

1 Law Offices of Todd M. Friedman, P.C.  
2 Todd M. Friedman, Esquire  
3 tfriedman@toddfllaw.com  
4 21550 Oxnard St., Ste. 780  
5 Woodland Hills, CA 91367  
6 Tel: 877-206-4741  
7 Fax: 866-633-0228

8 *Attorney for Plaintiffs*

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco  
**11/08/2018**  
Clerk of the Court  
BY:ERNALYN BURA  
Deputy Clerk

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF SAN FRANCISCO**

11 CARMEN ANDREWS, LAURIE MUNNING,  
12 CARON COLADONATO, and MICHAEL  
13 PALLAGROSI, on behalf of themselves and all  
14 others similarly situated,

15 Plaintiffs,

16 v.

17 THE GAP, INC.; GAP (APPAREL) LLC; GAP  
18 INTERNATIONAL SALES, INC.; BANANA  
19 REPUBLIC, LLC; and BANANA REPUBLIC  
20 (APPAREL) LLC,

21 Defendants.

CASE NO.: CGC-18-567237

**CLASS ACTION**

**AMENDED COMPLAINT FOR  
DAMAGES, INJUNCTIVE, &  
DECLARATORY RELIEF FOR  
VIOLATIONS OF CALIFORNIA,  
NEW JERSEY, AND FLORIDA  
CONSUMER FRAUD STATUTES  
AND CALIFORNIA COMMON  
LAW**

22 Plaintiffs Carmen Andrews, Laurie Munning, Caron Coladonato, and Michael Pallagrosi,  
23 individually and on behalf of all others similarly situated, through their undersigned attorneys,  
24 file this amended class action complaint against Defendants and allege as follows:

25 **NATURE OF THE ACTION**

26 1. Plaintiffs bring this proposed class action on behalf of a nationwide class of  
27 consumers against Defendants who are each citizens of California, alleging violations of the  
28 consumer protection laws of California, New Jersey, and Florida and California common law.

2. Specifically, it is alleged that Defendants engaged in a uniform policy of advertising  
and displaying fictitious purported former prices and percentage-off discounts in the advertising,

1 marketing, and sale of apparel and other personal items via their physical and online Gap Outlet,  
2 Gap Factory, and Banana Republic Factory stores (hereinafter referred to collectively as “Factory  
3 stores”) in California and throughout the United States.

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

6 4. First, Defendants have a uniform policy of creating and listing an arbitrary “fake”  
7 base price, which purports to be an item’s former, original and/or regular price at which the item  
8 is customarily sold, for every item offered for sale in their Factory stores (hereafter “fake base  
9 price”). See Exhibit A, Gap Outlet tag, stating the base price of the women’s select “**STRAIGHT**  
10 **KHAKIS**” purchased by Plaintiff Andrews to be “**\$49.99.**”

11 5. These fake base prices are created by Defendants, using a standardized formula and  
12 a uniform set of criteria created by Defendants. Meanwhile, Defendants’ Factory stores are the  
13 exclusive sellers of the large majority – if not all – of the items they offer, as these items are  
14 typically manufactured exclusively for Defendants’ Factory stores.

15 6. The fake base prices are much higher than the prices at which the items in question  
16 are normally and customarily sold or offered for sale by Defendants. These fake base prices are  
17 then used by Defendants to create the misleading impression in the minds of consumers that the  
18 prices of the items have been “discounted” when Defendants offer to sell these items at a price far  
19 lower than the fake base price. See Exhibit B, Gap Outlet Store Receipt, stating there was an  
20 “**Item Discount 50%**” on the “**STRAIGHT KHAKI**” pants purchased by Plaintiff Andrews,  
21 resulting in a purported sale price of “**\$24.99.**” In actuality, the lower, purportedly discounted  
22 prices are the prices at which Defendants consistently and regularly sell the items in question. In  
23 fact, the overwhelming majority of these items are never actually sold or offered for sale at the  
24 listed higher fake base price for any length of time.

25 7. In some cases, the items are offered for sale at the purported base price, but only  
26 for a very short period – usually seven days or less, out of an 18 month or greater timespan during  
27 which the item is offered for sale.

1           8. For example, during the 16 month period prior to Plaintiff Andrew’s purchase of  
2 the “**STRAIGHT KHAKI**” pants on February 9, 2018, Defendants only offered this item for sale  
3 at a price as high as \$49.99 for a total of seven days, from April 28, 2017 to May 4, 2017. See  
4 Exhibit C, which is a chart showing the daily price history of the product as offered at Gap Outlet  
5 stores from February 18, 2016 to April 21, 2018, based on counsel’s investigation.

6           9. Yet Defendants consistently advertised an inflated fake base price, listing that fake  
7 price on the item’s price tags and website page in their Factory stores, and on the sales receipts for  
8 the item, in order to create the false impression in the minds of consumers that the usual price at  
9 which Defendants regularly and ordinarily sold the item was \$49.99.

10          10. Defendants also perpetually advertise the items for sale on uniformly-worded signs  
11 in their physical Factory stores and via large banners on their websites. For example, the khaki  
12 pants purchased by Plaintiff Andrews were displayed beneath a sign which stated “**50% OFF.**”  
13 This practice is deceptive and misleading because the advertised percentage-off discounts claimed  
14 on such signs and notices – such as “**50% OFF**” – do not represent an actual discount. Rather, the  
15 purported percentage-off discount listed on such signs and notices merely represents the difference  
16 between the higher fake base price created by Defendants and the lower, purportedly-discounted  
17 price at which Defendants regularly sell the item in the normal course of business.

18          11. Defendants bolster the above-referenced scheme by presenting customers at their  
19 physical Factory stores with a written receipt which re-states the fake purported percentage off  
20 discount displayed on the signs referenced above. See Exhibit B, Plaintiff Andrews’s Gap Outlet  
21 Receipt, which states “**Item Discount 50%**” on the “**STRAIGHT KHAKI**” pants. This same  
22 form receipt also contains a statement at the end, falsely stating to the customer that “**You Saved**  
23 **[a specific dollar amount].**” See Exhibit B, Andrews Receipt from Gap Outlet store, stating  
24 “**You Saved 25.00**” on the purchase of the “**STRAIGHT KHAKI**” pants.

25          12. The statements on these receipts are false and misleading. The amount of the  
26 purported “savings” listed on such receipts is simply the difference between the higher fake base  
27 price created by Defendants and the lower purportedly-discounted price at which the item is  
28

1 regularly and consistently sold by Defendants in the ordinary course of business. Thus, the  
2 purported “savings” claimed on such receipts are entirely illusory. Customers are not actually  
3 saving anything. They are simply buying an item at the same price at which Defendants regularly  
4 and consistently sell the item in question.

5 13. The deceptive practice and policy alleged herein is not limited to any single item  
6 or group of items. Rather, Defendants’ deceptive advertising practice regarding listing fake  
7 “regular” prices and purported “discounts” was systematic and pervasive at Factory stores –  
8 both physical and online – as to each product for which a lower purported discount price and  
9 higher purported regular price were listed by Defendants.

10 14. Federal regulations, as well as the consumer protection laws of California, New  
11 Jersey, and Florida, prohibit the advertising of fake former prices, “phantom” price reductions  
12 and deceptive claims of percentage-off discounts which are based on inflated, fictitious  
13 “regular” prices. See, e.g., 16 C.F.R. § 233.1; Hinojos v. Kohl’s Corp., 718 F.3d 1098, 1101  
14 (9th Cir. 2013) (“Because such practices are misleading – and effective – the California  
15 legislature has prohibited them.”) (emphasis added).

16 15. By advertising these purported percentage-off discounts and these fake former  
17 prices, Defendants have violated California, New Jersey, and Florida consumer protection laws  
18 as alleged herein.

### 19 PARTIES

20 16. Plaintiff Carmen Andrews is a citizen of California, residing in Banning,  
21 Riverside County, California. During the class period, Plaintiff Andrews purchased goods from  
22 Defendants’ Gap Outlet store located at 48400 Seminole Drive, Cabazon, California and the Gap  
23 Outlet store located at 27461 San Bernardino Ave, Redlands, California, and she was subjected  
24 to the uniform practices alleged herein, and suffered an ascertainable loss and monetary damages  
25 as a result of Defendants’ unlawful conduct alleged herein.

26 17. Plaintiff Laurie Munning is an individual and citizen of New Jersey. During the  
27 class period, Plaintiff Munning purchased goods from Defendants’ online Gap Factory and Banana  
28

1 Republic Factory store websites and suffered an ascertainable loss and monetary damages as a  
2 result of Defendants' unlawful conduct alleged herein.

3 18. Plaintiff Caron Coladonato is an individual and citizen of New Jersey. During the  
4 class period, Plaintiff Coladonato purchased goods on numerous occasions from Defendants'  
5 Gap Factory stores in New Jersey, was subjected to the practices alleged herein on numerous  
6 occasions, and suffered an ascertainable loss as a result of Defendants' unlawful conduct alleged  
7 herein.

8 19. Plaintiff Michael Pallagrosi is an individual and citizen of Burlington County, New  
9 Jersey. During the class period, Plaintiff Pallagrosi purchased goods from Defendants' Banana  
10 Republic Factory stores located in Florida and New Jersey, was subjected to the practices alleged  
11 herein, and suffered an ascertainable loss and monetary damages as a result of Defendants'  
12 unlawful conduct alleged herein.

