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Attorneys for Defendant  
SAKS FIFTH AVENUE LLC

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

TOVA MALIK, on behalf of herself and  
all others similarly situated,

Plaintiffs,

vs.

SAKS FIFTH AVENUE LLC, a  
Massachusetts Limited Liability  
Company, and DOES 1-50; inclusive,

Defendants.

Case No.

**DEFENDANT'S NOTICE OF  
REMOVAL; DECLARATION OF  
AMY P. LALLY**

State Action filed: August 19, 2014

State Action served: September 1, 2014

[Filed concurrently with Declaration of  
John Quinn; Certification of Interested  
Parties; Notice of Related Cases and  
Civil Cover Sheet]

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT,  
2 CENTRAL DISTRICT OF CALIFORNIA:

3 Pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendant Saks Fifth  
4 Avenue LLC (“Saks”) hereby removes to this Court the above-styled action, pending  
5 as Case No. BC555134 in the Superior Court of the State of California for the County  
6 of Los Angeles (the “State Court Action”).

7 **I. INTRODUCTION**

8 1. This case is properly removed to this Court pursuant to 28 U.S.C.  
9 § 1441(a) and (b) because the State Court Action is pending in the Superior Court of  
10 California, County of Los Angeles, which is within the Central District of California,  
11 the Court has original jurisdiction over the State Court Action pursuant to 28 U.S.C.  
12 § 1332(d), and the procedural requirements for removal are satisfied. Specifically,  
13 this Court has jurisdiction pursuant to the Class Action Fairness Act (“CAFA”)   
14 because there is minimal diversity between the parties, the alleged putative class  
15 numbers “at least in the thousands,” and the amount in controversy exceeds the  
16 jurisdictional amount of \$5,000,000. *See* 28 U.S.C. §§ 1332(d), 1453.

17 **II. BACKGROUND**

18 2. On or about August 19, 2014, Plaintiff Tova Malik (“Plaintiff”) filed  
19 the State Court Action against Saks and Does 1 through 50 in the Superior Court  
20 of California, County of Los Angeles.<sup>1</sup>

21 3. Plaintiff seeks relief on behalf of a statewide class consisting of “all  
22 persons who purchased Saks Off 5th clothing in California . . . within the four  
23 years prior to the filing of the initial complaint.” Compl. ¶ 24.  
24

25 <sup>1</sup> The unnamed Doe defendants need not join or consent to Saks’ Notice of Removal,  
26 as they have not yet been served. *See Salveson v. W. States Bankcard Ass’n*, 731 F. 2d  
27 1423, 1429 (9th Cir. 1984) (superseded by statute on other grounds) (stating that  
28 defendants not yet served in a state court action need not join in the notice of  
removal). Furthermore, CAFA permits any defendant to unilaterally remove the  
action where, as here, CAFA’s requirements are met. *See* 28 U.S.C. § 1453(b).

1           4.     The Complaint alleges violations of the California Unfair  
2     Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, the California False  
3     Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.*, and the California  
4     Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*, against  
5     Saks arising out of the sale of Saks Off 5th clothing. Compl. ¶¶ 32-53.

6           5.     The Complaint seeks restitution and disgorgement, injunctive relief,  
7     statutory damages, general damages, special damages, exemplary damages, and  
8     attorneys’ fees. *See* Prayer for Relief ¶¶ 1, 3, 5-9.

9           6.     On August 22, 2014, process was served on Saks by certified mail.  
10    Service was deemed complete on September 1, 2014. *See* Cal. Civ. Proc. Code  
11    § 415.40. Saks has not filed an answer or responsive pleading to the Complaint.

### 12   **III.    JURISDICTION**

13           7.     Based on the allegations on the face of the Complaint, this Court has  
14    original jurisdiction over the State Court Action pursuant to CAFA. *See* 28  
15    U.S.C. § 1332(d).

16           8.     CAFA provides for federal jurisdiction of any “class action”  
17    composed of 100 or more putative class members, where any member of the  
18    proposed class is a citizen of a state different from any defendant, and the amount  
19    in controversy exceeds \$5,000,000 (exclusive of interest and costs). 28 U.S.C.  
20    § 1332(d).

21           9.     Although Saks denies that it is liable to any individual or that class  
22    treatment is appropriate for this case, removal is proper pursuant to 28 U.S.C.  
23    §§ 1332(d) and 1453 because the State Court Action is an action between citizens  
24    of different states, on behalf of a putative class numbering “at least in the  
25    thousands,” and involves an amount in controversy exceeding \$5,000,000.  
26  
27  
28

**A. There is Minimal Diversity**

10. CAFA requires only minimal diversity, namely, that “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).

11. Plaintiff alleges that she is a California citizen and resident. Compl. ¶ 1. As such, Saks is informed and believes that at the time Plaintiff filed the State Court Action, Plaintiff was a citizen of California.

12. For diversity purposes, a corporation is deemed to be a citizen of: (1) the state under whose laws it is organized; and (2) the state of its “principal place of business.” 28 U.S.C. § 1332(c)(1); *see also Davis v. HSBC Bank Nevada, N.A.*, 557 F.3d 1026, 1028 (9th Cir. 2009). Saks is a limited liability company organized under the laws of Massachusetts. *See* Compl. ¶ 2; *see also* Declaration of John Quinn (“Quinn Decl.”) ¶ 3. Saks has its principal place of business in New York, New York. Compl. ¶ 2; *see also* Quinn Decl. ¶ 3.

13. The minimal diversity requirement, therefore, is satisfied as Plaintiff is a citizen of California and Saks is a citizen of Massachusetts and New York.

**B. The Alleged Class Involves At Least 100 Class Members**

14. CAFA requires that “the number of members of all proposed plaintiff classes in the aggregate” be at least 100. 28 U.S.C. § 1332(d)(5)(B).

15. Plaintiff’s Complaint was filed as a statewide class action, as defined in 28 U.S.C. § 1332(d)(1)(B), and alleges a putative class far in excess of 100 class members. Compl. ¶ 25 (alleging that putative class members number “at least in the thousands”).

**C. The Alleged Amount in Controversy Exceeds \$5,000,000**

16. CAFA requires that the “aggregate[]” “matter in controversy exceed[] the sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(2) & (6). Removal is proper if it is demonstrated, “by a preponderance of evidence, that the aggregate amount in controversy exceeds”

1 \$5,000,000. *Rodriguez v. AT&T Mobility Servs. LLC*, 728 F. 3d 975, 981 (9th Cir.  
 2 2013). Saks denies Plaintiff’s substantive allegations, denies that Plaintiff is  
 3 entitled to any of the relief sought in her Complaint, and does not waive any  
 4 defense with respect to any of Plaintiff’s claims. Nonetheless, the amount in  
 5 controversy is determined by accepting Plaintiff’s allegations as true. *See, e.g.,*  
 6 *Sanchez v. Monumental Life Ins. Co.*, 102 F. 3d 398, 402 (9th Cir. 1996) (“[T]he  
 7 amount in controversy is met by the express allegations of the plaintiff’s  
 8 complaint.” (internal quotation marks omitted)); *Cain v. Hartford Life & Accident*  
 9 *Ins. Co.*, 890 F. Supp. 2d 1246, 1249 (C.D. Cal. 2012) (“In measuring the amount  
 10 in controversy, a court must assume that the allegations of the complaint are true  
 11 and assume that a jury will return a verdict for the plaintiff on all claims made in  
 12 the complaint.”).

13 17. In this case, the relief that the Complaint seeks related to restitution  
 14 alone exceeds CAFA’s \$5,000,000 amount-in-controversy requirement.

### 15 1. Restitution

16 18. Plaintiff seeks to represent “all persons who purchased Saks Off 5th  
 17 clothing in California . . . within the four years prior to the filing of the initial  
 18 complaint,” Compl. ¶ 24, and seeks restitution and disgorgement of “all money or  
 19 property wrongfully obtained by Defendant” as a result of Saks’ alleged  
 20 “unlawful, unfair, and fraudulent business practices,” Prayer for Relief ¶ 3.

21 19. Since August 19, 2010, Saks’ sales of Saks Off 5th clothing in  
 22 California alone exceeds \$5 million. *See* Quinn Decl. ¶ 4.

### 23 2. Injunctive Relief

24 20. Plaintiff also seeks injunctive relief. Costs of compliance with an  
 25 injunction are relevant in ascertaining whether the amount in controversy is  
 26 satisfied. *See* 28 U.S.C. 1332(d) (excluding only interest and costs from the  
 27 aggregated amount in controversy); *see also Guglielmino v. McKee Food Corp.*,  
 28 506 F. 3d 696, 700 (9th Cir. 2007). Pursuant to the CLRA, Plaintiff individually

1 and on behalf of the purported class seeks an injunction barring Saks “from  
 2 engaging in, and continuing to engage in, the unfair, unlawful and/or fraudulent  
 3 business practices alleged (in the Complaint) and that may yet be discovered in  
 4 the prosecution of this action.” *See* Compl. ¶¶ 37, 48, 52, and Prayer for Relief  
 5 ¶ 1.

6 21. An injunction would impose additional costs on Saks to the extent it  
 7 would be required to re-ticket its merchandise, revise its promotional calendars,  
 8 and redesign its sales receipts and other sales-related materials. *See* Quinn Decl.  
 9 ¶ 5.

10 22. Additionally, if Saks is enjoined from selling Saks Off 5th clothing as  
 11 currently sold in California, it would incur significant monetary losses during the  
 12 period in which it was prohibited from selling its current merchandise and/or  
 13 during the period needed to re-ticket merchandise. Such an injunction might also  
 14 result in the loss of customer confidence, as well as a disruption of its  
 15 relationships with designers and manufacturers, and create a competitive  
 16 disadvantage with respect to other off-price retailers. *See* Quinn Decl. ¶ 5.

### 17 **3. Exemplary Damages**

18 23. Plaintiff also seeks exemplary damages under the CLRA. Punitive  
 19 damages, if such damages are specifically authorized by statute, may be  
 20 considered for purposes of calculating the amount in controversy. *See, e.g., Wang*  
 21 *v. Asset Acceptance, LLC*, 680 F. Supp. 2d 1122, 1124-25 (N.D. Cal. 2010); *see*  
 22 *also Gibson v. Chrysler Corp.*, 261 F. 3d 927, 945 (9th Cir. 2001) (“It is well  
 23 established that punitive damages are part of the amount in controversy in a civil  
 24 action.”). Here, if Plaintiff and/or the putative class succeed on the CLRA claim,  
 25 punitive damages may be statutorily authorized. *See* Cal. Civ. Code § 1780(e).

### 26 **4. Attorneys’ Fees**

27 24. Finally, if the class action is successful, the class would be entitled to  
 28 recover attorneys’ fees. An award of attorneys’ fees, if such fees are specifically

1 authorized by statute, may be considered for purposes of calculating the amount in  
 2 controversy. *See Kroske v. US Bank Corp.*, 432 F. 3d 976, 980 (9th Cir. 2005).  
 3 Courts in the Ninth Circuit consider a reasonable and fair estimate of attorneys'  
 4 fees to be twenty-five percent of the total recovery. *See Powers v. Eichen*, 229  
 5 F. 3d 1249, 1256 (9th Cir. 2000); *Lim v. Helio, LLC*, No. CV 11-9183 PSG, 2012  
 6 WL 359304, at \*3 (C.D. Cal. Feb. 2, 2012). Here, if Plaintiff and/or the putative  
 7 class succeed on the CLRA claim, recovery of attorneys' fees may be statutorily  
 8 authorized. *See* Cal. Civ. Code § 1780(e).

9 25. As explained above, the estimated amount in controversy with  
 10 regards to restitution alone exceeds \$5 million, without taking into account the  
 11 cost of injunctive relief, exemplary damages, and attorneys' fees. This amount  
 12 satisfies CAFA's \$5,000,000 amount-in-controversy requirement based on the  
 13 allegations of Plaintiff's Complaint.

#### 14 **IV. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE** 15 **SATISFIED**

16 26. This Court is the proper venue for this action under 28 U.S.C.  
 17 § 1441(a), as the State Court Action is pending in the County of Los Angeles,  
 18 California, and the United States District Court for the Central District of  
 19 California is the "district and division embracing the place where such action is  
 20 pending." 28 U.S.C. § 1441(a).

21 27. The Complaint was filed on August 19, 2014, and served by certified  
 22 mail along with a summons on August 22, 2014. Service was deemed complete  
 23 on September 1, 2014. *See* Cal. Civ. Proc. Code § 415.40. Therefore, this Notice  
 24 of Removal has been timely filed within thirty days of the completed service of a  
 25 copy of the summons and Complaint, pursuant to 28 U.S.C. §§ 1446(b) and  
 26 1453(b).



1           28. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings,  
2 orders, and other papers received by Saks to date are attached as follows to the  
3 Declaration of Amy Lally:

4           Exhibit A: Summons, Complaint, Civil Case Cover Sheet, Civil  
5 Case Cover Sheet Addendum and Statement of Location, Notice of Case  
6 Assignment, Voluntary Efficient Litigation Stipulations, and Notice of Related  
7 Case

8           Exhibit B: Proof of Service: Notice of Court Order Re Related  
9 Cases

10           The documents attached to the Declaration of Amy Lally (“Lally Decl.”) are the  
11 only documents served on Saks to date. Lally Decl. ¶¶ 2-3.

12           29. Pursuant to 28 U.S.C. § 1446(d), Saks will promptly file a removal  
13 notice with the Clerk of the Superior Court of the State of California for the  
14 County of Los Angeles and will serve written notice of same upon counsel of  
15 record for Plaintiff.

16           30. Saks reserves the right to amend or supplement this Notice of  
17 Removal.

18           31. By filing this Notice of Removal, Saks does not waive, either  
19 expressly or implicitly, its rights to assert any defense which it could have asserted  
20 in the Superior Court of the State of California for the County of Los Angeles. If  
21 any question arises regarding the propriety of the removal of this action, Saks  
22 respectfully requests an opportunity to present a brief, additional evidence, and  
23 oral argument on this issue.



