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**IN THE SUPERIOR COURT OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO**

**CGC-24-616504**

NATASHA FRENCH and CHANG CHO, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

BANANA REPUBLIC, LLC, a California limited  
liability company, BANANA REPUBLIC  
(APPAREL) LLC, a California limited liability  
company, and DOES 1-50, inclusive,

Defendants.

Case No.:

**CLASS ACTION COMPLAINT**

**[DEMAND FOR JURY TRIAL]**

1 Plaintiffs Natasha French and Chang Cho (collectively, “Plaintiffs”) bring this action, on  
 2 behalf of themselves and all others similarly situated, against Defendants Banana Republic, LLC  
 3 and Banana Republic (Apparel) LLC (collectively, “Banana Republic” or “Defendants”) and state:

#### 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 Banana Republic Factory’s fashion  
 11 merchandise through the widespread and perpetual use of false reference and discount pricing. “In  
 12 short, the higher reference price stated alongside the selling price shift[s] the demand function  
 13 outward, leading to higher average prices and thus higher margins.” Staelin et al., *Competition and*  
 14 *the Regulation of Fictitious Pricing*, 87 J. MKTG., 826, 835 (2023).

15 2. Prices reflect a perceived value to consumers.<sup>1</sup> 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 Banana Republic Factory stores. In bringing this putative

24 \_\_\_\_\_  
 25 <sup>1</sup> Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Informative or Deceptive?*,  
 26 11 J. PUB. POL’Y & MKTG. 52, 55 (1992) [hereinafter Grewal & Compeau, *Comparative Price*  
 27 *Advertising*] (“[P]rice is materially utilized in the formation of perceptions of the product’s value  
 28 and influences the decision to purchase the product or to continue to search for a lower price.”);  
 Patrick J. Kaufmann et al., *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 class action complaint, Plaintiffs seek to remedy this deception and its attendant harm to  
2 consumers. Plaintiffs seek monetary damages, restitution, and declaratory and injunctive relief  
3 from Defendants arising from their false discounting scheme on apparel, accessories, shoes, and  
4 other items sold in their Banana Republic Factory stores and their e-commerce website,  
5 [bananarepublicfactory.gapfactory.com](https://bananarepublicfactory.gapfactory.com).<sup>2</sup>

6 4. False reference pricing occurs when a seller fabricates a false “original” price for a  
7 product and then offers that product at a substantially lower price under the guise of a discount.  
8 The resulting artificial price disparity misleads consumers into believing the product they are  
9 buying has a higher market value, and it induces them into purchasing the product. This practice  
10 artificially inflates the market price for these products by raising consumers’ internal reference  
11 price and in turn the perceived value consumers ascribe to these products (i.e., demand).<sup>3</sup>  
12 Consequently, false reference pricing schemes enable retailers, like Defendants, to sell products  
13 above their true market price and value, leaving consumers to pay the inflated price regardless of  
14 what they thought of the purported discount. Consumers are thus damaged not only by not  
15 receiving the promised discount, but by paying a premium the products would not have  
16 commanded but for the false reference pricing scheme.

17 5. The following example of a hypothetical DVD seller, which parallels Defendants’  
18 practice, illustrates how false reference pricing schemes harm consumers: the seller knows it can  
19 sell a particular DVD at \$5.00, which represents both the market price and the price at which the  
20 seller could regularly make a profit. Instead, however, the seller creates a fake “original” price for  
21 the DVD of \$100.00 and advertises the DVD as “on sale” at 90% off, creating a (fake) “sale” price  
22 of \$10.00. Consumers purchase the DVD for \$10.00 believing they got a “good deal” since it was  
23

24 <sup>2</sup> Plaintiffs are informed and believe and thereon allege that both Defendants are subsidiaries of  
25 Gap, Inc. Both Banana Republic Factory and Gap Factory share a common website in which  
26 shoppers can click to toggle between Gap Factory and Banana Republic Factory e-commerce  
27 stores. As of July 16, 2024, a website user entering the URL [bananarepublicfactory.com](https://bananarepublicfactory.com) will be  
28 automatically rerouted to [bananarepublicfactory.gapfactory.com](https://bananarepublicfactory.gapfactory.com). Throughout this complaint,  
[bananarepublicfactory.com](https://bananarepublicfactory.com) and [bananarepublicfactory.gapfactory.com](https://bananarepublicfactory.gapfactory.com) are used interchangeably  
and both refer to the Banana Republic Factory online e-commerce store.

<sup>3</sup> Grewal & Compeau, *Comparative Price Advertising*, *supra* n.1, at 55 (“By creating an impression of savings, the presence of a higher reference price enhances subjects’ perceived value and willingness to buy the product.”).

1 previously sold—i.e., valued by others in the market—at an “original” price of \$100.00, and  
2 presumably would be again soon.

3 6. The consumer’s presumption and purchase stem directly from the seller’s  
4 deception. If the seller did not employ a false referencing pricing scheme, it would not be able to  
5 sell many, if any, DVDs at \$10.00 because the true market value of the DVD is \$5.00. However,  
6 the false reference pricing scheme enables the seller to fabricate an increase in consumer demand  
7 for the DVD through the reasonable, but incorrect, *perceived value* of the DVD (\$100.00) in  
8 connection with the substantial discount of \$90.00. The net effect of myriad consumers’ increased  
9 willingness to pay \$10.00 for the DVD. Thus the seller artificially inflates the market price for the  
10 DVD to \$10.00 by advertising the false “original” price and corresponding fake discount.

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

19 8. Plaintiffs bring this action on behalf of themselves and other similarly situated  
20 consumers who have purchased one or more of Defendants’ Factory items advertised at a  
21 purported discount from a fictitious higher reference price from Banana Republic Factory stores  
22 and bananarepublicfactory.gapfactory.com. Plaintiffs intend to halt the dissemination and  
23 perpetuation of this false, misleading, and deceptive pricing scheme, to correct the false and  
24 harmful perception it has created in the minds of consumers, and to obtain redress for those who  
25 overpaid for merchandise tainted by this deceptive pricing scheme. Plaintiffs also seek to  
26 permanently enjoin Defendants from engaging in this unlawful conduct. Further, Plaintiffs seek to  
27 obtain all applicable damages, including actual, compensatory, benefit of the bargain, statutory,  
28 and punitive; equitable restitution; reasonable costs and attorneys’ fees; and other appropriate

1 relief in the amount by which Defendants were unjustly enriched as a result of their sales of  
2 merchandise offered a false discount.

## 3 II. JURISDICTION AND VENUE

4 9. This Court has jurisdiction over Defendants and the claims set forth below pursuant  
5 to Code of Civil Procedure § 410.10 and the California Constitution, Article VI § 10, because  
6 Defendants are incorporated or maintain their headquarters in California and the case is a cause  
7 not given by statute to the other trial courts.

8 10. Venue is proper in the Superior Court of California, County of San Francisco,  
9 because Defendants reside in this County, the acts and transactions giving rise to Plaintiffs' causes  
10 of action occurred in this County, and Defendants have conducted business and sold their Factory  
11 merchandise throughout California, including in the County of San Francisco, which has caused  
12 both obligations and liability of Defendants to arise in the County of San Francisco.

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

## 14 III. GENERAL ALLEGATIONS

### 15 A. Retailers Benefit from False Reference Pricing Schemes.

16 12. Defendants engage in a false and misleading reference price scheme in the  
17 marketing and selling of their Banana Republic Factory merchandise at their Banana Republic  
18 Factory stores and e-commerce website, bananarepublicfactory.gapfactory.com.

19 13. Retailers like Defendants can and do benefit substantially from false discounting  
20 schemes because “framing a price increase as a discount can not only allow the firm to get *higher*  
21 *margins*, but also *increase sales*.” Staelin et al., *supra*, at 835 (emphasis added). This is because  
22 consumers use advertised reference prices to make purchase decisions, particularly when the  
23 information available to consumers can vary among different types of products.<sup>4</sup> Most often, as  
24

25  
26 <sup>4</sup> Even within a product, consumers may have imperfect information on the individual attributes.  
27 Economists describe “search goods” as those whose attributes “can be ascertained in the search  
28 process prior to purchase” (e.g., style of a shirt), “experience goods” as those whose attributes “can  
be discovered only after purchase as the product is used” (e.g., longevity of a shirt), and “credence  
goods” as those whose attributes “cannot be evaluated in normal use” (e.g., whether the shirt’s cotton  
was produced using organic farming methods). Michael R. Darby & Edi Karni. *Free Competition  
and the Optimal Amount of Fraud*, 16 no. 1 J. LAW & ECON. 67, 68-69 (1973).

