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FILED
ALAMEDA COUNTY

SEP 21 2017

CLERK OF THE SUPERIOR COURT
By Erica Baker
ERICA BAKER, Deputy

6 [ADDITIONAL COUNSEL ON SIGNATURE PAGE]

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8 Zena L. Evans

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF ALAMEDA**

11
12 **ZENA L. EVANS; INDIVIDUALLY**
13 **AND ON BEHALF OF ALL OTHERS**
14 **SIMILARLY SITUATED,**

Case No.: **RG17876207**

CLASS ACTION COMPLAINT FOR:

14 Plaintiff,

- 1) VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT (CAL. CIVIL CODE §§ 1770, ET SEQ.);
- 2) VIOLATION OF BUSINESS & PROFESSIONS CODE §§ 17200, ET SEQ. (CALIFORNIA UNFAIR COMPETITION LAW); AND
- 3) VIOLATION OF BUSINESS & PROFESSIONS CODE §§ 17500, ET SEQ. (CALIFORNIA FALSE ADVERTISING LAW);
- 4) NEGLIGENT MISREPRESENTATION

16 v.

17 **THE GAP, INC.,**

19 Defendant.

JURY TRIAL DEMANDED

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BY FAX

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INTRODUCTION

1. Plaintiff ZENA L. EVANS (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of THE GAP, INC. (“Defendant” or “GAP”) in unlawfully engaging in false and misleading advertising, unfair competition, and deceptive conduct toward consumers by advertising Defendant’s products, including the Banana Republic Honeycomb Merino Shawl Cardigan (the “Sweater”) purchased by Plaintiff, with the false and deceptive representation that Defendant’s product was “100% Extra Fine Merino Wool.” Defendant’s falsely advertised products are sold via Defendant’s website, and in various stores throughout California and the United States.¹
2. Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.
3. The “100% Extra-Fine Merino Wool” claim is prominently displayed on the Defendant’s website under Defendant’s description of the Sweater purchased by Plaintiff. In fact; the Sweater is actually made of *only 68% extra-fine merino wool*, 20% cotton, 6% rayon, 6% nylon as indicated by the fabric tag attached to the Sweater,² contrary to Defendant’s representation to Plaintiff and similarly situated consumers, contrary to reasonable consumers’ expectations regarding the meaning of “100%,” and in violation of California and/or Federal laws.
4. Upon information and belief, the Sweater and substantially similar product sold by Defendant are only 68% Extra-Fine Merino Wool, contrary to Defendant’s advertising, including the “100% Extra-Fine Merino Wool” claim prominently posted on Defendants’ website where Plaintiff purchased the offending sweater.

¹ Plaintiff purchased the mislabeled Sweater, which in part is the subject matter of this lawsuit, via Defendant’s website, www.BananaRepublic.com, Order #TYKNLN9.

² A true and correct copy of a photograph of the Sweater’s tag is attached hereto as Exhibit A.

- 1 5. Labels matter and California consumers have been misled *en masse* into purchasing
2 Defendant's products, including the Sweater, relying on the representation that Defendant's
3 product was 100% Extra-Fine Merino Wool.
- 4 6. Upon information and belief, Defendant has been able to cut costs of production by limiting
5 the amount of Extra-Fine Merino Wool used in its products, including the Sweater, to an
6 amount less than the 100% advertised. By using less than 100% Extra Fine Merino Wool,
7 Defendant has saved money and increased its profit.
- 8 7. Defendant's labeling and advertising is misleading, deceptive, unfair, and fraudulent.
9 Defendant's conduct amounts to violation of various California consumer protection statutes,
10 including California's Consumers Legal Remedies Act ("CLRA"), California's Unfair
11 Competition Law ("UCL"), California's False Advertising Law ("FAL"), and Negligent
12 Misrepresentation.

13 **JURISDICTION AND VENUE**

- 14 8. Jurisdiction of this Court is proper because the events leading up to Plaintiff's causes of
15 action, or a substantial portion thereof, occurred in the County of Alameda in the State of
16 California.
- 17 9. This action arises out of Defendant's violations of California law, including California's
18 Consumers Legal Remedies Act ("CLRA"), California's Unfair Competition Law ("UCL"),
19 California's False Advertising Law ("FAL"), and Negligent Misrepresentation.
- 20 10. Because Defendant is a corporation that has a principal place of business in the State of
21 California and conducts business within the State of California, personal jurisdiction is
22 established.
- 23 11. Venue is proper in this Court pursuant to California Code of Civil Procedure §§ 395(a),
24 395.5, and Civil Code § 1780(d) because the transaction which is the subject of this action, or
25 a substantial portion thereof, occurred in the county of Alameda in the State of California,
- 26 12. In compliance with the requirement set forth in Civil Code § 1780(d), Plaintiff's Affidavit
27 of Venue is filed concurrently with this Complaint and attached hereto as Exhibit B.
- 28

1 **PARTIES**

2 13. Plaintiff is an individual residing in the City of Emeryville, County of Alameda, State of
3 California,

4 14. Defendant is a corporation organized and existing under the laws of the State of Delaware
5 with a principal place of business in the State of California.

