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16 *Attorneys for Plaintiffs and the Class*

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 FOR THE COUNTY OF SAN FRANCISCO

19 CARMEN ANDREWS,
20 LAURIE MUNNING,
21 CARON COLADONATO,
22 and MICHAEL PALLAGROSI,
23 on behalf of themselves and all others
24 similarly situated,

25 Plaintiffs,

26 v.

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

Defendants.

Case No. CGC-18-567237

**DECLARATION OF DANIEL HATTIS IN
SUPPORT OF PLAINTIFFS' UNOPPOSED
MOTION FOR AWARD OF ATTORNEYS'
FEES AND COSTS**

Reservation No. 09091011-04

Hearing

Date: October 11, 2019

Time: 9:30 a.m.

Dept. 302

Judge: Richard B. Ulmer, Jr.

1 I, Daniel M. Hattis, declare as follows:

2 1. I have personal knowledge of the facts set forth herein, and if called to testify
3 thereto, I could and would do so competently.

4 **Biography**

5 2. I am a member in good standing of the California State Bar and the Washington
6 State Bar and am the principal attorney at Hattis Law PLLC (“Hattis Law”). I am one of the
7 attorneys representing Plaintiffs in the *Andrews v. The Gap, Inc. et al.* case. I submit this
8 declaration in support of Plaintiffs’ Unopposed Motion For Award Of Attorney Fees And Costs.

9 3. I received my law degree from the University of California at Berkeley School of
10 Law (Boalt Hall) in 1999. From 2004 through 2011, I worked as an attorney at the Law Offices of
11 Angelo Salvatore Parise, where I litigated dozens of cases, in addition to working on transactional
12 and intellectual property matters.

13 4. In 2008, I founded Hattis Law, a class action law firm specializing in false
14 advertising cases. As principal of Hattis Law, I have performed a significant amount of class
15 action litigation work, including this case.

16 5. In 2011, I was appointed co-class counsel in a false discount advertising case of
17 first impression, *Brazil v. Dell Inc.*, No. C-07-01700 RMW (N.D. Cal.). After getting a class
18 certified, we obtained a court-approved class settlement, pursuant to which Dell agreed to provide
19 a \$50 cash payment to each class member who submitted a valid claim. In 2015, I was appointed
20 co-class counsel in a false advertising case, *In Re: TracFone Unlimited Service Plan Litigation*,
21 13-cv-03440-EMC (N.D. Cal.). We obtained a court-approved class settlement, pursuant to which
22 TracFone agreed to provide a non-reversionary \$40 million settlement fund from which eligible
23 customers who submitted valid claims could receive a cash payments. In 2017, I was appointed
24 co-class counsel in a false advertising case, *Williamson v. McAfee, Inc.*, 5:14-cv-00158-EJD
25 (N.D. Cal.). We obtained a court-approved class settlement, pursuant to which McAfee agreed to
26 provide an \$11.50 cash payment to each class member who submitted a valid claim, and agreed to
27 provide an \$11.50 value certificate to all other class members.

28 6. I continue to investigate and prosecute complex consumer protection class actions.

1 I am currently serving as plaintiffs' counsel in several class cases, including: *Tillage v. Comcast*
2 *Corporation*, Case No. 17-cv-06477-VC (N.D. Cal.), *Vianu v. AT&T Mobility LLC*, Case No. 19-
3 cv-03602-LB (N.D. Cal.), and *Bekkerman et al. v. California Board of Equalization Et Al.*, Case
4 No. 34-2016-80002287 (Cal.Sup.Ct. Sacramento).

5 7. I am also currently co-counsel with the City Attorney of Los Angeles in
6 government prosecutions for false advertising against four major department store retailers in Los
7 Angeles County Superior Court: *People v. J.C. Penney Corporation, Inc.*, Case No. BC643036;
8 *People v. Kohl's Department Stores, Inc.*, Case No. BC643037; *People v. Sears, Roebuck and Co.*
9 *et al.*, Case No. BC643039; and *People v. Macy's, Inc.*, Case No. BC643040.

