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8 OLD NAVY, LLC; OLD NAVY (APPAREL)  
9 LLC; OLD NAVY HOLDINGS, LLC; GPA  
SERVICES, INC.; and THE GAP, INC.

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12  
13 ANASTASHA BARBA and BRENDA  
14 TRIPICCHIO, for Themselves, as Private  
15 Attorney Generals, and/or On Behalf of  
All Others Similarly Situated,

16 Plaintiffs,

17 v.

18 OLD NAVY, LLC; OLD NAVY  
19 (APPAREL) LLC; OLD NAVY  
HOLDINGS, LLC; GPS SERVICES,  
20 INC.; THE GAP, INC.; and DOES 1  
through 20,

21 Defendants.

Case No. 19-7032

**DEFENDANTS OLD NAVY,  
LLC; OLD NAVY (APPAREL)  
LLC; OLD NAVY HOLDINGS,  
LLC; GPS SERVICES, INC.;  
AND THE GAP, INC.'S NOTICE  
OF REMOVAL**

COMPLAINT FILED IN SAN  
FRANCISCO SUPERIOR COURT:  
JULY 18, 2019  
SFSC NO. CGC-19-577743

COMPLAINT SERVED ON  
DEFENDANTS: SEPTEMBER 26,  
2019

NOTICE OF REMOVAL FILED:  
OCTOBER 25, 2019

1 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332, 1441, and  
2 1446, and 1453, Defendants Old Navy, LLC; Old Navy (Apparel), LLC; Old Navy  
3 Holdings, LLC; GPS Services, Inc.; and The Gap, Inc., (“Defendants”), by and  
4 through their attorneys, remove to this Court the action entitled *Anastasha Barba v.*  
5 *Old Navy, LLC, et al.*, Case No. CGC-19-577743 (the “Action”), which was  
6 originally filed in the Superior Court of the State of California for the County of  
7 San Francisco.

8 **I. INTRODUCTION**

9 1. As set forth below, this Action is properly removed to this Court  
10 pursuant to 28 U.S.C. § 1441 because this Court has jurisdiction under the Class  
11 Action Fairness Act, 28 U.S.C. § 1332(d)(“CAFA”), in that this Action is a civil  
12 action in which the amount in controversy exceeds the sum of \$5,000,000 exclusive  
13 of costs and interest, has more than 100 members in the proposed putative class,  
14 and is between citizens of different states.

15 2. By filing this notice of removal, Defendants do not intend to waive,  
16 and hereby reserve, any objection as to venue, the legal sufficiency of the claims  
17 alleged in the Action, and all other defenses. Defendants reserve the right to  
18 supplement and amend this notice of removal.

19 **II. BACKGROUND**

20 3. On July 18, 2019, plaintiffs Anastasha Barba and Brenda Tripicchio  
21 (“Plaintiffs”) commenced this putative class action by filing a Complaint in the San  
22 Francisco Superior Court.

23 4. The Complaint alleges violations of the California Consumer Legal  
24 Remedies Act, Cal. Civ. Code § 1750 *et seq.*, the California False Advertising Law,  
25 Cal. Bus. & Prof. Code § 17500 *et seq.*, the California Unfair Competition Law,  
26 Cal. Bus. & Prof. Code § 17200 *et seq.*, the New Jersey Consumer Fraud Act,  
27 N.J.S.A. & 56:8-1, *et seq.*, and the New Jersey Truth in Consumer Contract,  
28

1 Warranty and Notice Act, N.J.S.A. § 56:12-14, *et seq.* arising out of the sale of  
2 merchandise at Defendants’ Old Navy brick and mortar stores and at Defendants’  
3 online Old Navy website. The Complaint seeks an order certifying the proposed  
4 class, restitution or disgorgement of profits, injunctive relief, punitive and  
5 exemplary damages, and attorneys’ fees.

6 5. The proposed putative classes consists of “[all persons in the United  
7 States of America who, within the applicable limitations period, purchased from the  
8 Old Navy website one or more products which was advertised or promoted by  
9 displaying or disseminating a reference price or discount.” Complaint ¶ 106.  
10 Plaintiffs also propose a New Jersey subclass, which has identical features as the  
11 proposed class, except it includes only New Jersey citizens who purchased  
12 merchandise from Defendants’ Old Navy and Old Navy outlet brick-and-mortar  
13 stores. *Id.* ¶107.