6 15. Defendant is an American clothing retailer with five brands – Gap, Banana Republic, Old
7 Navy, Athleta, and Intermix. GAP's clothes are available in 90 countries worldwide through
8 3,300 company-operated stores, almost 400 franchise stores and e-commerce sites.³
9 Defendant advertises its Banana Republic brand as offering versatile, contemporary classics,
10 designed for today with style that endures. Through thoughtful design, [Banana Republic]
11 create[s] clothing and accessories with detailed craftsmanship in luxurious materials.”⁴

12 **FACTUAL ALLEGATIONS**

13 16. Plaintiff alleges and incorporates by reference all of the above paragraphs of this Complaint
14 as though fully stated herein.

15 17. Defendant manufactures, markets and/or sells Defendant's products, including the Sweater
16 purchased by Plaintiff and the similarly situated consumers, that have been represented on
17 Defendant's website as “100% Extra Fine Merino Wool” when in fact Defendants products
18 are only contain 68% Extra Fine Merino Wool.

19 18. Consumers generally believe that “100% Extra Fine Merino Wool” products are of higher
20 quality than their counterparts containing less than 100% Extra Fine Merino Wool and/or
21 counterparts that include synthetic materials, such as rayon or nylon, instead of Extra Fine
22 Merino Wool. Due to Defendants' scheme to defraud the market, members of the general
23 public were fraudulently induced to purchase Defendant's products at inflated prices.

24 19. On information and belief, Defendant charged excess monies for GAP's products in
25 comparison to Defendant's competitors during the entirety of the relevant four-year statutory
26 time period, based on Plaintiff and similarly situated consumers' reliance on Defendant's

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28 ³ See <http://www.gapinc.com/content/gapinc/html/aboutus.html>

⁴ See <http://www.gapinc.com/content/gapinc/html/aboutus/ourbrands/BananaRepublic.html>

1 false "100% Extra Fine Merino Wool" claim. California and Federal laws are designed to
2 protect consumers from such false representations and predatory conduct. Defendant's
3 scheme to defraud consumers for its own self-interest and monetary gain is ongoing and will
4 victimize consumers daily for the foreseeable future unless altered by judicial intervention.

5 20. Sometime during December 2016, Plaintiff purchased the Sweater via Defendant's website.

6 At the time of Plaintiff's purchase, the description of the offending products on Defendant's
7 website claimed Defendant's Sweater was "100% Extra Fine Merino Wool;" however, the
8 Sweater actually contained only 68% Extra Fine Merino Wool.⁵ Accordingly, Defendant
9 falsely advertises and represents its product as "100% Extra Fine Merino Wool."

10 21. In each case when Plaintiff and putative Class members purchased a Sweater misrepresented
11 as "100% Extra Fine Merino Wool", they relied upon Defendant's "100% Extra Fine Merino
12 Wool" representation in their purchasing decision, which is typical of most U.S. consumers,
13 and they were deceived as a result of GAP's actions. These purchasing decisions were
14 supported by the "100% Extra Fine Merino Wool" representation made by Defendant.
15 Plaintiff believed at the time she purchased the Sweater that she was purchasing a superior
16 quality product.

17 22. Plaintiff suffered an "injury in fact" because Plaintiff's money was taken by Defendant as a
18 result of Defendant's false "100% Extra Fine Merino Wool" representation set forth on
19 Defendant's website.

20 23. As such, on information and belief, the Sweater and similar offending GAP products, which
21 are made of less Extra Fine Merino Wool, are of inferior quality, less reliable, and result in
22 lower overall customer satisfaction than if the products were truly "100% Extra Fine Merino
23 Wool" as marketed, advertised and/or represented by Defendant.

24 24. On information and belief, the Sweater and similar offending GAP products are not worth the
25 purchase price paid by Plaintiff and putative Class members. The precise amount of damages
26 will be proven at the time of trial, in large part, by expert testimony.

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28 ⁵ See Plaintiff's Exhibit A.

1 25. Plaintiff and Class members were undoubtedly injured as a result of Defendant's false "100%
2 Extra Fine Merino Wool" representation that is at issue in this matter.

3 **CLASS ACTION ALLEGATIONS**

4 26. Plaintiff alleges and incorporates by reference all of the above paragraphs of this Complaint
5 as though fully stated herein.

6 27. Plaintiff brings this action individually and on behalf of all others similarly situated against
7 Defendant. Plaintiff represents, and is a member of the Class, ("the Class") consisting of:

8 All persons within California who purchased one or more of
9 Defendant's products that were advertised as "100% Extra Fine
10 Merino Wool," but were in fact only made of less than 100% Extra
11 Fine Merino Wool, within the four years prior to the filing of the
12 Complaint.

