

## AGREEMENT OF SETTLEMENT AND RELEASE

**THIS AGREEMENT OF SETTLEMENT AND RELEASE (“Agreement”)** is entered into by and between plaintiffs Laurie Munning, Michael Pallagrosi, Caron Coladonato and Carmen Andrews, individually, and in their representative capacity on behalf of all others similarly situated (collectively “Plaintiffs”), on the one hand, and Defendants The Gap, Inc., Gap (Apparel) LLC, Gap International Sales, Inc., Banana Republic LLC, and Banana Republic (Apparel) LLC (collectively “Gap” or “Defendants”), on the other (collectively referred to as the “Parties” or singularly “Party”) to effect the settlement set forth herein, subject to Court approval.

### RECITALS

**A.** On May 25, 2016, Plaintiff Laurie Munning filed a class action lawsuit in the Superior Court of the State of California for the County of San Francisco, on behalf of a class of all United States Citizens who purchased any discounted item from Defendants’ online Gap Factory Store website or Banana Republic Factory Store website between May 24, 2010 and the date of preliminary approval. On or about June 20, 2016 Defendants removed the Action to Federal Court. The action is entitled *Laurie Munning v. The Gap, Inc., Gap (Apparel) LLC, Gap International Sales, Inc., Banana Republic LLC, and Banana Republic (Apparel) LLC*, Civil Action No. 4:16-cv-3804 (N.D.C.A.).

**B.** On July 28, 2016, Defendants filed a motion to dismiss. The motion was denied in part and granted in part. On December 12, 2016, Plaintiff Munning filed a First Amended Complaint (“Munning Action”).

**C.** On January 9, 2017, Defendants filed a second motion to dismiss. After briefing, on February 24, 2017, the court denied in part and granted in part Defendants’ second motion to dismiss.

**D.** The parties engaged in written discovery on the Munning Action.

**E.** On June 20, 2017, the parties engaged in a full day mediation session of the Munning Action with the Hon. Edward A. Infante (Ret.) of JAMS, Inc. While the Parties made progress as to the possible framework for a settlement, a settlement was not reached.

**F.** On October 9, 2017, Plaintiff Caron Coladonato filed a class action lawsuit in the Superior Court of New Jersey, Camden County, on behalf of a class of all New Jersey citizens who purchased any purportedly discounted item from a Gap Factory Store or Banana Republic Factory Store in New Jersey between October 9, 2011 and the date of preliminary approval. Defendants removed the action and Plaintiff Coladonato filed a motion to remand which was denied on September 26, 2018. The action is entitled *Caron Coladonato v. The Gap, Inc., Gap (Apparel) LLC, Gap International Sales, Inc., Banana Republic LLC, and Banana Republic (Apparel) LLC*, Civil Action No. 1:17-cv-11998 (D.N.J.) (“Coladonato Action”).

**G.** On October 13, 2017, Plaintiff Michael Pallagrosi filed a class action lawsuit in Federal Court for the Northern District of California, on behalf of a class of all persons who purchased any purportedly discounted item from a Banana Republic Factory Store or Gap Factory Store in the United States between October 9, 2011 and the date of Preliminary Approval. The action is *Michael Pallagrosi v. The Gap, Inc., Gap (Apparel) LLC, Gap International Sales, Inc., Banana Republic LLC, and Banana Republic (Apparel) LLC*, Civil Action No. 4:17-cv-5905-HSG

(N.D.C.A.)("Pallagrosi Action"). On December 6, 2017, Defendants filed a motion to dismiss which was fully briefed and argued but not yet decided.

**H.** On June 13, 2018, Plaintiff Carmen Andrews filed a class action lawsuit in the Superior Court of the State of California for the County of San Francisco on behalf of all California citizens who purchased a purportedly discounted item from a Gap Factory Store or Gap Outlet in California between June 13, 2014 and the date of preliminary approval. The action is entitled *Carmen Andrews v. The Gap, Inc., Gap (Apparel) LLC, Gap International Sales, Inc.*, Docket No. CGC-18-567237 ("Andrews Action"). On October 9, 2018, Defendants filed a demurrer.

**I.** Between July 24, 2017 and the present, Plaintiffs and Defendants conducted substantial written discovery in the Munning and Pallagrosi Actions which consisted of Plaintiff producing over 40 terra bites of data which is the equivalent of 3 million pages of documents and Defendants producing over 300,000 pages of documents. The Parties did a thorough review of all of those documents as well as conducted a thorough investigation of the facts and analyzed the relevant legal issues with respect to the claims asserted in the Action, and Defendants' potential defenses to those claims, including the arguments asserted in Defendants' various motions to dismiss filed in the Action.

**J.** Plaintiffs' counsel also consulted with experts which included retail practices sales expert Chuck Polin, of Sandler and Associates, and damages expert Brian J. Bergmark of Torrey Partners, an economic and accounting services firm. Plaintiffs further reviewed extensive publicly-available information relating to Defendants, its pricing, advertising, and sales practices, and financial status. Counsel for Plaintiffs moreover conducted an extensive independent investigation of Defendants' pricing, advertising, and sales practices.

**K.** On August 20, 2018, the Parties participated in a second all day mediation of the Munning, Pallagrosi, Coladonato and Andrews Actions with mediator Hon. Jay C. Ghandi (Ret.) of JAMS Inc. Subsequent to the second mediation the Parties continued for two additional months of intense, contentious almost daily settlement discussions, which ultimately reached an amicable resolution of the actions, the terms of which are set forth in this Agreement.

**L.** Plaintiffs and their counsel believe that the claims asserted in the Complaint have merit. Defendants has denied, and continues to deny, any and all allegations of wrongdoing, liability or damages to any person whatsoever alleged in the Action, and believe the claims asserted by Plaintiffs are wholly without merit. Nonetheless, the Parties have concluded that litigation could be protracted and expensive, and desire the Action to be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement in order to limit further expense, inconvenience, and risk. The Parties also have considered the risks of continued litigation and the benefits of the proposed Agreement, and have considered the costs, risks, and delays associated with the prosecution of this complex and time-consuming litigation, as well as the likely appeals of any rulings in favor of either Plaintiffs or Defendants.

