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County of San Francisco
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9 **IN THE SUPERIOR COURT OF CALIFORNIA**

CGC-24-616357

10 **FOR THE COUNTY OF SAN FRANCISCO**

11 PAMELA CHO on behalf of herself and all
 12 others similarly situated,

Case No.:

13 Plaintiff,

CLASS ACTION COMPLAINT

14 v.

15 THE GAP, INC., a Delaware corporation, GAP
 (APPAREL) LLC, a California limited liability
 16 company, GAP INTERNATIONAL
 SALES, INC., a Delaware corporation, and
 DOES 1-50, inclusive,

[DEMAND FOR JURY TRIAL]

17 Defendants.
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1 Plaintiff Pamela Cho brings this action, on behalf of herself and all others similarly
 2 situated, against Defendants The Gap, Inc., Gap (Apparel) LLC, and Gap International Sales, Inc.
 3 (collectively, “Gap Factory” or “Defendants”) and states:

4 **I. NATURE OF ACTION**

5 1. “Protection of unwary consumers from being duped by unscrupulous sellers is an
 6 exigency of the utmost priority in contemporary society.” *Vasquez v. Superior Court*, 4 Cal. 3d
 7 800, 808 (1971). This principle is as true today as it was over 50 years ago when it was penned by
 8 Justice Mosk writing for a unanimous California Supreme Court. This putative class action is about
 9 holding a multimillion-dollar company accountable to its customers who have been deceived by a
 10 years-long campaign to trick them into paying more for Gap Factory’s fashion merchandise
 11 through the widespread and perpetual use of false reference and discount pricing. “In short, the
 12 higher reference price stated alongside the selling price shift[s] the demand function outward,
 13 leading to higher average prices and thus higher margins.” Staelin et al., *Competition and the*
 14 *Regulation of Fictitious Pricing*, 87 J. Mktg., 826, 835 (2023).

15 2. Prices reflect a perceived value to consumers.¹ False advertising of prices can be
 16 used to manipulate consumers’ value perception of products and cause consumers to overpay for
 17 them. Aware of the intertwined connection between consumers’ buying decision processes and
 18 price, retailers like Defendants lure consumers with advertised discounts that promise huge savings
 19 and high value. But the promised savings are false, and the product’s value reflected in its price is
 20 incorrect when the retailer advertises discounts off of some higher, made-up, and artificially
 21 inflated “original” price that no one ever pays.

22 3. At all relevant times, Defendants have continually advertised false price discounts
 23 for merchandise sold throughout their Gap Factory outlet stores. In bringing this putative class
 24 action complaint, Plaintiff seeks to remedy this deception and its attendant harm to consumers.

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 26 ¹ Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Informative or Deceptive?*,
 27 11 J. PUB. POL’Y & MKTG. 52, 55 (1992) (“[P]rice is materially utilized in the formation of
 28 perceptions of the product’s value and influences the decision to purchase the product or to
 continue to search for a lower price.”); Patrick J. Kaufmann, N. Craig Smith, & Gwendolyn K.
 Ortmeyer, *Deception in Retailer High-Low Pricing: A “Rule of Reason” Approach*, 70 J.
 RETAILING 115, 118 (1994) (“[R]eference to a retailer’s normal or regular price in retail sale price
 advertising provides the consumer with information used to determine perceived value”).

1 Plaintiff seeks monetary damages, restitution, and declaratory and injunctive relief from
2 Defendants arising from their false discounting scheme on apparel, accessories, shoes, and other
3 items sold in their Gap Factory outlet stores and their e-commerce website, gapfactory.com.

4 4. False reference pricing occurs when a seller fabricates a false “original” price for a
5 product and then offers that product at a substantially lower price under the guise of a discount.
6 The resulting artificial price disparity misleads consumers into believing the product they are
7 buying has a higher market value, and it induces them into purchasing the product. This practice
8 artificially inflates the market price for these products by raising consumers’ internal reference
9 price and in turn the perceived value consumers ascribe to these products (i.e., demand).²
10 Consequently, false reference pricing schemes enable retailers, like Defendants, to sell products
11 above their true market price and value, leaving consumers to pay the inflated price regardless of
12 what they thought of the purported discount. Consumers are thus damaged not only by not
13 receiving the promised discount, but by paying a premium the products would not have
14 commanded but for the false reference pricing scheme.

15 5. The following example of a hypothetical DVD seller, which parallels Defendants’
16 practice, illustrates how false reference pricing schemes harm consumers: the seller knows it can
17 sell a particular DVD at \$5.00, which represents both the market price and the price at which the
18 seller could regularly make a profit. Instead, however, the seller creates a fake “original” price for
19 the DVD of \$100.00 and advertises the DVD as “on sale” at 90% off, creating a (fake) “sale” price
20 of \$10.00. Consumers purchase the DVD for \$10.00 believing they got a “good deal” since it was
21 previously sold—i.e., valued by others in the market—at an “original” price of \$100.00, and
22 presumably would be again soon.

23 6. The consumer’s presumption and purchase stem directly from the seller’s
24 deception. If the seller did not employ a false referencing pricing scheme, it would not be able to
25 sell many, if any, DVDs at \$10.00 because the true market value of the DVD is \$5.00. However,
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27 ² Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Informative or Deceptive?*,
28 11 J. PUB. POL’Y & MKTG. 52, 55 (Spring 1992) (“By creating an impression of savings, the
presence of a higher reference price enhances subjects’ perceived value and willingness to buy the
product.”).

1 the false reference pricing scheme enables the seller to fabricate an increase in consumer demand
2 for the DVD through the reasonable, but incorrect, *perceived value* of the DVD (\$100.00) in
3 connection with the substantial discount of \$90.00. The net effect of myriad consumers' increased
4 willingness to pay \$10.00 for the DVD. Thus the seller artificially inflates the market price for the
5 DVD to \$10.00 by advertising the false "original" price and corresponding fake discount.

6 7. Through their false and misleading marketing, advertising, and pricing scheme
7 alleged herein, Defendants violated, and continue to violate, California and federal law.
8 Specifically, Defendants violated and continue to violate: California's Unfair Competition Law,
9 Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"); California's False Advertising Law, Cal.
10 Bus. & Prof. Code §§ 17500, *et seq.* (the "FAL"); California's Consumers Legal Remedies Act,
11 Cal. Civ. Code §§ 1750, *et seq.* (the "CLRA"); and the Federal Trade Commission ("FTC") Act
12 ("FTCA"), which prohibits "unfair or deceptive acts or practices in or affecting commerce" (15
13 U.S.C. § 45(a)(1)) and false advertisements (15 U.S.C. § 52(a)).

14 8. Plaintiff brings this action on behalf of herself and other similarly situated
15 consumers who have purchased one or more of Defendants' factory outlet items advertised at a
16 purported discount from a fictitious higher reference price from Gap Factory outlet stores and
17 gapfactory.com. Plaintiff intends to halt the dissemination and perpetuation of this false,
18 misleading, and deceptive pricing scheme, to correct the false and harmful perception it has created
19 in the minds of consumers, and to obtain redress for those who overpaid for merchandise tainted
20 by this deceptive pricing scheme. Plaintiff also seeks to permanently enjoin Defendants from
21 engaging in this unlawful conduct. Further, Plaintiff seeks to obtain all applicable damages,
22 including actual, compensatory, benefit of the bargain, statutory, and punitive; equitable
23 restitution; reasonable costs and attorneys' fees; and other appropriate relief in the amount by
24 which Defendants were unjustly enriched as a result of their sales of merchandise offered a false
25 discount.

26 II. JURISDICTION AND VENUE

27 9. This Court has jurisdiction over Defendants and the claims set forth below pursuant
28 to Code of Civil Procedure § 410.10 and the California Constitution, Article VI § 10, because

1 Defendants are incorporated or maintain their headquarters in California and the case is a cause
2 not given by statute to the other trial courts.

3 10. Venue is proper in the Superior Court of California, County of San Francisco,
4 because Defendants reside in this County, the acts and transactions giving rise to Plaintiff's causes
5 of action occurred in this County, and Defendants have conducted business and sold their outlet
6 merchandise throughout California, including in the County of San Francisco, which has caused
7 both obligations and liability of Defendants to arise in the County of San Francisco.

8 11. The amount in controversy exceeds the jurisdictional minimum of this Court.

9 III. GENERAL ALLEGATIONS

10 A. Retailers Benefit from False Reference Pricing Schemes.

11 12. Defendants engage in a false and misleading reference price scheme in the
12 marketing and selling of their Gap Factory outlet merchandise at their Gap Factory outlet stores
13 and e-commerce website, gapfactory.com.

14 13. Retailers like Defendants can and do benefit substantially from false discounting
15 schemes because "framing a price increase as a discount can not only allow the firm to get *higher*
16 *margins*, but also *increase sales*." Staelin et al., *supra*, at 835 (emphasis added). This is because
17 consumers use advertised reference prices to make purchase decisions, particularly when the
18 information available to consumers can vary among different types of products.³ Most often, as
19 with retail clothing, consumers lack full information about the products and, as a result, often use
20 information from sellers to make purchase decisions.⁴

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23 ³ Even within a product, consumers may have imperfect information on the individual attributes.
24 Economists describe "search goods" as those whose attributes "can be ascertained in the search
25 process prior to purchase" (e.g., style of a shirt), "experience goods" as those whose attributes "can
26 be discovered only after purchase as the product is used" (e.g., longevity of a shirt), and "credence
27 goods" as those whose attributes "cannot be evaluated in normal use" (e.g., whether the shirt's
28 cotton was produced using organic farming methods). Michael R. Darby, & Edi Karni. *Free
Competition and the Optimal Amount of Fraud*, J. LAW & ECONOMICS 16 no. 1 (1973): 67-88,
at 68-69.