12 28. Defendant and its employees and/or agents are excluded from the Class. Plaintiff does not
13 know the number of members in the Class, but Plaintiff currently believes that there are
14 hundreds of thousands, if not more, members of the Class within the State of California. This
15 matter should therefore be certified as a Class Action to assist in the expeditious litigation of
16 this matter.

17 29. The members of the Class are so numerous and geographically disbursed that joinder of all
18 Class members is impractical and the disposition of their claims in the Class action will
19 provide substantial benefits both to the parties and to the court. The Class can be identified
20 through Defendant's records and/or Defendant's agents' records.

21 30. There is a well-defined community of interest in the questions of law and fact involved
22 affecting the parties to be represented. Common questions of fact and law exist in this matter
23 that predominate over questions that may affect individual Class members, including but not
24 limited to:

- 25 a. Whether Defendant participated in or committed the wrongful conduct alleged
26 herein;
- 27 b. Whether Defendant's acts, transactions, or course of conduct constitute the violations
28 of law alleged herein;

- 1 c. Whether the members of the Class sustained and/or continue to sustain damages
- 2 attributable to Defendant's conduct, and, if so, the proper measure and appropriate
- 3 formula to be applied in determining such damages; and
- 4 d. Whether the members of the Class are entitled to injunctive and/or any other
- 5 equitable relief.

6 31. Plaintiff's claims are typical of the claims of all other members of the Class and involve the
7 same violations of law by Defendant as other Class members' claims. Plaintiff and members
8 of the Class also sustained damages arising out of Defendant's common course of conduct
9 complained herein.

10 32. As a person in who purchased one or more of Defendant's products, that were falsely
11 advertised with a "100% Extra Fine Merino Wool," but were in fact made out of only 68%
12 Extra Fine Merino Wool, Plaintiff is asserting claims that are typical of the Class. Plaintiff
13 will fairly and adequately represent and protect the interests of other members of the Class in
14 that Plaintiff has no interests antagonistic to any member of the Class. Furthermore, Plaintiff
15 has retained counsel who possesses significant class action litigation experience.

16 33. This suit seeks only damages and injunctive relief for recovery of economic injury on behalf
17 of the Class, and it expressly is not intended to request any recovery for personal injury and
18 claims related thereto. Plaintiff reserves the right to expand the Class definition to seek
19 recovery on behalf of additional persons as warranted as facts are learned in further
20 investigation and discovery.

21 34. Plaintiff and the members of the Class have all suffered irreparable harm as a result of the
22 Defendant's unlawful and wrongful conduct. Absent a representative Class action, members
23 of the Class will continue to face the potential for irreparable harm described herein. In
24 addition, these violations of law will be allowed to proceed without remedy and Defendant
25 will likely continue such illegal conduct. Because of the size of the individual Class
26 member's claims, few, if any, Class members could afford to seek legal redress for the
27 wrongs complained of herein. Furthermore, even if separate actions could be brought by
28 individual purchasers, the resulting multiplicity of lawsuits would cause undue hardship and

1 expense for both the Court and the litigants, as well as create the risk of inconsistent rulings
2 and adjudications that might be dispositive of the interests of similarly situated purchasers,
3 thereby substantially impeding purchasers' ability to protect their interests, while establishing
4 incompatible standards of conduct for Defendant.

5 35. Defendant has acted and/or refused to act on grounds generally applicable to the Plaintiff and
6 other members of the Class, thereby rendering class certification and final injunctive relief
7 and corresponding declaratory relief with respect to members of the Class as a whole
8 appropriate.

9 36. As discussed above, numerous common questions of fact and law exist in this matter. These
10 questions predominate over the individual questions presented in this action.

11 37. Plaintiff has retained counsel experienced in handling class action claims and claims
12 involving violations of the consumer laws, and specifically violations of the consumer
13 protection statutes alleged in this action.

14 38. A class action is a superior method for the fair and efficient adjudication of this controversy.
15 Class-wide damages are essential to induce Defendant to comply with federal and California
16 law. The interest of Class members in individually controlling the prosecution of separate
17 claims against Defendant is small because the damages suffered by individual members of
18 the Class may be minimal. As a result, the expense and burden and litigation would prevent
19 Class members from individually redressing the wrongs done to them. A representative class
20 action is both the appropriate vehicle by which to adjudicate these claims and is essential to
21 the interests of justice. Furthermore, a class action regarding the issues presented in this
22 matter creates no significant problems of manageability.

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FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT

CAL. CIV. CODE SECTION 1750, ET SEQ.

39. Plaintiff alleges and incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

40. Plaintiff brings this cause of action is pursuant to section 1750 on behalf of herself and on behalf of the putative Class.