1 with retail clothing, consumers lack full information about the products and, as a result, often use  
2 information from sellers to make purchase decisions.<sup>5</sup>

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

13 15. Research in marketing and economics has long recognized that consumer demand  
14 can be influenced by “internal” and “external” reference prices.<sup>10</sup> Internal reference prices are  
15 “prices stored in memory” (e.g., a consumer’s price expectations adapted from past experience)

16  
17 <sup>5</sup> “Not only do consumers lack full information about the prices of goods, but their information is  
18 probably even poorer about the quality variation of products simply because the latter information  
19 is more difficult to obtain”. Phillip Nelson. *Information and Consumer Behavior*. 78, no. 2 J. POL.  
20 ECON. 311, 311-12 (1970).

21 <sup>6</sup> Grewal & Compeau, *Comparative Price Advertising*, *supra* n.1, at 54; *see also* Richard Thaler.  
22 *Mental Accounting and Consumer Choice*, 4, no. 3 MKTG. SCI. 199, 212 (1985) [hereinafter Thaler,  
23 *Mental Accounting and Consumer Choice*] (“The [reference price] will be more successful as a  
24 reference price the less often the good is purchased. The [reference price] is most likely to serve  
25 as a proxy for quality when the consumer has trouble determining quality in other ways (such as  
26 by inspection)”).

27 <sup>7</sup> Grewal & Compeau, *Comparative Price Advertising*, *supra* n.1, at 52.

28 <sup>8</sup> Peter Darke & Darren Dahl. *Fairness and Discounts: The Subjective Value of a Bargain*, 13 no 3  
J. OF CONSUMER PSYCH. 328 (2003).

<sup>9</sup> “To incorporate . . . the psychology of buying into the model, two kinds of utility are postulated:  
*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  
Thaler. *Mental Accounting*, *supra* n.6, at 205.

<sup>10</sup> 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  
Internal and External Reference Prices using Scanner Data*, 19 no. 1 J. OF CONSUMER RSCH. 62,  
68 (1992) [hereinafter Mayhew & Winer, *An Empirical Analysis*].

1 while external reference prices are “provided by observed stimuli in the purchase environment”  
 2 (e.g., a “suggested retail price,” or other comparative sale price).<sup>11</sup> Researchers report that  
 3 consumers’ internal reference prices adjust toward external reference prices when valuing a  
 4 product.<sup>12</sup> For infrequently purchased products, external reference prices can be particularly  
 5 influential because these consumers have little or no prior internal reference.<sup>13</sup> In other words,  
 6 “[t]he deceptive potential of such advertised reference prices are likely to be considerably higher  
 7 for buyers with less experience or knowledge of the product and product category.”<sup>14</sup> Academic  
 8 literature further reports that “there is ample evidence that consumers use reference prices in  
 9 making brand choices”<sup>15</sup> and publications have summarized the empirical data as follows:

10 Inflated reference prices can have multiple effects on consumers. They can  
 11 increase consumers’ value perceptions (transaction value and acquisition value),  
 12 reduce their search intentions for lower prices, increase their purchase intentions,  
 13 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[.]<sup>16</sup>

14 16. In Staelin, *Regulation of Fictitious Pricing*, published just last year, authors Richard  
 15 Staelin, a Duke marketing professor since 1982, Joel Urbany, a Notre Dame marketing professor  
 16 since 1999, and Donald Ngwe, a senior principal economist for Microsoft and former marketing

17 \_\_\_\_\_  
 18 <sup>11</sup> Mayhew & Winer, *An Empirical Analysis*, *supra* n. 10, at 62.

19 <sup>12</sup> “Buyers’ internal reference prices adapt to the stimuli prices presented in the advertisement.  
 20 That is, buyers either adjust their internal reference price or accept the advertised reference price  
 21 to make judgments about the product’s value and the value of the deal.” Dhruv Grewal et al., *The  
 Effects of Price-Comparison Advertising on Buyers’ Perceptions of Acquisition Value,  
 Transaction Value, and Behavioral Intentions*. 62 J. OF MKTG. 46, 48 (1998) [hereinafter Grewal  
 et al., *The Effects of Price-Comparison Advertising*].

22 <sup>13</sup> As Thaler notes, “the [suggested retail price] will be more successful as a reference price the  
 less often the good is purchased.” Richard Thaler. *Mental Accounting*, *supra* n.6, at 212.

23 <sup>14</sup> Dhruv Grewal & Larry D. Compeau. *Pricing and public policy: A research agenda and an  
 24 overview of the special issue*, 18 no.1 J. PUB. POL’Y & MKTG. 3, 7 (1999) [hereinafter Grewal &  
 Compeau, *Pricing and public policy*].

25 <sup>15</sup> Gurumurthy Kalvanaram & Russell S. Winer. *Empirical Generalizations from Reference Price  
 26 Research*. 14, no. 3 MKTG. SCI. G161 (1995); *see also* Jerry B. Gotlieb & Cyndy Thomas  
 27 Fitzgerald. *An Investigation into the Effects of Advertised Reference Prices on the Price  
 28 Consumers are Willing to Pay for the Product*. 6 no. 1 J. OF APPLIED BUS. RSCH. 59, 65-66 (1990)  
 [hereinafter Gotlieb & Fitzgerald, *An Investigation*] (“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.”).

<sup>16</sup> Grewal & Compeau, *Pricing and public policy*, *supra* n.14, at 7.

1 professor for Harvard, built on their prior analytic work to explain the effects of false reference  
 2 pricing schemes and why their use has not dissipated as previously expected by the FTC, but rather  
 3 have become more prevalent in the absence of FTC regulation. Importantly, this new study cites  
 4 and confirms many of the same older consumer studies cited above<sup>17</sup> and notes that the findings  
 5 of these “older” studies are still widely accepted relevant principles in the economic discipline.  
 6 *See id.*

7 17. Additionally, Staelin, *Regulation of Fictitious Pricing*, explains how the modern  
 8 development of consumer search behavior and options available to consumers (e.g., smartphones,  
 9 online shopping) has actually *spread* the presence of fictitious reference pricing, not extinguished  
 10 it.<sup>18</sup> According to Staelin and his co-authors, “disclosure of the true normal price charged may be  
 11 the only solution that could plausibly influence both consumer and firm behavior.” *Id.* at 826. *See*  
 12 *also id.* at 831 (“Identical firms, selling identical products, make positive profits because of their  
 13 obfuscation strategy, and the likelihood of obfuscation grows as competition intensifies.”).

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

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

23 19. Defendants are a specialty retailer of men’s, women’s, and children’s apparel. For  
 24 years, Defendants have engaged in a fake discounting scheme that harms consumers by advertising

26 <sup>17</sup> *See* Staelin *et al.*, *supra*, at 826 (“It is now well accepted that many consumers get extra utility,  
 27 beyond that associated with consuming a product from purchasing it on deal [] and that magnitude  
 of this utility is a function of the size of the deal.”) (emphasis added).

28 <sup>18</sup> 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 their Banana Republic Factory merchandise at discounted “sale” prices in their Banana Republic  
 2 Factory stores and bananarepublicfactory.gapfactory.com. In short, Defendants market the “sale”  
 3 prices as discounts from the “original” prices listed on the products’ price tags for merchandise  
 4 sold at Defendants’ brick-and-mortar Banana Republic Factory stores. In most cases, the items are  
 5 each accompanied by a placard sign immediately above them<sup>19</sup> advertising a “\_\_% Off [the]  
 6 LOWEST TICKETED PRICE.” In other instances, the sale placards advertise a whole-price  
 7 discount that is usually substantially less than the “original” price tag price. The discount placard  
 8 signs are printed on white card stock with bold, black lettering advertising the fake discount.  
 9 Defendants do *not* advertise or otherwise disclose the date on which any item was last offered for  
 10 its “original” price.

11 20. The photos below demonstrate Banana Republic Factory’s uniform storewide  
 12 practice in place at all Banana Republic Factory stores.<sup>20</sup>



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27 <sup>19</sup> In other cases, such as with table displays, the discount sign applies to several, typically similar,  
 items.

28 <sup>20</sup> See **Exhibit A**, additional Banana Republic Factory in-store photographs depicting the extent  
 and pervasiveness of Defendants’ discounting scheme.



