

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

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (this “Agreement”) is entered into by and between plaintiff Randy Nunez, on behalf of himself, as an individual, and in his representative capacity, on behalf of all others similarly situated, (“Plaintiff”) and defendants Saks OFF 5TH LLC, Saks & Company LLC, and Saks Fifth Avenue LLC (“Saks OFF 5TH” or “Defendants”) (each a “Party” and, collectively, the “Parties”).

RECITALS

A. WHEREAS, on December 3, 2015, Plaintiff filed a putative class action lawsuit against Saks Incorporated¹ in the Southern District of California, Case No. 3:15-CV-02717-JAH-WVG, entitled Randy Nunez, on behalf of himself and all others similarly situated, v. Saks Incorporated. As used herein, the term “Federal Court Action” means the putative class action filed in the Southern District of California as described in Recital A. Plaintiff’s complaint alleged that advertisements of discounts on Saks Fifth Avenue branded merchandise at Saks OFF 5TH’s stores, and the Saksoff5th.com website (collectively, the “Saks OFF 5TH Stores”) were false and/or deceptive and improperly led consumers to believe they were receiving a discount on their purchase. Based upon those allegations, the complaint asserted claims for violation of California’s Unfair Competition Law, Business and Professions Code §§ 17200, et. seq. (the “UCL”), California’s False Advertising Law, Business and Professions Code §§ 17500, et. seq. (the “FAL”), and California’s Consumer Legal Remedies Act, Civil Code §§ 1750, et seq. (the “CLRA”).

B. WHEREAS, the Parties entered into a series of joint motions to extend Saks OFF 5TH’s deadline to file a responsive pleading to the Complaint, set deadlines for Plaintiff to file a first amended complaint, and for Saks OFF 5TH to file a responsive pleading to the first amended complaint to facilitate settlement discussions.

C. WHEREAS, on January 15, 2016, Plaintiff filed a first amended complaint. The first amended complaint added a claim for damages pursuant to the CLRA. Saks OFF 5TH filed a motion to dismiss and strike the first amended complaint on February 15, 2016, which the Court granted without prejudice on March 22, 2017.

D. WHEREAS, on April 21, 2017, Plaintiff filed the second amended complaint, which Saks OFF 5TH moved to dismiss on May 5, 2017.

E. WHEREAS, on June 15, 2017, the Parties stipulated to grant Plaintiff leave to file the third amended complaint. Saks OFF 5TH moved to dismiss the third amended complaint on July 17, 2017, which the Court granted with prejudice on December 1, 2017.

F. WHEREAS, on December 4, 2017, Plaintiff timely appealed, and on May 30, 2019, the Ninth Circuit reversed the dismissal and remanded. See *Nunez v. Saks OFF 5TH*, 771 F. App’x 401, 402 (9th Cir. 2019).

¹ Plaintiff erroneously named Saks Incorporated as Defendant in this matter; however, the proper Defendants in this case are Saks OFF 5TH LLC, Saks & Company LLC and Saks Fifth Avenue LLC. Saks OFF 5TH LLC, Saks & Company LLC and Saks Fifth Avenue LLC, therefore, are parties to this Settlement Agreement.

1 **G.** WHEREAS, on August 7, 2019, the Parties stipulated to grant Plaintiff leave to file
2 the Fourth Amended Class Action Complaint (“Fourth Amended Complaint”) filed on August 16,
3 2019. Saks OFF 5TH moved to dismiss and strike portions of the Fourth Amended Complaint on
4 October 1, 2019. The Court denied the motion to dismiss and granted in part Saks OFF 5TH’s
5 motion to strike. Saks OFF 5TH answered the Fourth Amended Complaint on June 30, 2023.
6 Thereafter, the Parties agreed to explore settlement discussions and mediation.

7 **H.** WHEREAS, in furtherance of settlement discussions and mediation, in July, 2023,
8 Saks OFF 5TH provided informal discovery to Plaintiff, including the number of potential Class
9 Members, the number of Class Members for whom Saks OFF 5TH maintains email addresses or
10 postal addresses, the average purchase price per item (in-store and online) during the Class Period,
11 and the average number of transactions per Class Member during the Class Period.

12 **I.** WHEREAS, on January 26, 2024, the Parties participated in a full-day mediation
13 with JAMS Mediator Robert A. Meyer (the “Mediator”), and, in the days following the mediation,
14 and through the Mediator’s continued involvement, the Parties ultimately agreed on the settlement
15 terms embodied in this Agreement.

16 **J.** WHEREAS, in preparation for mediation and thereafter, the Parties reviewed and
17 evaluated the relevant legal issues and facts related to the claims alleged by Plaintiff against Saks
18 OFF 5TH, Plaintiff and Plaintiff’s Counsel contend and believe the claims asserted in the
19 Complaint (defined in Section 1.12 below) have merit. Saks OFF 5TH has denied and continues
20 to deny any and all allegations of wrongdoing alleged in the Action (defined in Section 1.12 below)
21 and contends and believes the allegations and claims asserted by Plaintiff are without merit. Saks
22 OFF 5TH further denies that Plaintiff or any class members have suffered damages sufficient to
23 support a cause of action and denies that it would be possible or feasible to certify a class over Saks
24 OFF 5TH’s objection for other than settlement purposes. Nevertheless, the Parties have concluded
25 that litigation could be protracted and expensive and that it is desirable that the Action be fully and
26 finally settled in the manner and upon the terms and conditions set forth in this Agreement in order
27 to limit further expense, inconvenience, and uncertainty. The Parties also have considered the
28 uncertainties of trial and the benefits to be obtained under the Settlement and have considered the
costs, risks, and delays associated with the prosecution of this complex and time-consuming
litigation and the likely appeals of any rulings in favor of either Plaintiff or Saks OFF 5TH.

K. WHEREAS, in furtherance of the settlement process and as a material condition of
settlement, Plaintiff agreed to dismiss the Federal Court Action against Saks Incorporated and re-
file his claims against Saks OFF 5TH LLC, Saks & Company LLC, and Saks Fifth Avenue LLC in
the Superior Court of California, County of San Diego (the “Action”), asserting similar false and/or
deceptive advertising claims on behalf of the same Class (as defined below) and based on
allegations that Defendants’ advertisement of discounts on Saks Fifth Avenue-branded
merchandise at Saks OFF 5TH Stores improperly leads consumers to believe that they are receiving
a discount on their purchases.

L. WHEREAS, the Parties have jointly drafted this Settlement Agreement as the
formal settlement agreement contemplated by the Parties when they reached agreement on
settlement of the Action with the assistance of the Mediator. It is now the intention of the Parties
and the objective of this Settlement Agreement to avoid the costs of trial and settle and dispose of,
fully and completely and forever, any and all claims and causes of action in the Action.

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

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, Plaintiff, the Class, and Saks OFF 5TH agree to Settlement of the Action, subject to Court approval, under the following terms and conditions.

1. DEFINITIONS. In addition to the definitions included in the Recitals above, and in later sections of this Settlement Agreement, the following shall be defined terms for purposes of this Settlement Agreement. Some of the definitions in this section use terms that are defined later in the section. All defined terms are capitalized and listed in alphabetical order:

1.1 As used herein, the term “Action” means the lawsuit styled Randy Nunez v. Saks OFF 5TH LLC, Saks & Company LLC, and Saks Fifth Avenue LLC, filed in the Superior Court of California, County of San Diego following the dismissal of the Federal Court Action.

1.2 As used herein, the term “Authorized Claimant” means any Class Member, as defined in Section 1.8 below, who either: (a) receives direct notice of the proposed Settlement via email pursuant to Section 3.3(b) below, and does not validly request exclusion from the Class and the proposed Settlement pursuant to Section 3.9 below; or (b) validly and timely submits a complete and sufficient Claim Form, as defined in Section 1.4 below, and does not validly request exclusion from the Class and the proposed Settlement pursuant to Section 3.9 below.

1.3 As used herein, the term “Claim” means a request made by a Class Member in order to receive a Merchandise Certificate pursuant to the procedures stated in Section 3.5 below.

1.4 As used herein, the term “Claim Form” means the form a Class Member must complete and submit to receive a Merchandise Certificate as a Tier 2 Authorized Claimant, as defined in Sections 2.1(b) below. The Claim Form must be substantially similar to the form attached as Exhibit E.

1.5 As used herein, the term “Claimant” means any Class Member who submits a Claim Form under this Agreement.

1.6 As used herein, the term “Claims Administrator” means Simpluris Inc., and any successors to that entity, or another entity that Class Counsel designates (with approval from Defendants’ Counsel, whose approval shall not be unreasonably withheld), to administer the notice, claims, and Settlement relief distribution process provided for in the Settlement Agreement.

1.7 As used herein, the term “Claims Administrator Costs” means all costs incurred by the Claims Administrator, including the cost of providing notice to the Class and administering the Settlement, which will be paid in full by Class Counsel, except as provided in Section 3.6.

1.8 As used herein, the terms “Class” and “Class Members” mean all persons who made one or more Qualifying Purchases, as defined in Section 1.28 below, from Saks OFF 5TH Stores in California, online from www.saksoff5th.com or any other website URL currently or previously redirecting to www.saksoff5th.com, or on any Saks OFF 5TH mobile apps, with bill to or ship to addresses in California, one or more Saks Fifth Avenue-branded products at a discount from the advertised “Market Price” and have not received a refund or credit for their purchase(s) during the

1 Class Period, as defined in Section 1.9 below. Excluded from the Class is Defendants' Counsel,
2 Defendants' officers and directors, and the judge presiding over the Action.

3 1.9 As used herein, the term "Class Period" means: January 1, 2011 through the date
4 that the Court enters the Preliminary Approval Order, as defined in Section 1.26 below.

5 1.10 As used herein, the term "Class Released Claims" means all manner of actions,
6 causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises,
7 liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees, of any nature
8 whatsoever, known or unknown, in law or equity, fixed or contingent, which Class Members have
9 or may have, against the Released Parties, as defined in Section 1.29 below, arising out of or relating
10 to any of the acts, omissions or other conduct by Saks OFF 5TH that has been alleged or otherwise
11 referred to in the Complaint, or any preceding version thereof filed in the Action or in the Federal
12 Court Action, including, but not limited to, any and all claims related in any way to the
13 advertisement of prices by Saks OFF 5TH or any of its subsidiaries or affiliates at Saks OFF 5TH.

