

1 SCOTT+SCOTT, ATTORNEYS AT LAW, LLP
2 John T. Jasnoch (CA 281605)
3 707 Broadway, Suite 1000
4 San Diego, California 92101
5 Telephone: (619) 233-4565
6 Facsimile: (619) 233-0508
7 E-mail: jjasnoch@scott-scott.com

8 *Attorneys for Plaintiffs*

9 [Additional counsel listed on signature page.]

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

12
13 RANDY NUNEZ, on Behalf of
14 Himself and All Others Similarly
Situated,

15 Plaintiff,

16 vs.

17 SAKS INCORPORATED, a
18 Tennessee corporation, and DOES 1-
19 50, inclusive,

20 Defendant.

Case No. '15CV2717 JAH WVG

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Randy Nunez brings this action on behalf of himself and all others
2 similarly situated against Defendant Saks Incorporated (“Saks” or “Defendant”),
3 and states:

4 **I. NATURE OF ACTION**

5 1. This is a class action regarding Defendant’s false and misleading
6 advertisement of “market” prices, and corresponding phantom “savings” on
7 clothing, shoes, and fashion apparel sold in its retail stores and/or on its Internet
8 website. During the Class Period (defined below), Defendant advertised false
9 comparable prices and false price discounts for merchandise sold throughout its
10 retail stores and/or on its Internet website.

11 2. During the Class Period, Defendant continually misled consumers by
12 advertising clothing, shoes, and fashion apparel at discounted, “savings” prices.
13 Defendant would compare the “sale” prices to false “market” prices, which were
14 misrepresented as the “market” retail prices from which the “savings” was
15 discounted. The advertised discounts were nothing more than mere phantom
16 markdowns because the represented market prices were artificially inflated and
17 were never the original prices for clothing, shoes, and fashion apparel sold at
18 Defendant’s retail stores and/or on its Internet website. In addition, the represented
19 “market” prices were not the prevailing market retail prices within three months
20 next immediately preceding the publication of the advertised former prices, as
21 required by California law.

22 3. Defendant conveys its deceptive pricing scheme to consumers through
23 the use of various media platforms including, but not limited to, its website and
24 online promotional materials, in-store displays, and print advertisements. For
25 example, on Defendant’s sales stickers, the pricing scheme is prominently
26 displayed, advertising the “Market Price,” crossed-out with a single black line and
27 the discounted price, stating: “You Pay,” followed by an announcement of the
28 purported discount on a percentage basis.

1 4. The “market price” never existed and/or did not constitute the
2 prevailing market retail prices for such products within the three months next
3 immediately preceding the publication of the sales tag. Defendant sells its own,
4 exclusive, “Saks” branded products. There is no other “market price” for the
5 products being sold other than the price set at Defendant’s stores. The difference
6 between the “sale” and “regular” prices is a false savings percentage used to lure
7 consumers into purchasing products they believe are significantly discounted.

8 5. Through its false and misleading marketing, advertising, and pricing
9 scheme, Defendant violated, and continues to violate, California law prohibiting
10 advertising goods for sale as discounted from former prices which are false, and
11 prohibiting misleading statements about the existence and amount of price
12 reductions. Specifically, Defendant violated, and continues to violate, California
13 Business & Professions Code §§17200, *et seq.* (the “UCL”), California Business &
14 Professions Code §§17500, *et seq.* (the “FAL”), the California Consumers Legal
15 Remedies Act, California Civil Code §§1750, *et seq.* (the “CLRA”), and the
16 Federal Trade Commission Act (“FTCA”), which prohibits “unfair or deceptive
17 acts or practices in or affecting commerce” (15 U.S.C. §45(a)(1)) and false
18 advertisements (15 U.S.C. §52(a)).

19 6. Plaintiff brings this action on behalf of himself and other similarly
20 situated consumers who have purchased one or more clothing, shoes, or fashion
21 apparel at Defendant’s retail stores and/or on its Internet website that were
22 deceptively represented as discounted from false former prices in order to halt the
23 dissemination of this false, misleading, and deceptive price scheme, correct the
24 false and misleading perception it has created in the minds of consumers, and
25 obtain redress for those who have purchased Defendant’s products. Plaintiff seeks
26 restitution and other equitable remedies, including an injunction under the UCL
27 and FAL; and restitution, damages and an injunction under the CLRA.

