

1 DAVID F. MCDOWELL (BAR NO. 125806)  
DMcDowell@mofo.com  
2 ANDREW C. STANLEY (BAR NO. 292538)  
AStanley@mofo.com  
3 MORRISON & FOERSTER LLP  
707 Wilshire Boulevard, Suite 6000  
4 Los Angeles, CA 90017-3543  
Telephone: 213.892.5200  
5 Facsimile: 213.892.5454

6 MARGARET MAYO (BAR NO. 259685)  
MMayo@mofo.com  
7 MORRISON & FOERSTER LLP  
425 Market Street, 32nd Floor  
8 San Francisco, CA 94105-2482  
Telephone: 415.268.7000  
9 Facsimile: 415.268.7522

10 Attorneys for Defendant  
BANANA REPUBLIC, LLC  
11

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE  
14

15 SAJID VEERA, individually and on behalf of  
all others similarly situated,  
16

17 Plaintiffs,

18 v.

19 BANANA REPUBLIC, LLC, *et al.*,

20 Defendants.  
21

22 AND CONSOLIDATED ACTION  
23  
24  
25  
26  
27  
28

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

**CLASS ACTION SETTLEMENT  
AGREEMENT**

Judge: Hon. Amy D. Hogue  
Dept.: SS-9

Complaint Filed: April 1, 2014

CLASS ACTION SETTLEMENT AGREEMENT

la-1398926

1 **CLASS ACTION SETTLEMENT AGREEMENT**

2 This Class Action Settlement Agreement is made by and between the Class  
3 Representatives individually and on behalf of the Settlement Class and Defendants Banana  
4 Republic, LLC and The Gap, Inc. (collectively, "Gap").<sup>1</sup> The Class Representatives, the  
5 Settlement Class, and Gap are collectively referred to as the "Parties."

6 **RECITALS**

7 **The Veera Action**

8 WHEREAS, on April 1, 2014, Sajid Veera filed a Class Action Complaint against Banana  
9 Republic, LLC ("Banana Republic") in California Superior Court, County of Los Angeles (the  
10 "Court"), Case No. BC541146 (the "Veera Action");

11 WHEREAS, the Complaint in the Veera Action alleges that Banana Republic engaged in  
12 a false advertising scheme by displaying unqualified "X%-off-your-purchase" signs in the  
13 windows of its stores in California that did not disclose that the advertised discount would not be  
14 applied to all purchases. Sajid Veera claimed that he and other consumers were enticed by such  
15 signage to shop and purchase non-discounted items. Sajid Veera sued for monetary and  
16 injunctive relief;

17 WHEREAS, on February 2, 2015, a First Amended Complaint was filed against Banana  
18 Republic in the Veera Action, and Sajid Veera (who paid for his purchases with a Gap co-branded  
19 credit card, the agreement for which contained an arbitration provision) was replaced as the  
20 putative class representative by Plaintiffs Cheryl DeAguiro, Sean Bose, and Rakhee Bose;

21 WHEREAS, on April 3, 2015, Banana Republic demurred to the First Amended  
22 Complaint in the Veera Action;

23 WHEREAS, in response to Banana Republic's demurrer, Plaintiffs Cheryl DeAguiro,  
24 Sean Bose, and Rakhee Bose filed a Second Amended Complaint on April 28, 2015;

25 WHEREAS, on May 27, 2015, Banana Republic demurred to the Second Amended  
26 Complaint in the Veera Action;

27  
28 <sup>1</sup> Capitalized terms in this Agreement are defined in Section 1, below.

1 WHEREAS, on June 24, 2015, the Court overruled Banana Republic's demurrer to the  
2 Second Amended Complaint in the Veera Action;

3 WHEREAS, on July 6, 2015, Banana Republic filed an Answer to the Second Amended  
4 Complaint in the Veera Action;

5 WHEREAS, on November 19, 2015, Banana Republic filed a Motion for Summary  
6 Judgment or, in the alternative, Summary Adjudication;

7 WHEREAS, on February 18, 2016, the Court granted Banana Republic's Motion for  
8 Summary Judgment on the basis that Plaintiffs Cherilyn DeAguiro, Sean Bose, and Rakhee Bose  
9 had not lost "money or property" as defined by Proposition 64, and therefore lacked standing;

10 WHEREAS, Plaintiffs Cherilyn DeAguiro, Sean Bose, and Rakhee Bose subsequently  
11 appealed the Court's order granting Banana Republic's Motion for Summary Judgment;

12 WHEREAS, on December 16, 2016, the Court of Appeal reversed the Court's order  
13 granting Banana Republic's Motion for Summary Judgment;

14 WHEREAS, Banana Republic subsequently filed a petition for review by the California  
15 Supreme Court, which was denied. The remittitur issued on May 1, 2017;

16 WHEREAS, on June 21, 2017, Plaintiffs Cherilyn DeAguiro, Sean Bose, and Rakhee  
17 Bose filed a Third Amended Complaint;

18 WHEREAS, Banana Republic filed an Answer to the Third Amended Complaint on July  
19 21, 2017;

20 WHEREAS, on September 13, 2017, Plaintiffs Sean Bose and Rakhee Bose filed a  
21 Motion for Summary Adjudication;

22 WHEREAS, on January 19, 2018, the Court denied Plaintiffs' Motion for Summary  
23 Adjudication;

24 WHEREAS, on March 21, 2018, Plaintiffs Cherilyn DeAguiro, Sean Bose, and Rakhee  
25 Bose filed a Motion for Class Certification, which was set to be heard on September 11, 2018 at  
26 2:00 p.m.;

27 WHEREAS, on the morning on September 11, 2018, the Parties reached an agreement to  
28 settle the Veera Action;

1 **The Etman Action**

2 WHEREAS, on May 29, 2014, Misbah Etman filed a Class Action Complaint against The  
3 Gap, Inc. ("The Gap") in California Superior Court, County of Los Angeles, Case No. BC547161  
4 (the "Etman Action");

5 WHEREAS, the Complaint in the Etman Action alleges that The Gap engaged in a false  
6 advertising scheme by displaying signs promoting a class of merchandise for sale at a stated price  
7 or subject to a stated discount without clearly and conspicuously identifying the items within the  
8 class of merchandise that were not for sale at the stated price or subject to the stated discount.  
9 Misbah Etman claimed that she and other consumers were enticed by such signage to select and  
10 purchase non-discounted items. Misbah Etman sued for monetary and injunctive relief;

11 WHEREAS, on March 25, 2015, a First Amended Complaint was filed against The Gap in  
12 the Etman Action, and Misbah Etman (who paid for her purchases with a Gap co-branded credit  
13 card, the agreement for which contained an arbitration provision) was replaced as the putative  
14 class representative by Plaintiff Alexandra Boggio;

