggio could take a person-most-qualified deposition of Gap and so that *Belaire-West* discovery could be sufficiently completed. (Turner Decl. ¶ 4.) The Court granted the stipulation, and continued the date for Plaintiff Boggio's motion to December 12, 2018.

C. The Settlement Negotiation and the Settlement

After the remittitur issued following the issuance of *Veera v. Banana Republic, LLC*, 6 Cal. App. 5th 907 (2016), Judge John S. Wiley, Jr. informed the parties that, although coupon settlements are ordinarily frowned upon, he believes this case should be resolved by way of coupon

settlement. (Turner Decl. ¶ 5.) Judge Wiley stated that he believes a coupon settlement is warranted because it will, among other things, provide the putative class members with the discounts of which Plaintiffs allege Banana Republic deprived them. (Turner Decl. ¶ 5.)

Plaintiffs DeAguero, Bose, and Bose made their first settlement demand on June 14, 2018. (Turner Decl. ¶ 6.) Plaintiffs demand was limited to this action; however, in response, Banana Republic and Gap's counsel suggested the possibility of settling of both this action and the Etman Action. (Turner Decl. ¶ 6.) Plaintiffs' counsel informed Banana Republic and Gap's counsel that including the Etman Action in the settlement negotiation was possible but only after Gap produced certain types of information that would enable Plaintiff Boggio to intelligently negotiate a settlement of the putative class claims asserted in the Etman Action. (Turner Decl. ¶ 6.) Plaintiffs in this action had already obtained sufficient data from Banana Republic to intelligently negotiate a settlement of the putative class claims asserted in this action. (Turner Decl. ¶ 6.)

Over the next two months, the parties in this action negotiated the terms of a settlement of this action alone. (Turner Decl. ¶ 7.) After reaching agreement to a conceptual framework for a settlement of this action, on August 30, 2018, Banana Republic and Gap jointly proposed settling this case and the Etman Action together on terms within that conceptual framework; with this proposal, Gap provided Plaintiff Boggio the data she needed in order to intelligently negotiate a settlement of the putative class claims asserted in the Etman Action. (Turner Decl. ¶ 7.) Between August 30, 2018 and September 11, 2018, and a mere three hours before the hearing on Plaintiffs' motion for class certification in this action, the parties reached a settlement. (Turner Decl. ¶ 7.) The key terms of the settlement are:

1. Gap will provide a one-time coupon for the purchase of up to four items (excluding third-party merchandise) in a Banana Republic or Gap store at 30% off regular price as follows:
    a. To persons who can be identified from Banana Republic's records as purchasing any item that was not subject to a 20-50% discount on a day when such a discount was advertised in the store's windows during any of the periods of time identified in response to Third Supplemental

Interrogatory Response, the coupon will be provided to the individual without any action by that individual;

b. To persons who can be identified from Gap's records as purchasing any item at a price above the promotional price being offered for that product category on that particular day, the coupon will be provided to the individual without any action by that individual;

c. For all other putative class members, the individual will need to make a claim to receive the coupon. The claims process would be online. Claimant would not need to provide any proof of purchase or other written documentation but each Claimant would be required to state under penalty of perjury on the claim form the approximate shopping date(s) he or she shopped. The claims process would be subject to some fraud protection protocols;

2. Gap will pay all the costs of administering the class settlements, including the notice. Gap will have control over methods of notice so long as it can obtain a declaration from an experienced notice administrator that the notice plan meets constitutional minimums;

3. Gap will join in motions for preliminary and final approval of the settlement;

4. Gap will pay each of the Plaintiffs $8,000 as class representative service awards; and

5. Gap will pay a total of $1,000,000 in fees and costs without objection.

(Ex. 1.) The settlement agreement has not yet been signed by the parties, but no substantive changes are expected and the parties will submit a fully executed copy to the Court shortly. If the parties are unable to resolve the minor points of disagreement they have before the hearing on this motion, the parties will request the Court's assistance in resolving those issues at the hearing.

The scope of the release by members of the classes is circumscribed by the claims that are or could have been asserted in the operative complaint under the facts alleged in the complaints. (*See* Ex. 1.)

No settlement funds will revert to Defendants. (*See* Ex. 1.)

III. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL

Rule 3.769 of the California Rules of Court provides, in relevant part:

> (a) **Court approval after hearing**
> A settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party requires the approval of the court after hearing.
>
> (b) **Attorney's fees**
> Any agreement, express or implied, that has been entered into with respect to the payment of attorney's fees or the submission of an application for the approval of attorney's fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action.
>
> (c) **Preliminary approval of settlement**
> Any party to a settlement agreement may submit a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.
>
> (d) **Order certifying provisional settlement class**
> The Court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing.