28

1 **II. JURISDICTION AND VENUE**

2 7. This Court has original jurisdiction of this Action pursuant to the
3 Class Action Fairness Act, 28 U.S.C §1332(d)(2). The matter in controversy,
4 exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and at least
5 some members of the proposed Class have a different citizenship from Defendant.

6 8. The Southern District of California has personal jurisdiction over the
7 Defendant named in this action because Defendant is a corporation or other
8 business entity authorized to conduct, and does conduct, business in the State of
9 California. Defendant is registered with the California Secretary of State to do
10 sufficient business with sufficient minimum contacts in California, and/or
11 otherwise intentionally avails itself of the California market through the ownership
12 and operation of over 20 retail stores within the State of California.

13 9. Venue is proper under 18 U.S.C. §1965(a) because Defendant
14 transacts substantial business in this District. A substantial part of the events
15 giving rise to Plaintiff’s claims arose here.

16 **III. PARTIES**

17 **Plaintiff**

18 10. Randy Nunez resides in San Diego, California. Mr. Nunez, in
19 reliance on Defendant’s false and deceptive advertising, marketing, and “discount”
20 pricing schemes, purchased a pair of Saks Fifth Avenue branded shoes for
21 approximately \$86.39 on or around July 15, 2015, at a Saks Fifth Avenue “OFF
22 5TH” retail store located at 1750 Camino De La Reina, San Diego, California
23 92108. The pair of shoes was advertised as originally having a “market price” of
24 \$145.00. That price was crossed out and represented to Mr. Nunez as: “You Pay:
25 \$79.99,” a purported “44% Savings” according to the price tag. However, this
26 product was never offered for sale at \$145.00 at Defendant’s retail store, nor was it
27 offered at that price within the 90-day time period immediately preceding Mr.
28 Nunez’s purchase. Therefore, Mr. Nunez was damaged by his purchase of the
product.

1 **Defendant**

2 11. Plaintiff is informed and believes, and upon such information and
3 belief alleges, Defendant Saks Incorporated, is a Tennessee corporation with its
4 principal executive offices in New York, New York. Defendant Saks is a
5 subsidiary of Hudson Bay Company, a Canadian Corporation with its principal
6 executive offices in Toronto, Canada. Defendant operates Saks Fifth Avenue OFF
7 5TH stores and the saksoff5th.com website, and advertises, markets, distributes,
8 and/or sells clothing and clothing accessories in California and throughout the
9 United States.

10 12. Plaintiff does not know the true names or capacities of the persons or
11 entities sued herein as DOES 1-50, inclusive, and therefore sues such Defendants
12 by such fictitious names. Plaintiff is informed and believes, and upon such
13 information and belief alleges, that each of the DOE Defendants is in some manner
14 legally responsible for the damages suffered by Plaintiff and the Class members as
15 alleged herein. Plaintiff will amend this Complaint to set forth the true names and
16 capacities of these Defendants when they have been ascertained, along with
17 appropriate charging allegations, as may be necessary.

18 **IV. FACTUAL BACKGROUND**

19 13. On or around July 15, 2015, Plaintiff began searching for a new pair
20 of shoes that he could wear to work. Upon examining the men’s shoes at
21 Defendant’s retail store, he observed a pair of black penny slip-ons, branded as a
22 “Saks Fifth Avenue” labeled product. Mr. Nunez observed the price tag on the
23 bottom of the shoe’s sole and read it. Believing that he was receiving a significant
24 value by purchasing \$145 shoes for \$79.99, he decided to purchase the shoes and
25 proceeded to the cash register where he did, in fact, purchase the shoes.