13 20. Defendant The Gap, Inc. is a for-profit corporation with its principal place of  
14 business at 2 Folsom Street, 13<sup>th</sup> Floor, San Francisco, California 94105, and thus is a citizen of  
15 California.

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

19 22. Defendant Gap International Sales, Inc. is a for-profit corporation with its principal  
20 place of business at 2 Folsom Street, 13<sup>th</sup> Floor, San Francisco, California 94105, and thus is a  
21 citizen of California.

22 23. Defendant Banana Republic LLC is a for-profit limited liability company with its  
23 principal place of business at 2 Folsom Street, 13<sup>th</sup> Floor, San Francisco, California 94105, and  
24 thus is a citizen of California.

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

1           25. All Defendants have a parent-subsi- dary relationship, in that Defendants Gap  
2 (Apparel) LLC, Gap International Sales, Inc., Banana Republic LLC, and Banana Republic  
3 (Apparel) LLC are each wholly-owned subsidiaries of Defendant The Gap, Inc.

4           26. At all times during the relevant class period, Defendants together owned and  
5 operated, and continue to own and operate, approximately 889 Gap, Gap Outlet, and Gap Factory  
6 retail stores, and approximately 540 Banana Republic and Banana Republic Factory retail stores,  
7 throughout the United States, including California, New Jersey, and Florida.

8           27. Defendants also own and operate the online Gap, Gap Factory, Banana Republic,  
9 and Banana Republic Factory store retail websites, which advertise, market, and sell retail products  
10 in every state in the United States, including California, New Jersey, and Florida, and have done  
11 so throughout the relevant class period.

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

16           29. All uniform policies alleged herein exist at all Factory stores in the United States,  
17 both physical and online. Because these policies are in force at all Factory stores in United States,  
18 it is clear that these uniform policies originated with, emanated from, and were endorsed and  
19 ratified by, the parent corporation which owns and manages all of the Factory stores: Defendant  
20 The Gap, Inc.

21           30. Defendants jointly operate their Factory stores out of their headquarters in San  
22 Francisco, California, which operation entails, *inter alia*, the creation and implementation of the  
23 advertising, marketing, and sales policies described herein, including the sale of items.

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

**JURISDICTION AND VENUE**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

33. This case is properly in state court because it is brought by a California citizen against California defendants and raises no federal claims.

34. Venue is proper in the County of San Francisco because Defendants are each headquartered in the County of San Francisco, in that the principal place of business and headquarters for each Defendant is located in this County. Moreover, Defendants regularly transacted and continue to transact business in this County, in that Defendants operate their Factory stores from this County.

35. Further, the “Terms of Use” set forth on Defendants’ websites, which purport to give rise to a binding agreement between Defendants and users of the sites, which include Plaintiffs and the nationwide class members, purport to require that any claims brought against Defendants regarding purchases made through Defendants’ websites be resolved, inter alia, by the courts of the State of California, County of San Francisco.

**THE UNIFORM POLICY WHICH GIVES RISE TO THE CLASS CLAIMS**

36. One of the most effective techniques in advertising is for a seller to offer customers a reduction from the seller’s own former price for an item.

37. This technique is widely used because sellers know the truth of the old adage “everyone loves a bargain” and understand that a product’s “regular” price – the price at which a product is generally sold in the marketplace – matters to consumers.

1           38.     Indeed, numerous studies show that a consumer is much more likely to purchase an  
2 item if they are told that it is being offered at a price less than the price at which the seller or its  
3 competitors have previously sold the product; where they are being told that an item is worth much  
4 more than what they are currently being asked to pay for it.

5           39.     For example, a well-respected study by Dhruv Grewal & Larry D. Compeau,  
6 “Comparative Price Advertising: Informative or Deceptive?”, 11 J. of Pub. Pol’y & Mktg. 52, 55  
7 (Spring 1992), concludes that “[b]y creating an impression of savings, the presence of a higher  
8 reference price enhances [consumers’] perceived value and willingness to buy [a] product.”

9           40.     Numerous other articles and studies have reached the same conclusion. See  
10 Compeau & Grewal, in “Comparative Price Advertising: Believe It Or Not”, J. of Consumer  
11 Affairs, Vol. 36, No. 2, at 287 (Winter 2002) (noting that “decades of research support the  
12 conclusion that advertised reference prices do indeed enhance consumers’ perceptions of the  
13 value of the deal” and concluding that “[c]onsumers are influenced by comparison prices  
14 even when the stated reference prices are implausibly high.”); Joan Lindsey-Mullikin & Ross  
15 D. Petty, “Marketing Tactics Discouraging Price Search: Deception and Competition”, 64 J. of  
16 Bus. Research 67 (January 2011) (concluding that “[r]eference price ads strongly influence  
17 consumer perceptions of value”); Praveen K. Kopalle & Joan Lindsey-Mullikin, “The Impact of  
18 External Reference Price On Consumer Price Expectations”, 79 J. of Retailing 225 (2003),  
19 (concluding that “research has shown that retailer-supplied reference prices clearly enhance  
20 buyers’ perceptions of value” and “have a significant impact on consumer purchasing  
21 decisions.”); Dr. Jerry B. Gotlieb & Dr. Cyndy Thomas Fitzgerald, “An Investigation Into the  
22 Effects of Advertised Reference Prices On the Price Consumers Are Willing To Pay For the  
23 Product”, 6 J. of App’d Bus. Res. 1 (1990) (concluding that “consumers are likely to be misled  
24 into a willingness to pay a higher price for a product simply because the product has a higher  
25 reference price.”).



1           41.     Where the former prices listed by the seller are genuine – where the buyer really is  
2 getting an item for a lower price than the one at which it is ordinarily sold – then the “bargain”  
3 promised in a seller’s advertising may be real.

4           42.     Unfortunately, the case at bar is not such a case.

5           43.     The case at bar involves a tactic designed to trick consumers into thinking they are  
6 getting a “bargain,” based on the use of fake former prices which do not reflect a real price at  
7 which the items in question have ever actually been sold by Defendants, who are the exclusive  
8 sellers of the items.

9           44.     California law recognizes the abuses which can flow from the use of fictitious  
10 former prices and fake claims of “discounts” based on such prices. See e.g. Hinojos v. Kohl’s  
11 Corp., 718 F.3d 1098, 1101 (9th Cir. 2013):

12                   **“Most consumers have, at some point, purchased merchandise that was**  
13 **marketed as being ‘on sale’ because the proffered discount seemed too**  
14 **good to pass up. Retailers, well aware of consumers’ susceptibility to a**  
15 **bargain, therefore have an incentive to lie to their customers by falsely**  
16 **claiming that their products have previously sold at a far higher**  
**‘original’ price in order to induce customers to purchase merchandise at**  
**a purportedly marked-down ‘sale’ price. Because such practices are**  
**misleading – and effective – the California legislature has prohibited**  
**them.” (emphasis added)**

17           45.     Indeed, 16 C.F.R. § 233.1 specifically prohibits the advertising of false,  
18 “phantom” price reductions and discounts off inflated, fictitious “regular” prices that never  
19 actually existed. See 16 C.F.R. § 233.1., stating:

20                   **“§ 233.1 Former price comparisons.**

21                   **(a) One of the most commonly used forms of bargain advertising is to**  
22 **offer a reduction from the advertiser’s own former price for an article.**  
23 **If the former price is the actual, bona fide price at which the article was**  
24 **offered to the public on a regular basis for a reasonably substantial**  
25 **period of time, it provides a legitimate basis for the advertising of a price**  
26 **comparison. Where the former price is genuine, the bargain being**  
27 **advertised is a true one. If, on the other hand, the former price being**  
**advertised is not bona fide but fictitious – for example, where an**  
**artificial, inflated price was established for the purpose of enabling the**  
**subsequent offer of a large reduction – the ‘bargain’ being advertised is**  
**a false one; the purchaser is not receiving the unusual value he expects.**  
**In such a case, the ‘reduced’ price is, in reality, probably just the seller’s**

1 regular price.

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

13 \* \* \*

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

22 46. 16 C.F.R. § 233.1(b) makes clear that any statement describing a purported  
23 former price is deceptive unless the purported price comparison is based on a real price at which  
24 the item in question was actually sold in the recent past for a substantial period of time. See 16  
25 C.F.R. § 233.1(b): requiring “that the price is one at which the product was openly and  
26 actively offered for sale, for a reasonably substantial period of time, in the recent, regular  
27 course of his business...”

28 47. New Jersey law also prohibits the use of purported discounts and false or  
deceptive statements regarding former prices to try to induce a purchase and requires any  
statements regarding former prices and purported discounts to be clear, truthful and accurate.  
See e.g. N.J.A.C. § 13:45A-9.6, entitled “Pricing; prohibition on fictitious pricing and  
methods of substantiation” which states:

“(a) An advertiser shall not use a fictitious former price. Use of a  
fictitious former price will be deemed to be a violation of the [New  
Jersey] Consumer Fraud Act.