14 1.11 As used herein, the term "Class Releasers" means Plaintiff and all Class Members
15 who do not timely and sufficiently request to be excluded from the Class and the proposed
16 Settlement, and each of their respective successors, assigns, legatees, heirs, and personal
17 representatives.

18 1.12 As used herein, the term "Complaint" means the Complaint Plaintiff filed in the
19 Action, asserting claims on behalf of Plaintiff and the Class that are materially identical to, and that
20 are based on facts materially identical to, those asserted in Plaintiff's four amended complaints in
21 the Federal Court Action.

22 1.13 As used herein, the term "Court" means the Superior Court of California for the
23 County of San Diego.

24 1.14 As used herein, the term "Defendants" means Saks OFF 5TH LLC, Saks &
25 Company LLC, and Saks Fifth Avenue LLC.

26 1.15 As used herein, the terms "Defendants' Counsel" and "Saks OFF 5TH's Counsel"
27 mean the law firm of Morgan, Lewis & Bockius LLP.

28 1.16 As used herein, the term "Email Notice" means the legal notice summarizing the
proposed Settlement terms, as approved by Class Counsel, Saks OFF 5TH's Counsel, and the Court,
to be provided to Class Members via electronic mail pursuant to Section 3.3(b) below. The Email
Notice must be substantially similar to the form attached as Exhibit C.

1.17 As used herein, the term "Fairness Hearing" means the hearing(s) to be held by the
Court in the Action to consider and determine whether the proposed Settlement as contained in this
Settlement Agreement should be approved as fair, reasonable, and adequate, and whether the Final
Order and Judgment approving the Settlement contained in this Settlement Agreement, defined in
Sections 1.18 and 1.21 below, should be entered.

1.18 As used herein, the terms "Final Order" and "Order Granting Final Approval of
Class Settlement" mean the Court order granting final approval of the Settlement in the Action

1 following the Fairness Hearing. The proposed Final Order that Plaintiff submits to the Court for
2 approval must be substantially similar to the form attached as Exhibit F.

3 1.19 As used herein, the term “Final Settlement Date” means two Court days after the
4 Final Order and Final Judgment become “final.” For the purposes of this section, the Final Order
5 and Final Judgment will become “final” on the date upon which either of the following events
6 occurs: (a) if no timely motions for reconsideration and/or no appeals or other efforts to obtain
7 review have been filed, the expiration of thirty-one (31) calendar days after notice of the entry of
8 the Final Approval Order or Final Judgment in the Action is served on the Parties; or (b) in the
9 event that an appeal or other effort to obtain review has been initiated, the date after any and all
10 such appeals or other review(s) have been finally concluded in favor of the Final Order and Final
11 Judgment, any mandates have been returned to the Court, and the Final Order and Final Judgment,
12 and the ruling on any objection thereto, are no longer subject to review, whether by appeal, petitions
13 for rehearing, petitions for rehearing en banc, petitions for certiorari, or otherwise.

14 1.20 As used herein, the term “Full Notice” means the full legal notice of the proposed
15 Settlement terms, as approved by Class Counsel, Saks OFF 5THs counsel, and the Court, to be
16 provided to Class Members at the Settlement Website pursuant to Section 3.3(a) below. The Full
17 Notice must be substantially similar to the form attached as Exhibit B.

18 1.21 As used herein, the terms “Judgment” and “Final Judgment” mean a document
19 labeled by the Court as such and that has the effect of a judgment. The proposed Judgment that
20 Plaintiff will submit to the Court for entry must be substantially similar to the form attached as
21 Exhibit G.

22 1.22 As used herein, the term “Merchandise Certificate” means a single-use certificate
23 subject to the following terms and conditions which, at the election of the holder, may be applied
24 for up to \$20.00 (Twenty Dollars and No Cents) toward the purchase price of any single item at a
25 Saks OFF 5TH Store.

- 26 (a) Merchandise Certificates may only be used at Saks OFF 5TH Stores
27 (including the website www.saksoff5th.com).
- 28 (b) Merchandise Certificates are transferable, reusable, and stackable with other
promotions (but not with another Merchandise Certificate from this
Settlement).
- (c) Merchandise Certificates do not expire.
- (d) Merchandise Certificates have no cash value, are not usable for cash, and
may not be used to purchase gift cards or gift certificates

1.23 As used herein, the term “Named Plaintiff” means Randy Nunez in his individual
capacity only.

1.24 As used herein, the term “Payment Instructions” means (a) written directions from
Class Counsel for the payment of any amount, which shall specify: (i) as for any wire transfer
payment, the routing, account number, bank name and address and any other pertinent details
required for the transfer; and (ii) as for any check payment, the payee of the check; and (b) relevant

1 W-9 forms. The Payment Instructions shall be confirmed by voice phone call by Class Counsel to
2 Saks OFF 5TH's Counsel, and any payment to such voice confirmed wire instruction shall satisfy
3 any payment obligations set forth in this Agreement. The Parties agree to use reasonable efforts to
timely effect the payment contemplated by this section.

4 1.25 As used herein, the terms "Plaintiff's Counsel" and "Class Counsel" mean the law
5 firm of Lynch Carpenter, LLP and Scott+Scott Attorneys at Law, LLP.

6 1.26 As used herein, the terms "Preliminary Approval Order" or "Preliminary Approval
7 and Provisional Class Certification Order" mean the order provisionally certifying the Class for
8 Settlement purposes only, approving and directing notice, and setting the Fairness Hearing. The
proposed Preliminary Approval Order that Plaintiff submits to the Court for its approval must be
substantially similar to the form attached as Exhibit A.

9 1.27 As used herein, the term "Publication Notice" means a legal notice directing Class
10 Members to the Settlement Website, as approved by Class Counsel, Saks OFF 5TH's Counsel, and
11 the Court, to be provided to Class Members via print media pursuant to under Section 3.3 below.
The Publication Notice must be substantially similar to the form attached as Exhibit D.

12 1.28 As used herein, the term "Qualifying Purchase" means a purchase of any Saks Fifth
13 Avenue-branded product offered at an advertised discount from the advertised "Market Price" at a
14 Saks OFF 5TH Store in California, online from www.saksoff5th.com or any other website URL
15 currently or previously redirecting to www.saksoff5th.com, or on any Saks OFF 5TH mobile app,
with bill to or ship to addresses in California and during the Class Period that was not returned by,
or on behalf of, the purchaser, or otherwise.

16 1.29 As used herein, the term "Released Parties" means Saks OFF 5TH LLC, Saks &
17 Company LLC, Saks Fifth Avenue LLC, and Saks Holdings Inc. (f.k.a. Saks Incorporated), and
18 each of their direct or indirect parents, wholly or majority-owned subsidiaries, affiliated and related
19 entities, predecessors, successors and assigns, partners, privities, and any of their present and
former directors, officers, employees, shareholders, agents, representatives, attorneys, accountants,
insurers, and all persons acting by, through, under or in concert with it, or any of them.

20 1.30 As used herein, the term "Response Deadline" means the deadline by which Class
21 Members must submit a Claim Form, deliver objections or deliver requests for exclusion. The
22 Response Deadline shall be no later than one hundred and five (105) calendar days after entry of
the Preliminary Approval Order.

23 1.31 As used herein, the term "Settlement" means the Settlement of the Action and Class
Released Claims on the terms embodied in this Settlement Agreement.

24 1.32 As used herein, the term "Settlement Website" means the website that shall be
25 created for Settlement administration purposes and administered by the Claims Administrator.

26 1.33 As used herein, the term "Unknown Claims" means, with respect to the Class
27 Released Claims only, Plaintiff and the Class Members expressly waive and relinquish, to the
28 fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California
Civil Code, or any other similar provision under federal or state law, which provides:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
2 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT
3 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
4 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

5 As part of this agreement, Plaintiff and the Class Members state that they fully understand that the
6 facts on which the Settlement Agreement is to be executed may be different from the facts now
7 believed by Plaintiff, the Class Members, and Class Counsel to be true, and expressly accept and
8 assume the risk of this possible difference in facts and agree that the Settlement Agreement will
9 remain effective despite any difference in facts. Further, Plaintiff and the Class Members agree
10 that this waiver is an essential and material term of this release and the Settlement that underlies it,
11 and that without such waiver the Settlement would not have been accepted.

12 2. SETTLEMENT TERMS.

13 2.1 Tiers. Authorized Claimants will be categorized into the following tiers:

- 14 (a) Tier 1 Authorized Claimants: A Tier 1 Authorized Claimant is a Class
15 Member for whom: (i) Saks OFF 5TH maintains contact information in the
16 form of an email address; and (ii) does not submit a valid and timely written
17 exclusion request pursuant to Section 3.9 below. An otherwise qualified
18 Class Member does not need to submit a Claim Form or proof of Qualifying
19 Purchase(s) to be a Tier 1 Authorized Claimant.
- 20 (b) Tier 2 Authorized Claimants: A Tier 2 Authorized Claimant is a Class
21 Member who: (i) is not a Tier 1 Authorized Claimant; (ii) submits a valid
22 and timely Claim Form, together with acceptable proof of Qualifying
23 Purchase(s) in accordance with the Claims Procedures in Section 3.5(b) –
24 (d) below; and (iii) does not submit a valid and timely written exclusion
25 request pursuant to Section 3.9 below.

26 2.2 Award to the Class.

- 27 (a) Authorized Claimant Awards. If the Court approves the Settlement and
28 enters the Final Order, Tier 1 Authorized Claimants and Tier 2 Authorized
Claimants shall be awarded Merchandise Certificates as follows:
- (i) Tier 1 Authorized Claimants: Saks OFF 5TH shall issue and
distribute one (1) Merchandise Certificate to each Tier 1 Authorized
Claimant. The Merchandise Certificate shall be distributed to the
Tier 1 Authorized Claimant in accordance with Sections 2.3(a)
below.
- (ii) Tier 2 Authorized Claimants: Saks OFF 5TH shall issue and
distribute one (1) Merchandise Certificate to each Tier 2 Authorized
Claimant. The Merchandise Certificate shall be distributed to the
Tier 2 Authorized Claimant in accordance with Sections 2.3(b)

1 below. The Merchandise Certificates awarded to Tier 2 Authorized
2 Claimants shall not exceed \$1,500,000. If the claimed value of the
3 Merchandise Certificates exceeds \$1,500,000, the value of each
4 Merchandise Certificate shall be reduced pro rata.