**M.** It is now the intention of the Parties, and the objective of this Agreement, to avoid the costs of litigation and trial and settle and dispose of, fully and completely and forever, any and all claims and causes of action alleged in the Action.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the covenants and agreements set forth herein, Plaintiffs, on behalf of themselves and the Class, and Defendants, hereby stipulate to the resolution of the Action, subject to Court approval, under the following terms and conditions:

**1. DEFINITIONS.** In addition to the definitions included in the Recitals above, and in later sections of this Agreement, the following shall be defined terms for purposes of this Agreement. Some of the definitions in this section use terms that are defined later in the section. All defined terms are capitalized:

**1.1** As used herein, the term “**Action**” means this lawsuit, entitled *Carmen Andrews, Laurie Munning, Caron Coladonato and Michael Pallagrosi, on behalf of themselves and all others similarly situated v. The Gap, Inc., Gap (Apparel) LLC, Gap International Sales, Inc., Banana Republic LLC, and Banana Republic (Apparel) LLC.*, Docket No. Docket No. CGC-18-567237 (Super. Ct. of CA, San Francisco County). The Munning, Pallagrosi, and Coladonato actions mentioned above have all been dismissed.

**1.2** As used herein, the term “**Cash Fund**” means the fund of \$3,750,000 that Defendants will establish to pay Class Counsels attorneys’ fees and costs, Incentive Awards and Claims Administrator Costs, subject to court approval. All of Class Counsels attorneys’ fees and costs, Incentive Awards for Lead Plaintiffs and all Claims Administrator Costs shall be paid from the Cash Fund; in no event shall Defendants pay more than a total of \$3,750,000 to the Cash Fund, Claims Administrator Costs, Class Counsel’s attorneys’ fees and costs and Lead Plaintiffs’ Incentive Awards.

**1.3** As used herein, the term “**Claim**” means a request made by a Class Member in order to receive a Purchase Certificate pursuant to the procedures stated in Section 3.5.

**1.4** As used herein, the term “**Claim Filing Deadline**” means the deadline by which Class Members must file all claims under the Agreement. The Claim Filing Deadline shall be one hundred eighty (180) calendar days after entry of the Preliminary Approval Order.

**1.5** As used herein, the term “**Claim Form**” means the form Class Members must complete to submit a Claim under this Agreement. The Claim Form will state that any Claim submitted will be under penalty of perjury, and shall be substantially similar to the form attached hereto as **Exhibit E**.

**1.6** As used herein, the term “**Claimant**” means any Class Member who submits a valid Claim Form under this Agreement.

**1.7** As used herein, the term “**Claims Administrator**” means a third-party settlement administrator to be selected by Class Counsel, to administer the notice, claims, and Settlement relief distribution process provided for in the Agreement. The Claims Administrator must complete a data security questionnaire from Defendants, meet Defendants’ data security requirements, and execute a retention agreement that includes data security requirements. The Claims Administrator may be removed and replaced by agreement of the Parties or by order of the Court.

**1.8** As used herein, the term “**Claims Administrator Costs**” means all costs incurred by the Claims Administrator, including the cost of providing notice to the Class and administering the terms set forth in this Agreement.

**1.9** As used herein, the terms “*Class*” and “*Class Members*” mean the following Class:

All United States citizens who made one or more in-store or online purchase(s) at a Gap Outlet, Gap Factory Store or a Banana Republic Factory Store located in the United States between May 24, 2010 and the date of Preliminary Approval.

**1.10** As used herein, the term “*Class Period*” means May 24, 2010 through the date of Preliminary Approval.

**1.11** As used herein, the term “*Class Released Claims*” means all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys’ fees, in law or equity, fixed or contingent, which Class Members have or may have, arising out of or relating to any of the acts, omissions or other conduct by Defendants alleged or otherwise referred to in the Complaint, or any preceding version thereof filed in the Action, including, but not limited to, any and all claims related in any way to the advertisement or communication of prices in Burlington stores by any means in New Jersey during the Class Period.

**1.12** As used herein, the term “*Class Releasers*” means all Class Members who do not timely and sufficiently request to be excluded from the proposed settlement, and each of their respective successors, assigns, legatees, heirs, and personal representatives.

**1.13** As used herein, the term “*Complaint*” means the operative First Amended Class Action Complaint, filed by Plaintiffs in the Action, captioned *Carmen Andrews, Laurie Munning, Caron Coladonato and Michael Pallagrosi, on behalf of themselves and all others similarly situated v. The Gap, Inc., Gap (Apparel) LLC, Gap International Sales, Inc., Banana Republic LLC, and Banana Republic (Apparel) LLC*, Docket No. Docket No. CGC-18-567237 (Super. Ct. of CA. San Francisco County).

**1.14** As used herein, the term “*Court*” means the Superior Court of the State of California for the County of San Francisco, in which this Action is pending, and to which presentation of this Agreement for judicial review and approval will be made.

**1.15** As used herein, the terms “*Defendants*” and “*Gap*” mean the named Defendants in the Action.

**1.16** As used herein, the terms “*Defendants Counsel*” and “*Gap’s Counsel*” mean the law firm of Morgan, Lewis & Bockius LLP.

**1.17** As used herein, the term “*Email Notice*” means the legal notice summarizing the proposed terms of this Agreement, as approved by Class Counsel, Defendants’ Counsel, and the Court, to be provided to Class Members under Section 3.3 of this Agreement via electronic mail. The Email Notice shall be substantially similar to the form attached as **Exhibit C**.

**1.18** As used herein, the term “*Exclusion Deadline*” means the deadline by which Class Members must file any exclusion from the Agreement. The Exclusion Deadline shall be seventy-five (75) calendar days after entry of the Preliminary Approval Order.