(b) A former price or price range or the amount of reduction shall be

1 deemed fictitious if it cannot be substantiated, based upon proof:

- 2 1. Of a substantial number of sales of the advertised merchandise, or  
3 comparable merchandise of like grade or quality made within the  
4 advertiser's trade area in the regular course of business at any time  
5 within the most recent 60 days during which the advertised  
6 merchandise was available for sale prior to, or which were in fact  
7 made in the first 60 days during which the advertised merchandise  
8 was available for sale following the effective date of the  
9 advertisement;
- 10 2. That the advertised merchandise, or comparable merchandise of like  
11 grade or quality, was actively and openly offered for sale at that price  
12 within the advertiser's trade area in the regular course of business  
13 during at least 28 days of the most recent 90 days before or after the  
14 effective date of the advertisement; or
- 15 3. That the price does not exceed the supplier's cost plus the usual and  
16 customary mark-up used by the advertising merchant in the actual  
17 sale of the advertised merchandise or comparable merchandise of  
18 like grade or quality in the recent regular course of business."  
19 (emphasis added)

20 48. Similarly, for items with a price of less than \$100, N.J.A.C. §13:45A-9.3(a)(3)  
21 provides that a seller must comply with N.J.A.C. §13:45A-9.4(a)(6), which requires a seller to  
22 specifically:

23 "6. Set forth with specificity when in the remote past a former price of  
24 an item of merchandise was effective if it was not actively or openly  
25 offered for sale within the advertiser's trade area in the regular course  
26 of business during at least 28 of the 90 days before the effective date of  
27 the advertisement. In this regard, when advertising a seasonal sale, such  
28 as Christmas dishes, pool supplies, outdoor furniture, etc., actual dates,  
specific holidays or terms such as 'last season,' may be used to describe  
when the former price was used in the remote past." (emphasis added)

49. Consequently, a purported former price advertised by the seller – by law – must  
be a real price at which that seller or another seller in the same trade area actually offered that  
item for sale for a substantial period of time in the recent past.

50. In the case at bar, virtually all of the products sold at Defendants' Factory stores  
are manufactured by Defendants and are not offered for sale by other retailers. Thus, the  
purported former prices advertised at Defendants' Factory stores must refer to Defendants' own  
former prices.

1           51. Defendants violate the law by having a uniform policy of creating and listing an  
2 artificially high fake base price for every item offered for sale in their Factory stores throughout  
3 the United States; a price which purports to be each item's original or regular, non-discounted  
4 price.

5           52. These fake base prices are created by Defendants, using a set of uniform criteria  
6 created by Defendants, and are not based on any real prices at which the items in question are  
7 actually sold or offered for sale by Defendants, who are the exclusive sellers of the items, for any  
8 substantial period of time.

9           53. Indeed, these fake base prices are much higher than the prices at which the items in  
10 question are customarily sold or offered for sale by Defendants in the regular course of business.

11           54. Such fake base prices are used by Defendants to create the misleading impression  
12 in the minds of consumers that the prices of the items have been "discounted" down from the  
13 higher fake base prices when Defendants offer to sell these items at a price far lower than the fake  
14 base price, often at a purported "50% OFF" discount. See Exhibit B, Receipt Claiming an "Item  
15 **Discount 50%"** on Plaintiff Andrews's purchase.

16           55. In actuality, however, the lower, purportedly discounted prices are actually the true  
17 prices at which Defendants consistently and regularly sell the items in question.

18           56. Put simply, under Defendants' uniform policy, the purported "discount" price is  
19 actually the "real" price at which Defendants regularly and customarily sell the items.

20           57. The purported "original" price listed by Defendants is a ruse because virtually none  
21 of the items offered for sale in Defendants' Factory stores are ever sold for a reasonably substantial  
22 period of time at the higher fake base prices.

23           58. Defendants' deceptive scheme is bolstered by certain related uniform policies.

24           59. Using the fake base price as a starting point, Defendants then perpetually advertise  
25 the items for sale, via uniformly-worded signs and notices, claiming that the items are being sold  
26 for a specified percentage-off discount. This practice is false and misleading because the advertised  
27  
28

1 percentage-off discounts on such signs and notices – such as “50% OFF” – do not represent an  
2 actual discount.

3 60. Rather, the purported percentage-off discount listed on such signs and notices  
4 merely represents the difference between the higher fake base price created by Defendants and  
5 listed on the item’s price tag or webpage and the lower, purportedly-discounted price at which  
6 Defendants regularly sell the item in the normal course of business.

7 61. Defendants also bolster the above-referenced scheme by presenting customers with  
8 a written receipt which states “You Saved [a specific dollar amount]”. See Exhibit B, Gap Outlet  
9 Receipt to Plaintiff Andrews, stating “You Saved 25.00”. These written statements on these  
10 receipts that “You Saved” a specified dollar amount are false and misleading. Again, the amount  
11 of the purported “savings” listed on such receipts is simply the difference between the higher fake  
12 base price created by Defendants and listed on the item’s price tag or webpage and the lower price  
13 at which the item is regularly and consistently sold by Defendants in the ordinary course of  
14 business. Thus, the purported “savings” claimed on such receipts is entirely illusory. Customers  
15 are not actually saving anything. They are simply buying an item at the price at which Defendants  
16 regularly and consistently sell the item.

17 62. The policies described herein are not unique to the items purchased by Plaintiffs.  
18 Rather, Defendants’ deceptive advertising practice regarding listing fake “regular” prices and non-  
19 existent purported “discounts” was systematic and pervasive at all of their Factory stores  
20 throughout the United States and is applied to each product for which a lower purported discount  
21 price and a higher purported regular price were listed by Defendants.

22 63. The policies described herein are employed at all of Defendants’ online and  
23 physical Factory stores throughout the United States.

24 64. Plaintiffs’ experience in purchasing products from Defendants’ Factory stores helps  
25 illustrate Defendants’ unlawful practices described herein.

1           **A. Plaintiff Andrews**

2           65.     On various dates between 2012 and the present, including on February 9, 2018,  
3 Plaintiff Andrews made purchases of purported discounted merchandise at Defendants' Factory  
4 stores in California and was subjected to the uniform practices described herein.

5           66.     For example, on February 9, 2018, Plaintiff Andrews purchased a pair of women's  
6 "STRAIGHT KHAKI" pants from Defendants' Gap Outlet store located at 48400 Seminole  
7 Drive, Cabazon, California.

8           67.     The price tag on that item listed a purported former price of "\$49.99." See Exhibit  
9 A.

10          68.     The item was displayed in Defendants' store beneath a sign which stated "50%  
11 OFF".

12          69.     Defendants charged Plaintiff the purported discounted price of \$24.99 for this item,  
13 representing that this was a discounted price of "50% OFF" and that she had saved \$25 off the  
14 purported \$49.99 non-discounted price of this item. These facts are reflected, inter alia, in the  
15 written receipt which Defendants provided to Plaintiff. See Exhibit B, Plaintiff's Receipt, which  
16 stated "Item Discount 50%" and "You Saved 25.00," while repeating the fake purported non-  
17 discounted price of "49.99" that was listed on the item's price tag.

18          70.     Believing she was getting an item which had previously regularly been sold for  
19 some substantial period of time in the recent past for \$49.99 – an item which she therefore  
20 justifiably believed had an objective value of \$49.99 – Plaintiff Andrews purchased the item for a  
21 purportedly discounted price of \$24.99. See Exhibit B, Plaintiff's Receipt.

22          71.     In actuality, the item purchased by Plaintiff was not sold by Defendants or anyone  
23 else for any substantial period of time for \$49.99.

24          72.     Rather, based on counsel's investigation of Defendants' Gap Outlet store prices, in  
25 the 722 days which preceded Plaintiff's purchase of this item on February 9, 2018, the item had  
26 only been offered at a price of \$49.99 for seven days, between April 28, 2017 and May 4, 2017.

1 See Exhibit C which is a chart showing the daily price history of the product as offered at Gap  
2 Outlet stores from February 18, 2016 to April 21, 2018.

3 73. The fake base price was listed on the item's tags and on the receipts for the item in  
4 order to create the false impression in the minds of consumers that the usual price at which  
5 Defendants regularly and ordinarily sold the item was \$49.99.

6 74. In actuality, Defendants created the purported base price of \$49.99 for the item as  
7 a sales gimmick, knowing that the true, objective value of the item was far less than that amount.  
8 The \$49.99 purported base price was a fake former price created by Defendants according to a  
9 standardized formula. Defendants' offer to sell that item for seven days between April 28, 2017  
10 and May 5, 2017 was nothing more than a thinly veiled attempt by Defendants to "establish" the  
11 fake base price. Defendants were fully aware that Defendants would regularly sell this item for far  
12 less than \$49.99 and that, therefore, any claim that the item's regular price was \$49.99 was  
13 deceptive and misleading.

14 **B. Plaintiff Munning**

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

19 76. The advertised price of the swim trunks, which was set forth below its picture and  
20 description on Defendants' Gap Factory website, appeared in Exhibit D as follows:

21 ~~\$24.99~~ 32% off

22 **Now \$16.99**

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

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

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

5 ~~\$89.99~~ 50% off

6 **Now \$44.98**

7 79. The advertised price of the sweater, which was set forth below its picture and  
8 description on Defendants’ Banana Republic Factory website, appeared at Exhibit D as follows:

9 ~~\$54.99~~ 16% off

10 **Now \$45.98**

11 80. Plaintiff Munning purchased the three items from Defendants’ websites via a single  
12 transaction on March 15, 2016 and paid a single payment to Defendants for the three items that  
13 totaled \$107.95. See Exhibit E.