21. As shown in the above photos—and throughout **Exhibit A**—Defendants’ “original” (or “ticket”) prices are unaccompanied by any qualifying language that could arguably direct consumers to compare Defendants’ reference price and purported discount to any other market outside of the particular factory store where it is being advertised. This reasonable impression is reinforced by Defendants’ pervasive use of “\_\_% OFF” advertisements, which denote limited-time discounts from *former* prices.<sup>21</sup> Thus, Defendants do not advertise any “discounts” from any other stores, including their own mainline Banana Republic stores.

22. Additionally, Plaintiffs are informed and believe and thereon allege that all of the merchandise sold at Banana Republic Factory stores is manufactured for and sold exclusively at Banana Republic Factory stores.<sup>22</sup>

<sup>21</sup> See *Vizcarra v. Michaels Stores, Inc.*, No. 23-cv-00468-PCP, \_\_\_ F. Supp. 3d \_\_\_, 2024 WL 64747, at \*4 (N.D. Cal. Jan. 5, 2024) (“A reasonable consumer does not need language such as, ‘Formerly \$9.99, Now 40% Off \$9.99,’ or ‘40% Off the Former Price of \$9.99,’ to reasonably understand ‘40% off’ to mean 40% off the former price of the product.”) (quoting *Knapp v. Art.com, Inc.*, No. 16-CV-00768-WHO, 2016 WL 3268995, at \*4 (N.D. Cal. June 15, 2016)).

<sup>22</sup> See Megan Kristel, *What to Buy at Banana Republic Factory*, *The Well Dressed Life* (Feb. 7, 2023), <https://thewelldressedlife.com/what-to-buy-at-banana-republic-factory/> (“And their

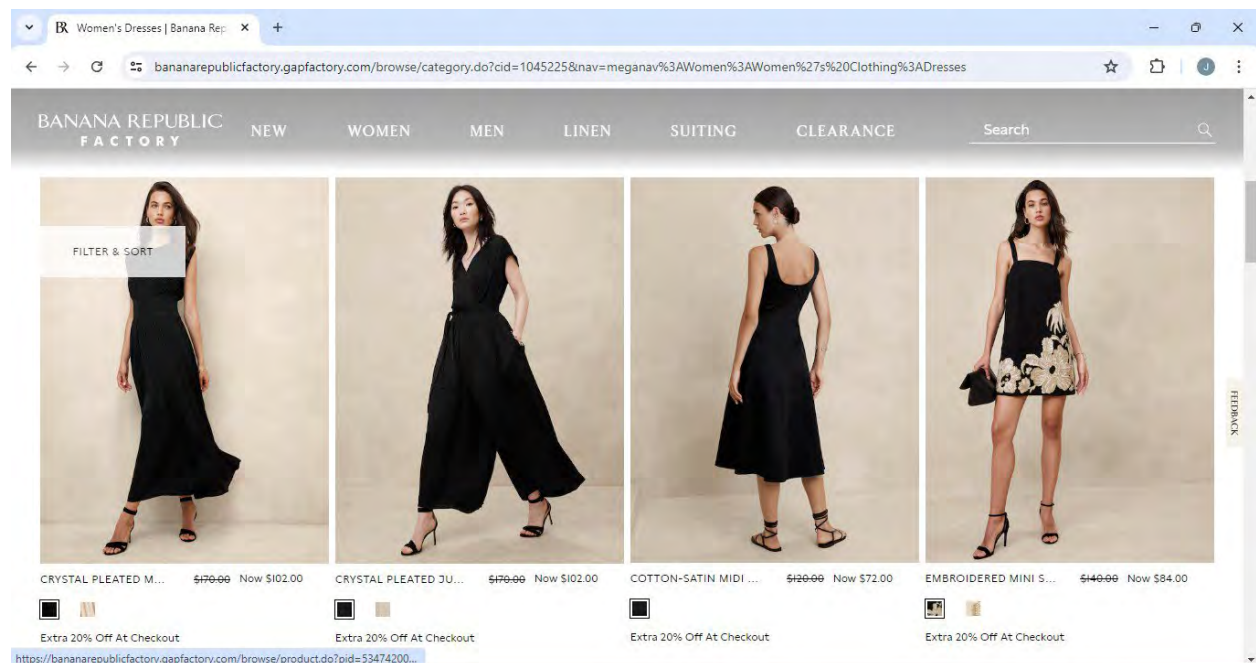
1           23.       Moreover, Defendants’ reference prices are not styled as “Compare At” pricing  
 2 representations. In those schemes an advertiser compares its prices to those of competitors using  
 3 words such as “compare at” or “comparable value” on its price tags to qualify its reference prices.  
 4 Accordingly, Plaintiffs are *not* required to “assert evidence from which a rational trier of fact  
 5 could infer that the *comparative* reference price was inaccurate[,]” *Harris v. PFI W. Stores Inc.*,  
 6 No. SACV192521JVSADSX, 2020 WL 3965022, at \*4 (C.D. Cal. Apr. 9, 2020) (citing *Sperling*,  
 7 291 F. Supp. 3d at 1085-86) (emphasis added), because, “th[at] situation *only arises when the*  
 8 *language of the advertisement implies a comparison to another retailer. Id.* (citing *Horosny v.*  
 9 *Burlington Coat Factory of California, LLC*, No. CV1505005SJOMRWX, 2015 WL 12532178,  
 10 at \*6 (C.D. Cal. Oct. 26, 2015) (emphasis added). Both Defendants’ exclusive and any non-  
 11 exclusive Factory store items bear ticket prices unaccompanied by any qualifying language that  
 12 would reasonably indicate a comparison to another market, and so consumers are not put on notice  
 13 to seek out those comparisons. Thus, it is irrelevant to Defendants’ liability whether the outlet  
 14 items are sold in other markets, such as department stores (they are not).

15           24.       With respect to Defendants’ factory sales at [bananarepublicfactory.com](http://bananarepublicfactory.com),  
 16 Defendants engage in the online equivalent of its brick-and-mortar practice.<sup>23</sup> That is, Defendants  
 17 perpetually advertise Banana Republic Factory merchandise with an “original” price (black font)  
 18 with a strikethrough on it (i.e., crossed out: e.g., ~~\$35.00~~) next to a corresponding “Now” price (e.g.,  
 19 “Now \$17.50), which represents a whole-price “discount” from the struck-through (fictitious)  
 20 “original” price. The “Now” price appears in the same thin black font as the “original” price. Like  
 21

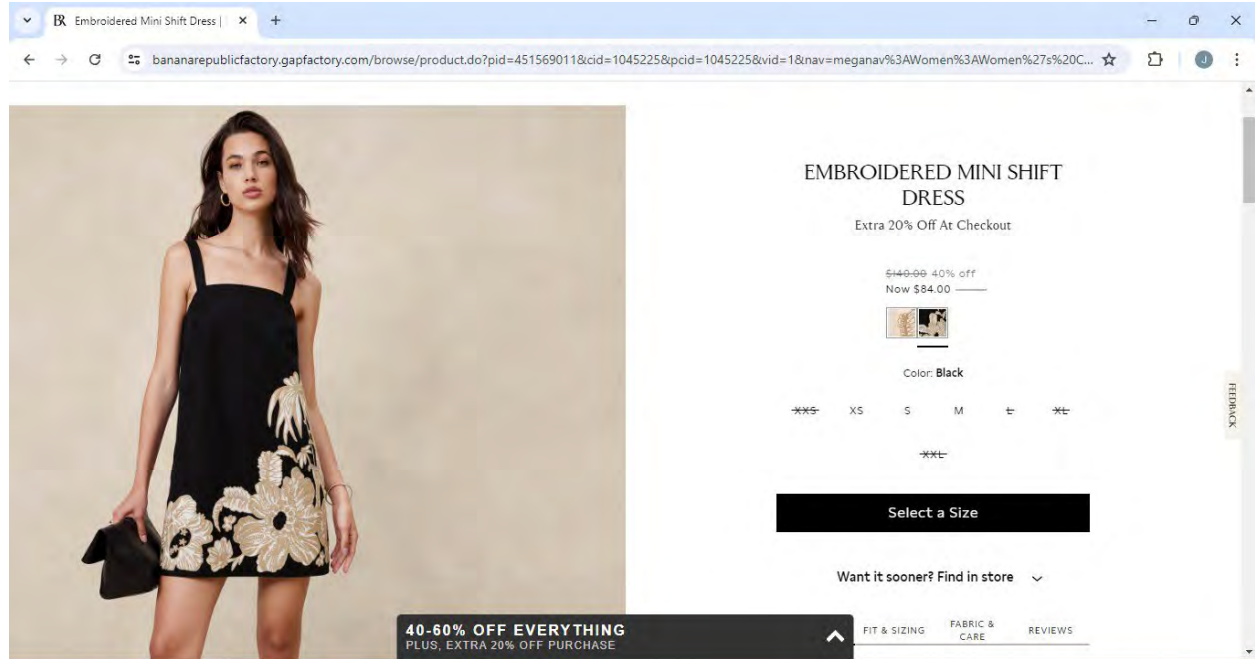
22 \_\_\_\_\_  
 23 [Banana Republic’s] Factory store is NOT an outlet. Just like J.Crew Factory, the clothing is  
 24 specifically designed and manufactured for the store.”); *Sperling v. Stein Mart, Inc.*, 291 F. Supp.  
 25 3d 1076, 1084 (C.D. Cal. 2018) (“In exclusive product cases, a store, often an outlet store, sells a  
 26 lower-price, different version of a product sold in a traditional retail store. The outlet uses the price  
 27 of the product made for the retail store as a comparative reference price on price tags. However,  
 28 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).

