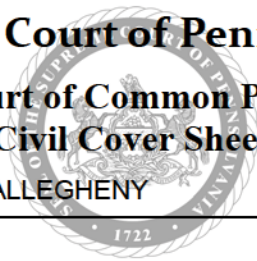


# Supreme Court of Pennsylvania

## Court of Common Pleas Civil Cover Sheet

ALLEGHENY

County



For Prothonotary Use Only:

Docket No:

TIME STAMP

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

**Commencement of Action:**

- Complaint
- Writ of Summons
- Petition
- Transfer from Another Jurisdiction
- Declaration of Taking

Lead Plaintiff's Name:

DANIEL GARCIA

Lead Defendant's Name:

AMERICAN EAGLE OUTFITTERS, INC.

Are money damages requested?  Yes  No

Dollar Amount Requested:  within arbitration limits  
 outside arbitration limits  
(check one)

Is this a Class Action Suit?  Yes  No

Is this an MDJ Appeal?  Yes  No

Name of Plaintiff/Appellant's Attorney: Kevin Tucker, East End Trial Group, LLC, ktucker@eastendtrialgroup.com

Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

**Nature of the Case:** Place an "X" to the left of the **ONE** case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

**TORT** (do not include Mass Tort)

- Intentional
- Malicious Prosecution
- Motor Vehicle
- Nuisance
- Premises Liability
- Product Liability (does not include mass tort)
- Slander/Libel/ Defamation
- Other: Unfair Trade Practices

**CONTRACT** (do not include Judgments)

- Buyer Plaintiff
- Debt Collection: Credit Card
- Debt Collection: Other
- Employment Dispute: Discrimination
- Employment Dispute: Other
- Other:

**CIVIL APPEALS**

- Administrative Agencies
- Board of Assessment
- Board of Elections
- Dept. of Transportation
- Statutory Appeal: Other
- Zoning Board
- Other:

**MASS TORT**

- Asbestos
- Tobacco
- Toxic Tort - DES
- Toxic Tort - Implant
- Toxic Waste
- Other:

**REAL PROPERTY**

- Ejectment
- Eminent Domain/Condemnation
- Ground Rent
- Landlord/Tenant Dispute
- Mortgage Foreclosure: Residential
- Mortgage Foreclosure: Commercial
- Partition
- Quiet Title
- Other:

**MISCELLANEOUS**

- Common Law/Statutory Arbitration
- Declaratory Judgment
- Mandamus
- Non-Domestic Relations
- Restraining Order
- Quo Warranto
- Replevin
- Other:

**PROFESSIONAL LIABILITY**

- Dental
- Legal
- Medical
- Other Professional:

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA**

DANIEL GARCIA, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

AMERICAN EAGLE OUTFITTERS, INC.,  
CARTER'S, INC., CHICO'S FAS, INC.,  
EXPRESS, INC., FOOT LOCKER, INC.,  
FRANCESCA'S SERVICES  
CORPORATION, GABRIEL BROTHERS,  
INC., GENESCO INC., HOT TOPIC, INC.,  
J.CREW GROUP, INC., KOHL'S  
CORPORATION, TAPESTRY, INC., THE  
GAP, INC., VERA BRADLEY, INC., and  
WALGREENS BOOTS ALLIANCE, INC.,

Defendants.

CIVIL DIVISION

No.

CLASS ACTION

**CLASS ACTION COMPLAINT**

Filed on behalf of Plaintiff:  
Daniel Garcia

Counsel of record for Plaintiff:

Kevin W. Tucker (He/Him/His)  
Pa. No. 312144  
EAST END TRIAL GROUP LLC  
186 42nd St., P.O. Box 40127  
Pittsburgh, PA 15201

Tel. (412) 877-5220

ktucker@eastendtrialgroup.com

*Other Attorneys On Signature*

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA**

DANIEL GARCIA, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

AMERICAN EAGLE OUTFITTERS, INC.,  
CARTER'S, INC., CHICO'S FAS, INC.,  
EXPRESS, INC., FOOT LOCKER, INC.,  
FRANCESCA'S SERVICES  
CORPORATION, GABRIEL BROTHERS,  
INC., GENESCO INC., HOT TOPIC, INC.,  
J.CREW GROUP, INC., KOHL'S  
CORPORATION, TAPESTRY, INC., THE  
GAP, INC., VERA BRADLEY, INC., and  
WALGREENS BOOTS ALLIANCE, INC.,

Defendants.

CIVIL DIVISION

No.

CLASS ACTION

**NOTICE TO DEFEND**

**YOU HAVE BEEN SUED IN COURT.** If you wish to defend against the claims set forth in the following pages, you must take action within **TWENTY (20)** days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

**IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.**

LAWYER REFERRAL SERVICE  
Allegheny County Bar Association  
11<sup>th</sup> Floor Koppers Building  
436 Seventh Avenue  
Pittsburgh, PA 15219  
(412) 261-5555

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA**

DANIEL GARCIA, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

AMERICAN EAGLE OUTFITTERS, INC.,  
CARTER’S, INC., CHICO’S FAS, INC.,  
EXPRESS, INC., FOOT LOCKER, INC.,  
FRANCESCA’S SERVICES  
CORPORATION, GABRIEL BROTHERS,  
INC., GENESCO INC., HOT TOPIC, INC.,  
J.CREW GROUP, INC., KOHL’S  
CORPORATION, TAPESTRY, INC., THE  
GAP, INC., VERA BRADLEY, INC., and  
WALGREENS BOOT ALLIANCE, INC.,

Defendants.

CIVIL DIVISION

No.

CLASS ACTION

**CLASS ACTION COMPLAINT**

Plaintiff Daniel Garcia (“Plaintiff” or “Garcia”), individually and on behalf of all others similarly situated, brings this action against Defendants American Eagle Outfitters, Inc., Carter’s, Inc., Chico’s FAS, Inc., Express, Inc., Foot Locker, Inc., Francesca’s Services Corporation, Gabriel Brothers, Inc., Genesco, Inc., Hot Topic, Inc., J.Crew Group, Inc., Kohl’s Corporation, Tapestry, Inc., The Gap, Inc., Vera Bradley, Inc., and Walgreens Boots Alliance, Inc. (“Defendants”), and alleges as follows:

**NATURE OF THE ACTION**

1. This action seeks statutory damages, attorneys’ fees, and costs against Defendants for violations of Pennsylvania’s Unfair Trade Practices and Consumer Protection Law (“UTPCPL”), 73 Pa. Stat. § 201-1, *et seq.*

## **JURISDICTION AND VENUE**

2. The Court has subject matter jurisdiction under 42 Pa. C.S. § 931.
3. The Court has personal jurisdiction over Defendants under 42 Pa. C.S. § 5301.
4. Venue is proper under Pa. R. Civ. P. 2179 because Defendants regularly conduct business in this County, this is the County where the cause of action arose, and/or this is the County where the transactions or occurrences took place out of which the cause of action arose.
5. Principles of comity and the Tax Injunction Act, U.S.C. § 1341 require the state courts of the Commonwealth of Pennsylvania to address matters involving state tax laws and regulations. *See Farneth v. Wal-Mart Stores, Inc.*, 2013 WL 6859013 (W.D. Pa. Dec. 30, 2013).