14 81. On the following day, March 16, 2016, the prices of the swim trunks, dress, and  
15 sweater remained unchanged.

16 82. Indeed, the prices for the swim trunks, dress, and sweater remained unchanged for  
17 the entire week following Plaintiff’s purchase, as did the advertisements on Defendants’ websites  
18 related thereto. See Exhibit E.

19 83. Accordingly, during the week following Plaintiff’s purchase of the swim trunks for  
20 “32% off,” the dress for “50% off,” and the sweater for “16% off,” none of the three items was  
21 ever sold at its listed non-discounted, “original” price. Indeed, the prices of the three items never  
22 exceeded the purported “discounted” or “sale” price that Plaintiff paid.

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



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

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

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

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

13 **C. Plaintiff Coladonato**

14 89. On November 25, 2016, Plaintiff Coladonato visited Defendants' Gap Factory store  
15 located at 100 Premium Outlets Drive, Blackwood, New Jersey, with the intent of taking advantage  
16 of an advertised "Black Friday" sale.

17 90. "Black Friday" is recognized to be one of the biggest shopping days of the year.  
18 The day after Thanksgiving, it is often thought of as the beginning of the Holiday shopping season,  
19 a day when many merchants offer sales and prices that are among the lowest of the year.

20 91. In the front window of the store, Plaintiff observed a large sign posted by  
21 Defendants, similar to the one pictured in Exhibit F, which proclaimed a storewide "sale" with  
22 items discounted by at least 50% off pursuant to the advertised "Black Friday" sale.

23 92. Plaintiff entered the store and purchased several items, including a kid's plaid  
24 button-down shirt and a kid's Gap logo hooded sweatshirt.

25 93. Both items were advertised to be part of a store-wide sale, and specifically were  
26 advertised to be discounted "50% OFF," via signs on the in-store racks similar to those pictured  
27 in Exhibit G.

1           94.     The price tag on the kid’s plaid button-down shirt listed a purported former price  
2 of “\$24.99.” The price tag of the kid’s Gap logo hooded sweatshirt listed a purported former price  
3 of “\$34.99.” See, e.g., Exhibit H, exemplar Factory store price tag listing fake base price.

4           95.     In actuality, neither of these items had ever been sold or offered for sale by  
5 Defendants in their Factory stores (or by anyone, anywhere) for a price as high as that claimed on  
6 their price tags.

7           96.     Based on Defendants’ representation that she was receiving a 50% discount off the  
8 regular price of each these items, Plaintiff purchased both items, paying \$12.50 for the kid’s plaid  
9 button-down shirt and \$17.50 for the kid’s Gap logo hooded sweat shirt. Based on the  
10 representations on the price tags of these items that they had previously been sold for \$24.99 and  
11 \$34.99 respectively, and were being offered for sale at a “50% OFF” discount for only a limited  
12 time pursuant to a “Black Friday” sale, Plaintiff believed she was receiving a kid’s plaid button-  
13 down shirt worth \$24.99 and a kid’s Gap logo hooded sweatshirt worth \$34.99.

14           97.     Indeed, Plaintiff Coladonato would not have purchased either item but for  
15 Defendants’ representation that they were being offered at a “50% OFF” discount.

16           98.     In reality, however, Plaintiff did not receive any discount on either of these items.  
17 Rather, the prices she paid for these two items were the same prices at which Defendants  
18 customarily and regularly sell these items.

19           99.     Moreover, the quality and value of these items were lower than claimed by  
20 Defendants, as they had never been sold for the claimed higher fake base prices listed on  
21 Defendants’ price tags, and therefore the true worth of the items must be valued at the lower prices  
22 at which Defendants routinely sold them.

23           **D. Plaintiff Pallagrosi**

24           100.    On various dates between 2011 and the present, including October 13, 2014 and  
25 October 24, 2016, Plaintiff Pallagrosi made purchases at Defendants’ Banana Republic Factory  
26 stores in New Jersey and Florida and was subjected to the practices described herein.

1           101. For example, on October 13, 2014, Plaintiff Pallagrosi purchased three pairs of  
2 “CAMO SOCK”s, SKU #46326, from a Banana Republic Factory store #1919, located at 1755  
3 West Palm Beach Lakes Boulevard, West Palm Beach, Florida.

4           102. The price tag on each “CAMO SOCK” listed a purported former price of “\$8.50,”  
5 but each item was sold to Plaintiff at a purportedly discounted sale price of “\$4.25.” These claims  
6 were repeated on Plaintiff’s receipt, which listed a purported original price of “\$8.50” and a  
7 purported sale price of “\$4.25” for each of these three items. See Exhibit I.

8           103. The rack where these items were located had above it a sign which stated “50%  
9 OFF”.

10           104. Believing he was getting three items which had previously sold for \$8.50 each –  
11 items he therefore justifiably believed were worth \$8.50 each– Plaintiff Pallagrosi purchased the  
12 three items for a purportedly discounted price of \$4.25 each. See Exhibit I, Pallagrosi Receipt.

13           105. Plaintiff Pallagrosi also purchased a pair of “AIDEN CAMO” pants on the same  
14 day at the same store.

15           106. The price tag on the “AIDEN CAMO” pants listed a purported former price of  
16 “\$24.99,” but the pants were sold to Plaintiff at a purportedly discounted sale price of “\$12.49.”  
17 These claims were repeated on Plaintiff’s receipt, which listed a purported original price of  
18 “\$24.99” and a purported sale price of “\$12.49.” See Exhibit I.

19           107. The “AIDEN CAMO” pants were also displayed beneath a sign that stated “50%  
20 OFF.”

21           108. Believing he was getting pants which had previously sold for \$24.99 – pants he  
22 therefore justifiably believed were worth \$24.99– Plaintiff Pallagrosi purchased the pants for a  
23 purportedly discounted price of \$12.49. See Exhibit I, Pallagrosi Receipt.

24           109. This belief by Plaintiff Pallagrosi that he was getting items worth twice as much as  
25 he was being asked to pay for them was bolstered by the receipt he was given, which stated for  
26 each item “Item Discount 50%” and “You Saved 79.24”. See Exhibit I.

1           110. In actuality, CAMO SOCKs purchased by Plaintiff Pallagrosi were never sold by  
2 Defendants or anyone else for \$8.50 a pair.

3           111. That \$8.50 price listed on the CAMO SOCK's price tag was created by Defendants  
4 and was not based on any price at which that item had ever been sold. Rather, that fake former  
5 price was created to do exactly what it did: induce a customer to purchase a shirt by making him  
6 believe he were getting an item worth twice as much as he was currently being asked to pay for it.

7           112. In actuality, the CAMO SOCKs were not "**50% OFF**," they had never been sold  
8 for \$8.50, and the true value of the item was, at most, the same price at which Defendants  
9 consistently sold that item: \$4.25.

10           113. Nor did the "AIDEN CAMO" pants purchased by Plaintiff Pallagrosi ever actually  
11 sell for \$24.99. That purported former price of \$24.99 was a fake former price created by  
12 Defendants and was not based on any real price at which the item was ever sold.

13           114. In actuality, the AIDEN CAMO pants were not "**50% OFF**," they had never been  
14 sold for \$24.99, and the true value of the item was, at most, the same price at which Defendants consistently  
15 sold that item: \$12.49.

16           115. Thus, the statement on Plaintiff Pallagrosi's receipt which stated "**Item Discount**  
17 **50%**" and "**You Saved 79.24**" was entirely false, as Plaintiff did not actually receive either the  
18 promised discount or the promised savings.

19           116. In addition, Plaintiff Pallagrosi made purchases at Defendants' Banana Republic  
20 Factory stores in New Jersey during the class period.

21           117. For example, Plaintiff Pallagrosi made purchases on October 24, 2016 at a Banana  
22 Republic Factory store located at 2000 Atlantic Avenue, Atlantic City, New Jersey, 080401. In  
23 particular, Plaintiff Pallagrosi purchased a pair of "**Fulton Chino**" pants, SKU No. 393532-141-  
24 3230, for \$35.69 at a Banana Republic Factory store located at 2000 Atlantic Avenue, Atlantic  
25 City, New Jersey, 080401. These pants bore a price tag which stated they were originally sold for  
26 "**\$59.99**," and they were displayed beneath a sign that stated "**30% OFF**." In actuality, the  
27 "**\$59.99**" price listed on these pants was invented by Defendants and was not based on any price  
28

1 at which that item had ever been sold. Rather, that fake former price was created to do exactly  
2 what it did: induce a customer to purchase the pants by making him believe he were getting an  
3 item worth much more than he was currently being asked to pay for it. In actuality, these pants  
4 were not “30% OFF,” they had never been sold for \$59.99, and the true value of the item was,  
5 at most, the same price at which Defendants consistently sold that item: \$35.69.