15 WHEREAS, on October 23, 2015, The Gap demurred to the First Amended Complaint in  
16 the Etman Action;

17 WHEREAS, on March 1, 2016, the Court sustained The Gap's demurrer to the First  
18 Amended Complaint in the Etman Action with leave to amend;

19 WHEREAS, on March 16, 2016, Plaintiff Alexandra Boggio filed a Second Amended  
20 Complaint in the Etman Action;

21 WHEREAS, on May 5, 2016, The Gap demurred to the Second Amended Complaint in  
22 the Etman Action;

23 WHEREAS, on May 17, 2016, while The Gap's demurrer to the Second Amended  
24 Complaint was still pending, Plaintiff Alexandra Boggio filed a Third Amended Complaint in the  
25 Etman Action;

26 WHEREAS, on June 7, 2016, The Gap demurred to the Third Amended Complaint in the  
27 Etman Action;

1 WHEREAS, on November 1, 2016, the Court sustained The Gap's demurrer to the Third  
2 Amended Complaint in the Etman Action, without leave to amend, on the basis that Plaintiff  
3 Alexandra Boggio had not lost "money or property" as defined by Proposition 64, and therefore  
4 lacked standing;

5 WHEREAS, on November 22, 2016, Plaintiff Alexandra Boggio and The Gap stipulated  
6 that the Etman Action be stayed (including entry of judgment in favor of The Gap) pending the  
7 appeal in the Veera Action, which involved the same legal question that was at issue in The Gap's  
8 demurrer in the Etman Action;

9 WHEREAS, following the Court of Appeal's reversal of the summary judgment order in  
10 the Veera Action, the Court in the Etman Action vacated its order sustaining The Gap's demurrer;

11 WHEREAS, on September 25, 2017, The Gap filed an answer to the Third Amended  
12 Complaint in the Etman Action;

13 WHEREAS, on the morning on September 11, 2018, the Parties reached an agreement to  
14 settle the Etman Action;

15 **The Settlement**

16 WHEREAS, Class Representatives and Class Counsel have pursued the Veera Action and  
17 the Etman Action (collectively, the "Litigation") believing that it is meritorious, and they have  
18 conducted an investigation of the facts and law surrounding this case, including but not limited to:  
19 (i) researching the applicable law and the potential defenses; (ii) conducting extensive written  
20 discovery and depositions, including without limitation, reviewing Banana Republic and The  
21 Gap's public filings and internal documents concerning their promotional materials and sales  
22 guidelines; (iii) developing arguments for class certification, and preparing and filing a motion for  
23 class certification; (iv) briefing numerous motions, including without limitation class certification  
24 and summary judgment; and (v) conducting settlement negotiations. Based on their own  
25 independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is  
26 fair, reasonable, and adequate, and is in the best interests of the Settlement Class Members as well  
27 as future consumers, in light of all known facts and circumstances, the risk of significant delay,  
28 and the appellate risk;

1 WHEREAS, Gap denies liability and wrongdoing of any kind associated with the claims  
2 alleged and contends that the Litigation is not appropriate for class certification or for class  
3 treatment. Gap continues to assert that the Class Representatives will not be able to establish any  
4 entitlement to any monetary remedy or injunctive relief. Gap also continues to assert that it has  
5 complied with all applicable laws and that its promotional materials are not deceptive or  
6 misleading;

7 WHEREAS, Gap further asserts that despite its good faith belief that it is not liable for  
8 any of the claims asserted, and despite its good faith belief that class certification would not be  
9 appropriate, Gap will not oppose the Court's Settlement Class contemplated by the Agreement  
10 solely for purposes of effectuating this Settlement. Gap's agreement to certification of the  
11 Settlement Class is expressly without prejudice to Gap's rights to oppose certification of a class  
12 or oppose any other claim (i) in the Litigation, should the Agreement not be approved or  
13 implemented for any reason; or (ii) in any other litigation, whether pending in California or  
14 elsewhere;

15 WHEREAS, in the event that the Agreement is not approved or is otherwise terminated,  
16 the Agreement shall be deemed null and void and be of no further force or effect, and it may not  
17 be used by any Party for any purpose in the Litigation or any other action;

18 WHEREAS, the entry of the Final Judgment in the Litigation shall dismiss with prejudice  
19 all claims and appeals that were or that could have been alleged in the Litigation by any and all  
20 Settlement Class Members against Gap, with the exception of any individual claims that might be  
21 retained by Settlement Class Members who exclude themselves from the Settlement, if any; and

22 WHEREAS, the Parties agree to cooperate and take all reasonable steps necessary and  
23 appropriate to obtain preliminary and final approval of the Settlement, to effectuate its terms, and  
24 dismiss the Litigation with prejudice.

25 THEREFORE, the Parties hereby agree as follows:

26 **1. Definitions**

27 1.1 The term "Agreement" as used herein means this Class Action Settlement  
28 Agreement.



1           1.2    The term "Attorneys' Fees and Costs" as used herein means the attorneys' fees and  
2 costs to be requested by Class Counsel, subject to the Court's approval in accordance with the  
3 sections below.

4           1.3    The term "Claim" as used herein means a Claim submitted by way of a Claim  
5 Form in accordance with the Agreement.

6           1.4    The term "Claim Form" as used herein means the Claim Form for the Settlement  
7 Class attached hereto as Exhibit A, which is agreed to by the Parties, subject to the Court's  
8 approval, as the method by which a Class Member may submit a Claim. Other than the Identified  
9 Class Members (who are not required to submit a Claim Form), only those Settlement Class  
10 Members who submit a Claim Form in the manner set forth in the Agreement, subject to the  
11 Court's approval, shall be eligible to recover a share of the Settlement proceeds.

12          1.5    The term "Claimant" as used herein means (i) any Identified Class Member and  
13 (ii) any Settlement Class Member who submits a Claim Form.

14          1.6    The term "Claims Administrator" as used herein means Kurtzman Carson  
15 Consultants LLC (KCC) that, subject to the Court's approval, shall perform the duties of, among  
16 other things: (i) providing Notice, Claim Forms, and Opt-Out Request Forms to Settlement Class  
17 Members; (ii) publishing the Publication Notice; (iii) providing notice as required by California  
18 law; (iv) tracking returned Claim Forms and Opt-Out Requests; (v) notifying the Parties of  
19 determinations regarding submitted Claim Forms and Opt-Out Requests consistent with the  
20 Agreement; (vi) distributing Merchandise Certificates; and (vii) other notice and administration  
21 duties in accordance with the Agreement and the Court's orders.