⁴ "Not only do consumers lack full information about the prices of goods, but their information is
probably even poorer about the quality variation of products simply because the latter information
is more difficult to obtain". Phillip Nelson. *Information and Consumer Behavior*. J. POLITICAL
ECONOMY 78, no. 2 (1970): 311-29, at 311-12.

1 14. Defendants’ deceptive advertised reference prices are thus incorporated into
 2 consumers’ decision process. First, a product’s “price is also used as an indicator of product
 3 quality.”⁵ In other words, consumers view Defendants’ deceptive advertised reference prices as a
 4 proxy for product quality. Second, reference prices “appeal[] to consumers’ desire for bargains or
 5 deals.”⁶ Academic researchers note how consumers “sometimes expend more time and energy to
 6 get a discount than seems reasonable given the financial gain involved,” and “often derive more
 7 satisfaction from finding a sale price than might be expected on the basis of the amount of money
 8 they actually save.”⁷ Under this concept, coined as “transaction utility” by Nobel Prize-winning
 9 economist Richard Thaler, consumers place value on the psychological experience of obtaining a
 10 product at a perceived bargain.⁸

11 15. Research in marketing and economics has long recognized that consumer demand
 12 can be influenced by “internal” and “external” reference prices.⁹ Internal reference prices are
 13 “prices stored in memory” (e.g., a consumer’s price expectations adapted from past experience)
 14 while external reference prices are “provided by observed stimuli in the purchase environment”
 15 (e.g., a “suggested retail price,” or other comparative sale price).¹⁰ Researchers report that
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 18 ⁵ Dhruv Grewal & Larry D. Compeau. *Comparative Price Advertising: Informative or Deceptive?*,
 19 J.PUBLIC POLICY & MARKETING (1992): 52-62, at 54; *see also* Richard Thaler. *Mental Accounting*
 20 *and Consumer Choice*. MARKETING SCIENCE 4, no. 3 (1985): 199-214, p. 212 (“The [reference
 price] will be more successful as a reference price the less often the good is purchased. The
 [reference price] is most likely to serve as a proxy for quality when the consumer has trouble
 determining quality in other ways (such as by inspection)”).

21 ⁶ Dhruv Grewal, & Larry D. Compeau. *Comparative Price Advertising: Informative or*
Deceptive?, J. OF PUBLIC POLICY & MARKETING (1992): 52-62, at 52.

22 ⁷ Peter Darke & Darren Dahl. *Fairness and Discounts: The Subjective Value of a Bargain*. J. OF
 CONSUMER PSYCHOLOGY 13, no 3 (2003): 328-38, at 328.

23 ⁸ “To incorporate ... the psychology of buying into the model, two kinds of utility are postulated:
 24 *acquisition utility* and *transaction utility*. The former depends on the value of the good received
 compared to the outlay, the latter depends solely on the perceived merits of the ‘deal.’” Richard
 25 Thaler. *Mental Accounting and Consumer Choice*. MKTG SCI. 4, no. 3 (1985): 199-214, at 205.

26 ⁹ Empirical results “suggest that internal reference prices are a significant factor in purchase
 decisions. The results also add empirical evidence that external reference prices significantly enter
 the brand-choice decision.” Glenn E. Mayhew & Russell S. Winer. *An Empirical Analysis of*
 27 *Internal and External Reference Prices using Scanner Data*, J. OF CONSUMER RESEARCH 19, no. 1
 (1992): 62-70, at 68.

28 ¹⁰ Glenn E. Mayhew & Russell S. Winer. *An Empirical Analysis of Internal and External Reference*
Prices using Scanner Data. J. CONSUMER RESEARCH 19, no. 1 (1992): 62-70, at 62.

1 consumers' internal reference prices adjust toward external reference prices when valuing a
 2 product.¹¹ For infrequently purchased products, external reference prices can be particularly
 3 influential because these consumers have little or no prior internal reference.¹² In other words,
 4 "[t]he deceptive potential of such advertised reference prices are likely to be considerably higher
 5 for buyers with less experience or knowledge of the product and product category."¹³ Academic
 6 literature further reports that "there is ample evidence that consumers use reference prices in
 7 making brand choices"¹⁴ and publications have summarized the empirical data as follows:

8 Inflated reference prices can have multiple effects on consumers. They can
 9 increase consumers' value perceptions (transaction value and acquisition value),
 10 reduce their search intentions for lower prices, increase their purchase intentions,
 11 and reduce their purchase intentions for competing products ... Inflated and/or
 false advertised reference prices enhance consumers' internal reference price
 estimates and, ultimately, increase their perceptions of value and likelihood to
 purchase[.]¹⁵

12 16. In Staelin, *Regulation of Fictitious Pricing*, published just last year, authors Richard
 13 Staelin, a Duke marketing professor since 1982, Joel Urbany, a Notre Dame marketing professor
 14 since 1999, and Donald Ngwe, a senior principal economist for Microsoft and former marketing
 15 professor for Harvard, built on their prior analytic work to explain the effects of false reference
 16 pricing schemes and why their use has not dissipated as previously expected by the FTC, but rather

18 ¹¹ "Buyers' internal reference prices adapt to the stimuli prices presented in the advertisement.
 19 That is, buyers either adjust their internal reference price or accept the advertised reference price
 20 to make judgments about the product's value and the value of the deal." Dhruv Grewal, Kent B.
 21 Monroe & Ramayya Krishnan. *The Effects of Price-Comparison Advertising on Buyers' Perceptions of Acquisition Value, Transaction Value, and Behavioral Intentions*. J. OF MARKETING 62 (1998): 46-59, at 48.

22 ¹² As Thaler notes, "the [suggested retail price] will be more successful as a reference price the
 23 less often the good is purchased." Richard Thaler. *Mental Accounting and Consumer Choice*. MKTG SCI. 4, no. 3 (1985): 199-214, at 212.

24 ¹³ Dhruv Grewal & Larry D. Compeau. *Pricing and public policy: A research agenda and an
 25 overview of the special issue*. J.PUBLIC POLICY & MARKETING 18, no. 1 (1999): 3-10, at 7.

26 ¹⁴ Gurumurthy Kalvanaram & Russell S. Winer. *Empirical Generalizations from Reference Price
 27 Research*. MARKETING SCIENCE 14, no. 3 (1995): G161-G169, at G161; see also Jerry B. Gotlieb
 & Cyndy Thomas Fitzgerald. *An Investigation into the Effects of Advertised Reference Prices on
 the Price Consumers are Willing to Pay for the Product*. J. OF APPLIED BUS. RESEARCH 6, no. 1
 (1990): 59-69, at 65-66. ("The results of this research provide support for the position that
 [external] reference prices are important cues consumers use when making the decision concerning
 how much they are willing to pay for the product.").

28 ¹⁵ Dhruv Grewal & Larry D. Compeau. *Pricing and public policy: A research agenda and an
 overview of the special issue*. J.PUBLIC POLICY & MARKETING 18, no. 1 (1999): 3-10, at 7.

1 have become more prevalent in the absence of FTC regulation. Importantly, this new study cites
 2 and confirms many of the same older consumer studies cited above¹⁶ and notes that the findings
 3 of these “older” studies are still widely accepted relevant principles in the economic discipline.
 4 *See id.*

5 17. Additionally, Staelin, *Regulation of Fictitious Pricing*, explains how the modern
 6 development of consumer search behavior and options available to consumers (e.g., smartphones,
 7 online shopping) has actually *spread* the presence of fictitious reference pricing, not extinguished
 8 it.¹⁷ According to Staelin and his co-authors “disclosure of the true normal price charged may be
 9 the only solution that could plausibly influence both consumer and firm behavior.” *Id.* at 826. *See*
 10 *also id.* at 831 (“Identical firms, selling identical products, make positive profits because of their
 11 obfuscation strategy, and the likelihood of obfuscation grows as competition intensifies.”).

12 18. Consequently, retailers like Defendants, who understand that consumers are
 13 susceptible to a bargain, have a substantial financial interest in making consumers think they *are*
 14 getting a bargain, even when they are not. Contrary to the illusory bargains in Defendants’
 15 advertisements, consumers are not receiving *any* discount and are actually *overpaying* for
 16 Defendants’ product because, as Staelin *et al.* put it, “[t]he magnitude of both real and fake
 17 discount[s] were significant predictors of demand above the effects of the actual sales price, **with**
 18 ***fake discounts having a substantially larger effect than real discounts.***” *Id.* at 835 (emphasis
 19 added).

20 **B. Defendants Engage in a Fraudulent Price Discounting Scheme.**

21 19. Defendants are a specialty retailer of men’s, women’s, and children’s apparel. For
 22 years, Defendants have engaged in a fake discounting scheme that harms consumers by advertising
 23 their Gap Factory merchandise at discounted “sale” prices in their Gap Factory outlet stores and
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 26 ¹⁶See Staelin, *Regulation of Fictitious Pricing* (manuscript at 3) (“It is now well established that
 27 many consumers get extra utility beyond that associated with consuming the product from
 purchasing it on deal (Thaler 1985, Compeau & Grewal 1998, Krishna et al. 2002) and that
 magnitude of this utility is a function of the size of the deal.”) (emphasis added).

28 ¹⁷ Staelin, *et al.*, *supra*, at 826. (explaining how the study “develop(s) a descriptive model
 explaining why fictitious reference pricing has spread instead of being extinguished by
 competition.”).

1 gapfactory.com. In short, Defendants market the “sale” prices as discounts from the “original”
 2 prices listed on the products’ price tags for merchandise sold at Defendants’ brick-and-mortar Gap
 3 Factory outlet stores. In most cases, the items are each accompanied by a placard sign immediately
 4 above them¹⁸ advertising a “__% Off [the] LOWEST TICKETED PRICE.” In other instances, the
 5 sale placards advertise a whole-price discount that is usually substantially less than the “original”
 6 price tag price. At Gap Factory outlets, the discount placard signs are printed on white card stock
 7 with bold, black lettering advertising the fake discount. Defendants do *not* advertise or otherwise
 8 disclose the date on which any item was last offered for its “original” price.