## **PARTIES**

6. Garcia is a natural person over the age of eighteen. He resides in Allegheny County, Pennsylvania.
7. American Eagle Outfitters, Inc. (“American Eagle”) is a Delaware corporation headquartered in Pittsburgh, Pennsylvania. American Eagle operates brick-and-mortar and online retail stores under the brands American Eagle, Aerie, Tailgate, and AEO Outlet Store. American Eagle owns two buildings in Pittsburgh that house its corporate headquarters. These buildings total 186,000 square feet and 150,000 square feet, respectively. American Eagle also owns a distribution facility in Hazleton, Pennsylvania consisting of approximately 1 million square feet. American Eagle owns, operates, or controls at least 50 brick-and-mortar retail locations in Pennsylvania. American Eagle’s financial policies and practices emanate from Pittsburgh, where American

Eagle’s finance officers and employees are located. For the year ended on February 1, 2020, American Eagle’s total net revenue was \$4,308,212,000.<sup>1</sup>

8. Carter’s, Inc. (“Carter’s”) is a Delaware corporation headquartered in Atlanta, Georgia. Carter’s operates brick-and-mortar and online retail stores under the brands Carter’s, OshKosh, and Skip Hop. Carter’s owns, operates, or controls at least 32 Carter’s and 20 OshKosh brick-and-mortar retail locations in Pennsylvania. For the year ended on December 28, 2019, Carter’s’ total net sales were \$3,519,286,000.<sup>2</sup>

9. Chico’s FAS, Inc. (“Chico’s”) is a Florida corporation headquartered in Fort Myers, Florida. Chico’s operates brick-and-mortar and online retail stores under the brands Chico’s, White House Black Market, Soma, and TellTale. Chico’s owns, operates, or manages at least 65 brick-and-mortar retail locations in Pennsylvania across its various brands. For the year ended February 1, 2020, Chico’s total net sales were \$2,037,875,000.<sup>3</sup>

10. Express, Inc. (“Express”) is a Delaware corporation headquartered in Columbus, Ohio. Express operates brick-and-mortar and online retail stores under the Express brand name.

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<sup>1</sup> American Eagle Outfitters, Inc., Annual Report (Form 10-K), at 9, 21 (Mar. 12, 2020), available at [https://www.sec.gov/ix?doc=/Archives/edgar/data/919012/000156459020010469/aeo-10k\\_20200201.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/919012/000156459020010469/aeo-10k_20200201.htm) (last accessed Oct. 5, 2020); American Eagle, Store Locator, available at <https://storelocations.ae.com/search.html?region=PA&country=US&qp=Pennsylvania,%20USA&l=en> (last accessed Oct. 5, 2020); American Eagle, Indeed, available at <https://www.indeed.com/jobs?q=american%20eagle&l=Pittsburgh%2C%20PA&jt=fulltime&vjk=f80a8c6aeb47ac3b> (last accessed Oct. 5, 2020).

<sup>2</sup> Carter’s, Inc., Annual Report (Form 10-k), at 4, 21 (Feb. 24, 2020), available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/1060822/000106082220000004/a10k-crix20191228.htm> (last accessed Oct. 5, 2020); Carter’s, Carter’s Locations in Pennsylvania, available at <https://locations.carters.com/pa/> (last accessed Oct. 5, 2020); OshKosh, OshKosh B’gosh Locations in Pennsylvania, available at <https://locations.oshkosh.com/pa/> (last accessed Oct. 5, 2020).

<sup>3</sup> Chico’s FAS, Inc., Annual Report (Form 10-k), at 2, 19, 22 (Mar. 16, 2020), available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/897429/000089742920000052/chs21202010-k.htm> (last accessed Oct. 5, 2020).

Express owns, operates, or manages at least 28 brick-and-mortar retail locations in Pennsylvania. For the year ended February 1, 2020, Express's total net sales were \$2,019,194,000.<sup>4</sup>

11. Foot Locker, Inc. ("Foot Locker") is a New York corporation headquartered in New York, New York. Foot Locker operates brick-and-mortar and online retail stores under the brands Foot Locker, Lady Foot Locker, Kids Foot Locker, Champs Sports, Eastbay, Footaction, Runners Point, and Sidestep. Foot Locker owns, operates, or manages at least 57 brick-and-mortar retail locations in Pennsylvania. For the year ended February 1, 2020, Foot Locker's total net sales were \$8,005,000,000.<sup>5</sup>

12. Francesca's Services Corporation ("Francesca's") is a Texas corporation headquartered in Austin, Texas. Francesca's operates brick-and-mortar and online retail stores under the Francesca's brand name. Francesca's owns, operates, or manages at least 30 brick-and-mortar retail locations in Pennsylvania.

13. Gabriel Brothers, Inc. ("Gabe's") is a West Virginia corporation headquartered in Morgantown, West Virginia. Gabe's operates brick-and-mortar and online retail stores under the Gabe's brand name. Gabe's owns, operates, or manages at least 10 brick-and-mortar retail locations in Pennsylvania.

14. Genesco, Inc. ("Genesco") is a Tennessee corporation headquartered in Nashville, Tennessee. Genesco operates brick-and-mortar and online retail stores under the brands Journeys, Schuh, Johnston & Murphy, and H.S. Trask. Genesco owns, operates, or manages at least 52 brick-

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<sup>4</sup> Express, Inc., Annual Report (Form 10-K), at 7, 23 (Mar. 17, 2020), available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/1483510/000148351020000018/expr-20200201.htm> (last accessed Oct. 5, 2020).

<sup>5</sup> Foot Locker, Inc., Annual Report (Form 10-K), at 1 (Mar. 27, 2020), available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/850209/000085020920000007/fl-20200201x10k.htm> (last accessed Oct. 5, 2020).

and-mortar retail locations in Pennsylvania. For the year ended February 1, 2020, Genesco's net sales were \$2,197,066,000.<sup>6</sup>

15. Hot Topic, Inc. ("Hot Topic") is a Delaware corporation headquartered in City of Industry, California. Hot Topic operates brick-and-mortar and online retail stores under the Hot Topic brand name. Hot Topic owns, operates, or manages at least 35 brick-and-mortar retail locations in Pennsylvania.

16. J.Crew Group, Inc. ("JCrew") is a Delaware corporation headquartered in New York, New York. JCrew operates brick-and-mortar and online retail stores under the brands JCrew and Madewell. JCrew owns, operates, or manages at least 22 brick-and-mortar retail locations in Pennsylvania. For the year ended February 2, 2019, JCrew's total revenues were \$2,483,994,000.<sup>7</sup> JCrew emerged from Chapter 11 bankruptcy in September 2020.

17. Kohl's Corporation ("Kohl's") is a Wisconsin corporation headquartered in Menomonee Falls, Wisconsin. Kohl's operates brick-and-mortar and online retail stores under the Kohl's brand name. Kohl's owns, operates, or manages at least 51 brick-and-mortar retail locations in Pennsylvania. For the year ended February 1, 2020, Kohl's' total net sales were \$18,885,000,000.<sup>8</sup>

18. Tapestry, Inc. ("Tapestry") is a Maryland corporation headquartered in New York, New York. Tapestry operates brick-and-mortar and online retail stores under the brand names

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<sup>6</sup> Genesco, Inc., Annual Report (Form 10-K), at 27 (Apr. 1, 2020), available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/18498/000001849820000016/gcofy202010-kq4.htm> (last accessed Oct. 5, 2020).

<sup>7</sup> J.Crew Group, Inc., Annual Report (Form 10-k), at 3, 21, 24 (Mar. 20, 2019), available at [https://www.sec.gov/Archives/edgar/data/1051251/000156459019008631/jcg-10k\\_20190202.htm](https://www.sec.gov/Archives/edgar/data/1051251/000156459019008631/jcg-10k_20190202.htm) (last accessed Oct. 5, 2020).

<sup>8</sup> Kohl's Corporation, Annual Report (Form 10-K), at 12, 18 (Mar. 18, 2020), available at <https://kohls.gcs-web.com/static-files/588b9e73-213b-4c1a-ae7f-a8e13d5191a3> (last accessed Oct. 5, 2020).



Coach, Kate Spade, and Stuart Weitzman. Tapestry owns, operates, or manages at least 43 brick-and-mortar retail locations in Pennsylvania. For the year ended February 1, 2020, Tapestry's total net sales were \$4,961,400,000.<sup>9</sup>

19. The Gap, Inc. ("Gap") is a Delaware corporation headquartered in San Francisco, California. Gap operates brick-and-mortar and online retail stores under the brand names Old Navy, Gap, Banana Republic, Athleta, Intermix, Janie and Jack, and Hill City. Gap owns, operates, or manages at least 111 brick-and-mortar retail locations in Pennsylvania. For the year ended February 1, 2020, Gap's total net sales were \$16,383,000,000.<sup>10</sup>

20. Vera Bradley, Inc. ("Vera Bradley") is a Delaware corporation headquartered in Columbus, OH. Vera Bradley operates brick-and-mortar and online retail stores under the brand names Vera Bradley and Pura Vida. Vera Bradley owns, operates, or manages at least 8 brick-and-mortar retail locations in Pennsylvania. For the year ended February 1, 2020, Vera Bradley's, total net revenues were \$495,212,000.<sup>11</sup>

21. Walgreens Boots Alliance, Inc. ("Walgreens") is a Delaware corporation headquartered in Deerfield, Illinois. Walgreens operates brick-and-mortar and online retail stores

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<sup>9</sup> Tapestry, Inc., Annual Report (Form 10-K), at 2, 30 (Aug. 13, 2020), available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/1116132/000111613220000022/tpr6272020-10k.htm> (last accessed Oct. 5, 2020).

