

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

JILLIAN BARNETT, *individually and on
behalf of all others similarly situated,*

Plaintiff,

v.

ATHLETA LLC,

Defendant.

Case No. _____

State Court Case No. 2021-008870-CA-01

Class Action

NOTICE OF REMOVAL OF CIVIL ACTION

PLEASE TAKE NOTICE that Defendant Athleta LLC (“Athleta” or “Defendant”), by and through its counsel, hereby files this notice of removal in the above-captioned action, currently pending in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, as Case No. 2021-008870-CA-01 (the “State Court Action”). This removal is made pursuant to 28 U.S.C. §§ 1332, 1441, 1453 and 1446. For the reasons set forth below, this Court has subject matter jurisdiction.

I. BACKGROUND

1. On or about April 14, 2021, Plaintiff Jillian Barnett, individually and on behalf of all others similarly situated, commenced a putative class action against Athleta by filing a Class Complaint and Demand for Jury Trial (the “Complaint”) in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. A true and correct copy of the Complaint is attached hereto as **Exhibit A**.

2. On April 29, 2021, Athleta was served with the Complaint. A true and correct copy of the Affidavit of Service of Process is attached hereto as **Exhibit B**.

3. True and correct copies of all process, pleadings, and orders in the State Court Action and not previously referenced are attached hereto as **Exhibit C**.

4. The Complaint alleges that Defendant unlawfully intercepted Plaintiff's electronic communications in violation of the Florida Security of Communications Act, Fla. Stat. Ann. § 934.01, *et seq.* ("FSCA"). (Ex. A ¶ 1.)

5. This Notice of Removal is timely under 28 U.S.C. § 1446(b), as it is filed within thirty (30) days after Plaintiff's service of the Complaint upon Athleta.

6. Nothing in this Notice of Removal shall constitute a waiver of Defendant's right to assert any defense, including motions pursuant to Federal Rule of Civil Procedure 12, as the case progresses.

II. VENUE

7. Venue is proper under 28 U.S.C. § 1441(a) because this Court is the United States District Court for the district and division embracing the location where the State Court Action was pending. The Circuit Court in Miami-Dade County, Florida is located within the geographic scope of the Miami Division of the United States District Court for the Southern District of Florida. *See* 28 U.S.C. § 89(c). Therefore, this Notice of Removal is properly filed in this Court pursuant to 28 U.S.C. § 1441(a).

III. REMOVAL IS TIMELY

8. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b). Plaintiff filed her Complaint on April 14, 2021 and served the Complaint on Defendant on April 29, 2021. Defendant hereby files this Notice of Removal within thirty (30) days of service, as required by law. *See, e.g., Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999).

IV. JURISDICTION

9. This Court has jurisdiction over this action under the Class Action Fairness Act (“CAFA”), codified under 28 U.S.C. § 1332(d) and § 1453, because: (A) it meets CAFA’s definition of a class action; (B) the putative class consists of more than 100 members; (C) there is minimal diversity of citizenship; and (D) the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d).

A. This Action Meets the “Class Action” Definition Under CAFA.

10. The State Court Action is a “class action.” CAFA provides:

[T]he term “class action” means any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action

28 U.S.C. § 1332(d)(1)(B). CAFA further provides “[t]his subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.”

28 U.S.C. § 1332(d)(8).

11. Plaintiff filed the State Court Action as a putative class action. (*See* Ex. A at 1 (titled “Class Action Complaint”); *id.* ¶ 1 (“This is a class action”), *id.* ¶¶ 20-29 (section entitled “Class Allegations”).) Plaintiff also asserts that she seeks to represent a class, defined as:

[a]ll persons residing within the State of Florida (1) who visited Defendant’s website and (2) whose electronic communications were intercepted by Defendant or on Defendant’s behalf (3) without their prior consent.

(Ex. A ¶ 20.) The class definition excludes Defendant as well as Defendant’s employees or agents.

(*Id.* ¶ 21.) Accordingly, the Complaint clearly qualifies as a “class action” under CAFA.

B. The Putative Class Exceeds 100 Members.

12. Plaintiff concedes that the putative class is “believed to be no less than 100 individuals.” (*Id.* ¶ 22; *see also Exhibit D*, Declaration of Jeffrey Held, ¶ 5.) Accordingly, the proposed class has at least one hundred members in the aggregate. 28 U.S.C. § 1332(d)(5)(b).¹

C. This Action Meets CAFA’s Minimal Diversity Requirement.

13. CAFA applies when “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). “Under CAFA, federal courts . . . have original jurisdiction over class actions in which the amount in controversy exceeds \$5,000,000 and there is minimal diversity (at least one plaintiff and one defendant are from different states).” *McDaniel v. Fifth Third Bank*, No. 14-11615, 2014 U.S. App. LEXIS 10489, *2-*3 (11th Cir. June 5, 2014) (citing *Evans v. Walter Indus., Inc.*, 449 F.3d 1159, 1163 (11th Cir. 2006)).

14. Plaintiff alleges she is a citizen of Miami-Dade County, Florida. (Ex. A ¶ 5.)

15. Athleta is a limited liability company. Thus, under CAFA, Athleta’s citizenship is determined by looking to (i) the state where Athleta has its principal place of business and (ii) the state under whose laws Athleta is organized. 28 U.S.C. § 1332(d)(10) (“For purposes of this subsection and section 1453, an *unincorporated association* shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.”) (emphasis added).

16. Though the Eleventh Circuit has not squarely addressed whether Section 1332(d)(10) applies to LLCs, it has historically treated them as “*unincorporated associations*” for jurisdictional purposes in traditional diversity cases. *See Rolling Greens MHP, L.P. v. Comcast*

¹ Although the putative class alleged by Plaintiff meets the threshold for jurisdictional purposes, Athleta denies that this action ultimately will prove appropriate for class treatment.