**1.19** As used herein, the term “*Fairness Hearing*” means the hearing(s) to be held by the Court to consider and determine whether the Agreement should be approved as fair, reasonable, and adequate, and whether the Final Order and Judgment approving the Agreement should be entered.

1.20 As used herein, the term “***Final Order and Judgment***” means the Court’s grant of final approval of the Agreement following the Fairness Hearing. The proposed Final Order and Judgment that Plaintiffs submit to the Court for its approval shall be substantially similar to the form attached as **Exhibit G**.

1.21 As used herein, the term “***Final Settlement Date***” means two (2) Court days after the Final Order and Judgment becomes “final.” For the purposes of this section, “final” means after [i] thirty (30) calendar days after notice of the entry of the Final Order and Judgment is served on the Parties, if no timely motions for reconsideration and/or no appeals or other efforts to obtain review have been filed; or [ii] in the event that an appeal or other effort to obtain review has been initiated, the date after any and all such appeals or other review(s) have been finally concluded in favor of the Final Order and Judgment, any mandates have been returned to the Court, and the Final Order and Judgment is no longer subject to review, whether by appeal, petitions for rehearing, petitions for rehearing *en banc*, petitions for certiorari, or otherwise.

1.22 As used herein, the term “***Full Notice***” means the full legal notice of the proposed Agreement terms, as approved by Class Counsel, Defendants’ counsel, and the Court, to be provided to Class Members under Section 3.3 of this Agreement. The Full Notice shall be substantially similar to the form attached as **Exhibit B**.

1.23 As used herein, the term “***Named Plaintiffs***” means Carmen Andrews, Laurie Munning, Michael Pallagrosi and Caron Coladonato in their individual capacities only.

1.24 As used herein, the term “***Objection Deadline***” means the deadline by which Class Members must file any objections to the Agreement. The Objection Deadline shall be seventy-five (75) calendar days after entry of the Preliminary Approval Order.

1.25 As used herein, the terms “***Plaintiffs’ Counsel***” and “***Class Counsel***” mean the law firm of DeNittis Osefchen Prince, P.C., Hattis Law, LLC and the Law Office of Todd M. Friedman, P.C.

1.26 As used herein, the term “***Preliminary Approval Order***” means the order provisionally certifying the Class for settlement purposes only, approving and directing notice, and setting the Fairness Hearing. The proposed Preliminary Approval Order that Plaintiffs submit to the Court for its approval shall be substantially similar to the form attached as **Exhibit A**.

1.27 As used herein, the term “***Publication Notice***” means the legal notice summarizing the proposed Agreement terms, as approved by Class Counsel, Defendants’ Counsel, and the Court, to be provided to Class Members under Section 3.3 via publication on one date in two New Jersey newspapers where Defendants advertises in New Jersey. The Publication Notice shall be substantially similar to the form attached as **Exhibit D**.

1.28 As used herein, the term “***Qualifying Purchase***” means the purchase of any product by a United States citizen from a Gap Outlet or website, a Gap Factory Store or website or a Banana Republic Factory Store or website in the United States within the Class Period, which was not subsequently returned.

1.29 As used herein, the term “***Released Parties***” means Defendants The Gap, Inc., Gap (Apparel) LLC, Gap International Sales, Inc., Banana Republic LLC, and Banana Republic (Apparel) LLC and each of their direct or indirect parents, wholly or majority-owned subsidiaries, affiliated and related entities, predecessors, successors and assigns, partners, privities, and any of their present and former directors, officers, employees, shareholders, agents, representatives,

attorneys, accountants, insurers, and all persons acting by, through, under or in concert with them, or any of them.

**1.30** As used herein, the term “*Settlement*” means the Settlement of the Action and related claims effectuated by this Agreement.

**1.31** As used herein, the term “*Settlement Purchase Certificate*” means a single-use certificate good for \$6.00 toward any purchase of merchandise in any Gap Outlet, Gap Factory Store, Banana Republic Store or any of their respective websites in the United States. Settlement Purchase Certificates will be valid for one (1) year from the date of issuance. The Settlement Purchase Certificates may be used with any other discounts and promotions, and on items that are on sale or otherwise discounted. The Settlement Purchase Certificates shall not be redeemable for cash (including no cash back), may not be applied to past purchases, may not be used to purchase gift cards, and will not be replaced if lost, stolen, damaged, or expired. The Settlement Purchase Certificates are fully transferable and may be used toward a single purchase. There is no minimum purchase required to use a Settlement Purchase Certificates. An exemplar of the Settlement Purchase Certificate is attached as **Exhibit “F.”**

**1.32** As used herein, the term “*Settlement Website*” means the website that shall be created for settlement administration purposes and administered by the Claims Administrator at a URL to be jointly approved by the Parties.

## **2. SETTLEMENT TERMS.**

**2.1 Tiers.** Authorized Claimants will be categorized into tiers based on the total dollar amount of their Qualifying Purchase(s) during the Class Period:

- (a) Tier 1 Authorized Claimants: A Tier 1 Authorized Claimant is one who does not submit proof of Qualifying Purchase(s), or submits proof of Qualifying Purchase(s) that are less than \$90.00, with his or her timely and valid Claim Form.
- (b) Tier 2 Authorized Claimants: A Tier 2 Authorized Claimant is one who has Qualifying Purchase(s) during the Class Period totaling \$90.00 or more and submits proof of such purchase(s) with their timely and valid Claim Form.

### **2.2 Award to the Class.**

- (a) Authorized Claimant Awards. The Claim Form shall have a space for Claimants to elect to receive the number of Settlement Purchase Certificates he or she wishes to obtain that corresponds with his or her tier. Below are the Settlement Purchase Certificates associated with each tier:
  - (i) Tier 1 Authorized Claimants: To each Tier 1 Authorized Claimant, Gap shall issue one (1) \$6.00 Settlement Purchase Certificate.
  - (ii) Tier 2 Authorized Claimants: To each Tier 2 Authorized Claimant, Gap shall issue two (2) \$6.00 Settlement Purchase Certificates.