41. California Civil Code section 1750 et seq., entitled the Consumers Legal Remedies Act (hereinafter "CLRA"), provides a list of "unfair or deceptive" practices in a "transaction" relating to the sale of "goods" or "services" to a "consumer." The Legislature's intent in promulgating the CLRA is expressed in Civil Code Section 1760, which provides, *inter alia*, that its terms are to be:

Construed liberally and applied to promote its underlying purposes, which are to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection.

42. Defendant's Sweater and other similar offending GAP products purchased by Plaintiff and the Class constitute "goods" as defined pursuant to Civil Code Section 1761(a).

43. Plaintiff, and the Class members, are each a "consumer" as defined pursuant to Civil Code Section 1761(d).

44. Each of Plaintiff's and the Class members' purchases of Defendant's products constituted a "transaction" as defined pursuant to Civil Code Section 1761(e).

45. Civil Code § 1770(a)(5) prohibits Defendant from "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have."

46. Defendant violated Civil Code §1770(a)(5) by marketing and deceptively representing that its Sweaters are "100% Extra Fine Merino Wool" when they actually made out of only 68% Extra Fine Merino Wool.

1 47. On information and belief, Defendant's violations of the CLRA set forth herein were done
2 with awareness of the fact that the conduct alleged was wrongful and was motivated solely
3 for Defendant's self-interest, monetary gain and increased profit. Plaintiff further alleges that
4 Defendant committed these acts knowing the harm that would result to Plaintiff and similarly
5 situated consumers; and Defendant engaged in such unfair and deceptive conduct
6 notwithstanding such this knowledge.

7 48. Plaintiff suffered an "injury in fact" because Plaintiff's money was taken by Defendant as a
8 result of Defendant's false "100% Extra Fine Merino Wool" representations set forth on the
9 Defendant's website in the marketing and description of Defendant's Sweater and similar
10 offending GAP products as described above, when Defendant knew, or should have known,
11 that the representations were unsubstantiated, false, and misleading and that the omissions
12 were of material facts they were obligated to disclose.

13 49. As a direct and proximate result of Defendant's violations of the CLRA, Plaintiff and
14 members of the Class are entitled to a declaration that Defendant violated the Consumers
15 Legal Remedies Act.

16 50. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct
17 in the future.

18 51. Pursuant to section 1782(d) of the California Civil Code ("section 1782(d)"), Plaintiff and the
19 Class seek a Court order enjoining the above-described wrongful acts and practices of
20 Defendant and for restitution and disgorgement.

21 52. Pursuant to section 1782(d), by letter dated February 27, 2017, Plaintiff notified Defendant in
22 writing sent by Certified mail to Defendant through Defendant's counsel of the particular
23 violations of section 1770 and demanded that Defendant rectify the problems associated
24 with the actions detailed above by, among other things, immediately recalling every
25 substandard garment by individually contacting those consumers who received them and
26 replace them with the advertised product free of charge to the affected consumers.
27 Defendant has not agreed to rectify the problems associated with the actions detailed above
28 by initiating corrective advertising or giving notice to all affected consumers within thirty

1 days of the date of written notice pursuant to section 1782. Therefore, Plaintiff and the
2 Class further seek claims for actual, punitive, and statutory damages, as deemed
3 appropriate.

4 53. Pursuant to section 1780(e) of the California Civil Code ("section 1780(e)"), Plaintiff and
5 the Class make claims for damages and attorneys' fees and costs.

6 54. Additionally, Plaintiff and the Class demand judgment against Defendant for damages,
7 restitution, pre and post judgment interest, injunctive and declaratory relief, corrective
8 advertising, costs and attorneys' fees incurred in bringing this action, and any and all other
9 relief that this Court may deem appropriate.

10 **SECOND CAUSE OF ACTION**

11 **VIOLATION OF BUS. & PROF. CODE, SECTION 17200, ET SEQ.**

12 **[CALIFORNIA'S UNFAIR COMPETITION LAW]**

13 55. Plaintiff alleges and incorporates by reference all of the above paragraphs of this Complaint
14 as though fully stated herein.

15 56. As alleged herein, Defendant has marketed and sold the Sweater and similar GAP products
16 purchased by Plaintiff and the Class in a way that misleads consumers, including Plaintiff
17 and the putative class, into believing that Defendant's Sweater, and other similar GAP
18 products, are "100% Extra Fine Merino Wool." despite the fact that these products are
19 actually made out of only 68% Extra Fine Merino Wool.

20 57. Plaintiff and Defendant are each "person[s]" as defined by California Bus. & Prof. Code §
21 17201. California Business & Professions Code § 17204 authorizes a private right of action
22 on both an individual and representative basis.