<sup>10</sup> The Gap, Inc., Annual Report (Form 10-K), at 1, 18 (Mar. 17, 2020), available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/39911/000003991120000019/fy201910-k.htm> (last accessed Oct. 5, 2020).

<sup>11</sup> Vera Bradley, Inc., Annual Report (Form 10-K), at 31, 34 (Mar. 31, 2020), available at <https://www.sec.gov/Archives/edgar/data/1495320/000149532020000010/vra-20200201x10k.htm> (last accessed Oct. 5, 2020).

under the brand name Walgreens. Walgreens owns, operates, or manages at least 200 brick-and-mortar retail locations in Pennsylvania. Walgreens net earnings in 2019 was \$3,962,000,000.<sup>12</sup>

22. Defendants are retail companies that sell apparel, jewelry, personal protective equipment, and other accessories throughout Pennsylvania.

### **FACTUAL ALLEGATIONS**

23. Retailers cannot charge or collect sales tax on protective face masks or face coverings because they are nontaxable.<sup>13</sup>

24. Defendants knew or should have known that it was impermissible to charge or collect sales tax on protective face masks based on widely-disseminated messages regarding the tax exemption for protective face masks during the state of emergency in Pennsylvania.<sup>14</sup>

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<sup>12</sup> Walgreens Boots Alliance, Inc., Annual Report (Form 10-k), at 35 (Oct. 15, 2020), available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/1618921/000161892120000082/wba-20200831.htm> (last accessed Oct. 22, 2020)

<sup>13</sup> Ex. 1 (“Protective face masks that are sold at retail are exempt from Pennsylvania sales tax during the emergency disaster declaration issued on March 6, 2020 by Governor Wolf.”); Ex. 2 (emergency disaster declaration as originally issued and as extended on June 3, 2020, and August 3, 2020); Ex. 3 (72 P.S. § 7204(17)) (excluding “[t]he sale at retail or use of...medical supplies” from sales tax.).

<sup>14</sup> See, e.g., Ex. 1; Ex. 2; Gail Cole, *The world needs face masks: What you need to know about sales tax when selling new products*, AVALARA (Apr. 21, 2020), available at <https://www.avalara.com/us/en/blog/2020/04/the-world-needs-face-masks-what-you-need-to-know-about-sales-tax-when-selling-new-products.html> (last accessed Oct. 21, 2020) (“Cloth face masks . . . [are] exempt (i.e., not taxed) in only a few [states]: Connecticut, Maryland, [and] Pennsylvania.”); *Cutler bill would exempt facial coverings from sales tax*, WICKED LOCAL KINGSTON (May 19, 2020), available at <https://kingston.wickedlocal.com/news/20200513/cutler-bill-would-exempt-facial-coverings-from-sales-tax> (last accessed Oct. 21, 2020) (“Currently Pennsylvania and Connecticut have some form of sales tax exemption for facial coverings.”); Chris Vignone, *The Complete Sales Tax Guide for Your Online PPE Business*, PM BUS. ADVISORS (Apr. 27, 2020), available at <https://www.pmbusinessadvisors.com/blog/the-complete-sales-tax-guide-for-your-online-ppe-business/> (last accessed Oct. 21, 2020) (“There is an assumption that PPE is exempt in many states. . . . Since the pandemic, more states are moving to pass legislation on PPE products due to the higher demand.”); Barbara Levitt, ETSY (May 2, 2020), available at <https://community.etsy.com/t5/All-Things-Finance/sales-tax-on-face-masks/td-p/130168039> (last accessed Oct. 21, 2020) (“Pennsylvania’s Governor specifically removed sales tax on facemasks since the pandemic started.”).

Moreover, prior to the state of emergency, it was already the case that “medical supplies,” which include protective face masks, were exempt from sales tax.<sup>15</sup>

25. Since March 6, 2020, Garcia has purchased protective face masks from many retailers in Pennsylvania. At least fifteen retailers charged Garcia sales tax on his mask purchases. Consistent with the widely-disseminated messages described above, many others did not.

26. This action is brought against those retailers charging sales tax on protective face masks sold in, or into via the internet, Pennsylvania.

### **American Eagle Outfitters, Inc.**

27. American Eagle sells protective face masks.

28. Garcia bought a protective face mask from American Eagle at a retail store located at 1000 Ross Park Mall Drive, Pittsburgh, PA 15237, on September 27, 2020.

29. American Eagle advertised the mask Garcia purchased as costing \$14.95.

30. Yet American Eagle charged, and Garcia paid, \$16.00 for the mask.

31. The extra \$1.05 equals 7% of the mask’s advertised price.

32. Garcia did not discover the extra \$1.05 charge until reviewing his receipt.<sup>16</sup>

33. The receipt identified the extra \$1.05 charge as sales tax.

34. American Eagle operates, controls, maintains, and is otherwise responsible for the point of sale (“POS”) systems in its brick-and-mortar locations and online stores.

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<sup>15</sup> See, e.g., Ex. 3; Anna Orso, *Everything you don’t pay sales tax on in Pennsylvania, from books to utilities*, BILLY PENN (Nov. 23, 2015), available at <https://billypenn.com/2015/11/23/everything-you-dont-pay-sales-tax-on-in-pennsylvania-from-books-to-utilities/> (last accessed Oct. 21, 2020) (“Here’s a big list of everything in Pennsylvania that isn’t taxed: . . . surgical masks, disposable.”).

<sup>16</sup> Ex. 4.

35. American Eagle's POS systems regularly charge and collect sales tax on protective face masks sold at American Eagle's brick-and-mortar locations in Pennsylvania and online to persons in Pennsylvania.

36. By charging and collecting sales tax on protective face masks, American Eagle denied Garcia and the Class the money and the benefit of the use and retention of money they otherwise would have had, benefited from, or held.

37. Garcia and the class suffered harm as a result of American Eagle's conduct.

### **Carter's, Inc.**

38. Carter's sells protective face masks.

39. Garcia bought a protective face mask from Carter's at a retail store located at 222 West Bridge Street, Homestead, PA 15120, on September 26, 2020.

40. Carter's advertised the mask Garcia purchased as costing \$3.00.

41. Yet Carter's charged, and Garcia paid, \$3.21 for the mask.

42. The extra \$0.21 equals 7% of the mask's advertised price.

43. Garcia did not discover the extra \$0.21 charge until reviewing his receipt.<sup>17</sup>

44. The receipt identified the extra \$0.21 charge as sales tax.

45. Carter's operates, controls, maintains, and is otherwise responsible for the POS systems in its brick-and-mortar locations and online stores.

46. Carter's' POS systems regularly charge and collect sales tax on protective face masks sold at Carter's' brick-and-mortar locations in Pennsylvania and online to persons in Pennsylvania.

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<sup>17</sup> Ex. 5.

47. By charging and collecting sales tax on protective face masks, Carter's denied Garcia and the Class the money and the benefit of the use and retention of money they otherwise would have had, benefited from, or held.

48. Garcia and the class suffered harm as a result of Carter's' conduct.

**Chico's FAS, Inc.**

49. Chico's sells protective face masks.

50. Garcia bought a protective face mask from Chico's at a retail store located at 1000 Ross Park Mall Drive, Pittsburgh, PA 15237, on September 27, 2020.

51. Chico's advertised the mask Garcia purchased as costing \$15.00.

52. Yet Chico's charged, and Garcia paid, \$16.05 for the mask.

53. The extra \$1.05 equals 7% of the mask's advertised price.

54. Garcia did not discover the extra \$1.05 charge until reviewing his receipt.<sup>18</sup>

55. The receipt identified the extra \$1.05 charge as sales tax.

56. Chico's operates, controls, maintains, and is otherwise responsible for the POS systems in its brick-and-mortar locations and online stores.