1 WHEREFORE, Defendant Saks respectfully requests that the Court assume  
2 jurisdiction over this action.

3  
4 Dated: September 30, 2014

Respectfully submitted,

5  
6 SIDLEY AUSTIN LLP

7 By: /s/ Amy P. Lally  
8 Amy P. Lally

9 Attorneys for Defendant  
10 Saks Fifth Avenue LLC  
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**DECLARATION OF AMY P. LALLY**

I, AMY P. LALLY, declare as follows:

1. I am an attorney at law licensed to practice in the State of California and before the United States District Court for the Central District of California. I am a partner in the law firm of Sidley Austin LLP and counsel for Defendant Saks Fifth Avenue LLC. The matters set forth below are within my personal knowledge, and if called upon as a witness I could and would testify competently as follows:

2. Attached as Exhibit A is a true and correct copy of the Summons, Complaint, Civil Case Cover Sheet, Civil Case Cover Sheet Addendum and Statement of Location, Notice of Case Assignment, Voluntary Efficient Litigation Stipulations, and Notice of Related Case served on Saks Fifth Avenue LLC in the action styled as *Malik v. Saks Fifth Avenue LLC*, Case No. BC555134, that was filed in the Superior Court of the State of California, County of Los Angeles.

3. Attached as Exhibit B is a true and correct copy of the Proof of Service: Notice of Court Order Re Related Cases in the action styled as *Malik v. Saks Fifth Avenue LLC*, Case No. BC555134, that was served on my office on September 24, 2014.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed this 30th day of September, 2014.

/s/ Amy P. Lally  
Amy P. Lally

# EXHIBIT A

**KIRTLAND & PACKARD LLP**  
L A W O F F I C E S

MARTI F. CLARK, LEGAL ASSISTANT  
mfc@KirtlandPackard.com

August 22, 2014

Sent Via Certified Return Receipt  
Saks Fifth Avenue LLC  
c/o Corporation Service Company  
84 State St., 6<sup>th</sup> Floor  
Boston, MA 02109

Re: Tova Malik v. Saks Fifth Avenue LLC, et al.  
Case No.: BC555134  
Our File No.: 2479-1

Dear Sir/Madam:

Pursuant to California Civil Code of Procedure § 415.40, SAKS FIFTH AVENUE LLC, a Massachusetts Limited Liability Company, is hereby served with the following documents: Summons, Complaint, Civil Case Cover Sheet, Addendum, Notice of Case Assignment ADR Information Pack and Notice of Related Case.

Please refer this matter to your attorneys.

Very truly yours,



Marti F. Clark, Assistant to  
MICHAEL LOUIS KELLY

/mfc  
Enclosures

02479-00001 164523.01

Reply to Los Angeles Office

LOS ANGELES 2041 Rosecrans Avenue, Third Floor • El Segundo, California 90245 • 310 536 1000 V • 310 536 1001 F  
SAN FRANCISCO 101 California Street, Suite 2450 • San Francisco, California 94111 • 415 946 8946 V • 415 946 8801 F

# SUMMONS

## (CITACION JUDICIAL)

SUM-100

**NOTICE TO DEFENDANT:** SAKS FIFTH AVENUE LLC, a  
(**AVISO AL DEMANDADO:**) Massachusetts Limited Liability  
Company, and DOES 1-50, inclusive,

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

CONFORMED COPY  
ORIGINAL FILED  
Superior Court Of California  
County Of Los Angeles

AUG 19 2014

Sherri R. Carter, Executive Officer/Clerk  
By: Judi Lara, Deputy

**YOU ARE BEING SUED BY PLAINTIFF:** TOVA MALIK, on behalf  
(**LO ESTÁ DEMANDANDO EL DEMANDANTE:**) of herself and all  
others similarly situated,

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA  
111 N. Hill Street

CASE NUMBER:  
(Número del Caso):

BC 555134

Los Angeles, CA 90012

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Michael Louis Kelly - SBN 82063

(310) 536-1000 (310) 536-1001

KIRTLAND & PACKARD LLP

2041 Rosecrans Avenue

El Segundo, CA 90245

DATE:

(Fecha)

SHERRI R. CARTER

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED:** You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): Saks Fifth Avenue LLC

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

(SEAL)

AUG 19 2014

1 Michael Louis Kelly - State Bar No. 82063

mlk@kirtlandpackard.com

2 Behram V. Parekh - State Bar No. 180361

bvp@kirtlandpackard.com

3 Heather M. Baker - State Bar No. 261303

hmb@kirtlandpackard.com

4 KIRTLAND & PACKARD LLP

2041 Rosecrans Avenue

5 Third Floor

El Segundo, California 90245

6 Telephone: (310) 536-1000

Facsimile: (310) 536-1001

7 *Counsel for Plaintiff and all*  
8 *others similarly situated*

CONFORMED COPY  
ORIGINAL FILED  
Superior Court Of California  
County Of Los Angeles

AUG 19 2014

Sherri R. Carter, Executive Officer/Clerk  
By: Judi Lara, Deputy

9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

12 TOVA MALIK, on behalf of herself and all  
13 others similarly situated,

14 Plaintiffs,

15 v.

16 SAKS FIFTH AVENUE LLC, a Massachusetts  
17 Limited Liability Company, and DOES 1-50,  
18 inclusive,

19 Defendants.

Case No.

**BC 555134**

) CLASS ACTION

) COMPLAINT FOR:

) 1. Violation of California's False Advertising  
) Laws ("FAL"); Bus. & Prof. Code § 17500 et  
) seq.;

) 2. Violation of California's Unfair  
) Competition Laws ("UCL"); Bus. & Prof.  
) Code § 17200 et seq.;

) 3. Violation of California's Consumer Legal  
) Remedies Act ("CLRA"); Civ. Code § 1750  
) et seq.

) JURY TRIAL DEMANDED

1 Plaintiff Tova Malik (also referred to as the "Plaintiff"), on behalf of herself and all others  
 2 similarly situated, alleges as follows. Plaintiff's allegations are based on the investigation of  
 3 counsel, and thus on information and belief, except as to the individual actions of Plaintiff, as to  
 4 which Plaintiff has personal knowledge.

### 5 THE PARTIES

- 6 1. Plaintiff Tova Malik is a citizen and resident of Los Angeles County, California who  
 7 purchased clothing from the Saks Fifth Avenue Off 5th Store (also referred to as the "Saks  
 8 Off 5th") in Camarillo, California that was purportedly sold for markedly lower than the  
 9 "Market Price" labeled on the price tag, which a consumer would normally pay at the  
 10 traditional Saks Fifth Avenue retail stores.
- 11 2. Plaintiff is informed and believes, and upon such information and belief alleges, that Saks  
 12 Fifth Avenue LLC (also referred to as "Defendant") is a Massachusetts limited liability  
 13 company, with its principle place of business in New York, New York, that markets,  
 14 distributes, and/or sells men's and women's clothing and accessories. Defendant sells its  
 15 clothing and accessories to consumers in California and throughout the nation.
- 16 3. Plaintiff does not know the true names or capacities of the persons or entities sued herein  
 17 as DOES 1-50, inclusive, and therefore sues such Defendants by such fictitious names.  
 18 Plaintiff is informed and believes, and upon such information and belief alleges, that each  
 19 of the DOE Defendants is in some manner legally responsible for the damages suffered by  
 20 Plaintiff and the members of the Class as alleged herein. Plaintiff will amend this  
 21 Complaint to set forth the true names and capacities of these Defendants when they have  
 22 been ascertained, along with appropriate charging allegations, as may be necessary.
- 23 4. At all times herein mentioned, Defendants, and each of them, were the agents, principals,  
 24 servants, employees, and subsidiaries of each of the remaining Defendants, and were at all  
 25 times acting within the purpose and scope of such agency, service, and employment, and  
 26 directed, consented, ratified, permitted, encouraged, and approved the acts of each  
 27 remaining Defendant.

28 //



**JURISDICTION AND VENUE**

5. This Court has jurisdiction over all causes of action asserted herein under the California Constitution.

6. Venue is proper in this County pursuant to California Civil Code § 1780(d) because Defendant does business here.

7. Venue is proper in this District pursuant to Los Angeles County Superior Court Rule 2.3(a)(1)(A) because this is a class action.

8. Out-of-state participants can be brought before this Court pursuant to California's "long-arm" jurisdictional statute.

**FACTUAL ALLEGATIONS**

9. Saks Fifth Avenue offers upscale assortments of designer apparel, shoes, handbags, jewelry, accessories, beauty and home products to the affluent consumer. Saks Fifth Avenue operates 42 stores across the United States. Saks Fifth Avenue had estimated \$3.1 billion in sale revenues in 2013.

10. Defendant also operates sixty six Saks Off 5th clearance stores. These Saks Off 5th Stores are an alternative way for large retail companies to capture a larger pool of consumers because they offer clothing and accessories at discounted prices from in-demand retail stores.

11. Outlet stores are a popular avenue for sale-seeking consumers because in-demand retail stores, such as Saks Fifth Avenue, will often sell clothes that are "after season" or clothing that had little popularity and as a result, did not sell. To mitigate any more monetary losses on the clothing, the retail stores will sell this clothing at various outlet malls for a discount.

12. Contagion among large retail stores operating outlet stores have spread throughout the nation as evidenced by the numerous outlet stores that now exist and outlet-specific malls. Shoppers have become accustomed to seeing products that once were sold at the traditional retail store at these outlet stores. This popularity has been noted, for example, apparel sales at factory outlets rose 17.8% in 2011, according to estimates by market research firm NPD

- 1 Group. Meanwhile, apparel sales industry-wide rose a meager 1.4%.<sup>1</sup>
- 2 13. Furthermore, the chief industry analyst at NPD Group states, "What outlets have been able
- 3 to do is touch the core of the American consumer. There's no question that what we're
- 4 witnessing is the transformation of how and where consumers are shopping. The recession
- 5 really kicked it into high gear for outlet centers."
- 6 14. It is, therefore, no surprise that Defendant has immersed themselves into this lucrative
- 7 industry to continue to grow their robust billion dollar business. Plaintiff and other Outlet
- 8 Store shoppers (also referred to as the "Class") were also looking to obtain benefits from
- 9 Defendant's discounted stores, which included buying the alleged same exact clothing after
- 10 season and/or excess clothing that Defendant's traditional stores once carried, but for a
- 11 discounted price.
- 12 15. Defendant labels its Saks Off 5th clothing with a tag that shows a markedly lower price
- 13 from the "Market Price," which corresponds to the price that appears to be used in
- 14 traditional Saks Fifth Avenue retail stores. Plaintiff was lured in by this large price
- 15 difference and as a result purchased items of clothing and accessories from Defendant's
- 16 Saks Off 5th Store in July of 2014.
- 17 16. Defendant's marketing techniques purposely suggests that the "Market Price" corresponds
- 18 to the exact same article of clothing when sold at the traditional Saks Fifth Avenue retail
- 19 store, but at a substantial discount, when in fact it is not.
- 20 17. Defendant's Saks Off 5th clothing is actually not intended for the sale at the traditional
- 21 Saks Fifth Avenue stores as the "Market Price" suggests, but rather strictly for the Saks Off
- 22 5th Store. Therefore, Defendant's price tags on the Saks Off 5th clothing are labeled with
- 23 an arbitrary inflated "Market Price" that is purely imaginative because it was never sold at
- 24 the traditional Saks Fifth Avenue store and therefore can't be compared to the "Market
- 25 Price" that a consumer would see. Thus the insinuated discount is false and misleading.
- 26 18. The Federal Trade Commission has also heard complaints by many members of Congress
- 27
- 28

<sup>1</sup><http://articles.latimes.com/2011/aug/07/business/la-fi-0807-cover-outlet-malls-20110807>

that see this practice occurring throughout large retail stores. Specifically, the Congressional members state, "it is a common practice at outlet stores to advertise a retail price alongside the outlet store price - even on made-for-outlet merchandise that does not sell at regular retail locations. Since the item was never sold in the regular retail store or at the retail price, the retail price is impossible to substantiate. We believe this practice may be a violation of the FTC's Guides Against Deceptive Pricing (16 CFR 233)."<sup>2</sup>

19. The FTC guidelines are as follows:

i. Many members of the purchasing public believe that a manufacturer's list price, or suggested retail price, is the price at which an article is generally sold. Therefore, if a reduction from this price is advertised, many people will believe that they are being offered a genuine bargain. To the extent that list or suggested retail prices do not in fact correspond to prices at which a substantial number of sales of the article in question are made, the advertisement of a reduction may mislead the consumer. A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, that the price is one at which the product was openly and actively offered for sale, for a reasonably substantial period of time, in recent, regular course of her business, honestly and in good faith - **and, of course, not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based.** (Emphasis added).

ii. It bears repeating that the manufacturer, distributor or retailer must in every case act honestly and in good faith in advertising a list price, and not with the intention of establishing a basis, or creating an instrumentality, for a deceptive comparison in any local or other trade area. For instance, a manufacturer may not affix price tickets containing inflated prices as an

<sup>2</sup><http://www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-stores-may-be-misleading-consumers>

1 accommodation to particular retailers who intend to use such prices as the  
2 basis for advertising fictitious price reductions.

3 16 C.F.R. § 233.3.

4 20. Furthermore, due to Plaintiff's reasonable belief that the Saks Off 5th Store was an "outlet"  
5 store she believed the clothing was authentic and once sold at a traditional Saks Fifth  
6 Avenue retail store since this is how outlet stores market themselves. She subsequently  
7 was under the impression that Saks Off 5th clothing was made with the same quality as all  
8 Saks Fifth Avenue clothing, which is not true. The Saks Off 5th clothing does not have the  
9 same qualities as the traditional Saks Fifth Avenue clothing.

10 21. Defendant's misleading pricing techniques led Plaintiff and the Class to believe the Saks  
11 Off 5th clothing was authentic Saks Fifth Avenue clothing, and in reliance thereon, decided  
12 to purchase the clothing from Defendant's Saks Off 5th Store. As a result, Plaintiff was  
13 damaged in purchasing the Saks Off 5th clothing because she paid for clothing based on  
14 Defendant's unsubstantiated "Market Price" and the ensuing arbitrary discount, but she did  
15 not experience any of Defendant's promised benefits shopping at the Saks Off 5th Store.