22          1.7    The term "Class Counsel" as used herein means the following counsel who have  
23 appeared on behalf of the Class Representatives: William Turner and Asha Dhillon of JONES,  
24 BELL, ABBOT, FLEMING & FITZGERALD, L.L.P.

25          1.8    The term "Class List" as used herein means the list of Identified Class Members.

26          1.9    The term "Class Representatives" as used herein means Cherilyn DeAguero, Sean  
27 Bose, and Rakhee Bose (Plaintiffs in the Veera Action), as well as Alexandra Boggio (Plaintiff in  
28 the Etman Action).

1           1.10 The term "Class Representative Incentive Payment" as used herein means the  
2 amount that Class Counsel may request be paid to the Class Representatives in their capacity as  
3 Class Representatives to compensate them for initiating the Litigation and performing work in  
4 support of the Litigation.

5           1.11 The term "Email Notice" as used herein means a document substantially in the  
6 form of the document attached hereto as Exhibit B, which has been agreed to by the Parties,  
7 subject to the Court's approval, and which will be sent to Identified Class Members as an email  
8 where an email address exists on the Class List.

9           1.12 The term "Final Judgment" as used herein refers to the Final Judgment and Order  
10 of Final Approval approving the Settlement and dismissing the Litigation with prejudice as  
11 against Gap, which the Settlement and the Agreement contemplate will be entered by the Court.

12           1.13 The term "Identified Class Member" shall refer to (i) all Settlement Class  
13 Members who can be identified from Gap's records as purchasing any item from a "Banana  
14 Republic" retail store in California that was not subject to a 20-50% discount on a day when such  
15 a discount was advertised in the store's windows, and (ii) all Settlement Class Members who can  
16 be identified from Gap's records as purchasing any item from a "Gap" retail store in California  
17 sold at or above the promotional price being offered for that product category on that particular  
18 day.

19           1.14 The term "Litigation" collectively refers to the Veera Action and the Etman  
20 Action, as defined in the Recitals above.

21           1.15 The term "Mail Notice" as used herein means a document substantially in the form  
22 of the document attached hereto as Exhibit C, which has been agreed to by the Parties, subject to  
23 the Court's approval, and which will be mailed to Identified Class Members for whom an email  
24 address does not exist on the Class List but for whom a mailing address exists on the Class List.

25           1.16 The term "Merchandise Certificate" as used herein means a one-time coupon for  
26 the purchase of up to four items (excluding third-party merchandise) in a "Banana Republic" or  
27 "Gap" retail store at 30% off the regular price. Merchandise Certificates are not divisible, may  
28 only be used in connection with a single purchase, and may not be combined with any other

Formatted: No underline



1 promotional offer. Merchandise Certificates shall expire six months after they are distributed.  
2 Merchandise Certificates are not redeemable for cash. They are not gift cards or gift certificates  
3 under California or federal law, and, thus, it is the Parties' belief and intent that the Merchandise  
4 Certificates are not subject to the restrictions and terms found under California or federal law  
5 regarding gift cards or gift certificates. The Merchandise Certificates may not be used for past  
6 purchases, layaway, or to purchase gift cards or certificates. They will not be replaced if lost,  
7 stolen, or damaged, and copies will not be accepted. No minimum purchase amount is required to  
8 use them.

9 1.17 The term "Notice" as used herein means a document substantially in the form of  
10 the Notice of Proposed Class Action Settlement Between Plaintiffs and Gap attached hereto as  
11 Exhibit D, which has been agreed to by the Parties, subject to the Court's approval, and which the  
12 Claims Administrator will make available through the Settlement Website, explaining the terms  
13 of the Settlement and the Claims, Opt-Out, and objection processes.

14 1.18 The term "Notice and Administration Costs" as used herein means the costs to  
15 send notice and administer the Settlement as contemplated by the Agreement.

16 1.19 The term "Opt-Out Request Form" as used herein means a form that will be  
17 available for download on the Settlement Website, which can be used by Settlement Class  
18 Members to request to opt out of the Settlement. Settlement Class Members are not required to  
19 use the Opt-Out Request Form to communicate their desire to opt out of the Settlement to the  
20 Claims Administrator.

21 1.20 The term "Parties" as used herein means the Class Representatives, the Settlement  
22 Class, and Gap.

23 1.21 The term "Preliminary Approval Order" as used herein means an order from the  
24 Court, substantially in the form of Exhibit F, granting conditional certification of the Settlement  
25 Class, granting preliminary approval of this Agreement, and approving the forms and methods of  
26 providing notice to the Settlement Class set forth herein.

1 1.22 The term "Publication Notice" as used herein means a document substantially in  
2 the form attached hereto as Exhibit E, which has been agreed to by the Parties, subject to the  
3 Court's approval, and which will be published in accordance with the terms of the Settlement.

4 1.23 The term "Releasing Settlement Class Members" as used herein means the Class  
5 Representatives and all Settlement Class Members, other than those who submit timely Requests  
6 to Opt Out.

7 1.24 The term "Request to Opt Out" as used herein means a request sent to the Claims  
8 Administrator by any Settlement Class Member wishing to opt out or exclude themselves from  
9 the Settlement.

10 1.25 The term "Settlement" as used herein means the compromise and settlement of the  
11 Litigation as contemplated by the Agreement.

12 1.26 The term "Settlement Class" as used herein and for purposes of the Settlement  
13 only, means all persons who purchased merchandise at Banana Republic or Gap stores in  
14 California, during the Settlement Class Period, when the store displayed advertising reflecting  
15 that purchases would be discounted and who were charged and paid prices not discounted in  
16 accordance with the advertising.

17 1.27 The term "Settlement Class Member Released Claims" as used herein means the  
18 claims, rights, penalties, demands, damages, debts, and accounts, duties, costs and expenses  
19 (other than those costs and expenses required to be paid pursuant to the Agreement), liens,  
20 charges, complaints, causes of action, obligations, or liabilities that are released, acquitted, and  
21 discharged as described below.

22 1.28 The term "Settlement Class Members" as used herein means the Class  
23 Representatives and all members of the Settlement Class.

24 1.29 The term "Settlement Class Period" as used herein and for purposes of the  
25 Settlement only means the period of time between April 1, 2010, and the present.