5 2.3 Distribution of Merchandise Certificates. If the Court approves the Settlement of
6 this Action, enters the Final Approval Order and Judgment, and the Final Approval Order and
7 Judgment become final, then, no later than sixty (60) calendar days after the Final Settlement Date,
8 Saks OFF 5TH shall, either directly or through the Claims Administrator at Saks OFF 5TH's
9 election, distribute the Merchandise Certificates as follows:

10 (a) Tier 1 Authorized Claimants: One (1) Merchandise Certificate shall be
11 distributed to each Tier 1 Authorized Claimant by email sent to the email
12 address maintained by Saks OFF 5TH for the Tier 1 Authorized Claimant
13 used for direct notice pursuant to Section 3.3(b).

14 (b) Tier 2 Authorized Claimants: One (1) Merchandise Certificate shall be
15 distributed to each Tier 2 Authorized Claimant by email sent to the email
16 address provided by the Tier 2 Authorized Claimant on his or her Claim
17 Form.

18 2.4 Structural Relief. Defendants agree to abide by all regulations and California state
19 and federal statutes cited in the Fourth Amended Complaint and to be included in the Action as a
20 matter of agreement not reduced to injunction.

21 2.5 Payment of Attorneys' Fees and Costs, Claims Administrator Costs, and
22 Individual Settlement Award to Named Plaintiff. The Parties understand and agree that Saks
23 OFF 5TH will not pay more than \$1,800,000 (One Million and Eight Hundred Thousand Dollars)
24 in total for: Class Counsel's attorneys' fees and recoverable litigation expenses ("Attorneys' Fees
25 and Costs"), Named Plaintiffs' Individual Settlement Award (the "Individual Settlement Award"),
26 and the Claims Administrator Costs (collectively, the "Cash Payment"). The Parties understand and
27 agree that that the Class Counsel shall be responsible for payment of the Claims Administrator
28 Costs and distribution of the Individual Settlement Award from the \$1,800,000 Cash Payment
contemplated by this section. Named Plaintiff agrees that he will not seek an Individual Settlement
Award of greater than \$10,000.00 total. Saks OFF 5TH agrees not to object to Named Plaintiff's
request for Individual Settlement Award of up to a maximum payment of \$10,000.00 total. The
Parties further acknowledge that Plaintiff must petition the Court for approval of any award to Class
Counsel for Attorneys' Fees and Costs. Plaintiff and Class Counsel agree that Class Counsel will
not seek an award greater than \$1,790,000 (One Million and Seven Hundred and Ninety Thousand
Dollars). The Cash Payment, including the award to Class Counsel for Attorneys' Fees and Costs,
shall be made in two distributions: (1) \$200,000 shall be paid upon the occurrence of both of the
following: (a) the entry of the Preliminary Approval Order, and (b) Saks OFF 5TH's receipt of
Payment Instructions from Class Counsel; (2) \$1,600,000 shall be paid upon the occurrence of both
of the following event(s): (a) the Final Settlement Date, and (b) Saks OFF 5TH's receipt of
Payment Instructions from Class Counsel. Unless the Court orders a different timetable, any such
payment shall be made within thirty (30) calendar days of the occurrence of the later of these events
and shall be made to the law firm of Lynch Carpenter, LLP. Lynch Carpenter, LLP shall have
control over and responsibility to distribute any payment of fees and costs to Class Counsel

1 Scott+Scott Attorneys at Law, LLP or any other attorney or law firm that may claim entitlement to
2 fees and costs under this Settlement or as a result of the Action (each, an "Additional Counsel").
3 No interest shall be paid on the attorneys' fees and costs award. Saks OFF 5TH agrees not to object
4 to Class Counsel's request for up to a maximum payment of than \$1,790,000 (One Million and
5 Seven Hundred and Ninety Thousand Dollars) total for Attorneys' Fees and Costs. Plaintiff and
6 Class Counsel further agree that, in any event, Saks OFF 5TH will not be obligated to pay any
7 award to Class Counsel and any and all Additional Counsel in excess than \$1,790,000 (One Million
8 and Seven Hundred and Ninety Thousand Dollars) total for Attorneys' Fees and Costs.

9
10 2.6 Reduction in Named Plaintiff's Individual Settlement Award or Class
11 Counsel's Attorneys' Fees and Costs. The Attorneys' Fees and Costs award are to be paid
12 separate and apart from the award to the Class. A reduction by the Court or by an appellate court
13 of the Individual Settlement Award sought by the Named Plaintiff or Class Counsel's attorneys'
14 fees and costs award shall not affect any of the Parties' other rights and obligations under the
15 Settlement Agreement.

16 2.7 No Tax Liability. Under no circumstances will Saks OFF 5TH or Saks OFF 5TH's
17 Counsel have any liability for taxes or tax expenses under this Settlement Agreement. Plaintiff,
18 Named Plaintiff and/or Class Counsel are responsible for any taxes on any recovery or award.
19 Nothing in this Settlement Agreement, or statements made during the negotiation of its terms, shall
20 constitute tax advice by Saks OFF 5TH or Saks OFF 5TH's Counsel.

21 2.8 Claims Administrator Costs. Class Counsel shall bear all costs of providing notice
22 to the Class in the manner prescribed in Section 3.3 of this Settlement Agreement and all costs
23 associated with independent administration of benefits by the Claims Administrator, except as
24 provided in Section 3.6.

25 2.9 Release as to All Class Members. Effective immediately upon the Final Approval
26 Order and Judgment becoming final (as described in Section 1.19 above), Class Releasors, and each
27 of them, hereby waive and fully, finally and forever release and discharge any and all Class
28 Released Claims (including Unknown Claims) against all Released Parties, and each of them.

29 2.10 General Release by Named Plaintiff. In addition to the releases made by the Class
30 Members set forth in Section 2.9 above, effective immediately upon the Final Approval Order and
31 Judgment becoming final (as described in Section 1.19 above), Named Plaintiff, and each of his
32 successors, assigns, legatees, heirs, and personal representatives, hereby also waive and fully,
33 finally and forever generally release and discharge the Released Parties, and each of them, from all
34 manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
35 agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and
36 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent.

37 In addition, Named Plaintiff, and each of Named Plaintiff's respective successors, assigns,
38 legatees, heirs, and personal representatives, expressly waive and relinquish, to the fullest extent
39 permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code,
40 or any other similar provision under federal or state law, which provides:

41 A general release does not extend to claims that the creditor or releasing party does
42 not know or suspect to exist in his or her favor at the time of executing the release

1 and that, if known by him or her, would have materially affected his or her
2 settlement with the debtor or released party.

3 Named Plaintiff, and each of his respective successors, assigns, legatees, heirs, and personal
4 representatives, fully understands that the facts on which the Settlement Agreement is to be
5 executed may be different from the facts now believed by Named Plaintiff and Plaintiff's Counsel
6 to be true and expressly accepts and assumes the risk of this possible difference in facts and agrees
7 that the Settlement Agreement will remain effective despite any difference in facts. Further, Named
8 Plaintiff, and each of his respective successors, assigns, legatees, heirs, and personal
9 representatives, agree that this waiver is an essential and material term of this release and the
10 Settlement that underlies it and that without such waiver the Settlement would not have been
11 accepted.

12 2.11 No Admission of Liability or Wrongdoing. This Settlement Agreement reflects
13 the Parties' compromise and Settlement of disputed claims. This Settlement Agreement's
14 constituent provisions, and any and all drafts, communications, and discussions relating thereto,
15 shall not be construed as or deemed to be evidence of an admission or concession of any point of
16 fact or law (including, but not limited to, matters respecting Class certification) by any person,
17 including Saks OFF 5TH, and shall not be offered or received in evidence or requested in discovery
18 in this Action or any other action or proceeding as evidence of an admission or concession. Saks
19 OFF 5TH has denied and continues to deny each of the claims and contentions alleged by Plaintiff
20 in the Action. Saks OFF 5TH has repeatedly asserted and continues to assert defenses thereto, and
21 has expressly denied and continues to deny any wrongdoing or legal liability arising out of any of
22 the facts or conduct alleged in the Action.

23 3. CLASS SETTLEMENT PROCEDURES.

24 3.1 Cooperation to Obtain Court Approval. The Parties will jointly take all
25 reasonable steps necessary to secure the Court's Approval of the Settlement and this Settlement
26 Agreement.

27 3.2 Preliminary Approval and Provisional Class Certification. Plaintiff shall file his
28 motion for preliminary approval of the Settlement Agreement as soon as feasibly possible. The
motion for preliminary approval of the Class action Settlement and provisional Class certification
shall request the Court to:

- 29 (a) preliminarily approve this Settlement Agreement.
- 30 (b) preliminarily approve the form, manner, and content of the Full Notice,
31 Email Notice, Publication Notice, and Claim Form described in Sections 3.3
32 and 3.5 below, and attached as Exhibits B - E;
- 33 (c) set the date and time of the Fairness Hearing;
- 34 (d) provisionally certify the Class under California Rules of Court,
35 rule 3.769(d), for Settlement purposes only;

- 1 (e) stay all proceedings in the Action against Saks OFF 5TH until the Court
2 renders a final decision on approval of the Settlement and sets a briefing
3 schedule for the papers in support of the Final Order;
- 4 (f) conditionally appoint Named Plaintiff as the Class representative for
5 Settlement purposes only; and
- 6 (g) conditionally appoint the law firms of Lynch Carpenter, LLP and
7 Scott+Scott Attorneys at Law LLP as Class Counsel for Settlement purposes
8 only.