57. Chico's' POS systems regularly charge and collect sales tax on protective face masks sold at Chico's' brick-and-mortar locations in Pennsylvania and online to persons in Pennsylvania.

58. By charging and collecting sales tax on protective face masks, Chico's denied Garcia and the Class the money and the benefit of the use and retention of money they otherwise would have had, benefited from, or held.

59. Garcia and the class suffered harm as a result of Chico's' conduct.

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<sup>18</sup> Ex. 6.

**Express, Inc.**

60. Express sells protective face masks.

61. Garcia bought a protective face mask from Express at a retail store located at Ross Park Mall in Pittsburgh, PA 15237, on September 29, 2020.

62. Express advertised the mask Garcia purchased as costing \$8.00.

63. Yet Express charged, and Garcia paid, \$8.56 for the mask.

64. The extra \$0.56 equals 7% of the mask's advertised price.

65. Garcia did not discover the extra \$0.56 charge until reviewing his receipt.<sup>19</sup>

66. The receipt identified the extra \$0.56 charge as sales tax.

67. Express operates, controls, maintains, and is otherwise responsible for the POS systems in its brick-and-mortar locations and online stores.

68. Express's POS systems regularly charge and collect sales tax on protective face masks sold at Express's brick-and-mortar locations in Pennsylvania and online to persons in Pennsylvania.

69. By charging and collecting sales tax on protective face masks, Express denied Garcia and the Class the money and the benefit of the use and retention of money they otherwise would have had, benefited from, or held.

70. Garcia and the class suffered harm as a result of Express's conduct.

**Foot Locker, Inc.**

71. Foot Locker sells protective face masks.

72. Garcia bought a protective face mask from Foot Locker at a retail store located at 1000 Ross Park Mall Drive, Pittsburgh, PA 15237, on September 29, 2020.

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<sup>19</sup> Ex. 7.

73. Foot Locker advertised the mask Garcia purchased as costing \$13.00.
74. Yet Foot Locker charged, and Garcia paid, \$13.91 for the mask.
75. The extra \$0.91 equals 7% of the mask's advertised price.
76. Garcia did not discover the extra \$0.91 charge until reviewing his receipt.<sup>20</sup>
77. The receipt identified the extra \$0.91 charge as sales tax.
78. Foot Locker operates, controls, maintains, and is otherwise responsible for the POS systems in its brick-and-mortar locations and online stores.
79. Foot Locker's POS systems regularly charge and collect sales tax on protective face masks sold at Foot Locker's brick-and-mortar locations in Pennsylvania and online to persons in Pennsylvania.
80. By charging and collecting sales tax on protective face masks, Foot Locker denied Garcia and the Class the money and the benefit of the use and retention of money they otherwise would have had, benefited from, or held.

81. Garcia and the class suffered harm as a result of Foot Locker's conduct.

### **Francesca's Services Corporation**

82. Francesca's sells protective face masks.
83. Garcia bought a protective face mask from Francesca's at a retail store located at 1000 Ross Park Mall Drive, Pittsburgh, PA 15237, on September 27, 2020.
84. Francesca's advertised the mask Garcia purchased as costing \$6.00.
85. Yet Francesca's charged, and Garcia paid, \$6.42 for the mask.
86. The extra \$0.42 equals 7% of the mask's advertised price.

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<sup>20</sup> Ex. 8.

87. Garcia did not discover the extra \$0.42 charge until reviewing his receipt.<sup>21</sup>

88. The receipt identified the extra \$0.42 charge as sales tax

89. Francesca's operates, controls, maintains, and is otherwise responsible for the POS systems in its brick-and-mortar locations and online stores.

90. Francesca's POS systems regularly charge and collect sales tax on protective face masks sold at Francesca's brick-and-mortar locations in Pennsylvania and online to persons in Pennsylvania.

91. By charging and collecting sales tax on protective face masks, Francesca's denied Garcia and the Class the money and the benefit of the use and retention of money they otherwise would have had, benefited from, or held.

92. Garcia and the class suffered harm as a result of Francesca's conduct.

### **Gabriel Brothers, Inc.**

93. Gabe's sells protective face masks.

94. Garcia bought a protective face mask from Gabe's at a retail store located at 3500 McIntyre Square Dr., Pittsburgh, PA, on September 27, 2020.

95. Gabe's advertised the mask Garcia purchased as costing \$2.99.

96. Yet Gabe's charged, and Garcia paid, \$3.20 for the mask.

97. The extra \$0.21 equals 7% of the mask's advertised price.

98. Garcia did not discover the extra \$0.21 charge until reviewing his receipt.<sup>22</sup>

99. The receipt identified the extra \$0.21 charge as sales tax.

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<sup>21</sup> Ex. 9.

<sup>22</sup> Ex. 10.



100. Gabe's operates, controls, maintains, and is otherwise responsible for the POS systems in its brick-and-mortar locations and online stores.

101. Gabe's' POS systems regularly charge and collect sales tax on protective face masks sold at Gabe's' brick-and-mortar locations in Pennsylvania and online to persons in Pennsylvania.

102. By charging and collecting sales tax on protective face masks, Gabe's denied Garcia and the Class the money and the benefit of the use and retention of money they otherwise would have had, benefited from, or held.

103. Garcia and the class suffered harm as a result of Gabe's' conduct.

**Genesco Inc.**

104. Genesco sells protective face masks.

105. Garcia bought a protective face mask from Genesco at a retail store located at 1000 Ross Park Mall Drive, Pittsburgh, PA 15237, on September 29, 2020.

106. Genesco advertised the mask Garcia purchased as costing \$15.00.

107. Yet Genesco charged, and Garcia paid, \$16.05 for the mask.

108. The extra \$1.05 equals 7% of the mask's advertised price.

109. Garcia did not discover the extra \$1.05 charge until reviewing his receipt.<sup>23</sup>

110. The receipt identified the extra \$1.05 charge as sales tax.

111. Genesco operates, controls, maintains, and is otherwise responsible for the POS systems in its brick-and-mortar locations and online stores.

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<sup>23</sup> Ex. 11.

112. Genesco's POS systems regularly charge and collect sales tax on protective face masks sold at Genesco's brick-and-mortar locations in Pennsylvania and online to persons in Pennsylvania.

113. By charging and collecting sales tax on protective face masks, Genesco denied Garcia and the Class the money and the benefit of the use and retention of money they otherwise would have had, benefited from, or held.

114. Garcia and the class suffered harm as a result of Genesco's conduct.

### **Hot Topic, Inc.**

115. Hot Topic sells protective face masks.

116. Garcia bought a protective face mask from Hot Topic at a retail store located at 1000 Ross Park Mall Drive, Pittsburgh, PA 15237, on September 29, 2020.

117. Hot Topic advertised the mask Garcia purchased as costing \$12.90.

118. Yet Hot Topic charged, and Garcia paid, \$13.80 for the mask.

119. The extra \$0.90 equals 7% of the mask's advertised price.

120. Garcia did not discover the extra \$0.90 charge until reviewing his receipt.<sup>24</sup>

121. The receipt identified the extra \$0.90 charge as sales tax.

122. Hot Topic operates, controls, maintains, and is otherwise responsible for the POS systems in its brick-and-mortar locations and online stores.

123. Hot Topic's POS systems regularly charge and collect sales tax on protective face masks sold at Hot Topic's brick-and-mortar locations in Pennsylvania and online to persons in Pennsylvania.

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<sup>24</sup> Ex. 12.

124. By charging and collecting sales tax on protective face masks, Hot Topic denied Garcia and the Class the money and the benefit of the use and retention of money they otherwise would have had, benefited from, or held.

125. Garcia and the class suffered harm as a result of Hot Topic's conduct.

**J.Crew Group, Inc.**

126. JCrew sells protective face masks.

127. Garcia bought a protective face mask from JCrew at a retail store located at 1000 Ross Park Mall Drive, Pittsburgh, PA 15237, on September 27, 2020.

128. JCrew advertised the mask Garcia purchased as costing \$18.00.

129. Yet JCrew charged, and Garcia paid, \$19.26 for the mask.

130. The extra \$1.26 equals 7% of the mask's advertised price.

131. Garcia did not discover the extra \$1.26 charge until reviewing his receipt.<sup>25</sup>

132. The receipt identified the extra \$1.26 charge as sales tax.

133. JCrew operates, controls, maintains, and is otherwise responsible for the POS systems in its brick-and-mortar locations and online stores.

