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FILED
Clerk of the Superior Court

NOV 01 2024

By: M. Garland

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO**

RANDY NUNEZ, on behalf of himself and all others similarly situated,

Plaintiff,

v.

SAKS OFF 5TH LLC, a Delaware Limited Liability Company, SAKS & COMPANY LLC, a Delaware Limited Liability Company, and SAKS FIFTH AVENUE LLC, a Massachusetts Limited Liability Company,

Defendants.

Case No. 37-2024-00024810-CU-BT-NC

[E-FILE]

CLASS ACTION

SECOND AMENDED [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION

CAF

On November 1, 2024, this Court heard Plaintiff Randy Nunez's unopposed motion for preliminary approval of class settlement and provisional class certification. This Court reviewed the motion, including the Settlement Agreement and Release (the "Settlement Agreement"). Based on this review and the findings below, the Court finds good cause to grant the motion.¹

FINDINGS:

1. The Settlement Agreement appears to be the product of serious, informed, non-collusive negotiations with Defendants Saks OFF 5TH LLC, Saks & Company LLC, and Saks Fifth Avenue LLC ("Saks OFF 5TH" or "Defendants"), and falls within the range of possible approval as fair, reasonable, and adequate.

¹ Capitalized terms in this Order, unless otherwise defined, have the same definitions as those terms in the Settlement Agreement.

1 2. The Full Notice, Email Notice, Digital Publication Notice, and Claim Form (attached to
2 the Settlement Agreement): (a) constitute the best such forms and notice practicable under the
3 circumstances; (b) the method for providing notice to Class Members set forth in the Settlement
4 Agreement constitutes valid, due, and sufficient notice to all members of the Class; and (c) the Notices
5 and Notice plan set forth in the Agreement comply fully with the requirements of California Code of Civil
6 Procedure § 382, California Rules of Court, Rules 3.766 and 3.769, the California and United States
7 Constitutions, and other applicable law.

8 3. For Settlement purposes only, the Class is so numerous that joinder of all Class Members
9 is impracticable.

10 4. For Settlement purposes only, Plaintiff's claims are typical of the Class's claims.

11 5. For Settlement purposes only, there are questions of law and fact common to the Class,
12 which predominate over any questions affecting only individual Class Members.

13 6. For Settlement purposes only, Class Certification is superior to other available methods for
14 the fair and efficient adjudication of the controversy.

15 **IT IS ORDERED THAT:**

16 1. **Settlement Approval.** The Settlement Agreement, including the Full Notice, Email
17 Notice, Digital Publication Notice, and Claim Form, attached to the Settlement Agreement as Exhibits B-
18 E are preliminarily approved.

19 2. **Provision of Class Notice.** Class Counsel will notify Class Members of the Settlement in
20 the manner specified under Section 3.3 of the Settlement Agreement.

21 3. **Claim for a Merchandise Certificate.**

22 (a) **Tier 1 Authorized Claimant.** Tier 1 Authorized Claimants are not required to submit a Claim
23 Form or proof of a Qualifying Purchase during the Class Period to be included in the distribution of
24 the twenty dollar (\$20.00) Merchandise Certificates and receive one (1) Merchandise Certificate. Saks
25 OFF 5TH shall, either directly or through the Claims Administrator at Saks OFF 5TH's election,
26 distribute one (1) Merchandise Certificate to each Tier 1 Authorized Claimant.

27 (b) **Tier 2 Authorized Claimant.** Class Members who have made one or more Qualifying
28 Purchase(s) during the Class Period shall submit a complete, valid and sufficient Claim Form,

1 including acceptable proof of Qualifying Purchase(s) during the Class Period, no later than one
2 hundred and thirty five (135) calendar days after entry of this Order.

3 4. Defendants may review all submitted Claim Forms and proof of Qualifying Purchase(s)
4 for completeness, legibility, validity, accuracy, and timeliness. Any costs incurred by the review process
5 shall be paid by Defendants. The Defendants may employ adequate and reasonable procedures and
6 standards to prevent the approval of duplicative and fraudulent Claims. The Defendants may contact any
7 Claimant to request additional information and documentation, including, but not limited to, information
8 and documentation sufficient to allow the Defendants to: (a) verify that the information set forth in or
9 attached to a Claim Form is accurate and the Claimant is a Class Member; and (b) determine the validity
10 of any Claim and/or whether any Claim is duplicative or fraudulent.