**2.3 Distribution.** Within sixty (60) calendar days of the Final Settlement Date, the Claims Administrator shall distribute the Settlement Purchase Certificates to Claimants via the email or address designated on their Claim Form.

**2.4 Incentive Awards to Named Plaintiffs.** The Parties acknowledge that the Named Plaintiffs must move the Court for approval of any incentive award to the Named Plaintiffs (the "Incentive Awards") in recognition of their efforts and activities in furtherance of both the litigation and this Agreement. Each Named Plaintiff agrees they will not seek an Incentive Award of greater than \$2,500. Defendants agrees not to oppose a request by Named Plaintiffs for such Incentive Awards. Named Plaintiffs further agree that, in any event, Defendants will not be obligated to pay any Incentive Award in excess of \$2,500 for each Named Plaintiff. Incentive Awards shall be payable to the Named Plaintiffs from the Cash Fund, if approved by the Court within five (5) calendar days after all of the following events have occurred: (a) the Final Settlement Date, and (b) each of the Named Plaintiffs have provided Defendants Counsel with a Form W-9 and payment instructions. The Parties represent that their negotiation of and agreement to the compensation paid to the Named Plaintiffs did not occur until after the substantive terms of this Agreement had been negotiated and agreed to in principle. No interest shall be paid on the Individual Awards.

**2.5 Claims Administrator Costs and Attorneys' Fees and Costs.** The Parties acknowledge that there will be certain Claims Administrator Costs associated with the Settlement, including the cost of providing notice to the Class and administering the terms set forth in this Agreement. The Parties also acknowledge that Plaintiffs will move the Court for approval of an award to Class Counsel for attorneys' fees and costs. Defendants have agreed to establish a Cash Fund of \$3,750,000 to be divided as set forth below, to cover both the Claims Administrator Costs and Class Counsels attorneys' fees and costs that may be awarded by the Court, as set forth below. The Parties agree that Defendants shall in no event be obligated to pay more than \$3,750,000, in total, toward Claims Administrator Costs, Class Counsels attorneys' fees and costs and Incentive Awards.

(a) Claims Administrator Costs. Within twenty (20) days of Court's entry of the Preliminary Approval Order, Defendants shall make a payment of \$770,000 out of the Cash Fund to an escrow account established by the Claims Administrator. Class Counsel will ensure that the Claims Administrator has supplied Defendants with the its Form W-9 prior to the date payment is due. Class Counsel shall direct the payments from the escrow account to the Claims Administrator as may be appropriate. Any Claims Administrator Costs in excess of \$770,000 shall be paid by Class Counsel.

(b) Attorneys' Fees and Costs. The Parties agree that Class Counsel shall seek an award of no more than \$2,970,000, in the aggregate, for fees and costs in an amount no more than \$2,970,000. Defendants agrees not to oppose Class Counsel's request for attorneys' fees and costs in an amount no more than \$2,970,000. Plaintiffs and Class Counsel further agree that any and all attorneys' fees and costs awarded to Class Counsel will be paid from the Cash Fund. If the Court approves this Agreement and an award of attorneys' fees and costs to Class Counsel, Defendants agrees to pay the attorneys' fees and costs approved by the Court to Class Counsel upon the occurrence of all of the following: (a) the Final Settlement Date, and (b) Class Counsel's delivery to Defendants of a Form W-9 for DeNittis Osefchen Prince, P.C. Any such payment shall be made within ten (10) calendar days of the occurrence of the later of these events and shall be

made to the law firm of DeNittis Osefchen Prince, P.C. The Parties represent that the amount of the attorneys' fees and costs to be requested by Class Counsel was negotiated at arm's-length, and only after agreement was reached on all substantive terms of the settlement. No interest shall be paid on the attorneys' fees and costs award.

**2.6 Reduction in Plaintiffs' Awards or Class Counsel's Attorneys' Fees.** A reduction by the Court or by an appellate court of the attorneys' fees or litigation costs or the Individual Awards sought by Plaintiffs and Class Counsel shall not affect any of the Parties' other rights and obligations under the Agreement.

**2.7 No Tax Liability.** Under no circumstances will Defendants or Defendants' Counsel have any liability for taxes or tax expenses under the Settlement. Plaintiffs and/or Class Counsel are/is responsible for any taxes on any recovery, award or on the Cash Fund. Nothing in this Settlement, or statements made during the negotiation of its terms, shall constitute tax advice by Defendants or Defendants' Counsel.

**2.8 Implementation Costs.** All the costs of providing notice to the Class (including the Settlement Website) in the manner prescribed in Section 3.3 of this Agreement, and the costs associated with independent administration of benefits by the Claims Administrator, shall be paid from the Cash Fund. To the extent there is any additional funds following the entry of Final Order and Judgment, the Parties agree to identify a mutually agreeable cy pres recipient to the Court for approval.

**2.9 Release as to All Class Members.** Upon entry of the Final Order and Judgment, Class Releasers shall be deemed to have fully, finally, and forever released and discharged all Class Released Claims against all Released Parties as set forth in the Final Order and Judgment.

**2.10 Release by Named Plaintiffs.** In addition to the releases made by the Class Members set forth in Section 2.9 above, effective upon entry of the Final Order and Judgment, the Named Plaintiffs make the additional following general release of all past or present claims, known or unknown, against the Released Parties. Upon entry of the Final Order and Judgment, the Named Plaintiffs, and each of their successors, assigns, legatees, heirs, and personal representatives release and forever discharge the Released Parties, from all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent.