9 The proposed Preliminary Approval and Provisional Class Certification Order shall be substantially
10 similar to the form attached as Exhibit A. Class Counsel shall draft the motion papers and give
11 Saks OFF 5TH's Counsel drafts of the motion and proposed order for preliminary approval and
12 provisional Class certification to review before the motion's filing and service date/deadline. Saks
13 OFF 5TH shall be permitted, but not required, to file its own brief or statement of non-opposition
14 in support of the Preliminary Approval and Provisional Class Certification Order. The Parties agree
15 that, pending the hearing on the contemplated motion for preliminary approval of the Settlement
16 Agreement and provisional Class certification order: (a) if Saks OFF 5TH has not already filed a
17 responsive pleading, Saks OFF 5TH shall have an extension of time to answer or otherwise respond
18 to the Complaint in the Action, and; (b) the Parties shall not propound further discovery. In the
19 event the Court denies preliminary approval of the Settlement Agreement, the Parties agree they
20 will meet and confer regarding when Saks OFF 5TH's answer or other responsive pleading to the
21 Complaint in the Action will be due, and a schedule for conducting discovery.

22 3.3 Class Notice. Subject to the Court entering the Preliminary Approval Order, the
23 Parties agree that Saks OFF 5TH and the retained Claims Administrator will provide the Class with
24 notice of the proposed Settlement by the following methods:

- 25 (a) Settlement Website. The Claims Administrator will administer and update
26 the Settlement Website in accordance with the terms of this Settlement
27 Agreement. The Claims Administrator will post the Full Notice on an
28 Internet website ("Internet Posting") specifically created for the Settlement
of this Action. The Full Notice shall be substantially similar to the form
attached as Exhibit B. The Internet Posting will also contain the Claim
Form, Complaint, Settlement Agreement, and Preliminary Approval Order.
Within seven (7) court days of when Class Counsel files a motion for
attorneys' fees and costs, the Internet Posting will also post the fees and costs
motion. The Internet Posting shall be operative starting on or before forty-
five (45) calendar days after entry of the Preliminary Approval Order. The
Internet Posting shall remain active at least until the Final Settlement Date.
Class Counsel and Counsel for Saks OFF 5TH may agree on changes to the
format of the Settlement Website, and may agree to add additional
information to the Settlement Website. Information may only be removed
from the Settlement Website with approval of the Court.
- (b) Email Notice. Using information available to Saks OFF 5TH, Saks OFF
5TH shall use reasonable efforts to identify those Saks OFF 5TH customers

1 who may be Class Members and for whom it has an email address. The
2 Claims Administrator may be required to de-duplicate the information
3 provided by Saks OFF 5TH to isolate the customer email addresses for
4 purposes of sending the Email Notice. Saks OFF 5TH, by and through the
5 Claims Administrator, will send Email Notice to those Class Members for
6 whom Saks OFF 5TH has an email address. Saks OFF 5TH estimates it
7 maintains approximately 785,000 email addresses that may belong to Class
8 Members. The Email Notice will be substantially similar to the form
9 attached as Exhibit C, and will provide the web address of the Settlement
10 Website and an email and mailing address to contact the Claims
11 Administrator. Unless otherwise ordered by the Court, the Claims
12 Administrator will provide the Email Notice on or before sixty (60) calendar
13 days after entry of the Preliminary Approval Order. The Parties will request
14 the Court authorize the issuance of notice under this Section to those Class
15 Members who have previously opted out from receiving emails from Saks
16 OFF 5TH so as to ensure notice is provided.

- 11 (c) Digital Publication Notice. Unless otherwise ordered by the Court, within
12 sixty (60) calendar days after entry of the Preliminary Approval Order, Saks
13 OFF 5TH, through the Claims Administrator, will publish digital website
14 banner advertisements focused on providing notice to the estimated 961,000
15 additional Class Members in California (for whom Saks OFF 5TH does not
16 have contact information) to be arranged and agreed upon with the assistance
17 of the Claims Administrator, but which shall not disparage Defendants, use
18 Defendants' usual logos or trade dress or otherwise suggest they are
19 advertisements for Defendants. The text of the Publication Notice will be
20 substantially similar to the form attached as Exhibit D.

17 3.4 Proof of Notice. No later than ten (10) calendar days before the Fairness Hearing,
18 Class Counsel and the Claims Administrator will serve upon Saks OFF 5TH a declaration
19 confirming that notice to the Class has been provided in accordance with Section 3.3 of this
20 Settlement Agreement.

21 3.5 Claims Procedure.

- 22 (a) Procedure for Receiving Award as a Tier 1 Authorized Claimant. Tier 1
23 Authorized Claimants are not required to submit a Claim Form or proof of a
24 Qualifying Purchase to be included in the distribution of the Merchandise
25 Certificates and receive one (1) Merchandise Certificate. As set forth in
26 Section 2.3(a) above, Saks OFF 5TH shall, either directly or through the
27 Claims Administrator at Saks OFF 5TH's election, distribute one (1)
28 Merchandise Certificate to each Tier 1 Authorized Claimant.
- (b) Procedure for Receiving Award as a Tier 2 Authorized Claimant. To
receive one (1) Merchandise Certificate as a Tier 2 Authorized Claimant, an
eligible Class Member (i.e. a Class Member who is not a Tier 1 Authorized
Claimant and has made one or more Qualifying Purchase(s) during the Class
Period) shall submit a complete, valid and sufficient Claim Form, including

1 acceptable proof of Qualifying Purchase(s) during the Class Period as
2 described in Section 3.5(d) below, on or before the Response Deadline.

3 (c) Date of Submission. The Claim Form, together with acceptable proof of
4 Qualifying Purchase, may be submitted electronically through the
5 Settlement Website or by United States mail. The delivery date of a Claim
6 Form is deemed to be the date the Claim Form is received by the Claims
7 Administrator electronically through the Settlement Website, as evidenced
8 by the electronic transmission receipt, or, if the Claim Form is submitted by
9 the United States mail, the date the Claim Form is deposited in the United
10 States Mail, as evidenced by the postmark.

11 (d) Acceptable Proof of Qualifying Purchase(s). Acceptable proof of
12 Qualifying Purchase(s) includes (i) a receipt clearly showing the date of
13 purchase and the total amount of the purchase, or (ii) transaction data from
14 a credit or debit card or banking statement, including a printed statement,
15 screen shot from a banking or credit card company website or mobile app,
16 clearly showing the date of purchase and the total of the purchase. Copies of
17 such documents shall be attached to the Claim Form whether submitted
18 electronically through the Settlement Website or by United States mail.

19 3.6 Right to Verify Claim Forms and to Prevent Duplicate and Fraudulent Claims.
20 Defendants may review all submitted Claim Forms and proof of Qualifying Purchase(s) for
21 completeness, legibility, validity, accuracy, and timeliness. Defendants may employ adequate and
22 reasonable procedures and standards to prevent the approval of duplicative and fraudulent Claims.
23 Defendants may contact any Claimant, through the Claims Administrator, to request additional
24 information and documentation, including, but not limited to, information and documentation
25 sufficient to allow Defendants to: (a) verify that the information set forth in or attached to a Claim
26 Form is accurate and the Claimant is a Class Member; and (b) determine the validity of any Claim
27 and/or whether any Claim is duplicative or fraudulent. Defendants may employ the Claims
28 Administrator to verify Claim Forms and to prevent duplicate and fraudulent claims; provided,
however, Defendants bears the costs of verification.

3.7 Right to Verify Merchandise Certificates and Prevent Duplicate, Counterfeit
and Fraudulent Merchandise Certificates. Saks OFF 5TH and/or the Claims Administrator may
review any Merchandise Certificate presented at a Saks OFF 5TH store to determine that the
Merchandise Certificate is valid and has not expired and to prevent the use of duplicate, counterfeit
and fraudulent Merchandise Certificates. Saks OFF 5TH reserves the right to decline any
Merchandise Certificate that Saks OFF 5TH believes is invalid, has expired, is a duplicate, is
counterfeit or is fraudulent. In the event that a Merchandise Certificate presented at a Saks OFF
5TH store is declined and the presenting party disputes the decision, Saks OFF 5TH will make a
good faith attempt to resolve the dispute.

3.8 Objections. Any Class Member who has not submitted a timely written exclusion
request pursuant to Section 3.9 below and who wishes to object to the fairness, reasonableness, or
adequacy of the Settlement Agreement or the proposed Settlement, must file written objections
with the Court, with copies delivered to the Claims Administrator, Saks OFF 5TH's Counsel and
Class Counsel on or before the Response Deadline.

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

- (a) The delivery date of any written objection is deemed to be the date the objection is deposited in the U.S. Mail as evidenced by the postmark. It shall be the objector's responsibility to ensure receipt of any objection by the Claims Administrator, Saks OFF 5TH's Counsel, and Class Counsel.
- (b) Any written objections must contain: (i) the name and case number of the Action; (ii) the Class Member's full name, address, and telephone number; (iii) the words "Notice of Objection" or "Formal Objection"; (iv) in clear and concise terms, the legal and factual arguments supporting the objection; (iv) facts supporting the person's status as a Class Member (e.g., the date and location of his/her relevant purchases and description of item(s) purchased); (vi) the Class Member's signature and the date; and (vii) the following language immediately above the Class Member's signature and date: "I declare under penalty of perjury under the laws of the State of California that the foregoing statements regarding class membership are true and correct to the best of my knowledge."
- (c) Any Class Member who submits a written objection, as described in this section, has the option to, but is not required to, appear at the Fairness Hearing, either in person or through personal counsel hired at the Class Member's expense, to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, or to the award of attorneys' fees. However, Class Members (with or without their attorneys) intending to make an appearance at the Fairness Hearing must include on a timely and valid objection a statement substantially similar to "Notice of Intention to Appear." If an objecting Class Member (either with or without his or her attorney or through his or her attorney acting on his or her behalf) intends to speak at the Fairness Hearing in support of the objection, the Class Member's objection must state this intention in a "Notice of Intention to Appear" served on the Claims Administrator, Class Counsel, and Saks OFF 5TH's Counsel no later than 15 calendar days before the Fairness Hearing. If the objecting Class Member intends to appear at the Fairness Hearing with or through counsel, he or she must also identify the attorney(s) representing the objector who will appear at the Fairness Hearing and include the attorney(s) name, address, phone number, email address, and the state bar(s) to which counsel is admitted in the Notice of Intention to Appear. If the objecting Class Member (or the Class Member's Counsel) intends to request the Court to allow the Class Member to call witnesses at the Fairness Hearing, such request must be made in the Class Member's written objection, which must also contain a list of any such witnesses and a summary of each witness's expected testimony. Only Class Members who submit timely objections including Notices of Intention to Appear may speak at the Fairness Hearing. If a Class Member makes an objection through an attorney, the Class Member will be responsible for his or her personal attorneys' fees and costs.