SCH Holdings L.L.C., 374 F.3d 1020, 1021-22 (11th Cir. 2004) (discussing LLCs and opining “that Congress, if it so chooses, is capable of adjusting the rules of diversity jurisdiction to account for **unincorporated associations**”) (emphasis added).

17. A year after *Rolling Greens*, in 2005, Congress enacted CAFA, which expressly extends the jurisdictional treatment of corporations to “unincorporated association[s],” like LLCs. *See* 28 U.S.C. § 1332(d)(10).

18. Since then, the Eleventh Circuit has acknowledged that CAFA’s Section 1332(d) “works a sea change in diversity jurisdiction” for class actions, “broaden[ing] diversity jurisdiction by establishing lower threshold requirements for jurisdiction and abrogating long-established precedent.” *Lowery*, 483 F.3d at 1193, 1200 n.40 (noting that “Section 1332(d)(10) sets forth how the citizenship of unincorporated associations is treated for purposes of CAFA’s jurisdictional and removal provisions . . .”).

19. Other Circuit Courts who have considered this issue have uniformly applied Section 1332(d)(10) to LLCs, and other unincorporated associations like limited partnerships. *See Ferrell v. Express Check Advance of SC LLC*, 591 F.3d 698, 705 (4th Cir. 2010) (applying Section 1332(d)(10) to an LLC for jurisdictional purposes); *Davis v. HSBC Bank Nev., N.A.*, 557 F.3d 1026, 1028, 1032 n.13 (9th Cir. 2009) (applying Section 1332(d)(10) to a limited partnership for jurisdictional purposes). Indeed, the Fourth Circuit conducted a thorough analysis of CAFA’s legislative history and the jurisprudential history that gave rise to its enactment and “conclude[d] that the term ‘unincorporated association’ in § 1332(d)(10) refers to **all non-corporate business entities**.” *Ferrell*, 591 F.3d at 705 (emphasis added); *see also Alvarez v. Loancare LLC*, No. 20-21837-CIV, 2021 WL 184547, at *8 (S.D. Fla. Jan. 19, 2021) (citing *Ferrell* favorably and applying Section 1332(d)(10) to an LLC).

20. Athleta maintains its primary place of business in San Francisco, California, and is organized under the laws of Delaware. (See Declaration of Marie Ma, attached hereto as **Exhibit E**, ¶ 4.) Therefore, under CAFA, Athleta is a citizen of California and Delaware for purposes of diversity jurisdiction. See 28 U.S.C. § 1332(d)(10).

21. Even if the Court were to find that Section 1332(d)(10) did not apply to LLCs, Athleta would still be considered a citizen of Delaware and California under the pre-CAFA diversity jurisdiction analysis. See *Rolling Greens*, 374 F.3d at 1022 (for purposes of diversity jurisdiction, a limited liability company is deemed to be a citizen of each state where its members reside). Using the *Rolling Greens* analysis, the sole member of Athleta is The Gap, Inc., a corporation that is incorporated in the State of Delaware, and that maintains its principal place of business in the State of California. (Ex. E ¶¶ 5-6.)

22. Accordingly, because Plaintiff is a citizen of *Florida*, and Athleta is a citizen of *Delaware* and *California*, CAFA's minimal diversity requirement is satisfied. 28 U.S.C. § 1332(d)(2)(A).

D. This Action Meets CAFA's Amount-in-Controversy Requirement.

23. CAFA creates original jurisdiction for "any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs." 28 U.S.C. § 1332(d)(2). The claims of the individual class members are aggregated to determine whether the matter in controversy exceeds \$5,000,000. 28 U.S.C. § 1332(d)(6). The amount-in-controversy analysis considers the amount the plaintiff has placed in controversy, not the amount the plaintiff is likely to recover. *McDaniel*, 2014 U.S. App. LEXIS 10489 at *3 ("[T]he plaintiff[s] likelihood of success on the merits is largely irrelevant to the court's jurisdiction because the pertinent question is what is *in controversy* in the case, not how much the plaintiffs

are ultimately likely to recover.”) (citing *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 751 (11th Cir. 2010) (emphasis in original).

24. To satisfy this requirement, “a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold; the notice need not contain evidentiary submissions.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 81 (2014); *see also Anderson v. Wilco Life Ins. Co.*, 943 F.3d 917, 925 (11th Cir. 2019) (same). Nevertheless, Athleta has submitted a declaration in support of its notice of removal that demonstrates the amount in controversy requirement is satisfied. (*See* Ex. D, ¶ 5.) When determining whether the \$5,000,000 threshold has been surpassed, “a court may rely on evidence put forward by the removing defendant, as well as reasonable inferences and deductions drawn from that evidence.” *Anderson*, 943 F.3d at 925 (citing *S. Fla. Wellness, Inc. v. Allstate Ins. Co.*, 745 F.3d 1312, 1315 (11th Cir. 2014)). Athleta denies all liability alleged in the Complaint and further denies that class treatment is appropriate for this Action. However, if damages or restitution were awarded on Plaintiff’s claims, the aggregate amount as to the putative class would satisfy the amount-in-controversy requirement.

25. Though Plaintiff has not specified the amount of relief she seeks, the allegations in the Complaint (as well as reasonable inferences and deductions drawn from those allegations) make clear that the amount Plaintiff has placed in controversy is easily above \$5,000,000, exclusive of interests and costs. Indeed, Plaintiff concedes that the proposed class of Florida residents is “numerous and geographically dispersed,” and that “the aggregate damages sustained by the Class are potentially in the millions of dollars” (Ex. A ¶¶ 22, 28.)