16 22. Defendant's misrepresentations regarding the Saks Off 5th clothing and the purported  
17 origin of the clothing were designed to, and did, lead Plaintiff and the putative Class to  
18 believe that the Saks Off 5th clothing was of equal quality and sold at the traditional Saks  
19 Fifth Avenue retail store before it became an item for sale at the Saks Off 5th Store.  
20 Further, Plaintiff and members of the Class relied on Defendant's misrepresentations and  
21 would not have paid as much, if at all, for the clothing but for Defendant's misleading  
22 advertising and representations.

23 23. Plaintiff brings this lawsuit to enjoin the ongoing deception of thousands of California  
24 consumers by Defendant, and to recover the monetary gains taken by this unlawful  
25 practice.

### 26 CLASS DEFINITIONS AND CLASS ALLEGATIONS

27 24. Plaintiff brings this action on behalf of herself and on behalf of all others similarly situated  
28 and, as members of the Class or subclasses (collectively referred to hereafter as the

“Class”) defined as follows:

(1) California Class: The Class that Plaintiff seeks to represent (“the California Class”) consists of all persons who purchased Saks Off 5th clothing in California labeled to persuade consumers to believe the clothing was originally sold at the traditional Saks Fifth Avenue store but in reality the clothing was intended only for the sale at the Saks Off 5th Store at a lesser quality, within the four years prior to the filing of the initial complaint. Excluded from the Class are Defendant, any parent, subsidiary, affiliate or controlled person of Defendant, as well as the officers and directors of Defendant, and the immediate family member of any such person. Also excluded is any judge who may preside over this case.

25. **Numerosity:** The proposed Class is so numerous that individual joinder of all its members is impracticable. Due to the nature of the trade and commerce involved, Plaintiff believes that the total number of Class members is at least in the thousands and that members of the Class are numerous and geographically dispersed across California and the United States. While the exact number and identities of the Class members are unknown at this time, such information can be ascertained through appropriate investigation and discovery. The disposition of the claims of the Class members in a single class action will provide substantial benefits to all parties and to the Court.

26. **Common Questions of Law and Fact Predominate:** There are many questions of law and fact common to the representative Plaintiff and the Class, and those questions substantially predominate over any questions that may affect individual Class members. The common questions of fact and law include, but are not limited to, the following:

- i. Whether Defendant’s advertising was and is misleading;
- ii. Whether Defendant’s representations were likely to mislead and did in fact mislead Plaintiff and Class members;
- iii. Whether Defendant was willful, deceptive, and oppressive in its conduct; and
- iv. Whether Defendant engaged in unlawful, unfair, or fraudulent business practices;

v. Whether Defendant misrepresented and/or failed to disclose material facts about its product pricing and discounts; and

vi. Whether Defendant has made false or misleading statements of fact concerning the reasons for, existence of, or amounts of its price reductions.

27. These common questions of law and fact predominate over questions that may affect individual Class members in that the claims of all Class members for each of the claims herein can be established with common proof. Additionally, a class action would be “superior to other available methods for the fair and efficient adjudication of the controversy” because: (1) Class members have little interest in individually controlling the prosecution of separate actions because the individual damages claims of each Class member are not substantial enough to warrant individual filings; (2) Plaintiff is not aware of other lawsuits against Defendant commenced by or on behalf of members of the Class; and (3) because the disputed advertisements are common to all Class members and because resolution of the claims of Plaintiff will resolve the claims of the remaining Class, certification does not pose any manageability problems.

28. **Typicality:** Plaintiff’s claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class have been similarly affected by Defendant’s conduct since they all relied on Defendant’s representations concerning the true authentically and purported discounts of the clothing and purchased the clothing based on those representations.

29. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained counsel with substantial experience in handling complex class action litigation. Plaintiff and her counsel are committed to prosecuting this action vigorously on behalf of the Class and have the financial resources to do so.

30. **Superiority of Class Action:** Plaintiff and the members of the Class suffered and will continue to suffer harm as a result of Defendant’s unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy. Class members have little interest in individually controlling the



prosecution of separate actions because the individual damages claims of each Class member are not substantial enough to warrant individual filings. In sum, for many, if not most, Class members, a class action is the only feasible mechanism that will allow them an opportunity for legal redress and justice.

31. Adjudication of individual Class members' claims with respect to Defendant would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication, and could substantially impair or impede the ability of other Class members to protect their interests.

### **FIRST CAUSE OF ACTION**

#### **Business and Professions Code § 17500**

#### **(Violation of the False Advertising Law)**

#### **(By Plaintiff and the Class Against Defendant)**

32. Plaintiff hereby incorporates paragraphs 1-31 above as if set forth in full.
33. California *Business and Professions Code* § 17500 provides that "[i]t is unlawful for any ... corporation ... with intent ... to dispose of ... personal property ... to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading...."
34. Similarly, this section provides, "[N]o price shall be advertised as a former price of any advertised thing, unless the alleged former price was the prevailing market price as above defined within three months next immediately preceding the publication of the advertisement or unless the date when the alleged former price did prevail is clearly, exactly and conspicuously stated in the advertisement."
35. Defendant misled consumers by making untrue statements and failing to disclose what is required as stated in the Code, as alleged above.



1 36. As a direct and proximate result of Defendant's misleading and false advertising, Plaintiff  
2 and the members of the Class have suffered injury in fact and have lost money.

3 37. The misleading and false advertising described herein presents a continuing threat to  
4 Plaintiff and the Class in that Defendant persists and continues to engage in these practices,  
5 and will not cease doing so unless and until forced to do so by this Court. Defendant's  
6 conduct will continue to cause irreparable injury to consumers unless enjoined or  
7 restrained.

## 8 SECOND CAUSE OF ACTION

### 9 *Business and Professions Code § 17200 et seq.*

#### 10 (Violation of the Unfair Competition Law)

#### 11 (By Plaintiff and the Class Against Defendant)

12 38. Plaintiff hereby incorporates paragraphs 1-37 above as if set forth in full.

13 39. California *Business and Professions Code* § 17200 *et seq.* (hereafter referred to as the  
14 "Unfair Competition Law" or "UCL") authorizes private lawsuits to enjoin acts of "unfair  
15 competition," which include any unlawful, unfair, or fraudulent business practice.

16 40. The UCL imposes strict liability. Plaintiff need not prove that Defendant intentionally or  
17 negligently engaged in unlawful, unfair, or fraudulent business practices—but only that  
18 such practices occurred.

19 41. The material misrepresentations, concealment, and non-disclosures by Defendant as part of  
20 its marketing and advertising of the Saks Off 5th Store clothing are unlawful, unfair, and  
21 fraudulent business practices prohibited by the UCL.

22 42. In carrying out such marketing, Defendant has violated the Consumer Legal Remedies Act,  
23 the False Advertising Law, and various other laws, regulations, statutes, and/or common  
24 law duties. Defendant's business practices alleged herein, therefore, are unlawful within  
25 the meaning of the UCL.

26 43. The harm to Plaintiff and members of the public outweighs the utility of Defendant's  
27 practices and, consequently, Defendant's practices, as set forth fully above, constitute an  
28 unfair business act or practice within the meaning of the UCL.

- 1 44. Defendant's practices are additionally unfair because they have caused Plaintiff and the  
 2 Class substantial injury, which is not outweighed by any countervailing benefits to  
 3 consumers or to competition, and which is not an injury the consumers themselves could  
 4 have reasonably avoided.
- 5 45. Defendant's practices, as set forth above, have misled the general public in the past and  
 6 will mislead the general public in the future. Consequently, Defendant's practices  
 7 constitute an unlawful and unfair business practice within the meaning of the UCL.
- 8 46. Pursuant to *Business and Professions Code* § 17204, an action for unfair competition may  
 9 be brought by any "person . . . who has suffered injury in fact and has lost money or  
 10 property as a result of such unfair competition." Defendant's wrongful misrepresentations  
 11 and omissions have directly and seriously injured Plaintiff and the putative Class by  
 12 causing them to purchase the discounted clothing based upon false and misleading  
 13 labeling.
- 14 47. The unlawful, unfair, and fraudulent business practices of Defendant are ongoing and  
 15 present a continuing threat that members of the public will be misled into purchasing the  
 16 clothing from the Saks Off 5th Store and that upon learning that the Saks Off 5th Store  
 17 clothing was never sold at the traditional Saks Fifth Avenue stores and that the "Market"  
 18 price is arbitrary and inflated to entice consumers, like Plaintiff, they will be damaged  
 19 financially.
- 20 48. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent injunctive relief  
 21 ordering Defendant to cease this unfair competition, as well as disgorgement and  
 22 restitution to Plaintiff and the Class of all of Defendant's revenues associated with its  
 23 unfair competition, or such portion of those revenues as the Court may find equitable.

### 24 **THIRD CAUSE OF ACTION**

25 **Civil Code § 1750 et seq.**

26 **(Violation of the Consumer Legal Remedies Act)**

27 **(By Plaintiff and the Class Against Defendant)**

- 28 49. Plaintiff hereby incorporates paragraphs 1-48 above as if set forth in full.

50. The Consumer Legal Remedies Act (hereafter referred to as the "CLRA") creates a non-exclusive statutory remedy for unfair methods of competition and unfair or deceptive acts or business practices. *See Reveles v. Toyota by the Bay*, 57 Cal. App. 4th 1139, 1164 (1997). Its self-declared purpose is to protect consumers against these unfair and deceptive business practices, and to provide efficient and economical procedures to secure such protection. Cal. Civ. Code § 1760. The CLRA was designed to be liberally construed and applied in favor of consumers to promote its underlying purposes. *Id.*

51. More specifically, Plaintiff alleges that Defendant has violated paragraphs 5, 7, 9 and 13 of Civil Code Section 1770(a) by engaging in the unfair and/or deceptive acts and practices set forth herein. Defendant's unfair and deceptive business practices in carrying out the marketing program described herein were and are intended to and did and do result in the purchase of Defendant's Saks Off 5th Store clothing by consumers, including Plaintiff, in violation of the CLRA. Cal. Civ. Code § 1770 *et seq.*

52. As a result of Defendant's unfair and/or deceptive business practices, Plaintiff and all purchasers of the Saks Off 5th Store clothing have suffered damage and lost money in that they paid for goods that does not have the qualities as represented. Plaintiff seeks and is entitled to an order enjoining Defendant from continuing to engage in the unfair and deceptive business practices alleged herein.

53. Pursuant to Section 1782 of the CLRA, Plaintiff intends to notify Defendant in writing of the particular violations of Section 1770 of the CLRA (the "Notice Letter"). If Defendant fails to comply with Plaintiff's demands within thirty days of receipt of the Notice Letter, pursuant to Section 1782 of the CLRA, Plaintiff will amend this Complaint to further request damages under the CLRA.

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**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for relief and judgment as follows:

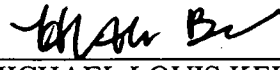
1. For preliminary and permanent injunctive relief enjoining Defendant, its agents, servants and employees, and all persons acting in concert with it, from engaging in, and continuing to engage in, the unfair, unlawful and/or fraudulent business practices alleged above and that may yet be discovered in the prosecution of this action;
2. For certification of the putative class;
3. For restitution and disgorgement of all money or property wrongfully obtained by Defendant by means of its herein-alleged unlawful, unfair, and fraudulent business practices;
4. For an accounting by Defendant for any and all profits derived by Defendant from its herein-alleged unlawful, unfair and/or fraudulent conduct and business practices;
5. An award of statutory damages according to proof, except that no damages are currently sought on Plaintiff's Cause of Action regarding the Consumer Legal Remedies Act at this time;
6. An award of general damages according to proof, except that no damages are currently sought on Plaintiff's Cause of Action regarding the Consumer Legal Remedies Act at this time;
7. An award of special damages according to proof, except that no damages are currently sought on Plaintiff's Cause of Action regarding the Consumer Legal Remedies Act at this time;
8. Exemplary damages, except that no damages are currently sought on Plaintiff's Cause of Action regarding the Consumer Legal Remedies Act at this time;
9. For attorneys' fees and expenses pursuant to all applicable laws, including, without limitation, the CLRA and the common law private attorney general doctrine;
10. For costs of suit; and
- //

11. For such other and further relief as the Court deems just and proper.

DATED: August 19, 2014

KIRTLAND & PACKARD LLP

By:

  
MICHAEL LOUIS KELLY  
BEHRAM V. PAREKH  
HEATHER M. BAKER

*Counsel for Plaintiff and all  
others similarly situated*

**JURY TRIAL DEMANDED**

Plaintiff demands a jury trial on all issues so triable.