26 1.30 The term "Settlement Effective Date" as used herein means the last date on which  
27 all of the following have occurred:  
28

1           1.30.1       The Court enters the Final Judgment approving the Settlement in a  
2 manner substantially consistent with the terms and intent of the Agreement; and

3           1.30.2       Either: (i) if there are no objectors, five (5) days after Class Counsel  
4 has waived in writing its right to appeal any award of Attorneys' Fees and Costs; or (ii) thirty-five  
5 (35) days have passed after completed service on the parties to the Litigation and all objectors to  
6 the Settlement, if any, of notice of entry to the Final Judgment, and every order awarding  
7 attorneys' fees, and within such time no appeal is taken or extension for such appeal is granted; or  
8 (iii) if an appeal is taken or an extension for such appeal is granted with respect to entry of the  
9 Final Judgment, the date when all appellate rights with respect to the Final Judgment have  
10 expired or have been exhausted in such a manner as to affirm the Final Judgment, and when no  
11 further appeals are possible, including review by the California Supreme Court or United States  
12 Supreme Court, and the appellate court has by final order affirmed the Final Judgment, or has  
13 denied review, or the appellant otherwise has exhausted all appellate remedies.

14       1.31    The term "Settlement Website" as used herein means an Internet website  
15 maintained by the Claims Administrator containing the Notice, Claim Form, Opt-Out Request  
16 Form, instructions on how to submit a Claim Form and/or on how to Opt-Out or Object to the  
17 Settlement, and where Merchandise Certificates may be obtained. The Settlement Website is:  
18 \_\_\_\_.

19       1.32    The term "Verified Claims" as used herein means those Claims that are approved  
20 by the Claims Administrator for payment after the deadline for audits allowable has expired or, if  
21 an audit or objection is made, after all audits or objections have been resolved in accordance with  
22 the sections below.

23   **2.    Settlement Class**

24       2.1    The Parties agree that, for purposes of the Agreement only, Class Representatives  
25 shall request, and Gap will not oppose, certification of the Settlement Class pursuant to Court  
26 Rule 3.769(d) and Code of Civil Procedure section 382, to which Gap will provide settlement  
27 consideration and from which Gap will obtain a release of claims, subject to the Court's  
28

1 preliminary approval of the Agreement, the section of the Notice to members of the Settlement  
2 Class and the Court's final approval of the Notice provided and the Agreement.

3 2.2 The Parties agree that, for purposes of the Agreement only, Class Representatives  
4 shall request, and Gap will not oppose, the Court's appointment of Class Counsel as counsel for  
5 the Settlement Class and the appointment of the Class Representatives as representatives of the  
6 Settlement Class.

7 2.3 The Parties agree that the operative complaints in the Litigation may be amended  
8 as necessary and/or as required by the Court to effectuate the terms of the Agreement.

9 2.4 The Settlement is conditioned on the Court certifying the Settlement Class. The  
10 Parties and Class Counsel agree that, if approved, certification of the Settlement Class is a  
11 conditional certification for settlement purposes only, and if for any reason the Court does not  
12 enter the Final Judgment, or if the Final Judgment is not entered following appeal of any order by  
13 the Court, the certification of the Settlement Class shall be deemed null and void, and each Party  
14 shall retain all their respective rights as they existed prior to the execution of the Agreement. In  
15 the event that the Court does not enter the Final Judgment: (i) any Court orders preliminarily or  
16 finally approving the certification of any class contemplated by the Agreement shall be null, void,  
17 and vacated, and they shall not be used or cited thereafter by any person or entity; and (ii) the fact  
18 of the settlement reflected in the Agreement, that Gap did not oppose the certification of any class  
19 under the Agreement, or that the Court preliminarily approved the certification of any settlement  
20 class, shall not be used or cited thereafter by any person or entity, including in any manner  
21 whatsoever, including without limitation any contested proceeding relating to the certification of  
22 any class.

### 23 3. Settlement Consideration

24 3.1 Subject to the other terms and conditions of the Agreement, and subject to the  
25 Court's approval, Gap will provide one Merchandise Certificate to (i) all Identified Class  
26 Members who do not submit a valid Request to Opt Out, and (ii) all Settlement Class Members  
27 who submit a Verified Claim.  
28

1   **4. Attorneys' Fees and Costs**

2       4.1 Class Counsel may apply to the Court for an award of reasonable Attorneys' Fees  
3 and Costs not to exceed \$1,000,000. Gap will not oppose this application. In the event that the  
4 Court does not approve the award of Attorneys' Fees and Costs requested by Class Counsel, or if  
5 the Court awards Attorneys' Fees and Costs in an amount less than that requested by Class  
6 Counsel, the Court's decision shall not affect the validity and enforceability of the Settlement,  
7 and it shall not be a basis for anyone to seek to void the Settlement or for rendering the entire  
8 Settlement null, void, or unenforceable. Class Counsel retain their right to appeal any decision by  
9 the Court regarding the Court's award of Attorneys' Fees and Costs.

10   **5. Incentive Payments**

11       5.1 Class Counsel may seek a Class Representative Incentive Payment for each Class  
12 Representative in the amount of \$8,000 each, for a total of \$32,000. Gap will not oppose this  
13 application. Any request made by Class Counsel in accordance with this section is without  
14 prejudice to the Class Representative's right to file a Claim as a Settlement Class Member. In the  
15 event that Class Counsel does not seek or the Court does not approve the Class Representative  
16 Incentive Payment, or the Court awards an amount that is less than sought, that decision shall not  
17 affect the validity and enforceability of the Settlement, and it shall not be a basis for anyone to  
18 seek to void the Settlement or for rendering the entire Settlement null, void, or unenforceable.

19   **6. Notice and Administrative Costs**

20       6.1 Gap shall be solely responsible for paying all administration and notice costs  
21 incurred by the Claims Administrator. Gap shall enter into a separate agreement with the Claims  
22 Administrator to that effect.

23   **7. Notice to the Class**

24       7.1 Given the expected size of the Settlement Class and Gap's lack of mailing address  
25 information for many Settlement Class Members, the Parties agree that direct notice via email is  
26 the best practicable notice for those Settlement Class Members for which such information exists  
27 (Email Notice), and via first-class regular U.S. Mail is the best practicable notice for those  
28 Settlement Class Members for which Gap has a mailing address but no email address (Mail

1 Notice). Recognizing that there are Settlement Class Members who cannot be identified through  
2 Gap's records, notice by print publication as agreed to by the Parties and authorized by the Court  
3 will be used to supplement the Email Notice.

4 7.1.1 The Email Notice shall be sent to Identified Class Members for  
5 whom there is a valid email address in Gap's records. The Email Notice shall advise Identified  
6 Class Members of their right to opt out of the Settlement or to object to the Settlement, the  
7 process by which such opt-outs or objections must be made, and the date set by the Court for a  
8 hearing on final approval of the Settlement. Subject to the Court's approval, the Email Notice  
9 shall be substantially in the form attached hereto as Exhibit B.