In addition, Named Plaintiffs, and each of Named Plaintiffs' successors, assigns, legatees, heirs, and personal representatives, expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

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



Named Plaintiffs fully understand that the facts on which this Agreement is to be executed may be different from the facts now believed by Named Plaintiffs and Class Counsel to be true and expressly accept and assume the risk of this possible difference in facts and agree that the Agreement will remain effective despite any difference in facts. Further, Named Plaintiffs agree that this waiver is an essential and material term of this release and this Agreement that underlies it and that without such waiver this Agreement would not have been accepted.

**2.11 No Admission of Liability or Wrongdoing.** This Agreement reflects the Parties' compromise and resolution of disputed claims. Its constituent provisions, and any and all drafts, communications, and discussions relating thereto, shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law (including, but not limited to, matters respecting class certification) by any person, including Defendants, and shall not be offered or received in evidence or requested in discovery in this Action or any other action or proceeding as evidence of an admission or concession. Defendants have denied and continues to deny each of the claims and contentions alleged by Plaintiffs in the Action. Defendants have repeatedly asserted and continues to assert defenses thereto, and have expressly denied and continues to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action.

**2.12 Settlement Information.** Within thirty (30) days after the execution of this Agreement, Defendants will provide to Class Counsel information regarding the number of items offered for sale in Gap Outlet, Gap Factory Stores, Banana Republic Stores and their respective websites in the United States, at a price of \$6 or less, along with a representative list of examples of such items.

### **3. CLASS NOTICE AND CLAIMS PROCEDURES.**

**3.1 Cooperation to Obtain Court Approval.** The Parties will jointly take all reasonable steps necessary to secure the Court's approval of this Agreement as provided in this Section.

**3.2 Preliminary Approval and Provisional Class Certification.** Plaintiffs shall file their motion for preliminary approval as soon as reasonably possible. The motion shall request that the Court:

- (a) preliminarily approve this Agreement as fair, adequate, and reasonable;
- (b) approve the form, manner, and content of the Full Notice, Email Notice, Postcard Notice, Publication Notice, and Claim Form described in Section 3.3 of this Agreement, and attached as **Exhibits B–F**;
- (c) set deadlines for the filing of objections to, and exclusions from, the settlement, for the submission of Claim Forms, for the filing of a motion for final approval of the settlement and for fees and costs and individual awards for the Named Plaintiffs, and to schedule the date of the Fairness Hearing;
- (d) provisionally certify the Class under CAL. R. CT. 3.769(d) for settlement purposes only;
- (e) stay all proceedings in the Action until the Court renders a final decision on approval of the Agreement and sets a briefing schedule for the papers in support of the Final Order;

(f) conditionally appoint Named Plaintiffs as the Class Representatives for settlement purposes only; and

(g) conditionally appoint the law firm of DeNittis Osefchen Prince, P.C. as Class Counsel for settlement purposes only.

The proposed Preliminary Approval Order shall be substantially similar to the form attached as **Exhibit A**. Defendants shall be permitted, but not required, to file its own brief or statement of non-opposition in support of the Preliminary Approval and Provisional Class Certification Order.

**3.3 Class Notice.** Subject to the Court entering the Preliminary Approval Order, the Parties agree that Defendants, through the retained Claims Administrator, will provide the Class with notice of the proposed Agreement by the following methods.

(a) **Settlement Website.** The Claims Administrator will post the Full Notice on an Internet website (“Internet Posting”) specifically created for the Settlement. The Full Notice shall be substantially similar to the form attached as **Exhibit B**. The Internet Posting will also contain the Claim Form, Complaint, Agreement, and Preliminary Approval Order. The Internet Posting shall be operative starting on or before thirty (30) calendar days after entry of the Preliminary Approval Order. The Internet Posting shall remain active at least until the Final Settlement Date.

(b) **Email Notice.** Defendants and the Claims Administrator shall use reasonable efforts to identify its Gap Outlet, Gap Factory Store and Banana Republic Factory Store customers who may be Class Members and for whom an email address can be determined from Gap’s records or other sources available to the Claims Administrator, including by reverse lookup. The Claims Administrator will send two (2) Email Notices to those Class Members for whom Defendants has or the Claims Administrator can find an email address. The Email Notice shall be substantially similar to the form attached as **Exhibit C**, and will provide the web address of the Settlement Website and an email and mailing address to contact the Claims Administrator. The Claims Administrator will provide the 1<sup>st</sup> Email Notice on or before thirty (30) calendar days after entry of the Preliminary Approval Order and the 2<sup>nd</sup> Email Notice, two (2) weeks thereafter.

(c) **Publication Notice.** The Claims Administrator will publish a Publication Notice through an internet and social media banner campaign throughout the United States. This Publication Notice will be substantially similar to the form attached as **Exhibit D**, and will provide the web address of the Settlement Website and an email and mailing address to contact the Claims Administrator. The Publication Notice will be published on multiple dates within thirty (30) calendar days after entry of the Preliminary Approval Order.

**3.4 Proof of Notice.** No later than ten (10) calendar days before the deadline for Plaintiffs to file their brief in support of the Final Order and Judgment, the Claims Administrator will serve upon Class Counsel a declaration confirming that notice to the Class has been provided in accordance with Section 3.3 of this Agreement.

### **3.5 Claims Procedure.**

(a) Class Members must complete and submit, under penalty of perjury, a valid Claim Form on or before the Claim Filing Deadline in order to receive the appropriate number of Settlement Purchase Certificates. For each such Class Member, Gap, through the Claims

Administrator, will send one or more Settlement Purchase Certificates to the email address or postal address specified on the completed Claim Form.

(b) Class Members who made over \$90.00 in Qualifying Purchases (exclusive of returns) and who wish to obtain more than one (1) Settlement Purchase Certificate as set forth in Sections 2.1 and 2.2 must submit a complete, valid, and timely Claim Form, and must attach thereto proof of such Qualifying Purchases. Acceptable proof of Qualifying Purchases includes [i] receipt(s) clearly showing the date of purchase(s) and the total of the purchase(s), or [ii] a credit or debit card transaction record clearly showing the date of purchase(s) and the total of the purchase(s). Copies of such documents must be included with the Claim Form whether submitted electronically or by postal mail. The proof of purchase must include sufficient information to allow Gap to verify the purchase(s). Other than as set forth in this subsection, Authorized Claimants may only receive one Settlement Purchase Certificate.