10 8. In addition to my work as an attorney, I have considerable experience in the
11 technology and software industries. For example, in 1998, I co-founded Rentals.com, Inc., which
12 built and supplied software and Internet solutions for the rental housing industry. While there, I
13 managed and worked with software engineers to build and develop various computer
14 technologies. In 2001, I co-founded an investment bank, SG Capital, LLC, where I advised
15 technology companies regarding capital raising, acquisitions and other transactional matters. In
16 2007, I co-founded Sesh.com, Inc., a Web-based communications company that enables "co-
17 browsing" of Web pages (i.e., multiple users browsing the same Web page at the same time).
18 During my time at these companies, I developed a strong familiarity with Internet and database
19 technologies, knowledge that has been instrumental in investigating, prosecuting, and bringing
20 this matter to a successful resolution.

21 **Proprietary Price Tracking Software and Data Analysis**

22 9. Hattis Law has dedicated a significant amount of time and resources to
23 investigating and litigating this matter to date. In January 2016, Hattis Law began an investigation
24 of the false advertising practices of Gap Factory and Banana Republic Factory (the
25 "Defendants"). Hattis Law developed, at significant cost, a proprietary and sophisticated tracking
26 mechanism which extracted and compiled, on a daily basis, pricing and other information directly
27 from the Gap Factory and Banana Republic Factory websites.

28 10. The data collected by Hattis Law included the daily pricing information for

1 approximately 45,657 Gap Factory and Banana Republic Factory products, for an aggregate total
2 of at least 4,936,414 daily product offerings since February 10, 2016. Plaintiffs' investigation
3 comprehensively tracked daily product information, including actual sales prices, reference
4 prices, and accompanying "discounts" and other offers. As part of the investigation, the relevant
5 information was saved for each product, every day, in the same HTML format in which Gap
6 Factory and Banana Republic Factory posted it on its website, and a screenshot was taken of each
7 page from which data was gathered. Pricing data was extracted and stored in a readily accessible
8 format which allowed linking the pricing data with both the related screen shot and HTML files.

9 11. The data and screenshots comprise dozens of terabytes of data. These millions of
10 records were compiled and organized for analysis, were analyzed via Plaintiffs' proprietary
11 algorithms, and were used as a basis for Plaintiffs' claims regarding Defendants' pricing and
12 discount practices and their use of reference prices that Plaintiffs alleged did not represent
13 Defendants' regular selling prices for the products in question. The proprietary software
14 automatically generates historical pricing charts for every product offered on the Gap Factory and
15 Banana Republic Factory websites.

16 12. The pricing data tracked by Hattis Law from the websites includes the Gap Factory
17 or Banana Republic Factory internal ProductID, which is the same identifier printed on in-store
18 product tags. This identifier can instantly be matched to the price histories we have collected from
19 the companies' websites.

20 13. For example, below is the store product tag which was attached to the Straight
21 Khakis pants which plaintiff Carmen Andrews purchased at Gap Outlet on February 9, 2018:
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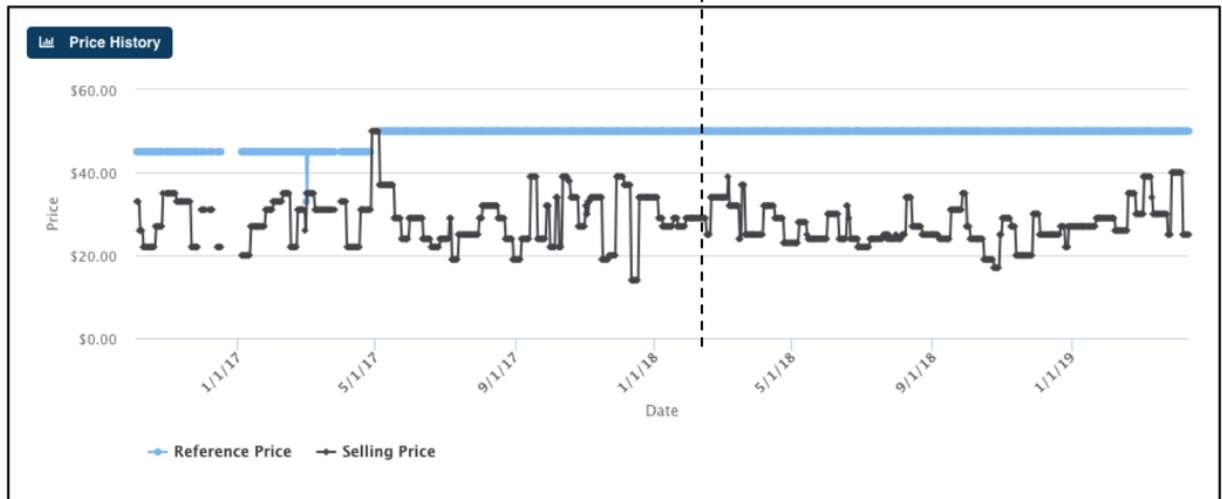