10 7.1.2 Because many of the sales made during the Settlement Class Period  
11 do not have corresponding customer names or addresses associated with them, the Parties agree  
12 that notice by publication would be the best practicable notice for the balance of the Settlement  
13 Class. This "Publication Notice" shall include instructions as to how to access the Settlement  
14 Website, how to request a Claim Form, and how to submit it. The Publication Notice shall also  
15 advise Settlement Class Members of their right to opt out of the Settlement or to object to the  
16 Settlement, the process and deadlines by which such opt-outs or objections must be made, and the  
17 date set by the Court for a hearing on final approval of the Settlement. Subject to the Court's  
18 approval, the Publication Notice shall be substantially in the form attached hereto as Exhibit D.

19 7.1.3 The Mail Notice shall be sent to Identified Class Members for  
20 whom there is a mailing address but no valid email address in Gap's records. Using best efforts  
21 to mail it as soon as possible, and in no event later than fourteen (14) days after receiving the  
22 Class List, the Settlement Administrator will mail the Mail Notice using the mailing address  
23 information provided by Gap, unless modified by any updated address information that the  
24 Settlement Administrator obtains in the course of administration of the Settlement. If a Mail  
25 Notice is returned because of an incorrect address, the Settlement Administrator will promptly,  
26 and not longer than ten (10) days from receipt of the returned packet, search for a more current  
27 address for the Settlement Class Member and re-mail the Mail Notice to the Settlement Class  
28 Member. The Settlement Administrator will use the Class List and otherwise work with Gap to

1 find that more current address. The Settlement Administrator will be responsible for taking  
2 reasonable steps, consistent with its agreed-upon job parameters, Court orders, and fee, as agreed  
3 to with Class Counsel and according to the following deadlines, to trace the mailing address of  
4 any Settlement Class Member for whom a Mail Notice is returned by the U.S. Postal Service as  
5 undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered  
6 mail; performing address searches for all mail returned without a forwarding address; and  
7 promptly re-mailing to Settlement Class Members for whom new addresses are found. If the  
8 Mail Notice is re-mailed, the Settlement Administrator will note for its own records and notify  
9 Class Counsel and Gap's Counsel of the date and address of each such re-mailing as part of a  
10 weekly status report provided to the Parties.

11 7.2 Gap will provide the Class List to the Claims Administrator within ~~sixty ten (610)~~  
12 days of issuance of the Preliminary Approval Order. Gap and Plaintiffs agree that all Class List  
13 information shall be treated as highly confidential, proprietary information, and that the contents  
14 of the Class List shall not be shared with third parties other than the Claims Administrator and  
15 that the Claims Administrator, and its agents, affiliates, and/or subcontractors (if any) shall be  
16 required to strictly preserve the confidentiality of the Class List.

17 7.3 The Email Notice and Mail Notice shall be sent to Settlement Class Members  
18 within ~~thirty-fourteen (3014)~~ days following receipt of the Class List from Gap, provided that any  
19 challenges or other barriers to the use of Email Notice have been resolved.

20 7.4 The Publication Notice shall commence within ten (10) days of Email Notices  
21 being sent.

22 7.5 The Email Notice, Claim Form, Opt-Out Request Form, the Agreement, and other  
23 materials as agreed to by the Parties shall be available on the Settlement Website. The Claims  
24 Administrator shall also establish a toll-free phone line and an email box to respond to inquiries  
25 from Settlement Class Members. The Settlement Website address, toll-free phone number, and  
26 email box address will be included in all notices to the Class.  
27  
28



1 **8. Submission of Claims**

2 8.1 To be eligible to receive a Merchandise Certificate, a Settlement Class Member  
3 (other than an Identified Class Member, for whom no Claim Form is required) must submit a  
4 completed Claim Form within ~~ninety-sixty~~ (690) days from the date Notice is disseminated. Only  
5 those Settlement Class Members (other than Identified Class Members) who submit a valid and  
6 approved Claim Form shall be eligible to receive a Merchandise Certificate. For a Claim Form to  
7 be considered timely, the Claims Administrator must receive the completed Claim Form by  
8 11:59 p.m. Pacific Time on the ~~ninetieth-sixtieth~~ (690<sup>th</sup>) day from the date Notice is disseminated.  
9 These deadlines shall be set forth clearly in the Notice.

10 8.2 For a Claim Form to be approved, the Claimant must meet the following criteria:

11 8.2.1 Claim Forms shall be executed but need not be notarized;

12 8.2.2 Claim Forms shall not require any proof of purchase;

13 8.2.3 Claim Forms shall require each Settlement Class Member to state,  
14 under penalty of perjury, the approximate day(s) he or she shopped at a Banana Republic or Gap  
15 store; and

16 8.2.4 Claim Forms shall be submitted online. Claimants will be directed  
17 to submit their Claim Forms electronically on the Settlement Website.

18 8.3 Claim Forms and Opt-Out Request Forms shall be available on the Settlement  
19 Website. The Email Notice and Publication Notice shall direct Settlement Class Members to the  
20 Settlement Website, which shall contain the Claim Form, Opt-Out Request Form, and other  
21 documentation concerning the Litigation and Settlement.

22 8.4 Submission of more than one Claim Form, or submission of an incomplete Claim  
23 Form, may render the Claim Form submitted by that Settlement Class Member invalid.

24 8.5 Within twenty (20) days after the deadline to submit Claim Forms, the Claims  
25 Administrator shall provide a spreadsheet to Class Counsel and to Gap that contains sufficient  
26 information for the Parties to determine the number of Verified Claims. The Claims  
27 Administrator shall also provide information regarding rejected Claims, as well as the reasons  
28 why each Claim was rejected. The Claims Administrator shall retain the originals of all Claim

1 Forms received from Claimants and shall make copies of the originals available to Gap or Class  
2 Counsel within three (3) business days upon request.

3 **9. Opt-Out Process**

4 9.1 A Settlement Class Member who wishes to exclude himself or herself from the  
5 Settlement and from the release of claims pursuant to the Settlement shall submit a Request to  
6 Opt Out. For a Request to Opt Out to be accepted, it must be timely and valid. To be timely, it  
7 must be postmarked by the date that is ~~ninety-sixty~~ ninety-sixty (690) days after the last date Notice is  
8 disseminated. To be valid, the Request to Opt Out must be signed and dated. Opt-Out Request  
9 Forms, substantially similar to the attached Exhibit G, shall be available for download from the  
10 Settlement Website and, upon request by a Settlement Class Member, made available by the  
11 Claims Administrator through First Class Mail.