(c) **Date of Submission.** The Claim Form must be submitted electronically, either via email or online through the Claims Administrator's settlement website or via fax or U.S. Mail. The delivery date is deemed to be the date that: (1) the Claim Form is deposited in the U.S. Mail, as evidenced by the postmark, in the case of submission by U.S. mail; or (2) in the case of submission electronically through the Settlement Website, the date the Claims Administrator receives the Claim Form, as evidenced by the transmission receipt.

**3.6 Right to Verify.** The Claims Administrator and/or Defendants may review all submitted Claim Forms and proof of Qualifying Purchase(s) for completeness, validity, accuracy, and timeliness, and may contact any Claimant, through the Claims Administrator, to request additional information and/or documentation to determine the validity of any claim. In addition, the Claims Administrator and/or Defendants may verify that: (1) the information set forth in or attached to a submitted Claim Form is accurate; and (2) the Claimant is a Class Member.

**3.7 Objections.** Any Class Member who has not submitted a timely written exclusion request pursuant to Section 3.8 of this Agreement and who wishes to object to the fairness, reasonableness, or adequacy of the settlement contemplated in this Agreement, may elect to object to this Agreement by delivering a timely written objection to the Court, Class Counsel, and Defendants' Counsel.

(a) To be timely, a written objection to the settlement contemplated in this Agreement must be submitted no later than the Objection Deadline. The submission date is deemed to be the date the objection is deposited in the U.S. Mail as evidenced by the postmark or emailed electronically or faxed. It shall be the objector's responsibility to ensure receipt of any objection by the Court, Class Counsel, and Defendants' Counsel. The Court has the discretion to reject untimely objections.

(b) Any written objections to the settlement contemplated in this Agreement must contain: (1) the name and case number of the Action; (2) the Class Member's full name, address, and telephone number; (3) the words "Notice of Objection" or "Formal Objection"; (4) in clear and concise terms, the legal and factual arguments supporting the objection; (5) facts supporting the person's status as a Class Member (*e.g.*, either any unique identifier included by the Claims Administrator in his/her notice, or the date and location of his/her relevant purchases); (6) the Class Member's signature and the date; and (7) the following language immediately above the Class Member's signature and date: "I declare under penalty of perjury under the laws of the State of California that the foregoing statements regarding class membership are true and correct

to the best of my knowledge.” The objection will not be valid if it only objects to the Action’s appropriateness or merits. Class Members who fail to make objections in this manner will be deemed to have waived any objections and will be foreclosed from making any objections (whether by a subsequent objection, intervention, appeal, or any other process) to this Agreement.

(c) Class Members have the option to appear at the Fairness Hearing, either in person or through counsel hired at the Class Member’s expense, to object to the fairness, reasonableness, or adequacy of the settlement contemplated in this Agreement, or to the award of attorneys’ fees. However, Class Members (with or without counsel) intending to make an appearance at the Fairness Hearing must so inform the Parties and the Court on or before the Objection Deadline by providing a “Notice of Intention to Appear” to the Court, Class Counsel, and Defendants’ Counsel.

**3.8 Exclusion from the Class.** Class Members may elect not to be part of the Class and not to be bound by this Agreement. To make this election, Class Members must send a signed letter or postcard to the Claims Administrator stating: (a) the name and case number of the Action; (b) the full name, address, and telephone number of the person requesting exclusion; and (c) a statement that he/she does not wish to participate in the Settlement, postmarked no later than the Exclusion Deadline. The Claims Administrator must serve on Class Counsel and Defendants’ Counsel a list of Class Members who have timely and validly excluded themselves from the Class within five (5) days after the Exclusion Deadline.

**3.9 Final Order and Judgment.** Before the Fairness Hearing, Plaintiffs must apply to the Court for entry of Final Order and Judgment. Such an order shall be substantially similar to the form attached as **Exhibit F**. Class Counsel shall draft the motion papers, and Defendants’ Counsel will not oppose the motion. Defendants shall be permitted, but not required, to file their own brief or statement of non-opposition in support of the Final Order and Judgment.

**3.10 Judgment and Enforcement.** The Parties agree that if the Court grants final approval of the proposed Agreement and enters Final Order and Judgment, the Final Order and Judgment shall include a provision for the retention of the Court’s jurisdiction over the Parties to enforce the terms of this Agreement.

#### **4. TERMINATION OF THE AGREEMENT.**

**4.1 Right to Terminate Agreement for Either Party.** Either Party has the right to terminate and withdraw from this Agreement at any time prior to the Fairness Hearing if the Court makes an order inconsistent with the terms of this Agreement (except for an order reducing the Class Counsel fee award or the Plaintiffs’ Individual Settlement Awards).

**4.2 Defendants’ Right to Terminate for Opt-Outs.** Defendants may terminate this Agreement if more than five percent (5%) of the proposed Class Members elect to be excluded from the Class.

**4.3 Effect of Settlement if Agreement Is Not Approved.** This Agreement was entered into only for the purpose of settlement of the action. In the event that this Agreement is Terminated by either Party, the Court conditions its approval of either the Preliminary Approval Order or the Final Order and Judgment on any modifications of this Agreement that are not acceptable to all Parties, or if the Court does not approve this Agreement or enter the Final Order and Judgment, or if the Final Settlement Date does not occur for any reason, then this Agreement shall be deemed

null and void *ab initio* and the Parties shall be deemed restored to their respective positions *status quo ante*, as if this Agreement was never executed. In that event: (a) the Preliminary Approval Order and all of its provisions will be vacated by its own terms; (b) the Action will revert to the status that existed before the Plaintiffs filed their motion for approval of the Preliminary Approval Order; and (c) no term or draft of this Agreement, or any part of the Parties' settlement discussions, negotiations or documentation will have any effect or be admissible into evidence for any purpose in the Action or any other proceeding. If the Court does not approve this Agreement or enter the Final Order and Judgment for any reason, or if the Final Settlement Date does not occur for any reason, Defendants shall retain all its rights to object to the maintenance of the Action as a class action, and nothing in this Agreement or other papers or proceedings related to this Agreement shall be used as evidence or argument by any Party concerning whether the Action may properly be maintained as a class action provided however, that Defendants will nonetheless bear any costs of Administration and notice paid from the Cash Fund.