14. The ProductID is the first nine numbers at the top of the tag: 157999-00-1.

15. Hattis Law was able to match this number to the ProductID data collected from the Gap Factory website in our database, and we could then instantly generate the following historical price chart for the product, which demonstrates that the advertised “regular” price of \$49.99 was false and inflated such that the “discount” advertised to Ms. Andrews was false and misleading:

Gap Factory Women’s Straight Khakis (ProductID 157999001)

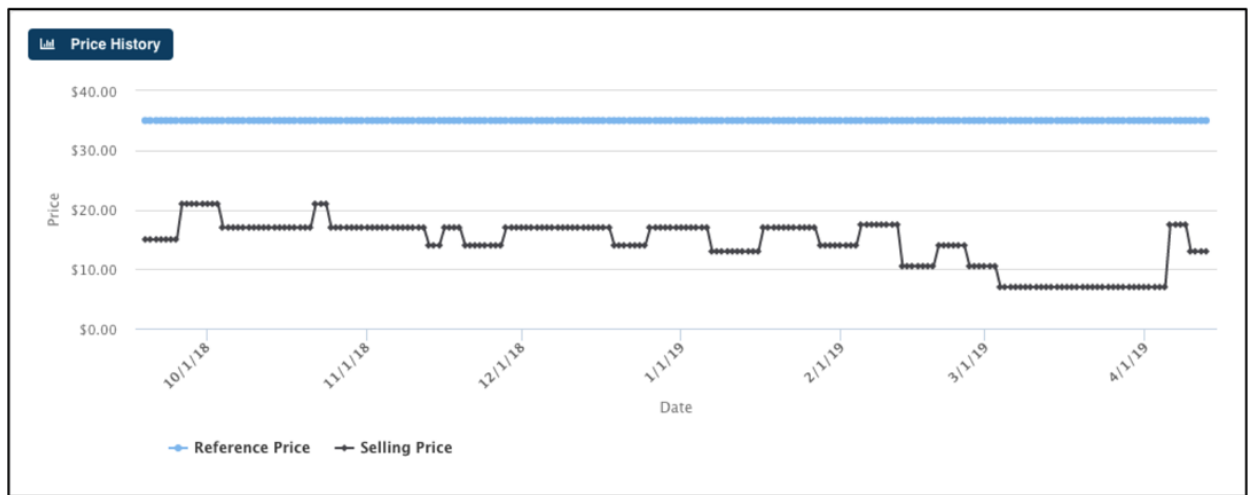
2/9/2018
Date of Purchase by
Plaintiff Carmen Andrews