9 20. The photos below demonstrate Gap Factory’s uniform storewide practice in place
 10 at all Gap Factory stores.¹⁹



24 21. As shown in the above photos—and throughout **Exhibit A**—Defendants’
 25 “original” (or “ticket”) prices are unaccompanied by any qualifying language that could arguably
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27 ¹⁸ In other cases, such as with table displays, the discount sign applies to several, typically similar,
 items.

28 ¹⁹ See **Exhibit A**, additional Gap Factory outlet in-store photographs depicting the extent and
 pervasiveness of Defendants’ pricing scheme.

1 direct consumers to compare Defendants’ reference price and purported discount to any other
 2 market outside of the particular factory store where it is being advertised. This reasonable
 3 impression is reinforced by Defendants’ pervasive use of “__% OFF” advertisements, which
 4 denote limited-time discounts from *former* prices.²⁰ Thus, Defendants do not advertise any
 5 “discounts” from any other stores, including their own Gap mainline stores.

6 22. Additionally, Plaintiff is informed and believes and thereon alleges that all of the
 7 merchandise sold at Gap Factory stores is manufactured for and sold exclusively at Gap Factory
 8 outlet stores.²¹ See Gap, Inc., Annual Report (Form 10-K), at p. 9 (March 19, 2024) (“2024 10-
 9 K”) (“Gap also serves value-conscious customers with exclusively designed collections for Gap
 10 Outlet and Gap Factory Stores.”); *Is Gap Factory the same as Gap?*, Gap Factory,
 11 <https://www.gapfactory.com/customerService/info.do?cid=1044824> (last accessed July 10, 2024)
 12 (“Our in-house design team creates an exclusive line of casual-chic styles available only at Factory.
 13 We do not sell Gap overstock, last season’s trends, or flawed products. You’ll get everything you
 14 love about the Gap brand at a value you’ll love even more.”).

15 23. Moreover, Defendants’ reference prices are not styled as “Compare At” pricing
 16 representations. In those schemes an advertiser compares its prices to those of competitors using
 17 words such as “compare at” or “comparable value” on its price tags to qualify its reference prices.
 18 Accordingly, Plaintiff is *not* required to “assert evidence from which a rational trier of fact could
 19 infer that the *comparative* reference price was inaccurate[.]” *Harris v. PFI W. Stores, Inc.*,

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 22 ²⁰ See *Vizcarra v. Michaels Stores, Inc.*, No. 23-cv-00468-PCP, __ F. Supp. 3d __, 2024 WL
 23 64747, at *4 (N.D. Cal. Jan. 5, 2024) (“A reasonable consumer does not need language such as,
 24 ‘Formerly \$9.99, Now 40% Off \$9.99,’ or ‘40% Off the Former Price of \$9.99,’ to reasonably
 25 understand ‘40% off’ to mean 40% off the former price of the product.”) (quoting *Knapp v.*
 26 *Art.com, Inc.*, No. 16-CV-00768-WHO, 2016 WL 3268995, at *4 (N.D. Cal. June 15, 2016)).

27 ²¹ See *Sperling v. Stein Mart, Inc.*, 291 F. Supp. 3d 1076, 1084 (C.D. Cal. 2018) (“In exclusive
 28 product cases, a store, often an outlet store, sells a lower-price, different version of a product sold
 in a traditional retail store. The outlet uses the price of the product made for the retail store as a
 comparative reference price on price tags. However, the actual product being sold in the outlet is
 made exclusively for the outlet and is never sold for the comparative reference price at a traditional
 retail store. In those cases, courts generally find that a plaintiff can proceed with his or her
 claims.”); see, e.g., *Rubenstein v. Neiman Marcus Grp. LLC*, 687 F.App’x 564, 567 (9th Cir.
 2017); *Stathakos v. Columbia Sportswear Co.*, No. 15-cv-04543-YGR, 2017 WL 1957063, at *8
 (N.D. Cal. May 11, 2017); *Branca v. Nordstrom, Inc.*, No. 14cv2062-MMA, 2015 WL 10436858,
 at *7–8 (S.D. Cal. Oct. 9, 2015).

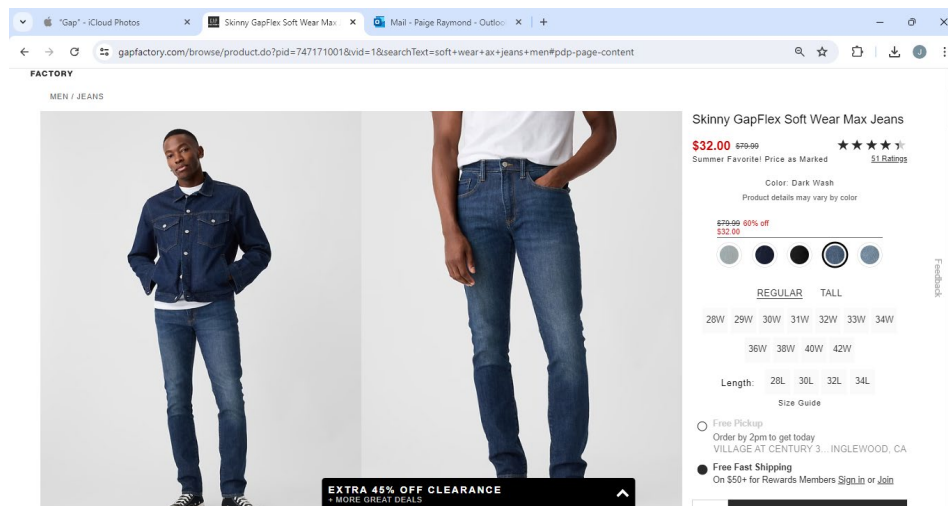
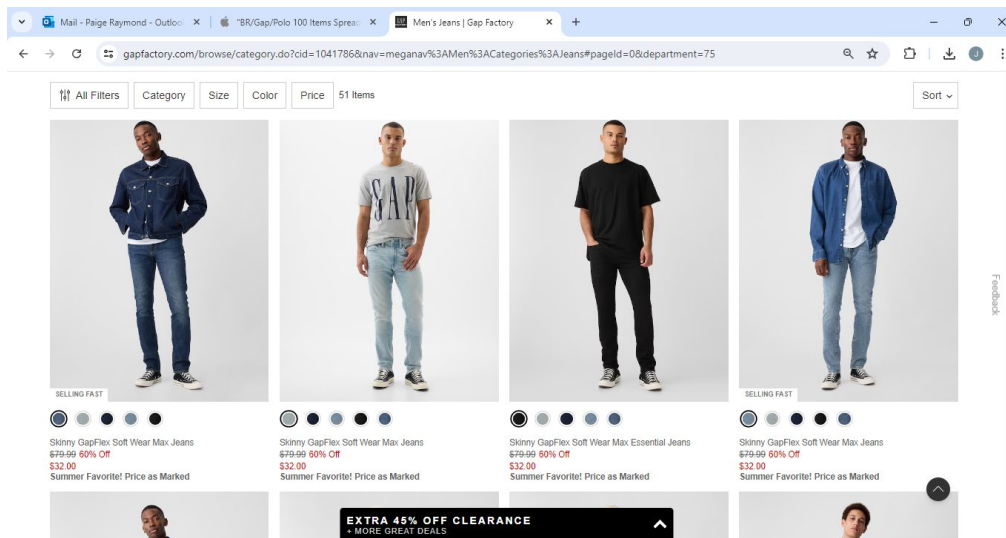
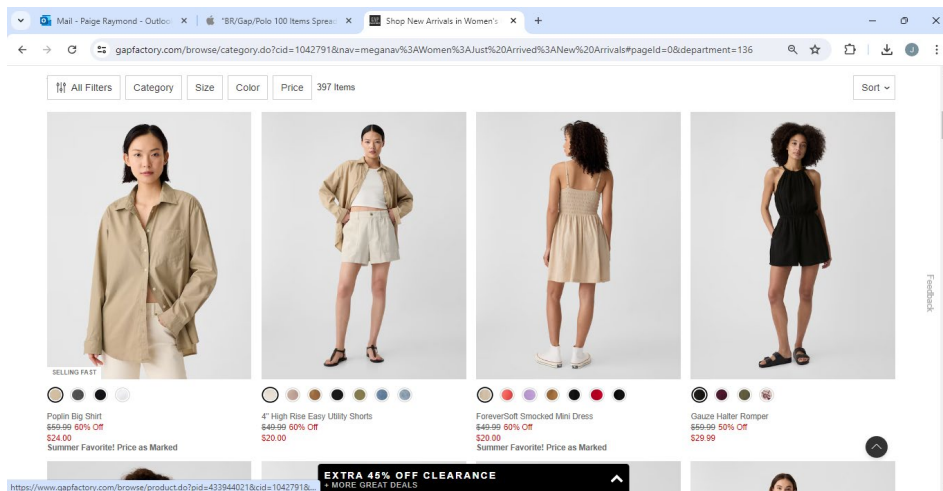
1 No. SACV192521JVSAD SX, 2020 WL 3965022, at *4 (C.D. Cal. Apr. 9, 2020) (citing *Sperling*,
2 291 F. Supp. 3d at 1085-86) (emphasis added), because, “th[at] situation *only arises when the*
3 *language of the advertisement implies a comparison to another retailer*. *Id.* (citing *Horosny v.*
4 *Burlington Coat Factory of California, LLC*, No. CV1505005SJOMRWX, 2015 WL 12532178,
5 at *6 (C.D. Cal. Oct. 26, 2015) (emphasis added). Both Defendants’ exclusive and any non-
6 exclusive Factory store items bear ticket prices unaccompanied by any qualifying language that
7 would reasonably indicate a comparison to another market, and so consumers are not put on notice
8 to seek out those comparisons. Thus, it is irrelevant to Defendants’ liability whether the outlet
9 items are sold in other markets, like department stores (they are not).