DATED: August 19, 2014

KIRTLAND & PACKARD LLP

By: 

MICHAEL LOUIS KELLY  
BEHRAM V. PAREKH  
HEATHER M. BAKER

*Counsel for Plaintiff and all  
others similarly situated*

|  |  |  |  |
|--|--|--|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):<br><b>Michael Louis Kelly - SBN 82063</b><br><b>KIRTLAND &amp; PACKARD LLP</b><br><b>2041 Rosecrans Avenue</b><br><b>Third Floor</b><br><b>El Segundo, CA 90245</b><br>TELEPHONE NO.: (310) 536-1000 FAX NO.: (310) 536-1001<br>ATTORNEY FOR (Name): <u>Plaintiff and all others similarly sit</u> |  | <b>FOR COURT USE ONLY</b><br><br><b>CONFORMED COPY</b><br><b>ORIGINAL FILED</b><br>Superior Court Of California<br>County Of Los Angeles<br><br><b>AUG 19 2014</b><br><br>Sherri R. Carter, Executive Officer/Clerk<br>By: Judi Lara, Deputy |  |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES<br>STREET ADDRESS: 111 N. Hill Street<br>MAILING ADDRESS:<br>CITY AND ZIP CODE: Los Angeles, CA 90012<br>BRANCH NAME: Central District   |  | CASE NUMBER: <b>BC 555134</b><br><br>JUDGE:<br>DEPT:   |  |
| CASE NAME: <b>TOVA MALIK v. SAKS FIFTH AVENUE LLC, et al.</b>  |  |  |  |
| <b>CIVIL CASE COVER SHEET</b><br><input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)   |  | <b>Complex Case Designation</b><br><input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b><br>Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)   |  |

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

|   |  |  |
|---|--|--|
| <b>Auto Tort</b><br><input type="checkbox"/> Auto (22)<br><input type="checkbox"/> Uninsured motorist (46)<br><b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b><br><input type="checkbox"/> Asbestos (04)<br><input type="checkbox"/> Product liability (24)<br><input type="checkbox"/> Medical malpractice (45)<br><input type="checkbox"/> Other PI/PD/WD (23)<br><b>Non-PI/PD/WD (Other) Tort</b><br><input checked="" type="checkbox"/> Business tort/unfair business practice (07)<br><input type="checkbox"/> Civil rights (08)<br><input type="checkbox"/> Defamation (13)<br><input type="checkbox"/> Fraud (16)<br><input type="checkbox"/> Intellectual property (19)<br><input type="checkbox"/> Professional negligence (25)<br><input type="checkbox"/> Other non-PI/PD/WD tort (35)<br><b>Employment</b><br><input type="checkbox"/> Wrongful termination (36)<br><input type="checkbox"/> Other employment (15) | <b>Contract</b><br><input type="checkbox"/> Breach of contract/warranty (06)<br><input type="checkbox"/> Rule 3.740 collections (09)<br><input type="checkbox"/> Other collections (09)<br><input type="checkbox"/> Insurance coverage (18)<br><input type="checkbox"/> Other contract (37)<br><b>Real Property</b><br><input type="checkbox"/> Eminent domain/Inverse condemnation (14)<br><input type="checkbox"/> Wrongful eviction (33)<br><input type="checkbox"/> Other real property (26)<br><b>Unlawful Detainer</b><br><input type="checkbox"/> Commercial (31)<br><input type="checkbox"/> Residential (32)<br><input type="checkbox"/> Drugs (38)<br><b>Judicial Review</b><br><input type="checkbox"/> Asset forfeiture (05)<br><input type="checkbox"/> Petition re: arbitration award (11)<br><input type="checkbox"/> Writ of mandate (02)<br><input type="checkbox"/> Other judicial review (39) | <b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b><br><input type="checkbox"/> Antitrust/Trade regulation (03)<br><input type="checkbox"/> Construction defect (10)<br><input type="checkbox"/> Mass tort (40)<br><input type="checkbox"/> Securities litigation (28)<br><input type="checkbox"/> Environmental/Toxic tort (30)<br><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)<br><b>Enforcement of Judgment</b><br><input type="checkbox"/> Enforcement of judgment (20)<br><b>Miscellaneous Civil Complaint</b><br><input type="checkbox"/> RICO (27)<br><input type="checkbox"/> Other complaint (not specified above) (42)<br><b>Miscellaneous Civil Petition</b><br><input type="checkbox"/> Partnership and corporate governance (21)<br><input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|--|

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties    d. ☐ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve    e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☐ Substantial amount of documentary evidence    f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): Three
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 19, 2014

Michael Louis Kelly / Heather M. Baker

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2



## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

|   |   |   |
|---|---|---|
| <b>Auto Tort</b>  | <b>Contract</b>   | <b>Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)</b>               |
| Auto (22)—Personal Injury/Property Damage/Wrongful Death  | Breach of Contract/Warranty (06)  | Antitrust/Trade Regulation (03)   |
| Uninsured Motorist (46) ( <i>if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto</i> ) | Breach of Rental/Lease Contract ( <i>not unlawful detainer or wrongful eviction</i> )                                     | Construction Defect (10)  |
|   | Contract/Warranty Breach—Seller Plaintiff ( <i>not fraud or negligence</i> )  | Claims Involving Mass Tort (40)   |
|   | Negligent Breach of Contract/Warranty   | Securities Litigation (28)  |
|   | Other Breach of Contract/Warranty   | Environmental/Toxic Tort (30)   |
| <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b>   | Collections (e.g., money owed, open book accounts) (09)   | Insurance Coverage Claims ( <i>arising from provisionally complex case type listed above</i> ) (41) |
| Asbestos (04)   | Collection Case—Seller Plaintiff  |   |
| Asbestos Property Damage  | Other Promissory Note/Collections Case  | <b>Enforcement of Judgment</b>  |
| Asbestos Personal Injury/Wrongful Death   | Insurance Coverage ( <i>not provisionally complex</i> ) (18)  | Enforcement of Judgment (20)  |
| Product Liability ( <i>not asbestos or toxic/environmental</i> ) (24)   | Auto Subrogation  | Abstract of Judgment (Out of County)  |
| Medical Malpractice (45)  | Other Coverage  | Confession of Judgment ( <i>non-domestic relations</i> )  |
| Medical Malpractice—Physicians & Surgeons   | Other Contract (37)   | Sister State Judgment   |
| Other Professional Health Care Malpractice  | Contractual Fraud   | Administrative Agency Award ( <i>not unpaid taxes</i> )   |
| Other PI/PD/WD (23)   | Other Contract Dispute  | Petition/Certification of Entry of Judgment on Unpaid Taxes   |
| Premises Liability (e.g., slip and fall)  |   | Other Enforcement of Judgment Case  |
| Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  | <b>Real Property</b>  | <b>Miscellaneous Civil Complaint</b>  |
| Intentional Infliction of Emotional Distress  | Eminent Domain/Inverse Condemnation (14)  | RICO (27)   |
| Negligent Infliction of Emotional Distress  | Wrongful Eviction (33)  | Other Complaint ( <i>not specified above</i> ) (42)   |
| Other PI/PD/WD  | Other Real Property (e.g., quiet title) (26)  | Declaratory Relief Only   |
| <b>Non-PI/PD/WD (Other) Tort</b>  | Writ of Possession of Real Property   | Injunctive Relief Only ( <i>non-harassment</i> )  |
| Business Tort/Unfair Business Practice (07)   | Mortgage Foreclosure  | Mechanics Lien  |
| Civil Rights (e.g., discrimination, false arrest) ( <i>not civil harassment</i> ) (08)  | Quiet Title   | Other Commercial Complaint Case ( <i>non-tort/non-complex</i> )                                     |
| Defamation (e.g., slander, libel) (13)  | Other Real Property ( <i>not eminent domain, landlord/tenant, or foreclosure</i> )  | Other Civil Complaint ( <i>non-tort/non-complex</i> )   |
| Fraud (16)  | <b>Unlawful Detainer</b>  | <b>Miscellaneous Civil Petition</b>   |
| Intellectual Property (19)  | Commercial (31)   | Partnership and Corporate Governance (21)   |
| Professional Negligence (25)  | Residential (32)  | Other Petition ( <i>not specified above</i> ) (43)  |
| Legal Malpractice   | Drugs (38) ( <i>if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential</i> ) | Civil Harassment  |
| Other Professional Malpractice ( <i>not medical or legal</i> )  | <b>Judicial Review</b>  | Workplace Violence  |
| Other Non-PI/PD/WD Tort (35)  | Asset Forfeiture (05)   | Elder/Dependent Adult Abuse   |
| <b>Employment</b>   | Petition Re: Arbitration Award (11)   | Election Contest  |
| Wrongful Termination (36)   | Writ of Mandate (02)  | Petition for Name Change  |
| Other Employment (15)   | Writ—Administrative Mandamus  | Petition for Relief from Late Claim   |
|   | Writ—Mandamus on Limited Court Case Matter  | Other Civil Petition  |
|   | Writ—Other Limited Court Case Review  |   |
|   | Other Judicial Review (39)  |   |
|   | Review of Health Officer Order  |   |
|   | Notice of Appeal—Labor Commissioner Appeals   |   |

SHORT TITLE: TOVA MALIK v. SAKS FIFTH AVENUE LLC, et al.

CASE NUMBER

**BC 555134**

**CIVIL CASE COVER SHEET ADDENDUM AND  
STATEMENT OF LOCATION  
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

**This form is required pursuant to Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.**

**Item I.** Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☒ YES CLASS ACTION? ☒ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 7 ☐ HOURS/ ☒ DAYS

**Item II.** Indicate the correct district and courthouse location (4 steps – If you checked “Limited Case”, skip to Item III, Pg. 4):

**Step 1:** After first completing the Civil Case Cover Sheet form, find the main Civil Case Cover Sheet heading for your case in the left margin below, and, to the right in Column **A**, the Civil Case Cover Sheet case type you selected.

**Step 2:** Check one Superior Court type of action in Column **B** below which best describes the nature of this case.

**Step 3:** In Column **C**, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Local Rule 2.0.

**Applicable Reasons for Choosing Courthouse Location (see Column C below)**

- |  |  |
|--|--|
| 1. Class actions must be filed in the Stanley Mosk Courthouse, central district. | 6. Location of property or permanently garaged vehicle.    |
| 2. May be filed in central (other county, or no bodily injury/property damage).  | 7. Location where petitioner resides.                      |
| 3. Location where cause of action arose.   | 8. Location wherein defendant/respondent functions wholly. |
| 4. Location where bodily injury, death or damage occurred.                       | 9. Location where one or more of the parties reside.       |
| 5. Location where performance required or defendant resides.                     | 10. Location of Labor Commissioner Office                  |

**Step 4:** Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

|  | <b>A</b><br>Civil Case Cover Sheet<br>Category No.                    | <b>B</b><br>Type of Action<br>(Check only one)  | <b>C</b><br>Applicable Reasons<br>(See Step 3 Above) |
|--|---|---|--|
|  |   |   |  |
| Auto Tort  | Auto (22)   | <input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death   | 1., 2., 4.   |
|  | Uninsured Motorist (46)   | <input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist  | 1., 2., 4.   |
| Other Personal Injury/Property<br>Damage/Wrongful Death Tort | Asbestos (04)   | <input type="checkbox"/> A6070 Asbestos Property Damage<br><input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death   | 2.<br>2.   |
|  | Product Liability (24)  | <input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)  | 1., 2., 3., 4., 8.                                   |
|  | Medical Malpractice (45)  | <input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons  | 1., 4.   |
|  |   | <input type="checkbox"/> A7240 Other Professional Health Care Malpractice   | 1., 4.   |
|  | Other<br>Personal Injury<br>Property Damage<br>Wrongful Death<br>(23) | <input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)<br><input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)<br><input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress<br><input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death | 1., 4.<br>1., 4.<br>1., 3.<br>1., 4.                 |

SHORT TITLE: TOVA MALIK v. SAKS FIFTH AVENUE LLC, et al.

CASE NUMBER

|  | A<br>Civil Case Cover Sheet<br>Category No              | B<br>Type of Action<br>(Check only one)   | C<br>Applicable Reasons<br>See Step 3 Above        |
|--|---|---|--|
| Non-Personal Injury/ Property<br>Damage/ Wrongful Death Tort | Business Tort (07)                                      | <input checked="" type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)   | 1., 3.   |
|  | Civil Rights (08)                                       | <input type="checkbox"/> A6005 Civil Rights/Discrimination  | 1., 2., 3.   |
|  | Defamation (13)   | <input type="checkbox"/> A6010 Defamation (slander/libel)   | 1., 2., 3.   |
|  | Fraud (16)  | <input type="checkbox"/> A6013 Fraud (no contract)  | 1., 2., 3.   |
|  | Professional Negligence (25)                            | <input type="checkbox"/> A6017 Legal Malpractice<br><input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)  | 1., 2., 3.<br>1., 2., 3.                           |
|  | Other (35)  | <input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort   | 2., 3.   |
| Employment   | Wrongful Termination (36)                               | <input type="checkbox"/> A6037 Wrongful Termination   | 1., 2., 3.   |
|  | Other Employment (15)                                   | <input type="checkbox"/> A6024 Other Employment Complaint Case<br><input type="checkbox"/> A6109 Labor Commissioner Appeals   | 1., 2., 3.<br>10.                                  |
| Contract   | Breach of Contract/ Warranty<br>(06)<br>(not insurance) | <input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)<br><input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence)<br><input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud)<br><input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence) | 2., 5.<br>2., 5.<br>1., 2., 5.<br>1., 2., 5.       |
|  | Collections (09)  | <input type="checkbox"/> A6002 Collections Case-Seller Plaintiff<br><input type="checkbox"/> A6012 Other Promissory Note/Collections Case   | 2., 5., 6.<br>2., 5.                               |
|  | Insurance Coverage (18)                                 | <input type="checkbox"/> A6015 Insurance Coverage (not complex)   | 1., 2., 5., 8.                                     |
|  | Other Contract (37)                                     | <input type="checkbox"/> A6009 Contractual Fraud<br><input type="checkbox"/> A6031 Tortious Interference<br><input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)  | 1., 2., 3., 5.<br>1., 2., 3., 5.<br>1., 2., 3., 8. |
| Real Property  | Eminent Domain/Inverse<br>Condemnation (14)             | <input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____  | 2.   |
|  | Wrongful Eviction (33)                                  | <input type="checkbox"/> A6023 Wrongful Eviction Case   | 2., 6.   |
|  | Other Real Property (26)                                | <input type="checkbox"/> A6018 Mortgage Foreclosure<br><input type="checkbox"/> A6032 Quiet Title<br><input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)  | 2., 6.<br>2., 6.<br>2., 6.                         |
| Unlawful Detainer  | Unlawful Detainer-Commercial<br>(31)                    | <input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)  | 2., 6.   |
|  | Unlawful Detainer-Residential<br>(32)                   | <input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)   | 2., 6.   |
|  | Unlawful Detainer-<br>Post-Foreclosure (34)             | <input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure  | 2., 6.   |
|  | Unlawful Detainer-Drugs (38)                            | <input type="checkbox"/> A6022 Unlawful Detainer-Drugs  | 2., 6.   |

SHORT TITLE: TOVA MALIK v. SAKS FIFTH AVENUE LLC, et al.