3.9 Exclusion from the Class. Class Members may elect not to be part of the Class and not to be bound by this Settlement Agreement. To make this election, a Class Member must

1 send a signed letter or postcard to the Claims Administrator, postmarked no later than the Response
2 Deadline, stating: (a) the name and case number of the Action; (b) the full name, address, and
3 telephone number of the person requesting exclusion; and (c) a statement that he/she does not wish
4 to participate in the Settlement. No later than seven (7) calendar days before the filing date for
5 Plaintiff's motion in support of the Final Order and Judgment, the Claims Administrator shall serve
6 on Class Counsel and Saks OFF 5TH's Counsel a list of Class Members who have timely and
7 validly excluded themselves from the Class.

8
9 3.10 Final Order and Judgment. Before the Fairness Hearing, Plaintiff shall apply for
10 Court approval of a proposed Final Order and Judgment, substantially similar to the forms attached
11 as Exhibits F and G, respectively. Class Counsel shall draft the motion papers and give Saks OFF
12 5TH's Counsel drafts of the motion and proposed Final Order and Judgment to review at least seven
13 (7) calendar days before the motion's filing and service date/deadline. Saks OFF 5TH shall be
14 permitted, but is not required, to file its own brief or statement of non-opposition in support of the
15 Final Approval Order and Judgment. Subject to the Court's approval, the Final Order and Judgment
16 shall, among other things:

- 17 (a) finally approve the Settlement Agreement as fair, reasonable and adequate;
- 18 (b) finally certify the Class for Settlement purposes only, pursuant to California
19 Code of Civil Procedure § 382;
- 20 (c) find that the notice and the notice dissemination methodology complied with
21 the Settlement Agreement, California Code of Civil Procedure § 382,
22 California Rules of Court, rules 3.766 and 3.769, the California Constitution
23 and United States Constitution;
- 24 (d) issue orders related to the relief provided for in the Settlement Agreement,
25 including distribution of the Merchandise Certificates, payment of Plaintiff's
26 Individual Settlement Award, and payment of Class Counsel's Attorneys'
27 Fees and Costs;
- 28 (e) incorporate the releases set forth in Sections 2.9 and 2.10 above;
- (f) dismiss the Action with prejudice; and
- (g) retain jurisdiction over the Action and the Parties relating to the
administration, consummation, and/or enforcement of the Agreement and/or
the Final Order and Judgment, and for any other necessary purpose.

3.11 Judgment and Enforcement. The Parties agree that should the Court grant final
approval of the proposed Settlement and enter Judgment, the Judgment shall include a provision
for the retention of the Court's jurisdiction over the Parties to enforce the terms of this Settlement
Agreement.

4. Nullification of Settlement Agreement.

4.1 Parties Right to Revoke. The Parties have the right in their sole and exclusive
discretion to terminate and withdraw from the Settlement at any time prior to the Fairness Hearing

1 if: (a) the Court makes an order inconsistent with any of the terms of this Settlement Agreement
2 (except for an order reducing the Class Counsel award for Attorneys' Fees and Costs or the
3 Plaintiff's Individual Settlement Award); or (b) any court, following the signing of this Settlement
4 Agreement but before the Fairness Hearing, certifies, whether on a conditional basis or not, a class,
5 collective, or representative action involving a claim described in the Action by potential class
6 members covered by this Settlement; or (c) more than ten percent (10%) of Class Members, or
7 170,000 Class Members, timely and validly opt out of the Settlement; or (d) an opposing Party
8 breaches the Settlement Agreement, provided, however, the non-breaching Party shall provide
9 notice of the breach and a reasonable opportunity for the breaching Party to cure such breach.

7 4.2 Effect of Agreement if Settlement Is Not Approved. This Settlement Agreement
8 was entered into only for the purpose of Settlement. In the event that any of the following events
9 occurs, then this Settlement Agreement shall be deemed null and void ab initio and the Parties shall
10 be deemed restored to their respective positions status quo ante, and as if this Settlement Agreement
11 was never executed: (a) Saks OFF 5TH invokes its right to revoke pursuant to Section 4.1 above;
12 (b) the Court conditions its approval of either the Preliminary Approval Order or the Final Approval
13 Order and Judgment on any modifications of this Settlement Agreement that are not acceptable to
14 all Parties; (c) the Court does not approve the Settlement or enter the Final Approval Order and
15 Judgment; or (d) the Final Settlement Date does not occur for any reason. If any of the afore-
16 described events occurs, then: (a) the Preliminary Approval Order and all of its provisions will be
17 vacated by its own terms, including, but not limited to, vacating conditional certification of the
18 Class, conditional appointment of Named Plaintiff as Class representative, and conditional
19 appointment of Plaintiff's Counsel as Class Counsel; (b) the Action will revert to the status that
20 existed before the Named Plaintiff filed his motion for approval of the Preliminary Approval Order;
21 and (c) no term or draft of this Settlement Agreement, or any part of the Parties' Settlement
22 discussions, negotiations or documentation will have any effect or be admissible into evidence for
23 any purpose in the Action or any other proceeding. If the Court does not approve the Settlement
24 or enter the Final Approval Order and Judgment for any reason, or if the Final Settlement Date does
25 not occur for any reason, Saks OFF 5TH shall retain all its rights to object to the maintenance of
26 the Action as a class action, and nothing in this Settlement Agreement or other papers or
27 proceedings related to the Settlement shall be used as evidence or argument by any Party concerning
28 whether the Action may properly be maintained as a class action.

20 5. ADDITIONAL PROVISIONS.

21 5.1 Stay or Extension of Litigation Obligations. Parties shall cooperate in seeking a
22 stay or extension of any litigation obligations.

23 5.2 Change of Time Periods. All time periods and dates described in this Settlement
24 Agreement are subject to the Court's approval. These time periods and dates may be changed by
25 the Court or by the Parties' written agreement without notice to the Class.

26 5.3 Fair, Adequate, and Reasonable Settlement. The Parties believe this Settlement
27 is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement in
28 arms-length negotiations, taking into account all relevant factors, present and potential. This
Settlement was reached after extensive negotiations, including a full-day mediation session
conducted with the assistance of JAMS Mediator Robert A. Meyer, and subsequent
communications between the Mediator and the Parties.

1 5.4 Real Parties in Interest. In executing this Settlement Agreement, the Parties
2 warrant and represent that except as provided herein, neither the claims or causes of action released
3 herein nor any part thereof have been assigned, granted, or transferred in any way to any other
person, firm, or entity.

4 5.5 Voluntary Agreement. This Settlement Agreement is executed voluntarily and
5 without duress or undue influence on the part of or on behalf of the Parties, or of any other person,
firm, or entity.

6 5.6 Binding on Successors. This Settlement Agreement shall bind and inure to the
7 benefit of the respective successors, assigns, legatees, heirs, and personal representatives of each
of the Parties.

8 5.7 Parties Represented by Counsel. The Parties hereby acknowledge that they have
9 been represented in negotiations for and in the preparation of this Settlement Agreement by
10 independent counsel of their own choosing, that they have read this Settlement Agreement and have
11 had it fully explained to them by such counsel, and that they are fully aware of the contents of this
Settlement Agreement and of its legal effect.

12 5.8 Authorization. Each Party warrants and represents that there are no liens or claims
13 of lien or assignments in law or equity or otherwise of or against any of the claims or causes of
14 action released herein and, further, that each Party is fully entitled and duly authorized to give this
complete and final release and discharge.

15 5.9 Entire Agreement. This Settlement Agreement and attached exhibits contain the
16 entire agreement between the Parties and constitute the complete, final, and exclusive embodiment
17 of their agreement with respect to the Action. This Settlement Agreement is executed without
reliance on any promise, representation, or warranty by any Party or any Party's representative
other than those expressly set forth in this Settlement Agreement.

18 5.10 Construction and Interpretation. Neither the Parties nor any of the Parties'
19 respective attorneys shall be deemed the drafter of this Settlement Agreement for purposes of
20 interpreting any provision hereof in any judicial or other proceeding that may arise between or
21 among them. This Settlement Agreement has been, and must be construed to have been, drafted
by all the Parties to it, so that any rule that construes ambiguities against the drafter will have no
force or effect.

22 5.11 Headings and Formatting of Definitions. The various headings used in this
23 Settlement Agreement are solely for the convenience of the Parties and shall not be used to interpret
24 this Settlement Agreement. The headings and the formatting of the text in the definitions do not
define, limit, extend, or describe the Parties' intent or the scope of this Settlement Agreement.

25 5.12 Exhibits. The exhibits to this Settlement Agreement are integral parts of the
26 Settlement Agreement and Settlement and are hereby incorporated and made a part of this
Settlement Agreement as though fully set forth in the Settlement Agreement.

27 5.13 Modifications and Amendments. No amendment, change, or modification of this
28 Settlement Agreement or any part thereof shall be valid unless in writing signed by the Parties or
their counsel.

1 5.14 Governing Law. This Agreement is entered into in accordance with the laws of the
2 State of California and shall be governed by and interpreted in accordance with the laws of the State
3 of California, without regard to its conflict of law principles.

4 5.15 Further Assurances. Each of the Parties hereto shall execute and deliver any and
5 all additional papers, documents, and other assurances and shall do any and all acts or things
6 reasonably necessary in connection with the performance of its obligations hereunder to carry out
7 the express intent of the Parties hereto.

8 5.16 Agreement Constitutes a Complete Defense. To the extent permitted by law, this
9 Settlement Agreement may be pled as a full and complete defense to, and may be used as the basis
10 for an injunction against, any action, suit, or other proceedings that may be instituted, prosecuted,
11 or attempted in breach of or contrary to this Settlement Agreement.

12 5.17 Execution Date. This Settlement Agreement shall be deemed executed upon the
13 last date of execution by all of the undersigned.