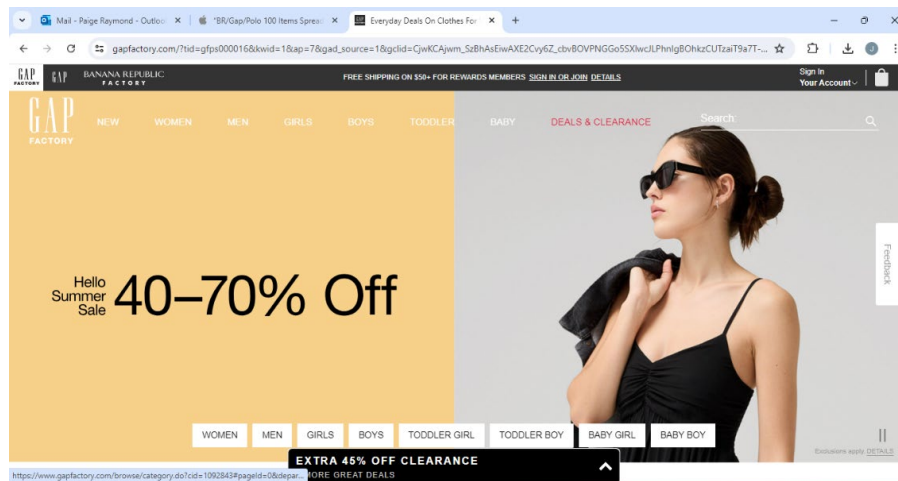
10 24. With respect to Defendants’ factory sales at gapfactory.com, Defendants engage in
11 the online equivalent of its brick-and-mortar practice.²² That is, Defendants perpetually advertise
12 Gap Factory merchandise with an “original” price (black font) with a strikethrough on it (i.e.,
13 crossed out: e.g., ~~\$19.99~~) next to a corresponding “__% Off” discount and a reduced “sale” price
14 representing the advertised percentage off taken from the fictitious original price. The “__% Off”
15 and “sale” price usually appear in red font, indicating the urgency with which consumers need to
16 act if they wish to take advantage of the “savings.” Indeed, like Defendants’ in-store Gap Factory
17 outlets products, the false reference prices advertised at gapfactory.com operate as a baseline for
18 consumers to rely on to assess a product’s value. Showing the discount percentage in red alongside
19 this “original” price communicates to consumers that the product is being offered at a substantial
20 discount from a former price and will return to that price if the shopper fails to act. The photos
21 below illustrate this practice, which, except for variations on the “__% Off” discount on different
22 products, is uniform across the e-commerce website, and appears on both list and product pages.²³

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24 ²² As discussed below in Section VI.D Plaintiff’s counsel confirmed that the outlet products sold
25 at gapfactory.com are the same as those available in-store.

26 ²³ Attached hereto as **Exhibit B** are numerous snapshots from gapfactory.com depicting falsely
27 discounted merchandise. Attached as **Exhibit C** are numerous snapshots of the website acquired
28 from the Wayback Machine. Wayback Machine (accessible at <https://wayback-api.archive.org/>) is
a well-regarded internet archive of websites and webpages as they existed at one point in time. In
other words, while a website may update its content periodically, WBM permits users to view it
exactly as it appears on the date the page snapshot is taken. The date of the snapshot is shown at
the top of each page.

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25. The Gap Factory products sold in-store and at gapfactory.com are the same. There is also no meaningful difference from Defendants’ Gap Factory outlet inventory—the same products are sold at every store and online and the same fraudulent pricing scheme is deployed uniformly. Both channels consist of exclusive, made-for-outlet products not sold in Gap mainline stores or department stores. Thus, Defendants are not offering a “discount” from their own or any competitor’s merchandise for sale in the relevant market (or *any* market). Further, because the Factory outlet products in both the brick-and-mortar Gap Factory stores and gapfactory.com are never—or virtually never—offered for sale or actually sold at their “original” or “price tag” prices, those prices and their accompanying “discounts” are fraudulent: they are used solely to induce consumers to make purchases and spend more under the reasonable, but incorrect, belief that the merchandise was once sold at its advertised reference price in either (1) the brick-and-mortar Gap Factory store, (2) gapfactory.com, or (2) the Gap mainline store (which sells higher quality Gap-branded merchandise) at a significant discount when, in fact, they are purchasing inferior quality, *made-for-factory-outlet*, merchandise that has never been offered outside of a Gap Factory store and, even there, never (or virtually never) at the higher “original” price advertised on its price tag.

26. Even if Defendants did offer the Factory outlet products at their full reference price (which they do not), that offering would do little to legitimize Defendants’ practice. This is because, for the advertised former price to be “actual, bona fide” and “legitimate” it must be the “price at which the article was offered to the public *on a regular basis for a reasonably substantial*

1 *period of time.*” 16 C.F.R. § 233.1(a) (emphasis added). Nor would such rare offerings constitute
 2 the “prevailing market price” within the “three months next immediately preceding the publication
 3 of the advertisement,” as is required by the FAL, Cal. Bus. & Prof. Code § 17501, “unless the date
 4 when the alleged former price did prevail is clearly, exactly and conspicuously stated in the
 5 advertisement[,]” which Defendants also fail to do on *all* advertisements. Rather, the advertised
 6 reference prices on Gap Factory merchandise are *not* the price at which Defendants regularly (or
 7 ever) sell, or expect to regularly sell, the merchandise; they are merely a basis for misleading
 8 consumers into believing they are receiving a substantial discount.

9 27. In sum, Defendants’ fake discount scheme is intended to (and does) increase
 10 Defendants’ sales while depriving consumers of the benefit of their bargain and causing them to
 11 spend more money than the Factory Store items are actually worth—the price they could command
 12 in the absence of the fake discount.²⁴ This conduct deprives consumers of a fair opportunity to
 13 fully evaluate the offers and to make purchase decisions based on accurate information and results
 14 in the illegal imposition of a price premium the Factory store merchandise could not and would
 15 not otherwise command, which consumers, like Plaintiff, are duped into paying.

16 **C. Defendants’ Fraudulent Price Discounting Scheme Harms All Consumers.**

17 28. A product’s reference price matters because it serves as a baseline upon which
 18 consumers perceive its value.²⁵ Empirical studies “suggest that consumers are likely to be misled
 19 into a willingness to pay a higher price for a product simply because the product has a higher
 20 reference price.”²⁶ Consumers are misled and incorrectly overvalue Defendants’ Factory products
 21 as a result of the false price comparisons. The products’ actual sales prices, therefore, reflect
 22

23 _____
 24 ²⁴ Staelin *et al.*, *supra*, at 826 (“It is now well accepted that many consumers get extra utility,
 beyond that associated with consuming a product, from purchasing it on deal [] and that the
 magnitude of this utility is a function of the size of the deal.”).

25 ²⁵ Richard Thaler, *Mental Accounting and Consumer Choice*, MKTG SCIENCE 4, no. 3 (1985): 199-
 214, at 212.

26 ²⁶ Jerry B. Gotlieb & Cyndy T. Fitzgerald. *An Investigation into the Effects of Advertised Reference*
 27 *Prices on the Price Consumers are Willing to Pay for the Product*. J. OF APPLIED BUS. RESEARCH
 6, no. 1 (1990): 59-69, at 66. Moreover, “if a higher reference price encourages consumers to pay
 28 a higher price for a product than the consumer was willing to pay for the identical product with a
 lower reference price, then the practice of using high reference prices would be deceptive.” *Id.* at
 60.

1 consumers' overvaluation of them, which in turn permits Defendants to command inflated prices
 2 for them beyond what the market would otherwise allow. As discussed above, academic
 3 researchers have documented the relationship between reference prices and consumer behavior, as
 4 well as the resulting harm from *false* reference prices:

5 [A]dvertised reference prices in these deal-oriented advertisements can enhance
 6 buyers' internal reference prices These enhanced internal reference prices,
 7 when compared with the lower selling price, result in higher transaction value
 8 perceptions. The increase in perceived transaction value enhances purchases and
 9 reduces search behavior for lower prices. If sellers intentionally increase the
 advertised reference prices above normal retail prices, this is, inflate advertised
 reference prices, the resulting inflated perceptions of transaction value would be
 deceptive. Harm to both buyers and competitors could result from the effect of the
 inflated transaction value on buyers' search and purchase behaviors.²⁷

10 29. Accordingly, all consumers who purchase Gap Factory merchandise are harmed by
 11 Defendants' pricing scheme because its impact pervades the entire market for Gap Factory
 12 merchandise. This is because, again, the artificially increased demand generated by Defendants'
 13 pricing scheme results in increased actual sales prices beyond what the products would command
 14 in the absence of the false reference pricing scheme. Again, "the higher reference price stated
 15 alongside the selling price shift[s] the demand function outward, leading to higher average prices
 16 and thus higher margins." Staelin *et al.*, *supra*, at 835. Thus, all Gap Factory shoppers pay more
 17 regardless of their individual beliefs or purchasing decision processes. In other words, their
 18 subjective beliefs about the value of the products or the legitimacy of the purported discounts are
 19 inconsequential to the injury they incur when purchasing Defendants' Gap Factory merchandise.
 20 All consumers who purchase falsely discounted Gap Factory outlet products have overpaid and
 21 are deprived of the benefit of the bargain (i.e., the promised discount). Additionally, they will have
 22 paid a premium for merchandise that is worth less than its actual sales price.

23 30. To put it differently, the fake discount information presented by Defendants' falsely
 24 advertised reference and sale prices first causes consumers to (reasonably) perceive they are
 25 receiving a bargain when the merchandise is purchased at its "sale" price. This consumer perception
 26

27 _____
 28 ²⁷Dhruv Grewal, Kent B. Monroe & Ramayya Krishnan, *The Effects of Price-Comparison Advertising on Buyers' Perceptions of Acquisition Value, Transaction Value, and Behavioral Intentions*, J. OF MKTG 62 (1998): 46-59, at 46.