23 58. "Unfair competition" is defined by Bus. & Prof. Code section § 17200 as encompassing
24 several types of business "wrongs," four of which are at issue here: (1) an "unlawful"
25 business act or practice, (2) an "unfair" business act or practice, (3) a "fraudulent" business
26 act or practice, and (4) "unfair, deceptive, untrue or misleading advertising." The definitions
27 in §§ 17200, et seq. are drafted in the disjunctive, meaning that each of these "wrongs"
28 operates independently from the others.

1 59. By and through Defendant's conduct alleged in further detail above and herein, Defendant
2 engaged in conduct which constitutes unlawful, unfair, and/or fraudulent business practices
3 prohibited by Bus. & Prof. Code §§ 17200, et seq.

4 *A. Unlawful Prong*

5 60. A business act or practice is "unlawful" under the UCL if it violates any other law or
6 regulation.

7 61. California's Bus. & Prof. Code § 17200 prohibits any "unlawful," "fraudulent," or
8 "unfair" business act or practice and any false or misleading advertising. In the course of
9 conducting business, Defendant committed unlawful business practices by, among other
10 things, making the representations (which also constitute advertising within the meaning
11 of section 17200) and omissions of material facts, as set forth more fully herein, and
12 violating *inter alia* §§ 17500 et seq., §§ 1750 of the California Civil Code and the common
13 law.

14 62. As further alleged below, because Defendant has California's Bus. & Prof. Code §
15 17500, California's False Advertising Law ("FAL"), Defendant has violated California's
16 Bus. & Prof. Code § 17200 et seq., which provides a cause of action for an "unlawful"
17 business act or practice perpetrated on members of the California public.

18 63. Further, pursuant to 15 U.S.C. § 45(a)(1), the FTCA prohibits "unfair or deceptive acts or
19 practices in or affecting commerce," and specifically prohibits false advertisements. 15
20 U.S.C. § 52(a).

21 64. Beginning at a date currently unknown through the time of this Complaint, Defendant has
22 committed acts of unfair competition, including those described above, by engaging in a
23 pattern of "unlawful" business practices, within the meaning of Bus. & Prof. Code § 17200 et
24 seq. by manufacturing, distributing, advertising and/or marketing Defendant's products with
25 a false representation that the products referenced herein are "100% Extra Fine Merino
26 Wool" when Defendant's products are in fact made out of only 68% Extra Fine Merino
27 Wool.

28 65. Defendant had other reasonably available alternatives to further its legitimate business

1 interest, other than the conduct described herein, such as selling the offending Sweater, and
2 other similar GAP products, without falsely and deceptively stating and/or misrepresenting
3 the percentage of Extra Fine Merino Wool contained in Defendant's product.

4 ***B. "Unfair" Prong***

5 66. California Bus. & Prof. Code §§ 17200, et seq. also prohibits any unfair business act or
6 practice.

7 67. Beginning at a date currently unknown and continuing up through the time of this Complaint,
8 Defendant has committed acts of unfair competition that are prohibited by Bus. & Prof. Code
9 § 17200 et seq. Defendant engaged in a pattern of "unfair" business practices that violate the
10 wording and intent of the statutes by engaging conduct and practices that threaten an
11 incipient violation of law/s or violate the policy or spirit of law/s by manufacturing,
12 distributing, advertising and/or marketing Defendant's products with the representation that
13 its product consists 100% Extra Fine Merino Wool in violation of Bus. & Prof. Code §§
14 17500 et seq. when in fact Defendant's Sweater and other similar GAP products are in fact
15 made out of less than 100% Extra Fine Merino Wool.

16 68. Further, Defendant engaged in a pattern of "unfair" business practices that violate the
17 wording and intent of the abovementioned statute/s by engaging in practices that are
18 immoral, unethical, oppressive or unscrupulous, the utility of such conduct, if any, being far
19 outweighed by the harm done to consumers and against public policy by, among other things,
20 engaging in false advertising by misrepresenting and omitting material facts regarding
21 Defendant's products with a false country of origin designation, in violation of Bus. & Prof.
22 Code section 17500 et seq. by falsely representing that the products referenced herein are
23 "100% Extra Fine Merino Wool" when Defendant's products are in fact made out of less than
24 100% Extra Fine Merino Wool.

25 69. Alternatively, Defendant engaged in a pattern of "unfair" business practices that violate the
26 wording and intent of the abovementioned statute/s by, among other things, engaging in false
27 advertising by misrepresenting and omitting material facts regarding Defendant's products
28 with a false country of origin designation, in violation of Bus. & Prof. Code section 17500 et

1 seq. by falsely representing that the products referenced herein are "100% Extra Fine Merino
2 Wool;" wherein: (1) the injury to the consumer was substantial; (2) the injury was not
3 outweighed by any countervailing benefits to consumers or competition; and (3) the injury
4 was not of the kind that consumers themselves could not have reasonably avoided.

5 *C. "Fraudulent" Prong*

6 70. California Bus & Prof. Code §§ 17200, et seq. also prohibits any "fraudulent business act or
7 practice."