26. Specifically, the Complaint seeks declarative and injunctive relief, liquidated damages, punitive statutory damages, and attorney’s fees and costs. (*Id.* ¶¶ 39–41.) The liquidated

damages sought by Plaintiff are set forth by the FSCA, which provides for “liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher.” (Ex. A ¶ 39.) The statute of limitations for an FSCA claim is two years. Fla. Stat. Ann. § 934.10(3).

27. Here, Athleta records show that there were more than 5,000 sales made on the Athleta website to unique persons with billing addresses in Florida during the two years prior to the filing of the Complaint. (Ex. D ¶ 5.) Thus, there necessarily were at least 5,000 Floridian *visitors* to Athleta’s website during the period Plaintiff alleges Athleta was intercepting website visitor’s electronic communications. Since Plaintiff seeks statutory damages of at least \$1,000 per class member, the amount of alleged statutory damages alone exceeds \$5,000,000. Plaintiff’s claims for attorney’s fees and injunctive relief, including the cost of implementing the requested relief, only further confirm that the amount in controversy requirement is met.

V. NOTICE

28. As required by 28 U.S.C. § 1446(d), a copy of this notice of removal is being served upon Plaintiff’s counsel and a copy is being filed with the Clerk of the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

29. Defendant has paid the required removal fee to the Clerk of the Court.

30. This Notice of Removal is signed pursuant to and complies with Rule 11 of the Federal Rules of Civil Procedure.

VI. CONCLUSION

WHEREFORE, Defendant Athleta LLC respectfully removes this action from the Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida, to the United States District Court for the Southern District of Florida, Miami Division pursuant to 28 U.S.C. §§ 1332, 1441, 1453

and 1446 and respectfully requests that this Court to assume full jurisdiction over the cause herein, as provided by law, as an action properly removed and to issue all necessary orders and process.

Respectfully submitted,

/s/ Jennifer Olmedo-Rodriguez, Esq.

Jennifer Olmedo-Rodriguez, Esq.

Fla. Bar No.: 605158

jennifer.olmedo-rodriguez@bipc.com

BUCHANAN INGERSOLL & ROONEY PC

One Biscayne Tower

2 South Biscayne Blvd., Suite 1500

Miami, Florida 33131

Tel: (305) 347-4080

Fax: (305) 347-4089

Ashley Bruce Trehan, Esq.

Fla. Bar No.: 0043411

ashley.trehan@bipc.com

Jordan D. Maglich, Esq.

Fla. Bar No.: 0086106

jordan.maglich@bipc.com

BUCHANAN INGERSOLL & ROONEY PC

401 E. Jackson Street, Suite 2400

Tampa, FL 33602

Tel: (813) 228-8180

Fax: (813) 229-8189

Attorneys for Defendant Athleta LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 19, 2021, I electronically filed the foregoing and its attachments with the Clerk of the Court by using the CM/ECF system and sent the foregoing and its attachments via email to the following counsel of record:

Andrew J. Shamis, Esq.
ashamis@shamisgentile.com
SHAMIS & GENTILE, P.A.
14 NE 1st Avenue, Suite 705
Miami, Florida 33132

Manuel Hiraldo, Esq.
MHiraldo@Hiraldolaw.com
HIRALDO P.A.
401 E. Las Olas Blvd., Suite 1400
Fort Lauderdale, FL 33301

Scott Edelsberg, Esq.
scott@edelsberglaw.com
EDELBERG LAW, PA
20900 NE 30th Ave., Suite 417
Aventura, FL 33180

Attorneys for Plaintiff

/s/ Jennifer Olmedo-Rodriguez, Esq.
Jennifer Olmedo-Rodriguez, Esq.
Fla. Bar No.: 605158
jennifer.olmedo-rodriguez@bipc.com
BUCHANAN INGERSOLL & ROONEY PC
One Biscayne Tower
2 South Biscayne Blvd., Suite 1500
Miami, Florida 33131
Tel: (305) 347-4080
Fax: (305) 347-4089

Attorneys for Defendant Athleta LLC

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS: JILLIAN BARNETT, individually and on behalf of all others similarly situated, County of Residence of First Listed Plaintiff Miami-Dade County, Florida (EXCEPT IN U.S. PLAINTIFF CASES) Attorneys (Firm Name, Address, and Telephone Number) Shamis & Gentile, P.A., 14 NE 1st Avenue, Suite 705, Miami, Florida, 33132 (see attachment) DEFENDANTS: ATHLETA LLC County of Residence of First Listed Defendant Delaware and California (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known) Buchanan Ingersoll & Rooney P.C., 401 E. Jackson St., Suite 2400, Tampa FL 33602 (see attachment)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) 1 U.S. Government Plaintiff 2 U.S. Government Defendant 3 Federal Question (U.S. Government Not a Party) 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) PTF DEF Citizen of This State [X] 1 [] 1 Incorporated or Principal Place of Business In This State Citizen of Another State [] 2 [] 2 Incorporated and Principal Place of Business In Another State Citizen or Subject of a Foreign Country [] 3 [] 3 Foreign Nation [] 4 [] 4 [] 5 [X] 5 [] 6 [] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise. REAL PROPERTY: 210 Land Condemnation, 220 Foreclosure, 230 Rent Lease & Ejectment, 240 Torts to Land, 245 Tort Product Liability, 290 All Other Real Property. CIVIL RIGHTS: 440 Other Civil Rights, 441 Voting, 442 Employment, 443 Housing/Accommodations, 445 Amer. w/Disabilities - Employment, 446 Amer. w/Disabilities - Other, 448 Education. PRISONER PETITIONS: Habeas Corpus: 463 Alien Detainee, 510 Motions to Vacate Sentence, 530 General, 535 Death Penalty; Other: 540 Mandamus & Other, 550 Civil Rights, 555 Prison Condition, 560 Civil Detainee - Conditions of Confinement. LABOR: 710 Fair Labor Standards Act, 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act. IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions. FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609. OTHER STATUTES: 375 False Claims Act, 376 Qui Tam (31 USC 3729(a)), 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit (15 USC 1681 or 1692), 485 Telephone Consumer Protection Act, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes.