1 results in these consumers gaining an additional “transaction value”²⁸ on their outlet purchases,
2 which they would not have otherwise gained but for Defendants’ fake discounting scheme.
3 Consumers’ valuation of Gap Factory outlet merchandise therefore increases in the aggregate.

4 31. Fundamental economics concepts and principles dictate that the harm caused by
5 Defendants’ scheme is uniformly suffered by deceived and, to the extent there are any, non-
6 deceived Factory outlet shoppers alike. One such principle is that cost and demand conditions
7 determine the market prices paid by all consumers.²⁹ The aggregate demand curve for a product,
8 including Defendants’, represents consumers’ valuation of that product as a whole; as consumers’
9 valuation increases, the demand curve shifts outward. When the aggregate demand curve of a
10 product shifts outward, its market price will increase. Therefore, a specific individual’s willingness
11 to pay a certain price for a product will not negate how market prices, as determined by aggregate
12 demand, dictate what all consumers purchasing a given product will pay.

13 32. As a result, Defendants’ pricing scheme impacts the market prices of their Gap
14 Factory outlet products, and any one individual consumer’s subjective beliefs or idiosyncratic
15 rationales will not isolate them from the resultant artificial and illegitimate inflation in Gap Factory
16 outlet prices. Economic theory ensures that as the aggregate demand curve for the products moves
17 outward, all consumers are forced to pay a higher price than the products would command absent
18 the fake discounting scheme. Plaintiff and proposed Class (defined below) members thus suffered
19 a common impact from Defendants’ misconduct.

22 ²⁸ Thaler, Richard. *Mental Accounting and Consumer Choice*. MKTG SCI. 4, no. 3 (1985): 199-
23 214, at 205 (“To incorporate ... the psychology of buying into the model, two kinds of utility are
24 postulated: acquisition utility and transaction utility. The former depends on the value of the good
25 received compared to the outlay, the latter depends solely on the perceived merits of the ‘deal.’”);
26 Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Informative or Deceptive?*,
11 J. PUB. POL’Y & MKTG. 52, 55 (Spring 1992) (“By creating an impression of savings, the
27 presence of a higher reference price enhances subjects’ perceived value and willingness to buy the
28 product.”); Dhruv Grewal, & Larry D. Compeau. *Pricing and public policy: A research agenda
and an overview of the special issue*. J. PUB. POL’Y & MKTG 18, no. 1 (1999): 3-10, at 7.

²⁹ Mankiw, N. *Essentials of Economics*. 8th Edition. Boston, MA: Cengage Learning, 2015, at 66
 (“[P]rice and quantity are determined by all buyers and sellers as they interact in the marketplace”);
 see also, Hal R. Varian, *Microeconomics Analysis*. 3rd Edition. New York, NY: W. W. Norton &
 Company, 1992, at 23-38, 144-57, 233-353 & 285-312.

1 **D. Investigation**

2 33. Plaintiff's counsel has conducted a large-scale, comprehensive investigation into
3 Defendants' fake discounting scheme at their Gap Factory outlet stores and online at
4 gapfactory.com. Plaintiff's counsel has tracked items in Defendants' Gap Factory outlet stores in
5 California from July 18, 2022, continuing often on a daily or near-daily basis until September 14,
6 2022. Plaintiff's counsel recommenced the investigation in March of 2023 and it is currently
7 ongoing. During this time, Plaintiff's counsel regularly monitored prices in California and Oregon
8 Gap Factory outlet stores. Plaintiff's counsel has also monitored prices in New York Gap Factory
9 outlet stores during this time. Attached as **Exhibit D** to this complaint is a list of exemplary
10 products tracked in California.

11 34. Notably, Defendants' Factory outlet pricing scheme (i.e., the manner in which the
12 reference prices and purported discounts are conveyed to shoppers) has appeared uniform at *every*
13 location, regardless of what state it is in or when the observation was made.³⁰ The only thing that
14 changed was the advertised discount and/or reference price on certain merchandise. Indeed, all
15 products observed appear to have remained "on sale" throughout the investigation, "discounted"
16 against a false reference price that has never been observed as the actual selling price. In other
17 words, all items had price tags that were then perpetually "discounted" by in-store signage
18 indicating a large percentage off ("__% Off") or whole-price reduction discount. Accordingly,
19 Plaintiff is informed and believes and thereon alleges that Gap Factory outlet store merchandise is
20 never offered for sale at its full "original" price—and certainly not "on a regular basis for a
21 reasonably substantial period of time," as required by 16 C.F.R. § 233.1.

22 35. Thus, the investigation confirms that the "original" or "price tag" reference price
23 of the item Plaintiff purchased was never the actual selling price of that item because it was never
24 offered at that price, but rather continuously offered for sale at fake discount prices. The
25 investigation confirmed that this was a pervasive practice at the Defendants' Gap Factory outlet
26

27 _____
28 ³⁰ That is, the fake discounting scheme described above in Section III.B. has appeared uniformly
implemented at each location. *See Exhibit A.*

1 stores, as thousands of items remained continuously discounted throughout the investigation
2 period, including those products purchased by Plaintiff.³¹

3 36. Plaintiff’s counsel has also monitored Gap Factory outlet merchandise sold online
4 at gapfactory.com during 2024. Gapfactory.com sells the same Gap Factory merchandise as the
5 brick-and-mortar outlet stores in California. Plaintiff’s counsel found that the merchandise for sale
6 on gapfactory.com was subject to the same perpetual false discounting scheme. Indeed, everything
7 offered on gapfactory.com appears to be always, if not virtually always, advertised at discounts
8 from higher reference prices. This confirmed allegations in Section III.B. above—that items for
9 sale on gapfactory.com are perpetually and uniformly priced with substantially “discounted” sale
10 prices appearing next to both the “crossed out” (or “strikethrough”) “original” price, and the
11 purported discount “__% Off.”

12 _____
13 ³¹ Numerous false discount pricing cases brought in California federal district courts have held
14 that, notwithstanding [FRCP] Rule 9(b) (not applicable here), that plaintiffs are *not* required to
15 perform or provide *any* specific details pertaining of pre-lawsuit investigations into false
16 discounting practices in order to defeat a motion to dismiss. *See, e.g., Rubenstein*, 687 F.App’x
17 at 568 (“Without an opportunity to conduct any discovery, Rubenstein cannot reasonably be
18 expected to have detailed personal knowledge of Neiman Marcus’s internal pricing policies or
19 procedures for its Last Call stores. Because Rubenstein need not specifically plead facts to which
20 she cannot ‘reasonably be expected to have access,’ her allegations regarding the fictitious nature
21 of the Compared To prices may properly be based on personal information and belief at this stage
22 of the litigation.”); *Stathakos*, 2016 WL 1730001, at *3–4 (complaint lacking in any allegations
23 related to pre-suit investigation of false discounting practice satisfied Rule 9(b); *Knapp*, 2016 WL
24 3268995, at *4 (allegations of “perpetual sale” were alone sufficient); *Horosny*, 2015 WL
25 12532178, at *4 (denying motion to dismiss where plaintiff pled existence of deceptive pricing
26 scheme “on information and belief” only, without investigation); *see also Le v. Kohls Dept.*
27 *Stores, Inc.*, 160 F.Supp.3d 1096, 1099 (E.D. Wis. Feb. 8, 2016) (denying a motion to dismiss
28 where the plaintiff had not conducted a nationwide pre-suit investigation before alleging the
defendant’s comparison prices did not reflect a price at which its merchandise was routinely sold).
Still, complaints containing pre-suit investigation allegations similar to Plaintiff’s here have
routinely been sustained over motion to dismiss challenges, in California federal courts as well as
state courts which notably *do not* apply Federal Rule 9(b)’s heightened pleading standard for
actions sounding in fraud. *See, e.g., Adams v. Cole Haan, LLC*, No. 8:20-CV-00913-JWH-DFMx,
2021 WL 4907248 (C.D. Cal. Mar. 1, 2021); *Dahlin v. Under Armour, Inc.*, No. CV 20-3706 PA
(JEMx), 2020 WL 6647733 (C.D. Cal. July 31, 2020); *Inga*, 2020 WL 5769080, at *1; *Harris v.*
PFI W. Stores, Inc., No. SACV 19-2521 JVS (ADSx), 2020 WL 3965022, at *1 (C.D. Cal. Apr. 9,
2020); *Calderon v. Kate Spade & Co., LLC*, No. 3:19-CV-00674-AJB-JLB, 2020 WL 1062930
(S.D. Cal. Mar. 5, 2020); *Fisher v. Eddie Bauer LLC*, No. 19-cv-857 JM (WVG) 2020 WL
4218228 (S.D. Cal. Feb. 3, 2020); *Dennis v. Ralph Lauren Corp.*, No. 16-cv-1056-WQH-BGS,
2017 WL 3732103 (S.D. Cal. Aug. 29, 2017); *Rael v. New York & Co., Inc.*, No. 16-CV-369-BAS
(JMA), 2017 WL 3021019 (S.D. Cal. July 17, 2017); *Azimpour v. Sears, et al.*, No. 15-CV-2798
JLS (WVG), 2017 WL 1496255 (S.D. Cal. Apr. 26, 2017); *Fallenstein v. PVH Corp., et al.*,
No. 21-CV-01690-AJB-AGS (S.D. Cal. Jan. 3, 2023) at ECF No. 29 (Order Denying Defendants’
Motion to Dismiss Plaintiff’s First Amended Complaint); *Schertzer v. Alpargatas USA Inc* (Super.
Ct. San Diego, 37-2019- 00015352, Dkt. No 45).