14 5.18 Continuing Jurisdiction. On and after the Final Settlement Date, the Court shall
15 retain jurisdiction over the interpretation, effectuation, and implementation of this Settlement
16 Agreement.

17 5.19 Counterparts. This Settlement Agreement may be executed in counterparts, each
18 of which shall constitute an original, but all of which together shall constitute one and the same
19 instrument. The several signature pages may be collected and annexed to one or more documents
20 to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated
21 as originals.

22 5.20 Recitals. The Recitals are incorporated by this reference and are part of the
23 Settlement Agreement.

24 5.21 Inadmissibility. This Settlement Agreement (whether approved or not approved,
25 revoked, or made ineffective for any reason) and any proceedings or discussions related to this
26 Settlement Agreement are inadmissible as evidence of any liability or wrongdoing whatsoever in
27 any court or tribunal in any state, territory, or jurisdiction. Further, neither this Settlement
28 Agreement, the Settlement contemplated by it, nor any proceedings taken under it, will be construed
29 or offered or received into evidence as an admission, concession, or presumption that class
30 certification is appropriate, except to the extent necessary to consummate this Settlement
31 Agreement and the binding effect of the Final Order and Judgment.

32 5.22 No Conflict Intended. Any inconsistency between this Settlement Agreement and
33 the attached exhibits will be resolved in favor of this Settlement Agreement.

34 5.23 Disposal of the Class List. Within six (6) months after the Final Settlement Date
35 and completion of the administration, or in the event the Settlement is terminated pursuant to
36 Section 4, after providing Plaintiff's Counsel at least ten (10) calendar days advance notice of its
37 invocation of this section, all originals, copies, documents, transcriptions, iterations, or drafts of the
38 contact information for Class Members or any portion thereof shall, in Saks OFF 5TH's sole
39 discretion be either (i) returned to Saks OFF 5TH by the Claims Administrator or (ii) permanently

1 destroyed by the Claims Administrator, with the Claims Administrator certifying in writing that
2 such destruction has occurred.

3 5.24 Notices. Any notice, instruction, application for Court approval or application for
4 Court orders sought in connection with the Settlement Agreement or other document to be given
5 by any Party to any other Party in connection therewith, shall be in writing and delivered personally
6 or sent by registered or certified mail, postage prepaid, if to Saks OFF 5TH to the attention of Saks
7 OFF 5TH's Counsel, and if to Class Members to the attention of Class Counsel on their behalf.

CLASS COUNSEL	SAKS OFF FIFTH'S COUNSEL
<p>Todd D. Carpenter, Esq. LYNCH CARPENTER, LLP 1234 Camino del Mar Del Mar, California 92014</p>	<p>Joseph Duffy, Esq. MORGAN, LEWIS & BOCKIUS LLP 300 South Grand Avenue Twenty-Second Floor Los Angeles, California 90071</p>
<p>Erin Green Comite, Esq. SCOTT+SCOTT ATTORNEYS AT LAW LLP 156 South Main Street P.O. Box 192 Colchester, CT 06415</p>	<p>Gregory T. Parks, Esq. MORGAN, LEWIS & BOCKIUS LLP 2222 Market Street Philadelphia, PA 19103</p>

14 5.25 List of Exhibits: The following exhibits are attached to this Settlement Agreement:

15 Exhibit A: [Proposed] Preliminary Approval and Provisional Class Certification Order

16 Exhibit B: Full Notice

17 Exhibit C: Email Notice

18 Exhibit D: Digital Publication Notice

19 Exhibit E: Claim Form

20 Exhibit F: [Proposed] Order Granting Final Approval of Class Settlement

21 Exhibit G: [Proposed] Final Judgment

22
23
24 [This Space Left Blank. Signature Page to Follow]

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

IN WITNESS WHEREOF, the Parties hereto, acting by and through their respective Counsel of record, have so AGREED.

Dated: 5/17/2024, 2024

DocuSigned by:
Randy Nunez
781480F5BA6641C...
RANDY NUNEZ

Dated: 5/16/2024, 2024

DocuSigned by:
SAKS OFF 5TH LLC
Phoebe Johnson
B7AE11810DCB4CD...
By: Phoebe Johnson
Its: CFO

Dated: 5/16/2024, 2024

DocuSigned by:
SAKS COMPANY LLC
jennifer bewley
C2B39A2B93BE4C2...
By: jennifer bewley
Its: CFO

Dated: 5/16/2024, 2024

DocuSigned by:
SAKS FIFTH AVENUE LLC
jennifer bewley
C2B39A2B93BE4C2...
By: jennifer bewley
Its: CFO

EXHIBIT A
[PROPOSED] PRELIMINARY APPROVAL AND PROVISIONAL CLASS CERTIFICATION
ORDER

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

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

Plaintiff,

vs.

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.

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

On _____ (month) ____ (day), 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

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

1 Avenue LLC (“Saks OFF 5TH” or “Defendants”), and falls within the range of possible approval
2 as fair, reasonable and adequate.

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

10 3. For settlement purposes only, the Class is so numerous that joinder of all Class
11 Members is impracticable.

12 4. For settlement purposes only, Plaintiff’s claims are typical of the Class’s claims.

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

15 6. For settlement purposes only, Class Certification is superior to other available
16 methods for the fair and efficient adjudication of the controversy.

17 **IT IS ORDERED THAT:**

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

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

23 3. **Claim for a Merchandise Certificate.** Tier 1 Authorized Claimants are not
24 required to submit a Claim Form or proof of a Qualifying Purchase during the Class Period to be
25 included in the distribution of the Merchandise Certificates and receive one (1) Merchandise
26 Certificate. To receive one (1) Merchandise Certificate as a Tier 2 Authorized Claimant, an eligible
27 Class Member shall timely submit a complete, valid and sufficient Claim Form, including
28

1 acceptable proof of Qualifying Purchase(s) during the Class Period, no later than one hundred and
2 five (105) calendar days after entry of this Order.

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

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

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

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

19 **7. Requesting Exclusion.** Class Members who want to be excluded from the
20 Settlement must send a signed letter or postcard to the Claims Administrator stating: (a) the name
21 and case number of the Action; (b) the full name, address, and telephone number of the person
22 requesting exclusion; and (c) a statement that the person does not wish to participate in the
23 Settlement, postmarked no later than one hundred and five (105) calendar days after entry of this
24 order.

25 **8. Provisional Certification.** The Class is provisionally certified as all persons,
26 during the Class Period (i.e. from January 1, 2011, to the date the Court enters the Preliminary
27 Approval Order), who purchased one or more Saks Fifth Avenue-branded products at a Saks OFF
28 5TH store in California, online from www.saksoff5th.com or any other website URL currently or

1 previously redirecting to www.saksoff5th.com, or on any Saks OFF 5TH mobile apps, with bill to
2 or ship to addresses in California at a discount from the advertised “Market Price” and have not
3 received a refund or credit for their purchase(s) during the Class Period. Excluded from the Class
4 is Saks OFF 5TH’s Counsel, Saks OFF 5TH’s officers and directors, and the judge presiding over
5 the Action.

6 9. **Conditional Appointment of Class Representatives and Class Counsel.** Plaintiff
7 Randy Nunez is conditionally certified as the Class Representative to implement the Parties’
8 settlement in accordance with the Settlement Agreement. The law firms of Scott + Scott Attorneys
9 at Law LLP and Lynch Carpenter, LLP are conditionally appointed as Class Counsel. Plaintiff and
10 Class Counsel must fairly and adequately protect the Class’s interests.

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

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

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

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

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

26 15. **Fairness Hearing.** On _____ (month) ____ (day), 2024, at _____, this
27 Court will hold a Fairness Hearing to determine whether the Settlement Agreement should be
28

1 finally approved as fair, reasonable, and adequate. Based on the date of this Order and the date of
2 the Fairness Hearing, the 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	60 calendar days after entry of this Order
Last day for Plaintiffs to file fee petition	90 calendar days after entry of this Order
Last day for Class Members to file a claim, request exclusion or object to the Settlement	105 calendar days after entry of this Order
Last day for Parties to file briefs in support of the Final Order and Judgment	10 calendar days before Fairness Hearing

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

13
14 DATED: _____ San Diego Superior Court Judge

EXHIBIT B
FULL NOTICE

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

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

Plaintiff,

vs.

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

Defendants.

No.

IF YOU SHOPPED AT A SAKS OFF 5TH STORE OR ONLINE AT WWW.SAKSOFF5TH.COM WHILE IN CALIFORNIA BETWEEN JANUARY 1, 2011 AND [MONTH] [DAY], [YEAR], YOU MAY BE ELIGIBLE TO RECEIVE A **MERCHANDISE CERTIFICATE FOR UP TO \$20 OFF**, USABLE TOWARD FUTURE PURCHASES AT A SAKS OFF 5TH STORE OR ONLINE.

A STATE COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER.

A settlement (“Settlement”) has been proposed in the class action lawsuit referenced above pending in the Superior Court of California, County of San Diego (the “Action”). If the Court gives final approval to the Settlement, Saks OFF 5TH LLC, Saks & Company LLC, and Saks Fifth Avenue LLC (collectively, “Saks OFF 5TH”) will provide, for each Class Member who made a Qualifying Purchase during the Class Period and either receives direct notice via email, or properly and timely completes and submits a Claim Form with proof of Qualifying Purchase, one Merchandise Certificate, which, at the election of the holder, may be applied for up to \$20.00 toward future purchases at a Saks OFF 5TH store or online at www.saksoff5th.com.

