



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THE GAP, INC., ATHLETA LLC,)
BANANA REPUBLIC, LLC,)
INTERMIX HOLDCO, INC., JANIE)
AND JACK LLC, and OLD NAVY,)
LLC,)

Plaintiffs)

v.)

SIMON PROPERTY GROUP, L.P.,)
ABQ UPTOWN, LLC; ALLEN)
PREMIUM OUTLETS, L.P.;)
ARIZONA MILLS MALL, LLC;)
ARUNDEL MILLS LIMITED)
PARTNERSHIP; BATTLEFIELD)
MALL, LLC; BELLWETHER)
PROPERTIES OF)
MASSACHUSETTS LIMITED)
PARTNERSHIP; BELLWETHER)
PROPERTIES OF SOUTH)
CAROLINA, LIMITED)
PARTNERSHIP; BIRCH RUN)
OUTLETS II, LLC; BRAINTREE)
PROPERTY ASSOCIATES LIMITED)
PARTNERSHIP; BRIARWOOD,)
LLC; CALHOUN OUTLETS, LLC;)
CARLSBAD PREMIUM OUTLETS,)
LLC; CAROLINA PREMIUM)
OUTLETS, LLC; CASTLETON)
SQUARE, LLC; CHARLES MALL)
COMPANY LIMITED)
PARTNERSHIP; CHARLOTTE)
OUTLETS, LLC; CHELSEA ALLEN)
DEVELOPMENT, L.P.; CHELSEA)
FINANCING PARTNERSHIP, L.P.;)
CHELSEA LAS VEGAS HOLDINGS,)
LLC; CHELSEA LIMERICK)
HOLDINGS, LLC; CHELSEA)

C.A. No. _____

MONROE HOLDINGS, LLC;)
 CHELSEA ORLANDO)
 DEVELOPMENT LIMITED)
 PARTNERSHIP; CHELSEA)
 POCONO FINANCE, LLC;)
 CHELSEA POCONO HOLDINGS,)
 LLC; CHICAGO PREMIUM)
 OUTLETS EXPANSION, LLC;)
 CHICAGO PREMIUM OUTLETS,)
 LLC; CIRCLE CENTRE MALL, LLC;)
 COCONUT POINT TOWN CENTER,)
 LLC; COLORADO MILLS MALL)
 LIMITED PARTNERSHIP;)
 COLUMBIA MALL PARTNERSHIP;)
 COPLEY PLACE ASSOCIATES,)
 LLC; CORAL - CS/LTD.)
 ASSOCIATES; CPG CARLSBAD)
 HOLDINGS, LLC; CPG FINANCE II)
 LLC; CPG HOUSTON HOLDINGS,)
 L.P.; CPG MERCEDES, L.P.; CPG)
 PARTNERS, L.P.; CPG ROUND)
 ROCK, L.P.; CPI-PHIPPS LIMITED)
 LIABILITY COMPANY; CRAIG)
 REALTY GROUP - WOODBURN,)
 LLC; CRYSTAL MALL, LLC; DEL)
 AMO FASHION CENTER)
 OPERATING COMPANY, LLC;)
 DENVER PREMIUM OUTLETS,)
 LLC; DENVER WEST VILLAGE,)
 L.P.; DOVER MALL, LLC; EMPIRE)
 MALL, LLC; F/C MICHIGAN CITY)
 DEVELOPMENT, LLC; F/C)
 WATERLOO DEVELOPMENT LLC;)
 FASHION CENTRE MALL, LLC;)
 FASHION VALLEY MALL, LLC;)
 FLORIDA KEYS FACTORY SHOPS)
 LIMITED PARTNERSHIP; FLORIDA)
 MALL ASSOCIATES, LTD.; FORUM)
 SHOPS, LLC; FRANKLIN MILLS)
 ASSOCIATES LIMITED)