14 6. Plaintiffs’ Notice and Acknowledgment of Receipt of the Complaint  
15 lists a mailing date of September 9, 2019.

16 7. Defendants signed Plaintiffs’ Notice and Acknowledgement of Receipt  
17 of the Complaint on September 26, 2019. Therefore, service of the summons and  
18 Complaint was complete on September 26, 2019. *See* Cal. Civ. Proc. Code §  
19 415.30(c).

20 8. On October 21, 2019, Plaintiffs served Defendants with a First  
21 Amended Complaint for this Action.

22 9. Defendants have not filed an answer or responsive pleading to the  
23 Complaint or the First Amended Complaint.

### 24 **III. JURISDICTION**

25 10. CAFA creates federal jurisdiction over lawsuits in which “the matter  
26 in controversy exceeds the sum or value of \$5,000,000 exclusive of interest and  
27 costs, and is a class action in which . . . any member of a class of plaintiffs is a  
28 citizen of a State different from any defendant,” and involves a putative class that

1 consists of more than 100 members. 28 U.S.C. §§ 1332(d)(2)(A) and (d)(5). All of  
2 these requirements are met here.

3 **A. Minimal Diversity Exists**

4 11. CAFA requires only minimal diversity, and in class action lawsuits,  
5 “[t]he district courts shall have original jurisdiction of any civil action in which . . .  
6 any member of a class of plaintiffs is a citizen of a State different from any  
7 defendant.” 28 U.S.C. § 1332(d)(2)(A). Diversity of citizenship exists here.

8 12. Plaintiff Brenda Tripicchio is a citizen of New Jersey. Complaint ¶ 7.  
9 (“Plaintiff Brenda Tripicchio is . . . a citizen of the State of New Jersey and an  
10 individual and a natural adult person who resides in Burlington County, New  
11 Jersey.”).

12 13. For purposes of diversity, a corporation is deemed to be a citizen of  
13 (1) the state under whose laws it is organized; and (2) the state of its “principal  
14 place of business.” 28 U.S.C. § 1332(c)(1). Defendant The Gap, Inc. is a Delaware  
15 corporation with its principal place of business in the State of California.  
16 Complaint ¶11. Thus, for purposes of CAFA jurisdiction, Gap, Inc. is a citizen of  
17 Delaware and California, and no other state. 28 U.S.C. § 1332(c)(1).

18 14. Accordingly, the minimal diversity requirement is satisfied given that  
19 Plaintiff Tripicchio is a citizen of New Jersey and The Gap, Inc. is a citizen of  
20 Delaware and California.

21 **B. The Amount in Controversy Exceeds \$5,000,000**

22 15. Although Defendants deny all liability alleged in the Complaint and  
23 deny that class treatment is appropriate for this Action, if damages or restitution  
24 were awarded on Plaintiffs’ claims, the aggregate amount as to the putative class  
25 would exceed \$5,000,000 exclusive of interests and costs.

26 16. Defendants deny Plaintiffs’ substantive allegations, deny that Plaintiff  
27 is entitled to any of the relief sought in the Complaint, and do not waive any  
28 defense with respect to any of Plaintiffs’ claims. Nonetheless, the amount in

1 controversy is determined by accepting Plaintiffs' allegations as true. *See, e.g.,*  
2 *Cain v. Hartford Life & Accident Ins. Co.*, 890 F. Supp. 2d 1246, 1249 (C.D. Cal.  
3 2012) (citing *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F.  
4 Supp. 2d 993, 1001 (C.D. Cal. 2002) (“In measuring the amount in controversy, a  
5 court must assume that the allegations of the complaint are true and assume that a  
6 jury will return a verdict for the plaintiff on all claims made in the complaint.”));  
7 *accord Gyorke-Takatri v. Nestle USA, Inc.*, Case No. 15-cv-03702-YGR, 2015 WL  
8 6828258, at \*2 (N.D. Cal. Nov. 6, 2015); *Asturias v. Nationstar Mortgage, LLC*,  
9 Case No. 15-CV-3861 YGR, 2015 WL 6602022, at \*1 (N.D. Cal. Oct. 30, 2015).