CASE NUMBER

|   | <b>A</b><br>Civil Case Cover Sheet<br>Category No. | <b>B</b><br>Type of Action<br>(Check only one)  | <b>C</b><br>Applicable Reasons -<br>See Step 3 Above |
|---|--|---|--|
| <b>Judicial Review</b>  | Asset Forfeiture (05)                              | <input type="checkbox"/> A6108 Asset Forfeiture Case  | 2., 6.   |
|   | Petition re Arbitration (11)                       | <input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration  | 2., 5.   |
|   | Writ of Mandate (02)                               | <input type="checkbox"/> A6151 Writ - Administrative Mandamus<br><input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter<br><input type="checkbox"/> A6153 Writ - Other Limited Court Case Review | 2., 8.<br>2.<br>2.                                   |
|   | Other Judicial Review (39)                         | <input type="checkbox"/> A6150 Other Writ /Judicial Review  | 2., 8.   |
| <b>Provisionally Complex Litigation</b>                                     | Antitrust/Trade Regulation (03)                    | <input type="checkbox"/> A6003 Antitrust/Trade Regulation   | 1., 2., 8.   |
|   | Construction Defect (10)                           | <input type="checkbox"/> A6007 Construction Defect  | 1., 2., 3.   |
|   | Claims Involving Mass Tort (40)                    | <input type="checkbox"/> A6006 Claims Involving Mass Tort   | 1., 2., 8.   |
|   | Securities Litigation (28)                         | <input type="checkbox"/> A6035 Securities Litigation Case   | 1., 2., 8.   |
|   | Toxic Tort Environmental (30)                      | <input type="checkbox"/> A6036 Toxic Tort/Environmental   | 1., 2., 3., 8.                                       |
|   | Insurance Coverage Claims from Complex Case (41)   | <input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)   | 1., 2., 5., 8.                                       |
| <b>Enforcement of Judgment</b>  | Enforcement of Judgment (20)                       | <input type="checkbox"/> A6141 Sister State Judgment  | 2., 9.   |
|   |  | <input type="checkbox"/> A6160 Abstract of Judgment   | 2., 6.   |
|   |  | <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations)  | 2., 9.   |
|   |  | <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes)   | 2., 8.   |
|   |  | <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax   | 2., 8.   |
|   |  | <input type="checkbox"/> A6112 Other Enforcement of Judgment Case   | 2., 8., 9.   |
| <b>Miscellaneous Civil Complaints</b>                                       | RICO (27)  | <input type="checkbox"/> A6033 Racketeering (RICO) Case   | 1., 2., 8.   |
|   | Other Complaints (Not Specified Above) (42)        | <input type="checkbox"/> A6030 Declaratory Relief Only  | 1., 2., 8.   |
|   |  | <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)   | 2., 8.   |
|   |  | <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)   | 1., 2., 8.   |
| <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex) | 1., 2., 8.   |   |  |
| <b>Miscellaneous Civil Petitions</b>  | Partnership Corporation Governance (21)            | <input type="checkbox"/> A6113 Partnership and Corporate Governance Case  | 2., 8.   |
|   | Other Petitions (Not Specified Above) (43)         | <input type="checkbox"/> A6121 Civil Harassment   | 2., 3., 9.   |
|   |  | <input type="checkbox"/> A6123 Workplace Harassment   | 2., 3., 9.   |
|   |  | <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case   | 2., 3., 9.   |
|   |  | <input type="checkbox"/> A6190 Election Contest   | 2.   |
|   |  | <input type="checkbox"/> A6110 Petition for Change of Name  | 2., 7.   |
|   |  | <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law  | 2., 3., 4., 8.                                       |
|   |  | <input type="checkbox"/> A6100 Other Civil Petition   | 2., 9.   |



SHORT TITLE: TOVA MALIK v. SAKS FIFTH AVENUE LLC, et al.

CASE NUMBER

**Item III. Statement of Location:** Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

**REASON:** Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected for this case.

☒ 1. ☐ 2. ☐ 3. ☐ 4. ☐ 5. ☐ 6. ☐ 7. ☐ 8. ☐ 9. ☐ 10.

ADDRESS: 5445 Ethel Avenue

CITY:

Sherman Oaks

STATE:

CA

ZIP CODE:

91401

**Item IV. Declaration of Assignment:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Los Angeles courthouse in the Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., § 392 et seq., and Local Rule 2.0, subds. (b), (c) and (d)].

Dated: Aug 19, 2014

(SIGNATURE OF ATTORNEY/FILING PARTY)

*Michael Louis Kelly / Heather M. Baker*  
Michael Louis Kelly /  
Heather M. Baker

**PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:**

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 03/11).
5. Payment in full of the filing fee, unless fees have been waived.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

## NOTICE OF CASE ASSIGNMENT – CLASS ACTION CASES

Case Number \_\_\_\_\_

**THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT**

Your case is assigned for all purposes to the judicial officer indicated below (Local Rule 3.3(c)).

| ASSIGNED JUDGE                | DEPT | ROOM |
|-------------------------------|------|------|
| Judge Elihu M. Berle          | 323  | 1707 |
| Judge Lee Smalley Edmon       | 322  | 1702 |
| Judge John Shepard Wiley, Jr. | 311  | 1408 |
| Judge Kenneth Freeman         | 310  | 1412 |
| Judge Jane Johnson            | 308  | 1415 |
| Judge William F. Highberger   | 307  | 1402 |
| OTHER                         |      |      |

**BC 555134****Instructions for handling Class Action Civil Cases**

The following critical provisions of the Chapter Three Rules, as applicable in the Central District, are summarized for your assistance.

**APPLICATION**

The Chapter Three Rules were effective January 1, 1994. They apply to all general civil cases.

**PRIORITY OVER OTHER RULES**

The Chapter Three Rules shall have priority over all other Local Rules to the extent the others are inconsistent.

**CHALLENGE TO ASSIGNED JUDGE**

A challenge under Code of Civil Procedure section 170.6 must be made within 15 days after notice of assignment for all purposes to a judge, or if a party has not yet appeared, within 15 days of the first appearance.

**TIME STANDARDS**

Cases assigned to the Individual Calendaring Court will be subject to processing under the following time standards:

**COMPLAINTS:** All complaints shall be served within 60 days of filing and proof of service shall be filed within 90 days of filing.

**CROSS-COMPLAINTS:** Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints shall be served within 30 days of the filing date and a proof of service filed within 60 days of the filing date.

A Status Conference will be scheduled by the assigned Independent Calendar Judge no later than 270 days after the filing of the complaint. Counsel must be fully prepared to discuss the following issues: alternative dispute resolution, bifurcation, settlement, trial date, and expert witnesses.

**FINAL STATUS CONFERENCE**

The Court will require the parties at a status conference not more than 10 days before the trial to have timely filed and served all motions in limine, bifurcation motions, statements of major evidentiary issues, dispositive motions, requested jury instructions, and special jury instructions and special jury verdicts. These matters may be heard and resolved at this conference. At least 5 days before this conference, counsel must also have exchanged lists of exhibits and witnesses and have submitted to the court a brief statement of the case to be read to the jury panel as required by Chapter Eight of the Los Angeles Superior Court Rules.

**SANCTIONS**

The court will impose appropriate sanctions for the failure or refusal to comply with Chapter Three Rules, orders made by the Court, and time standards or deadlines established by the Court or by the Chapter Three Rules. Such sanctions may be on a party or if appropriate on counsel for the party.

This is not a complete delineation of the Chapter Three Rules, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under Trial Court Delay Reduction. Careful reading and compliance with the actual Chapter Rules is absolutely imperative.

Given to the Plaintiff/Cross-Complainant/Attorney of Record on AUG 19 2014 SHERRI R. CARTER, Executive Officer/Clerk

## VOLUNTARY EFFICIENT LITIGATION STIPULATIONS

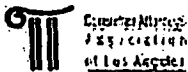


Superior Court of California  
County of Los Angeles



Los Angeles County  
Bar Association  
Litigation Section

Los Angeles County  
Bar Association Labor and  
Employment Law Section



Consumer Attorneys  
Association of Los Angeles



Southern California  
Defense Counsel



Association of  
Business Trial Lawyers



California Employment  
Lawyers Association

The Early Organizational Meeting Stipulation, Discovery Resolution Stipulation, and Motions in Limine Stipulation are voluntary stipulations entered into by the parties. The parties may enter into one, two, or all three of the stipulations; however, they may not alter the stipulations as written, because the Court wants to ensure uniformity of application. These stipulations are meant to encourage cooperation between the parties and to assist in resolving issues in a manner that promotes economic case resolution and judicial efficiency.

*The following organizations endorse the goal of promoting efficiency in litigation and ask that counsel consider using these stipulations as a voluntary way to promote communications and procedures among counsel and with the court to fairly resolve issues in their cases.*

◆ Los Angeles County Bar Association Litigation Section ◆

◆ Los Angeles County Bar Association  
Labor and Employment Law Section ◆

◆ Consumer Attorneys Association of Los Angeles ◆

◆ Southern California Defense Counsel ◆

◆ Association of Business Trial Lawyers ◆

◆ California Employment Lawyers Association ◆



|  |  |                     |                                 |
|--|--|---------------------|---------------------------------|
| NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:              |  | STATE BAR NUMBER    | Reserved for Clerk's File Stamp |
| TELEPHONE NO.:<br>E-MAIL ADDRESS (Optional):<br>ATTORNEY FOR (Name): |  | FAX NO. (Optional): |                                 |
| <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b>           |  |                     |                                 |
| COURTHOUSE ADDRESS:  |  |                     |                                 |
| PLAINTIFF:   |  |                     |                                 |
| DEFENDANT:   |  |                     |                                 |
| <b>STIPULATION – EARLY ORGANIZATIONAL MEETING</b>                    |  |                     | CASE NUMBER:                    |

**This stipulation is intended to encourage cooperation among the parties at an early stage in the litigation and to assist the parties in efficient case resolution.**

**The parties agree that:**

1. The parties commit to conduct an initial conference (in-person or via teleconference or via videoconference) within 15 days from the date this stipulation is signed, *to discuss and consider whether there can be agreement on the following:*
  - a. Are motions to challenge the pleadings necessary? If the issue can be resolved by amendment as of right, or if the Court would allow leave to amend, could an amended complaint resolve most or all of the issues a demurrer might otherwise raise? If so, the parties agree to work through pleading issues so that a demurrer need only raise issues they cannot resolve. Is the issue that the defendant seeks to raise amenable to resolution on demurrer, or would some other type of motion be preferable? Could a voluntary targeted exchange of documents or information by any party cure an uncertainty in the pleadings?
  - b. Initial mutual exchanges of documents at the "core" of the litigation. (For example, in an employment case, the employment records, personnel file and documents relating to the conduct in question could be considered "core." In a personal injury case, an incident or police report, medical records, and repair or maintenance records could be considered "core.");
  - c. Exchange of names and contact information of witnesses;
  - d. Any insurance agreement that may be available to satisfy part or all of a judgment, or to indemnify or reimburse for payments made to satisfy a judgment;
  - e. Exchange of any other information that might be helpful to facilitate understanding, handling, or resolution of the case in a manner that preserves objections or privileges by agreement;
  - f. Controlling issues of law that, if resolved early, will promote efficiency and economy in other phases of the case. Also, when and how such issues can be presented to the Court;
  - g. Whether or when the case should be scheduled with a settlement officer, what discovery or court ruling on legal issues is reasonably required to make settlement discussions meaningful, and whether the parties wish to use a sitting judge or a private mediator or other options as

|              |              |
|--------------|--------------|
| SHORT TITLE: | CASE NUMBER: |
|--------------|--------------|

discussed in the "Alternative Dispute Resolution (ADR) Information Package" served with the complaint;

- h. Computation of damages, including documents not privileged or protected from disclosure, on which such computation is based;
  - i. Whether the case is suitable for the Expedited Jury Trial procedures (see information at [www.lasuperiorcourt.org](http://www.lasuperiorcourt.org) under "Civil" and then under "General Information").
2. The time for a defending party to respond to a complaint or cross-complaint will be extended to \_\_\_\_\_ for the complaint, and \_\_\_\_\_ for the cross-complaint, which is comprised of the 30 days to respond under Government Code § 68616(b), and the 30 days permitted by Code of Civil Procedure section 1054(a), good cause having been found by the Civil Supervising Judge due to the case management benefits provided by this Stipulation.  
(INSERT DATE) (INSERT DATE)
  3. The parties will prepare a joint report titled "Joint Status Report Pursuant to Initial Conference and Early Organizational Meeting Stipulation, and if desired, a proposed order summarizing results of their meet and confer and advising the Court of any way it may assist the parties' efficient conduct or resolution of the case. The parties shall attach the Joint Status Report to the Case Management Conference statement, and file the documents when the CMC statement is due.
  4. References to "days" mean calendar days, unless otherwise noted. If the date for performing any act pursuant to this stipulation falls on a Saturday, Sunday or Court holiday, then the time for performing that act shall be extended to the next Court day

The following parties stipulate:

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

>

\_\_\_\_\_  
(ATTORNEY FOR PLAINTIFF)

>

\_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

>

\_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

>

\_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

>

\_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

>

\_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

>

\_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

|  |  |                     |                                 |
|--|--|---------------------|---------------------------------|
| NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:              |  | STATE BAR NUMBER    | Reserved for Clerk's File Stamp |
| TELEPHONE NO.:<br>E-MAIL ADDRESS (Optional):<br>ATTORNEY FOR (Name): |  | FAX NO. (Optional): |                                 |
| <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b>           |  |                     |                                 |
| COURTHOUSE ADDRESS:  |  |                     |                                 |
| PLAINTIFF:   |  |                     |                                 |
| DEFENDANT:   |  |                     | CASE NUMBER:                    |
| <b>STIPULATION – DISCOVERY RESOLUTION</b>                            |  |                     |                                 |

**This stipulation is intended to provide a fast and informal resolution of discovery issues through limited paperwork and an informal conference with the Court to aid in the resolution of the issues.**