PARTNERSHIP; GAFFNEY)
 OUTLETS, LLC; GALLERIA AT)
 WOLFCHASE, LLC; GILROY)
 PREMIUM OUTLETS, LLC; GRAND)
 PRAIRIE OUTLETS, LLC;)
 GRAPEVINE MILLS LIMITED)
 PARTNERSHIP; GREENWOOD)
 PARK MALL, LLC; GROVE CITY)
 FACTORY SHOPS LIMITED)
 PARTNERSHIP; GULF COAST)
 FACTORY SHOPS LIMITED)
 PARTNERSHIP; GULFPORT)
 FACTORY SHOPS LIMITED)
 PARTNERSHIP; HAMILTON TOWN)
 CENTER, LLC; HG GALLERIA,)
 LLC; JERSEY SHORE PREMIUM)
 OUTLETS, LLC; JG ELIZABETH,)
 LLC; KATY MILLS MALL LIMITED)
 PARTNERSHIP; KING OF PRUSSIA)
 ASSOCIATES; KITTERY PREMIUM)
 OUTLETS RETAIL LLC; KS)
 SPRINGFIELD LIMITED)
 PARTNERSHIP; LAS AMERICAS)
 PREMIUM OUTLETS, LLC; LAS)
 VEGAS NORTH OUTLETS, LLC;)
 LAS VEGAS SOUTH OUTLETS,)
 LLC; LAWRENCE ASSOCIATES,)
 LLC; LEE OUTLETS, LLC;)
 LIGHTHOUSE PLACE PREMIUM)
 OUTLETS, LLC; LINCOLN PLAZA)
 CENTER, L.P.; LIVERMORE)
 PREMIUM OUTLETS II, LLC;)
 LIVERMORE PREMIUM OUTLETS,)
 LLC; LIVINGSTON MALL)
 VENTURE; MALL AT)
 BRIARWOOD, LLC; MALL AT)
 CHESTNUT HILL, LLC; MALL AT)
 CONCORD MILLS LIMITED)
 PARTNERSHIP; MALL AT GURNEE)
 MILLS, LLC; MALL AT KATY)

MILLS, L.P.; MALL AT LEHIGH)
VALLEY, L.P.; MALL AT LIBERTY)
TREE, LLC; MALL AT MIAMI)
INTERNATIONAL, LLC; MALL AT)
MIDLAND PARK, LLC; MALL AT)
MONTGOMERY, L.P.; MALL AT)
NORTHSHORE, LLC; MALL AT)
POTOMAC MILLS, LLC; MALL AT)
ROCKINGHAM, LLC; MALL AT)
SMITH HAVEN, LLC; MALL AT)
SOLOMON POND, LLC; MALL AT)
SUMMIT, LLC; MALL OF)
GEORGIA, LLC; MAYFLOWER)
CAPE COD, LLC; MAYFLOWER)
SQUARE ONE, LLC; MCCAIN)
MALL COMPANY LIMITED)
PARTNERSHIP; MERRIMACK)
PREMIUM OUTLETS CENTER,)
LLC; MERRIMACK PREMIUM)
OUTLETS, LLC; MILPITAS MILLS,)
L.P.; MISSION VIEJO ASSOCIATES,)
L.P.; MNH MALL, LLC; NORFOLK)
OUTLETS, LLC; NORTHGATE)
MALL PARTNERSHIP;)
NORTHWESTERN SIMON, INC.;)
ONTARIO MILLS LIMITED)
PARTNERSHIP; OPRY MILLS)
MALL LIMITED PARTNERSHIP;)
ORANGE CITY MILLS LIMITED)
PARTNERSHIP; ORLAND, L.P.;)
ORLANDO (VINELAND))
EXCHANGE, LLC; ORLANDO)
OUTLET OWNER, LLC; ORLANDO)
VINELAND PO, L.P.; OUTLET)
VILLAGE OF HAGERSTOWN)
LIMITED PARTNERSHIP;)
PARAGON OUTLETS AT GRAND)
PRAIRIE LIMITED PARTNERSHIP;)
PARAGON OUTLETS EAGAN, LLC;))
PARAGON OUTLETS LIVERMORE)

VALLEY, LLC; PENN ROSS JOINT)
 VENTURE; PENN SQUARE MALL)
 LIMITED PARTNERSHIP;)
 PHEASANT LANE REALTY TRUST;))
 PHILADELPHIA PREMIUM)
 OUTLETS, LLC; PHOENIX)
 PREMIUM OUTLETS, LLC; PLAZA)
 CAROLINA MALL LP; PREMIUM)
 OUTLET PARTNERS, L.P.;)
 PREMIUM OUTLETS PARTNERS,)
 L.P.; PRIME OUTLETS AT GRAND)
 PRAIRIE LIMITED PARTNERSHIP;)
 PRIME OUTLETS AT PLEASANT)
 PRAIRIE, LLC; RIVERSIDE)
 SQUARE LIMITED PARTNERSHIP;)
 SA GALLERIA IV, L.P.; SA)
 GALLERIA, LLC; SAGEMORE)
 MANAGEMENT COMPANY, LLC;)
 SAN MARCOS FACTORY STORES,)
 L.P.; SAN MARCOS PREMIUM)
 OUTLETS, L.P.; SAWGRASS MILLS)
 PHASE III LIMITED PARTNERSHIP;))
 SDG DADELAND ASSOCIATES,)
 INC.; SDG FASHION MALL)
 LIMITED PARTNERSHIP; SECOND)
 HORIZON GROUP LIMITED)
 PARTNERSHIP; SHOPPING)
 CENTER ASSOCIATES; SHOPS AT)
 MISSION VIEJO, LLC; SILVER)
 SANDS GL I, LLC; SILVER SANDS)
 JOINT VENTURE PARTNERS;)
 SIMON CAPITAL GP; SIMON)
 CAPITAL LIMITED PARTNERSHIP;))
 SIMON FINANCING)
 PARTNERSHIP, L.P.; SIMON)
 PROPERTY GROUP (TEXAS), L.P.;)
 SIMON PROPERTY GROUP INC.;)
 SIMON/CHELSEA CHICAGO)
 DEVELOPMENT, LLC;)
 SIMON/CHELSEA LAS VEGAS)