6 118. Plaintiff Pallagrosi also purchased a pair of “**Brushed Twill**” pants, SKU No.  
7 246950-021-3230, for \$35.69 at a Banana Republic Factory store located at 2000 Atlantic  
8 Avenue, Atlantic City, New Jersey, 080401. These pants bore a price tag which stated they were  
9 originally sold for “\$69.99,” and they were displayed beneath a sign that stated “40% OFF.” In  
10 actuality, the “\$69.99” price listed on these pants was invented by Defendants and was not based  
11 on any price at which that item had ever been sold. Rather, that fake former price was created to  
12 do exactly what it did: induce a customer to purchase the pants by making him believe he were  
13 getting an item worth much more than he was currently being asked to pay for it. In actuality,  
14 these pants were not “40% OFF,” they had never been sold for \$69.99, and the true value of the  
15 item was, at most, the same price at which Defendants consistently sold that item: \$35.69.

16 119. Plaintiff Pallagrosi also purchased a “**Dorito Crew**” shirt, SKU No. 247201-011-  
17 0002, for \$5.78 at a Banana Republic Factory store located at 2000 Atlantic Avenue, Atlantic  
18 City, New Jersey, 080401. This shirt bore a price tag which stated it had originally sold for  
19 “\$16.99,” and it was displayed beneath a sign that stated “60% OFF.” In actuality, the \$16.99  
20 price listed on this shirt was invented by Defendants and was not based on any price at which that  
21 item had ever been sold. Rather, that fake former price was created to do exactly what it did:  
22 induce a customer to purchase a shirt by making him believe he were getting an item worth much  
23 more than he was currently being asked to pay for it. In actuality, this shirt was not “60% OFF,”  
24 it had never been sold for \$16.99, and the true value of the item was, at most, the same price at  
25 which Defendants consistently sold that item: \$5.78.

26 120. Moreover, the quality and value of these items were lower than claimed by  
27 Defendants, as they had never been sold for the claimed higher base prices listed on Defendants’  
28

1 price tags and therefore the true worth of the items must be valued at or below the lower prices at  
2 which Defendants routinely sold them.

3 121. Plaintiffs and the class members relied on Defendants' false prices and purported  
4 discounts; a reliance which was not only reasonable, but entirely intended by Defendants.

5 122. Indeed, empirical marketing studies have noted an incentive for retailers to engage  
6 in this false and fraudulent behavior. See Comparative Price Advertising: Informative or  
7 Deceptive?, Dhruv Grewal and Larry D. Compeau, Journal of Public Policy & Marketing, Vol.  
8 11, No. 1, at 55-56 (Spring 1992):

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

13 123. The unlawful uniform policies alleged herein go well beyond the items that  
14 Plaintiffs purchased, and are applied as a matter of uniform policy by Defendants to every item of  
15 clothing in every one of Defendants' Factory stores which are offered for sale at a purported  
16 discounted price.

17 124. These deceptive advertising, marketing, and sales practices were kept secret, and  
18 were affirmatively and fraudulently concealed from customers by Defendants throughout the class  
19 period.

20 125. As a result, Plaintiffs and their fellow customers of Defendants' Factory stores were  
21 unaware of Defendants' unlawful conduct and did not know they were actually paying the  
22 everyday, regular prices for Defendants' products, rather than the advertised, purported discount  
23 prices.

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



1           **Republic Factory store website between May 24, 2010 and the present**  
2           **(hereafter the “Online Subclass”).**

3           132.    **Sub-Class Definition:** Plaintiff Munning also brings this action as a class action  
4 pursuant to Ca. Civ. Proc. Code § 382, seeking damages and injunctive relief under New Jersey  
5 law on behalf of herself and all members of the following proposed subclass:

6           **All persons in New Jersey who purchased any purportedly discounted**  
7           **item from Defendants’ online Gap Factory or Banana Republic Factory**  
8           **store website between May 24, 2010 and the present (hereafter the**  
9           **“New Jersey Online Subclass”).**

10           133.   **Sub-Class Definition:** Plaintiff Coladonato brings this action as a class action  
11 pursuant to Ca. Civ. Proc. Code § 382, seeking damages and injunctive relief under New Jersey  
12 law on behalf of herself and all members of the following proposed subclass:

13           **All New Jersey citizens who purchased any purportedly discounted**  
14           **item from a Gap Factory store in New Jersey between October 9, 2011**  
15           **and the present. (hereafter the “New Jersey Gap Subclass”).**

16           134.   **Sub-Class Definition:** Plaintiff Pallagrosi brings this action as a class action  
17 pursuant to Ca. Civ. Proc. Code § 382, seeking damages and injunctive relief under California law  
18 on behalf of himself and all members of the following proposed subclass:

19           **All persons who purchased any purportedly discounted item from a**  
20           **Banana Republic Factory or Gap Factory store in the United States**  
21           **between October 9, 2011 and the present. (hereafter the “In-Store**  
22           **Subclass”).**

23           135.   **Sub-Class Definition:** Plaintiff Pallagrosi also brings this action as a class action  
24 pursuant to Ca. Civ. Proc. Code § 382, seeking damages and injunctive relief under New Jersey  
25 law on behalf of himself and all members of the following proposed subclass:

26           **All persons who purchased any purportedly discounted item from a**  
27           **Banana Republic Factory or Gap Factory store in New Jersey between**  
28           **October 9, 2011 and the present. (hereafter the “New Jersey Subclass”).**

          136.   **Sub-Class Definition:** Plaintiff Pallagrosi also brings this action as a class action  
pursuant to Ca. Civ. Proc. Code § 382, seeking damages and injunctive relief under Florida law  
on behalf of himself and all members of the following proposed subclass:

**All persons who purchased any purportedly discounted item from a**  
**Banana Republic Factory or Gap Factory store in Florida between**  
**October 6, 2011 and the present. (hereafter the “Florida Subclass”).**



1           137. The scope of the class definitions may be refined after discovery of Defendants'  
2 and/or third party records.

3           138. Each of the classes for whose benefit this action is brought is so numerous that  
4 joinder of all members is impracticable.

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

7           140. The proposed class and subclasses are each composed of at least 10,000 persons.

8           141. Common questions of law and fact exist as to each class member.

9           142. All claims in this action arise exclusively from uniform policies and procedures of  
10 Defendants as outlined herein.

11           143. No violations alleged in this Complaint are a result of any individualized oral  
12 communications or individualized interaction of any kind between class members and Defendants  
13 or anyone else.

14           144. There are common questions of law and fact affecting the rights of the class  
15 members, including, inter alia, the following:

- 16           a. whether the uniform advertising, marketing, and sales practices alleged  
17 herein exist;
- 18           b. whether Defendants ever sold items or offered items for sale at their listed  
19 base prices;
- 20           c. the standardized formula and criteria by which Defendants create the fake  
21 former prices;
- 22           d. whether Defendants' purported percentage-off discounts reflected actual  
23 savings or reductions;
- 24           e. whether Defendants deceptively advertised every day, regular prices of their  
25 items as "discount" or "sale" prices;
- 26           f. the length of time Defendants engaged in the practices alleged herein;
- 27           g. whether the alleged practices violate established law;
- 28           h. the nature and extent of the injury to the classes and the measure of class-  
wide damages; and

1 i. whether the class and subclasses are entitled to injunctive relief to end the  
2 challenged practices.

3 145. Plaintiffs are members of the class and respective subclasses they seek to represent.

4 146. The claims of Plaintiffs are not only typical of all class members, they are identical.

5 147. All claims of Plaintiffs and the classes arise from the same course of conduct, policy  
6 and procedures as outlined herein.

7 148. All claims of Plaintiffs and the classes are based on the exact same legal theories.

8 149. Plaintiffs seek the same relief for themselves as for every other class member.

9 150. Plaintiffs have no interest antagonistic to or in conflict with the classes.

10 151. Plaintiffs will thoroughly and adequately protect the interests of the classes, having  
11 retained qualified and competent legal counsel to represent themselves and the classes.

12 152. A class action is superior to other available methods for the fair and efficient  
13 adjudication of the controversy since, inter alia, the damages suffered by each class member were  
14 not great enough to enable them to maintain separate suits against Defendants and in most, if not  
15 all, instances were less than \$200 per person.

16 153. Common questions will predominate, and there will be no unusual manageability  
17 issues.

18 154. Without the proposed class action, Defendants will likely retain the benefit of their  
19 wrongdoing and will continue the complained-of practices, which will result in further damages  
20 to Plaintiffs and class members.

## 21 COUNT I

### 22 **VIOLATION OF THE CALIFORNIA CONSUMERS LEGAL REMEDIES ACT, 23 CAL. CIV. CODE § 1750, et seq.**

24 **(On Behalf of the Class and the Online, In-Store, California, and Khaki Subclasses)**

25 155. Plaintiffs repeat and incorporate by reference all previous paragraphs of this  
26 Complaint as if set forth fully herein.

27 156. Plaintiffs bring this claim individually and on behalf of all other individuals who  
28 purchased items from Defendants' Factory stores pursuant to the California Consumers Legal

1 Remedies Act, Cal. Civ. Code § 1750, et seq. (the “CLRA”), because the actions of Defendants,  
2 and their conduct described herein, constitute transactions that have resulted in the sale of goods  
3 to consumers.

4 157. Plaintiffs and each class member are “consumers” as defined by California Civil  
5 Code § 1761(d).