1 37. Plaintiff's counsel also researched gapfactory.com with the Wayback Machine. The
 2 website snapshots recorded by the Wayback Machine are consistent with the investigation. *See*
 3 **Exhibit C**. The website snapshots recorded by the Wayback Machine showed discounted prices
 4 on gapfactory.com merchandise across the several months before Plaintiff's purchases on May 25,
 5 2024, therefore supporting Plaintiff's allegation of perpetual fake discounts across the e-commerce
 6 platform, in addition to the brick-and-mortar Factory outlet stores.

7 38. Thus, the false discounting scheme used by Defendants on their Gap Factory outlet
 8 merchandise is uniformly and identically applied on all, or virtually all, of the Gap Factory
 9 products sold through Defendants' California brick-and-mortar outlet stores and e-commerce
 10 website, gapfactory.com.

11 39. Despite Plaintiff's counsel's best efforts at investigation, the full extent of
 12 Defendants' false and deceptive pricing scheme can only be revealed through a full examination
 13 of records exclusively in Defendants' possession.

14 IV. PARTIES

15 Plaintiff Pamela Cho

16 40. Plaintiff Cho resides in Mountain View, California. On May 25, 2024, Plaintiff
 17 went shopping for some new clothing at the Gap Factory outlet store located at 447 Great Mall
 18 Dr., Milpitas, CA 95035 (the "Great Mall Milpitas Outlets"). In reliance on Defendants' false and
 19 deceptive advertising, marketing and discount pricing scheme, Plaintiff purchased the following
 20 items from the Milpitas Outlets on May 25, 2024:

21 No.	Item:	False Reference Price:	Purported Discount	Purchase Price:
22 1	GFIT Brushed J (GapFit Brushed Tech Jersey Joggers) SKU 496329-011-0002	\$59.99	60% off	\$24.00
23 2	SL Ribbed Ruff (Ribbed Flutter Sleeve Top) SKU 434712-011-0003	\$34.99	\$16.00 off	\$18.99
24 3	3PL Corvette (Chevrolet Corvette Graphic T-Shirt) SKU 402061-001-0003	\$34.49	50% off	\$17.49
25 4	SL Ribbed Ruff (Ribbed Flutter Sleeve Top) SKU 434712-051-0002	\$34.99	\$16.00 off	\$18.99

1 41. During her time at the Gap Factory outlet store on May 25, 2024, Plaintiff browsed
2 several items before deciding on what items to purchase. After reviewing the advertised sale price
3 for the items listed above, Plaintiff decided to purchase the above listed items. During her time
4 there on May 25, 2024, Plaintiff noticed numerous signs within the Gap Factory outlet store
5 advertising various “__% Off” discounts on items throughout the store.³²

6 42. Indeed, after observing the original prices of the item and the accompanying sale
7 price, Plaintiff believed she was receiving a significant discount on the items she had chosen. Her
8 belief that the discounted prices on the items were limited and would not last was material and
9 integral to her purchase decision. She would not have made the purchases were it not for the
10 significant bargain she thought she was receiving. On all products, the advertised discounts were
11 a material representation to her, and she relied on them in making her purchase decision. As shown
12 in **Exhibit E**, the total “original” price for all four items was \$164.96, the purported discount was
13 \$85.49, and sales tax was \$7.46. Plaintiff paid a total of \$87.03. However, Plaintiff did not receive
14 the benefit of her bargain.

15 43. Plaintiff has therefore suffered economic injury as a direct result of Defendants’
16 unlawful, unfair, and fraudulent false reference pricing scheme.

17 44. Indeed, Plaintiff’s economic injury resulting from Defendants’ misconduct is
18 reliably quantifiable. Plaintiff overpaid for the products she purchased as described herein. And it
19 was Defendants’ false reference pricing scheme and attendant deception that caused Plaintiff to
20 overpay. Despite Plaintiff’s original belief that each product she purchased was discounted and
21 thus that its value was significantly greater than the sale price for which they purchased it, Plaintiff
22 in actuality paid an *inflated* price for the product they purchased. That is, the items Plaintiff
23 purchased were all worth less than the amount Plaintiff paid for each of them and if Defendants
24 had not employed the falsely advertised “original” prices for the four items Plaintiff purchased,
25 then those items would not have commanded such high, inflated prices. The price premium
26 Plaintiff paid—i.e., the difference between the amount Plaintiff paid and the value received, or the

27 _____
28 ³² See, e.g., **Exhibit A**, depicting extent of discount signs on display throughout Defendants’ outlet stores.

1 but-for price the products would have commanded absent the false discounting scheme, can be
2 isolated through multiple expert-based models, including hedonic regression, conjoint analysis,
3 and market simulation, which Plaintiff will further describe in her motion to certify this action as
4 a class action pursuant to Cal. Civ. Proc. § 382.

5 45. Plaintiff is also susceptible to harm reoccurring, and therefore requires an
6 injunction, because she cannot be certain that Defendants will have corrected this deceptive pricing
7 scheme, and she desires to shop at Defendants' Gap Factory outlet stores in the future because she
8 likes the brand and the clothing styles offered. Due to the enormous, fluctuating variety of styles
9 and sizes of merchandise offered at Gap Factory outlet stores, Plaintiff will be unable to parse what
10 prices are inflated and untrue, and what prices are not. Plaintiff simply does not have the resources
11 to ensure that Defendants are complying with California and federal law with respect to their
12 pricing, labeling, and/or advertising of their outlet merchandise.

13 46. Further, because of the wide selection of merchandise available at Defendants'
14 outlet stores, the sheer volume of Gap Factory products involved in Defendants' deceit (i.e.,
15 virtually all of them), and the likelihood that Defendants may yet develop and market additional
16 factory outlet merchandise items for sale, Plaintiff may again, by mistake, purchase a falsely
17 discounted product at one of the Gap Factory outlet stores under the reasonable, but false,
18 impression that Defendants had corrected the scheme and that their reference price advertisement
19 represented a *bona fide* former price at which the item was previously offered for sale by
20 Defendants. However, without a substantial, time-consuming, and costly investigation, Plaintiff
21 will have no way of knowing whether Defendants have deceived her again.

22 47. Absent an equitable injunction enjoining Defendants from continuing in the
23 unlawful course of conduct alleged herein, Plaintiff, members of the Class, and the public will be
24 irreparably harmed and denied an effective and complete remedy because they face a real and
25 tangible threat of future harm emanating from Defendants' ongoing and deceptive conduct that
26 cannot be remedied with monetary damages. Accordingly, Plaintiff, members of the Class, and the
27 general public lack an adequate remedy at law and an injunction is the only form of relief which
28 will guarantee Plaintiff and other California consumers the appropriate assurances.

1 **Defendants**

2 48. Plaintiff is informed and believes, and upon such information and belief alleges,
3 Defendant Gap, Inc., d/b/a Gap Factory is a Delaware corporation with its principal executive
4 offices in San Francisco, California. Plaintiff is informed and believes that Defendant Gap, Inc.
5 d/b/a Gap Factory owns and operates Gap Factory outlet stores in California and advertises,
6 markets, distributes, and/or sells clothing and accessories in California and throughout the United
7 States.

8 49. Defendant Gap (Apparel) LLC is a for-profit limited liability company formed and
9 existing under the laws of the State of California with its principal place of business at 2 Folsom
10 Street, 13th Floor, San Francisco, California 94105, and thus is a citizen of California.

11 50. Defendant Gap International Sales, Inc. is a for-profit corporation formed and
12 existing under the laws of the State of Delaware with its principal place of business at 2 Folsom
13 Street, 13th Floor, San Francisco, California 94105, and thus is a citizen of Delaware and
14 California.

15 51. All Defendants have a parent-subsidary relationship, in that Defendants Gap
16 (Apparel) LLC, and Gap International Sales, Inc., are each wholly-owned subsidiaries of
17 Defendant The Gap, Inc.

18 52. Plaintiff does not know the true names or capacities of the persons or entities sued
19 herein as Does 1-50, inclusive, and therefore sue such defendants by such fictitious names.
20 Plaintiff is informed and believes, and upon such information and belief alleges, that each of the
21 Doe defendants is, in some manner, legally responsible for the damages suffered by Plaintiff and
22 members of the proposed Class as alleged herein. Plaintiff will amend this Complaint to set forth
23 the true names and capacities of these defendants when they have been ascertained, along with
24 appropriate charging allegations, as may be necessary.

25 53. Defendants know that their reference price advertising is false, deceptive,
26 misleading, unconscionable, and unlawful under California and federal law.

27 54. Defendants fraudulently concealed from and intentionally failed to disclose to
28 Plaintiff and other members of the proposed Class the truth about their advertised discount prices

1 and former reference prices. Defendants concealed from consumers the true nature and quality of
2 the products sold at their Gap Factory outlet stores.

3 55. Defendants intentionally concealed and failed to disclose material facts regarding
4 the truth about false former price advertising in order to provoke Plaintiff and the proposed Class
5 to purchase Gap Factory outlet products.

6 56. At all relevant times, Defendants have been under a duty to Plaintiff and the Class
7 to disclose the truth about its false discounts.

8 V. CLASS ALLEGATIONS

9 57. Plaintiff brings this action on behalf of herself and all other similarly situated Class
10 members pursuant to Code of Civil Procedure § 382 and seeks certification of the following Class
11 against Defendants:

12 All persons who are residents of the State of California and within the applicable
13 statute of limitations preceding the filing of this action (the “Class Period”),
14 purchased from a Gap Factory store located in California or from gapfactory.com
one or more products at discounts from an advertised reference price and who have
not received a refund or credit for their purchase(s).

15 Excluded from the Class are Defendants, as well as their officers, employees, agents or affiliates,
16 parent companies and/or subsidiaries, and each of their respective officers, employees, agents or
17 affiliates, and any judge who presides over this action. Plaintiff reserves the right to expand, limit,
18 modify, or amend this Class definition, including the addition of one or more classes, in connection
19 with her motion for Class certification, or at any other time, based upon, *inter alia*, changing
20 circumstances and/or new facts obtained during discovery.