DEVELOPMENT, LLC;)
 SIMON/CLARKSBURG)
 DEVELOPMENT, LLC;)
 SIMON/PREIT GLOUCESTER)
 DEVELOPMENT, LLC;)
 SIMON/WOODMONT)
 DEVELOPMENT, LLC; SOUTH)
 HILLS VILLAGE ASSOCIATES,)
 L.P.; SOUTHDALE CENTER, LLC;)
 SOUTHPARK MALL LIMITED)
 PARTNERSHIP; SOUTHRIDGE)
 LIMITED PARTNERSHIP; SPG)
 CENTER, LLC; SPG FINANCE II,)
 LLC; SPG HOUSTON HOLDINGS,)
 L.P.; SPG PRIEN, LLC; ST. JOHNS)
 TOWN CENTER, LLC; STJTC II,)
 LLC; STONERIDGE PROPERTIES,)
 LLC; SUGARLOAF MILLS LIMITED)
 PARTNERSHIP; SUNRISE MILLS)
 (MLP) LIMITED PARTNERSHIP;)
 TACOMA MALL PARTNERSHIP;)
 TAMPA PREMIUM OUTLETS, LLC;)
 THE DOMAIN MALL, LLC; THE)
 FALLS SHOPPING CENTER)
 ASSOCIATES, LLC; THE RETAIL)
 PROPERTY TRUST; THE TOWN)
 CENTER AT BOCA RATON TRUST;)
 TREASURE COAST-JCP)
 ASSOCIATES, LTD.; TUCSON)
 PREMIUM OUTLETS, LLC; TWIN)
 CITIES OUTLETS EAGAN, LLC;)
 UNIVERSITY PARK MALL, LLC;)
 UPV CENTER, L.P.; UPV)
 CORPORATION; UPV GLIMCHER,)
 L.P.; WALT WHITMAN MALL, LLC;)
 WATERLOO PREMIUM OUTLETS,)
 LLC; WEST TOWN MALL, LLC;)
 WESTCHESTER MALL, LLC;)
 WILLIAMSBURG OUTLETS, LLC;)
 WMACH, LLC; WOODFIELD)

MALL, LLC; and WOODLAND)
HILLS MALL, LLC,)
)
Defendants.)
)
)

VERIFIED COMPLAINT

Plaintiffs The Gap, Inc., (“Gap”), Athleta LLC (“Athleta”), Banana Republic, LLC (“Banana Republic”), Intermix HoldCo, Inc., (“Intermix”) Janie and Jack LLC (“Janie and Jack”), and Old Navy, LLC (“Old Navy”) (collectively, “Tenants”) bring this Complaint against Defendants Simon Property Group, L.P., and each of the parties listed in Paragraph 10 below (referred to collectively as (“Landlords”)), as set forth herein.

INTRODUCTION

1. The COVID-19 pandemic has presented unique and unprecedented circumstances that were unforeseeable—indeed, unimaginable—at the time the leases between Tenants and Landlords were executed. The disease is highly contagious and its spread has been rapid. State and local governments’ reactions have been profound, varied, and constantly evolving, and prevented Tenants from opening their doors for months. To protect the health and safety of their employees, customers, and the surrounding communities, and comply with applicable law, Tenants have been required to close their stores and keep them closed for extended

periods of time. And like innumerable other companies, they were required to make the difficult decision to furlough tens of thousands of store employees for closed stores across the country to preserve their finances while revenue from the stores dropped to zero overnight.

2. Even now, as government restrictions ease for some activities and types of businesses but not others, the disease remains virulent, and extensive guidelines are required to be followed that may provide some measure of protection, but will radically change the shopping experience for a long time to come. Indeed, shopping for apparel in physical stores will look nothing like what was contemplated by the leases when they were executed. In a world of unforeseeable events, the circumstances the subject stores have faced are at the extreme end of unforeseeability. These circumstances not only impose a severe and irreparable hardship on Tenants, they frustrated the express purpose of these leases and made their principal object illegal, impossible, and impracticable, all for a period of time that remains unknown and unknowable. Thus, the subject leases and applicable law nullified any obligation to pay rent beginning in March 2020, entitle Tenants to a refund of rent and expenses paid in advance for March 2020, and require that the Leases be modified and reformed, or rescinded, canceled, or terminated as a matter of law.