## **5. ADDITIONAL PROVISIONS.**

**5.1 Change of Time Periods.** All time periods and dates described in this Agreement are subject to the Court's approval. These time periods and dates may be changed by the Court or by the Parties' written agreement without notice to the Class.

**5.2 Fair, Adequate, and Reasonable Agreement.** The Parties agree this Agreement and settlement reflected herein is fair, adequate, and reasonable and this Agreement was the result of extensive informed, intense, non-collusive, and arms-length negotiations, taking into account all relevant factors, present and potential.

**5.3 Real Parties in Interest.** In executing this Agreement, the Parties warrant and represent that except as provided herein, neither the claims or causes of action released herein nor any part thereof have been assigned, granted, or transferred in any way to any other person, firm, or entity.

**5.4 Voluntary Agreement.** This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the Parties, or of any other person, firm, or entity.

**5.5 Binding on Successors.** This Agreement shall bind and inure to the benefit of the respective successors, assigns, legatees, heirs, and personal representatives of each of the Parties.

**5.6 Parties Represented by Counsel.** The Parties hereby acknowledge that they have been represented in negotiations for and in the preparation of this Agreement by independent counsel of their own choosing, that they have read this Agreement and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Agreement and of its legal effect.

**5.7 Authorization.** Each Party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein and, further, that each Party is fully entitled and duly authorized to give this complete and final release and discharge.

**5.8 Entire Agreement.** This Agreement, and the exhibits thereto, contain(s) the entire agreement between the Parties and constitute the complete, final, and exclusive embodiment of their agreement with respect to the Action. This Agreement is executed without reliance on any promise, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this Agreement.

**5.9 Construction and Interpretation.** Neither the Parties nor any of the Parties' respective attorneys shall be deemed the drafter of this Agreement for purposes of interpreting any provision hereof in any judicial or other proceeding that may arise between or among them. This Agreement has been, and must be construed to have been, drafted by all the Parties to it, so that any rule that construes ambiguities against the drafter will have no force or effect.

**5.10 Headings and Formatting of Definitions.** The various headings used in this Agreement are solely for the convenience of the Parties and shall not be used to interpret this Agreement. Similarly, bolding and italicizing of definitional words and phrases is solely for the Parties' convenience and may not be used to interpret this Agreement. The headings and the formatting of the text in the definitions do not define, limit, extend, or describe the Parties' intent or the scope of this Agreement.

**5.11 Exhibits.** The exhibits to this Agreement are integral parts of the Agreement, and are hereby incorporated and made a part of this Agreement, as though fully set forth in the Agreement.

**5.12 Modifications and Amendments.** No amendment, change, or modification of this Agreement or any part thereof shall be valid unless in writing signed by the Parties or their counsel.

**5.13 Governing Law.** This Agreement is entered into in accordance with the laws of the State of California, and shall be governed by and interpreted in accordance with the laws of the State of California, without regard to its conflict of law principles.

**5.14 Further Assurances.** Each of the Parties hereto shall execute and deliver any and all additional papers, documents, and other assurances and shall do any and all acts or things reasonably necessary in connection with the performance of its obligations hereunder to carry out the express intent of the Parties hereto.

**5.15 Agreement Constitutes a Complete Defense.** To the extent permitted by law, this Agreement may be pled as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceedings that may be instituted, prosecuted, or attempted in breach of or contrary to this Agreement.

**5.16 Cooperation of the Parties.** The Parties acknowledge that it is their intent to consummate this Agreement and agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions contained herein and to exercise their best efforts to accomplish the foregoing terms and conditions of this Agreement. Specifically, the Parties agree to prepare and execute all documents, to seek Court approvals, defend Court approvals, and to do all things reasonably necessary to complete the settlement described herein. Further, the Parties will comply in good faith with the terms and conditions of this Agreement. Should any dispute arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, a representative of Class Counsel and a representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior to submitting such disputes to the Court.

**5.17 Execution Date.** This Agreement shall be deemed executed upon the last date of execution by all of the undersigned.

**5.18 Continuing Jurisdiction.** The Court shall retain jurisdiction over the interpretation, effectuation, and implementation of this Agreement.

**5.19 Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated as originals.

**5.20 Recitals.** The Recitals are incorporated by this reference, and are part of this Agreement.

**5.21 Inadmissibility.** This Agreement (whether approved or not approved, revoked, or made ineffective for any reason) and any proceedings or discussions related to it are inadmissible as evidence of any liability or wrongdoing whatsoever in any court or tribunal in any state, territory, or jurisdiction. Further, this Agreement shall not be construed or offered or received into evidence as an admission, concession, or presumption that class certification is appropriate, except to the extent necessary to consummate this Agreement and the binding effect of the Final Order and Judgment.

**5.22 Notices.** Any notice, instruction, application for Court approval or application for Court orders sought in connection with this Agreement or other document to be given by any Party to any other Party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, if to Defendants' to the attention of Defendants' Counsel, and if to Class Members to the attention of Class Counsel on their behalf.

