

1 Stephen M. Doniger (SBN 179314)
 stephen@donigerlawfirm.com
 2 Scott A. Burroughs (SBN 235718)
 scott@donigerlawfirm.com
 3 Trevor W. Barrett (SBN 287174)
 tbarrett@donigerlawfirm.com
 4 Justin M. Gomes (SBN 301793)
 jgomes@donigerlawfirm.com
 5 DONIGER / BURROUGHS
 6 603 Rose Avenue
 7 Venice, California 90291
 8 Telephone: (310) 590-1820
 9 Attorneys for Plaintiff

10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**

12 GOLD VALUE INTERNATIONAL
 13 TEXTILE, INC., a California Corporation,
 14 individually and doing business as “FIESTA
 FABRIC,”

15 Plaintiff,

17 v.

18 TRAMP, INC., a New York Corporation;
 19 BURLINGTON COAT FACTORY DIRECT
 20 CORP., a New Jersey Corporation;
 21 BEALL’S DEPARTMENT STORES, INC.,
 22 a Florida Corporation; AMAZON.COM,
 INC., a Delaware Corporation; and DOES 1
 through 10,

23 Defendants.
 24

Case No.:

COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT;
2. VICARIOUS AND CONTRIBUTORY COPYRIGHT INFRINGEMENT

Jury Trial Demanded

1 Plaintiff, GOLD VALUE INTERNATIONAL TEXTILE, INC., a California
2 Corporation, individually, and doing business as “FIESTA FABRIC” (collectively
3 “FIESTA”) by and through its undersigned attorneys, hereby prays to this honorable
4 Court for relief based on the following:

5 **JURISDICTION AND VENUE**

6 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., § 101
7 *et seq.*

8 2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and
9 1338 (a) and (b).

10 3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and
11 1400(a) in that this is the judicial district in which a substantial part of the acts and
12 omissions giving rise to the claims occurred.

13 **PARTIES**

14 1. FIESTA is a corporation organized and existing under the laws of the state
15 of California.

16 2. Plaintiff is informed and believes and thereon alleges that Defendant
17 TRAMP, INC. (“Tramp”) is a corporation organized and existing under the laws of
18 the state of New York, with its principal place of business located at 1407 Broadway
19 Room 1404, New York, New York 10018 and is doing business in and with the State
20 of California.

21 3. Plaintiff is informed and believes and thereon alleges that Defendant
22 BURLINGTON COAT FACTORY DIRECT CORPORATION. (“Burlington”) is a
23 corporation organized and existing under the laws of New Jersey, with its principal
24 place of business located at 1830 Route 130, North Burlington, New Jersey 08016
25 and is doing business in and with the State of California.

26 4. Plaintiff is informed and believes and thereon alleges that Defendant
27 BEALL’S DEPARTMENT STORES, INC. (“Bealls”) is a corporation organized

1 and existing under the laws of Florida, with its principal place of business located at
2 6355 Manatee Ave, Bradenton, Florida 34209 and is doing business in and with the
3 State of California.

4 5. Plaintiff is informed and believes and thereon alleges that Defendant
5 AMAZON.COM, INC. (“Amazon”) is a Delaware corporation with its principal
6 place of business located at 1200 12th Avenue South, Suite 1200, Seattle,
7 Washington 98114 and is doing business in and with the State of California.

8 6. Plaintiff is informed and believes and thereon alleges that Defendants
9 DOES 1 through 10, inclusive, are other parties not yet identified who have infringed
10 Plaintiff’s copyrights, have contributed to the infringement of Plaintiff’s copyrights,
11 or have engaged in one or more of the wrongful practices alleged herein. The true
12 names, whether corporate, individual or otherwise, of Defendants 1 through 10,
13 inclusive, are presently unknown to Plaintiff, which therefore sues said Defendants
14 by such fictitious names, and will seek leave to amend this Complaint to show their
15 true names and capacities when same have been ascertained.

16 7. Plaintiff is informed and believes and thereon alleges that at all times
17 relevant hereto each of the Defendants was the agent, affiliate, officer, director,
18 manager, principal, alter-ego, and/or employee of the remaining Defendants and was
19 at all times acting within the scope of such agency, affiliation, alter-ego relationship
20 and/or employment; and actively participated in or subsequently ratified and/or
21 adopted each of the acts or conduct alleged, with full knowledge of all the facts and
22 circumstances, including, but not limited to, full knowledge of each violation of
23 Plaintiff’s rights and the damages to Plaintiff proximately caused thereby.

24 **CLAIMS RELATED TO DESIGN FIE-206-839**

25 8. Plaintiff owns an original two-dimensional artwork used for purposes of
26 textile printing entitled FIE-206-839 (“Subject Design”) that has been registered
27 with the United States Copyright Office.

1 9. Prior to the acts complained of herein, Plaintiff widely disseminated fabric
2 bearing Subject Design to numerous parties in the fashion and apparel industries.

3 10. Plaintiff is informed and believes and thereon alleges that following its
4 distribution of Subject Design, Tramp, Burlington, Bealls, Amazon, DOE
5 Defendants, and each of them distributed and/or sold fabric and/or garments
6 featuring a design which is substantially similar to Subject Design (hereinafter
7 “Subject Product”) without Plaintiff’s authorization, including but not limited to
8 garments sold by Burlington, Bealls, and Amazon under, *inter alia*, Style Number
9 GP93068. Such Subject Product bore the “TRAMP” label, and identifying
10 information indicating said garments were manufactured by, caused to be
11 manufactured by, or supplied by Tramp.