21 58. **Numerosity:** The Class members are so numerous that joinder of all members is
22 impracticable. Plaintiff is informed and believes that the proposed Class contains hundreds of
23 thousands of individuals who have been damaged by Defendants’ conduct as alleged herein. The
24 precise number of Class members is unknown to Plaintiff.

25 59. **Existence and Predominance of Common Questions of Law and Fact:** This action
26 involves common questions of law and fact, which predominate over any questions affecting
27 individual Class members. These common legal and factual questions include, but are not limited
28 to, the following:

1 a. whether, during the Class Period, Defendants used falsely advertised
2 reference prices on their Gap Factory outlet product labels and falsely advertised price
3 discounts on merchandise sold in their outlet stores;

4 b. whether Defendants ever offered items for sale or sold items at their
5 advertised reference price;

6 c. whether, during the Class Period, the original price advertised by
7 Defendants was the prevailing market price for the products in question during the three
8 months preceding the dissemination and/or publication of the advertised former prices;

9 d. whether Defendants' purported sale prices advertised in their Gap Factory
10 outlet stores reflected any actual discounts or savings;

11 e. whether Defendants' purported percentage-off discounts advertised in their
12 Gap Factory outlet stores reflected any actual discounts or savings;

13 f. whether Defendants' alleged conduct constitutes violations of the laws
14 asserted;

15 g. whether Defendants' alleged conduct constitutes violations of federal
16 and/or California pricing regulations;

17 h. whether Defendants engaged in an unconscionable commercial practice,
18 and/or employed deception or misrepresentation under the laws asserted;

19 i. whether Plaintiff and Class members are entitled to damages and the proper
20 measure of that loss; and

21 j. whether an injunction is necessary to prevent Defendants from continuing
22 to use false, misleading or illegal price comparisons.

23 60. **Typicality:** Plaintiff's claims are typical of the claims of the Class members
24 because, *inter alia*, all Class members have been deceived (or were likely to be deceived) by
25 Defendants' false and deceptive price advertising scheme, as alleged herein. Plaintiff is advancing
26 the same claims and legal theories on behalf of herself and all Class members.

27 61. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the Class
28 members. Plaintiff has retained counsel experienced in complex consumer class action litigation,

1 and Plaintiff intends to prosecute this action vigorously. Plaintiff has no antagonistic or adverse
2 interests to those of the Class.

3 62. **Superiority:** The nature of this action and the nature of laws available to Plaintiff
4 and the Class make the use of the class action format a particularly efficient and appropriate
5 procedure to afford relief to them and the Class for the wrongs alleged. The damages or other
6 financial detriment suffered by individual Class members is relatively modest compared to the
7 burden and expense that would be entailed by individual litigation of their claims against
8 Defendants. It would thus be virtually impossible for Plaintiff and Class members, on an individual
9 basis, to obtain effective redress for the wrongs done to them. Absent the class action, Class
10 members and the general public would not likely recover, or would not likely have the chance to
11 recover, damages or restitution, and Defendants will be permitted to retain the proceeds of its
12 fraudulent and deceptive misdeeds.

13 63. All Class members, including Plaintiff, were exposed to one or more of Defendants'
14 misrepresentations or omissions of material fact claiming that former reference prices advertised
15 prices were legitimate. Due to the scope and extent of Defendants' consistent false sale prices, and
16 advertising scheme, disseminated in a years-long campaign to California consumers, it can be
17 reasonably inferred that such misrepresentations or omissions of material fact were uniformly
18 made to all members of the Class. In addition, it can be reasonably presumed that all Class
19 members, including Plaintiff, affirmatively acted in response to the representations contained in
20 Defendants' false advertising scheme when purchasing merchandise sold at Gap Factory outlet
21 stores.

22 64. Plaintiff is informed that Defendants keep extensive computerized records of their
23 Gap Factory outlet customers through, *inter alia*, customer loyalty programs, credit card programs,
24 and general marketing programs. Defendants have one or more databases through which a
25 significant majority of Class members may be identified and ascertained, and they maintain contact
26 information, including email and home addresses, through which notice of this action could be
27 disseminated in accordance with due process requirements.

28

1 VI. CAUSES OF ACTION

2 FIRST CAUSE OF ACTION

3 **Violation of California’s Unfair Competition Law (“UCL”)**
4 **CAL. BUS. & PROF. CODE §§ 17200, *et seq.***
5 ***(On Behalf of Plaintiff and the Class)***

6 65. Plaintiff repeats and re-alleges the allegations contained in every preceding
7 paragraph as if fully set forth herein.

8 66. Plaintiff brings this claim individually and on behalf of the members of the
9 proposed Class against Defendants for violations of the UCL, Cal. Bus. & Prof. Code §§ 17200,
10 *et seq.*

11 67. The UCL defines “unfair business competition” to include any “unlawful, unfair or
12 fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising.
13 Cal. Bus. Prof. Code § 17200.

14 68. The UCL imposes strict liability. Plaintiff and members of the proposed Class need
15 not prove that Defendants intentionally or negligently engaged in unlawful, unfair, or fraudulent
16 business practices—but only that such practices occurred.

17 ***“Unfair” Prong***

18 69. A business act or practice is “unfair” under the UCL if it offends an established
19 public policy or is immoral, unethical, oppressive, unscrupulous or substantially injurious to
20 consumers, and that unfairness is determined by weighing the reasons, justifications and motives
21 of the practice against the gravity of the harm to the alleged victims.

22 70. Defendants’ actions constitute “unfair” business practices because, as alleged
23 above, Defendants engaged in misleading and deceptive price comparison advertising that
24 represented false reference prices and corresponding deeply discounted phantom “sale” prices.
25 Defendants’ acts and practices offended an established public policy of transparency in pricing,
26 including regulations enacted by the FTC, and they constituted immoral, unethical, oppressive,
27 and unscrupulous activities that are substantially injurious to consumers.

28 71. The harm emanating from this practice to Plaintiff and members of the proposed
Class outweighs any utility it provides because Defendants’ practice of advertising false discounts

1 provides no utility. There were reasonably available alternatives to further Defendants' legitimate
2 business interests other than the misleading and deceptive conduct described herein.

3 ***"Fraudulent" Prong***

4 72. A business act or practice is "fraudulent" under the UCL if it is likely to deceive
5 members of the consuming public.

6 73. Defendants' acts and practices alleged above constitute fraudulent business acts or
7 practices as Defendants have deceived Plaintiff and members of the proposed Class and are highly
8 likely to deceive members of the consuming public. Plaintiff and members of the proposed Class
9 relied on Defendants' fraudulent and deceptive representations regarding their false or outdated
10 "original prices" for products sold by Defendants at their Gap Factory outlet stores. These
11 misrepresentations played a substantial role in Plaintiff's and members of the proposed Class's
12 decision to purchase the product at a purportedly steep discount, and Plaintiff and members of the
13 proposed Class would not have purchased the product without Defendants' misrepresentations.

14 ***"Unlawful" Prong***

15 74. A business act or practice is "unlawful" under the UCL if it violates any other law
16 or regulation.

17 75. Defendants' acts and practices alleged above constitute unlawful business acts or
18 practices as Defendants have violated state and federal law in connection with their deceptive
19 pricing scheme. The FTCA prohibits "unfair or deceptive acts or practices in or affecting
20 commerce" (15 U.S.C. § 45(a)(1)) and prohibits the dissemination of any false advertisements. 15
21 U.S.C. § 52(a). Under the FTC, false former pricing schemes, like Defendants', are described as
22 deceptive practices that would violate the FTCA:

23 (a) One of the most commonly used forms of bargain advertising is to offer a
24 reduction from the advertiser's own former price for an article. If the former price
25 is the actual, bona fide price at which the article was offered to the public on a
26 regular basis for a reasonably substantial period of time, it provides a legitimate
27 basis for the advertising of a price comparison. Where the former price is genuine,
28 the bargain being 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 regular price

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

11 16 C.F.R. § 233.1(a) and (b) (emphasis added).

12 76. In addition, Defendants' acts and practices violate California law, which expressly
 13 prohibits false former pricing schemes. The FAL, Cal. Bus. & Prof. Code § 17501, entitled "*Worth*
 14 *or value; statements as to former price,*" states:

15 For the purpose of this article the worth or value of any thing advertised is the
 16 prevailing market price, wholesale if the offer is at wholesale, retail if the offer is
 17 at retail, at the time of publication of such advertisement in the locality wherein
 18 the advertisement is published.

19 ***No price shall be advertised as a former price of any advertised thing, unless the***
 20 ***alleged former price was the prevailing market price as above defined within***
 21 ***three months next immediately preceding the publication of the advertisement***
 22 ***or unless the date when the alleged former price did prevail is clearly, exactly and***
 23 ***conspicuously stated in the advertisement.***

24 Cal. Bus. & Prof. Code § 17501 (emphasis added).

25 77. Defendants violate § 17501 because they advertise items, including the items that
 26 Plaintiff purchased and is described herein, with a former "original" or "Ticketed Price" that
 27 greatly exceeds the prevailing market price of those items. Defendants' own sales records will
 28 show that they normally sell their products, including the item(s) purchased by Plaintiff, at prices
 lower than the advertised former "original" or "Ticketed Price," thereby establishing that those
 prices exceed the prevailing market price of Defendants' merchandise in violation of Cal. Bus. &
 Prof. Code § 17501.

78. As detailed in the Third Cause of Action below, the CLRA, Cal. Civ. Code
 § 1770(a)(9), prohibits a business from "[a]dvertising goods or services with intent not to sell them
 as advertised," and subsection (a)(13) prohibits a business from "[m]aking false or misleading
 statements of fact concerning reasons for, existence of, or amounts of price reductions."

1 79. As detailed herein, and for the same reason that Defendants’ acts and practices
2 violate the FTCA and the FAL, they also violate the CLRA.