134. JCrew's POS systems regularly charge and collect sales tax on protective face masks sold at JCrew's brick-and-mortar locations in Pennsylvania and online to persons in Pennsylvania.

135. By charging and collecting sales tax on protective face masks, JCrew denied Garcia and the Class the money and the benefit of the use and retention of money they otherwise would have had, benefited from, or held.

136. Garcia and the class suffered harm as a result of JCrew's conduct.

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<sup>25</sup> Ex. 13.

### **Kohl's Corporation**

137. Kohl's sells protective face masks.

138. Garcia bought a protective face mask from Kohl's at a retail store located in Pittsburgh, PA 15237, on September 26, 2020.

139. Kohl's advertised the mask Garcia purchased as costing \$6.99.

140. Yet Kohl's charged, and Garcia paid, \$7.48 for the mask.

141. The extra \$0.49 equals 7% of the mask's advertised price.

142. Garcia did not discover the extra \$0.49 charge until reviewing his receipt.<sup>26</sup>

143. The receipt identified the extra \$0.49 charge as sales tax

144. Kohl's operates, controls, maintains, and is otherwise responsible for the POS systems in its brick-and-mortar locations and online stores.

145. Kohl's' POS systems regularly charge and collect sales tax on protective face masks sold at Kohl's' brick-and-mortar locations in Pennsylvania and online to persons in Pennsylvania.

146. By charging and collecting sales tax on protective face masks, Kohl's denied Garcia and the Class the money and the benefit of the use and retention of money they otherwise would have had, benefited from, or held.

147. Garcia and the class suffered harm as a result of Kohl's' conduct.

### **Tapestry, Inc.**

148. Tapestry sells protective face masks.

149. Garcia bought a protective face mask from Tapestry at a retail store located at 1000 Ross Park Mall Drive, Pittsburgh, PA 15237, on September 27, 2020.

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<sup>26</sup> Ex. 14.

150. Tapestry advertised the mask Garcia purchased as costing \$9.00.
151. Yet Tapestry charged, and Garcia paid, \$9.63 for the mask.
152. The extra \$0.63 equals 7% of the mask's advertised price.
153. Garcia did not discover the extra \$0.63 charge until reviewing his receipt.<sup>27</sup>
154. The receipt identified the extra \$0.63 charge as sales tax.
155. Tapestry operates, controls, maintains, and is otherwise responsible for the POS systems in its brick-and-mortar locations and online stores.
156. Tapestry's POS systems regularly charge and collect sales tax on protective face masks sold at Tapestry's brick-and-mortar locations in Pennsylvania and online to persons in Pennsylvania.
157. By charging and collecting sales tax on protective face masks, Tapestry denied Garcia and the Class the money and the benefit of the use and retention of money they otherwise would have had, benefited from, or held.
158. Garcia and the class suffered harm as a result of Tapestry's conduct.

**The Gap, Inc.**

159. Gap sells protective face masks.
160. Garcia bought a protective face masks from Gap at a retail store located at 8900 Covenant Avenue, Pittsburgh, PA 15237, on September 27, 2020.
161. Gap advertised the masks Garcia purchased as costing \$12.50.
162. Yet Gap charged, and Garcia paid, \$13.37 for the masks.
163. The extra \$0.87 equals 7% of the masks' advertised price.

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<sup>27</sup> Ex. 15.

164. Garcia did not discover the extra \$0.87 charge until reviewing his receipt.<sup>28</sup>

165. The receipt identified the extra \$0.87 charge as sales tax.

166. Gap operates, controls, maintains, and is otherwise responsible for the POS systems in its brick-and-mortar locations and online stores.

167. Gap's POS systems regularly charge and collect sales tax on protective face masks sold at Gap's brick-and-mortar locations in Pennsylvania and online to persons in Pennsylvania.

168. By charging and collecting sales tax on protective face masks, Gap denied Garcia and the Class the money and the benefit of the use and retention of money they otherwise would have had, benefited from, or held.

169. Garcia and the class suffered harm as a result of Gap's conduct.

#### **Vera Bradley, Inc.**

170. Vera Bradley sells protective face masks.

171. Garcia bought a protective face mask from Vera Bradley at a retail store located at 1000 Ross Park Mall Drive, Pittsburgh, PA 15237, on September 29, 2020.

172. Vera Bradley advertised the mask Garcia purchased as costing \$8.00.

173. Yet Vera Bradley charged, and Garcia paid, \$8.56 for the mask.

174. The extra \$0.56 equals 7% of the mask's advertised price.

175. Garcia did not discover the extra \$0.56 charge until reviewing his receipt.<sup>29</sup>

176. The receipt identified the extra \$0.56 charge as sales tax.

177. Vera Bradley operates, controls, maintains, and is otherwise responsible for the POS systems in its brick-and-mortar locations and online stores.

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<sup>28</sup> Ex. 16.

<sup>29</sup> Ex. 17.

178. Vera Bradley's POS systems regularly charge and collect sales tax on protective face masks sold at Vera Bradley's brick-and-mortar locations in Pennsylvania and online to persons in Pennsylvania.

179. By charging and collecting sales tax on protective face masks, Vera Bradley denied Garcia and the Class the money and the benefit of the use and retention of money they otherwise would have had, benefited from, or held.

180. Garcia and the class suffered harm as a result of Vera Bradley's conduct.

**Walgreens Boots Alliance, Inc.**

181. Walgreens sells protective face masks.

182. Garcia bought a protective face mask from Walgreens at a retail store located at 1701 William Flynn Hwy, Glenshaw, PA 15116, on October 22, 2020.

183. Walgreens advertised the mask Garcia purchased as costing \$8.99.

184. Yet Walgreens charged, and Garcia paid, \$9.62 for the mask.

185. The extra \$0.63 equals 7% of the mask's advertised price.

186. Garcia did not discover the extra \$0.63 charge until reviewing his receipt.<sup>30</sup>

187. The receipt identified the extra \$0.63 charge as sales tax.

188. Walgreens operates, controls, maintains, and is otherwise responsible for the POS systems in its brick-and-mortar locations and online stores.

189. Walgreens' POS systems regularly charge and collect sales tax on protective face masks sold at Walgreens' brick-and-mortar locations in Pennsylvania and online to persons in Pennsylvania.

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<sup>30</sup> Ex. 18.

190. By charging and collecting sales tax on protective face masks, Walgreens denied Garcia and the Class the money and the benefit of the use and retention of money they otherwise would have had, benefited from, or held.

191. Garcia and the class suffered harm as a result of Walgreens' conduct.

### **CLASS ACTION ALLEGATIONS**

192. Garcia brings this action individually and on behalf of all others similarly situated under Rules 1702, 1708, and 1709 of the Pennsylvania Rules of Civil Procedure.

193. Garcia seeks to certify the following Classes:

(a) The American Eagle Class: "All persons who purchased a protective face mask or face covering from American Eagle at a retail store in Pennsylvania, or from American Eagle over the internet and arranged for delivery of the protective face mask into Pennsylvania, and who were charged an amount purporting to represent sales tax on that purchase since March 6, 2020."

(b) The Carter's Class: "All persons who purchased a protective face mask or face covering from Carter's at a retail store in Pennsylvania, or from Carter's over the internet and arranged for delivery of the protective face mask into Pennsylvania, and who were charged an amount purporting to represent sales tax on that purchase since March 6, 2020."

(c) The Chico's Class: "All persons who purchased a protective face mask or face covering from Chico's at a retail store in Pennsylvania, or from Chico's over the internet and arranged for delivery of the protective face mask into Pennsylvania, and who were charged an amount purporting to represent sales tax on that purchase since March 6, 2020."

(d) The Express Class: "All persons who purchased a protective face mask or face covering from Express at a retail store in Pennsylvania, or from Express over the internet and



arranged for delivery of the protective face mask into Pennsylvania, and who were charged an amount purporting to represent sales tax on that purchase since March 6, 2020.”