<sup>23</sup> As discussed below in Section VI.D, Plaintiffs’ counsel confirmed that the outlet products sold  
 at [bananarepublicfactory.gapfactory.com](http://bananarepublicfactory.gapfactory.com) are the same as those available in-store.

1 Defendants’ in-store Banana Republic Factory products, the false references prices advertised at  
 2 bananarepublicfactory.com operate as a baseline for consumers to rely on to assess a product’s  
 3 value. Defendants’ characterization of the actual sales price as the “Now” price alongside the  
 4 “original” price communicates to consumers that the product is being offered at a substantial  
 5 discount from a former price for a limited time and will return to that price if the shopper fails to  
 6 act. The photos below illustrate this practice, which is uniform across the e-commerce website,  
 7 and appears on both list and product pages.<sup>24</sup>



24 <sup>24</sup> The product pages also include a “\_\_% Off” descriptor to the right of the struck-through  
 25 “original” price and immediately above the “discounted” sales price. Attached hereto as **Exhibit B**  
 26 are numerous snapshots from bananarepublicfactory.com showing an assortment of merchandise  
 27 items advertised with false discounts. Attached as **Exhibit C** are numerous snapshots of the  
 28 website acquired 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. **Exhibit C** therefore offers further evidence of the perpetual nature of Defendants’ false discounting scheme employed at bananarepublicfactory.com.



25. The Banana Republic Factory products sold in-store and at bananarepublicfactory.com are the same. There is also no meaningful difference from Defendants’ Banana Republic Factory 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 Banana Republic mainline stores or department stores.

26. 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 Factory products sold in both the brick-and-mortar Banana Republic Factory stores and bananarepublicfactory.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 Banana Republic Factory store, (2) bananarepublicfactory.com, or (2) the Banana Republic mainline store (which sells higher quality Banana Republic-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 Banana Republic Factory store and, even there, never (or virtually never) at the higher “original” price advertised on its price tag.

1           27. Even if Defendants did offer the Factory products at their full reference price  
 2 (which they do not), that offering would do little to legitimize Defendants’ practice. This is  
 3 because, for the advertised former price to be “actual, bona fide” and “legitimate” it must be the  
 4 “price at which the article was offered to the public *on a regular basis for a reasonably substantial*  
 5 *period of time.*” 16 C.F.R. § 233.1(a) (emphasis added). Nor would such rare offerings constitute  
 6 the “prevailing market price” within the “three months next immediately preceding the publication  
 7 of the advertisement,” as is required by the FAL, Cal. Bus. & Prof. Code § 17501, “unless the date  
 8 when the alleged former price did prevail is clearly, exactly and conspicuously stated in the  
 9 advertisement[,]” which Defendants also fail to do on *all* advertisements. Rather, the advertised  
 10 reference prices on Banana Republic Factory merchandise are *not* the price at which Defendants  
 11 regularly (or ever) sell, or expect to regularly sell, the merchandise; they are merely a basis for  
 12 misleading consumers into believing they are receiving a substantial discount.

13           28. In sum, Defendants’ fake discount scheme is intended to (and does) increase  
 14 Defendants’ sales while depriving consumers of the benefit of their bargain and causing them to  
 15 spend more money than the Factory Store items are actually worth—the price they could command  
 16 in the absence of the fake discount.<sup>25</sup> This conduct deprives consumers of a fair opportunity to  
 17 fully evaluate the offers and to make purchase decisions based on accurate information and results  
 18 in the illegal imposition of a price premium the Factory store merchandise could not and would  
 19 not otherwise command, which consumers, like Plaintiffs, are duped into paying.

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

21           29. A product’s reference price matters because it serves as a baseline upon which  
 22 consumers perceive its value.<sup>26</sup> Empirical studies “suggest that consumers are likely to be misled  
 23 into a willingness to pay a higher price for a product simply because the product has a higher  
 24 reference price.”<sup>27</sup> Consumers are misled and incorrectly overvalue Defendants’ Banana Republic  
 25

26 <sup>25</sup> See *supra* note 17.

27 <sup>26</sup> Thaler, *Mental Accounting and Consumer Choice*, *supra* n.6, at 212.

28 <sup>27</sup> Gotlieb & Fitzgerald, *An Investigation*, *supra* n.15, at 66. Moreover, “if a higher reference price encourages consumers to pay a higher price for a product than the consumer was willing to pay

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

6 [A]dvertised reference prices in these deal-oriented advertisements can enhance  
 7 buyers' internal reference prices . . . . These enhanced internal reference prices,  
 8 when compared with the lower selling price, result in higher transaction value  
 9 perceptions. The increase in perceived transaction value enhances purchases and  
 10 reduces search behavior for lower prices. If sellers intentionally increase the  
 11 advertised reference prices above normal retail prices, this is, inflate advertised  
 12 reference prices, the resulting inflated perceptions of transaction value would be  
 13 deceptive. Harm to both buyers and competitors could result from the effect of the  
 14 inflated transaction value on buyers' search and purchase behaviors.<sup>28</sup>

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

for the identical product with a lower reference price, then the practice of using high reference  
 prices would be deceptive." *Id.* at 60.

<sup>28</sup> Dhruv Grewal et al., *The Effects of Price-Comparison Advertising*, *supra* n.12, at 46.

1           31. To put it differently, the fake discount information presented by Defendants' falsely  
2 advertised reference and sale prices first causes consumers to (reasonably) perceive they are  
3 receiving a bargain when the merchandise is purchased at its "sale" price. This consumer  
4 perception results in these consumers gaining an additional "transaction value"<sup>29</sup> on their outlet  
5 purchases, which they would not have otherwise gained but for Defendants' fake discounting  
6 scheme. Consumers' valuation of Banana Republic Factory merchandise therefore increases in  
7 the aggregate.

8           32. Fundamental economics concepts and principles dictate that the harm caused by  
9 Defendants' scheme is uniformly suffered by deceived and, to the extent there are any, non-  
10 deceived Banana Republic Factory shoppers alike. One such principle is that cost and demand  
11 conditions determine the market prices paid by all consumers.<sup>30</sup> The aggregate demand curve for  
12 a product, including Defendants', represents consumers' valuation of that product as whole; as  
13 consumers' valuation increases, the demand curve shifts outward. When the aggregate demand  
14 curve of a product shifts outward, its market price will increase. Therefore, a specific individual's  
15 willingness to pay a certain price for a product will not negate how market prices, as determined  
16 by aggregate demand, dictate what all consumers purchasing a given product will pay.

17           33. As a result, Defendants' pricing scheme impacts the market prices of their Banana  
18 Republic Factory products, and any one individual consumer's subjective beliefs or idiosyncratic  
19 rationales will not isolate them from the resultant artificial and illegitimate inflation in Banana  
20 Republic Factory prices. Economic theory ensures that as the aggregate demand curve for the  
21 products moves outward, all consumers are forced to pay a higher price than the products would  
22

23 \_\_\_\_\_  
24 <sup>29</sup> Thaler, *Mental Accounting and Consumer Choice*, *supra* n.6, at 205 ("To incorporate ... the  
25 psychology of buying into the model, two kinds of utility are postulated: acquisition utility and  
26 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.'"); Grewal & Compeau, *Comparative  
Price Advertising*, *supra* n.1, at 55 ("By creating an impression of savings, the presence of a higher  
reference price enhances subjects' perceived value and willingness to buy the product.");  
Grewal & Compeau, *Pricing and public policy*, *supra* n.14, at 7.