11 5. **Objection to Settlement.** Class Members who have not submitted a timely written
12 exclusion request pursuant to Paragraph 7 below and who want to object to the Settlement Agreement
13 must file written objections with the Court, with copies delivered to the Claims Administrator, Class
14 Counsel, and Saks OFF 5TH's Counsel no later than one hundred and thirty five (135) calendar days after
15 entry of this Order. The delivery date is deemed to be the date the objection is deposited in the U.S. Mail
16 as evidenced by the postmark. It shall be the objector's responsibility to ensure receipt of any objection
17 by the Claims Administrator, Saks OFF 5TH's Counsel and Class Counsel on or before the deadline. The
18 objection must include: (a) the name and case number of the Action; (b) the objecting Class Member's
19 full name, address, and telephone number; (c) the words "Notice of Objection" or "Formal Objection";
20 (d) in clear and concise terms, the legal and factual arguments supporting the objection; (e) facts
21 supporting the objector's status as a Class Member (e.g., the date and location of his/her relevant purchases
22 and description of the item(s) purchased); (f) the objecting Class Member's signature and the date; and
23 (g) the following language immediately above the objecting Class Member's signature and date: "I declare
24 under penalty of perjury under the laws of the State of California that the foregoing statements regarding
25 class membership are true and correct to the best of my knowledge." Any Class Member who submits a
26 written objection, as described in this section, has the option to appear at the Fairness Hearing, either in
27 person or through personal counsel hired at the Class Member's expense, to object to the fairness,
28 reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, or to the award of

1 attorneys' fees. Class Members, or their attorneys, intending to make an appearance at the Fairness
2 Hearing, however, must include on a timely and valid objection a statement substantially similar to
3 "Notice of Intention to Appear." If the objecting Class Member intends to appear at the Fairness Hearing
4 through counsel, he or she must also identify the attorney(s) representing the objector who will appear at
5 the Fairness Hearing and include the attorney(s) name, address, phone number, email address, and the
6 state bar(s) to which counsel is admitted. If the objecting Class Member intends to request the Court allow
7 the Class Member to call witnesses at the Fairness Hearing, such request must be made in the Class
8 Member's written objection, which must also contain a list of any such witnesses and a summary of each
9 witness's expected testimony. Only Class Members who submit timely objections containing Notices of
10 Intention to Appear or their counsel may speak at the Fairness Hearing.

11 6. **Failure to Object to Settlement.** Class Members who fail to object to the Settlement
12 Agreement in the manner specified in paragraph 5 above will: (a) be deemed to have waived their right to
13 object to the Settlement Agreement; (b) be foreclosed from objecting (whether by a subsequent objection,
14 intervention, appeal, or any other process) to the Settlement Agreement; and (c) not be entitled to speak
15 at the Fairness Hearing.

16 7. **Requesting Exclusion.** Class Members who want to be excluded from the Settlement must
17 send a signed letter or postcard to the Claims Administrator stating: (a) the name and case number of the
18 Action; (b) the full name, address, and telephone number of the person requesting exclusion; and (c) a
19 statement that the person does not wish to participate in the Settlement, postmarked no later than one
20 hundred and thirty five (135) calendar days after entry of this order.

21 8. **Provisional Certification.** The Class is provisionally certified as all persons, during the
22 Class Period (i.e. from January 1, 2011, to the date the Court enters the Preliminary Approval Order), who
23 purchased one or more Saks Fifth Avenue-branded products at a Saks OFF 5TH store in California, online
24 from www.saksoff5th.com or any other website URL currently or previously redirecting to
25 www.saksoff5th.com, or on any Saks OFF 5TH mobile apps, with bill to or ship to addresses in California
26 at a discount from the advertised "Market Price" and have not received a refund or credit for their
27 purchase(s) during the Class Period. Excluded from the Class is Saks OFF 5TH's Counsel, Saks OFF
28 5TH's officers and directors, and the judge presiding over the Action.

1 9. **Conditional Appointment of Class Representative and Class Counsel.** Plaintiff Randy
2 Nunez is conditionally certified as the Class Representative to implement the Parties' settlement in
3 accordance with the Settlement Agreement. The law firms of Scott + Scott Attorneys at Law LLP and
4 Lynch Carpenter, LLP are conditionally appointed as Class Counsel. Plaintiff and Class Counsel must
5 fairly and adequately protect the Class's interests.

6 10. **Claims Administrator.** Simpluris Inc. is appointed as the Claims Administrator.