12 9.2 A Settlement Class Member who submits a Request to Opt Out is not eligible to  
13 receive a Merchandise Certificate, except that if any Settlement Class Member submits both a  
14 Request to Opt Out and a Claim Form, the Request to Opt Out will be rejected, the Settlement  
15 Class Member will be treated as if they are still a member of the class, and the Claim Form will  
16 be treated as valid, if it meets the requirements detailed above, and processed.

17 9.3 The Claims Administrator shall maintain a list of persons who have excluded  
18 themselves and shall provide such list to the Parties upon request. The Claims Administrator  
19 shall retain the originals of all Requests to Opt Out (including the envelopes with the postmarks)  
20 received from Settlement Class Members and shall make copies of the originals available to Gap  
21 or Class Counsel within three (3) business days upon request.

22 9.4 Gap, at its sole discretion, has the right to terminate the Settlement if more than  
23 one thousand (1,000) Class Members opt out of the Settlement Class and if Gap notifies Class  
24 Counsel in writing that it has elected to terminate the Agreement. If the Agreement is terminated,  
25 it will be deemed null, void, and unenforceable.

1 **10. Objection Process**

2 10.1 A Settlement Class Member who wishes to object to the Settlement must notify  
3 the Court of his or her objection, in writing, within sixty (60) days of the last date Notice is  
4 disseminated.

5 10.2 To be considered valid, an objection must be in writing, must include the  
6 objector's name and address, and must include the basis for the objection, along with any and all  
7 documents that support the objection. The objection must also indicate whether or not the  
8 objector intends to appear at the hearing on the motion for final approval of the Settlement. The  
9 objection must be filed with the Court on or before the deadline in Section 10.1. Additional  
10 instructions regarding how to object to the Settlement are contained in the Notices.

11 10.3 Settlement Class Members who do not file a timely written objection in  
12 accordance with the procedures set forth in the Agreement shall be deemed to have waived any  
13 objections to the Settlement and shall forever be foreclosed from making any objection (whether  
14 by appeal or otherwise) to the Settlement, or any aspect of the Settlement, including without  
15 limitation the fairness, reasonableness, or adequacy of the Settlement, or any award of Attorneys'  
16 Fees and Costs, reimbursement of costs and expenses, and/or the Class Representative Incentive  
17 Payments.

18 **11. Distribution Process**

19 11.1 Class Counsel shall provide Gap with all necessary W-9 tax forms in connection  
20 with the Attorneys' Fees and Costs and Class Representative Incentive Payments. Within ten  
21 (10) business days following the Settlement Effective Date and receipt of all necessary tax forms  
22 from Class Counsel, Gap shall pay by wire transfer to an account, on behalf of Class Counsel,  
23 monies sufficient to cover the Attorneys' Fees and Costs and Class Representative Incentive  
24 Payments approved by the Court.

25 11.2 Within ninety (90) days following the Settlement Effective Date, Gap shall  
26 provide a sufficient number of Merchandise Certificates for distribution to (i) all Identified Class  
27 Members who do not submit a valid Request to Opt Out, and (ii) all Settlement Class Members  
28

1 who submit a Verified Claim. The Merchandise Certificates shall be distributed via email within  
2 one hundred and twenty (120) business days following the Settlement Effective Date.

3 **12. Comprehensive Waiver, Release, and Dismissal**

4 12.1 Settlement Class Member Released Claims – Released by Settlement Class  
5 Members:

6 12.1.1 Subject to the Court's entry of the Final Judgment, and for good  
7 and valuable consideration set forth herein, the receipt and sufficiency of which is hereby  
8 acknowledged, all Releasing Settlement Class Members do hereby irrevocably release, acquit,  
9 and forever discharge Gap (and all past and present affiliates, divisions, parents, or subsidiaries,  
10 officers, directors, employees, agents, and attorneys) against any and all claims, rights, penalties,  
11 demands, damages, costs and expenses (including attorneys' fees and costs other than those costs  
12 and expenses required to be paid pursuant to the Agreement), causes of action, or liability of any  
13 kind arising out of or in connection with all of the claims or causes of action that were made or  
14 could have been made in the Litigation or in any other forum relating, in whole or in part, to the  
15 alleged acts, omissions, facts, matters, transactions, and circumstances asserted in the Litigation;  
16 including assertions that Gap has used false or misleading promotional materials at Banana  
17 Republic and Gap stores during the Class Period.

18 12.1.2 The Settlement Class Member Released Claims includes a release  
19 of all claims for Attorneys' Fees and Costs incurred by Releasing Settlement Class Members or  
20 by Class Counsel or any other attorney in connection with the Litigation and the Settlement.

21 12.1.3 ~~Releasing Settlement Class Members~~ The Class Representatives  
22 understand and agree that the release of ~~the Settlement Class Member Released Claims~~ their  
23 claims is a full and final general release applying to both ~~those Settlement Class Member~~  
24 ~~Released Claims~~ the claims that are currently known, anticipated, or disclosed to Releasing  
25 ~~Settlement Class Members~~ them and to all those ~~Settlement Class Member Released Claims~~ claims  
26 that are presently unknown, unanticipated, or undisclosed to any Releasing Settlement Class  
27 ~~Members~~ Class Representative arising out of the alleged facts, circumstances, and occurrences  
28 underlying: (i) the claims set forth in the Litigation; or (ii) Gap's conduct with respect to the

1 Litigation. ~~Releasing Settlement Class Members~~ The Class Representatives acknowledge that the  
2 facts could be different than they now know or suspect to be the case, but they are nonetheless  
3 releasing all such unknown claims. In exchange for the good and valuable consideration set forth  
4 herein, all ~~Releasing Settlement Class Members~~ Class Representatives further waive any and all  
5 rights or benefits that they as individuals or the class may now have as a result of the alleged  
6 facts, circumstances, and occurrences underlying the claims set forth in the Litigation under the  
7 terms of § 1542 of the California Civil Code (or similar statute in effect in any other jurisdiction),  
8 which provides as follows:

9 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**  
10 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR**  
11 **HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH**  
12 **IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED**  
13 **HIS OR HER SETTLEMENT WITH DEBTOR.**

14 12.2 The Parties acknowledge that the Settlement, including the releases provided in  
15 Section 12, reflects a compromise of disputed claims.

16 12.3 The Final Judgment shall dismiss the Litigation with prejudice as to Gap and shall  
17 incorporate the terms of this release.