3. Accordingly, Tenants seek a determination of their rights and obligations under their leases, including a determination that Tenants owe no additional money to their Landlords, that the Landlords owe money to Tenants, that Tenants are entitled to reformation of their Leases, and that Tenants are entitled to attorney's fees and expenses incurred in connection with this action.

THE PARTIES AND JURISDICTION

4. Gap is a Delaware corporation qualified to do business in Delaware and has had its principal place of business in California. At all relevant times, Gap has operated Gap, Gap Kids, and Baby Gap retail stores throughout the United States through the stores identified on Exhibit A.

5. Athleta is a Delaware limited liability company and has had its principal place of business in California. At all relevant times, Athleta has operated Athleta retail stores throughout the United States through the stores identified on Exhibit A.

6. Banana Republic is a Delaware limited liability company and has had its principal place of business in California. At all relevant times, Banana Republic has operated Banana Republic retail stores throughout the United States through the stores identified on Exhibit A.

7. Intermix HoldCo, Inc. is a California limited liability company and has had its principal place of business in California. At all relevant times, Intermix

HoldCo has operated Intermix retail stores throughout the United States through the stores identified on Exhibit A.

8. Janie and Jack LLC is a California limited liability company and has had its principal place of business in California. At all relevant times, Janie and Jack has operated Janie and Jack retail stores throughout the United States through the stores identified on Exhibit A.

9. Old Navy, LLC is a Delaware limited liability company and has had its principal place of business in California. At all relevant times, Old Navy has operated Old Navy retail stores throughout the United States through the stores identified on Exhibit A.

10. At all relevant times, Plaintiffs have been parties to the leases identified on Exhibit A with Defendants ABQ Uptown, LLC, Allen Premium Outlets, L.P., Arizona Mills Mall, LLC, Arundel Mills Limited Partnership, Battlefield Mall, LLC, Bellwether Properties Of Massachusetts Limited Partnership, Bellwether Properties Of South Carolina, Limited Partnership, Birch Run Outlets II, LLC, Braintree Property Associates Limited Partnership, Briarwood, LLC, Calhoun Outlets, LLC, Carlsbad Premium Outlets, LLC, Carolina Premium Outlets, LLC, Castleton Square, LLC, Charles Mall Company Limited Partnership, Charlotte Outlets, LLC, Chelsea Allen Development, L.P., Chelsea Financing Partnership, L.P., Chelsea Las Vegas Holdings, LLC, Chelsea Limerick Holdings, LLC, Chelsea Monroe Holdings, LLC,

Chelsea Orlando Development Limited Partnership, Chelsea Pocono Finance, LLC, Chelsea Pocono Holdings, LLC, Chicago Premium Outlets Expansion, LLC, Chicago Premium Outlets, LLC, Circle Centre Mall, LLC, Coconut Point Town Center, LLC, Colorado Mills Mall Limited Partnership, Columbia Mall Partnership, Copley Place Associates, LLC, Coral - Cs/Ltd. Associates, CPG Carlsbad Holdings, LLC, CPG Finance II LLC, CPG Houston Holdings, L.P., CPG Mercedes, L.P., CPG Partners, L.P., CPG Round Rock, L.P., CPI-Phipps Limited Liability Company, Craig Realty Group - Woodburn, LLC, Crystal Mall, LLC, Del Amo Fashion Center Operating Company, LLC, Denver Premium Outlets, LLC, Denver West Village, L.P., Dover Mall, LLC, Empire Mall, LLC, F/C Michigan City Development, LLC, F/C Waterloo Development LLC, Fashion Centre Mall, LLC, Fashion Valley Mall, LLC, Florida Keys Factory Shops Limited Partnership , Florida Mall Associates, Ltd., Forum Shops, LLC, Franklin Mills Associates Limited Partnership, Gaffney Outlets, LLC, Galleria At Wolfchase, LLC, Gilroy Premium Outlets, LLC, Grand Prairie Outlets, LLC, Grapevine Mills Limited Partnership, Greenwood Park Mall, LLC, Grove City Factory Shops Limited Partnership, Gulf Coast Factory Shops Limited Partnership, Gulfport Factory Shops Limited Partnership, Hamilton Town Center, LLC, HG Galleria, LLC, Jersey Shore Premium Outlets, LLC, JG Elizabeth, LLC, Katy Mills Mall Limited Partnership, King Of Prussia Associates, Kittery Premium Outlets Retail LLC, KS Springfield Limited Partnership, , Las Americas