V. ORIGIN (Place an "X" in One Box Only) 1 Original Proceeding [X] 2 Removed from State Court [] 3 Remanded from Appellate Court [] 4 Reinstated or Reopened [] 5 Transferred from Another District (specify) [] 6 Multidistrict Litigation - Transfer [] 8 Multidistrict Litigation - Direct File []

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §§ 1332, 1441, 1446, and 1453 Brief description of cause: Class action alleging unlawful interception of Plaintiff's electronic communications in violation of Florida Security of Communications Act § 934.03

VII. REQUESTED IN COMPLAINT: [X] CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ Statutory, over \$5 mil CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE (see attached) DOCKET NUMBER (see attached)

DATE 5/19/2021 SIGNATURE OF ATTORNEY OF RECORD /s/ Jennifer Olmedo-Rodriguez, FBN 605158

FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Barnett v. Athleta LLC

Attachment to Civil Cover Sheet

Section I(c) Attorney Information

Plaintiff's attorneys:

Andrew J. Shamis, Esq.
ashamis@shamisgentile.com
SHAMIS & GENTILE, P.A.
14 NE 1st Avenue, Suite 705
Miami, Florida 33132

Scott Edelsberg, Esq.
scott@edelsberglaw.com
EDELSBERG LAW, PA
20900 NE 30th Ave., Suite 417
Aventura, FL 33180

Manuel Hiraldo, Esq.
MHiraldo@Hiraldolaw.com
HIRALDO P.A.
401 E. Las Olas Blvd., Suite 1400
Fort Lauderdale, FL 33301

Defendant's attorneys:

Ashley Bruce Trehan, FBN 0043411
ashley.trehan@bipc.com
Jordan D. Maglich, FBN 0086106
jordan.maglich@bipc.com
BUCHANAN INGERSOLL & ROONEY PC
401 E. Jackson Street, Suite 2400
Tampa, FL 33602
Tel: (813) 228-8180
Fax: (813) 229-8189

Jennifer Olmedo-Rodriguez, Esq.
Fla. Bar No.: 605158
jennifer.olmedo-rodriguez@bipc.com
BUCHANAN INGERSOLL & ROONEY PC
One Biscayne Tower
2 South Biscayne Blvd., Suite 1500
Miami, Florida 33131
Tel: (305) 347-4080
Fax: (305) 347-4089

Section VIII – Related Cases

1. *Swiggum v. EAN Services, LLC*, Case No. 9:21-cv-00493-TPB-CPT (M.D. Fla.) (U.S. District Judge Thomas P. Barber)
2. *Smart v. Bose Corp.*, Case No. 5:21-cv-00142-JSM-PRL (M.D. Fla.) (U.S. District Judge James S. Moody, Jr.)
3. *Londers v. Intel Corporation*, Case No. 5:21-cv-182 (M.D. Fla.) (U.S. District Judge James S. Moody, Jr.)
4. *Smart v. The Home Depot Inc.*, Case No. 5:21-cv-00153-JSM-PRL (M.D. Fla.) (U.S. District Judge James S. Moody, Jr.)
5. *Holden v. Banana Republic, LLC*, Case No. 3:21-cv-00268-BJD-JRK (M.D. Fla.) (U.S. District Judge Brian J. Davis)
6. *Holden v. Old Navy, LLC*, Case No. 3:21-cv-00270-BJD-PDB (M.D. Fla.) (U.S. District Judge Brian J. Davis)