18 **13. Duties of The Parties With Respect to Preliminary Court Approval**

19 13.1 On or before January 23, 2019, or such other date as the Court approves, Class  
20 Counsel shall apply to the Court for a Preliminary Approval Order substantially in the following  
21 form:

- 22 13.1.1 Conditionally certifying the Settlement Class;  
23 13.1.2 Preliminarily approving the Settlement;  
24 13.1.3 Approving as to form and content the proposed notices and notice  
25 plan, including the Email and Publication Notices, Claim Form, and Opt-Out Request Form;  
26 13.1.4 Scheduling a fairness hearing on the question of whether the  
27 proposed Settlement should be finally approved as fair, reasonable, and adequate as to the  
28 Settlement Class;

1                   13.1.5       Approving Cherilyn DeAguiro, Sean Bose, Rakhee Bose and  
2 Alexandra Boggio as Settlement Class Representatives;  
3                   13.1.6       Approving as Class Counsel for the Settlement Class, William  
4 Turner and Asha Dhillon of JONES, BELL, ABBOT, FLEMING & FITZGERALD, L.L.P.; and  
5                   13.1.7       Approving KCC as Claims Administrator.  
6                   13.2      Gap shall cooperate with Class Counsel as reasonably necessary to obtain the  
7 Preliminary Approval Order in accordance with the terms of the Agreement.  
8 **14.   Duties of The Parties Following Preliminary Court Approval**  
9                   14.1      Following issuance of the Preliminary Approval Order by the Court, and prior to  
10 the final fairness hearing, Class Counsel will submit a proposed Final Judgment that will be  
11 agreed to by the Parties. The proposed Final Judgment shall:  
12                   14.1.1     Approve the Settlement, adjudging the terms thereof to be fair,  
13 reasonable, and adequate, and directing consummation of its terms and sections;  
14                   14.1.2     Approve Class Counsel's application for an award of Attorneys'  
15 Fees and Costs;  
16                   14.1.3     Approve the Class Representative Incentive Payments;  
17                   14.1.4     Certify the Settlement Class for Settlement purposes only in  
18 accordance with applicable legal standards and the Agreement; and  
19                   14.1.5     Dismiss the Litigation between the Class Representatives and the  
20 Settlement Class Members, on the one hand, and Gap on the other hand, on the merits and with  
21 prejudice and permanently bar the Class Representatives, and all Settlement Class Members  
22 (other than those who timely filed valid Opt-Out Requests) from further prosecuting any of the  
23 Settlement Class Member Released Claims against Gap.  
24                   14.2      Gap shall cooperate with Class Counsel as necessary to obtain entry of the Final  
25 Judgment, in accordance with the terms of the Agreement, and the dismissal with prejudice of the  
26 Litigation as to Gap.  
27                   14.3      The Final Judgment shall not be considered final until the occurrence of the  
28 Settlement Effective Date.

1 **15. Mutual Full Cooperation**

2 15.1 The Parties agree to cooperate fully with each other to accomplish the terms of the  
3 Settlement, including, but not limited to, execution of all necessary documents, and to take such  
4 other action as may reasonably be necessary to implement the terms of the Settlement. The  
5 Parties shall use their best efforts, including all efforts contemplated by the Settlement and any  
6 other efforts that may become necessary by order of the Court or otherwise, to effectuate the  
7 terms of the Settlement. As soon as practicable after execution of the Agreement, Class Counsel  
8 shall, with the assistance and cooperation of Gap and its counsel, take all necessary steps to  
9 secure the Final Judgment.

10 **16. Statement of No Admission**

11 16.1 Nothing contained in the Agreement or the Settlement shall be construed as or  
12 deemed an admission of liability, culpability, or wrongdoing. Gap expressly denies liability for  
13 the claims asserted and specifically denies and does not admit any of the pleaded facts not  
14 admitted in its pleadings in the Litigation. Nor shall the Agreement or the Settlement constitute  
15 an admission by Gap as to any interpretation of laws or as to the merits, validity, or accuracy of  
16 any claims made against it in the Litigation. Likewise, nothing in the Agreement shall be  
17 construed as or deemed an admission by Class Representatives or the Settlement Class with  
18 regard to the validity of any of Gap's defenses or affirmative defenses. Each of the Parties has  
19 entered into the Agreement and the Settlement with the intention to avoid further disputes and  
20 litigation with the attendant inconvenience and expenses.

21 16.2 The Agreement, and all related documents, the certification for settlement  
22 purposes entered pursuant to the Agreement, and any Claim Forms, Requests to Opt-out or  
23 Objections submitted by Settlement Class Members and all other actions taken in implementation  
24 of the Settlement, including any statements, discussions, or communications, and any materials  
25 prepared, exchanged, issued, or used during the course of the negotiations leading to the  
26 Agreement, are settlement documents and shall be inadmissible in evidence and shall not be used  
27 for any purpose in the Litigation or any other judicial, arbitral, administrative, investigative, or  
28



1 other court tribunal, forum, or proceeding, or any other litigation against Gap, for any purpose,  
2 except in an action or proceeding to approve, interpret, or enforce the terms of the Agreement.

3 16.3 The Claim Forms, Opt-Out Requests or Objections, or other evidence produced or  
4 created by any Settlement Class Member in connection with the claims resolution procedures  
5 pursuant to the Settlement, and any actions taken by Gap in response to such Claim Forms,  
6 Opt-Out Requests, Objections, or other evidence, do not constitute, and will not be deemed to  
7 constitute, an admission by Gap of any violation of any federal, state, or local law, statute,  
8 ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity.

9 **17. Voiding The Agreement**

10 17.1 In the event that the Court disapproves or sets aside the Agreement or any material  
11 part of the Agreement for any reason, or holds that it will not enter the Final Judgment without  
12 material modification, or holds that the entry of the Final Judgment or any material part thereof  
13 should be overturned or modified in any material way, then:

14 17.1.1 If all Parties do not agree jointly to appeal such ruling, the  
15 Agreement will become null and void, and the Parties stipulate to joint motions (i) that any and  
16 all orders entered pursuant to the Agreement be vacated; and (ii) that any and all dismissals  
17 pursuant to the Agreement will be vacated; or

18 17.1.2 If the Parties do agree to jointly appeal such ruling and if the Final  
19 Judgment or its equivalent in all material respects is not in effect after the termination of all  
20 proceedings arising out of such appeal, the Agreement will become null and void, and the Parties  
21 stipulate to joint motions (i) that any and all orders entered pursuant to the Agreement be vacated,  
22 including without limitation any order modifying the class certification order or permitting  
23 amendment of the complaint to conform the complaint to the class definition set out in Section  
24 1.25; and (ii) that any and all dismissals pursuant to the Agreement will be vacated; and the  
25 Litigation will resume in the California Superior Court, County of Los Angeles.

26 17.2 In the event that the Court does not approve the Attorneys' Fees and Costs in the  
27 amount requested by Class Counsel, or in the event that the Attorneys' Fees and Costs requested  
28 by Class Counsel are reduced, that finding shall not be a basis for rendering the entire Agreement

1 null, void, or unenforceable. Class Counsel retains their right to appeal any decision by the Court  
2 regarding the Attorneys' Fees and Costs.