8 71. Beginning at a date currently unknown and continuing up through the time of this Complaint,
9 Defendant engaged in acts of unfair competition, including those described above and herein,
10 prohibited and in violation of Bus. & Prof. Code § 17200 et seq. by engaging in a pattern of
11 "fraudulent" business practices within the meaning of Bus. & Prof. Code § 17200 et seq., by
12 manufacturing, distributing, and/or marketing Defendant's Sweater, and similarly advertised
13 GAP products, with the representation that the products referenced herein are "100% Extra
14 Fine Merino Wool" when Defendant's products are in fact consist of only 68% Extra Fine
15 Merino Wool.

16 72. Defendant's actions, claims, nondisclosures, and misleading representations, as more fully set
17 forth above, were also false, misleading and/or likely to deceive the consuming public within
18 the meaning of Cal. Bus. & Prof. Code §§ 17200, et seq.

19 73. Defendant engaged in fraudulent acts and business practices by knowingly or negligently
20 representing to Plaintiff, and other similarly situated consumers, that Defendant's Sweaters,
21 and similar GAP products, were made of 100% Extra Fine Merino Wool while they were in
22 fact made of only 68% Extra Fine Merino Wool.

23 74. Plaintiff reserves the right to allege further conduct that constitutes other fraudulent business
24 acts or practices. Such acts and omissions by Defendant are unlawful and/or unfair and/or
25 fraudulent and constitute a violation of Business & Professions Code section 17200 et seq.
26 Plaintiff reserves the right to identify additional violations by Defendant as may be
27 established through discovery.

28

1 75. Plaintiff and other members of the putative Class have in fact been deceived as a result of
2 their reliance upon Defendant's material representation as described above. As a result of
3 this reliance, Defendant has caused harm to Plaintiff and other members of the Class who
4 each purchased Defendant's products falsely advertised as 100% Extra Fine Merino Wool.
5 Plaintiff and the other members of the putative Class have suffered injury in fact and lost
6 money as a result of these unlawful, unfair, and fraudulent business practices.

7 76. As a result of Defendant's unfair conduct and deception, Plaintiff and members of the
8 putative Class have been injured because had they been aware that Defendant's product was
9 not in fact made of 100% Extra Fine Merino Wool, they would not have purchased
10 Defendant's product, or would have paid less for the product, or would have purchased a
11 different product from another competing manufacturer.

12 77. As a direct and proximate result of Defendant's unlawful, unfair and fraudulent conduct
13 described herein, Defendant has been and will continue to receive unjust revenue and profit at
14 the expense of its competitors and the public. Defendant has and will continue to be unjustly
15 enriched by the receipt of ill-gotten gains from customers, including Plaintiff, who
16 unwittingly provided money to Defendant based on Defendant's fraudulent "100% Extra Fine
17 Merino Wool" representations when Defendant's products are in fact made out of only 68%
18 Extra Fine Merino Wool.

19 78. Plaintiff suffered an "injury in fact" because Plaintiff's money was taken by Defendant as a
20 result of Defendant's false "100% Extra Fine Merino Wool" representations set forth on the
21 Defendant's website in the marketing and description of Defendant's offending products.

22 79. Unless Defendant is enjoined from continuing to engage in the unlawful, unfair, fraudulent,
23 untrue, and deceptive business acts and practices as described herein, Plaintiff and similarly
24 situated consumers will continue to be exposed to and harmed by Defendant's unlawful,
25 unfair, and/or fraudulent business acts or practices.

26 80. Plaintiff and the Class seek restitution of excess monies paid to Defendant associated with the
27 false representation that Defendant's Sweaters and other similar GAP products are made of
28 100% Extra Fine Merino Wool as set forth on Defendant's website in the marketing and

1 description of the offending Sweater and other similar GAP products purchased by Plaintiff
2 and the Class.

3 81. Additionally, Plaintiff and the Class demand judgment against Defendant for damages,
4 restitution, pre and post judgment interest, injunctive and declaratory relief, corrective
5 advertising, costs and attorneys' fees incurred in bringing this action, and any and all other
6 relief that this Court may deem appropriate.

7 82. In prosecuting this action for the enforcement of important rights affecting the public interest,
8 Plaintiff seeks the recovery of attorneys' fees, which is available to a prevailing plaintiff in
9 class action cases such as this matter.

10 **THIRD CAUSE OF ACTION**

11 **VIOLATION OF BUS. & PROF. CODE §§ 17500, ET SEQ.**

12 **[CALIFORNIA'S FALSE ADVERTISING LAW]**

13 83. Plaintiff alleges and incorporates by reference all of the above paragraphs of this Complaint
14 as though fully stated herein.

15 84. Plaintiff brings this cause of action on behalf of herself and on behalf of the putative Class.