7. *Liberto v. The Gap, Inc.*, Case No. 3:21-cv-436-BJD (M.D. Fla.) (U.S. District Judge Brian J. Davis)
8. *Holden v. NortonLifeLock Inc.*, Case No. 3:21-cv-00279-BJD-JRK (M.D. Fla.) (U.S. District Judge Brian J. Davis)
9. *Holden v. Fossil Group, Inc.*, Case No. 3:21-cv-00300-TJC-JBT (M.D. Fla.) (U.S. District Judge Brian J. Davis)
10. *Harris v. Edward D. Jones & Co.*, Case No. 3:21-cv-00330-BJD-JBT (M.D. Fla.) (U.S. District Judge Brian J. Davis)
11. *Benstine v. Lumen Technologies, Inc.*, Case No. 2:21-cv-275 (M.D. Fla.) (U.S. District Judge John L. Badalamenti)
12. *Marshall v. WebMD LLC*, Case No. 8:21-cv-683 (M.D. Fla.) (U.S. Dist. Judge William F. Jung)
13. *Zarnesky v. Adidas America Inc.*, Case No. 6:21-cv-540 (M.D. Fla.) (U.S. Dist. Judge Gregory A. Presnell)
14. *Harris v. Six Continents Hotels Inc.*, Case No. 2021-CA-1043 (M.D. Fla.) (U.S. Dist. Judge Marcia Morales Howard)
15. *Makkinje v. AthenaHealth, Inc.*, Case No. 8:21-cv-861 (M.D. Fla.) (U.S. Dist. Judge Mary S. Scriven)
16. *Goldstein v. Fandango Media, LLC*, Case No. 9:21-cv-80466 (S.D. Fla.) (U.S. District Judge Rodolfo A. Ruiz, II)
17. *Leace v. General Motors LLC*, Case No. 0:21-cv-60721 (S.D. Fla.) (U.S. Dist. Judge Rodolfo A. Ruiz, II)
18. *Goldstein v. Costco Wholesale Corporation*, Case No. 9:21-cv-80601-RAR (S.D. Fla.) (U.S. District Judge Rodolfo A. Ruiz, II)
19. *Goldstein v. T-Mobile USA Inc.*, Case No. 9:21-cv-80545-JIC (S.D. Fla.) (U.S. District Judge James I. Cohn)
20. *Goldstein v. Luxottica of America, Inc. dba Ray-Ban*, Case No. 9:21-cv-80546-AMC (S.D. Fla.) (U.S. District Judge Aileen M. Cannon)
21. *Connor v. Whirlpool Corp.*, Case No. 2:21-cv-14180 (S.D. Fla.) (U.S. Dist. Judge Aileen M. Cannon)
22. *Perez v. Western Union Holdings*, Case No. 0:21-cv-60616-RKA (S.D. Fla.) (U.S. District Judge Roy K. Altman)
23. *Neal v. Container Store Inc.*, Case No. 0:21-cv-60853 (S.D. Fla.) (U.S. Dist. Judge Roy K. Altman)
24. *Cardoso v. Whirlpool Corp.*, Case No. 0:21-cv-60784 (S.D. Fla.) (U.S. Dist. Judge William P. Dimitrouleas)
25. *Liberto v. Dillard's Inc.*, Case No. 3:21-cv-517 (N.D. Fla.) (M. Casey Rodgers)
26. *Underhill v. HSN, Inc.*, Case No. 2021-CA-000290 (4th Jud. Ct. Duval County) (Circuit Court Judge Katie L. Dearing)
27. *Goldstein v. Avis Budget Group, Inc.*, Case No. 2021-CA-001597 (15th Jud. Ct. Palm Beach County) (Circuit Court Judge John S. Kastrenakes)

28. *Jacome v. Spirit Airlines, Inc.*, Case No. 2021-000947-CA-01 (11th Jud. Ct. Miami-Dade County) (Circuit Court Judge Carlos Lopez)
29. *Swiggum v. Beall's Inc.*, Case No. 2021-CA-000168 (12th Jud. Ct. Manatee County) (Circuit Court Judge Charles Sniffen)
30. *Harris v. Euromarket Designs Inc. dba Crate and Barrel*, Case No. 2021-CA-000907 (4th Jud. Ct. Duval County) (Circuit Court Judge Gary Wilkinson)
31. *Belanger v. Norwegian Cruise Line Holdings Ltd.*, Case No. 2021 30222 CICI (7th Jud. Ct. Volusia County) (Circuit Court Judge Mary J. Jolley)
32. *Barnett v. Euromarket Desgins, Inc. dba CB2*, Case No. 2021-008898-CA-01 (11th Jud. Ct. Miami-Dade County) (Circuit Court Judge unknown)

250299277

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO.

JILLIAN BARNETT, *individually and on
behalf of all others similarly situated,*

Plaintiff,

vs.

ATHLETA LLC,

Defendant.

CLASS ACTION

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Jillian Barnett brings this class action against Defendant Athleta LLC, and alleges as follows upon personal knowledge as to Plaintiff and Plaintiff's own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by Plaintiff's attorneys.

NATURE OF THE ACTION

1. This is a class action under the Florida Security of Communications Act, Fla. Stat. Ann. § 934.01, *et seq.* ("FSCA"), arising from Defendant's unlawful interception of electronic communications. Specifically, this case stems from Defendant's use of tracking, recording, and/or "session replay" software to intercept Plaintiff's and the class members' electronic communications with Defendant's website, including how they interact with the website, their mouse movements and clicks, information inputted into the website, and/or pages and content viewed on the website.

2. Defendant intercepted the electronic communications at issue without the knowledge or prior consent of Plaintiff and the Class members. Defendant did so for its own

financial gain and in violation of Plaintiff's and the Class members' privacy rights under the FSCA. Such clandestine monitoring and recording of an individual's electronic communications has long been held a violation of the FSCA. *See, e.g., O'Brien v. O'Brien*, 899 So. 2d 1133 (Fla. 5th DCA 2005).

3. Defendant has intercepted the electronic communications involving Plaintiff and the Class members' visits to its website, causing them injuries, including invasion of their privacy and/or exposure of their private information.

4. Through this action, Plaintiff seeks injunctive relief to halt Defendant's unlawful interceptions. Plaintiff also seeks damages authorized by the FSCA on behalf of Plaintiff and the Class members, defined below, and any other available legal or equitable remedies resulting from the actions of Defendant described herein.

PARTIES

5. Plaintiff is, and at all times relevant hereto was, a citizen and resident of Miami-Dade County, Florida.

6. Defendant is, and at all times relevant hereto was, a company that maintains its primary place of business at 2 Folsom Street, San Francisco, CA 94105.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to Florida Rule of Civil Procedure 1.220 and Fla. Stat. § 26.012(2). The matter in controversy exceeds the sum or value of \$30,000 exclusive of interest, costs, and attorney's fees.

8. Defendant is subject to personal jurisdiction in Florida because this suit arises out of and relates to Defendant's contacts with this state. Defendant intercepted electronic communications from and to Florida without the consent of Plaintiff and the Class members.

Plaintiff and the Class members were in Florida when Defendant's unlawful interceptions occurred, and were injured while residing in and physically present in Florida.