Your legal rights are affected whether you act or don’t act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

<p>SUBMIT A CLAIM FORM</p>	<p>If you received direct notice of this Settlement via email, and made one or more Qualifying Purchase(s) between January 1, 2011 and _____, 2024 (the “Class Period”): you will receive one (1) Merchandise Certificate without submitting a Claim Form. If you did not receive direct notice of this Settlement via email and made one or more Qualifying Purchase(s) during the Class Period: You must submit a Claim Form and proof of Qualifying Purchase to receive one (1) Merchandise Certificate.</p> <p>Visit the Settlement website located at _____ to obtain a Claim Form.</p>	<p>Deadline: _____</p>
<p>EXCLUDE YOURSELF</p>	<p>If you exclude yourself from the Settlement, you will not receive a Merchandise Certificate under the Settlement. Excluding yourself is the only option that allows you to bring or maintain your own lawsuit against Saks OFF 5TH for the allegations in the Action ever again.</p>	<p>Deadline: _____</p>
<p>OBJECT</p>	<p>You may file a written objection telling the Court why you object to (i.e., don’t like) the Settlement and think it shouldn’t be approved. Submitting an objection does not exclude you from the Settlement.</p>	<p>Deadline: _____</p>
<p>GO TO THE “FAIRNESS HEARING”</p>	<p>The Court will hold a “Fairness Hearing” to consider the Settlement, the request for attorneys’ fees and costs of the lawyers who brought the Action, and the Named Plaintiff’s request for a service award for bringing the Action.</p> <p>You may, but are not required to, speak at the Fairness Hearing about any objection you filed to the Settlement. If you intend to speak at the Fairness Hearing, you must also submit a “Notice of Intention to Appear” indicating your intent to do so.</p>	<p>Hearing Date and Time: _____</p>

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING	<p>If you received direct notice of this Settlement via email, and made one or more Qualifying Purchase(s) during the Class Period: If you do nothing, and the Court approves the Settlement, you will receive one (1) Merchandise Certificate. You will also give up your right to object to the Settlement and you will be not be able to be part of any other lawsuit about the legal claims in this case. If you did not receive direct notice of this Settlement via email and made one or more Qualifying Purchase(s) during the Class Period: If you do nothing, and the Court approves the Settlement, you will not receive a Merchandise Certificate. You will also give up your right to object to the Settlement and you will be not be able to be part of any other lawsuit about the legal claims in this case.</p>	N/A
-------------------	--	-----

- These rights and options—**and the deadlines to exercise them**—are explained in more detail below.
- The Court in charge of this Action has preliminarily approved the Settlement and must decide whether to give final approval to the Settlement. The relief provided to Class Members will be provided only if the Court gives final approval to the Settlement and, if there are any appeals, after the appeals are resolved in favor of the Settlement. *Please be patient.*

WHAT THIS NOTICE CONTAINS

BACKGROUND INFORMATION##

1. Why did I get this notice?
2. What is this lawsuit about?
3. Why is this a class action?
4. Why is there a Settlement?
5. How do I know if I am part of the Settlement?

6. I'm still not sure if I am included.
THE PROPOSED SETTLEMENT.....##
7. What relief does the Settlement provide to the Class Members?
HOW TO RECEIVE A MERCHANDISE CERTIFICATE – SUBMITTING A CLAIM FORM.....##
8. How can I get a Merchandise Certificate(s)?
9. When will I get my Merchandise Certificate(s)?
THE LAWYERS IN THIS CASE AND THE REPRESENTATIVE PLAINTIFFS.##
10. Do I have a lawyer in this case?
11. How will the lawyers be paid?
12. Will the Named Plaintiff receive any compensation for his efforts in bringing this Action?
DISMISSAL OF ACTION AND RELEASE OF ALL CLAIMS.....##
13. What am I giving up to obtain relief under the Settlement?
HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT.....##
14. How do I exclude myself from the Settlement?
HOW TO OBJECT TO THE SETTLEMENT.....##
15. How do I tell the Court that I disagree with the Settlement?
16. What is the difference between excluding myself and objecting to the Settlement?
FAIRNESS HEARING.....##
17. What is the Fairness Hearing?
18. When and where is the Fairness Hearing?
19. May I speak at the hearing?
ADDITIONAL INFORMATION.....##
20. How do I get more information?
21. What if my address or other information has changed or changes after I submit a Claim Form?

BACKGROUND INFORMATION

1. Why did I get this notice?

You received this Notice because a Settlement has been reached in this Action. You might be a member of the Settlement Class and may be eligible for the relief detailed below.

This Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement,

including information about how you can see a copy of the Settlement Agreement (which defines certain capitalized terms used in this Notice), see Section 20 below.

2. *What is this lawsuit about?*

Plaintiff Randy Nunez (the “Named Plaintiff”) filed a lawsuit against Saks OFF 5TH on behalf of himself and all others similarly situated. The lawsuit alleges that Saks OFF 5TH engaged in deceptive advertising by advertising purportedly improper discounts on merchandise sold in its Saks OFF 5TH stores and online at www.saksoff5th.com.

Saks OFF 5TH denies each and every one of the allegations of unlawful conduct, any wrongdoing, and any liability whatsoever, and no court or other entity has made any judgment or other determination of any liability. Saks OFF 5TH further denies that any Class Member is entitled to any relief and, other than for Settlement purposes, Saks OFF 5TH denies that this Action is appropriate for certification as a class action.

The issuance of this Notice is not an expression of the Court’s opinion on the merits or the lack of merits of the Named Plaintiff’s claims in the Action.

For information about how to learn about what has happened in the Action to date, please see Section 20 below.

3. *Why is this a class action?*

In a class action lawsuit, one or more people called “Named Plaintiff(s)” (in this Action, Randy Nunez) sue on behalf of other people who allegedly have similar claims. For purposes of this proposed Settlement, one court will resolve the issues for all Class Members. The companies sued in this case, Saks OFF 5TH LLC, Saks & Company LLC, and Saks Fifth Avenue LLC, are called the Defendants.

4. *Why is there a Settlement?*

The Named Plaintiff has made claims against Saks OFF 5TH. Saks OFF 5TH denies that it has done anything wrong or illegal and admits no liability. The Court has **not** decided that the Named Plaintiff or Saks OFF 5TH should win this Action. Instead, both sides agreed to a Settlement. That way, they avoid the cost of a trial, and the Class Members will receive relief now rather than years from now, if at all.

5. *How do I know if I am part of the Settlement?*

The Court has decided that everyone who fits this description is a Class Member for purposes of the proposed Settlement: All persons, during the Class Period (from January 1, 2011, to the date the Court enters the Preliminary Approval Order), who purchased one or more Saks Fifth Avenue-branded products at a Saks OFF 5TH store in California, online at www.saksoff5th.com or any other website URL currently or previously redirecting to www.saksoff5th.com, or on any Saks OFF 5TH mobile apps, with bill to or ship to addresses in California at a discount from the advertised “Market Price,” and have not received a refund or credit for their purchase(s) during the Class Period (a “Qualifying Purchase”). Excluded from the Class is Saks OFF 5TH’s Counsel, Saks OFF 5TH’s officers and directors, and the judge presiding over the Action.

6. *I’m still not sure if I am included.*

If you are still not sure whether you are included, you can write the Claims Administrator for free help. The email address of the Claims Administrator is _____ and the U.S. postal (mailing) address is _____.

THE PROPOSED SETTLEMENT

7. *What relief does the Settlement provide to the Class Members?*

Saks OFF 5TH has agreed to provide each Class Member who received direct notice of this Settlement via email and does not timely request exclusion from or object to the Settlement (Tier 1 Authorized Claimant), or who timely and validly completes and submits a claim form and proof of Qualifying Purchase during the Class Period (Tier 2 Authorized Claimant), one (1) Merchandise Certificate which, at the election of the holder, may be applied for up to \$20.00 toward future purchases at a Saks OFF 5TH store or online at www.saksoff5th.com. Merchandise Certificates for Tier 2 Authorized Claimants will be capped at a value of \$1,500,000; if the claimed value of Merchandise Certificates to be distributed to Tier 2 Authorized Claimants exceeds \$1,500,000, the value of the Merchandise Certificates for Tier 2 Authorized Claimants will be reduced pro rata. Merchandise Certificates for Tier 1 Authorized Claimants are not capped by value.

Merchandise Certificates will be reusable, and stackable with other promotions, but may not be combined with another Merchandise Certificate from this Settlement. Merchandise Certificates may be used on items that are on sale. Merchandise Certificates shall not be redeemable for cash, will not be replaced if lost, stolen or damaged, and cannot be used to purchase gift cards or services. Merchandise Certificates will be transferable and will not expire.

HOW TO RECEIVE A MERCHANDISE CERTIFICATE – SUBMITTING A CLAIM FORM

8. *How can I get a Merchandise Certificate(s)?*

If you received direct notice of the Settlement by email notice, you need not do anything to receive one (1) Merchandise Certificate(s).

To qualify for one (1) Merchandise Certificate if you did not receive direct notice by email, you must send in a Claim Form and proof of Qualifying Purchase.

A Claim Form is available by clicking [HERE](#) or on the Internet at the website _____ . The Claim Form may be submitted electronically or by postal mail. Read the instructions carefully, fill out the form, and postmark it by _____ or submit it online on or before 11:59 p.m. (Pacific) on _____ .

9. *When will I get my Merchandise Certificate(s)?*

As described in Sections 17 and 18 below, the Court will hold a hearing on _____ at _____ , to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals. It's always uncertain when the appeals will be resolved, and resolving them can take time, perhaps more than a year. You can check on the progress of the case on the website dedicated to the Settlement at _____ . *Please be patient.*

THE LAWYERS IN THIS CASE AND THE REPRESENTATIVE PLAINTIFF

10. *Do I have a lawyer in this case?*

The Court has ordered that the law firm of Scott + Scott Attorneys at Law LLP and Lynch Carpenter, LLP (“Class Counsel”) will represent the interests of all Class Members. You will not be separately charged for these lawyers’ services. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. *How will the lawyers be paid?*

Saks OFF 5TH has agreed to pay Class Counsel’s claims administration costs, any incentive award to Plaintiff, and attorneys’ fees and costs up to \$**1,800,000**, subject to approval by the Court. You will not be required to pay any attorneys’ fees or costs. Please see paragraphs 2.6 and 2.7 of the Settlement Agreement, available [HERE](#), for additional details.

12. Will the Named Plaintiff receive any compensation for his efforts in bringing this Action?

The Named Plaintiff will request a service award of not more than \$10,000 total for his service as Class representative and his efforts in bringing the Action. The Court will make the final decision as to the amount to be paid to the Class representative.