27 <sup>30</sup> Mankiw, N. *Essentials of Economics*, 8th Edition. Boston, MA: Cengage Learning, 66 (2015)  
28 ("[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, at 23-38, 144-57, 233-353 & 285-312 (1992).



1 command absent the fake discounting scheme. Plaintiffs and proposed Class (defined below)  
2 members thus suffered a common impact from Defendants' misconduct.

3 **D. Investigation**

4 34. Plaintiffs' counsel has conducted a large-scale, comprehensive investigation into  
5 Defendants' fake discounting scheme at their Banana Republic Factory stores and online at  
6 bananarepublicfactory.com. Plaintiffs' counsel has tracked items in Defendants' Banana Republic  
7 Factory stores across California from July 18, 2022, and continuing often on a daily or near-daily  
8 basis until September 23, 2022. Plaintiffs' counsel made additional visits in March 2023 to confirm  
9 that Defendants' Banana Republic Factory items remained falsely discounted under the same  
10 pricing scheme, and confirmed that they did. Plaintiffs' counsel also began investigation in Oregon  
11 in September 2023, which is currently ongoing. Plaintiffs' counsel has also monitored Defendants'  
12 pricing in New York. Notably, at all times (2022, 2023, and 2024), all products observed remained  
13 "discounted" under the same uniform pricing scheme at all locations regardless of the state and  
14 year. Attached as **Exhibit D** to this complaint is a list of exemplary products tracked in California.

15 35. Notably, at all times observations were made (2022, 2023, and 2024), and at all  
16 locations (California, Oregon, New York), Defendants' Factory pricing scheme (i.e., the manner  
17 in which the reference prices and purported discounts are conveyed to shoppers) has been  
18 uniform,<sup>31</sup> and all products observed remained perpetually "discounted." The only thing that  
19 changed was the advertised discount and/or reference price on certain merchandise. In other words,  
20 all items had price tags that were constantly "discounted" by in-store signage indicating a  
21 substantial percent off ("\_\_% Off") or whole-price reduction discount. Accordingly, Plaintiffs are  
22 informed and believe and thereon allege that Banana Republic Factory store merchandise is never  
23 offered for sale at its full "original" price—and certainly not "on a regular basis for a reasonably  
24 substantial period of time," as required by 16 C.F.R. § 233.1.

25 36. Thus, the investigation confirms that the "original" or "price tag" reference price  
26 of the item Plaintiffs purchased was never the actual selling price of that item because it was never  
27

28 <sup>31</sup> That is, the fake discounting scheme described above in Section III.B. has appeared uniformly  
implemented at each location. See **Exhibit A**.

1 offered at that price, but rather continuously offered for sale at fake discount prices. The  
 2 investigation confirmed that this was a pervasive, uniform, and systematic practice at the  
 3 Defendants' Banana Republic Factory stores, as thousands of items remained continuously  
 4 discounted throughout the investigation period, including those products purchased by Plaintiffs.<sup>32</sup>  
 5 Indeed, the investigation indicated that Banana Republic Factory merchandise is never offered for  
 6 sale at its full "original" price—and certainly are not "on a regular basis for a reasonably substantial  
 7 period of time," as required by 16 C.F.R. § 233.1.

8 37. Plaintiffs' counsel has also monitored Banana Republic Factory merchandise sold  
 9 online at [bananarepublicfactory.gapfactory.com](https://bananarepublicfactory.gapfactory.com) during 2024. [bananarepublicfactory.gapfactory.com](https://bananarepublicfactory.gapfactory.com)  
 10 sells the same Banana Republic Factory merchandise as the brick-and-mortar outlet stores in California.  
 11 Plaintiffs' counsel found that the merchandise for sale on [bananarepublicfactory.gapfactory.com](https://bananarepublicfactory.gapfactory.com) was

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12 <sup>32</sup> Numerous false discount pricing cases brought in California federal district courts have held  
 13 that, notwithstanding [FRCP] Rule 9(b) (not applicable here), that plaintiffs are *not* required to  
 14 perform or provide *any* specific details pertaining of pre-lawsuit investigations into false  
 15 discounting practices in order to defeat a motion to dismiss. *See, e.g., Rubenstein*, 687 F.App'x  
 16 at 568 ("Without an opportunity to conduct any discovery, Rubenstein cannot reasonably be  
 17 expected to have detailed personal knowledge of Neiman Marcus's internal pricing policies or  
 18 procedures for its Last Call stores. Because Rubenstein need not specifically plead facts to which  
 19 she cannot 'reasonably be expected to have access,' her allegations regarding the fictitious nature  
 20 of the Compared To prices may properly be based on personal information and belief at this stage  
 21 of the litigation."); *Stathakos*, 2016 WL 1730001, at \*3–4 (complaint lacking in any allegations  
 22 related to pre-suit investigation of false discounting practice satisfied Rule 9(b); *Knapp*, 2016 WL  
 23 3268995, at \*4 (allegations of "perpetual sale" were alone sufficient); *Horosny*, 2015 WL  
 24 12532178, at \*4 (denying motion to dismiss where plaintiff pled existence of deceptive pricing  
 25 scheme "on information and belief" only, without investigation); *see also Le v. Kohls Dept.*  
 26 *Stores, Inc.*, 160 F.Supp.3d 1096, 1099 (E.D. Wis. Feb. 8, 2016) (denying a motion to dismiss  
 27 where the plaintiff had not conducted a nationwide pre-suit investigation before alleging the  
 28 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 subject to the same perpetual false discounting scheme. Indeed, everything offered on  
2 bananarepublicfactory.gapfactory.com appears to be always, if not virtually always, advertised at  
3 discounts from higher reference prices. This confirmed allegations in Section III.B. above—that  
4 items for sale on bananarepublicfactory.gapfactory.com are perpetually and uniformly priced with  
5 substantially “discounted” sale prices appearing next to both the “crossed out” (or “strikethrough”)  
6 “original” price, next to the lower “Now” price and the purported discount “\_\_% Off” (on the  
7 product pages).

8 38. Plaintiffs’ counsel also researched bananarepublicfactory.gapfactory.com with the  
9 Wayback Machine. The website snapshots recorded by the Wayback Machine are consistent with  
10 the investigation. *See Exhibit C.* The website snapshots recorded by the Wayback Machine  
11 showed discounted prices on bananarepublicfactory.com merchandise across several months  
12 before Plaintiffs’ purchases, therefore supporting the allegations of perpetual fake discounts across  
13 the e-commerce platform, in addition to the brick-and-mortar Factory stores.

14 39. Thus, the false discounting scheme used by Defendants on their Banana Republic  
15 Factory merchandise is uniformly and identically applied on all, or virtually all, of the Banana  
16 Republic Factory products sold through Defendants’ California brick-and-mortar outlet stores and  
17 e-commerce website, bananarepublicfactory.gapfactory.com.

18 40. Despite Plaintiffs’ counsel’s best efforts at investigation, the full extent of  
19 Defendants’ false and deceptive pricing scheme can only be revealed through a full examination  
20 of records exclusively in Defendants’ possession.

#### 21 IV. PARTIES

##### 22 Plaintiffs

23 41. Plaintiff Natasha French resides in Tracy, California. On August 28, 2022, Plaintiff  
24 French went shopping for some new clothing at the Banana Republic Factory store in Livermore,  
25 California (“SF Premium Outlets”). In reliance on Defendants’ false and deceptive advertising,  
26 marketing and discount pricing scheme, Plaintiff French purchased a tan trench coat with a  
27 reference price of \$180.00 that was advertised at a purported 50%-off discount, with an additional  
28 discount taken on top of that. Plaintiff French paid an after-tax total of \$83.24.