26 14. Specifically, relying upon Defendant’s misrepresentations and false
27 and deceptive advertising, Plaintiff purchased a pair of Saks Fifth Avenue penny
28 slip-on shoes. The price tag indicated that the “Market Price” of the shoes was

1 “\$145.00,” and that they were being offered at a discount, described as: “You Pay:
2 \$79.99,” a purported 44% savings to the consumer. This purported “market” price
3 and corresponding price “discount” and savings was false and misleading, as the
4 prevailing retail price for the Saks Fifth Avenue branded penny slip-ons during the
5 three months immediately prior to Plaintiff’s purchase was not the \$145.00
6 “market” price advertised by Saks.

7 15. Plaintiff would not have purchased the shoes without the
8 misrepresentations made by Saks. As a result, Plaintiff has been personally
9 victimized by and suffered economic injury as a direct result of Defendant’s
10 unlawful, unfair, and fraudulent conduct.

11 16. Defendant knows that its comparative price advertising is false,
12 deceptive, misleading, and unlawful under California law.

13 17. Defendant fraudulently concealed from and intentionally failed to
14 disclose to Plaintiff and other members of the proposed class the truth about its
15 advertised price and former prices.

16 18. At all relevant times, Defendant has been under a duty to Plaintiff and
17 the proposed class to disclose the truth about its false discounts.

18 19. Plaintiff relied upon Defendant’s artificially inflated “market” price
19 and false discount when purchasing his shoes at Defendant’s retail store. Plaintiff
20 would not have made the purchase but for Defendant’s representations of the
21 fabricated original “market” price and false discount.

22 20. Plaintiff and the Class reasonably and justifiably acted and relied on
23 the substantial price differences that Defendant advertised, and made purchases
24 believing that they were receiving a substantial discount on an item of greater
25 value than it actually was. Plaintiff, like other Class members, was lured in, relied
26 on, and damaged by this pricing scheme that Defendant carried out.

27 21. Defendant intentionally concealed and failed to disclose material facts
28 regarding the truth about false former price advertising in order to provoke

1 Plaintiff and the proposed class to purchase Saks Fifth Avenue-branded products in
2 its retail stores and/or on its Internet website.

3 **V. CLASS ALLEGATIONS**

4 22. Plaintiff brings this action on behalf of himself and all other similarly
5 situated Class members pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal
6 Rules of Civil Procedure and seeks certification of the following Class against
7 Defendant for violations of California state laws:

8 All persons who, while in the State of California and
9 during the applicable statutes of limitations (*the "Class*
10 *Period"*), purchased from Saks one or more Saks Fifth
11 Avenue branded products at discounts from the
12 advertised "market" price and who have not received a
13 refund or credit for their purchase(s).

14 Excluded from the Class is Defendant, as well as its officers, employees,
15 agents, or affiliates, and any judge who presides over this action, as well as all past
16 and present employees, officers, and directors of Saks. Plaintiff reserves the right
17 to expand, limit, modify, or amend this Class definition, including the addition of
18 one or more subclasses, in connection with his motion for class certification, or at
19 any other time, based upon, *inter alia*, changing circumstances and/or new facts
20 obtained during discovery.

21 23. **Numerosity:** The Class members are so numerous that joinder of all
22 members is impracticable. Plaintiff is informed and believes that the proposed
23 Class contains hundreds of thousands of individuals who have been damaged by
24 Defendant's conduct as alleged herein. The precise number of Class members is
25 unknown to Plaintiff.

26 24. **Existence and Predominance of Common Questions of Law and**
27 **Fact:** This action involves common questions of law and fact, which predominate
28 over any questions affecting individual Class members. These common legal and
factual questions include, but are not limited to, the following:

- 1 a. whether, during the Class Period, Saks used false “market” or
2 “original” price labels and falsely advertised price discounts on
3 its Saks Fifth Avenue-branded products it sold in its retail
4 stores and/or on its Internet website;
- 5 b. whether, during the Class Period, the “original” or “market”
6 prices advertised by Saks were the prevailing market prices for
7 the respective Saks Fifth Avenue-branded products during the
8 three months period preceding the dissemination and/or
9 publication of the advertised former prices;
- 10 c. whether Saks’ alleged conduct constitutes violations of the laws
11 asserted;
- 12 d. whether Saks’ engaged in unfair, unlawful, and/or fraudulent
13 business practices under the laws asserted;
- 14 e. whether Saks’ engaged in false or misleading advertising;
- 15 f. whether Plaintiff and Class members are entitled to damages
16 and/or restitution and the proper measure of that loss; and
- 17 g. whether an injunction is necessary to prevent Saks from
18 continuing to use false, misleading, or illegal price comparison.