(e) The Foot Locker Class: “All persons who purchased a protective face mask or face covering from Foot Locker at a retail store in Pennsylvania, or from Foot Locker over the internet and arranged for delivery of the protective face mask into Pennsylvania, and who were charged an amount purporting to represent sales tax on that purchase since March 6, 2020.”

(f) The Francesca’s Class: “All persons who purchased a protective face mask or face covering from Francesca’s at a retail store in Pennsylvania, or from Francesca’s over the internet and arranged for delivery of the protective face mask into Pennsylvania, and who were charged an amount purporting to represent sales tax on that purchase since March 6, 2020.”

(g) The Gabe’s Class: “All persons who purchased a protective face mask or face covering from Gabe’s at a retail store in Pennsylvania, or from Gabe’s over the internet and arranged for delivery of the protective face mask into Pennsylvania, and who were charged an amount purporting to represent sales tax on that purchase since March 6, 2020.”

(h) The Genesco Class: “All persons who purchased a protective face mask or face covering from Genesco at a retail store in Pennsylvania, or from Genesco over the internet and arranged for delivery of the protective face mask into Pennsylvania, and who were charged an amount purporting to represent sales tax on that purchase since March 6, 2020.”

(i) The Hot Topic Class: “All persons who purchased a protective face mask or face covering from Hot Topic at a retail store in Pennsylvania, or from Hot Topic over the internet and arranged for delivery of the protective face mask into Pennsylvania, and who were charged an amount purporting to represent sales tax on that purchase since March 6, 2020.”

(j) The JCrew Class: “All persons who purchased a protective face mask or face covering from JCrew at a retail store in Pennsylvania, or from JCrew over the internet and arranged for delivery of the protective face mask into Pennsylvania, and who were charged an amount purporting to represent sales tax on that purchase since March 6, 2020.”

(k) The Kohl’s Class: “All persons who purchased a protective face mask or face covering from Kohl’s at a retail store in Pennsylvania, or from Kohl’s over the internet and arranged for delivery of the protective face mask into Pennsylvania, and who were charged an amount purporting to represent sales tax on that purchase since March 6, 2020.”

(l) The Tapestry Class: “All persons who purchased a protective face mask or face covering from Tapestry at a retail store in Pennsylvania, or from Tapestry over the internet and arranged for delivery of the protective face mask into Pennsylvania, and who were charged an amount purporting to represent sales tax on that purchase since March 6, 2020.”

(m) The Gap Class: “All persons who purchased a protective face mask or face covering from Gap at a retail store in Pennsylvania, or from Gap over the internet and arranged for delivery of the protective face mask into Pennsylvania, and who were charged an amount purporting to represent sales tax on that purchase since March 6, 2020.”

(n) The Vera Bradley Class: “All persons who purchased a protective face mask or face covering from Vera Bradley at a retail store in Pennsylvania, or from Vera Bradley over the internet and arranged for delivery of the protective face mask into Pennsylvania, and who were charged an amount purporting to represent sales tax on that purchase since March 6, 2020.”

(o) The Walgreens Class: “All persons who purchased a protective face mask or face covering from Walgreens at a retail store in Pennsylvania, or from Walgreens over the

internet and arranged for delivery of the protective face mask into Pennsylvania, and who were charged an amount purporting to represent sales tax on that purchase since March 6, 2020

194. Garcia reserves the right to expand, narrow, or otherwise modify the Classes as the litigation continues and discovery proceeds.

195. Pa. R. Civ. P. 1702(1), 1708(a)(2): Each Class is so numerous that joinder of its Class Members is impracticable. The United States Census Bureau estimates there are 12,801,989 individuals residing in Pennsylvania as of July 1, 2019.<sup>31</sup> All of these individuals have been ordered to wear protective face masks or face coverings to prevent the spread of COVID-19 since at least April 15, 2020.<sup>32</sup> Given Pennsylvania's population, orders requiring Pennsylvania residents to wear protective face masks in public, and the size of Defendants' businesses, each of which operates brick-and-mortar retail locations in Pennsylvania and online stores that sell protective face masks or face coverings into Pennsylvania, there likely are hundreds or thousands of Members of each Class. Since each of the claims of the Class Members is substantially identical, and the Class Members request substantially similar relief, centralizing the Class Members' claims in a single proceeding likely is the most manageable litigation method available.

196. Pa. R. Civ. P. 1702(2), 1708(a)(1): Garcia and each Member of each Class share numerous common questions of law and fact that will drive the resolution of the litigation and predominate over any individual issues. For example, there is a single common answer to the question of whether Defendants violated the UTPCPL by charging Class Members 7% or more than the advertised price for protective face masks. The answer to this question is the same for

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<sup>31</sup> U.S. Census Bureau, *QuickFacts Pennsylvania*, available at <https://www.census.gov/quickfacts/PA> (last accessed Sept. 30, 2020).

<sup>32</sup> Ex. 19, p. 5 (April 15, 2020 order requiring face masks for consumers); Ex. 20, Section 2 (July 1, 2020 order requiring universal face coverings).

Garcia and each Member of each Class, and Garcia and each Member of each Class require the same proof to answer this question. This question, and other common questions of law and fact, predominate over any individual issues.

197. Pa. R. Civ. P. 1702(3): Garcia's claims are typical of the claims of each Member of each Class because the claims are based on the same legal theories and arise from the same conduct.

198. Pa. R. Civ. P. 1702(4), 1709: Garcia is an adequate representative of each Member of each Class because the interests of Garcia and each Member of each Class align. Garcia will fairly, adequately, and vigorously represent and protect the interests of each Member of each Class and has no interest antagonistic to any Member of any Class. Garcia retained counsel who are competent and experienced in the prosecution of class action litigation generally and UTPCPL litigation specifically. Garcia has or can acquire adequate financial resources to assure that the interests of each Member of each Class will not be harmed.

199. Pa. R. Civ. P. 1708(a)(3), (6), (7): Given the complexity and nature of the issues presented and the relief requested, the expense and time necessary to obtain such relief, and the anticipated recovery and relief that Garcia and each Member of each Class may obtain, the class action mechanism is by far the preferred and most efficient litigation mechanism to adjudicate the claims of Garcia and each Member of each Class. Additionally, requiring Garcia and each Member of each Class to file individual actions would impose a crushing burden on the court system. Class treatment presents far fewer management difficulties and provides benefits of a single adjudication and economies of scale.

200. Pa. R. Civ. P. 1708(a)(4): Based on the knowledge of Garcia and undersigned counsel, there are no similar cases currently pending.

201. Pa. R. Civ. P. 1708(a)(5): This forum is appropriate for this litigation, as each Defendant regularly conducts business in this County and all or part of the claims arose in this County.

**COUNT I—American Eagle Outfitters, Inc.**  
**Violation of the Unfair Trade Practices and Consumer Protection Law**  
**73 Pa. Stat. § 201-1, *et seq.***

202. This claim is brought individually and on behalf of the American Eagle Class.

203. Garcia and American Eagle are persons, the protective face masks are goods purchased for personal, family, and/or household use, and American Eagle’s conduct described herein is trade or commerce under the UTPCPL. 73 Pa. Stat. § 201-2(2)-(3), 201-9.2.

204. American Eagle’s conduct described herein constitutes as unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because: i) American Eagle represented that goods have characteristics they do not have; ii) American Eagle advertised goods with intent not sell them as advertised; and iii) American Eagle engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(v), (ix), (xxi).

205. American Eagle’s use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

206. Garcia and the American Eagle Class Members lost money or property as result of American Eagle’s violations and therefore are entitled to one hundred dollars (\$100) per violation under 73 P.S. 201-9.2, as well as reasonable costs and attorney fees and such additional relief the Court deems necessary and proper.

**COUNT II—Carter’s, Inc.**  
**Violation of the Unfair Trade Practices and Consumer Protection Law**  
**73 Pa. Stat. § 201-1, et seq.**

207. This claim is brought individually and on behalf of the Carter’s Class.

208. Garcia and Carter’s are persons, the protective face masks are goods purchased for personal, family, and/or household use, and Carter’s’ conduct described herein is trade or commerce under the UTPCPL. 73 Pa. Stat. § 201-2(2)-(3), 201-9.2.