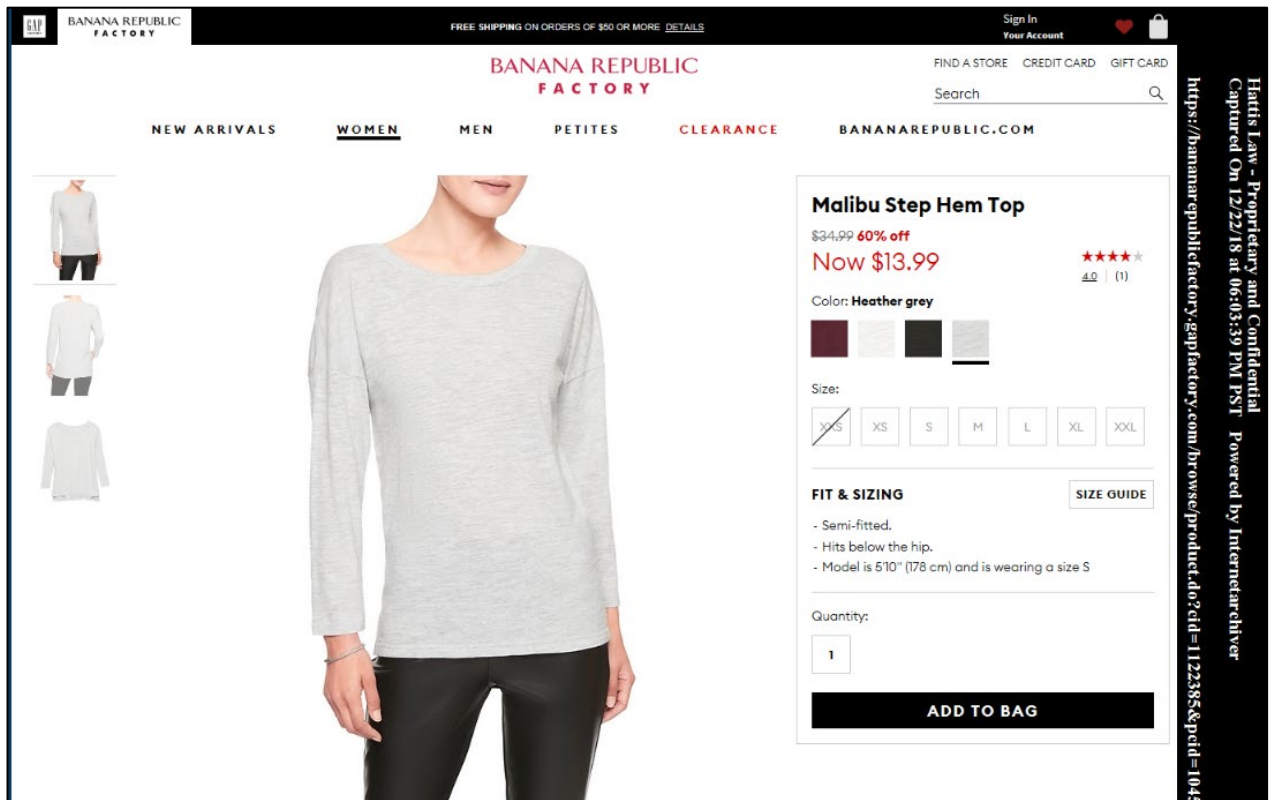
1 16. Based on our proprietary software, Hattis Law can instantly generate historical
2 price charts like the above for any of the 45,657 Gap Factory and Banana Republic Factory
3 products Hattis Law tracked on a daily basis since February 10, 2016.

4 17. For example, below is a historical price chart for a Banana Republic Factory
5 product “Malibu Step Hem Top,” which likewise shows the advertised reference price was false
6 and inflated because the top was in fact never offered at the supposed “regular” price:

7 **Banana Republic Factory – Malibu Step Hem Top (ProductID 367689011)**



17 18. Hattis Law has archived and stored a screenshot of the product webpage for every
18 single day each product was offered. Each point (representing a single day) on the chart
19 represents and links to an archived screenshot image taken on that date, identical to what a
20 consumer would have seen on the website that day. Each such screenshot is time-stamped in the
21 right margin and saved as a png image file. For example, below is the Hattis Law screenshot for
22 the Malibu Step Hem Top taken on December 22, 2018:



19. The exhaustive data collected by Hattis Law shows that these examples are typical and representative of Defendants’ practices.

20. Our data indicates that approximately 47% of Defendants’ daily offerings that were advertised with a reference price (i.e. with a purported “regular” price) were in fact never offered at the reference price during the prior 90-day period. Further, approximately 20% of Defendants’ products were never offered at the represented reference price for the entire sales history of the product (a period of time which often spanned years).

21. Hattis Law incurred over \$55,000 in hard costs specific to this case, mostly in engineering customization of our technology for the Gap Factory and Banana Republic Factory websites and data analysis. But Hattis Law has also, over the past decade, made a seven-digit investment in custom-creating the price tracking software platform which made this all possible. The aforementioned \$55,000 in costs is specific to, and limited to, customizing and implementing the existing platform to the Gap Factory and Banana Republic Factory websites and data, and it wholly excludes the multi-million dollar cost of creating the technology platform itself. Hattis Law has also incurred an additional \$2,349.56 in other costs related to this case.

1 Members.

2 28. The negotiation over attorneys' fees in this case took place only after the
3 substantive relief for the class had already been negotiated and agreed upon. Pursuant to my usual
4 practice and that of other class counsel I am familiar with, the Plaintiffs' attorneys in this case
5 refused to discuss attorneys' fees until after an agreement on the substantive relief for the class
6 was reached. Once agreement on the substantive relief for the class was reached, Plaintiffs'
7 counsel offered to simply submit the proposed settlement to the Court for approval and to rely on
8 the Court to determine the appropriate fees and costs. Defendants declined that proposal and the
9 parties then engaged in additional arms-length bargaining over fees and costs.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct.

12 Executed in King County, Washington, on September 9, 2019.

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14 DANIEL M. HATTIS
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