19
20
21
22 25. **Typicality:** Plaintiff’s claims are typical of the claims of the members
23 of the Class because, *inter alia*, all Class members have been deceived (or were
24 likely to be deceived) by Saks’ false and deceptive price advertising scheme, as
25 alleged herein. Plaintiff is advancing the same claims and legal theories on behalf
26 of himself and all members of the Class.

27 26. **Adequacy:** Plaintiff will fairly and adequately protect the interests of
28 the members of the Class. Plaintiff has retained counsel experienced in complex

1 consumer class action litigation, and Plaintiff intends to prosecute this action
2 vigorously. Plaintiff has no antagonistic or adverse interest to those of the Class.

3 27. *Superiority*: The nature of this action and the nature of laws available
4 to Mr. Nunez and the Class make the use of the class action format a particularly
5 efficient and appropriate procedure to afford relief to him and the Class for the
6 wrongs alleged. The damages or other financial detriment suffered by individual
7 Class members is relatively modest compared to the burden and expense that
8 would be entailed by individual litigation of their claims against Saks. It would
9 thus be virtually impossible for Plaintiff and Class members, on an individual
10 basis, to obtain effective redress for the wrongs done to them. Absent the class
11 action, Class members and the general public would not likely recover, or would
12 not likely have the chance to recover, damages or restitution, and Saks will be
13 permitted to retain the proceeds of its fraudulent and deceptive misdeeds.

14 28. All Class members, including Mr. Nunez, were exposed to one or
15 more of Saks' misrepresentations or omissions of material fact claiming that
16 former "original" advertised prices were in existence. Due to the scope and extent
17 of Saks' consistent false "discount" price advertising scheme, disseminated in a
18 years-long campaign to California consumers via a number of different platforms –
19 in-store displays, Internet advertisements, print advertisements, etc. – it can be
20 reasonably inferred that such misrepresentations or omissions of material fact were
21 uniformly made to all members of the Class. In addition, it can be reasonably
22 presumed that all Class members, including, Mr. Nunez, affirmatively acted in
23 response to the representations contained in Saks' false advertising scheme when
24 purchasing his Saks Fifth Avenue branded penny slip-on shoes at the Saks Fifth
25 Avenue OFF 5TH retail store.

26 29. Saks keeps extensive computerized records of its customers through,
27 *inter alia*, customer loyalty programs, co-branded credit cards, and general
28 marketing programs. Saks has one or more databases through which a significant

1 majority of Class members may be identified and ascertained, and it maintains
2 contact information, including email and home addresses, through which notice of
3 this action could be disseminated in accordance with due process requirements.

4 **VI. CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**
6 **Violation of Unfair Competition Law**
7 **Business and Professions Code §17200, *et seq.***

8 30. Plaintiff repeats and re-alleges the allegations contained in every
9 preceding paragraph as if fully set forth herein.

10 31. The UCL defines unfair business competition to include any
11 “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive,
12 untrue or misleading” advertising. Cal. Bus. & Prof. Code §17200.

13 32. The UCL imposes strict liability. Plaintiff need not prove that
14 Defendant intentionally or negligently engaged in unlawful, unfair, or fraudulent
15 business practices, but only that such practices occurred.

16 33. A business act or practice is “unfair” under the UCL if it offends an
17 established public policy or is immoral, unethical, oppressive, unscrupulous, or
18 substantially injurious to consumers, and that unfairness is determined by weighing
19 the reasons, justifications, and motives of the practice against the gravity of the
20 harm to the alleged victims.