6 158. The items offered for sale at Defendants’ Factory stores are “goods” within the  
7 meaning of California Civil Code § 1761(a). The sale of these items to Plaintiffs and the class were  
8 “transactions” within the meaning of 1761(e). Defendants intended to, and did in fact, sell these  
9 items to Plaintiffs and the classes.

10 159. Defendants violated the CLRA in at least the following respects:

- 11 a. in violation of § 1770(a)(5), Defendants represented that the items for sale  
12 had characteristics which they do not have (i.e., that the items have an  
13 “original” price when they do not, and are being offered for sale at a  
14 discounted price when they are not);
- 15 b. in violation of § 1770(a)(9), Defendants advertised the items with intent not  
16 to sell them as advertised (i.e., the items were advertised as being discounted  
17 when Defendants intended to, and did in fact, sell them at their regular  
18 prices);
- 19 c. in violation of § 1770(a)(13), Defendants have made false and misleading  
20 statements of fact concerning the existence and amounts of price reductions  
21 (i.e., by advertising discounts and offering sale prices that did not exist);  
22 and
- 23 d. in violation of § 1770(a)(16), Defendants represented that the items have  
24 been supplied in accordance with previous representations (i.e., that they  
25 were sold at a discounted price) when they were not.

26 160. By the acts alleged herein, Defendants have violated the CLRA. Specifically,  
27 Defendants:

- 28 a. Set and advertised an arbitrary base price for items, which price was  
represented to be the item’s “original” or “regular” price despite the fact  
that such items were never sold or offered for sale at that price for any  
substantial period of time;
- b. Continuously advertised and offered items for sale at a discount off their  
purported base prices, when the “discounted” sale prices did not actually  
represent the advertised savings since the items were never offered for sale  
at their base prices for any substantial period of time;

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

3 d. Charged their customers the full, regular price for the items rather providing  
4 the advertised sale or discounted price.

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

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

9 163. On May 3, 2018, Plaintiffs sent notice to Defendants in writing, by certified mail,  
10 of the violations alleged herein and demanded that Defendants remedy those violations with  
respect to themselves and the classes. See Exhibit J, Pre-suit Notice.

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

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

14 166. Plaintiffs and each class member were injured in fact and lost money as a result of  
15 Defendants' deceptive conduct.

16 167. Plaintiffs now seeks actual, punitive, and statutory damages pursuant to the CLRA  
17 for themselves and the class members.

18 **COUNT II**

19 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW,**  
20 **CAL. BUS. & PROF. CODE § 17200, et seq.**

21 **(On Behalf of the Class and the Online, In-Store, California, and Khaki Subclasses)**

22 168. Plaintiffs reallege and incorporate by reference all previous paragraphs of this  
23 Complaint as if set forth fully herein.

24 169. Plaintiffs bring this claim individually and on behalf of the proposed class and  
25 subclasses.

1           170. The California Unfair Competition Law, California Business & Professions Code  
2 § 17200, et seq. (the “UCL”), prohibits acts of “unfair competition,” which is defined as including  
3 **“any unlawful, unfair or fraudulent business act or practice ....”**

4           171. By the acts alleged herein, Defendants have engaged in unfair competition and  
5 unfair, unlawful, or fraudulent business practices in violation of the UCL. Specifically,  
6 Defendants:

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

20           172. Defendants intentionally and purposefully concealed these actions from Plaintiffs  
21 and the class members.

22           173. Defendants’ conduct was unlawful in that it violates, without limitation, the CLRA,  
23 and California’s False Advertising Law, California Business & Professions Code § 17500, et seq.  
24 (the “FAL”). Defendants’ conduct was unfair in that it offends established public policy and/or is  
25 immoral, unethical, oppressive, unscrupulous, and substantially injurious to Plaintiffs and the class  
26 members. The harm to Plaintiffs and the class members arising from Defendants’ conduct  
27 outweighs any legitimate benefit Defendants derived from the conduct. Defendants’ conduct  
28 undermines and violates the stated spirit and policies underlying the CLRA and the FAL as alleged  
herein. Defendants’ actions and practices constitute fraudulent business practices in violation of  
the UCL because, among other things, they are likely to deceive reasonable consumers. Plaintiffs  
and the class members justifiably relied on Defendants’ representations and omissions.

1 174. These acts and practices have deceived Plaintiffs and the class members and are  
2 likely to deceive persons targeted by such statements and omissions. In failing to disclose their  
3 unlawful sales and marketing practices, Defendants breached their duties to disclose these facts,  
4 violated the UCL, and caused injuries to Plaintiffs and the class members. The omissions and acts  
5 of concealment by Defendants pertained to information that was material to Plaintiffs and the class  
6 members, as it would have been to all reasonable consumers.

7 175. Due to the deceptive nature of Defendants' actions, the injuries suffered by  
8 Plaintiffs and the class members were not reasonably avoidable.

9 176. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts or practices  
10 by Defendants, to obtain restitution and disgorgement of all monies and revenues generated as a  
11 result of such practices, and all other relief allowed under the UCL.

12 **COUNT III**

13 **VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW,**  
14 **CAL. BUS. & PROF. CODE § 17500, et seq.**  
15 **(On Behalf of the Class and the Online, In-Store, California, and Khaki Subclasses)**

16 177. Plaintiffs reallege and incorporate by reference all previous paragraphs of this  
17 Complaint as if set forth fully herein.

18 178. Plaintiffs bring this claim individually and on behalf of the class and subclasses.

19 179. By the acts alleged herein, Defendants have publicly disseminated untrue or  
20 misleading advertising and have intended not to sell the items as advertised, in violation of the  
21 FAL. Specifically, Defendants:

- 22 a. Set and advertised an arbitrary base price for numerous items, which price  
23 was represented to be the item's former, original and/or regular price despite  
24 the fact that such items were never sold or offered for sale at that price for  
25 any substantial period of time;
- 26 b. Continuously advertised and offered items for sale at a discount off their  
27 purported base prices, when the "discounted" sale prices did not actually  
28 represent the advertised savings since the items were never offered for sale  
at their purported base prices for any substantial period of time;
- c. Represented that items were on sale and offered at discounted prices when  
in fact the items were being offered for sale at the everyday, regular prices  
at which Defendants routinely sold the items; and

1 d. Charged their customers the full, regular price for the items rather than at  
2 the advertised discount.

3 180. Defendants committed such violations of the FAL with actual knowledge that their  
4 advertising was untrue or misleading, or in the exercise of reasonable care should have known that  
5 their advertising was untrue or misleading.

6 181. Plaintiffs and the class members reasonably relied on Defendants' representations  
7 and/or omissions made in violation of the FAL.

8 182. As a direct and proximate result of these violations, Plaintiffs and the class  
9 members suffered injury and fact and lost money.

10 183. Plaintiffs, individually and on behalf of the class members, seek equitable relief in  
11 the form of an order requiring Defendants to refund Plaintiffs and all class members all monies  
12 they paid for the purported discounted items they purchased from Defendants' Factory stores, and  
13 injunctive relief in the form of an order prohibiting Defendants from engaging in the alleged  
14 misconduct and performing a corrective advertising campaign.

15 **COUNT IV**

16 **VIOLATION OF CAL. BUS. & PROF. CODE § 17501**

17 **(On Behalf of the Class and the Online, In-Store, California, and Khaki Subclasses)**

18 184. Plaintiffs reallege and incorporate by reference all previous paragraphs of this  
19 Complaint as if set forth fully herein.

20 185. Plaintiffs bring this claim individually and on behalf of the class and subclasses.

21 186. Under Business and Professions Code § 17501 ("Section 17501"): **"No price shall**  
22 **be advertised as a former price of any advertised thing, unless the alleged former price was**  
23 **the prevailing market price . . . within three months next immediately preceding the**  
24 **publication of the advertisement or unless the date when the alleged former price did prevail**  
25 **is clearly, exactly and conspicuously stated in the advertisement."** A violation of the UCL and  
26 FAL would include occurrences where a seller employs a reference price with regard to a specific  
27 product on any given day in an amount higher than that which it actually offered and sold the

1 product for a majority of the days on which it was offered during the preceding 90 days.

2 187. Pursuant to 4 California Code of Regulations § 1301: **“The term ‘former price’**  
3 **as used in Section 17501 . . . includes but is not limited to the following words and phrases**  
4 **when used in connection with advertised prices; ‘formerly -,’ ‘regularly -,’ ‘usually -,’**  
5 **‘originally -,’ ‘reduced from \_\_\_\_\_,’ ‘was \_\_\_\_\_ now \_\_\_\_\_,’ ‘\_\_\_\_ % off.’”**

6 188. Section 17501 provides that when advertising a product with a representation of a  
7 former price, the seller is compelled to either use a reference price representing the **“prevailing**  
8 **market price . . . within three months next immediately preceding the publication of the**  
9 **advertisement,”** or alternatively make a disclosure that identifies, **“clearly, exactly and**  
10 **conspicuously,”** when the former price prevailed, and in this way is narrowly tailored to ensure  
11 that the information communicated by the seller to the consumer is truthful and not misleading or  
12 deceptive. Defendants have pervasively violated Section 17501 by failing to satisfy either option  
13 provided for complying with the statute.

