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10 Attorneys for Defendant
erroneously sued as SAKS, INC. dba
11 SAKS OFF FIFTH

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 JOHNSON HUNG, individually, and on
behalf of all others similarly situated,

15 Plaintiff,

16 vs.

17 SAKS, INC., DBA SAKS OFF FIFTH,
18 and DOES 1 - 10, inclusive,

19 Defendant.

Case No. 2:18-cv-10594

**DEFENDANT ERRONEOUSLY
SUED AS SAKS, INC. DBA SAKS
OFF FIFTH'S NOTICE OF
REMOVAL OF ACTION UNDER 28
U.S.C. SECTIONS 1332(d), 1441, 1446
AND 1453**

[Filed concurrently with supporting
Declarations; Certification of Interested
Parties; and Civil Cover Sheet]

State Action Filed: November 15, 2018

State Action Served: November 26, 2018

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

3 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and
4 1453, Defendant (“Saks”) erroneously sued as Saks, Inc., d/b/a Saks Off Fifth¹,
5 hereby removes to this Court the above-styled action, pending as Case No.
6 18STCV05183 in the Superior Court of the State of California for the County of
7 Los Angeles (the “State Court Action”). In support of this Notice of Removal, Saks
8 states as follows:

9 **I. BACKGROUND**

10 1. On or about November 15, 2018, Plaintiff Johnson Hung (“Plaintiff”)
11 filed the State Court Action against Saks and Does 1 through 10 in the Superior Court
12 of California, Court of Los Angeles.²

13 2. Plaintiff seeks relief on behalf of a class consisting of “[a]ll consumers,
14 who, between the applicable statute of limitations and the present, purchased or
15 attempted to purchase Class products . . . namely [Saks] clothing and jewelry
16 products, marked as discounted at the original price when in fact, the item’s original
17 price has been changed.” Compl. ¶ 54.

18 3. The Complaint alleges violations of the California False Advertising Law
19 (“FAL”), Cal. Bus. & Prof. Code § 17500, *et seq.*, the California Unfair Competition
20 Law (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.*, and the California Consumer
21 Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*, against Saks arising
22

23 ¹ Plaintiff erroneously names “Saks, Inc.” as the defendant in this action and d/b/a
24 “Saks Off Fifth.” However, Saks Fifth Avenue OFF 5TH (“Saks OFF 5TH”) is a
25 d/b/a of Saks & Company LLC. Saks will file a motion to address this issue if
26 necessary.

27 ² The unnamed Doe Defendants need not join or consent to Saks’ Notice of Removal,
28 as they have not yet been served. *See Salveson v. W. States Bankcard Ass’n*, 731 F.2d
1423, 1429 (9th Cir. 1984) (superseded by statute on other grounds) (stating that
defendants not yet served in a state court action need not join in the notice of
removal). Furthermore, the Class Action Fairness Act (“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 out of the sale of Saks OFF 5TH clothing and jewelry products. Compl. ¶¶ 69-99.

2 4. The Complaint seeks restitution and disgorgement, injunctive relief,
3 statutory damages, general damages, special damages, exemplary damages, and
4 attorneys' fees. *See id.*, Prayer for Relief ¶ 101 (d)-(i).

5 5. On November 26, 2018, process was served in person. Service was
6 deemed complete on November 26, 2018. *See* Cal. Civ. Proc. Code § 415.10. Saks
7 has not filed an answer or responsive pleading to the Complaint.

8 **II. THIS COURT HAS JURISDICTION OF THIS ACTION PURSUANT**
9 **TO CAFA.**

10 6. Based on the allegations on the face of the Complaint, this Court has
11 original jurisdiction over the State Court Action pursuant to the Class Action
12 Fairness Act ("CAFA"). *See* 28 U.S.C. § 1332(d).

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

17 8. Although Saks denies that it is liable to any individual or that class
18 treatment is appropriate for this case, removal is proper pursuant to 28 U.S.C.
19 §§ 1332(d) and 1453 because the State Court Action is a putative class action
20 between citizens of different states, on behalf of a putative class "composed of
21 thousands of persons," and involves a purported amount in controversy exceeding
22 \$5,000,000. Compl. ¶ 58, Ex. A at 3 ("[W]e anticipate a nation-wide class of
23 thousands of consumers Defendant is facing seven-figure liability, at the very
24 least.").