Premium Outlets, LLC, Las Vegas North Outlets, LLC, Las Vegas South Outlets, LLC, Lawrence Associates, LLC, Lee Outlets, LLC, Lighthouse Place Premium Outlets, LLC, Lincoln Plaza Center, L.P., Livermore Premium Outlets II, LLC, Livermore Premium Outlets, LLC, Livingston Mall Venture, Mall At Briarwood, LLC, Mall At Chestnut Hill, LLC, Mall At Concord Mills Limited Partnership, Mall At Gurnee Mills, LLC, Mall At Katy Mills, L.P., Mall At Lehigh Valley, L.P., Mall At Liberty Tree, LLC, Mall At Miami International, LLC, Mall At Midland Park, LLC, Mall At Montgomery, L.P., Mall At Northshore, LLC, Mall At Potomac Mills, LLC, Mall At Rockingham, LLC, Mall At Smith Haven, LLC, Mall At Solomon Pond, LLC, Mall At Summit, LLC, Mall Of Georgia, LLC, Mayflower Cape Cod, LLC, Mayflower Square One, LLC, McCain Mall Company Limited Partnership, Merrimack Premium Outlets Center, LLC, Merrimack Premium Outlets, LLC, Milpitas Mills, L.P., Mission Viejo Associates, L.P., MNH Mall, LLC, Norfolk Outlets, LLC, Northgate Mall Partnership, Northwestern Simon, Inc., Ontario Mills Limited Partnership, Opry Mills Mall Limited Partnership, Orange City Mills Limited Partnership, Orland, L.P., Orlando (Vineland) Exchange, LLC, Orlando Outlet Owner, LLC, Orlando Vineland PO, L.P., Outlet Village Of Hagerstown Limited Partnership, Paragon Outlets At Grand Prairie Limited Partnership, Paragon Outlets Eagan, LLC, Paragon Outlets Livermore Valley, LLC, Penn Ross Joint Venture, Penn Square Mall Limited Partnership, Pheasant Lane Realty Trust,

Philadelphia Premium Outlets, LLC, Phoenix Premium Outlets, LLC, Plaza Carolina Mall LP, Premium Outlet Partners, L.P., Premium Outlets Partners, L.P., Prime Outlets At Grand Prairie Limited Partnership, Prime Outlets At Pleasant Prairie, LLC, Riverside Square Limited Partnership, SA Galleria IV, L.P., SA Galleria, LLC, Sagemore Management Company, LLC, San Marcos Factory Stores, L.P., San Marcos Premium Outlets, L.P., Sawgrass Mills Phase III Limited Partnership, SDG Dadeland Associates, Inc., SDG Fashion Mall Limited Partnership, Second Horizon Group Limited Partnership, Shopping Center Associates, Shops At Mission Viejo, LLC, Silver Sands GL I, LLC, Silver Sands Joint Venture Partners, Simon Capital GP, Simon Capital Limited Partnership, Simon Financing Partnership, L.P., Simon Property Group (Texas), L.P., Simon Property Group Inc., Simon Property Group, L.P., Simon/Chelsea Chicago Development, LLC, Simon/Chelsea Las Vegas Development, LLC, Simon/Clarksburg Development, LLC, Simon/Preit Gloucester Development, LLC, Simon/Woodmont Development, LLC, South Hills Village Associates, L.P., Southdale Center, LLC, Southpark Mall Limited Partnership, Southridge Limited Partnership, SPG Center, LLC, SPG Finance II, LLC, SPG Houston Holdings, L.P., SPG Prien, LLC, St. Johns Town Center, LLC, STJTC II, LLC, Stoneridge Properties, LLC, Sugarloaf Mills Limited Partnership, Sunrise Mills (Mlp) Limited Partnership, Tacoma Mall Partnership, Tampa Premium Outlets, LLC, The Domain

Mall, LLC, The Falls Shopping Center Associates, LLC, The Retail Property Trust, The Town Center At Boca Raton Trust, Treasure Coast-JCP Associates, Ltd., Tucson Premium Outlets, LLC, Twin Cities Outlets Eagan, LLC, University Park Mall, LLC, UPV Center, L.P., UPV Corporation , UPV Glimcher, L.P., Walt Whitman Mall, LLC, Waterloo Premium Outlets, LLC, West Town Mall, LLC, Westchester Mall, LLC, Williamsburg Outlets, LLC, WMACH, LLC, Woodfield Mall, LLC, Woodland Hills Mall, LLC, (collectively, the “Owners”) for stores in the shopping centers identified on Exhibit A (the “Shopping Centers”).