9. Venue for this action is proper in this Court because all facts giving rise to this action occurred in this circuit.

FACTS

10. Defendant owns and operates the following website: www.athleta.gap.com.

11. Over the past year, Plaintiff visited Defendant's website approximately 2 times.

12. Plaintiff most recently visited Defendant's website on or about November 2020.

13. Plaintiff was in Florida during each visit to Defendant's website.

14. Upon information and belief, during one or more of these visits, Defendant utilized tracking, recording and/or "session replay" software to contemporaneously intercept Plaintiff's use and interaction with the website, including mouse clicks and movements, information inputted by Plaintiff, and/or pages and content viewed by Plaintiff. Defendant also recorded Plaintiff's location during the visits, as well as the time and dates of each visit.

15. Plaintiff never consented to interception of her electronic communications by Defendant or anyone else.

16. At no point in time did Plaintiff provide Defendant, its employees, or agents with consent to intercept Plaintiff's electronic communications.

17. Plaintiff and the putative Class members did not have a reasonable opportunity to discover Defendant's unlawful interceptions because Defendant did not disclose or seek their consent to intercept the communications.

18. Upon information and belief, Defendant similarly intercepted the electronic communications of other individuals located in Florida who visited Defendant's website.

19. Defendant's surreptitious interception Plaintiff's electronic communications caused Plaintiff harm, including invasion of her privacy and/or the exposure of private information.

CLASS ALLEGATIONS

PROPOSED CLASS

20. Plaintiff brings this lawsuit as a class action on behalf of all other similarly situated persons pursuant to Florida Rule of Civil Procedure 1.220(b)(2) and (b)(3). The "Class" that Plaintiff seeks to represent is defined as:

All persons residing within the State of Florida (1) who visited Defendant's website and (2) whose electronic communications were intercepted by Defendant or on Defendant's behalf (3) without their prior consent.

21. Defendant and its employees or agents are excluded from the Class. Plaintiff reserves the right to modify or amend the Class definitions, as appropriate, during the course of this litigation.

NUMEROSITY

22. The Class members are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. The precise number of Class members is unknown to Plaintiff, but may be readily ascertained from Defendant's records and is believed to be no less than 100 individuals. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice

23. The identities of the Class members are unknown at this time and can be ascertained only through discovery. Identification of the Class members is a matter capable of ministerial determination from Defendant's records kept in connection with its unlawful interceptions.

COMMON QUESTIONS OF LAW AND FACT

24. There are numerous questions of law and fact common to the Class which predominate over any questions affecting only individual members of the Class. Among the questions of law and fact common to the Class are:

- (1) Whether Defendant violated the FSCA;
- (2) Whether Defendant intercepted Plaintiff's and the Class members' electronic communications;
- (3) Whether Defendant disclosed to Plaintiff and the Class Members that it was intercepting their electronic communications;
- (4) Whether Defendant secured prior consent before intercepting Plaintiff's and the Class members' electronic communications;
- (5) Whether Defendant is liable for damages, and the amount of such damages;
and
- (6) Whether Defendant should be enjoined from such conduct in the future.

25. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendants routinely intercepts electronic communications without securing prior consent is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

TYPICALITY

26. Plaintiff's claims are typical of the claims of the Class members, as they are all based on the same factual and legal theories.

PROTECTING THE INTERESTS OF THE CLASS MEMBERS

27. Plaintiff is a representative who will fully and adequately assert and protect the interests of the Class and has retained competent counsel. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

SUPERIORITY

28. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims of all members of the Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are potentially in the millions of dollars, the individual damages incurred by each member of the Class resulting from Defendant's wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual Class members prosecuting their own separate claims is remote, and, even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

29. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For example, one court might enjoin Defendant from performing the challenged acts, whereas another may not. Additionally, individual actions may be dispositive of the interests of the Class, although certain class members are not parties to such actions.

COUNT I
Violations of the FSCA, Fla. Stat. Ann. § 934.03
(On Behalf of Plaintiff and the Class)

30. Plaintiff re-alleges and incorporates the foregoing allegations as if fully set forth herein.

31. It is a violation of the FSCA to intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept any electronic communication. Fla. Stat. Ann. § 934.03(1)(a).

32. Further, it is a violation to intentionally use, or endeavor to use, “the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection[.]” Fla. Stat. Ann. § 934.03(1)(d).

33. The FSCA defines “intercept” as the “acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.” Fla. Stat. Ann. § 934.02(3).

34. The FSCA defines “electronic communication” as “any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce....” Fla. Stat. Ann. § 934.02(12).

35. Defendant violated § 934.03(1)(a) of the FSCA by intercepting Plaintiff’s and the Class members’ electronic communications when they visited Defendant’s website.

36. Defendant intercepted Plaintiff’s and the Class members’ electronic communications without their prior consent.

37. Defendant violated § 934.03(1)(d) of the FSCA by using the unlawfully intercepted electronic communications.

38. Plaintiff and the Class members had an expectation of privacy during their visits to Defendant’s website, which Defendant violated by intercepting their electronic communications with the website.

39. As a result of Defendant's conduct, and pursuant to § 934.10 of the FSCA, Plaintiff and the other members of the putative Class were harmed and are each entitled to "liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher[.]" Fla Stat. Ann. § 934.10(b).

40. Plaintiff is also entitled to "reasonable attorney's fees and other litigation costs reasonably incurred." Fla Stat. Ann. § 934.10(d).

41. Plaintiff and the Class members are also entitled to an injunction.

WHEREFORE, Plaintiff Jillian Barnett, on behalf of herself and the other members of the Class, prays for the following relief:

a. A declaration that Defendant's practices described herein violate the Florida Security of Communications Act;

b. An injunction prohibiting Defendant from intercepting the electronic communications of individuals visiting Defendant's website without their knowledge and consent;

c. An award of actual, liquidated damages, and/or punitive statutory damages;

d. Reasonable attorney's fees and costs; and

e. Such further and other relief the Court deems reasonable and just.