3 **18. Authority to Execute**

4 18.1 The respective signatories to the Agreement each represent that they are fully  
5 authorized to enter into the Settlement on behalf of the respective Parties for submission to the  
6 Court for preliminary and final approval.

7 **19. No Prior Assignments**

8 19.1 The Parties represent, covenant, and warrant that they have not directly or  
9 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber, to any  
10 person or entity any portion of any liability, claim, demand, action, cause of action, or right  
11 released and discharged in the Settlement.

12 **20. Miscellaneous Sections**

13 20.1 Construction. The Parties agree that the terms and conditions of the Settlement are  
14 the result of lengthy, intensive, arms-length negotiations between the Parties and that the  
15 Settlement shall not be construed in favor of or against any party by reason of the extent to which  
16 any party or her or his counsel participated in the drafting of the Settlement.

17 20.2 Captions and Interpretations. Section titles or captions contained in the Agreement  
18 are a matter of convenience and for reference, and they in no way define, limit, extend, or  
19 describe the scope of the Settlement or any section of the Agreement.

20 20.3 Modification. The Agreement may not be changed, altered, or modified, except in  
21 a writing signed by the Parties and approved by the Court. Notwithstanding the foregoing, the  
22 Parties agree that any dates contained in the Agreement may be modified by agreement of the  
23 Parties without Court approval if the Parties agree and cause exists for such modification. The  
24 Settlement may not be discharged except by performance in accordance with its terms or by a  
25 writing signed by the Parties.

26 20.4 Integration Clause. The Agreement, the Exhibits hereto, and any other documents  
27 delivered pursuant hereto contain the entire agreement between the Parties relating to the  
28 resolution of the Litigation, and all prior or contemporaneous agreements, understandings,

1 representations, and statements, whether oral or written and whether by Party or such Party's  
2 legal counsel, are merged in the Agreement. No rights under the Settlement may be waived  
3 except in writing and signed by the Party against whom such waiver is to be enforced.

4 20.5 Binding on Assigns. The Settlement shall be binding upon, and inure to the  
5 benefit of, the Parties and their respective heirs, trustees, executors, administrators, successors,  
6 and assigns.

7 20.6 Binding on Settlement Class Members. It is agreed that because the Settlement  
8 Class is large, it is impossible or impractical to have each Settlement Class Member execute the  
9 Agreement. The Email and Publication Notices will provide all Settlement Class Members with a  
10 summary of the Settlement and will advise all Settlement Class Members of the binding nature of  
11 the release. Excepting only those Settlement Class Members who timely submit an Opt-Out  
12 Request, the Email and Publication Notice shall have the same force and effect as if the  
13 Agreement was executed by each Settlement Class Member.

14 20.7 Counterparts. The Agreement may be executed by .pdf signature and in any  
15 number of counterparts, and when each Party has signed and delivered to each other at least one  
16 such counterpart, each counterpart shall be deemed an original, and, when taken together with  
17 other signed counterparts, they shall constitute one and the same Agreement, which shall be  
18 binding upon and effective as to all Parties.

19 20.8 Applicable Law. The Agreement shall be governed by California law without  
20 regard to its choice of law or conflicts of law principles or provisions.

## 21 **21. Disputes**

22 21.1 Mediation. The Parties agree that they will first attempt to resolve any  
23 disagreements or disputes over the implementation of the terms of the Settlement, the Agreement,  
24 or any other documents necessary to effectuate the Settlement through a mediator who is  
25 mutually agreeable to the Parties. ~~In the event that one or more of the Parties institutes a legal~~  
26 ~~action, arbitration, or other proceeding against any other Party or Parties to enforce the sections of~~  
27 ~~the Settlement or to declare rights and/or obligations under the Settlement, they will bear their~~  
28 ~~own costs, expenses, and attorney's fees.~~

1 **22. Confidentiality**

2 22.1 Any and all negotiations related to the Settlement and the Agreement will remain  
3 strictly confidential and shall not be discussed with anyone other than the Class Representatives  
4 and Gap, their retained attorneys, their accountants and financial or tax advisers, the retained  
5 consultants, the Court, and a mediator who is mutually agreeable to the Parties, unless otherwise  
6 agreed to by Class Counsel and Gap or unless otherwise ordered by the Court. The Parties will  
7 not issue any press release or equivalent, nor make any public statement, nor will they respond to  
8 any press or media inquiry, other than to state that the case has been settled and to direct any  
9 member of the press or media to the Settlement Website, the Agreement, and the documents  
10 publicly filed in the Litigation. This section does not prohibit the Parties from presenting to the  
11 Court as much information about their settlement negotiations as they mutually agree is  
12 necessary, or as the Court requires, to procure approval of the Settlement.

13 **23. Documents and Discovery**

14 23.1 Within thirty (30) days after the Settlement Effective Date, Class Counsel agrees  
15 to take steps necessary to destroy or erase all documents and data provided by Gap in the  
16 Litigation. Upon request from Gap, Class Counsel shall certify in writing to Gap their  
17 compliance with this section. Nothing in this section or the Agreement shall prohibit Class  
18 Counsel from retaining a case file, including all pleadings, motion papers, court filings,  
19 deposition transcripts, legal memoranda, correspondence, notes, and work product, so long as any  
20 exhibits to such documents that contain documents or data marked "CONFIDENTIAL" or  
21 "HIGHLY CONFIDENTIAL" continue to be treated as such under the Protective Order in this  
22 case.  
23  
24  
25  
26  
27  
28

1 FOR CLASS COUNSEL

2  
3 Dated: \_\_\_\_\_ By: \_\_\_\_\_  
4 William Turner  
5 JONES, BELL, ABBOT, FLEMING &  
6 FITZGERALD, L.L.P.

7 FOR PLAINTIFFS AND THE PLAINTIFF CLASS

8 Dated: \_\_\_\_\_ By: \_\_\_\_\_  
9 Cherilyn DeAgüero

10 Dated: \_\_\_\_\_ By: \_\_\_\_\_  
11 Sean Bose

12 Dated: \_\_\_\_\_ By: \_\_\_\_\_  
13 Rakhee Bose

14 Dated: \_\_\_\_\_ By: \_\_\_\_\_  
15 Alexandra Boggio

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28 la- 1398926

- 26 -  
CLASS ACTION SETTLEMENT AGREEMENT

1 FOR DEFENDANTS

2  
3 Dated: \_\_\_\_\_

By: \_\_\_\_\_  
THE GAP, INC.

4 By: \_\_\_\_\_

5 Its: \_\_\_\_\_  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28