11. Plaintiffs are informed and believe and thereon allege that Defendant Simon Property Group, L.P. operates, manages and controls, and is a managing agent of the Owners for, the Shopping Centers including by creating or implementing policies for the operation of the Shopping Centers and the advertisement of the Shopping Centers through websites, including with respect to operating hours, and restrictions on the operation of the Shopping Centers such as limitations on the number of entrances to the Shopping Centers, restrictions on and closures of common areas and amenities that suppress foot traffic in the Shopping Centers, including shopping centers located in Delaware. Plaintiffs are further informed and believe and thereon allege that Simon Property Group, L.P. controls the leasing of the Shopping Centers’ premises. Plaintiffs are informed and believe and thereon allege that Simon Property Group, L.P. has alleged it is the assignee of

certain rights otherwise held by the Owners which it has asserted in the Complaint herein and has thereby availed itself of the courts and laws of the State of Delaware. Plaintiffs are further informed and believe and thereon allege that Defendant Simon Property Group, L.P. is an indirect owner of, and a recipient of a financial benefit from the leasing and operation of, the Shopping Centers, and has operated, managed, and indirectly owned the Shopping Centers including in Delaware.

12. Plaintiffs are informed and believe and thereon allege that, through their conduct, Defendant Simon Property Group, L.P. has so thoroughly dominated and controlled the operation of the Owners that they are in fact the business conduit and alter ego of the Owners and must be treated as their alter ego and the veil of their corporation pierced to avoid an inequitable result.

13. Jurisdiction is proper in Delaware as the claims arise from the making and performance of contracts that are substantially connected with Delaware and the parties incorporated in Delaware, and some of the Shopping Centers listed on Exhibit A are located in Delaware.

14. This Court has subject matter jurisdiction over this dispute pursuant to 10 *Del. C.* § 341, as Plaintiffs lack an adequate remedy at law and seek equitable relief.

THE LEASES

15. Tenants and the Owners are parties to leases for Premises in the Shopping Centers (the “Leases”) under which Tenants have operated Gap, Athleta, Banana Republic, Intermix, Janie and Jack, and Old Navy brand stores, all as shown on Exhibit A, which is incorporated herein by this reference.

16. The express purpose of the Leases was to provide Tenants with commercial retail space suitable for the operation of retail stores selling apparel. The Leases state in substantially identical language that the leased premises shall be used and occupied for the purpose of selling apparel and accessories and, at Tenants’ option, such other uses as are consistent with any of Tenant’s other stores operating under the same tradename as those used by Tenants. Landlords tacitly and expressly acknowledged that Tenants were entering into the Leases in reliance upon Tenants’ ability to use the premises for this purpose.

17. But for the ability to operate stores at the Premises for the sale of apparel, Tenants would not have entered into the Leases. Indeed, Tenants’ ability to operate retail stores at the Premises was the sole consideration Tenants received in exchange for entering into the Leases, all other nominal benefits of the Leases being a part of, and subordinate and ancillary to that consideration. Without the ability to operate stores at the Premises, at all or as contemplated when entering into the

Leases, the transactions between Tenants and Landlords that were embodied in the Leases make no sense.

18. For example, the Leases are for fixed terms. At the time of contracting, Tenants and Landlords (or their predecessors) negotiated an exchange of rent and other consideration that Tenants would pay based on the contemplated term of the Leases. If the parties had known at the time they negotiated and entered into the Leases that Tenants would not be permitted to operate a retail store for the entire duration of the Leases, or to do so only with restricted limits on the occupancy of the premises, the parties would not have agreed on the same amount of rent and other terms.

19. From the inception of the Leases until March 2020, Tenants maintained and operated stores at the Premises pursuant to the Leases.

20. Following the outbreak of COVID-19 in the United States, on March 18, 2020, Simon Property Group, L.P. announced that the malls were closing effective the same day. Tenants were forced to suspend all retail operations at the Premises in light of these closures, and to comply with applicable governmental orders and guidelines, and to protect the health and safety of their employees, customers, and the surrounding communities, including state and local orders that required the closure of non-essential businesses and the imposition of other restrictions on such businesses.

21. As a result of the foregoing circumstances and orders, and other applicable governmental orders and guidelines, all of which were unforeseeable at the time the Leases were entered into, and which resulted from no act of Tenants, the parties' intended use of the Premises was frustrated, became impossible, illegal, and impracticable. Specifically, Tenants were forced to suspend all retail operations at the Premises. Tenants' purpose in entering into the Leases was frustrated. Tenants' performance under the Leases became impossible and impracticable. And Tenants were deprived of the consideration they were to receive in exchange for entering into the Leases.