JURY DEMAND

Plaintiff and Class Members hereby demand a trial by jury.

DOCUMENT PRESERVATION DEMAND

Plaintiff demands that Defendant take affirmative steps to preserve all records, lists, electronic databases or other itemizations associated with the allegations herein, including all records, lists, electronic databases or other itemizations in the possession of any vendors,

individuals, and/or companies contracted, hired, or directed by Defendant to assist in sending the alleged communications.

Dated: April 14, 2021

Respectfully Submitted,

By: /s/ Andrew J. Shamis
SHAMIS & GENTILE, P.A.
Andrew J. Shamis, Esq.
Florida Bar No. 101754
ashamis@shamisgentile.com
Garrett O. Berg, Esq.
Florida Bar No. 1000427
gberg@shamisgentile.com
14 NE 1st Avenue, Suite 705
Miami, Florida 33132
(t) (305) 479-2299
(f) (786) 623-0915

EDELSBERG LAW, PA
Scott Edelsberg, Esq.
Florida Bar No. 100537
scott@edelsberglaw.com
20900 NE 30th Ave., Suite 417
Aventura, FL 33180
Telephone: 305-975-3320

HIRALDO P.A.
Manuel Hiraldo, Esq.
Florida Bar No. 030380
401 E. Las Olas Blvd., Suite 1400
Fort Lauderdale, FL 33301
MHiraldo@Hiraldolaw.com
Telephone: 954-400-4713

Counsel for Plaintiff and Proposed Class

RETURN OF SERVICE

State of Florida

County of Miami-Dade

Circuit Court

Case Number: 2021-008870-CA-01

Plaintiff:

JILLIAN BARNETT, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

vs.

Defendant:

ATHLETA LLC

For:

Andrew J. Shamis, Esq.
Shamis & Gentile, P.A.
14 NE 1ST Avenue, Suite 400
Miami, FL 33132

Received by Global Process Services Corp on the 28th day of April, 2021 at 1:27 pm to be served on **ATHLETA LLC C/O CT CORPORATION SYSTEM, 1200 SOUTH PINE ISLAND ROAD, PLANTATION, FL 33324**

I, Sandra Quinones, do hereby affirm that on the **29th day of April, 2021 at 3:00 pm, I:**

served a **CORPORATION** by delivering a true copy of the **Summons and Class Action Complaint** with the date and hour of service endorsed thereon by me, to: **DONNA MOCH** as **REGSITERED AGENT** for **ATHLETA LLC C/O CT CORPORATION SYSTEM**, at the address of: **1200 SOUTH PINE ISLAND ROAD, PLANTATION, FL 33324**, and informed said person of the contents therein, in compliance with state statutes.

I certify that I am over the age of eighteen, and that I have no interest in the above action. Per F.S.92.525(2) Under penalties of perjury, I declare that I have read the foregoing Return of Service and the facts stated in it are true.



Sandra Quinones
SPS #394

Global Process Services Corp
P.O. Box 961556
Miami, FL 33296
(786) 287-0606

Our Job Serial Number: GER-2021000910
Ref: S&G



FORM 1.997. CIVIL COVER SHEET

The civil cover sheet and the information contained in it neither replace nor supplement the filing and service of pleadings or other documents as required by law. This form must be filed by the plaintiff or petitioner with the Clerk of Court for the purpose of reporting uniform data pursuant to section 25.075, Florida Statutes. (See instructions for completion.)

I. CASE STYLE

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

Jillian Barnett
Plaintiff

Case # _____
Judge _____

vs.

Athleta LLC
Defendant

II. AMOUNT OF CLAIM

Please indicate the estimated amount of the claim, rounded to the nearest dollar. The estimated amount of the claim is requested for data collection and clerical processing purposes only. The amount of the claim shall not be used for any other purpose.

- \$8,000 or less
- \$8,001 - \$30,000
- \$30,001- \$50,000
- \$50,001- \$75,000
- \$75,001 - \$100,000
- over \$100,000.00

III. TYPE OF CASE (If the case fits more than one type of case, select the most definitive category.) If the most descriptive label is a subcategory (is indented under a broader category), place an x on both the main category and subcategory lines.

CIRCUIT CIVIL

- Condominium
- Contracts and indebtedness
- Eminent domain
- Auto negligence
- Negligence—other
 - Business governance
 - Business torts
 - Environmental/Toxic tort
 - Third party indemnification
 - Construction defect
 - Mass tort
 - Negligent security
 - Nursing home negligence
 - Premises liability—commercial
 - Premises liability—residential
- Products liability
- Real Property/Mortgage foreclosure
 - Commercial foreclosure
 - Homestead residential foreclosure
 - Non-homestead residential foreclosure
 - Other real property actions
- Professional malpractice
 - Malpractice—business
 - Malpractice—medical
 - Malpractice—other professional
- Other
 - Antitrust/Trade regulation
 - Business transactions
 - Constitutional challenge—statute or ordinance
 - Constitutional challenge—proposed amendment
 - Corporate trusts
 - Discrimination—employment or other
 - Insurance claims
 - Intellectual property
 - Libel/Slander
 - Shareholder derivative action
 - Securities litigation
 - Trade secrets
 - Trust litigation

COUNTY CIVIL

- Small Claims up to \$8,000
- Civil
- Real property/Mortgage foreclosure

- Replevins
- Evictions
 - Residential Evictions
 - Non-residential Evictions
- Other civil (non-monetary)

COMPLEX BUSINESS COURT

This action is appropriate for assignment to Complex Business Court as delineated and mandated by the Administrative Order. Yes No

IV. REMEDIES SOUGHT (check all that apply):

- Monetary;
- Nonmonetary declaratory or injunctive relief;
- Punitive

V. NUMBER OF CAUSES OF ACTION: []

(Specify)

1

VI. IS THIS CASE A CLASS ACTION LAWSUIT?

- yes
- no

VII. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

- no
- yes If "yes," list all related cases by name, case number, and court.