7 11. **Termination.** If the Settlement Agreement terminates for any reason, the following will
8 occur: (a) Class Certification will be automatically vacated; (b) Plaintiff will stop functioning as Class
9 Representative; (c) Class Counsel will stop functioning as Class Counsel; and (d) this Action will revert
10 to its previous status in all respects as it existed immediately before the Parties executed the Settlement
11 Agreement, with the exception of Plaintiff's filing of the Complaint. This Order will not waive or
12 otherwise impact the Parties' rights or arguments.

13 12. **No Admissions.** Nothing in this Order is, or may be construed as, an admission or
14 concession on any point of fact or law by or against any Party.

15 13. **Stay of Dates and Deadlines.** All discovery and pretrial proceedings and deadlines are
16 stayed and suspended until further notice from the Court, except for such actions as are necessary to
17 implement the Settlement Agreement and this Order.

18 14. **Further Procedures.** Counsel for the Parties are hereby authorized to agree to utilize all
19 reasonable procedures in connection with the administration of the Settlement which are not materially
20 inconsistent with either this Order or the terms of the Settlement Agreement. CAF

21 15. **Fairness Hearing.** On ~~February~~ ^{April} ~~18~~ ¹⁸ ~~CAF~~ ^{CAF} ~~5~~ (month) ~~18~~ (day), 202A, at 1:30 p.m., this Court
22 will hold a Fairness Hearing to determine whether the Settlement Agreement should be finally approved
23 as fair, reasonable, and adequate. Based on the date of this Order and the date of the Fairness Hearing, the
24 following are the certain associated dates in this Settlement:

Event	Timing
Last day for Defendants, through the Class Administrator, to send Email Notice, start operating Settlement Website, and begin to provide Publication Notice	90 calendar days after entry of this Order

Event	Timing
Last day for Plaintiff to file fee petition	120 calendar days after entry of this Order
Last day for Class Members to file a Claim, request exclusion, or object to the Settlement	135 calendar days after entry of this Order or 45 calendar days after issuance of Class Notices, whichever is later.
Last day for Parties to file briefs in support of the Final Order and Judgment	10 calendar days before Fairness Hearing

This Court may order the Fairness Hearing to be postponed, adjourned, or continued. If that occurs, the updated hearing date shall be posted on the Settlement Website, but other than the website posting, Class Counsel will not be required to provide any additional notice to Class Members.

DATED: November 1, 2024

Cynthia A. Freeland
San Diego Superior Court Judge

CYNTHIA A. FREELAND

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 234,464 NAME: Todd D. Carpenter FIRM NAME: LYNCH CARPENTER, LLP STREET ADDRESS: 1234 Camino Del Mar CITY: Del Mar STATE: CA ZIP CODE: 92014 TELEPHONE NO.: (619) 762-1910 FAX NO. : E-MAIL ADDRESS: todd@lcllp.com ATTORNEY FOR (name): Plaintiff Randy Nunez	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 325 S. Melrose Drive MAILING ADDRESS: 325 S. Melrose Drive CITY AND ZIP CODE: Vista CA 92081 BRANCH NAME: North County	FILED Clerk of the Superior Court NOV 01 2024 By: M. Garland
PLAINTIFF/PETITIONER: Randy Nunez DEFENDANT/RESPONDENT: Saks off 5th LLC, et al.	CASE NUMBER: 37-2024-00024810-CU-BT-NC JUDICIAL OFFICER: Cynthia A. Freeland
PROOF OF ELECTRONIC SERVICE	DEPARTMENT: N-27

1. I am at least 18 years old.
 - a. My residence or business address is (specify):
1234 Camino Del Mar, CA 92014
 - b. My electronic service address is (specify):
sara@lcllp.com
2. I electronically served the following documents (exact titles): Second Amended [Proposed] Order Granting Preliminary Approval of Class Settlement and Provisional Class Certification

The documents served are listed in an attachment. (Form POS-050(D)/EFS-050(D) may be used for this purpose.)

3. I electronically served the documents listed in 2 as follows:
 - a. Name of person served: Joseph Duffy
On behalf of (name or names of parties represented, if person served is an attorney):
Saks off 5th LLC
 - b. Electronic service address of person served :
joseph.duffy@morganlewis.com
 - c. On (date): October 30, 2024

The documents listed in item 2 were served electronically on the persons and in the manner described in an attachment. (Form POS-050(P)/EFS-050(P) may be used for this purpose.)

Date: October 30, 2024

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

Sara Pearson

 (TYPE OR PRINT NAME OF DECLARANT)

 /s/ Sara Pearson

 (SIGNATURE OF DECLARANT)