22. Indeed, though the Leases specifically contemplated that Tenants would benefit from their use for a fixed term, as a result of the unforeseeable COVID-19 crisis, Tenants have been deprived of their use of the Premises for the full term that Tenants were promised under the Leases. Such a result is inequitable and damages Tenants, in part because the term of the Leases, and the expectation that Tenants would be able to use them for their entire term, was the basis for the parties' negotiations and calculations at the time of contracting concerning Tenants' obligation to pay rent and other consideration under the Leases. Thus, for the additional fact and reason that the Premises were not usable for the entire term of the Leases, it is impossible and impracticable for the Landlord and Tenants to continue performing their obligations under the Leases, the parties' mutual purpose

for entering into the Leases has been frustrated, and the consideration Tenants were to receive under the Leases has failed.

23. None of these events were foreseeable at the time the Leases were entered into. Indeed, this is the first time in our history that all 50 U.S. states are under a federal major disaster declaration at the same time.

24. And this crisis is far from over. Even after restrictions limiting operations at the Premises are lifted, the conditions under which retailers are expected to operate, and the environment in which they will have to operate, are nothing like what was contemplated and promised at the time the Leases were entered into. Tenants were promised retail space in vibrant shopping centers that would be attractive to consumers. However, retailers are now expected to downgrade services in the interest of health and safety, and consumers are still too concerned about the risk of entering a store to return to the shopping centers *en masse*. Landlords themselves have imposed restrictions on consumer behavior that will deter consumers from visiting the Shopping Centers and Tenants' store.

25. Nevertheless, Landlords have wrongfully demanded that Tenants pay rent for the period of time that Tenants were forced to close. Landlords have also disputed Tenants' right to keep their stores closed and modify the Leases due to this radical change in circumstances.

26. Because the parties cannot agree on their rights and obligations under the Leases, Tenants bring the following claims for relief, and attorney's fees and costs.

COUNT I
(Rescission, Cancellation, and Termination)
(By All Plaintiffs Against
Defendants Identified in Exhibit A)

27. Plaintiffs incorporate by reference each of the preceding paragraphs of their allegations as if fully set forth herein and assert this count in the alternative.

28. Tenants' ability to operate retail stores at the Premises was the parties' mutual purpose and intent in entering into the Leases and in Tenants agreeing to pay the rent and other consideration agreed to be paid under the Leases related to these Plaintiffs and these Defendants as set forth on Exhibit A, and as the parties understood at the time of contracting, and but for their right to operate such retail stores for the full term of the Leases, Tenant would not have entered into the Leases. Indeed, without Tenants' ability to use the Premises, the transactions between the parties that resulted in the Leases make no sense.

29. The parties were mutually mistaken as to the basic assumption that Tenants would not be forced to suspend their operation of retail stores on the Premises and that Landlords would be paid rent and expenses by Tenants for their uninterrupted use of the Premises pursuant to the Leases, and that Tenants would be permitted to operate the stores without the imposition of unforeseeable restrictions

and conditions that destroy the consideration anticipated and to be provided under the subject leases.

30. The parties' mutual mistake has a material effect on the parties' agreed exchange of performances under the Lease because Tenants were forced to suspend all retail operations at the Premises, and otherwise operate in an unforeseen manner not contemplated at the time the leases were entered into.

31. When Tenants were forced to suspend all retail operations at the Premises and continue operations under unforeseen conditions, the purpose and object of the Leases were frustrated and impossible to effectuate due to no fault of the Tenants, the Leases' object and purpose became impossible, illegal and impracticable, and Tenants were deprived of the consideration they were to receive in exchange for entering into the Leases.

32. The sudden suspension of retail operations at the Premises and the long-term impact on these Tenants' Premises and the locations in which they are situated were unforeseeable and could not have been contemplated by the parties at the time the Leases were executed.

33. Except to the extent excused, waived, rendered impossible or impracticable, or prevented by Defendants' performance, Tenants have duly performed all of the terms of the Leases required to be performed by them.

34. An actual controversy exists between these of the Tenants and Landlords concerning their respective rights under their Leases and these Tenants have no adequate remedy at law. Specifically, the parties dispute, in addition to, and/or in the alternative to, these of the Tenants' claim for declaratory relief regarding the absence of any obligation under the Leases to pay rent and expenses for the period beginning March 19, 2020,

- a. Whether Tenants are entitled to judicial rescission, cancellation, and termination of the subject leases, as a result of the frustration of purpose of the subject leases, the illegality, impossibility and impracticability of the subject leases, and/or the failure of consideration, effective on such date as the Court determines based on the evidence presented at trial.
- b. When, on or after March 19, 2020, the Leases should be deemed rescinded, canceled, and terminated pursuant to the Leases and applicable law.