21 34. Defendant’s actions constitute “unfair” business acts or practices
22 because, as alleged above, Defendant engaged in misleading and deceptive price
23 comparison advertising that represented false “regular” prices and “discount”
24 prices that were nothing more than fabricated “regular” prices leading to phantom
25 markdowns. Defendant’s acts and practices offended an established public policy
26 and engaged in immoral, unethical, oppressive, and unscrupulous activities that are
27 substantially injurious to consumers.

28 35. The harm to Plaintiff and Class members outweighs the utility of
Defendant’s practices. There were reasonably available alternatives to further

1 Defendant's legitimate business interests, other than the misleading and deceptive
2 conduct described herein.

3 36. A business act or practice is "fraudulent" under the UCL if it is likely
4 to deceive members of the consuming public.

5 37. A business act or practice is "unlawful" under the UCL if it violates
6 any other law or regulation.

7 38. Defendant's acts and practices alleged above have deceived Plaintiff
8 and are highly likely to deceive members of the consuming public. Plaintiff relied
9 on Defendant's fraudulent and deceptive representations regarding its "market"
10 prices for products which Defendant sells exclusively at its Saks Fifth Avenue
11 stores. These misrepresentations played a substantial role in Plaintiff's decision to
12 purchase those products at steep discounts, and Plaintiff would not have purchased
13 those products without Defendant's misrepresentations.

14 39. The FTCA prohibits "unfair or deceptive acts or practices in or
15 affecting commerce" (15 U.S.C. §45(a)(1)) and prohibits the dissemination of any
16 false advertisements (15 U.S.C. §52(a)). Under the FTCA, false former pricing
17 schemes, similar to the ones implemented by Saks, are described as deceptive
18 practices that would violate the FTCA:

19 (a) One of the most commonly used forms of bargain advertising is
20 to offer a reduction from the advertiser's own former price for
21 an article. If the former price is the actual, bona fide price at
22 which the article was offered to the public on a regular basis for
23 a reasonably substantial period of time, it provides a legitimate
24 basis for the advertising of a price comparison. Where the
25 former price is genuine, the bargain being advertised is a true
one. If, on the other hand, the former price being advertised is
not bona fide but fictitious – for example, where an artificial
price, inflated price was established for the purpose of enabling
the subsequent offer of a large reduction – the "bargain" being
advertised is a false one; the purchaser is not receiving the
unusual value he expects.

26 16 C.F.R. §233.1(a).

27 (b) A former price is not necessarily fictitious merely because no
28 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

1 sale, for a reasonably substantial period of time, in the recent,
2 regular course of his 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.

3 16 C.F.R. §233.1(b).

4 40. California law also expressly prohibits false former pricing schemes.
5 Cal. Bus. & Prof. Code §17501, entitled “*Worth or Value; statements as to former*
6 *price*” states:

7 For the purpose of this article the worth or value of any
8 thing advertised is the prevailing market price, wholesale
if the offer is at wholesale, retail if the offer is at retail, at
9 the time of publication of such advertisement in the
locality wherein the advertisement is published.

10 ***No price shall be advertised as a former price of any***
11 ***advertised thing, unless the alleged former price was the***
12 ***prevailing market price as above defined within three***
13 ***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.

14 [Emphasis added.]

15 41. As detailed in Plaintiff’s Third Cause of Action below, California
16 Civil Code §1770(a)(9), prohibits a business from “[a]dvertising goods or services
17 with intent not to sell them as advertised,” and subsection (a)(13) prohibits a
18 business from “[m]aking false or misleading statements of fact concerning reasons
19 for, existence of, or amounts of price reductions.”

20 42. Defendant’s practices, as set forth above, have mislead Plaintiff, the
21 proposed Class, and the general public in the past and will continue to mislead in
22 the future. Consequently, Defendant’s practices constitute an unlawful an unfair
23 business practice in within the meaning of the UCL.

24 43. Defendant’s violation of the UCL through its unlawful, unfair, and
25 fraudulent business practices are ongoing and present a continuing threat that
26 members of the public will be deceived into purchasing products based on price
27 comparisons of arbitrary and inflated “regular” prices to “sale” prices that created
28

1 merely phantom markdowns and lead to financial damage for consumers, like
2 Plaintiff and the proposed Class.