10 17. Case law is clear that “[t]he amount-in-controversy allegation of a  
11 plaintiff invoking federal-court jurisdiction is accepted if made in good faith.  
12 Similarly, the amount-in-controversy allegation of a defendant seeking federal-  
13 court adjudication should be accepted when not contested by the plaintiff or  
14 questioned by the court.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135  
15 S. Ct. 547, 549-50 (2014).

16 18. Here, Plaintiffs seek punitive and exemplary damages and requests the  
17 Court “order disgorgement or restitution, including, without limitation,  
18 disgorgement of all revenues, profits and/or unjust enrichment that each Defendant  
19 obtained, directly or indirectly, from Plaintiffs and the members of the Class or  
20 otherwise as a result of the unlawful conduct alleged herein...” Complaint ¶ 209.  
21 In seeking disgorgement or restitution, Plaintiffs seek to represent (1) “[a]ll persons  
22 in the United States of America, who within the applicable limitations period,  
23 purchased from the Old Navy website one or more products which was advertised  
24 or promoted by displaying or disseminating a reference price or discount.”  
25 Complaint ¶ 106; and (2) “[a]ll persons in the State of New Jersey who, within the  
26 applicable limitations period, purchased from an Old Navy or Old Navy Outlet  
27 brick-and-mortar store one or more products which was advertised or promoted by  
28 displaying or disseminating a reference price or discount.” Complaint ¶ 107.

1 19. Given the volume of sales on Defendants online Old Navy website and  
 2 brick-and-mortar stores and the amount of potential class members who made  
 3 purchases online and in stores, the amount in controversy, exclusive of interests and  
 4 costs, well exceeds \$5,000,000.<sup>1</sup>

5 **C. The Putative Class Exceeds 100 Members**

6 20. Plaintiffs allege that “the class easily comprises hundreds of thousands  
 7 of individuals. As such, Class members are so numerous that joinder of all  
 8 members is impracticable.” Complaint ¶ 110.

9 21. Because the Complaint clearly pleads that more than 100 individual  
 10 purchased merchandise from Defendants’ online Old Navy website and Old Navy  
 11 and Old Navy Outlet brick-and-mortar stores, during the putative class period, the  
 12 size of the putative class well exceeds 100 members.

13 **IV. THE PROCEDURAL REQUIREMENTS FOR REMOVAL**  
 14 **ARE SATISFIED**

15 22. This Court is the proper venue for removal because the Action is  
 16 pending in the County of San Francisco, California, and the United States District  
 17 Court for the Northern District of California, San Francisco Division is the “district  
 18 and division embracing the place where such action is pending.” 28 U.S.C. §  
 19 1441(a).

20 23. Defendants timely filed this notice of removal. Service of the  
 21 Complaint and Summons was complete on September 26, 2019. Accordingly,  
 22 Defendants filed this Notice of Removal within 30 days of being served. 28 U.S.C.

23 ///

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26 \_\_\_\_\_  
 27 <sup>1</sup> The amount in controversy is satisfied, in part, by an examination of Defendant The  
 28 Gap, Inc.’s Form 10-K filings. *See, e.g.*, The Gap, Inc., Annual Report (Form 10-k) at  
 16 (Mar. 19, 2019), *available at* <https://investors.gapinc.com/static-files/ea814b54-72cf-4b8b-b343-ed9f77534afe>

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§§ 1446(d), a copy of this notice of removal is being promptly served upon counsel for Plaintiff and a copy is being filed with the Clerk of the Superior Court of the State of California for the County of San Francisco.

Dated: October 25, 2019 MORGAN, LEWIS & BOCKIUS LLP

By /s/ Joseph Duffy  
Joseph Duffy  
Attorneys for Defendants  
OLD NAVY, LLC; OLD NAVY  
(APPAREL) LLC; OLD NAVY  
HOLDINGS, LLC; GPS  
SERVICES, INC.; THE GAP, INC.