14 189. As alleged herein, Defendants have advertised purported former prices that were  
15 not the prevailing market prices for the items within the three months immediately preceding such  
16 advertisements.

17 190. The relevant “market” for purposes of applying Section 17501 is Defendants’ own  
18 offers of the items at their Factory stores because (i) the huge majority of products offered for sale  
19 in Defendants’ Factory stores are exclusively manufactured for and are available only at  
20 Defendants’ Factory stores; (ii) the nature of the representations of Defendants’ reference prices  
21 which reference “% off” and “you saved”; (iii) Defendants intended those representations to be  
22 interpreted as their Factory stores’ own former prices; and (iv) academic research confirms  
23 consumers reasonably interpret these advertisements as reflecting Defendants’ Factory stores’ own  
24 former prices.

25 191. Defendants have routinely advertised former prices when such prices were not  
26 offered by Defendants in their Factory stores on a bona fide basis a majority of the days the item  
27 was offered during the three months immediately preceding the advertisement. In fact, Defendants  
28



1 routinely advertise reference prices when such prices were never offered by Defendants' Factory  
2 stores on a bona fide basis at any time during the three months immediately preceding the  
3 advertisement (or were offered only a very small minority of such days at such prices) while at the  
4 same time Defendants' Factory stores were consistently offering the item in question for a lower  
5 price during such period.

6 192. Meanwhile, Defendants did not identify to consumers, let alone "**clearly, exactly**  
7 **and conspicuously,**" when, if ever, the advertised reference prices did prevail. In fact, Defendants  
8 provide no indication at all to consumers regarding whether or to what extent the reference prices  
9 advertised were offered on a bona fide basis recently or at some time in the distant past.

10 193. Defendants committed such violations of the Section 17501 with actual knowledge  
11 that their advertising was untrue or misleading, or in the exercise of reasonable care should have  
12 known that their advertising was untrue or misleading.

13 194. Plaintiffs and the class members reasonably relied on Defendants' representations  
14 and/or omissions made in violation of the Section 17501.

15 195. As a direct and proximate result of these violations, Plaintiffs and the class  
16 members suffered injury and fact and lost money.

17 196. Unless restrained by this Court, Defendants will continue to engage in violations of  
18 Section 17501.

19 197. Plaintiffs, individually and on behalf of the class members, seek equitable relief in  
20 the form of an order requiring Defendants to refund Plaintiffs and all class members all monies  
21 they paid for the purported discounted items they purchased from Defendants' Factory stores, and  
22 injunctive relief in the form of an order prohibiting Defendants from engaging in the alleged  
23 misconduct and performing a corrective advertising campaign.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

COUNT V

**VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT**  
**N.J.S.A. 56:8-1, et seq.**

**(On Behalf of the New Jersey, New Jersey Online, and New Jersey Gap Subclasses)**

198. Plaintiffs reallege and incorporate by reference all previous paragraphs of this Complaint as if fully set forth herein.

199. Plaintiffs Munning, Coladonato, and Pallagrosi bring this claim individually and on behalf of all other members of the New Jersey subclasses who were customers of Defendants' Factory stores.

200. The New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, et seq. (the "NJCFA"), applies to all sales made by Defendants in New Jersey.

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

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

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

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

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

1 206. Specifically, N.J.S.A. 56:8-2 prohibits **“unlawful practices,”** which are defined as:

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

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

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

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

20 210. Rather, the NJCFA requires merely a causal nexus between the false statement and  
21 the purchase, not actual reliance. See Lee v. Carter-Reed Co., L.L.C., 4 A.3d 561, 577 (2010)  
22 (**“causation under the [NJCFA] is not the equivalent of reliance”**).

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

26 212. By the acts alleged herein, Defendants have violated the NJCFA. Specifically,  
27 Defendants:

- 28 a. Set and advertised an arbitrary base price for numerous items in their  
Factory stores, which price was represented to be the item’s “original” or

1 “regular” price despite the fact that such items were never sold or offered  
2 for sale at that price;

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

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

10 d. Charged their customers the full, regular price for the items in their Factory  
11 stores rather than the advertised sale or discounted price.

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

15 214. As alleged herein, Defendants have engaged in deceptive conduct which creates a  
16 likelihood of confusion or misunderstanding.

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

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

25 217. Further, the statements by Defendants that the purported “sale” price of an item was  
26 a certain % discount **“off”** the stated, purported comparison price was a false, affirmative statement  
27 of fact, since the items in question were never sold at that comparison price and the purported  
28 “sale” price was actually Defendants’ regular price for the item.

218. Moreover, because Defendants’ conduct described herein is a violation of both  
federal and New Jersey state regulations, such conduct constitutes a per se violation of the NJCFA,  
N.J.S.A. § 56:8-1, et seq.

1           219. Specifically, Defendants' conduct violates 16 C.F.R. § 233.1 in that the purported  
2 "original" prices of the items in Defendants' Factory stores were "not bona fide but fictitious"  
3 under 16 C.F.R. § 233.1 because the items were never actually sold or offered for sale at those  
4 prices. Thus, the purported "reduced" prices offered by Defendants were "in reality, ...  
5 [Defendants'] regular price[s]" and "the 'bargain[s]' being advertised" by Defendants were  
6 "false." 16 C.F.R. § 233.1.

7           220. Defendants' conduct also violated both N.J.A.C. 13:45A-9.3(a)(3) and  
8 13:45A-9.4(a)(5) and (6). These regulations require, inter alia, that a seller advertising a purported  
9 percentage "off" discount and/or price comparison must affirmatively state in writing the basis for  
10 the purported discount and the source of the price which is being used for comparison, including  
11 whether that price was previously charged by the seller or its competitors and when and where that  
12 former price was previously charged. Defendants failed to do any of this in their Factory stores.

13           221. Plaintiffs and the class members reasonably and justifiably expected Defendants to  
14 comply with applicable law, but Defendants failed to do so.

15           222. As a direct and proximate result of these unlawful actions by Defendants, Plaintiffs  
16 and the New Jersey subclasses have been injured and have suffered an ascertainable loss of money.

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

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

24           **"a victim of consumer fraud must prove an 'ascertainable loss,' N.J.S.A.**  
25 **56:8-19, but that requirement has been broadly defined as embracing**  
26 **more than a monetary loss. (emphasis added)**

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

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

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

12 **“In light of the Legislature’s clear intent [in passing the Consumer Fraud**  
13 **Act], it would be incongruous to provide consumers with a form of**  
14 **damages less than what is available in an ordinary breach-of-contract**  
15 **case. The ‘expectation interest’ of the consumer who purchases**  
16 **merchandise at a discount is the benefit of the bargain. The statute**  
17 **cannot be construed to allow an offending merchant to benefit from his**  
18 **own deception.” (emphasis added)**

19 227. Plaintiffs suffered an ascertainable loss within the meaning of the NJCFA when  
20 they failed to receive the full benefit of the purported discount offered by Defendants and when  
21 they were lulled into making a purchase of by the promise of the illusory discounts promised by  
22 Defendants.

23 228. For example, Plaintiff Munning was promised by Defendants’ Factory store  
24 website that she was receiving a “32% off” discount on her purchase of the swim trunks, a “50%  
25 off” discount on her purchase of the dress and “16% off” discount on her purchase of the sweater.  
26 As outlined herein, she did not receive any of these promised discounts, since the merchandise was  
27 being sold at Defendants’ normal, everyday prices.

28 229. Moreover, in exchange for her payment of \$107.95, Defendants’ Factory store  
website promised Plaintiff in writing that she would receive three items of merchandise that,  
together, had previously sold for a total of \$169.97. In actuality, these three items had never sold

1 for \$169.97. Thus, Plaintiff did not receive the promised total discount of \$62.02 off the purported  
2 prior prices.

3 230. Finally, Plaintiffs would not have made any purchase from Defendants' Factory  
4 stores at all but for the false promise by Defendants that they were receiving discounted  
5 merchandise and thus Plaintiffs' entire payments to Defendants constitute losses caused by  
6 Defendants' misconduct.

7 231. Plaintiffs would purchase items from Defendants' Factory stores in the future if  
8 they could be confident that the purported % "off" discounts and purported price comparisons  
9 listed in Defendants' Factory stores were truthful and accurate.

10 232. Pursuant to N.J.S.A. 56:8-19 of the NJCFA, Plaintiffs seek, inter alia, actual  
11 damages, treble damages and injunctive relief for herself and the New Jersey sub-classes.

### 12 COUNT VI

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

15 **(On Behalf of the New Jersey, New Jersey Online, and New Jersey Gap Subclasses)**

16 233. Plaintiffs reallege and incorporate by reference all previous paragraphs of this  
17 Complaint as if fully set forth herein.

18 234. Plaintiffs Munning, Coladonato, and Pallagrosi bring this claim individually and on  
19 behalf of all other members of the New Jersey subclasses who were customers of Defendants'  
20 Factory stores.

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

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

24 237. The advertisements and representations in Defendants' Factory stores, stating, *e.g.*,  
25 that the items in the Factory stores are being offered for sale at a discounted price, is both a  
26 consumer "notice" and "warranty" within the meaning of N.J.S.A. §§ 56:12-15 and 16.