42. During her time at the Banana Republic Factory store on August 28, 2022, Plaintiff French browsed several items before deciding on what item to purchase. After reviewing the advertised sale price for the items listed above, Plaintiff French decided to purchase the above listed item. During her time there on August 28, 2022, Plaintiff French noticed numerous signs within the Banana Republic Factory store advertising various “\_\_% Off” discounts on items throughout the store.<sup>33</sup>

43. Indeed, after observing the original price of the item and the accompanying sale price, Plaintiff French believed she was receiving a significant discount on the item she had chosen. She relied on the purported discount and her belief that the discounted price on the item was for a limited time and would not last was material and integral to her purchase decision. She would not have made the purchase were it not for the significant bargain she thought she was receiving. Plaintiff French paid a total of \$83.24. However, Plaintiff French did not receive the benefit of her bargain.

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

45. Plaintiff Chang Cho resides in Mountain View, California. On May 25, 2024, Plaintiff Cho went shopping for some new clothing at the Banana Republic Factory store in Milpitas, California (“Milpitas Outlets”). In reliance on Defendants’ false and deceptive advertising, marketing and discount pricing scheme, Plaintiff Cho purchased the following items from the Milpitas Outlets on May 25, 2024:

No.	Item:	False Reference Price	Purported Discount	Purchase Price
1	Washwell Trave (SKU 599227-031-3230)	\$95.00	50% Off	\$47.50
2	Tailored Fit S (SKU 432435-001-4201)	\$300.00	50% Off	\$150.00
3	SL Silky Twill (SKU 452020-001-0010)	\$140.00	50% Off	\$70.00

<sup>33</sup> See, e.g., **Exhibit A**, depicting extent of discount signs on display throughout Defendants’ outlet stores.

1           46.     During his time at the Banana Republic Factory store on May 25, 2024, Plaintiff  
2 Cho browsed several items before deciding on what items to purchase. After reviewing the  
3 advertised sale prices for the items listed above, Plaintiff Cho decided to purchase the above listed  
4 items. During his time there on May 25, 2024, Plaintiff Cho also noticed numerous signs within  
5 the Banana Republic Factory store advertising various “\_\_% Off” discounts on items throughout  
6 the store.

7           47.     Indeed, after observing the original prices of the items and the accompanying sale  
8 price, Plaintiff Cho believed he was receiving a significant discount on the items he had chosen.  
9 He relied on the purported discount and his belief that the discounted price on the items was for a  
10 limited time and would not last was material and integral to his purchase decision. He would not  
11 have made the purchases were it not for the significant bargain she thought she was receiving.  
12 Plaintiff Cho paid an after-tax total of \$292.58. However, Plaintiff Cho did not receive the benefit  
13 of his bargain. A copy of Plaintiff Cho’s receipt is attached hereto as **Exhibit E**.

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

16           49.     Indeed, Plaintiffs’ economic injury resulting from Defendants’ misconduct is reliably  
17 quantifiable. Plaintiffs overpaid for each item purchased as described herein. And it was Defendants’  
18 false reference pricing scheme and attendant deception that caused Plaintiffs to overpay. Despite  
19 Plaintiffs’ original beliefs that each item was discounted and thus that its value was significantly  
20 greater than the sale price paid for it, Plaintiffs, in actuality, paid an *inflated* price for each item.

21           50.     That is, the items Plaintiffs purchased were each worth less than the amount  
22 Plaintiffs paid for them and if Defendants had not employed the falsely advertised “original” prices  
23 for the items, then they would not have commanded such a high, inflated price. The price premium  
24 Plaintiffs paid—i.e., the difference between the amount Plaintiffs paid and the value received, or  
25 the but-for price the product would have commanded absent the false discounting scheme, can be  
26 isolated through multiple expert-based models, including hedonic regression, conjoint analysis,  
27 and market simulation, which Plaintiffs will further describe in their motion to certify this action  
28 as a class action pursuant to Cal. Civ. Proc. § 382.

1           51. Plaintiffs are also susceptible to harm reoccurring, and therefore require an  
2 injunction, because they cannot be certain that Defendants will have corrected this deceptive  
3 pricing scheme, and they desire to shop at Defendants' Banana Republic Factory stores in the  
4 future because they like the brand and the clothing styles offered. Due to the enormous, fluctuating  
5 variety of styles and sizes of merchandise offered at Banana Republic Factory stores, Plaintiffs  
6 will be unable to parse what prices are inflated and untrue, and what prices are not. Plaintiffs  
7 simply do not have the resources to ensure that Defendants are complying with California and  
8 federal law with respect to their pricing, labeling, and/or advertising of their outlet merchandise.

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

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

25           **Defendants**

26           54. Defendant Banana Republic LLC is a for-profit limited liability company formed  
27 and existing under the laws of the State of California with its principal place of business at  
28 2 Folsom Street, 13<sup>th</sup> Floor, San Francisco, California 94105, and thus is a citizen of California.

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

4 56. Plaintiffs do not know the true names or capacities of the persons or entities sued  
5 herein as Does 1-50, inclusive, and therefore sue such defendants by such fictitious names.  
6 Plaintiffs are informed and believe, and upon such information and belief allege, that each of the  
7 Doe defendants is, in some manner, legally responsible for the damages suffered by Plaintiffs and  
8 members of the proposed Class as alleged herein. Plaintiffs will amend this Complaint to set forth  
9 the true names and capacities of these defendants when they have been ascertained, along with  
10 appropriate charging allegations, as may be necessary.

11 57. Defendants know that their reference price advertising is false, deceptive,  
12 misleading, unconscionable, and unlawful under California and federal law.

13 58. Defendants fraudulently concealed from and intentionally failed to disclose to  
14 Plaintiffs and other members of the proposed Class the truth about their advertised discount prices  
15 and former reference prices. Defendants concealed from consumers the true nature and quality of  
16 the products sold at their Banana Republic Factory stores.

17 59. Defendants intentionally concealed and failed to disclose material facts regarding  
18 the truth about false former price advertising in order to provoke Plaintiffs and the proposed Class  
19 to purchase Banana Republic Factory products.

20 60. At all relevant times, Defendants have been under a duty to Plaintiffs and the Class  
21 to disclose the truth about their false discounts.

22 **V. CLASS ALLEGATIONS**

23 61. Plaintiffs bring this action on behalf of themselves and all other similarly situated  
24 Class members pursuant to Code of Civil Procedure § 382 and seek certification of the following  
25 Class against Defendants:

26 All persons who are residents of the State of California and within the applicable  
27 statute of limitations preceding the filing of this action (the “Class Period”),  
28 purchased from a Banana Republic Factory store located in California or from  
bananarepublic.com or bananarepublic.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).

1 Excluded from the Class are Defendants, as well as their officers, employees, agents or affiliates,  
2 parent companies and/or subsidiaries, and each of their respective officers, employees, agents or  
3 affiliates, and any judge who presides over this action. Plaintiffs reserve the right to expand, limit,  
4 modify, or amend this Class definition, including the addition of one or more classes, in connection  
5 with their motion for Class certification, or at any other time, based upon, *inter alia*, changing  
6 circumstances and/or new facts obtained during discovery.

7 62. **Numerosity:** The Class members are so numerous that joinder of all members is  
8 impracticable. Plaintiffs are informed and believe that the proposed Class contains hundreds of  
9 thousands of individuals who have been damaged by Defendants' conduct as alleged herein. The  
10 precise number of Class members is unknown to Plaintiffs.

11 63. **Existence and Predominance of Common Questions of Law and Fact:** This action  
12 involves common questions of law and fact, which predominate over any questions affecting  
13 individual Class members. These common legal and factual questions include, but are not limited  
14 to, the following:

15 a. whether, during the Class Period, Defendants used falsely advertised  
16 reference prices on their Banana Republic Factory product labels and falsely advertised  
17 price discounts on merchandise sold in their outlet stores;

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

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

23 d. whether Defendants' purported sale prices advertised in their Banana  
24 Republic Factory stores reflected any actual discounts or savings;

25 e. whether Defendants' purported percentage-off discounts advertised in their  
26 Banana Republic Factory stores reflected any actual discounts or savings;

27 f. whether Defendants' alleged conduct constitutes violations of the laws  
28 asserted;



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

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

5           i.       whether Plaintiffs and Class members are entitled to damages and the proper  
6 measure of that loss; and

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

9       64.    **Typicality:** Plaintiffs' claims are typical of the claims of the Class members  
10 because, *inter alia*, all Class members have been deceived (or were likely to be deceived) by  
11 Defendants' false and deceptive price advertising scheme, as alleged herein. Plaintiffs are  
12 advancing the same claims and legal theories on behalf of herself and all Class members.