209. Carter’s’ conduct described herein constitutes as unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because: i) Carter’s represented that goods have characteristics they do not have; ii) Carter’s advertised goods with intent not sell them as advertised; and iii) Carter’s engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(v), (ix), (xxi).

210. Carter’s’ use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

211. Garcia and the Carter’s Class Members lost money or property as result of Carter’s’ violations and therefore are entitled to one hundred dollars (\$100) per violation under 73 P.S. 201-9.2, as well as reasonable costs and attorney fees and such additional relief the Court deems necessary and proper.

**COUNT III—Chico’s FAS, Inc.**  
**Violation of the Unfair Trade Practices and Consumer Protection Law**  
**73 Pa. Stat. § 201-1, et seq.**

212. This claim is brought individually and on behalf of the Chico’s Class.

213. Garcia and Chico’s are persons, the protective face masks are goods purchased for personal, family, and/or household use, and Chico’s’ conduct described herein is trade or commerce under the UTPCPL. 73 Pa. Stat. § 201-2(2)-(3), 201-9.2.

214. Chico's conduct described herein constitutes as unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because: i) Chico's represented that goods have characteristics they do not have; ii) Chico's advertised goods with intent not sell them as advertised; and iii) Chico's engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(v), (ix), (xxi).

215. Chico's use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

216. Garcia and the Chico's Class Members lost money or property as result of Chico's violations and therefore are entitled to one hundred dollars (\$100) per violation under 73 P.S. 201-9.2, as well as reasonable costs and attorney fees and such additional relief the Court deems necessary and proper.

**COUNT IV—Express, Inc.**  
**Violation of the Unfair Trade Practices and Consumer Protection Law**  
**73 Pa. Stat. § 201-1, et seq.**

217. This claim is brought individually and on behalf of the Express Class.

218. Garcia and Express are persons, the protective face masks are goods purchased for personal, family, and/or household use, and Express's conduct described herein is trade or commerce under the UTPCPL. 73 Pa. Stat. § 201-2(2)-(3), 201-9.2.

219. Express's conduct described herein constitutes as unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because: i) Express represented that goods have characteristics they do not have; ii) Express advertised goods with intent not sell them as advertised; and iii) Express engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(v), (ix), (xxi).

220. Express's use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

221. Garcia and the Express's Class Members lost money or property as result of Express's violations and therefore are entitled to one hundred dollars (\$100) per violation under 73 P.S. 201-9.2, as well as reasonable costs and attorney fees and such additional relief the Court deems necessary and proper.

**COUNT V—Foot Locker, Inc.**  
**Violation of the Unfair Trade Practices and Consumer Protection Law**  
**73 Pa. Stat. § 201-1, *et seq.***

222. This claim is brought individually and on behalf of the Foot Locker Class.

223. Garcia and Foot Locker are persons, the protective face masks are goods purchased for personal, family, and/or household use, and Foot Locker's conduct described herein is trade or commerce under the UTPCPL. 73 Pa. Stat. § 201-2(2)-(3), 201-9.2.

224. Foot Locker's conduct described herein constitutes as unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because: i) Foot Locker represented that goods have characteristics they do not have; ii) Foot Locker advertised goods with intent not sell them as advertised; and iii) Foot Locker engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(v), (ix), (xxi).

225. Foot Locker's use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

226. Garcia and the Foot Locker's Class Members lost money or property as result of Foot Locker's violations and therefore are entitled to one hundred dollars (\$100) per violation under 73 P.S. 201-9.2, as well as reasonable costs and attorney fees and such additional relief the Court deems necessary and proper.



**COUNT VI—Francesca’s Services Corporation**  
**Violation of the Unfair Trade Practices and Consumer Protection Law**  
**73 Pa. Stat. § 201-1, et seq.**

227. This claim is brought individually and on behalf of the Francesca’s Class.

228. Garcia and Francesca’s are persons, the protective face masks are goods purchased for personal, family, and/or household use, and Francesca’s’ conduct described herein is trade or commerce under the UTPCPL. 73 Pa. Stat. § 201-2(2)-(3), 201-9.2.

229. Francesca’s’ conduct described herein constitutes as unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because: i) Francesca’s represented that goods have characteristics they do not have; ii) Francesca’s advertised goods with intent not sell them as advertised; and iii) Francesca’s engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(v), (ix), (xxi).

230. Francesca’s’ use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

231. Garcia and the Francesca’s’ Class Members lost money or property as result of Francesca’s’ violations and therefore are entitled to one hundred dollars (\$100) per violation under 73 P.S. 201-9.2, as well as reasonable costs and attorney fees and such additional relief the Court deems necessary and proper.

**COUNT VII—Gabriel Brother’s, Inc.**  
**Violation of the Unfair Trade Practices and Consumer Protection Law**  
**73 Pa. Stat. § 201-1, et seq.**

232. This claim is brought individually and on behalf of the Gabe’s Class.

233. Garcia and Gabe’s are persons, the protective face masks are goods purchased for personal, family, and/or household use, and Gabe’s’ conduct described herein is trade or commerce under the UTPCPL. 73 Pa. Stat. § 201-2(2)-(3), 201-9.2.

234. Gabe's' conduct described herein constitutes as unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because: i) Gabe's represented that goods have characteristics they do not have; ii) Gabe's advertised goods with intent not sell them as advertised; and iii) Gabe's engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(v), (ix), (xxi).

235. Gabe's' use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

236. Garcia and the Gabe's' Class Members lost money or property as result of Gabe's' violations and therefore are entitled to one hundred dollars (\$100) per violation under 73 P.S. 201-9.2, as well as reasonable costs and attorney fees and such additional relief the Court deems necessary and proper.

**COUNT VIII—Genesco Inc.**  
**Violation of the Unfair Trade Practices and Consumer Protection Law**  
**73 Pa. Stat. § 201-1, et seq.**

237. This claim is brought individually and on behalf of the Genesco Class.

238. Garcia and Genesco are persons, the protective face masks are goods purchased for personal, family, and/or household use, and Genesco's conduct described herein is trade or commerce under the UTPCPL. 73 Pa. Stat. § 201-2(2)-(3), 201-9.2.

239. Genesco's conduct described herein constitutes as unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because: i) Genesco represented that goods have characteristics they do not have; ii) Genesco advertised goods with intent not sell them as advertised; and iii) Genesco engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(v), (ix), (xxi).

240. Genesco's use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

241. Garcia and the Genesco's Class Members lost money or property as result of Genesco's violations and therefore are entitled to one hundred dollars (\$100) per violation under 73 P.S. 201-9.2, as well as reasonable costs and attorney fees and such additional relief the Court deems necessary and proper.

**COUNT IX—Hot Topic, Inc.**  
**Violation of the Unfair Trade Practices and Consumer Protection Law**  
**73 Pa. Stat. § 201-1, et seq.**

242. This claim is brought individually and on behalf of the Hot Topic Class.

243. Garcia and Hot Topic are persons, the protective face masks are goods purchased for personal, family, and/or household use, and Hot Topic's conduct described herein is trade or commerce under the UTPCPL. 73 Pa. Stat. § 201-2(2)-(3), 201-9.2.

244. Hot Topic's conduct described herein constitutes as unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because: i) Hot Topic represented that goods have characteristics they do not have; ii) Hot Topic advertised goods with intent not sell them as advertised; and iii) Hot Topic engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(v), (ix), (xxi).

245. Hot Topic's use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

246. Garcia and the Hot Topic's Class Members lost money or property as result of Hot Topic's violations and therefore are entitled to one hundred dollars (\$100) per violation under 73 P.S. 201-9.2, as well as reasonable costs and attorney fees and such additional relief the Court deems necessary and proper.

**COUNT X—J.Crew Group, Inc.**  
**Violation of the Unfair Trade Practices and Consumer Protection Law**  
**73 Pa. Stat. § 201-1, et seq.**

247. This claim is brought individually and on behalf of the JCrew Class.

248. Garcia and JCrew are persons, the protective face masks are goods purchased for personal, family, and/or household use, and JCrew's conduct described herein is trade or commerce under the UTPCPL. 73 Pa. Stat. § 201-2(2)-(3), 201-9.2.

249. JCrew's conduct described herein constitutes as unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because: i) JCrew represented that goods have characteristics they do not have; ii) JCrew advertised goods with intent not sell them as advertised; and iii) JCrew engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(v), (ix), (xxi).