COUNT II
(Reformation)
(By All Plaintiffs Against All Defendants)

35. Plaintiffs incorporate by reference each of the preceding paragraphs of its allegations as if fully set forth herein and assert this cause of action in the alternative.

36. Tenants' ability to operate retail stores at the Premises was the parties' mutual purpose and intent in entering into the Leases and in Tenants agreeing to pay the rent and other consideration agreed to be paid under the Leases related to these Plaintiffs and these Defendants as set forth on Exhibit A and, as the parties understood at the time of contracting, but for their right to operate such retail stores for the full term of the Leases Tenants would not have entered into the Leases, and would not have agreed to pay the rent and other expenses specified in the Leases. Indeed, without Tenants' ability to use the Premises in the manner originally contemplated or for the Premises and the shopping center in which they are located to continue to be the destination location contemplated, the transaction between the parties that resulted in the Leases would have made no sense.

37. The parties were mutually mistaken as to the basic assumption that Tenants would not be forced to suspend their operation of retail stores on the Premises and that Landlords would be paid rent and expenses by Tenants for their uninterrupted use of the Premises pursuant to the Leases, and otherwise operate in an unforeseen manner not contemplated at the time the leases were entered into.

38. The parties' mutual mistake has a material effect on the parties' agreed exchange of performances under the Lease because Tenants were forced to suspend all retail operations at the Premises.

39. When Tenants were forced to suspend all retail operations at the Premises and continue operations under unforeseen conditions, the purpose and object of the Leases were frustrated and impossible to effectuate due to no fault of the Tenants, the Leases' object and purpose became impossible, illegal and impracticable, and Tenants were deprived of the consideration they were to receive in exchange for entering into the Leases.

40. The sudden suspension of retail operations at the Premises and the long-term impact on these Tenants' Premises and the locations in which they are situated were unforeseeable and could not have been contemplated by the parties at the time the Leases were executed.

41. Except to the extent excused, waived, rendered impossible or impracticable, or prevented by Defendants' performance, Tenants have duly performed all of the terms of the Leases required to be performed by them.

42. An actual controversy exists between Tenants and Landlords concerning their respective rights under the Leases, and Tenants have no adequate remedy at law. Specifically, the parties dispute:

- a. Whether and upon what terms the Leases should be judicially reformed to reflect the parties' ongoing and future obligations for the payment of rent and expenses based upon all of the following:

- i. The interruption or impairment of Tenants' use of the Premises and the likelihood of future disruptions and shutdowns;
- ii. Whether there was a frustration of purpose of the Leases, and for what period of time;
- iii. Whether the continued operation of the Leases was illegal, impossible, or impracticable, and for what period of time;
- iv. Whether there was a failure of consideration under the Leases, and for what period of time;
- v. Whether a casualty occurred that rendered the Premises partially or entirely unusable, and for what period of time.

43. Therefore, Tenants seek (in the alternative to rescission, cancellation and termination as to those plaintiffs included in the preceding cause of action), a judgment declaring the following:

- a. The terms upon which the Leases should be judicially reformed to reflect the parties' ongoing and future obligations for the payment of rent and expenses based upon all of the following:
 - i. The interruption or impairment of Tenants' use of the Premises and the likelihood of future disruptions and shutdowns;
 - ii. The frustration of purpose of the Leases;

- iii. That the continued operation of the Leases was illegal, impossible, or impracticable;
- iv. A failure of consideration under the Leases;
- v. A casualty occurring that renders the Premises partially or entirely unusable.

WHEREFORE, Plaintiffs The Gap, Inc., (“Gap”), Athleta LLC (“Athleta”), Banana Republic, LLC (“Banana Republic”), Intermix HoldCo, Inc., (“Intermix”) Janie and Jack LLC (“Janie and Jack”), and Old Navy, LLC (“Old Navy”) respectfully request and pray:

- A. That Judgment be entered upon the Complaint in favor of Plaintiffs Gap, Inc., Athleta LLC, Banana Republic, LLC, Intermix HoldCo, Inc., Janie and Jack LLC, and Old Navy, LLC, and against Defendants;
- B. That the Court deem rescinded, canceled and terminated those Leases that the Court deems just and proper according to proof and in the discretion of the court;
- C. That the Court reform the Leases on terms that are just and proper, according to proof and in the discretion of the court;
- D. That Plaintiffs be awarded their attorney’s fees and costs;
- E. That the Court grant such other and further relief as the Court deems just and proper;

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/s/ Patricia A. Winston

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