13       65.    **Adequacy:** Plaintiffs will fairly and adequately protect the interests of the Class  
14 members. Plaintiffs have retained counsel experienced in complex consumer class action litigation,  
15 and Plaintiffs intend to prosecute this action vigorously. Plaintiffs have no antagonistic or adverse  
16 interests to those of the Class.

17       66.    **Superiority:** The nature of this action and the nature of laws available to Plaintiffs  
18 and the Class make the use of the class action format a particularly efficient and appropriate  
19 procedure to afford relief to them and the Class for the wrongs alleged. The damages or other  
20 financial detriment suffered by individual Class members is relatively modest compared to the  
21 burden and expense that would be entailed by individual litigation of their claims against  
22 Defendants. It would thus be virtually impossible for Plaintiffs and Class members, on an  
23 individual basis, to obtain effective redress for the wrongs done to them. Absent the class action,  
24 Class members and the general public would not likely recover, or would not likely have the  
25 chance to recover, damages or restitution, and Defendants will be permitted to retain the proceeds  
26 of its fraudulent and deceptive misdeeds.

27       67.    All Class members, including Plaintiffs, were exposed to one or more of  
28 Defendants' misrepresentations or omissions of material fact claiming that former reference prices

1 advertised prices were legitimate. Due to the scope and extent of Defendants’ consistent false sale  
 2 prices, and advertising scheme, disseminated in a years-long campaign to California consumers, it  
 3 can be reasonably inferred that such misrepresentations or omissions of material fact were  
 4 uniformly made to all members of the Class. In addition, it can be reasonably presumed that all  
 5 Class members, including Plaintiffs, affirmatively acted in response to the representations  
 6 contained in Defendants’ false advertising scheme when purchasing merchandise sold at Banana  
 7 Republic Factory stores.

8 68. Plaintiffs are informed that Defendants keep extensive computerized records of  
 9 their Banana Republic Factory customers through, *inter alia*, customer loyalty programs, credit  
 10 card programs, and general marketing programs. Defendants have one or more databases through  
 11 which a significant majority of Class members may be identified and ascertained, and they  
 12 maintain contact information, including email and home addresses, through which notice of this  
 13 action could be disseminated in accordance with due process requirements.

## 14 VI. CAUSES OF ACTION

### 15 FIRST CAUSE OF ACTION

#### 16 **Violation of California’s Unfair Competition Law (“UCL”)** 17 **CAL. BUS. & PROF. CODE § 17200, *et seq.***

18 69. Plaintiffs repeat and re-allege the allegations contained in every preceding  
 19 paragraph as if fully set forth herein.

20 70. Plaintiffs bring this claim individually and on behalf of the members of the  
 21 proposed Class against Defendants for violations of the UCL, Cal. Bus. & Prof. Code §§ 17200,  
 22 *et seq.*

23 71. The UCL defines “unfair business competition” to include any “unlawful, unfair or  
 24 fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising.  
 25 Cal. Bus. Prof. Code § 17200.

26 72. The UCL imposes strict liability. Plaintiffs and members of the proposed Class need  
 27 not prove that Defendants intentionally or negligently engaged in unlawful, unfair, or fraudulent  
 28 business practices—but only that such practices occurred.

1           ***“Unfair” Prong***

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

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

12           75. The harm emanating from this practice to Plaintiffs and members of the proposed  
13 Class outweighs any utility it provides because Defendants’ practice of advertising false discounts  
14 provides no utility. There were reasonably available alternatives to further Defendants’ legitimate  
15 business interests other than the misleading and deceptive conduct described herein.

16           ***“Fraudulent” Prong***

17           76. A business act or practice is “fraudulent” under the UCL if it is likely to deceive  
18 members of the consuming public.

19           77. Defendants’ acts and practices alleged above constitute fraudulent business acts or  
20 practices as Defendants have deceived Plaintiffs and members of the proposed Class and they are  
21 highly likely to deceive members of the consuming public. Plaintiffs and members of the proposed  
22 Class relied on Defendants’ fraudulent and deceptive representations regarding their false or  
23 outdated “original prices” for products sold by Defendants at their Banana Republic Factory stores.  
24 These misrepresentations played a substantial role in Plaintiffs’ and members of the proposed  
25 Class’s decision to purchase the product at a purportedly steep discount, and Plaintiffs and  
26 members of the proposed Class would not have purchased the product without Defendants’  
27 misrepresentations.  
28

1           **“Unlawful” Prong**

2           78. A business act or practice is “unlawful” under the UCL if it violates any other law  
3 or regulation.

4           79. Defendants’ acts and practices alleged above constitute unlawful business acts or  
5 practices as Defendants have violated state and federal law in connection with their deceptive  
6 pricing scheme. The FTCA prohibits “unfair or deceptive acts or practices in or affecting  
7 commerce” (15 U.S.C. § 45(a)(1)) and prohibits the dissemination of any false advertisements. 15  
8 U.S.C. § 52(a). Under the FTC, false former pricing schemes, like Defendants’, are described as  
9 deceptive practices that would violate the FTCA:

10           (a) One of the most commonly used forms of bargain advertising is to offer a  
11 reduction from the advertiser's own former price for an article. If the former price  
12 is the actual, bona fide price at which the article was offered to the public on a  
13 regular basis for a reasonably substantial period of time, it provides a legitimate  
14 basis for the advertising of a price comparison. Where the former price is genuine,  
15 the bargain being advertised is a true one. If, on the other hand, the former price  
16 being advertised is not bona fide but fictitious - *for example, where an artificial,  
17 inflated price was established for the purpose of enabling the subsequent offer  
18 of a large reduction - the “bargain” being advertised is a false one*; the purchaser  
19 is not receiving the unusual value he expects. In such a case, the “reduced” price  
20 is, in reality, probably just the seller's regular price

21           (b) A former price is not necessarily fictitious merely because no sales at the  
22 advertised price were made. The advertiser should be especially careful, however,  
23 in such a case, that the price is one at which the product was openly and actively  
24 offered for sale, for a reasonably substantial period of time, in the recent, regular  
25 course of his business, honestly and in good faith - and, of course, not for the  
26 purpose of establishing a fictitious higher price on which a deceptive comparison  
27 might be based. And the advertiser should scrupulously avoid any implication that  
28 a former price is a selling, not an asking price (for example, by use of such  
language as, “Formerly sold at \$ \_\_\_\_\_”), unless substantial sales at that price  
were actually made.

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

80. In addition, Defendants’ acts and practices violate California law, which expressly  
prohibits false former pricing schemes. The FAL, Cal. Bus. & Prof. Code § 17501, entitled “*Worth  
or value; statements as to former price,*” states:

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

1 ***No price shall be advertised as a former price of any advertised thing, unless the***  
2 ***alleged former price was the prevailing market price as above defined within***  
3 ***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.

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

5 81. Defendants violate § 17501 because they advertise items, including the items that  
6 Plaintiffs purchased described herein, with a former “original” or “Ticketed Price” that greatly exceeds  
7 the prevailing market price of those items. Defendants’ own sales records will show that they normally  
8 sell their products, including the items purchased by Plaintiffs, at a price lower than the advertised  
9 former “original” or “Ticketed Price,” thereby establishing that those prices exceed the prevailing  
10 market price of Defendants’ merchandise in violation of Cal. Bus. & Prof. Code § 17501.

11 82. As detailed in the Third Cause of Action below, the CLRA, Cal. Civ. Code  
12 § 1770(a)(9), prohibits a business from “[a]dvertising goods or services with intent not to sell them  
13 as advertised,” and subsection (a)(13) prohibits a business from “[m]aking false or misleading  
14 statements of fact concerning reasons for, existence of, or amounts of price reductions.”

15 83. As detailed herein, and for the same reason that Defendants’ acts and practices  
16 violate the FTCA and the FAL, they also violate the CLRA.

17 84. Defendants’ practices, as set forth above, misled Plaintiffs, the proposed Class, and the  
18 public in the past and will continue to mislead them in the future. Consequently, Defendants’ practices  
19 constitute an unlawful, fraudulent, and unfair business practice within the meaning of the UCL.

20 85. Defendants’ violations of the UCL, through their unlawful, unfair, and fraudulent  
21 business practices, are ongoing and present a continuing threat to Plaintiffs, members of the  
22 proposed Class, and the public who, if Defendants’ false pricing scheme is permitted to continue,  
23 will be deceived into purchasing products based on illegal price comparisons. These false  
24 comparisons created phantom markdowns and led to financial harm for consumers like Plaintiffs  
25 and the members of the proposed Class as described herein. Because of the surreptitious nature of  
26 Defendants’ deception, these injuries cannot be reasonably avoided and will continue to be  
27 suffered by the consuming public absent a mandated change in Defendants’ practice.

