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ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

AUG 19 2014

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

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

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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 )  
Limited Liability Company, and DOES 1-50, )  
17 inclusive, )  
18 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**  
)  
)

LAW OFFICES  
KIRTLAND & PACKARD LLP

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.

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**JURISDICTION AND VENUE**

1  
2 5. This Court has jurisdiction over all causes of action asserted herein under the California  
3 Constitution.

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

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

8 8. Out-of-state participants can be brought before this Court pursuant to California’s “long-  
9 arm” jurisdictional statute.

10 **FACTUAL ALLEGATIONS**

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

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

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

23 12. Contagion among large retail stores operating outlet stores have spread throughout the  
24 nation as evidenced by the numerous outlet stores that now exist and outlet-specific malls.  
25 Shoppers have become accustomed to seeing products that once were sold at the traditional  
26 retail store at these outlet stores. This popularity has been noted, for example, apparel sales  
27 at factory outlets rose 17.8% in 2011, according to estimates by market research firm NPD  
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Group. Meanwhile, apparel sales industry-wide rose a meager 1.4%.<sup>1</sup>

13. Furthermore, the chief industry analyst at NPD Group states, "What outlets have been able to do is touch the core of the American consumer. There's no question that what we're witnessing is the transformation of how and where consumers are shopping. The recession really kicked it into high gear for outlet centers."

14. It is, therefore, no surprise that Defendant has immersed themselves into this lucrative industry to continue to grow their robust billion dollar business. Plaintiff and other Outlet Store shoppers (also referred to as the "Class") were also looking to obtain benefits from Defendant's discounted stores, which included buying the alleged same exact clothing after season and/or excess clothing that Defendant's traditional stores once carried, but for a discounted price.

15. Defendant labels its Saks Off 5th clothing with a tag that shows a markedly lower price from the "Market Price," which corresponds to the price that appears to be used in traditional Saks Fifth Avenue retail stores. Plaintiff was lured in by this large price difference and as a result purchased items of clothing and accessories from Defendant's Saks Off 5th Store in July of 2014.

16. Defendant's marketing techniques purposely suggests that the "Market Price" corresponds to the exact same article of clothing when sold at the traditional Saks Fifth Avenue retail store, but at a substantial discount, when in fact it is not.

17. Defendant's Saks Off 5th clothing is actually not intended for the sale at the traditional Saks Fifth Avenue stores as the "Market Price" suggests, but rather strictly for the Saks Off 5th Store. Therefore, Defendant's price tags on the Saks Off 5th clothing are labeled with an arbitrary inflated "Market Price" that is purely imaginative because it was never sold at the traditional Saks Fifth Avenue store and therefore can't be compared to the "Market Price" that a consumer would see. Thus the insinuated discount is false and misleading.

18. The Federal Trade Commission has also heard complaints by many members of Congress

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

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

7 19. The FTC guidelines are as follows:

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

22 ii. It bears repeating that the manufacturer, distributor or retailer must in every  
23 case act honestly and in good faith in advertising a list price, and not with  
24 the intention of establishing a basis, or creating an instrumentality, for a  
25 deceptive comparison in any local or other trade area. For instance, a  
26 manufacturer may not affix price tickets containing inflated prices as an  
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28 <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

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“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;

- 1 v. Whether Defendant misrepresented and/or failed to disclose material facts  
2 about its product pricing and discounts; and
- 3 vi. Whether Defendant has made false or misleading statements of fact  
4 concerning the reasons for, existence of, or amounts of its price reductions.
- 5 27. These common questions of law and fact predominate over questions that may affect  
6 individual Class members in that the claims of all Class members for each of the claims  
7 herein can be established with common proof. Additionally, a class action would be  
8 “superior to other available methods for the fair and efficient adjudication of the  
9 controversy” because: (1) Class members have little interest in individually controlling the  
10 prosecution of separate actions because the individual damages claims of each Class  
11 member are not substantial enough to warrant individual filings; (2) Plaintiff is not aware  
12 of other lawsuits against Defendant commenced by or on behalf of members of the Class;  
13 and (3) because the disputed advertisements are common to all Class members and because  
14 resolution of the claims of Plaintiff will resolve the claims of the remaining Class,  
15 certification does not pose any manageability problems.
- 16 28. **Typicality:** Plaintiff’s claims are typical of the claims of the members of the Class.  
17 Plaintiff and all members of the Class have been similarly affected by Defendant’s conduct  
18 since they all relied on Defendant’s representations concerning the true authentically and  
19 purported discounts of the clothing and purchased the clothing based on those  
20 representations.
- 21 29. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and protect the  
22 interests of the Class. Plaintiff has retained counsel with substantial experience in handling  
23 complex class action litigation. Plaintiff and her counsel are committed to prosecuting this  
24 action vigorously on behalf of the Class and have the financial resources to do so.
- 25 30. **Superiority of Class Action:** Plaintiff and the members of the Class suffered and will  
26 continue to suffer harm as a result of Defendant’s unlawful and wrongful conduct. A class  
27 action is superior to other available methods for the fair and efficient adjudication of the  
28 present controversy. Class members have little interest in individually controlling the



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

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

9 **FIRST CAUSE OF ACTION**

10 **Business and Professions Code § 17500**

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

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

- 13 32. Plaintiff hereby incorporates paragraphs 1-31 above as if set forth in full.
- 14 33. California *Business and Professions Code* § 17500 provides that “[i]t is unlawful for any ...  
15 corporation ... with intent ... to dispose of ... personal property ... to induce the public to  
16 enter into any obligation relating thereto, to make or disseminate or cause to be made or  
17 disseminated ... from this state before the public in any state, in any newspaper or other  
18 publication, or any advertising device, or by public outcry or proclamation, or in any other  
19 manner or means whatever, including over the Internet, any statement ... which is untrue or  
20 misleading, and which is known, or which by the exercise of reasonable care should be  
21 known, to be untrue or misleading....”
- 22 34. Similarly, this section provides, “[N]o price shall be advertised as a former price of any  
23 advertised thing, unless the alleged former price was the prevailing market price as above  
24 defined within three months next immediately preceding the publication of the  
25 advertisement or unless the date when the alleged former price did prevail is clearly,  
26 exactly and conspicuously stated in the advertisement.”
- 27 35. Defendant misled consumers by making untrue statements and failing to disclose what is  
28 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.

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

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

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

19 53. Pursuant to Section 1782 of the CLRA, Plaintiff intends to notify Defendant in writing of  
20 the particular violations of Section 1770 of the CLRA (the “Notice Letter”). If Defendant  
21 fails to comply with Plaintiff’s demands within thirty days of receipt of the Notice Letter,  
22 pursuant to Section 1782 of the CLRA, Plaintiff will amend this Complaint to further  
23 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


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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*


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**JURY TRIAL DEMANDED**

Plaintiff demands a jury trial on all issues so triable.

DATED: August 19, 2014

KIRTLAND & PACKARD LLP

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MICHAEL LOUIS KELLY  
BEHRAM V. PAREKH  
HEATHER M. BAKER

*Counsel for Plaintiff and all  
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