**The parties agree that:**

1. Prior to the discovery cut-off in this action, no discovery motion shall be filed or heard unless the moving party first makes a written request for an Informal Discovery Conference pursuant to the terms of this stipulation.
2. At the Informal Discovery Conference the Court will consider the dispute presented by parties and determine whether it can be resolved informally. Nothing set forth herein will preclude a party from making a record at the conclusion of an Informal Discovery Conference, either orally or in writing.
3. Following a reasonable and good faith attempt at an informal resolution of each issue to be presented, a party may request an Informal Discovery Conference pursuant to the following procedures:
  - a. The party requesting the Informal Discovery Conference will:
    - i. File a Request for Informal Discovery Conference with the clerk's office on the approved form (copy attached) and deliver a courtesy, conformed copy to the assigned department;
    - ii. Include a brief summary of the dispute and specify the relief requested; and
    - iii. Serve the opposing party pursuant to any authorized or agreed method of service that ensures that the opposing party receives the Request for Informal Discovery Conference no later than the next court day following the filing.
  - b. Any Answer to a Request for Informal Discovery Conference must:
    - i. Also be filed on the approved form (copy attached);
    - ii. Include a brief summary of why the requested relief should be denied;

|              |              |
|--------------|--------------|
| SHORT TITLE: | CASE NUMBER: |
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- iii. Be filed within two (2) court days of receipt of the Request; and
  - iv. Be served on the opposing party pursuant to any authorized or agreed upon method of service that ensures that the opposing party receives the Answer no later than the next court day following the filing.
- c. No other pleadings, including but not limited to exhibits, declarations, or attachments, will be accepted.
- d. If the Court has not granted or denied the Request for Informal Discovery Conference within ten (10) days following the filing of the Request, then it shall be deemed to have been denied. If the Court acts on the Request, the parties will be notified whether the Request for Informal Discovery Conference has been granted or denied and, if granted, the date and time of the Informal Discovery Conference, which must be within twenty (20) days of the filing of the Request for Informal Discovery Conference.
- e. If the conference is not held within twenty (20) days of the filing of the Request for Informal Discovery Conference, unless extended by agreement of the parties and the Court, then the Request for the Informal Discovery Conference shall be deemed to have been denied at that time.
4. If (a) the Court has denied a conference or (b) one of the time deadlines above has expired without the Court having acted or (c) the Informal Discovery Conference is concluded without resolving the dispute, then a party may file a discovery motion to address unresolved issues.
5. The parties hereby further agree that the time for making a motion to compel or other discovery motion is tolled from the date of filing of the Request for Informal Discovery Conference until (a) the request is denied or deemed denied or (b) twenty (20) days after the filing of the Request for Informal Discovery Conference, whichever is earlier, unless extended by Order of the Court.
- It is the understanding and intent of the parties that this stipulation shall, for each discovery dispute to which it applies, constitute a writing memorializing a "specific later date to which the propounding [or demanding or requesting] party and the responding party have agreed in writing," within the meaning of Code Civil Procedure sections 2030.300(c), 2031.320(c), and 2033.290(c).
6. Nothing herein will preclude any party from applying *ex parte* for appropriate relief, including an order shortening time for a motion to be heard concerning discovery.
7. Any party may terminate this stipulation by giving twenty-one (21) days notice of intent to terminate the stipulation.
8. References to "days" mean calendar days, unless otherwise noted. If the date for performing any act pursuant to this stipulation falls on a Saturday, Sunday or Court holiday, then the time for performing that act shall be extended to the next Court day.

|              |              |
|--------------|--------------|
| SHORT TITLE: | CASE NUMBER: |
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**The following parties stipulate:**

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

➤ \_\_\_\_\_  
(ATTORNEY FOR PLAINTIFF)

➤ \_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

➤ \_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

➤ \_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

➤ \_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

➤ \_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

➤ \_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

|   |  |                     |                                 |
|---|--|---------------------|---------------------------------|
| NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:   |  | STATE BAR NUMBER    | Reserved for Clerk's File Stamp |
| TELEPHONE NO.:<br>E-MAIL ADDRESS (Optional):<br>ATTORNEY FOR (Name):                                      |  | FAX NO. (Optional): |                                 |
| <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b>  |  |                     |                                 |
| COURTHOUSE ADDRESS:   |  |                     |                                 |
| PLAINTIFF:  |  |                     |                                 |
| DEFENDANT:  |  |                     |                                 |
| <b>INFORMAL DISCOVERY CONFERENCE</b><br>(pursuant to the Discovery Resolution Stipulation of the parties) |  |                     | CASE NUMBER:                    |

- This document relates to:
  - ☐ Request for Informal Discovery Conference
  - ☐ Answer to Request for Informal Discovery Conference
- Deadline for Court to decide on Request: \_\_\_\_\_ (insert date 10 calendar days following filing of the Request).
- Deadline for Court to hold Informal Discovery Conference: \_\_\_\_\_ (insert date 20 calendar days following filing of the Request).
- For a Request for Informal Discovery Conference, briefly describe the nature of the discovery dispute, including the facts and legal arguments at issue. For an Answer to Request for Informal Discovery Conference, briefly describe why the Court should deny the requested discovery, including the facts and legal arguments at issue.

|  |  |                     |                                 |
|--|--|---------------------|---------------------------------|
| NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:    |  | STATE BAR NUMBER    | Reserved for Clerk's File Stamp |
| TELEPHONE NO.:   |  | FAX NO. (Optional): |                                 |
| E-MAIL ADDRESS (Optional):                                 |  |                     |                                 |
| ATTORNEY FOR (Name):                                       |  |                     |                                 |
| <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b> |  |                     |                                 |
| COURTHOUSE ADDRESS:  |  |                     |                                 |
| PLAINTIFF:   |  |                     |                                 |
| DEFENDANT:   |  |                     |                                 |
| <b>STIPULATION AND ORDER – MOTIONS IN LIMINE</b>           |  |                     | CASE NUMBER:                    |

This stipulation is intended to provide fast and informal resolution of evidentiary issues through diligent efforts to define and discuss such issues and limit paperwork.

**The parties agree that:**

1. At least \_\_\_\_ days before the final status conference, each party will provide all other parties with a list containing a one paragraph explanation of each proposed motion in limine. Each one paragraph explanation must identify the substance of a single proposed motion in limine and the grounds for the proposed motion.
2. The parties thereafter will meet and confer, either in person or via teleconference or videoconference, concerning all proposed motions in limine. In that meet and confer, the parties will determine:
  - a. Whether the parties can stipulate to any of the proposed motions. If the parties so stipulate, they may file a stipulation and proposed order with the Court.
  - b. Whether any of the proposed motions can be briefed and submitted by means of a short joint statement of issues. For each motion which can be addressed by a short joint statement of issues, a short joint statement of issues must be filed with the Court 10 days prior to the final status conference. Each side's portion of the short joint statement of issues may not exceed three pages. The parties will meet and confer to agree on a date and manner for exchanging the parties' respective portions of the short joint statement of issues and the process for filing the short joint statement of issues.
3. All proposed motions in limine that are not either the subject of a stipulation or briefed via a short joint statement of issues will be briefed and filed in accordance with the California Rules of Court and the Los Angeles Superior Court Rules.



|              |              |
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| SHORT TITLE: | CASE NUMBER: |
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**The following parties stipulate:**

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

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(TYPE OR PRINT NAME)

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(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

>

\_\_\_\_\_  
(ATTORNEY FOR PLAINTIFF)

>

\_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

>

\_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

>

\_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

>

\_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

>

\_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

>

\_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

**THE COURT SO ORDERS.**

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDICIAL OFFICER

|  |   |
|--|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):<br>Michael Louis Kelly - SBN 82063<br>KIRTLAND & PACKARD LLP<br>2041 Rosecrans Avenue<br>Third Floor<br>El Segundo, CA 90245<br>TELEPHONE NO.: (310) 536-1000 FAX NO. (Optional): (310) 536-1001<br>E-MAIL ADDRESS (Optional):<br>ATTORNEY FOR (Name): Plaintiff and all others similarly situated | FOR COURT USE ONLY  |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES<br>STREET ADDRESS: 600 S. Commonwealth Avenue<br>MAILING ADDRESS:<br>CITY AND ZIP CODE: Los Angeles, CA 90005<br>BRANCH NAME: Central Civil West   |   |
| PLAINTIFF/PETITIONER: TOVA MALIK, on behalf of herself and all others similarly situated,<br><br>DEFENDANT/RESPONDENT: SAKS FIFTH AVENUE LLC, a Massachusetts Limited Liability Company, and DOES 1-50, inclusive  | CASE NUMBER:<br>BC555134<br><br>JUDICIAL OFFICER:<br>Hon. William F. Highberger |
| NOTICE OF RELATED CASE   | DEPT.:<br>307   |

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1. a. Title: Linda Rubenstein v The Neiman Marcus Group LLC, et al.  
 b. Case number: BC554133  
 c. Court: ☒ same as above  
☐ other state or federal court (name and address):  
  
 d. Department: 308  
 e. Case type: ☐ limited civil ☒ unlimited civil ☐ probate ☐ family law ☐ other (specify):  
  
 f. Filing date: August 7, 2014  
 g. Has this case been designated or determined as "complex?" ☐ Yes ☒ No  
 h. Relationship of this case to the case referenced above (check all that apply):  
☐ involves the same parties and is based on the same or similar claims.  
☒ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.  
☐ involves claims against, title to, possession of, or damages to the same property.  
☒ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.  
☐ Additional explanation is attached in attachment 1h  
 i. Status of case:  
☒ pending ☐ dismissed ☐ with ☐ without prejudice  
☐ disposed of by judgment
2. a. Title: Linda Rubenstein v The Gap, Inc., et al.  
 b. Case number: BC555010  
 c. Court: ☒ same as above  
☐ other state or federal court (name and address):  
  
 d. Department: 310

|  |                          |
|--|--------------------------|
| PLAINTIFF/PETITIONER: TOVA MALIK, on behalf of herself<br>and all others similarly situated,<br>DEFENDANT/RESPONDENT: SAKS FIFTH AVENUE LLC, a<br>Massachusetts Limited Liability Company, and DOES 1- | CASE NUMBER:<br>BC555134 |
|--|--------------------------|

2. (continued)

e. Case type: ☐ limited civil ☒ unlimited civil ☐ probate ☐ family law ☐ other (specify):

f. Filing date: August 18, 2014

g. Has this case been designated or determined as "complex?" ☐ Yes ☒ No

h. Relationship of this case to the case referenced above (check all that apply):

- ☐ involves the same parties and is based on the same or similar claims.
- ☒ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- ☒ involves claims against, title to, possession of, or damages to the same property.
- ☐ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- ☐ Additional explanation is attached in attachment 2h

i. Status of case:

- ☒ pending
- ☐ dismissed ☐ with ☐ without prejudice
- ☐ disposed of by judgment

3. a. Title:

b. Case number:

c. Court: ☐ same as above  
☐ other state or federal court (name and address):

d. Department:

e. Case type: ☐ limited civil ☐ unlimited civil ☐ probate ☐ family law ☐ other (specify):

f. Filing date:

g. Has this case been designated or determined as "complex?" ☐ Yes ☐ No

h. Relationship of this case to the case referenced above (check all that apply):


- ☐ involves the same parties and is based on the same or similar claims.
- ☐ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- ☐ involves claims against, title to, possession of, or damages to the same property.
- ☐ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- ☐ Additional explanation is attached in attachment 3h

i. Status of case:

- ☐ pending
- ☐ dismissed ☐ with ☐ without prejudice
- ☐ disposed of by judgment

4. ☐ Additional related cases are described in Attachment 4. Number of pages attached: \_\_\_\_\_

Date: August 21, 2014

Behram V. Parekh  
(TYPE OR PRINT NAME OF PARTY OR ATTORNEY)
  
(SIGNATURE OF PARTY OR ATTORNEY)

PLAINTIFF/PETITIONER: TOVA MALIK, on behalf of herself and  
all others similarly situated,  
DEFENDANT/RESPONDENT: SAKS FIFTH AVENUE LLC, a  
Massachusetts Limited Liability Company, and DOES 1-50

CASE NUMBER:  
BC555134

**PROOF OF SERVICE BY FIRST-CLASS MAIL  
NOTICE OF RELATED CASE**

**(NOTE: You cannot serve the Notice of Related Case if you are a party in the action. The person who served the notice must complete this proof of service. The notice must be served on all known parties in each related action or proceeding.)**

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify)*:

2. I served a copy of the *Notice of Related Case* by enclosing it in a sealed envelope with first-class postage fully prepaid and *(check one)*:

- a. ☐ deposited the sealed envelope with the United States Postal Service.  
b. ☐ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Related Case* was mailed:

- a. on *(date)*:  
b. from *(city and state)*:

4. The envelope was addressed and mailed as follows:

a. Name of person served:

Street address:

City:

State and zip code:

c. Name of person served:

Street address:

City:

State and zip code:

b. Name of person served:

Street address:

City:

State and zip code:

d. Name of person served:

Street address:

City:

State and zip code:

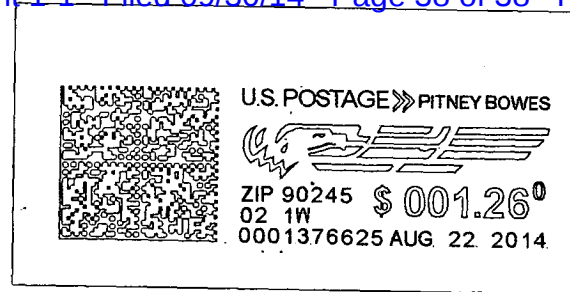
☐ Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

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

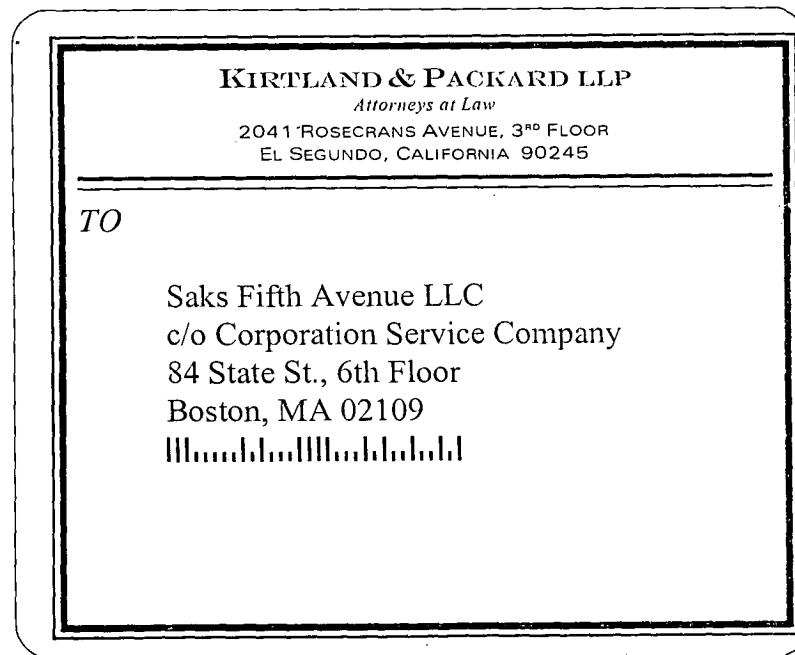
Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME OF DECLARANT)

\_\_\_\_\_  
(SIGNATURE OF DECLARANT)



12479-1  
PITNEY BOWES  
ZIP 90245  
0001376625 AUG 22 2014



# EXHIBIT B

*Counsel for Plaintiff and all  
others similarly situated*

LAW OFFICES  
**KIRTLAND & PACKARD LLP**

**Defendants.**

**Complaint filed: August 19, 2014**



## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 09/17/14

DEPT. 308

HONORABLE JANE L. JOHNSON

JUDGE

B. DELBARRIO

DEPUTY CLERK

HONORABLE  
#11

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

C. CONCEPCION, C.A.

Deputy Sheriff

NOT REPORTED

Reporter

3:30 pm

BC555134

Plaintiff

Counsel

TOVA MALIK

VS

Defendant

SAKS FIFTH AVENUE LLC

Counsel

NO APPEARANCES

## NATURE OF PROCEEDINGS:

COURT ORDER RE RELATED CASES

The Court has reviewed the Notice of Related Case filed by the Plaintiff re Cases BC555134, and:

BC555010 Rubenstein v. The Gap, Inc.