CLASS COUNSEL	DEFENDANTS'S COUNSEL
<p style="text-align: center;">Stephen P. DeNittis DeNITTIS OSEFCHEN PRINCE, PC 5 Greentree Centre 525 Route 73 North, Suite 410 Marlton, NJ 08053</p>	<p style="text-align: center;">Joseph Duffy MORGAN, LEWIS &amp; BOCKIUS LLP 300 South Grand Avenue Twenty Second Floor Los Angeles, CA 90071-3132</p>

**5.23 List of Exhibits:** The following exhibits are attached to this Agreement:

- Exhibit A: [Proposed] Preliminary Approval and Provisional Class Certification Order
- Exhibit B: Full Notice
- Exhibit C: Email Notice
- Exhibit D: Publication Notice
- Exhibit E: Claim Form
- Exhibit F: Exemplar of Purchase Certificate
- Exhibit G: [Proposed] Final Approval Order and Judgment

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**IN WITNESS WHEREOF**, the Parties hereto, acting by and through their respective Counsel of record, have so AGREED:

Dated: \_\_\_\_\_

\_\_\_\_\_  
CARMEN ANDREWS, PLAINTIFF

Dated: 1/30/19

  
\_\_\_\_\_  
LAURIE MUNNING, PLAINTIFF

Dated: \_\_\_\_\_

\_\_\_\_\_  
MICHAEL PALLAGROSI, PLAINTIFF

Dated: \_\_\_\_\_

\_\_\_\_\_  
CARON COLADONATO, PLAINTIFF

Dated: \_\_\_\_\_

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

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

Their: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
DENITTIS OSEFCHEN PRINCE, PC

\_\_\_\_\_  
Stephen DeNittis  
Counsel for Plaintiffs

And



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IN WITNESS WHEREOF, the Parties hereto, acting by and through their respective Counsel of record, have so AGREED:

Dated: 01/29/2019

Carmen Andrews  
CARMEN ANDREWS, PLAINTIFF

Dated: \_\_\_\_\_

\_\_\_\_\_  
LAURIE MUNNING, PLAINTIFF

Dated: \_\_\_\_\_

\_\_\_\_\_  
MICHAEL PALLAGROSI, PLAINTIFF

Dated: \_\_\_\_\_

\_\_\_\_\_  
CARON COLADONATO, PLAINTIFF

Dated: \_\_\_\_\_

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

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

Their: \_\_\_\_\_

Dated: \_\_\_\_\_

**DENITTIS OSEFCHEN PRINCE, PC**

\_\_\_\_\_  
Stephen DeNittis  
Counsel for Plaintiffs

And

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**IN WITNESS WHEREOF**, the Parties hereto, acting by and through their respective Counsel of record, have so AGREED:

Dated: \_\_\_\_\_

\_\_\_\_\_  
CARMEN ANDREWS, PLAINTIFF

Dated: \_\_\_\_\_

\_\_\_\_\_  
LAURIE MUNNING, PLAINTIFF

Dated: 1/29/19

  
\_\_\_\_\_  
MICHAEL PALLAGROSI, PLAINTIFF

Dated: \_\_\_\_\_

\_\_\_\_\_  
CARON COLADONATO, PLAINTIFF

Dated: \_\_\_\_\_

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

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

Their: \_\_\_\_\_

Dated: 1/30/19

**DENITTIS OSEFCHEN PRINCE, PC**

  
\_\_\_\_\_  
Stephen DeNittis  
Counsel for Plaintiffs

And

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IN WITNESS WHEREOF, the Parties hereto, acting by and through their respective Counsel of record, have SO AGREED:

Dated: \_\_\_\_\_

CARMEN ANDREWS, PLAINTIFF

Dated: \_\_\_\_\_

LAURIE MUNNING, PLAINTIFF

Dated: \_\_\_\_\_

MICHAEL PALLAGROSI, PLAINTIFF

Dated: 1/30/19

Caron Coladonato  
CARON COLADONATO, PLAINTIFF

Dated: \_\_\_\_\_

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

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

Their: \_\_\_\_\_

Dated: \_\_\_\_\_

DENITTIS OSEFCHEN PRINCE, PC

\_\_\_\_\_  
Stephen DeNittis  
Counsel for Plaintiffs

And

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IN WITNESS WHEREOF, the Parties hereto, acting by and through their respective Counsel of record, have so AGREED:

Dated: \_\_\_\_\_

\_\_\_\_\_  
CARMEN ANDREWS, PLAINTIFF

Dated: \_\_\_\_\_

\_\_\_\_\_  
LAURIE MUNNING, PLAINTIFF

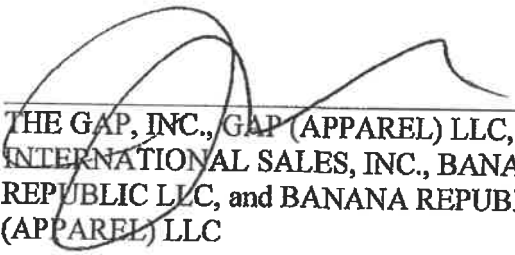
Dated: \_\_\_\_\_

\_\_\_\_\_  
MICHAEL PALLAGROSI, PLAINTIFF

Dated: \_\_\_\_\_

\_\_\_\_\_  
CARON COLADONATO, PLAINTIFF

Dated: 1/30/19

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

By: Julie Gruber

Their: General Counsel, EIP

Dated: \_\_\_\_\_

\_\_\_\_\_  
DENITTIS OSEFCHEN PRINCE, PC

\_\_\_\_\_  
Stephen DeNittis  
Counsel for Plaintiffs

And


Todd M. Friedman, Esquire  
Law Offices of Todd M. Friedman, P.C.  
21550 Oxnard St., Ste 780  
Woodland Hills, CA 91367  
Counsel for Plaintiffs

and

Daniel M. Hattis, Esquire  
HATTIS LAW, PLLC  
1134 Crane Street, #216  
Menlo Park, CA 94025  
Counsel for Plaintiffs

Dated: January 30, 2019

**MORGAN, LEWIS & BOCKIUS LLP**

  
\_\_\_\_\_  
Joseph Duffy  
Counsel for Defendants