250. JCrew's use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

251. Garcia and the JCrew Class Members lost money or property as result of JCrew's violations and therefore are entitled to one hundred dollars (\$100) per violation under 73 P.S. 201-9.2, as well as reasonable costs and attorney fees and such additional relief the Court deems necessary and proper.

**COUNT XI—Kohl's Corporation**  
**Violation of the Unfair Trade Practices and Consumer Protection Law**  
**73 Pa. Stat. § 201-1, et seq.**

252. This claim is brought individually and on behalf of the Kohl's Class.

253. Garcia and Kohl's are persons, the protective face masks are goods purchased for personal, family, and/or household use, and Kohl's conduct described herein is trade or commerce under the UTPCPL. 73 Pa. Stat. § 201-2(2)-(3), 201-9.2.

254. Kohl's' conduct described herein constitutes as unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because: i) Kohl's represented that goods have characteristics they do not have; ii) Kohl's advertised goods with intent not sell them as advertised; and iii) Kohl's engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(v), (ix), (xxi).

255. Kohl's' use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

256. Garcia and the Kohl's Class Members lost money or property as result of Kohl's' violations and therefore are entitled to one hundred dollars (\$100) per violation under 73 P.S. 201-9.2, as well as reasonable costs and attorney fees and such additional relief the Court deems necessary and proper.

**COUNT XII—Tapestry, Inc.**  
**Violation of the Unfair Trade Practices and Consumer Protection Law**  
**73 Pa. Stat. § 201-1, et seq.**

257. This claim is brought individually and on behalf of the Tapestry Class.

258. Garcia and Tapestry are persons, the protective face masks are goods purchased for personal, family, and/or household use, and Tapestry's conduct described herein is trade or commerce under the UTPCPL. 73 Pa. Stat. § 201-2(2)-(3), 201-9.2.

259. Tapestry's conduct described herein constitutes as unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because: i) Tapestry represented that goods have characteristics they do not have; ii) Tapestry advertised goods with intent not sell them as advertised; and iii) Tapestry engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(v), (ix), (xxi).

260. Tapestry's use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

261. Garcia and the Tapestry Class Members lost money or property as result of Tapestry's violations and therefore are entitled to one hundred dollars (\$100) per violation under 73 P.S. 201-9.2, as well as reasonable costs and attorney fees and such additional relief the Court deems necessary and proper.

**COUNT XIII—The Gap, Inc.**  
**Violation of the Unfair Trade Practices and Consumer Protection Law**  
**73 Pa. Stat. § 201-1, et seq.**

262. This claim is brought individually on behalf of Daniel Garcia and on behalf of the Gap Class.

263. Daniel Garcia and Gap are persons, the protective face masks are goods purchased for personal, family, and/or household use, and Gap's conduct described herein is trade or commerce under the UTPCPL. 73 Pa. Stat. § 201-2(2)-(3), 201-9.2.

264. Gap's conduct described herein constitutes as unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because: i) Gap represented that goods have characteristics they do not have; ii) Gap advertised goods with intent not sell them as advertised; and iii) Gap engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(v), (ix), (xxi).

265. Gap's use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

266. Daniel Garcia and the Gap Class Members lost money or property as result of Gap's violations and therefore are entitled to one hundred dollars (\$100) per violation under 73 P.S. 201-

9.2, as well as reasonable costs and attorney fees and such additional relief the Court deems necessary and proper.

**COUNT XIV—Vera Bradley, Inc.**  
**Violation of the Unfair Trade Practices and Consumer Protection Law**  
**73 Pa. Stat. § 201-1, et seq.**

267. This claim is brought individually and on behalf of the Vera Bradley Class.

268. Garcia and Vera Bradley are persons, the protective face masks are goods purchased for personal, family, and/or household use, and Vera Bradley’s conduct described herein is trade or commerce under the UTPCPL. 73 Pa. Stat. § 201-2(2)-(3), 201-9.2.

269. Vera Bradley’s conduct described herein constitutes as unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because: i) Vera Bradley represented that goods have characteristics they do not have; ii) Vera Bradley advertised goods with intent not sell them as advertised; and iii) Vera Bradley engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(v), (ix), (xxi).

270. Vera Bradley’s use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

271. Garcia and the Vera Bradley Class Members lost money or property as result of Vera Bradley’s violations and therefore are entitled to one hundred dollars (\$100) per violation under 73 P.S. 201-9.2, as well as reasonable costs and attorney fees and such additional relief the Court deems necessary and proper.

**COUNT XV—Walgreens Boots Alliance, Inc.**  
**Violation of the Unfair Trade Practices and Consumer Protection Law**  
**73 Pa. Stat. § 201-1, et seq.**

272. This claim is brought individually and on behalf of the Walgreens Class.

273. Garcia and Walgreens are persons, the protective face masks are goods purchased for personal, family, and/or household use, and Walgreens' conduct described herein is trade or commerce under the UTPCPL. 73 Pa. Stat. § 201-2(2)-(3), 201-9.2.

274. Walgreens' conduct described herein constitutes as unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because: i) Walgreens represented that goods have characteristics they do not have; ii) Walgreens advertised goods with intent not sell them as advertised; and iii) Walgreens engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(v), (ix), (xxi).

275. Walgreens' use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

276. Garcia and the Walgreens Class Members lost money or property as result of Walgreens' violations and therefore are entitled to one hundred dollars (\$100) per violation under 73 P.S. 201-9.2, as well as reasonable costs and attorney fees and such additional relief the Court deems necessary and proper.

**JURY TRIAL DEMANDED**

Garcia requests a jury trial on all claims so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Garcia prays for the following relief:

- a. An order certifying each proposed Class, appointing Garcia as representative of each proposed Class, and appointing undersigned counsel as counsel for each proposed Class;
- b. An order awarding one hundred dollars (\$100.00) per violation of the UTPCPL, and not a refund of the overcharges that Defendants misrepresented as sales tax;
- c. An order awarding attorneys' fees and costs; and



- d. An order awarding all other relief that is just, equitable and appropriate.

Respectfully Submitted,

Dated: October 22, 2020

*/s/ Kevin W. Tucker*

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Kevin W. Tucker (He/Him/His)

Pa. No. 312144

Kevin J. Abramowicz

Pa. No. 320659

**EAST END TRIAL GROUP LLC**

186 42nd St., P.O. Box 40127

Pittsburgh, PA 15201



Tel. (412) 877-5220

Fax. (412) 626-7101

ktucker@eastendtrialgroup.com

kabramowicz@eastendtrialgroup.com

Jason M. Leviton (*pro hac* forthcoming)

Lauren Godless (*pro hac* forthcoming)

**BLOCK & LEVITON LLP**

260 Franklin Street, Suite 1860

Boston, MA 02110

Tel. (617) 398-5600

jason@blockleviton.com

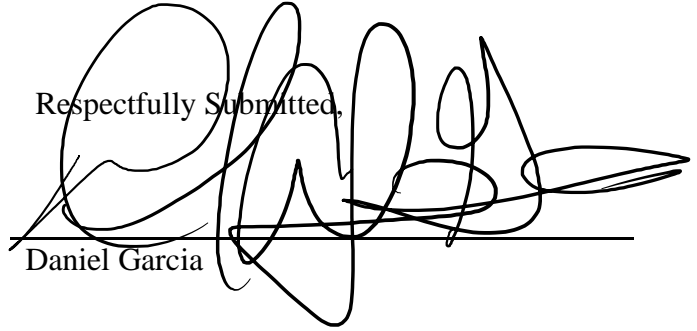
lauren@blockleviton.com

*Counsel for Plaintiff*

**VERIFICATION**

I, Daniel Garcia, am fully familiar with the facts set forth in this Complaint and believe them to be true and correct to the best of my knowledge, information, and belief. I understand any false statements herein are made subject to the penalties of 18 Pa. C.S § 4904, relating to unsworn falsification to authorities.

Respectfully Submitted,

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right. The signature is written over a horizontal line.

Daniel Garcia

Dated: October 22, 2020

# 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 Pennsylvania Retailers Charged Unlawful Sales Tax on Masks During COVID-19 Crisis](#)

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