25 **A. There is Minimal Diversity.**

26 9. CAFA requires only minimal diversity, namely, that "any member of a
27 class of plaintiffs is a citizen of a State different from any defendant"
28 28 U.S.C. § 1332(d)(2)(A).

1 10. Plaintiff alleges that he is a California citizen and resident. Compl. ¶ 20.
2 As such, Saks is informed and believes that at the time Plaintiff filed the State Court
3 Action, Plaintiff was a citizen of California.

4 11. For diversity purposes, a corporation is deemed to be a citizen of: (1) the
5 state under whose law it is organized; and (2) the state of its “principal place of
6 business.” 28 U.S.C. § 1332(c)(1); *see also Davis v. HSBC Bank Nevada, N.A.*, 557
7 F.3d 1026, 1028 (9th Cir. 2009). Saks Incorporated is a corporation organized
8 under the laws of Tennessee with its principal place of business in New York, New
9 York.³ Declaration of Thomas Ott (“Ott Decl.”) ¶ 4; Compl. ¶ 21

10 12. The minimal diversity requirement, therefore, is satisfied as Plaintiff is a
11 citizen of California and Saks Incorporated is a citizen of Tennessee and New York.

12 **B. The Alleged Class Involves at Least 100 Members.**

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

15 14. Plaintiff’s Complaint was filed as a class action, as defined in 28 U.S.C.
16 § 1332(d)(1)(B), and alleges a putative class far in excess of 100 class members.
17 Compl. ¶ 58 (alleging that “the proposed class is composed of thousands of
18 persons”).

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

20 15. CAFA requires that the “aggregate[]” “matter in controversy exceed[]
21 the sum or value of \$5,000,000, exclusive of interests and costs.” 28 U.S.C.
22 § 1332(d)(2) & (6). Removal is proper if it is demonstrated, “by a preponderance of
23

24 ³ As noted, Plaintiff erroneously names “Saks, Inc.” as the defendant in this action.
25 Saks Fifth Avenue OFF 5TH is a d/b/a of Saks & Company LLC. There is,
26 however, minimal diversity with respect to Saks & Company LLC as well. For
27 diversity purposes, an LLC is a citizen of every state in which its members are
28 citizens. *Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th
Cir. 2006). Saks & Company LLC is a Delaware limited liability company with its
principal place of business in New York, New York. The sole member of Saks &
Company LLC is Saks Incorporated, which as described above, is a Tennessee
corporation with its principal place of business in New York, New York. Saks
Incorporated is wholly privately owned. Ott Decl. ¶ 4.

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

13 16. 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 **(i) Restitution**

16 17. Plaintiff seeks to represent “[a]ll consumers, who . . . purchased or
17 attempted to purchase Class products . . . namely Defendant’s clothing and jewelry
18 products, marked as discounted at the original price when in fact, the item’s original
19 price has been changed.” Compl. ¶ 54. Plaintiff seeks restitution and disgorgement
20 of funds acquired from the sale of the purportedly misbranded products. *Id.* ¶ 78,
21 Prayer for Relief ¶ 101 (e).

22 18. Since November 15, 2014, sales of Saks OFF 5TH clothing and jewelry
23 in California alone exceeds \$5 million. Ott Decl. ¶ 3.

24 **(ii) Injunctive Relief**

25 19. Plaintiff also seeks injunctive relief. Pursuant to the FAL, Plaintiff
26 individually and on behalf of the purported class seeks an injunction “ordering
27 [Saks] to cease its false advertising.” Compl. ¶ 78. Plaintiff also seeks, on behalf of
28 himself and the putative class, injunctive relief under the UCL, requiring Saks “to

1 immediately cease such acts of unlawful, unfair and fraudulent business practices.”

2 *Id.* ¶ 96

3 20. Costs of compliance with an injunction are relevant in ascertaining
4 whether the amount in controversy is satisfied. *See* 28 U.S.C. § 1332(d)(6)
5 (excluding only interest and costs from the aggregated amount in controversy); *see*
6 *also Guglielmino v. McKee Food Corp.*, 506 F.3d 696, 700 (9th Cir. 2007).