BC554133 Rubenstein v. The Neiman Marcus Group, LLC

The Court orders not to relate the cases for the following reason:

The cases are deemed not related because they involve different additional parties and, while based on similar claims, concern different companies and transactions. CRC 3.300(a)(1), and (2).

Counsel for the Plaintiff is to give notice.

## CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order of September 17, 2014 upon each party or counsel named below by placing the document for collection and mailing so as to

Page 1 of 2 DEPT. 308

|  |
|--|
| <b>MINUTES ENTERED</b><br>09/17/14<br>COUNTY CLERK |
|--|

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 09/17/14

DEPT. 308

HONORABLE JANE L. JOHNSON

JUDGE

B. DELBARRIO

DEPUTY CLERK

HONORABLE  
#11

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

C. CONCEPCION, C.A.

Deputy Sheriff

NOT REPORTED

Reporter

3:30 pm

BC555134

Plaintiff

Counsel

TOVA MALIK

VS

Defendant

SAKS FIFTH AVENUE LLC

Counsel

NO APPEARANCES

## NATURE OF PROCEEDINGS:

cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: September 17, 2014

Sherri R. Carter, Executive Officer/Clerk

By: B. DelBarrio, Deputy Clerk

Michael Louis Kelly  
KIRTLAND & PACKARD LLP  
2041 Rosecrans Avenue, Third Floor  
El Segundo, California 90245

## PROOF OF SERVICE

[CCP §§1010.6, 1011, 1013, 1013a, 2015.3; CRC 2.260, 2.306]  
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2041 Rosecrans Avenue, 3<sup>rd</sup> Floor, El Segundo, California 90245. I am "readily familiar" with my employer's practice of collection and processing of correspondence and documents for mailing with the United States Postal Service, mailing via overnight delivery, transmission by facsimile machine, and delivery by hand.

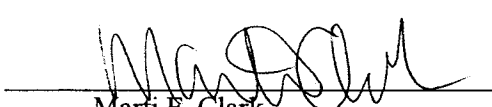
On September 24, 2014, I served a copy of each of the documents listed below by placing said copies for processing as indicated herein: **COURT ORDER RE RELATED CASES (DATED 9/17/14)**

|   |  |
|---|--|
| ✓ | <b>U.S. MAIL:</b> The correspondence or documents were placed in sealed, labeled envelopes with postage thereon fully prepaid on the above date and placed for collection and mailing at my place of business to be deposited with the U.S. Postal Service at El Segundo, California on this same date in the ordinary course of business.   |
|   | <b>HAND DELIVERY:</b> The correspondence or documents were placed in sealed, labeled envelopes and served by personal delivery to the party or attorney indicated herein or, if upon attorney, by leaving the labeled envelopes with a receptionist or other person having charge of the attorney's office.  |
|   | <b>OVERNIGHT DELIVERY:</b> The correspondence or documents were placed in sealed, labeled packaging for overnight delivery with all charges to be paid by my employer on the above date for collection and mailing at my place of business to be deposited in a facility regularly maintained by the overnight delivery carrier, or delivered to a courier or driver authorized by the overnight delivery carrier to receive such packages, on this date in the ordinary course of business. |

## PERSONS OR PARTIES SERVED:

|   |   |  |
|---|---|--|
| <u>Counsel for Defendant, SAKS<br/>FIFTH AVENUE LLC</u> | Amy P. Lally<br>Sidley Austin LLP<br>555 W. Fifth Street<br>Los Angeles, CA 90013 | 213-896-6642 D<br>213-896-6000 T<br>213-896-6600 F |
|---|---|--|

|   |   |
|---|---|
| ✓ | State) I certify (or declare) under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 24, 2014. |
|   | (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.                          |

  
Marti F. Clark

Michael Louis Kelly - State Bar No. 82063  
mlk@kirtlandpackard.com  
 Behram V. Parekh - State Bar No. 180361  
bvp@kirtlandpackard.com  
 Heather M. Baker - State Bar No. 261303  
hmb@kirtlandpackard.com  
 KIRTLAND & PACKARD LLP  
 2041 Rosecrans Avenue  
 Third Floor  
 El Segundo, California 90245  
 Telephone: (310) 536-1000  
 Facsimile: (310) 536-1001

*Counsel for Plaintiff and all  
 others similarly situated*

**CONFORMED COPY  
 ORIGINAL FILED**  
 Superior Court Of California  
 County Of Los Angeles

**AUG 19 2014**

Sherri R. Carter, Executive Officer/Clerk  
 By: Judi Lara, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

TOVA MALIK, on behalf of herself and all  
 others similarly situated,

Plaintiffs,

v.

SAKS FIFTH AVENUE LLC, a Massachusetts  
 Limited Liability Company, and DOES 1-50,  
 inclusive,

Defendants.

Case No.

**BC 555134**

CLASS ACTION

COMPLAINT FOR:

1. Violation of California's False Advertising  
 Laws ("FAL"); Bus. & Prof. Code § 17500 et  
 seq.;

2. Violation of California's Unfair  
 Competition Laws ("UCL"); Bus. & Prof.  
 Code § 17200 et seq.;

3. Violation of California's Consumer Legal  
 Remedies Act ("CLRA"); Civ. Code § 1750  
 et seq.

JURY TRIAL DEMANDED

1 Plaintiff Tova Malik (also referred to as the "Plaintiff"), on behalf of herself and all others  
 2 similarly situated, alleges as follows. Plaintiff's allegations are based on the investigation of  
 3 counsel, and thus on information and belief, except as to the individual actions of Plaintiff, as to  
 4 which Plaintiff has personal knowledge.

### 5 THE PARTIES

- 6 1. Plaintiff Tova Malik is a citizen and resident of Los Angeles County, California who  
 7 purchased clothing from the Saks Fifth Avenue Off 5th Store (also referred to as the "Saks  
 8 Off 5th") in Camarillo, California that was purportedly sold for markedly lower than the  
 9 "Market Price" labeled on the price tag, which a consumer would normally pay at the  
 10 traditional Saks Fifth Avenue retail stores.
- 11 2. Plaintiff is informed and believes, and upon such information and belief alleges, that Saks  
 12 Fifth Avenue LLC (also referred to as "Defendant") is a Massachusetts limited liability  
 13 company, with its principle place of business in New York, New York, that markets,  
 14 distributes, and/or sells men's and women's clothing and accessories. Defendant sells its  
 15 clothing and accessories to consumers in California and throughout the nation.
- 16 3. Plaintiff does not know the true names or capacities of the persons or entities sued herein  
 17 as DOES 1-50, inclusive, and therefore sues such Defendants by such fictitious names.  
 18 Plaintiff is informed and believes, and upon such information and belief alleges, that each  
 19 of the DOE Defendants is in some manner legally responsible for the damages suffered by  
 20 Plaintiff and the members of the Class as alleged herein. Plaintiff will amend this  
 21 Complaint to set forth the true names and capacities of these Defendants when they have  
 22 been ascertained, along with appropriate charging allegations, as may be necessary.
- 23 4. At all times herein mentioned, Defendants, and each of them, were the agents, principals,  
 24 servants, employees, and subsidiaries of each of the remaining Defendants, and were at all  
 25 times acting within the purpose and scope of such agency, service, and employment, and  
 26 directed, consented, ratified, permitted, encouraged, and approved the acts of each  
 27 remaining Defendant.

28 //

**JURISDICTION AND VENUE**

5. This Court has jurisdiction over all causes of action asserted herein under the California Constitution.

6. Venue is proper in this County pursuant to California Civil Code § 1780(d) because Defendant does business here.

7. Venue is proper in this District pursuant to Los Angeles County Superior Court Rule 2.3(a)(1)(A) because this is a class action.

8. Out-of-state participants can be brought before this Court pursuant to California's "long-arm" jurisdictional statute.

**FACTUAL ALLEGATIONS**

9. Saks Fifth Avenue offers upscale assortments of designer apparel, shoes, handbags, jewelry, accessories, beauty and home products to the affluent consumer. Saks Fifth Avenue operates 42 stores across the United States. Saks Fifth Avenue had estimated \$3.1 billion in sale revenues in 2013.

10. Defendant also operates sixty six Saks Off 5th clearance stores. These Saks Off 5th Stores are an alternative way for large retail companies to capture a larger pool of consumers because they offer clothing and accessories at discounted prices from in-demand retail stores.

11. Outlet stores are a popular avenue for sale-seeking consumers because in-demand retail stores, such as Saks Fifth Avenue, will often sell clothes that are "after season" or clothing that had little popularity and as a result, did not sell. To mitigate any more monetary losses on the clothing, the retail stores will sell this clothing at various outlet malls for a discount.

12. Contagion among large retail stores operating outlet stores have spread throughout the nation as evidenced by the numerous outlet stores that now exist and outlet-specific malls. Shoppers have become accustomed to seeing products that once were sold at the traditional retail store at these outlet stores. This popularity has been noted, for example, apparel sales at factory outlets rose 17.8% in 2011, according to estimates by market research firm NPD

- 1 Group. Meanwhile, apparel sales industry-wide rose a meager 1.4%.<sup>1</sup>
- 2 13. Furthermore, the chief industry analyst at NPD Group states, "What outlets have been able
- 3 to do is touch the core of the American consumer. There's no question that what we're
- 4 witnessing is the transformation of how and where consumers are shopping. The recession
- 5 really kicked it into high gear for outlet centers."
- 6 14. It is, therefore, no surprise that Defendant has immersed themselves into this lucrative
- 7 industry to continue to grow their robust billion dollar business. Plaintiff and other Outlet
- 8 Store shoppers (also referred to as the "Class") were also looking to obtain benefits from
- 9 Defendant's discounted stores, which included buying the alleged same exact clothing after
- 10 season and/or excess clothing that Defendant's traditional stores once carried, but for a
- 11 discounted price.
- 12 15. Defendant labels its Saks Off 5th clothing with a tag that shows a markedly lower price
- 13 from the "Market Price," which corresponds to the price that appears to be used in
- 14 traditional Saks Fifth Avenue retail stores. Plaintiff was lured in by this large price
- 15 difference and as a result purchased items of clothing and accessories from Defendant's
- 16 Saks Off 5th Store in July of 2014.
- 17 16. Defendant's marketing techniques purposely suggests that the "Market Price" corresponds
- 18 to the exact same article of clothing when sold at the traditional Saks Fifth Avenue retail
- 19 store, but at a substantial discount, when in fact it is not.
- 20 17. Defendant's Saks Off 5th clothing is actually not intended for the sale at the traditional
- 21 Saks Fifth Avenue stores as the "Market Price" suggests, but rather strictly for the Saks Off
- 22 5th Store. Therefore, Defendant's price tags on the Saks Off 5th clothing are labeled with
- 23 an arbitrary inflated "Market Price" that is purely imaginative because it was never sold at
- 24 the traditional Saks Fifth Avenue store and therefore can't be compared to the "Market
- 25 Price" that a consumer would see. Thus the insinuated discount is false and misleading.
- 26 18. The Federal Trade Commission has also heard complaints by many members of Congress
- 27
- 28

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<sup>1</sup><http://articles.latimes.com/2011/aug/07/business/la-fi-0807-cover-outlet-malls-20110807>



that see this practice occurring throughout large retail stores. Specifically, the Congressional members state, "it is a common practice at outlet stores to advertise a retail price alongside the outlet store price - even on made-for-outlet merchandise that does not sell at regular retail locations. Since the item was never sold in the regular retail store or at the retail price, the retail price is impossible to substantiate. We believe this practice may be a violation of the FTC's Guides Against Deceptive Pricing (16 CFR 233)."<sup>2</sup>

19. The FTC guidelines are as follows:

i. Many members of the purchasing public believe that a manufacturer's list price, or suggested retail price, is the price at which an article is generally sold. Therefore, if a reduction from this price is advertised, many people will believe that they are being offered a genuine bargain. To the extent that list or suggested retail prices do not in fact correspond to prices at which a substantial number of sales of the article in question are made, the advertisement of a reduction may mislead the consumer. A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, that the price is one at which the product was openly and actively offered for sale, for a reasonably substantial period of time, in recent, regular course of her business, honestly and in good faith - **and, of course, not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based.** (Emphasis added).

ii. It bears repeating that the manufacturer, distributor or retailer must in every case act honestly and in good faith in advertising a list price, and not with the intention of establishing a basis, or creating an instrumentality, for a deceptive comparison in any local or other trade area. For instance, a manufacturer may not affix price tickets containing inflated prices as an

<sup>2</sup><http://www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-stores-may-be-misleading-consumers>

1 accommodation to particular retailers who intend to use such prices as the  
2 basis for advertising fictitious price reductions.