16 85. Plaintiff and Defendant are both "person[s]" as defined by Cal. Bus. & Prof. Code § 17506.
17 Cal. Bus. & Prof. Code § 17535 authorizes a private right of action on both an individual
18 and representative basis.

19 86. The misrepresentations, acts, and non-disclosures by Defendant of the material facts detailed
20 herein constitute false and misleading advertising and therefore violate Cal. Bus. & Prof.
21 Code §§ 17500, et seq.

22 87. At all times relevant, Defendant's advertising and promotion regarding its Sweater, and
23 similar GAP products, being "100% Extra Fine Merino Wool" was untrue, misleading, and
24 likely to deceive the reasonable consumer and the public, and, in fact, has deceived Plaintiff
25 and consumers similarly situated by representing that Defendant's products were "100%
26 Extra Fine Merino Wool" when in fact Defendant knew and failed to disclose or truthfully
27 advertise that its products in fact consisted of less than "100% Extra Fine Merino Wool."

28 88. Defendant engaged in the false and/or misleading advertising as alleged herein with the

1 intent to directly or indirectly induce the purchase of Defendant's product, which Defendant
2 knew, or had reason to know, was not in fact ""100% Extra Fine Merino Wool" as
3 Defendant advertised to Plaintiff and the public.

4 89. In making and publicly disseminating the statements and/or omissions alleged herein,
5 Defendant knew or should have known that the statements and/or omissions were untrue or
6 misleading, and acted in violation of California Business & Professions Code §§ 17500 *et*
7 *seq.*

8 90. Plaintiff and members of the putative Class have suffered injury in fact and have lost money
9 and/or property as a result of Defendant's false advertising, as more fully set forth herein.
10 Plaintiff and members of the Class have been injured because they were induced to purchase
11 and overpay for Defendant's product based on the belief that Defendant's products were
12 "100% Extra Fine Merino Wool." Plaintiff and members of the putative Class have been
13 injured because had they been made aware that Defendant's product was not "100% Extra
14 Fine Merino Wool" they would have not purchased Defendant's product, or would have
15 paid less for the product, or would have purchased different product from another competing
16 manufacturer.

17 91. At a date presently unknown to Plaintiff, but at least four years prior to the filing of this
18 action, and as set forth above, Defendant has committed acts of untrue and misleading
19 advertising, as defined by Bus. & Prof. Code §§ 17500 *et seq.*, by engaging in the false
20 advertising and promotion of the offending Sweater and other similar GAP products as
21 "100% Extra Fine Merino Wool" on Defendant's website.

22 92. The false and misleading advertising of Defendant, as described above, presents a
23 continuing threat to consumers, as Defendant continues to use the deceptive labels and
24 advertising, which will continue to mislead consumers who purchase Defendant's products
25 under false or misleading premises.

26 93. As a result of the conduct described above, Defendant has been unjustly enriched at the
27 expense of Plaintiff and members of the putative Class. Specifically, Defendant has been
28 unjustly enriched by obtaining revenues and profits that would not have otherwise been

1 101. Plaintiff and other similarly situated persons in California saw, believed, and relied upon
2 Defendant's advertising representations and, in reliance on them, purchased Defendant's
3 product.

4 102. At all times relevant, Defendant made the misrepresentations herein alleged when Defendant
5 knew, or should have known, these representations to be untrue, and Defendant had no
6 reasonable basis for believing the representations to be true.

7 103. As a proximate result of Defendant's negligent misrepresentations, Plaintiff and other
8 similarly situated consumers were induced to purchase, purchase more of, or pay more for,
9 Defendant's product in reliance on the misrepresentations and omissions of Defendant as
10 alleged in detail above, and incurred damages in an amount to be determined at trial, during
11 the Class Period.

12 104. In prosecuting this action for the enforcement of important rights affecting the public
13 interest, Plaintiff seeks the recovery of attorneys' fees, which is available to a prevailing
14 plaintiff in class action cases such as this matter.

15 **PRAYER FOR RELIEF**

16 **WHEREFORE**, Plaintiff respectfully requests the Court grant Plaintiff and the Class
17 members the following relief against Defendant:

- 18 • That this action be certified as a Class Action on behalf of the Class and Plaintiff be
19 appointed to serve as the representative of the Class in this matter and Plaintiff's Counsel
20 be appointed as Class Counsel;
- 21 • That Defendant's wrongful conduct alleged herein be adjudged and decreed to violate the
22 consumer protection statutory claims asserted herein;
- 23 • That Plaintiff and each of the other members of the Class recover a minimum of \$1,000
24 statutory damages pursuant to Cal. Civ. Code § 1780(a) and/or any other applicable law;
- 25 • That Plaintiff and each of the other members of the Class recover actual damages, subject
26 to proof at trial, pursuant to Cal. Civ. Code § 1780(a) and/or any other applicable law;
- 27 • That Plaintiff and each of the other members of the Class recover punitive damages
28 pursuant to Cal. Civ. Code § 1780(a) and/or any other applicable law;