1 d. Charged their customers the full, regular price for the items rather than  
2 giving them the advertised discount; and

3 e. Represented to their customers on their receipts that they had received a  
4 certain percentage discount and “saved” a specified amount of money when  
5 in fact they did not.

6 259. Plaintiffs and the class need, and are entitled to, an order for injunctive and  
7 declaratory relief declaring that Defendants’ uniform advertising, marketing, and sales policies  
8 alleged herein violate federal and New Jersey pricing regulations, and enjoining Defendants from  
9 continuing such practices in their Factory stores in New Jersey.

10 260. Defendants are continuing each of these complained-of practices in their Factory  
11 stores in New Jersey.

12 261. Plaintiffs and the class have a significant interest in this matter in that each has  
13 been, and will again in the future, be subjected to the unlawful policies alleged herein.

14 262. Indeed, Plaintiffs are frequent customers of Defendants’ Factory stores who  
15 consistently shop at Defendants’ Factory stores in New Jersey. Further, Plaintiffs routinely  
16 purchase merchandise from Defendants’ Factory stores, and are entitled to know whether the  
17 purported “% OFF” discounts and purported price comparisons listed in such stores are truthful  
18 and accurate. As such, Plaintiffs are regularly subjected to Defendants’ unlawful conduct alleged  
19 herein and will be subject to such conduct in the future.

20 263. Based on the foregoing, a justifiable controversy is presented in this case, rendering  
21 declaratory judgment appropriate.

22 264. In addition, because the unlawful uniform policies of Defendants continue, and are  
23 on-going, Plaintiffs and the class also need, and are entitled to, an order for injunctive relief,  
24 enjoining Defendants from continuing these complained-of practices in their Factory Stores in  
25 New Jersey.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

COUNT VI

**VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR  
TRADE PRACTICES ACT ("FDUTPA")  
Fla. Stat. § 501.201, et seq.**

**(On Behalf of the Florida Subclass)**

265. Plaintiffs repeat and incorporate by reference all previous paragraphs of this Complaint as if fully set forth herein.

266. Plaintiff Pallagrosi brings this claim individually and on behalf of the other members of the Florida Subclass.

267. Florida's Deceptive and Unfair Trade Practices Act (FDUTPA), sections 501.201-.213, Florida Statutes is intended to **"protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce."** § 501.202(2). See also Delgado v. J.W. Courtesy Pontiac GMC-Truck, Inc., 693 So.2d 602, 605-06 (Fla. 2d DCA 1997) (discussing the purpose of FDUTPA in light of its legislative history).

268. Under the FDUTPA a deceptive practice is one that is "likely to mislead" consumers. Davis v. Powertel, Inc., 776 So.2d 971, 974 (Fla. 1st DCA 2000).

269. Under the FDUTPA, an unfair practice is **"one that 'offends established public policy' and one that is 'immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.'"** Samuels v. King Motor Co. of Boca Raton, 782 So.2d 489, 499 (Fla. 4th DCA 2001).

270. The FDUTPA affords civil private causes of action for both declaratory and injunctive relief and for damages.

271. With respect to the recovery of damages, FDUTPA provides: In any action brought by a person who has suffered a loss as a result of a violation of this part, such person may recover actual damages, plus attorney's fees and court costs as provided in s. 501.2105.

272. A consumer claim for damages under FDUTPA has three elements: (1) a deceptive act or unfair practice; (2) causation; and (3) actual damages. See Chicken Unlimited, Inc. v.

1 Bockover, 374 So.2d 96, 97 (Fla. 2d DCA 1979); Gen. Motors Acceptance Corp. v. Laesser, 718  
2 So.2d 276, 277 (Fla. 4th DCA 1998); Macias v. HBC of Fla., Inc., 694 So.2d 88, 90 (Fla. 3d DCA  
3 1997).

4 273. The standard for determining the actual damages recoverable under FDUTPA is  
5 well-defined in the case law as the difference between the promised value and the actual value of  
6 the item delivered. Rollins, Inc. v. Heller, 454 So.2d 580, 585 (Fla. 3d DCA 1984)(“[T]he  
7 **measure of actual damages is the difference in the market value of the product or service in**  
8 **the condition in which it was delivered and its market value in the condition in which it**  
9 **should have been delivered according to the contract of the parties.”).**

10 274. Plaintiff Pallagrosi and the Florida Subclass members have clearly suffered actual  
11 recoverable damages within the meaning of the FDUTPA because the goods sold and delivered by  
12 Defendants to them had a market value far less than what Defendants had expressly represented  
13 and promised they would receive.

14 275. For example, Plaintiff Pallagrosi was promised by Defendants in writing that for a  
15 payment of \$12.49, he would receive from Defendants an “AIDEN CAMO” pants which had  
16 previously sold for “\$24.99” and which had a market value of \$24.99. See Exhibit I. In actuality,  
17 the “AIDEN CAMO” pants purchased by Plaintiff Pallagrosi from Defendants had never been sold  
18 by anyone for \$24.99, the pants were not worth \$24.99 and their market value was no higher than  
19 the \$12.49 for which Defendants routinely sold this item.

20 276. The practices described herein clearly violated the FDUTPA.

21 277. The express purpose of the FDUTPA is to “**protect the consuming public...from**  
22 **those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair**  
23 **acts or practices in the conduct of any trade or commerce”** Section 501.202(2).

24 278. The sale of the goods purchased by Plaintiff Pallagrosi fell within the meaning of  
25 “trade or commerce” within the scope of the FDUTPA, Sections 501.201 to 501.213.

26 279. Plaintiff Pallagrosi and each Florida subclass members are “consumer[s]” as  
27 defined by Section 501.203.

1           280. Section 501.204(1), Florida Statutes declares as unlawful “unfair methods of  
2 competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the  
3 conduct of any trade or commerce”. Defendants violated the FDUTPA engaging in, and continuing  
4 to engage in, unfair and deceptive practices and false advertising by representing a false and  
5 misleading former price and corresponding purported sale price, resulting in nothing more than a  
6 false, misleading and deceptive illusion of a discount. These acts and practices are unfair because  
7 they caused Plaintiff Pallagrosi, and are likely to cause consumers, to falsely believe Defendants  
8 are offering values, discounts, or bargains from the prevailing market worth of the products sold  
9 that did not, in fact, exist. As a result, consumers – including Plaintiff Pallagrosi – reasonably  
10 perceived they were receiving products which were regularly sold at substantially higher prices  
11 (and were, therefore, worth more) than what they paid. This perception induced reasonable  
12 consumers, including Plaintiff Pallagrosi, to purchase products from Defendants and/or pay more  
13 for such products, which they otherwise would not have purchased.

14           281. The reasonable consumer relies on clothing companies to honestly represent the  
15 price of the products and any associated discounts. The damages suffered by Plaintiff and the  
16 Florida subclass were directly and proximately caused by the deceptive, misleading and unfair  
17 practices of Defendants.

18           282. Pursuant to Section 501.211(1), Plaintiff Pallagrosi and other Florida subclass  
19 members seek to a declaratory judgment and court order enjoining the above described wrongful  
20 acts and practices of the Defendants and for restitution and disgorgement.

21           283. Additionally, pursuant to Sections 501.211(2) and 501.2105, Florida Statutes,  
22 Plaintiff Pallagrosi and the subclass make claims for damages, attorney’s fees and costs.

23           284. On September 6, 2017, Plaintiff sent notice to Defendants in writing, by certified  
24 mail, of the violations alleged herein and demanded that Defendants remedy those violations  
25 with respect to themselves and the classes.

26           285. To date, Defendants have not remedied their practices complained of herein.  
27  
28

1 PRAYER FOR RELIEF

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

4 A. Enter an order certifying the proposed classes, designating Plaintiffs as the  
5 representatives for the class and sub-classes they seek to represent, and designating the  
6 undersigned as class counsel;

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

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

11 D. Grant injunctive and declaratory relief to end the challenged conduct;

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

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

15 G. Award interest as permitted by law;

16 H. Grant reasonable attorneys' fees pursuant to California Civil Code § 1780 (d) and  
17 as otherwise permitted by statute, and reimbursement all costs incurred in the prosecution of this  
18 action; and

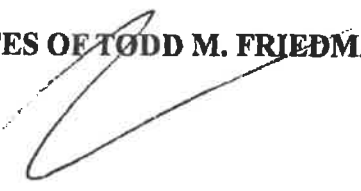
19 I. Grant such other relief as this Court deems just and proper.  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury as to all issues so triable.

Dated: November 8, 2018

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

By:   
Todd M. Friedman, Esq.

and

**DeNITTIS OSEFCHEN PRINCE, P.C.**

Stephen P. DeNittis, Esq.

*Pro Hac Vice pending*

sdenittis@denittislaw.com

5 Greentree Centre

525 Route 73 North, Suite 410

Marlton, NJ 08053

Tel.: (856) 797-9951

Fax: (856) 797-9978

**HATTIS LAW**

Daniel M. Hattis, Esq.

dan@hattislaw.com

PO Box 1645

Bellevue, WA 98009

Tel.: 650-980-1990

*Attorneys for Plaintiff*

LAW OFFICES OF TODD M. FRIEDMAN, P.C.  
21550 Oxnard St., Ste 780  
Woodland Hills, CA 91367

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28