"To prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-01 (1996) (quoting *Outrigger Bd. of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-79 (1980)). The purpose of preliminary approval of a class action settlement is to determine whether a proposed settlement is "within the range of possible approval." *Armstrong v. Board of School Directors*, 616 F.2d 305, 314 (7th Cir. 1980).[2]

> Approval of class action settlements involves a two-step process. First, counsel submit the proposed terms of settlement and the court makes a preliminary fairness evaluation. . . .
>
> If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval, the court should direct that

[2] In *City of San Jose v. Superior Court*, the California Supreme Court urged trial courts to incorporate procedures from outside sources, such as Rule 23 of the Federal Rules of Civil Procedure and federal cases interpreting Rule 23, in determining whether to allow the maintenance of a class action. 12 Cal. 3d 447, 453-54 (1974).

> notice . . . be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement. . . .

Newberg on Class Actions § 11.25 (4th ed. 2002) (quoting The Manual for Complex Litigation, Third).

Preliminary approval is warranted and "a presumption of fairness exists where: 1) the settlement is reached through arm's length bargaining; 2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; [and] 3) counsel is experienced in similar litigation ...." *See Dunk*, 48 Cal. App. 4th at 1801 (citing Newberg & Conte, Newberg on Class Actions (3d ed. 1992) § 11.41, 11-91).

A presumption of fairness exists, and preliminary approval of the proposed class settlement is warranted, here. In addition, the evidence submitted in connection with this motion warrants provisional certification of settlement classes.

A. The Settlement Was Reached Through Arm's Length Bargaining

As described above, the parties engaged in arm's-length bargaining over a period of three months. (Turner Decl. ¶ 8.) In addition, there is nothing about the parties' settlement that would suggest collusion among the parties and/or their attorneys.

Plaintiffs stuck their necks out for the putative classes, participated in the actions at every stage of the litigation, and had their depositions taken; therefore, a class representative service award of $8,000 is not outside the range of approvable awards nor does it suggest preferential treatment for Plaintiffs.

Plaintiffs and Plaintiffs' counsel will submit with their motion for attorney's fees and costs evidence establishing that the "clear sailing" agreement to an award of $1,000,000 for attorney's fees and costs is not excessive in that Plaintiffs' counsel has litigated this case efficiently and such an award will amount to approximately its lodestar. (Turner Decl. ¶ 9.)

B. The Parties' Investigation and Discovery Are Sufficient to Allow Counsel and the Court to Act Intelligently

As described above, the parties conducted extensive discovery over the past four years that places the counsel and the Court in a position to be able to make an informed decision regarding the fairness of the proposed settlement.

C. Counsel Is Experienced in Similar Litigation

The attached declaration of William M. Turner and Exhibit 4, regarding David F. McDowell (Gap's lead counsel), establish that Class Counsel and counsel for Defendants are experienced in class action litigation. (*See* Turner Decl. ¶ 12; Ex. 4)

D. The Settlement Is "Within the Range of Approval"; Therefore, the Percentage of Objectors Will Likely Be Small

Preliminary approval does not require the trial court to answer the ultimate question of whether a proposed settlement is fair, reasonable, and adequate. That final determination is made only after notice of the settlement has been given to the class members and after they have been given an opportunity to voice their views of the settlement or to be excluded from the settlement. 3B J. Moore, Moore's Federal Practice §§23.80 - 23.85 (2003).

In considering a potential settlement for preliminary approval purposes, the trial court does not have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. *Wershba v. Apple Computer, Inc*, 91 Cal.App.4th 230, 239-40 (2001); *Dunk*, supra, 48 Cal. App. 4th at 1807. The Ninth Circuit explains, "the very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice v. Civil Service Com'n of City and County of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982). The question whether a proposed settlement is fair, reasonable, and adequate necessarily requires a judgment and evaluation by the attorneys for the parties based upon a comparison of "'the terms of the compromise with the likely rewards of litigation.' " *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982), cert. denied 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)).

With regard to class action settlements, the opinions of counsel should be given considerable weight both because of counsel's familiarity with this litigation and previous experience with cases such as these. *Officers for Justice*, 688 F.2d 615, 625 (9th Cir. 1982); *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988); *Weinberger*, 698 F.2d at 74. For example, in *Lyons v. Marrud, Inc.*, [1972-1973 Transfer Binder] Fed. Sec. L. Rep. (CCH) Paragraph 93,525 (S.D.N.Y. 1972), the court

noted that "[e]xperienced and competent counsel have assessed these problems and the probability of success on the merits.... The parties' decision regarding the respective merits of their position has an important bearing." *Id.* at ¶ 92,520. "The recommendations of plaintiffs' counsel should be given a presumption of reasonableness." *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979). As a result, courts hold that the recommendation of counsel is entitled to significant weight. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

Plaintiffs understand from their investigation and from the documents and information they obtained in discovery that the range of discounts they allege that Banana Republic and Gap did not give to the putative settlement class members was 20 percent to 50 percent, with a 50 percent discount being uncommon and not widely applicable; and that the prices Plaintiff Boggio alleges Gap overcharged (charged more than the price stated on a sign Gap displayed) were in similar proportion to percentage discounts not given. (Turner Decl. ¶ 10.) The proposed settlement provides that the putative settlement class members will receive approximately the discount(s) of which Plaintiffs allege they were deprived, and they will be able to purchase merchandise for the approximate prices Plaintiffs allege they should have been charged, which is the type of settlement Judge Wiley informed the parties he believes is warranted here. (*See* Turner Decl. ¶¶ 5, 10.)

Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, Plaintiffs faced significant risks because: (1) Judge Wiley granted summary judgment for Banana Republic in this action, and, although the Court of Appeal reversed, there was a dissenting Justice—meaning that there are judicial officers who have evaluated Plaintiffs claims and have concluded they have no merit; (2) Judge Freeman sustained Gap's demurrer with prejudice, indicating that he believed (before he had the benefit of the *Veera* decision) that Plaintiff Boggio's claims have no merit as a matter of law; and (3) class certification has not been granted in this action or in the Etman Action. Banana Republic and the Gap also faced significant risks because: (1) the *Veera* decision resuscitated and bolsters Plaintiffs' claims in both actions; (2) there was the very real possibility that this action and/or the Etman Action would be certified for class treatment; and (3) Banana Republic and Gap faced significant discovery and

discovery issues. Under the circumstances, and given the risks, counsel believes that the attendant risks favor the proposed settlement. (*See* Turner Decl. ¶ 11.)

In addition, Judge Wiley indicated that he believes a settlement of this kind is appropriate here, meaning that it he believes that such a settlement is fair to the members of the settlement classes. (*See* Turner Decl. ¶ 5.)

Therefore, the settlement is "within the range of approval" and it appears unlikely that there will be many objectors.

IV. THIS COURT SHOULD PROVISIONALLY CERTIFY SETTLEMNT CLASSES

Plaintiffs in both cases contend that the requirements for class certification are satisfied and class certification is warranted. Plaintiffs further contend that the evidence and the proposed settlement meets all the requirements for provisional certification of a settlement class under Code of Civil Procedure section 382 and Court Rule 3.769(d).

Although Banana Republic and Gap reserve all rights with respect to class certification if the proposed settlement is not approved, for the purposes of preliminary and final approval of the settlement only, they do not dispute that the requirements for provisional certification of settlement classes are satisfied by the papers and evidence regarding class certification submitted in this action and by the papers and evidence submitted with this motion, and they request that provisional settlement classes be certified.

The proposed provisional settlement classes are:

- **Veera Provisional Settlement Class**: All persons who, at Banana Republic stores in California, during the time period of April 1, 2010 to the date of preliminary approval of the settlement, on days when Banana Republic displayed advertising in the windows of their stores reflecting that purchases would be discounted and not reflecting that purchases of certain merchandise would not be discounted in accordance with the advertising, were charged and paid prices not discounted in accordance with the advertising.
- **Etman Provisional Settlement Class**: All persons who, during the time period from May 29, 2010 to the date judgment is entered in this action, at Gap stores

in California, purchased products at prices greater than the posted prices (or not discounted in accordance with the posted discount) when Gap posted near a class of merchandise signs stating the price of, or discount that applied to, that class of merchandise without clearly and conspicuously identifying the articles of merchandise within that class of merchandise that Gap would not sell at the price, or would not give the discount, stated on the signs.

The parties request that this Court provisionally certify these settlement classes.

V. THIS COURT SHOULD APPROVE THE NOTICE OF SETTLEMENT AND CLAIM FORM

California Rule of Court 3.769 further provides, in relevant part, that:

> (e) **Order for final approval hearing**
> If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing.
>
> **(f) Notice to class of final approval hearing**
> If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.

The parties proposed Notices of Settlement (Ex. 2) and Claim Form (Ex. 3) meet the requirements of Rule 3.769(e) and (f); therefore, they should be approved.

Moreover, the proposed settlement provides for a 30-day response period. (Exs. 2, 3.) This is ample time for settlement class members to evaluate the proposed settlement and to intelligently decide whether to opt out of, or object to, the proposed settlement. *See* McLaughlin on Class Actions: Law and Practice, § 6:17 (2009) ("Courts have consistently held that three to four weeks between the mailing of class notice and the last date to object, coupled with a few more weeks between the close of objections and the settlement hearing, affords class members adequate opportunity to evaluate and, if desired, take action concerning a proposed settlement.")

VI. CONCLUSION

For these reasons, the proposed settlement is presumptively fair and the parties request an order: (1) preliminarily approving the class action settlement; (2) provisionally certifying settlement classes; (3) scheduling a hearing on final approval of the settlement; and (4) directing that the attached notice of the proposed settlement and claim form be sent to the provisional settlement class members.

DATED: January 9, 2019

Jones, Bell, Abbott, Fleming & Fitzgerald L.L.P.

By: _____
WILLIAM M. TURNER
Attorneys for Plaintiffs Cherilyn DeAguero, Rakhee Bose, Sean Bose, and Alexandra Boggio