3 44. Pursuant to the UCL, Plaintiff is entitled to preliminary and
4 permanent injunctive relief ordering Defendant to cease this unfair competition, as
5 well as disgorgement and restitution to Plaintiff and the Class of all of Defendant's
6 revenues associated with its unfair competition, or such portion of those revenues
7 as the Court may find equitable.

8 **SECOND CAUSE OF ACTION**
9 **Violation of the California False Advertising Law,
California Business and Professions Code §17500, *et seq.***

10 45. Plaintiff repeats and re-alleges the allegations contained in every
11 preceding paragraph as if fully set forth herein.

12 46. Cal. Bus. & Prof. Code §17500 provides that “[i]t is unlawful for any
13 ... corporation ... with intent ... to dispose of ... personal property ... to induce
14 the public to enter into any obligation relating thereto, to make or disseminate or
15 cause to be made or disseminated ... from this state before the public in any state,
16 in any newspaper or other publication, or any advertising device, or by public
17 outcry or proclamation, or in any other manner or means whatever, including over
18 the Internet, any statement ... which is *untrue* or misleading, and which is known,
19 or which by the exercise of reasonable care should be known, to be untrue or
20 misleading....” [Emphasis added].

21 47. The “intent” required by Cal. Bus. & Prof. Code §17500 is the intent
22 to dispose of property, and not the intent to mislead the public in the disposition of
23 such property.

24 48. Similarly, this section provides, “[n]o price shall be advertised as a
25 former price of any advertised thing, unless the alleged former prices was the
26 prevailing market price...within three months next immediately preceding the
27 publication of the advertisement or unless the date when the alleged former price
28

1 did prevail is clearly, exactly and conspicuously stated in the advertisement.” Cal.
2 Bus. & Prof. Code §17501.

3 49. Defendant’s routine of advertising discounted prices from false
4 “market” prices associated with its Saks Fifth Avenue branded products which
5 were never the true prevailing “market” prices of those products and were
6 materially greater than the true prevailing prices was an unfair, untrue, and
7 misleading practice. This deceptive marketing practice gave consumers the false
8 impression that the products were regularly sold on the market for a substantially
9 higher price than they actually were, therefore, leading to the false impression that
10 the Saks Fifth Avenue-branded products were worth more than they actually were.

11 50. Defendant misled consumers by making untrue and misleading
12 statements and failing to disclose what is required as stated in the Code, as alleged
13 above.

14 51. As a direct and proximate result of Defendant’s misleading and false
15 advertisements, Plaintiff and Class members have suffered injury in fact and have
16 lost money. As such, Plaintiff requests that this Court order Defendant to restore
17 this money to Plaintiff and all Class members, and to enjoin Defendant from
18 continuing these unfair practices in violation of the UCL in the future. Otherwise,
19 Plaintiff, Class members, and the broader general public will be irreparably harmed
20 and/or denied an effective and complete remedy.

21 **THIRD CAUSE OF ACTION**
22 **Violation of the Consumers Legal Remedies Act (“CLRA”),**
23 **California Civil Code §1750, *et seq.***

24 52. Plaintiff repeats and re-alleges the allegations contained in every
25 preceding paragraph as if fully set forth herein.

26 53. This cause of action is brought pursuant to the Consumers Legal
27 Remedies Act (CLRA), California Civil Code §1750, *et seq.*, and similar laws in
28 other states. Plaintiff and each member of the proposed Class are “consumers” as
defined by California Civil Code §1761(d). Defendant’s sale of the Saks Fifth

1 Avenue-branded products to Plaintiff and the Class were “transactions” within the
2 meaning of California Civil Code §1761(e). The products purchased by Plaintiff
3 and the Class are “goods” within the meaning of California Civil Code §1761(a).