7 **(iii) Exemplary Damages**

8 21. Plaintiff also seeks exemplary damages. Compl., Prayer for Relief
9 ¶ 101(f). Punitive damages, if such damages are specifically authorized by statute,
10 may be considered for purposes of calculating the amount in controversy. *See, e.g.*,
11 *Wang v. Asset Acceptance, LLC*, 680 F. Supp. 2d 1122, 1124-25 (N.D. Cal. 2010);
12 *see also Gibson v. Chrysler Corp.*, 261 F. 3d 927 945 (9th Cir. 2001) (“It is well
13 established that punitive damages are part of the amount in controversy in a civil
14 action.”). Plaintiff seeks punitive damages under the CLRA. *See* Cal. Civ. Code
15 § 1780(e).

16 **(iv) Attorneys’ Fees**

17 22. Finally, Plaintiff prays for attorneys’ fees. An award of attorney’s fees,
18 if such fees are specifically authorized by statute, may be considered for purpose of
19 calculating the amount in controversy. *See Kroske v. US Bank Corp.*, 432 F.3d 976,
20 980 (9th Cir. 2005). Courts in the Ninth Circuit consider a reasonable and fair
21 estimate of attorneys’ fees to be twenty-five percent of the total recovery. *See*
22 *Powers v. Eichen*, 229 F. 3d 1249, 1256 (9th Cir. 2000); *Lim v. Helio, LLC*,
23 No. CV 11-9183 PSG, 2012 WL 359304, at *3 (C.D. Cal. Feb. 2, 2012). Plaintiff
24 seeks attorneys’ fees under the CLRA. *See* Cal. Civ. Code § 1780(e).

25 23. As explained above, the estimated amount in controversy with regards
26 to restitution alone exceeds \$5 million, without taking into account the cost of
27 injunctive relief, exemplary damages, and attorneys’ fees. This amount satisfies
28 CAFA’s \$5,000,000 amount in controversy requirement based on the allegations of

1 Plaintiff's complaint.

2 **III. REMOVAL IS PROPER AND TIMELY**

3 24. This Court is the proper venue for this action because the State Court
4 Action is pending in the Superior Court of the State of California for the County of
5 Los Angeles, and the United States District Court for the Central District of
6 California is the "district and division embracing the place where such action is
7 pending." 28 U.S.C. § 1441(a).

8 25. This Notice of Removal is timely because it is filed within thirty days of
9 receipt of a copy of the Complaint and Summons. 28 U.S.C. § 1446(b)(1), 1453(b).
10 The Complaint was filed on November 15, 2018, and personally served on Saks'
11 registered agent for service of process on November 26, 2018. Lally Decl., Ex. A.
12 Service was deemed complete on November 26, 2018. *See* Cal. Civ. Proc. Code
13 § 415.10.

14 26. Pursuant to 28 U.S.C. § 1446(a), copies of all of process, pleadings,
15 orders and other papers received by Saks to date are attached as follows to the
16 Declaration of Amy Lally ("Lally Declaration"): Civil Case Cover Sheet, Civil Case
17 Cover Sheet Addendum and Statement of Location, Notice of Case Assignment –
18 Unlimited Civil Case, Voluntary Efficient Litigation Stipulations, Alternative
19 Dispute Resolution (ADR) Information Packet, and Complaint.

20 27. The documents attached to the Lally Declaration are the only documents
21 served on Saks to date in the litigation. Lally Decl. ¶2.

22 28. Saks will promptly file a removal notice with the Clerk of the Superior
23 Court of the State of California for the County of Los Angeles, and will serve
24 written notice of same upon counsel of record for Plaintiff, as required by 28 U.S.C.
25 § 1446(d).

26 29. Saks reserves the right to amend or supplement this Notice of Removal.

27 30. By filing this Notice of Removal, Saks does not waive, either expressly
28 or implicitly, its rights to assert any defense which it could have asserted in the

1 Superior Court of the State of California for the County of Los Angeles. If any
2 question arises regarding the propriety of the removal of this action, Saks
3 respectfully requests an opportunity to present a brief, additional evidence, and oral
4 argument on this issue.

5 WHEREFORE, for the foregoing reasons, Saks respectfully requests that this
6 court exercise jurisdiction over this action.

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Date: December 21, 2018

Respectfully submitted,
SIDLEY AUSTIN LLP

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

Attorneys for Defendant
erroneously sued as SAKS, INC.
dba SAKS OFF FIFTH