3 16 C.F.R. § 233.3.

4 20. Furthermore, due to Plaintiff's reasonable belief that the Saks Off 5th Store was an "outlet"  
5 store she believed the clothing was authentic and once sold at a traditional Saks Fifth  
6 Avenue retail store since this is how outlet stores market themselves. She subsequently  
7 was under the impression that Saks Off 5th clothing was made with the same quality as all  
8 Saks Fifth Avenue clothing, which is not true. The Saks Off 5th clothing does not have the  
9 same qualities as the traditional Saks Fifth Avenue clothing.

10 21. Defendant's misleading pricing techniques led Plaintiff and the Class to believe the Saks  
11 Off 5th clothing was authentic Saks Fifth Avenue clothing, and in reliance thereon, decided  
12 to purchase the clothing from Defendant's Saks Off 5th Store. As a result, Plaintiff was  
13 damaged in purchasing the Saks Off 5th clothing because she paid for clothing based on  
14 Defendant's unsubstantiated "Market Price" and the ensuing arbitrary discount, but she did  
15 not experience any of Defendant's promised benefits shopping at the Saks Off 5th Store.

16 22. Defendant's misrepresentations regarding the Saks Off 5th clothing and the purported  
17 origin of the clothing were designed to, and did, lead Plaintiff and the putative Class to  
18 believe that the Saks Off 5th clothing was of equal quality and sold at the traditional Saks  
19 Fifth Avenue retail store before it became an item for sale at the Saks Off 5th Store.  
20 Further, Plaintiff and members of the Class relied on Defendant's misrepresentations and  
21 would not have paid as much, if at all, for the clothing but for Defendant's misleading  
22 advertising and representations.

23 23. Plaintiff brings this lawsuit to enjoin the ongoing deception of thousands of California  
24 consumers by Defendant, and to recover the monetary gains taken by this unlawful  
25 practice.

#### 26 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

27 24. Plaintiff brings this action on behalf of herself and on behalf of all others similarly situated  
28 and, as members of the Class or subclasses (collectively referred to hereafter as the

“Class”) defined as follows:

(1) California Class: The Class that Plaintiff seeks to represent (“the California Class”) consists of all persons who purchased Saks Off 5th clothing in California labeled to persuade consumers to believe the clothing was originally sold at the traditional Saks Fifth Avenue store but in reality the clothing was intended only for the sale at the Saks Off 5th Store at a lesser quality, within the four years prior to the filing of the initial complaint. Excluded from the Class are Defendant, any parent, subsidiary, affiliate or controlled person of Defendant, as well as the officers and directors of Defendant, and the immediate family member of any such person. Also excluded is any judge who may preside over this case.

25. **Numerosity:** The proposed Class is so numerous that individual joinder of all its members is impracticable. Due to the nature of the trade and commerce involved, Plaintiff believes that the total number of Class members is at least in the thousands and that members of the Class are numerous and geographically dispersed across California and the United States. While the exact number and identities of the Class members are unknown at this time, such information can be ascertained through appropriate investigation and discovery. The disposition of the claims of the Class members in a single class action will provide substantial benefits to all parties and to the Court.

26. **Common Questions of Law and Fact Predominate:** There are many questions of law and fact common to the representative Plaintiff and the Class, and those questions substantially predominate over any questions that may affect individual Class members. The common questions of fact and law include, but are not limited to, the following:

- i. Whether Defendant’s advertising was and is misleading;
- ii. Whether Defendant’s representations were likely to mislead and did in fact mislead Plaintiff and Class members;
- iii. Whether Defendant was willful, deceptive, and oppressive in its conduct; and
- iv. Whether Defendant engaged in unlawful, unfair, or fraudulent business practices;

v. Whether Defendant misrepresented and/or failed to disclose material facts about its product pricing and discounts; and

vi. Whether Defendant has made false or misleading statements of fact concerning the reasons for, existence of, or amounts of its price reductions.

27. These common questions of law and fact predominate over questions that may affect individual Class members in that the claims of all Class members for each of the claims herein can be established with common proof. Additionally, a class action would be “superior to other available methods for the fair and efficient adjudication of the controversy” because: (1) Class members have little interest in individually controlling the prosecution of separate actions because the individual damages claims of each Class member are not substantial enough to warrant individual filings; (2) Plaintiff is not aware of other lawsuits against Defendant commenced by or on behalf of members of the Class; and (3) because the disputed advertisements are common to all Class members and because resolution of the claims of Plaintiff will resolve the claims of the remaining Class, certification does not pose any manageability problems.

28. **Typicality:** Plaintiff’s claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class have been similarly affected by Defendant’s conduct since they all relied on Defendant’s representations concerning the true authentically and purported discounts of the clothing and purchased the clothing based on those representations.

29. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained counsel with substantial experience in handling complex class action litigation. Plaintiff and her counsel are committed to prosecuting this action vigorously on behalf of the Class and have the financial resources to do so.

30. **Superiority of Class Action:** Plaintiff and the members of the Class suffered and will continue to suffer harm as a result of Defendant’s unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy. Class members have little interest in individually controlling the

prosecution of separate actions because the individual damages claims of each Class member are not substantial enough to warrant individual filings. In sum, for many, if not most, Class members, a class action is the only feasible mechanism that will allow them an opportunity for legal redress and justice.

31. Adjudication of individual Class members' claims with respect to Defendant would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication, and could substantially impair or impede the ability of other Class members to protect their interests.

### **FIRST CAUSE OF ACTION**

#### **Business and Professions Code § 17500**

#### **(Violation of the False Advertising Law)**

#### **(By Plaintiff and the Class Against Defendant)**

32. Plaintiff hereby incorporates paragraphs 1-31 above as if set forth in full.
33. California *Business and Professions Code* § 17500 provides that "[i]t is unlawful for any ... corporation ... with intent ... to dispose of ... personal property ... to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading...."
34. Similarly, this section provides, "[N]o price shall be advertised as a former price of any advertised thing, unless the alleged former price was the prevailing market price as above defined within three months next immediately preceding the publication of the advertisement or unless the date when the alleged former price did prevail is clearly, exactly and conspicuously stated in the advertisement."
35. Defendant misled consumers by making untrue statements and failing to disclose what is required as stated in the Code, as alleged above.

1 36. As a direct and proximate result of Defendant's misleading and false advertising, Plaintiff  
2 and the members of the Class have suffered injury in fact and have lost money.

3 37. The misleading and false advertising described herein presents a continuing threat to  
4 Plaintiff and the Class in that Defendant persists and continues to engage in these practices,  
5 and will not cease doing so unless and until forced to do so by this Court. Defendant's  
6 conduct will continue to cause irreparable injury to consumers unless enjoined or  
7 restrained.

## 8 SECOND CAUSE OF ACTION

### 9 *Business and Professions Code § 17200 et seq.*

#### 10 (Violation of the Unfair Competition Law)

#### 11 (By Plaintiff and the Class Against Defendant)

12 38. Plaintiff hereby incorporates paragraphs 1-37 above as if set forth in full.

13 39. California *Business and Professions Code* § 17200 *et seq.* (hereafter referred to as the  
14 "Unfair Competition Law" or "UCL") authorizes private lawsuits to enjoin acts of "unfair  
15 competition," which include any unlawful, unfair, or fraudulent business practice.

16 40. The UCL imposes strict liability. Plaintiff need not prove that Defendant intentionally or  
17 negligently engaged in unlawful, unfair, or fraudulent business practices—but only that  
18 such practices occurred.

19 41. The material misrepresentations, concealment, and non-disclosures by Defendant as part of  
20 its marketing and advertising of the Saks Off 5th Store clothing are unlawful, unfair, and  
21 fraudulent business practices prohibited by the UCL.

22 42. In carrying out such marketing, Defendant has violated the Consumer Legal Remedies Act,  
23 the False Advertising Law, and various other laws, regulations, statutes, and/or common  
24 law duties. Defendant's business practices alleged herein, therefore, are unlawful within  
25 the meaning of the UCL.

26 43. The harm to Plaintiff and members of the public outweighs the utility of Defendant's  
27 practices and, consequently, Defendant's practices, as set forth fully above, constitute an  
28 unfair business act or practice within the meaning of the UCL.



- 1 44. Defendant's practices are additionally unfair because they have caused Plaintiff and the  
 2 Class substantial injury, which is not outweighed by any countervailing benefits to  
 3 consumers or to competition, and which is not an injury the consumers themselves could  
 4 have reasonably avoided.
- 5 45. Defendant's practices, as set forth above, have misled the general public in the past and  
 6 will mislead the general public in the future. Consequently, Defendant's practices  
 7 constitute an unlawful and unfair business practice within the meaning of the UCL.
- 8 46. Pursuant to *Business and Professions Code* § 17204, an action for unfair competition may  
 9 be brought by any "person . . . who has suffered injury in fact and has lost money or  
 10 property as a result of such unfair competition." Defendant's wrongful misrepresentations  
 11 and omissions have directly and seriously injured Plaintiff and the putative Class by  
 12 causing them to purchase the discounted clothing based upon false and misleading  
 13 labeling.
- 14 47. The unlawful, unfair, and fraudulent business practices of Defendant are ongoing and  
 15 present a continuing threat that members of the public will be misled into purchasing the  
 16 clothing from the Saks Off 5th Store and that upon learning that the Saks Off 5th Store  
 17 clothing was never sold at the traditional Saks Fifth Avenue stores and that the "Market"  
 18 price is arbitrary and inflated to entice consumers, like Plaintiff, they will be damaged  
 19 financially.
- 20 48. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent injunctive relief  
 21 ordering Defendant to cease this unfair competition, as well as disgorgement and  
 22 restitution to Plaintiff and the Class of all of Defendant's revenues associated with its  
 23 unfair competition, or such portion of those revenues as the Court may find equitable.

### 24 **THIRD CAUSE OF ACTION**

25 **Civil Code § 1750 et seq.**

26 **(Violation of the Consumer Legal Remedies Act)**

27 **(By Plaintiff and the Class Against Defendant)**

- 28 49. Plaintiff hereby incorporates paragraphs 1-48 above as if set forth in full.



50. The Consumer Legal Remedies Act (hereafter referred to as the "CLRA") creates a non-exclusive statutory remedy for unfair methods of competition and unfair or deceptive acts or business practices. *See Reveles v. Toyota by the Bay*, 57 Cal. App. 4th 1139, 1164 (1997). Its self-declared purpose is to protect consumers against these unfair and deceptive business practices, and to provide efficient and economical procedures to secure such protection. Cal. Civ. Code § 1760. The CLRA was designed to be liberally construed and applied in favor of consumers to promote its underlying purposes. *Id.*

51. More specifically, Plaintiff alleges that Defendant has violated paragraphs 5, 7, 9 and 13 of Civil Code Section 1770(a) by engaging in the unfair and/or deceptive acts and practices set forth herein. Defendant's unfair and deceptive business practices in carrying out the marketing program described herein were and are intended to and did and do result in the purchase of Defendant's Saks Off 5th Store clothing by consumers, including Plaintiff, in violation of the CLRA. Cal. Civ. Code § 1770 *et seq.*

52. As a result of Defendant's unfair and/or deceptive business practices, Plaintiff and all purchasers of the Saks Off 5th Store clothing have suffered damage and lost money in that they paid for goods that does not have the qualities as represented. Plaintiff seeks and is entitled to an order enjoining Defendant from continuing to engage in the unfair and deceptive business practices alleged herein.

53. Pursuant to Section 1782 of the CLRA, Plaintiff intends to notify Defendant in writing of the particular violations of Section 1770 of the CLRA (the "Notice Letter"). If Defendant fails to comply with Plaintiff's demands within thirty days of receipt of the Notice Letter, pursuant to Section 1782 of the CLRA, Plaintiff will amend this Complaint to further request damages under the CLRA.

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**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for relief and judgment as follows:

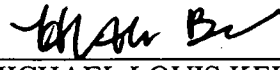
1. For preliminary and permanent injunctive relief enjoining Defendant, its agents, servants and employees, and all persons acting in concert with it, from engaging in, and continuing to engage in, the unfair, unlawful and/or fraudulent business practices alleged above and that may yet be discovered in the prosecution of this action;
2. For certification of the putative class;
3. For restitution and disgorgement of all money or property wrongfully obtained by Defendant by means of its herein-alleged unlawful, unfair, and fraudulent business practices;
4. For an accounting by Defendant for any and all profits derived by Defendant from its herein-alleged unlawful, unfair and/or fraudulent conduct and business practices;
5. An award of statutory damages according to proof, except that no damages are currently sought on Plaintiff's Cause of Action regarding the Consumer Legal Remedies Act at this time;
6. An award of general damages according to proof, except that no damages are currently sought on Plaintiff's Cause of Action regarding the Consumer Legal Remedies Act at this time;
7. An award of special damages according to proof, except that no damages are currently sought on Plaintiff's Cause of Action regarding the Consumer Legal Remedies Act at this time;
8. Exemplary damages, except that no damages are currently sought on Plaintiff's Cause of Action regarding the Consumer Legal Remedies Act at this time;
9. For attorneys' fees and expenses pursuant to all applicable laws, including, without limitation, the CLRA and the common law private attorney general doctrine;
10. For costs of suit; and
- //

11. For such other and further relief as the Court deems just and proper.

DATED: August 19, 2014

KIRTLAND & PACKARD LLP

By:

  
MICHAEL LOUIS KELLY  
BEHRAM V. PAREKH  
HEATHER M. BAKER

*Counsel for Plaintiff and all  
others similarly situated*

**JURY TRIAL DEMANDED**

Plaintiff demands a jury trial on all issues so triable.

DATED: August 19, 2014

KIRTLAND & PACKARD LLP

By: 

MICHAEL LOUIS KELLY  
BEHRAM V. PAREKH  
HEATHER M. BAKER

*Counsel for Plaintiff and all  
others similarly situated*