VIII. IS JURY TRIAL DEMANDED IN COMPLAINT?

- yes
- no

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief, and that I have read and will comply with the requirements of Florida Rule of Judicial Administration 2.425.

Signature: s/ Angelica Gentile Gentile
Attorney or party

Fla. Bar # 102630
(Bar # if attorney)

Angelica Gentile Gentile
(type or print name)

04/14/2021
Date

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. 2021-008870-CA-01

JILLIAN BARNETT, individually and on behalf of
all others similarly situated,

CLASS ACTION

Plaintiff,

JURY TRIAL DEMANDED

vs.

ATHLETA LLC,

Defendant.

_____ /

SUMMONS

THE STATE OF FLORIDA:
To Each Sheriff/Certified Process Server of the State:

YOU ARE COMMANDED to serve this summons and a copy of the Complaint, in this
action on Defendant:

Athleta LLC
c/o CT Corporation System
1200 South Pine Island Road
Plantation, FL 33324

Each Defendant is required to serve written defenses to the Complaint or petition on:
**Andrew Shamis, Esq, Shamis & Gentile, P.A., 14 NE 1st Ave STE 705, Miami, Florida
33132**, within **twenty (20) days** after service of this summons on that Defendant, exclusive of
the date of service, and to file the original of the defenses with the Clerk of this Court either
before service on Plaintiff's attorney or immediately thereafter. If a Defendant fails to do so, a
default will be entered against that Defendant for the relief demanded in the complaint or
petition.

Dated this _____ day of _____ 4/14/2021 _____, April 14, 2021.

As Clerk of the Court

By: _____
As Deputy Clerk



IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. 2021-008870-CA-01

JILLIAN BARNETT, individually and on behalf of
all others similarly situated,

CLASS ACTION

Plaintiff,

JURY TRIAL DEMANDED

vs.

ATHLETA LLC,

Defendant.

_____ /

SUMMONS

THE STATE OF FLORIDA:
To Each Sheriff/Certified Process Server of the State:

YOU ARE COMMANDED to serve this summons and a copy of the Complaint, in this
action on Defendant:

Athleta LLC
c/o CT Corporation System
1200 South Pine Island Road
Plantation, FL 33324

Each Defendant is required to serve written defenses to the Complaint or petition on:
**Andrew Shamis, Esq, Shamis & Gentile, P.A., 14 NE 1st Ave STE 705, Miami, Florida
33132**, within **twenty (20) days** after service of this summons on that Defendant, exclusive of
the date of service, and to file the original of the defenses with the Clerk of this Court either
before service on Plaintiff's attorney or immediately thereafter. If a Defendant fails to do so, a
default will be entered against that Defendant for the relief demanded in the complaint or
petition.

Dated this _____ day of _____ 4/14/2021 _____, April 14, 2021.

As Clerk of the Court

By: _____
As Deputy Clerk



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

JILLIAN BARNETT, *individually and on
behalf of all others similarly situated,*

Plaintiff,

v.

ATHLETA LLC,

Defendant.

Case No. _____

DECLARATION OF JEFFREY HELD

I, Jeffrey Held, declare as follows:

1. I am currently employed at The Gap, Inc. (“Gap”). I have personal knowledge of the facts set forth herein and if called and sworn as a witness, I could and would competently testify thereto.

2. My title is Senior Director, Web Content Development. I have worked at Gap since August 28, 2008. I have been in my current role for approximately 12 years.

3. Defendant Athleta, LLC (“Athleta”) is a wholly owned subsidiary of Gap.

4. While employed at Gap, I have gained knowledge regarding Athleta’s website, athleta.com and athleta.gap.com (the “Athleta Website”), including the collection and storage of information regarding online purchases (e.g., name, address, etc.).

5. From April 14, 2019 to April 14, 2021, at least 5,000 sales were made on the Athleta Website to unique names and billing addresses in the state of Florida.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this
17th day of May, 2021 in Santa Rosa, CA.

A handwritten signature in black ink, appearing to read "Jeffrey Held", is written over a horizontal line. The signature is stylized and somewhat cursive.

Jeffrey Held

250284543

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

JILLIAN BARNETT, *individually and on
behalf of all others similarly situated,*

Plaintiff,

v.

ATHLETA LLC,

Defendant.

Case No. _____

DECLARATION OF MARIE MA

I, Marie Ma, declare as follows:

1. I am currently employed at The Gap, Inc. (“Gap”). I have personal knowledge of the facts set forth herein and if called and sworn as a witness, I could and would competently testify thereto.

2. My title is Assistant Secretary. I have worked at Gap since 2004. I have been in my current role for about 1 year.

3. Defendant Athleta, LLC (“Athleta”) is a wholly owned subsidiary of Gap.

4. Athleta is a limited liability company that maintains its primary place of business in San Francisco, California and is organized under the laws of Delaware.

5. The sole member of Athleta is Gap.

6. Gap is incorporated in the State of Delaware, and maintains its primary place of business in San Francisco, California.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this
17th day of May, 2021 in San Francisco, California.

Marie Ma

Marie Ma

250285591

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Athleta Intercepted Florida Website Visitors' Electronic Communications](#)