3 80. Defendants’ practices, as set forth above, misled Plaintiff, the proposed Class, and
4 the public in the past and will continue to mislead them in the future. Consequently, Defendants’
5 practices constitute an unlawful, fraudulent, and unfair business practice within the meaning of the
6 UCL.

7 81. Defendants’ violations of the UCL, through their unlawful, unfair, and fraudulent
8 business practices, are ongoing and present a continuing threat to Plaintiff, members of the
9 proposed Class, and the public who, if Defendants’ false pricing scheme is permitted to continue,
10 will be deceived into purchasing products based on illegal price comparisons. These false
11 comparisons created phantom markdowns and led to financial harm for consumers like Plaintiff
12 and the members of the proposed Class as described herein. Because of the surreptitious nature of
13 Defendants’ deception, these injuries cannot be reasonably avoided and will continue to be
14 suffered by the consuming public absent a mandated change in Defendants’ practice.

15 82. Pursuant to Bus. & Prof. Code § 17203, Plaintiff and members of the proposed
16 Class are entitled to preliminary and permanent injunctive relief enjoining Defendants from
17 continuing to engage in this unfair competition alleged above, as well as disgorgement and
18 restitution to Plaintiff and the proposed Class of all Defendants’ revenues wrongfully obtained
19 from them as a result of Defendants’ unfair competition, or such portion of those revenues as the
20 Court may find equitable.³³

21 _____
22 ³³ California permits broad discretion to fashion remedies as needed, and “the appropriate measure
23 of recovery [under the equitable provisions of California’s consumer protection laws] depends on
24 the nature of the case and the alleged harm that [a plaintiff] suffers.” *Le*, 160 F. Supp. 3d at 1104.
25 “California’s consumer protection laws... authorize multiple forms of restitutionary recovery.” *Id.*
26 at 1105; *Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 989 (9th Cir. 2015) (“[I]n
27 calculating restitution under the UCL and FAL, the focus is on the difference between what was
28 paid and what a reasonable consumer would have paid at the time of purchase without the
fraudulent or omitted information.”); *Jacobo*, 2016 WL 3482041, at *7 (“Remedy for the alleged
misconduct is not limited to the difference between the value of the goods [p]laintiffs purchased
and the price for those goods.”); *Russell v. Kohl’s Dep’t Stores, Inc.*, No. ED CV 15-1143 RGK
(SPx), 2015 WL 12781206, at *3-4 (C.D. Cal. Oct. 6, 2015) (explaining why cost minus value is
not the exclusive method of measuring restitution); *Spann v. J.C. Penney Corp.*, No. SA CV 12-
0215 FMO (RNBx), 2015 WL 1526559, at *4 (C.D. Cal. Mar. 23, 2015) (“[A]lthough California
case law makes clear that [cost minus value] can be a measure of restitution, defendant has not

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SECOND CAUSE OF ACTION

**Violation of California’s False Advertising Law (“FAL”)
CAL. BUS. & PROF. CODE §§ 17500, *et seq.*
(On Behalf of Plaintiff and the Class)**

83. Plaintiff repeats and re-alleges the allegations contained in every preceding paragraph as if fully set forth herein.

84. Plaintiff brings this claim individually and on behalf of the members of the proposed Class against Defendants for violations of California’s FAL, Cal. Bus. & Prof. Code §§ 17500, *et seq.*

85. Cal. Bus. & Prof. Code § 17500 provides:

It is unlawful for any . . . corporation . . . with intent directly or indirectly to dispose of . . . personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated . . . from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that . . . personal property or those services . . . which is ***untrue or misleading***, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading . . .

(emphasis added).

86. The “intent” required by section 17500 is the intent to make or disseminate personal property (or cause such personal property to be made or disseminated), and not the intent to mislead the public in the making or dissemination of such property.

87. Similarly, this section provides:

no price shall be advertised as a former price of any advertised thing, unless the alleged former price was the prevailing market price . . . within three months next immediately preceding the publication of the advertisement or unless the date when the alleged former price did prevail is clearly, exactly, and conspicuously stated in the advertisement.

cited, nor has the court found, any authority indicating that is the only way restitution can be calculated.”); *Johns v. Bayer Corp.*, No. 09-cv-1935-AJB (DHB), 2012 WL 1520030, at *5 (S.D. Cal. Apr. 30, 2012) (finding that neither *In re Vioxx* nor any other case cited by the defendant “suggest[ed] that the difference in price paid and value received is the only proper measure of restitution”); *Stathakos*, 2016 WL 1730001, at *4 (challenge to restitution methodology premature at motion to dismiss stage); *In re Tobacco Cases II*, 240 Cal. App. 4th 779, 792 (2015) (explaining that *In re Vioxx Class Cases*, 180 Cal. App. 4th 116 (2009) did not limit measuring restitution to the price/value differential).

1 Cal Bus. & Prof. Code § 17501.

2 88. Defendants' routine of advertising discounted prices from false "reference" prices,
3 which were never the prevailing market prices of those products and were materially greater than
4 the true prevailing prices (i.e., Defendants' average and/or most common actual sale price),
5 constitutes an unfair, untrue, and misleading practice in violation of the FAL. This deceptive
6 marketing practice gave consumers the false impression that the products were regularly sold on
7 the market for a substantially higher price than they actually were; therefore, leading to the false
8 impression that the products sold at Defendants' Gap Factory outlet stores were worth more than
9 they actually were.

10 89. As a direct and proximate result of Defendants' misleading and false
11 advertisements, as well as Defendants' deceptive and unfair acts and practices made during the
12 course of Defendants' business, Plaintiff and members of the proposed Class suffered economic
13 injury.

14 90. Plaintiff and members of the proposed Class request that this Court order
15 Defendants to restore this money to Plaintiff and the proposed Class, and to enjoin Defendants
16 from continuing these unfair practices in violation of the FAL in the future. Otherwise, Plaintiff,
17 members of the proposed Class, and the broader general public will be irreparably harmed and/or
18 denied an effective and complete remedy.

19 **THIRD CAUSE OF ACTION**

20 **Violation of California's Consumers Legal Remedies Act ("CLRA")**

21 **CAL. CIV. CODE § 1750, *et seq.***

22 ***(On Behalf of Plaintiff and the Class)***

23 91. Plaintiff repeats and re-alleges the allegations contained in every preceding
24 paragraph as if fully set forth herein.

25 92. Plaintiff brings this claim individually and on behalf of the members of the
26 proposed Class against Defendants for violations of the CLRA, Cal. Civ. Code § 1750, *et seq.*

27 93. Plaintiff and each member of the proposed Class are "consumers" as defined by
28 Cal. Civ. Code § 1761(d). Defendants' sale of products at their Gap Factory outlet stores were
"transactions" within the meaning of Cal. Civ. Code § 1761(e). The products purchased by Plaintiff

1 and members of the proposed Class are “goods” or “services” within the meaning of Cal. Civ.
2 Code § 1761(a)-(b).

3 94. Defendants violated and continue to violate the CLRA by engaging in the following
4 practices proscribed by Cal. Civ. Code § 1770(a) in transactions with Plaintiff and members of the
5 proposed Class which were intended to result in, and did result in, the sale of products sold at their
6 Gap Factory outlet stores and gapfactory.com:

- 7 a. advertising goods or services with intent not to sell them as advertised;
8 § 1770(a)(9); and
- 9 b. making false or misleading statements of fact concerning reasons for,
10 existence of, or amounts of price reductions; § 1770(a)(13).

11 95. Plaintiff is a consumer who has suffered economic injury and damages, including
12 benefit of the bargain damages, as a result of Defendants’ use and employment of the false and
13 misleading reference pricing alleged herein. Pursuant to Cal. Civ. Code § 1780(a), Plaintiff
14 therefore seeks an order enjoining such methods, acts, or practices as well as any other relief the
15 Court deems proper. Plaintiff additionally seeks costs and reasonable attorney’s fees pursuant to
16 Cal. Civ. Code § 1780(e).

17 96. On July 12, 2024, Plaintiff, through counsel, sent a CLRA demand letter by
18 certified mail to Defendants that provided notice of Defendants’ violation of the CLRA and
19 demanded Defendants correct, repair, replace, or otherwise rectify the unlawful, unfair, false, and
20 deceptive practices complained of herein. The letter also stated that if Defendants refused to do so,
21 Plaintiff would file a complaint seeking damages in accordance with the CLRA. If Defendants do
22 not respond to Plaintiff’s letter or agree to rectify the problems associated with the actions detailed
23 above and give notice to all affected consumers within 30 days of the date of written notice
24 pursuant to § 1782, Plaintiff will amend the complaint to seek actual, punitive, and statutory
25 damages, as appropriate against Defendants.

26 97. Filed concurrently is a declaration of venue pursuant to Cal. Civ. Code §1780(d).

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VII. PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of herself and on behalf of the other members of the Class, requests that this Court award relief against Defendants as follows:

- a. an order certifying the Class and designating Plaintiff as the Class Representative and her counsel as Class Counsel;
- b. awarding restitution and disgorgement of all profits and unjust enrichment that Defendants obtained from Plaintiff and the Class members as a result of their unlawful, unfair, and fraudulent business practices described herein;
- c. awarding declaratory and injunctive relief as permitted by law or equity, including: enjoining Defendants from continuing the unlawful practices as set forth herein, and directing Defendants to identify, with Court supervision, victims of its misconduct and pay them all money they are required to pay;
- d. ordering payment of damages as permitted by law, including actual, compensatory, benefit of the bargain, and/or statutory damages, to the full extent permitted by law;
- e. retaining jurisdiction to monitor Defendants’ compliance with permanent injunctive relief;
- f. ordering Defendants to engage in a corrective advertising campaign;
- g. awarding attorneys’ fees and costs; and
- h. for such other and further relief as the Court may deem necessary or appropriate.

VIII. DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial for all claims so triable.

Dated: July 12, 2024

LYNCH CARPENTER LLP

By: /s/ Todd D. Carpenter
Todd D. Carpenter (CA 234464)
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