- 1 • That Plaintiff and each of the other members of the Class be awarded restitutionary
2 disgorgement and recover the amounts by which Defendant has been unjustly enriched;
3 • That Defendant be enjoined from continuing the wrongful conduct alleged herein and
4 required to comply with all applicable laws;
5 • That Plaintiff and each of the other members of the Class recover their costs of suit,
6 including reasonable attorneys' fees and expenses as provided by law per Cal. Civ. Code
7 § 1780(d), Code of Civil Procedure § 1021.5, and/or any other applicable law; and
8 • Any other relief the Court may deem just and proper.

9 **TRIAL BY JURY**

10 105. Pursuant to the Seventh Amendment to the Constitution of the United States of America,
11 Plaintiff is entitled, and demands, a trial by jury.

12
13 Dated: September 20, 2017

Respectfully submitted,

14 **KAZEROUNI LAW GROUP, APC**

15
16 By: 

17 ABBAS KAZEROUNIAN, ESQ.
18 MONA AMINI, ESQ.
19 ATTORNEYS FOR PLAINTIFF

20 [ADDITIONAL PLAINTIFF'S COUNSEL]

21 **HYDE & SWIGART**

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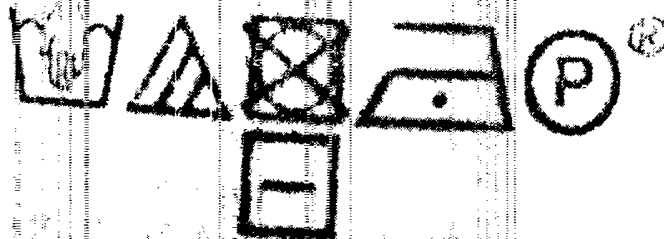
EXHIBIT A

S
P
42-44/91-97CM
CH

MADE IN CHINA

RN 94023

US GB : 68% MERINOS EXTRA FINE
Wool, 20% COTON, 6% RAYON,
VISCOSE, 6% NYLON



1105

HAND WASH COLD/ ONLY NON-
CHLORINE BLEACH WHEN NEEDED/
DRY FLAT/ COOL IRON

IMPORTED FOR: Gap (UK Holdings) Ltd,
Berkeley Square House / Berkeley Square,
London W1J 8JS

CA 17897

Одежда второго слоя

FABRIQUE EN CHINE/ HECHO EN
CHINA/ DIBUAT DI TIONGKOK/
СДЕЛАНО В КИТАЕ/ MADE IN CHINA

CA : 68% LAINE MERINOS EXTRA
FINE, 20% COTON, 6% VISCOSE,
6% NYLON. FR/MA : 68% LAINE
MERINOS EXTRA FINE, 20% COTON,

EXHIBIT B

1 **KAZEROUNI LAW GROUP, APC**
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3 mona@kazlg.com
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4 Costa Mesa, CA 92626
Telephone: (800) 400-6808
5 Facsimile: (800) 520-5523

6 [ADDITIONAL COUNSEL ON SIGNATURE PAGE]

7 *Attorneys for Plaintiff,*
Zena L. Evans

8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF ALAMEDA**

11

12 **ZENA L. EVANS; INDIVIDUALLY**
13 **AND ON BEHALF OF ALL OTHERS**
SIMILARLY SITUATED,

14

Plaintiff,

15

16

v.

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THE GAP, INC.,

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Defendant.

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28 //

Case No.:

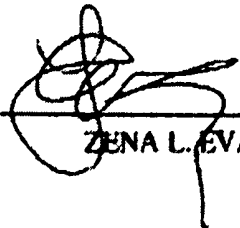
**PLAINTIFF'S CONSUMER LEGAL
REMEDIES ACT VENUE AFFIDAVIT
PURSUANT TO CIVIL CODE § 1780(D)**

AFFIDAVIT PURSUANT TO CIVIL CODE § 1780(D)

1
2 I, ZENA L. EVANS, declare and state as follows:

- 3 1. I have personal knowledge of the following facts stated in this declaration and could competently
4 testify thereto if called upon to do so.
- 5 2. I am the named plaintiff in the above-captioned action involving, among other things, a cause of
6 action against Defendant THE GAP, INC. ("Defendant") for violation of the Consumers Legal
7 Remedies Act.
- 8 3. Sometime in December 2016, I purchased the sweater that is the subject of this action from
9 Defendant's website.
- 10 4. I am, and at all times relevant to this action have been, a resident of the county of Alameda in the
11 State of California.

12
13 I declare under the penalty of perjury under the laws of the State of California that the foregoing
14 is true and correct. Executed this 17th day of September 2017 in Fremontville, California.

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ZENA L. EVANS