12 11. An image of Subject Design and one non-exclusive exemplar of Subject
13 Product are set forth hereinbelow. The below comparison makes clear that the
14 overall look and feel and constituent elements of the designs are substantially
15 similar.

16 **Subject Design**



Subject Product



FIRST CLAIM FOR RELIEF

(For Copyright Infringement - Against All Defendants, and Each)

12. Plaintiff repeats, realleges and incorporates herein by reference as though fully set forth the allegations contained in the preceding paragraphs of this Complaint.

13. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, had access to Subject Design including, without limitation, through (a) access to Plaintiff's showroom and/or design library; (b) access to illegally distributed copies of Subject Design by third-party vendors and/or DOE Defendants, including without limitation international and/or overseas converters and printing mills; (c) access to Plaintiff's strike-offs and samples, and (d) access to garments in the marketplace manufactured with lawfully printed fabric bearing Subject Design.

14. Plaintiff is informed and believes and thereon alleges that one or more of the Defendants manufactures garments and/or is a garment vendor. Plaintiff is further informed and believes and thereon alleges that said Defendant(s), and each of them, has an ongoing business relationship with Defendant retailers, and each of them, and supplied garments to said retailers, which garments infringed Subject Design in that said garments were composed of fabric which featured unauthorized print designs that were identical or substantially similar to Subject Design, or were an illegal modification thereof.

15. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, infringed Plaintiff's copyright by creating, making and/or developing directly infringing and/or derivative works from Subject Design and by producing, distributing and/or selling Subject Products through a nationwide network of retail stores, catalogues, and through on-line websites.

16. Due to Defendants', and each of their, acts of infringement, Plaintiff has suffered damages in an amount to be established at trial.

1 17. Due to Defendants', and each of their, acts of copyright infringement as
2 alleged herein, Defendants, and each of them, have obtained profits they would not
3 otherwise have realized but for their infringement of Subject Design. As such,
4 Plaintiff is entitled to disgorgement of Defendants', and each of their, profits
5 attributable to the infringement of Subject Design in an amount to be established at
6 trial.

7 18. Plaintiff is informed and believes and thereon alleges that Defendants, and
8 each of them, have committed copyright infringement with actual or constructive
9 knowledge of Plaintiff's rights such that said acts of copyright infringement were,
10 and continue to be, willful, intentional and malicious, subjecting Defendants, and
11 each of them, to liability for statutory damages under Section 504(c)(2) of the
12 Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000) per
13 infringement.

14 **SECOND CLAIM FOR RELIEF**

15 (For Vicarious and Contributory Copyright Infringement - Against All Defendants)

16 19. Plaintiff repeats, realleges and incorporates herein by reference as though
17 fully set forth the allegations contained in the preceding paragraphs of this
18 complaint.

19 20. Plaintiff is informed and believes and thereon alleges that Defendants
20 knowingly induced, participated in, aided and abetted in and profited from the illegal
21 reproduction and/or subsequent sales of garments featuring the Subject Design as
22 alleged herein.

23 21. Plaintiff is informed and believes and thereon alleges that Defendants, and
24 each of them, are vicariously liable for the infringement alleged herein because they
25 had the right and ability to supervise the infringing conduct and because they had a
26 direct financial interest in the infringing conduct.

1 22. By reason of the Defendants', and each of their, acts of contributory and
2 vicarious infringement as alleged above, Plaintiff has suffered and will continue to
3 suffer substantial damages to its business in an amount to be established at trial, as
4 well as additional general and special damages in an amount to be established at
5 trial.

6 23. Due to Defendants', and each of their acts of copyright infringement as
7 alleged herein, Defendants, and each of them, have obtained direct and indirect
8 profits they would not otherwise have realized but for their infringement of Subject
9 Design. As such, Plaintiff is entitled to disgorgement of Defendants' profits directly
10 and indirectly attributable to Defendants' infringement of the Subject Design, in an
11 amount to be established at trial.

12 24. Plaintiff is informed and believes and thereon alleges that Defendants, and
13 each of them, have committed acts of copyright infringement, as alleged above,
14 which were willful, intentional and malicious, which further subjects Defendants,
15 and each of them, to liability for statutory damages under Section 504(c)(2) of the
16 Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000) per
17 infringement. Within the time permitted by law, Plaintiff will make its election

18 **PRAYER FOR RELIEF**

19 Wherefore, Plaintiff prays for judgment as follows:

20 **Against All Defendants**

21 **25. With Respect to Each Claim for Relief**

- 22 a. That Defendants—each of them—and their respective agents and
23 servants be enjoined from importing, manufacturing, distributing,
24 offering for sale, selling or otherwise trafficking in any product that
25 infringes Plaintiff's copyrights in Subject Design;
- 26 b. That Plaintiff be awarded all profits of Defendants, and each of them,
27 plus all losses of Plaintiff, the exact sum to be proven at the time of trial,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

or, if elected before final judgment, statutory damages as available under the Copyright Act, 17 U.S.C. § 101 et seq.;

- c. That Plaintiff be awarded its attorneys' fees as available under the Copyright Act, 17 U.S.C. § 101 et seq.;
- d. That Plaintiff be awarded pre-judgment interest as allowed by law;
- e. That Plaintiff be awarded the costs of this action; and
- f. That Plaintiff be awarded such further legal and equitable relief as the Court deems proper.

Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P. 38 and the 7th Amendment to the United States Constitution.

Respectfully submitted,

Dated: September 18, 2015

By: /s/ Scott A. Burroughs
Scott A. Burroughs, Esq.
Trevor W. Barrett, Esq.
Justin M. Gomes, Esq.
DONIGER / BURROUGHS
Attorney for Plaintiff