4 54. Defendant violated and continues to violate the CLRA by engaging in
5 the following practices proscribed by California Civil Code §1770(a) in
6 transactions with Plaintiff and the Class which were intended to result in, and did
7 result in, the sale of the Saks Fifth Avenue branded products:

- 8 a. advertising goods or services with intent not to sell them as
9 advertised; and
10 b. Making false or misleading statements of fact concerning
11 reasons for, existence of, or amounts of price reductions.

12 55. Pursuant to §1782(a) of the CLRA, on December 3, 2015, Plaintiff’s
13 counsel notified Defendant in writing by certified mail of the particular violations
14 of §1770 of the CLRA and demanded that it rectify the problems associated with
15 the actions detailed above and give notice to all affected consumers of Defendant’s
16 intent to act. If Defendant fails to respond to Plaintiff’s letter or agree to rectify the
17 problems associated with the actions detailed above and give notice to all affected
18 consumers within 30 days of the date of written notice, as proscribed by §1782,
19 Plaintiff will move to amend his Complaint to pursue claims for actual, punitive,
20 and statutory damages, as appropriate against Defendant. As to this cause of
21 action, at this time, Plaintiff seeks only injunctive relief.

22 **VII. PRAYER FOR RELIEF**

23 56. Wherefore, Plaintiff, on behalf of himself and on behalf of the other
24 members of the Class, requests that this Court award relief against Saks as follows:

- 25 A. An order certifying the class and designating Randy Nunez as the
26 Class Representative and his counsel as Class Counsel;
27 B. Awarding Plaintiff and the proposed Class members damages;
28

1 C. Awarding restitution and disgorgement of all profits and unjust
2 enrichment that Defendant's obtained from Plaintiff and the Class members as a
3 result of its unlawful, unfair, and fraudulent business practices described herein;

4 D. Awarding declaratory and injunctive relief as permitted by law or
5 equity, including: enjoining Defendant from continuing the unlawful practices as
6 set forth herein, and directing Defendant to identify, with Court supervisions,
7 victims of its misconduct and pay them all money they are required to pay;

8 E. Order Defendant to engage in a corrective advertising campaign;

9 F. Awarding attorneys' fees and costs; and

10 G. For such other and further relief as the Court may deem necessary or
11 appropriate.

12 **VIII. DEMAND FOR JURY TRIAL**

13 Plaintiff hereby demands a jury trial for all of the claims so triable.

14 Dated: December 3, 2015 SCOTT+SCOTT, ATTORNEYS AT LAW, LLP

15
16 /s/John T. Jasnoch

17 John T. Jasnoch (CA 281605)
18 707 Broadway, Suite 1000
19 San Diego, California 92101
20 Telephone: 619-233-4565
21 Facsimile: 619-233-0508
22 jjasnoch@scott-scott.com

23 SCOTT+SCOTT, ATTORNEYS AT LAW, LLP

24 Joseph P. Guglielmo
25 Erin G. Comite
26 The Chrysler Building
27 405 Lexington Avenue, 40th Floor
28 New York, NY 10174
Telephone: 212-223-6444
Facsimile: 212-223-6334
jguglielmo@scott-scott.com
ecomite@scott-scott.com

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

CARPENTER LAW GROUP
Todd D. Carpenter (CA 234464)
402 West Broadway, 29th Floor
San Diego, California 92101
Telephone: 619.756.6994
Facsimile: 619.756.6991
todd@carpenterlawyers.com

CARLSON LYNCH SWEET & KILPELA, LLP
Gary F. Lynch
Edwin J. Kilpela, Jr.
1133 Penn Avenue
5th Floor
Pittsburgh, PA 15222

Attorneys for Plaintiff

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Randy Nunez

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) John T. Jasnoch, SCOTT+SCOTT, ATTORNEYS AT LAW, LLP, 707 Broadway, Suite 1000, San Diego, CA 92101

DEFENDANTS

Saks Incorporated

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'15CV2717 JAH WVG

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332

Brief description of cause: Violations of Unfair Competition Law, Cal. False Advertising Law, and California Bus. & Prof. Code

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 12/03/2015 SIGNATURE OF ATTORNEY OF RECORD s/ John T. Jasnoch

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.