28

1 86. Pursuant to Bus. & Prof. Code § 17203, Plaintiffs and members of the proposed  
 2 Class are entitled to preliminary and permanent injunctive relief enjoining Defendants from  
 3 continuing to engage in this unfair competition alleged above, as well as disgorgement and  
 4 restitution to Plaintiffs and the proposed Class of all Defendants' revenues wrongfully obtained  
 5 from them as a result of Defendants' unfair competition, or such portion of those revenues as the  
 6 Court may find equitable.<sup>34</sup>

## SECOND CAUSE OF ACTION

### **Violation of California's False Advertising Law ("FAL") CAL. BUS. & PROF. CODE §§ 17500, *et seq.***

10 87. Plaintiffs repeat and re-allege the allegations contained in every preceding  
 11 paragraph as if fully set forth herein.

12 88. Plaintiffs bring this claim individually and on behalf of the members of the  
 13 proposed Class against Defendants for violations of California's FAL, Cal. Bus. & Prof. Code  
 14 §§ 17500, *et seq.*

15 89. Cal. Bus. & Prof. Code § 17500 provides:

16 It is unlawful for any . . . corporation . . . with intent directly or indirectly to dispose  
 17 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

18 <sup>34</sup> California permits broad discretion to fashion remedies as needed, and "the appropriate measure  
 19 of recovery [under the equitable provisions of California's consumer protection laws] depends on  
 20 the nature of the case and the alleged harm that [a plaintiff] suffers." *Le*, 160 F. Supp. 3d at 1104.  
 "California's consumer protection laws...authorize multiple forms of restitutionary recovery." *Id.*  
 21 at 1105; *Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 989 (9th Cir. 2015) ("[I]n  
 22 calculating restitution under the UCL and FAL, the focus is on the difference between what was  
 paid and what a reasonable consumer would have paid at the time of purchase without the  
 23 fraudulent or omitted information."); *Jacobo*, 2016 WL 3482041, at \*7 ("Remedy for the alleged  
 24 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  
 25 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  
 26 case law makes clear that [cost minus value] can be a measure of restitution, defendant has not  
 cited, nor has the court found, any authority indicating that is the only way restitution can be  
 27 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  
 28 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 obligation relating thereto, to make or disseminate or cause to be made or  
 2 disseminated . . . from this state before the public in any state, in any newspaper  
 3 or other publication, or any advertising device, or by public outcry or  
 4 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 . . .

5 (emphasis added).

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

9 91. Similarly, this section provides:

10 no price shall be advertised as a former price of any advertised thing, unless the  
 11 alleged former price was the prevailing market price . . . within three months next  
 12 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.

13 Cal Bus. & Prof. Code § 17501.

14 92. Defendants’ routine of advertising discounted prices from false “reference” prices,  
 15 which were never the prevailing market prices of those products and were materially greater than  
 16 the true prevailing prices (i.e., Defendants’ average and/or most common actual sale price),  
 17 constitutes an unfair, untrue, and misleading practice in violation of the FAL. This deceptive  
 18 marketing practice gave consumers the false impression that the products were regularly sold on  
 19 the market for a substantially higher price than they actually were; therefore, leading to the false  
 20 impression that the products sold at Defendants’ Banana Republic Factory stores were worth more  
 21 than they actually were.

22 93. As a direct and proximate result of Defendants’ misleading and false advertisements,  
 23 as well as Defendants’ deceptive and unfair acts and practices made during the course of Defendants’  
 24 business, Plaintiffs and members of the proposed Class suffered economic injury.

25 94. Plaintiffs and members of the proposed Class request that this Court order  
 26 Defendants to restore this money to Plaintiffs and the proposed Class, and to enjoin Defendants  
 27 from continuing these unfair practices in violation of the FAL in the future. Otherwise, Plaintiffs,  
 28

1 members of the proposed Class, and the broader general public will be irreparably harmed and/or  
2 denied an effective and complete remedy.

3 **THIRD CAUSE OF ACTION**

4 **Violation of California’s Consumers Legal Remedies Act (“CLRA”)**  
5 **CAL. CIV. CODE § 1750, *et seq.***

6 95. Plaintiffs repeat and re-allege the allegations contained in every preceding  
7 paragraph as if fully set forth herein.

8 96. Plaintiffs bring this claim individually and on behalf of the members of the  
9 proposed Class against Defendants for violations of the CLRA, Cal. Civ. Code § 1750, *et seq.*

10 97. Plaintiffs and each member of the proposed Class are “consumers” as defined by  
11 Cal. Civ. Code § 1761(d). Defendants’ sale of products at their Banana Republic Factory stores  
12 were “transactions” within the meaning of Cal. Civ. Code § 1761(e). The products purchased by  
13 Plaintiffs and members of the proposed Class are “goods” or “services” within the meaning of Cal.  
14 Civ. Code § 1761(a)-(b).

15 98. Defendants violated and continue to violate the CLRA by engaging in the following  
16 practices proscribed by Cal. Civ. Code § 1770(a) in transactions with Plaintiffs and members of  
17 the proposed Class which were intended to result in, and did result in, the sale of products sold at their  
18 Banana Republic Factory stores and [bananarepublicfactory.gapfactory.com](http://bananarepublicfactory.gapfactory.com):

- 19 a. advertising goods or services with intent not to sell them as advertised;  
20 § 1770(a)(9); and  
21 b. making false or misleading statements of fact concerning reasons for,  
22 existence of, or amounts of price reductions; § 1770(a)(13).

23 99. Plaintiffs are consumers who have suffered economic injury and damages, including  
24 benefit of the bargain damages, as a result of Defendants’ use and employment of the false and  
25 misleading reference pricing alleged herein. Pursuant to Cal. Civ. Code § 1780(a), Plaintiffs  
26 therefore seek an order enjoining such methods, acts, or practices as well as any other relief the Court  
27 deems proper. Plaintiffs additionally seek costs and reasonable attorney’s fees pursuant to Cal. Civ.  
28 Code § 1780(e).



1           100. On July 17, 2024, Plaintiffs, through counsel, sent a CLRA demand letter by  
2 certified mail to Defendants that provided notice of Defendants’ violation of the CLRA and  
3 demanded Defendants correct, repair, replace, or otherwise rectify the unlawful, unfair, false, and  
4 deceptive practices complained of herein. The letter also stated that if Defendants refused to do so,  
5 Plaintiffs would file a complaint seeking damages in accordance with the CLRA. If Defendants do  
6 not respond to Plaintiffs’ letter or agree to rectify the problems associated with the actions detailed  
7 above and give notice to all affected consumers within 30 days of the date of written notice  
8 pursuant to § 1782, Plaintiffs will amend the complaint to seek actual, punitive, and statutory  
9 damages, as appropriate against Defendants.

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

11                                   **VII. PRAYER FOR RELIEF**

12           Wherefore, Plaintiffs, on behalf of themselves and on behalf of the other members of the  
13 Class, requests that this Court award relief against Defendants as follows:

14           a. an order certifying the Class and designating Plaintiffs as the Class Representatives  
15 and their counsel as Class Counsel;

16           b. awarding restitution and disgorgement of all profits and unjust enrichment that  
17 Defendants obtained from Plaintiffs and the Class members as a result of their unlawful, unfair,  
18 and fraudulent business practices described herein;

19           c. awarding declaratory and injunctive relief as permitted by law or equity, including:  
20 enjoining Defendants from continuing the unlawful practices as set forth herein, and directing  
21 Defendants to identify, with Court supervision, victims of its misconduct and pay them all money  
22 they are required to pay;

23           d. ordering payment of damages as permitted by law, including actual, compensatory,  
24 benefit of the bargain, and/or statutory damages, to the full extent permitted by law;

25           e. retaining jurisdiction to monitor Defendants’ compliance with permanent  
26 injunctive relief;

27           f. ordering Defendants to engage in a corrective advertising campaign;

28           g. awarding attorneys’ fees and costs; and

1 h. for such other and further relief as the Court may deem necessary or appropriate.

2 **VIII. DEMAND FOR JURY TRIAL**

3 Plaintiffs hereby demand a jury trial for all claims so triable.

4 Dated: July 17, 2024

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