DISMISSAL OF ACTION AND RELEASE OF ALL CLAIMS

13. What am I giving up to obtain relief under the Settlement?

If the Court approves the proposed Settlement, unless you exclude yourself from the Settlement, you will be releasing your claims against Saks OFF 5TH. This generally means that you will not be able to file a lawsuit, continue prosecuting a lawsuit, or be part of any other lawsuit against Saks OFF 5TH regarding the claims in the Action. The Settlement Agreement, available on the Internet at the website _____ contains the full terms of the release.

14. How do I exclude myself from the Settlement?

You may exclude yourself from the Class and the Settlement. If you want to be excluded, you must send a signed letter or postcard stating: (a) the name and case number of the Action; (b) your full name, address, and telephone number; and (c) a statement that you do not wish to participate in the Settlement, postmarked no later than _____ to the Claims Administrator at:

Nunez 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, Settlement
c/o _____

If you timely request exclusion from the Class, you will be excluded from the Class, you will not receive a Merchandise Certificate under the Settlement, you will not be bound by the judgment entered in the Action, and you will not be precluded from prosecuting any timely, individual claim against Saks OFF 5TH based on the conduct complained of in the Action.

15. How do I tell the Court that I disagree with the Settlement?

At the date, time, and location stated in Section 18 below, the Court will hold a Fairness Hearing to determine if the Settlement is fair, reasonable, and adequate, and to consider

Class Counsel's request for an award of attorneys' fees and costs, and the service award to the Named Plaintiff.

If you wish to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, you must file a written objection with the Court and deliver copies of the written objection to the Claims Administrator, Class Counsel, and Saks OFF 5TH's Counsel at the address set forth below no later than (*i.e.*, postmarked by) _____.

Nunez 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, Settlement
c/o _____

Any written objections must contain: (a) the name and case number of the Action; (b) the Class Member's full name, address, and telephone number; (c) the words "Notice of Objection" or "Formal Objection"; (d) in clear and concise terms, the legal and factual arguments supporting the objection; (e) facts supporting the person's status as a Class Member (e.g., the date and location of his/her relevant purchases and description of the item(s) purchased); (f) the Class Member's signature and the date; and (g) the following language immediately above the Class Member's signature and date: "I declare under penalty of perjury under the laws of the State of California that the foregoing statements regarding class membership are true and correct to the best of my knowledge." You may, but need not, submit your objection through counsel of your choice. If you do make your objection through an attorney, you will be responsible for your personal attorneys' fees and costs.

IF YOU DO NOT TIMELY MAKE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS AND WILL NOT BE ENTITLED TO SPEAK AT THE FAIRNESS HEARING.

If you submit a written objection, you may appear at the Fairness Hearing, either in person or through personal counsel hired at your expense, to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, or to the award of attorneys' fees. You are not required, however, to appear. If you, or your attorney, intend to make an appearance at the Fairness Hearing, you must include on your timely and valid objection a statement substantially similar to "Notice of Intention to Appear".

If you intend to appear at the Fairness Hearing through counsel, you must also identify the attorney(s) representing you who will appear at the Fairness Hearing and include the attorney(s) name, address, phone number, email address, and the state bar(s) to which your counsel is admitted. Also, if you intend to request the Court to allow you to call witnesses at the Fairness Hearing, such request must be made in your written objection, which must also contain a list of any such witnesses and a summary of each witness's expected testimony.

16. *What is the difference between excluding myself and objecting to the Settlement?*

Objecting is simply telling the Court that you disagree with something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

FAIRNESS HEARING

17. *What is the Fairness Hearing?*

The Court has preliminarily approved the Settlement and will hold a hearing to decide whether to give final approval to the Settlement. The purpose of the Fairness Hearing will be for the Court to determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class; to consider the award of attorneys' fees and expenses to Class Counsel; and to consider the request for a service award to the Named Plaintiff. You may attend, but you do not have to.

18. *When and where is the Fairness Hearing?*

On _____, 2024, at _____ Pacific, a hearing will be held on the fairness of the proposed Settlement. At the hearing, the Court will be available to hear any objections and arguments concerning the proposed Settlement's fairness. The hearing will take place before the Honorable _____ in Courtroom _____ of the Superior Court of California, County of San Diego, located at 325 S. Melrose Dr., Vista, CA 92081. The hearing may be postponed to a different date or time or location without notice. Please check _____ for any updates about the Settlement generally or the Fairness Hearing specifically. If the date or time of the Fairness Hearing changes, an update to the Settlement website will be the only way you will be informed of the change.

19. *May I speak at the hearing?*

At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement. As described above in Section 15, you may speak at the Fairness Hearing only if (a) you have timely submitted an objection, and (b) you have timely and validly provided a Notice of Intent to Appear.

If you have requested exclusion from the Settlement, you may not speak at the hearing.

ADDITIONAL INFORMATION

20. *How do I get more information?*

To see a copy of the Settlement Agreement, the Court's Preliminary Approval Order, Class Counsel's application for attorneys' fees and costs, and the operative complaint filed in the Action, please visit the Settlement website located at: _____. Alternatively, you

may contact the Claims Administrator at the email address _____ or the U.S. postal (mailing) address: _____.

This description of this Action is general and does not cover all of the issues and proceedings that have occurred. In order to see the complete file you should visit *****roa.sdcourt.ca.gov/roa/ or the Clerk's office at 330 West Broadway, San Diego, CA 92101. The Clerk will tell you how to obtain the file for inspection and copying at your own expense.

21. *What if my address or other information has changed or changes after I submit a Claim Form?*

It is your responsibility to inform the Claims Administrator of your updated information. You may do so at the address below:

Nunez 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, Settlement

DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.

Dated: _____ 2024

By: Order of the Superior Court of California

HONORABLE _____
SUPERIOR COURT JUDGE

EXHIBIT C
EMAIL NOTICE

To: _____

From: _____

Re: LEGAL NOTICE OF SETTLEMENT OF CLASS ACTION

IF YOU SHOPPED AT A SAKS OFF 5TH STORE LOCATED IN CALIFORNIA, ONLINE AT WWW.SAKSOFF5TH.COM OR ON THE SAKS OFF 5TH MOBILE APP WHILE IN CALIFORNIA BETWEEN JANUARY 1, 2011 AND [MONTH] [DAY], [YEAR], YOU MAY BE ELIGIBLE TO RECEIVE A **MERCHANDISE CERTIFICATE FOR UP TO \$20 OFF** FUTURE PURCHASES AT A SAKS OFF 5TH STORE OR ONLINE

Why did I get this notice? A settlement (“Settlement”) has been proposed in a class action lawsuit pending in the Superior Court of California, County of San Diego (“Court”) titled *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* (“Action”). According to available records, you might be a “Class Member.” The purpose of this Email Notice is to inform you of the Action and the Settlement so that you may decide what steps to take in relation to it.

What is the Action about? The Action was filed against Saks OFF 5TH LLC, Saks & Company LLC, and Saks Fifth Avenue LLC (“Saks OFF 5TH” or “Defendants”) by plaintiff Randy Nunez alleging Saks OFF 5TH engaged in deceptive advertising by advertising purportedly improper discounts on merchandise at Saks OFF 5TH stores located in California and online at www.saksoff5th.com. Saks OFF 5TH denies any wrongdoing and liability and both sides disagree on how much, if anything, the Class could have recovered after trial. **No court has decided which side is right. But both sides agreed to provide benefits to Class Members and resolve the case.**

Am I a Class Member? You are a “Class Member” if, between January 1, 2011 and [Month] [Day], [Year] (the “Class Period”), you purchased Saks Fifth Avenue-branded merchandise at a discount from the advertised “Market Price” at a Saks OFF 5TH store in California, online at www.saksoff5th.com or any other website URL currently or previously redirecting to www.saksoff5th.com, or on any Saks OFF 5TH mobile apps, with bill to or ship to addresses in California, and have not received a refund or credit for their purchase(s) during the Class Period (a “Qualifying Purchase”) and you are not Saks OFF 5TH’s Counsel, a Saks OFF 5TH officer or director, or the judge presiding over the Action.

What relief does the Settlement provide? If you are a Class Member, you are eligible to receive one (1) Merchandise Certificate good for a maximum value of \$20 for future purchases at a Saks OFF 5TH store or online at www.saksoff5th.com. **To receive one (1) Merchandise Certificate, you need not do anything in response to this email notice.** You will automatically receive a Merchandise Certificate via email at the termination of the Settlement proceedings.

What are my other options? If you don’t want to be legally bound by the Settlement, you must exclude yourself by _____, or you won’t be able to sue Saks OFF 5TH about the legal claims in the Action ever again. If you exclude yourself, you cannot receive a Merchandise Certificate(s) from this Settlement. If you stay in the Settlement, you may

object to it by _____. The detailed notice available at _____ explains how to request exclusion or object. The Court will hold a hearing on _____ at _____ Pacific to consider whether to approve the Settlement, and a request by the lawyers representing all Class Members (Lynch Carpenter, LLP) for \$1,800,000 in attorneys' fees and costs, which includes the Class representative's (Randy Nunez) request for not more than \$10,000 for his service and Claims Administrator's costs. You may ask to appear at the hearing, but you don't have to.

More information? For complete information about the Settlement, to view the Settlement Agreement, related Court documents and Claim Form, and to learn more about how to exercise your various options under the Settlement, visit _____. You may also write to the Claims Administrator at the email address _____ or the postal address _____.

EXHIBIT D
DIGITAL PUBLICATION NOTICE

Digital Noticing Ad Mockups

Created for Nunez v. Saks OFF 5TH




Website Banner Ads

CLASS ACTION NOTICE

If you purchased a Saks Fifth Avenue branded product from Saks OFF 5TH in California that was discounted from an advertised "Market Price" and haven't received a refund or credit, a class action settlement may affect your rights.

[Learn More](#)

SettlementWebsite.com




160x600 px

CLASS ACTION NOTICE

If you purchased a Saks Fifth Avenue branded product from Saks OFF 5TH in California that was discounted from an advertised "Market Price" and haven't received a refund or credit, a class action settlement may affect your rights.

[Learn More](#)

SettlementWebsite.com




300x600 px

Animated GIF Website Banner Ads

FRAME 1

CLASS ACTION NOTICE


If you purchased a Saks Fifth Avenue branded product from Saks OFF 5TH in California that was discounted from



FRAME 2

CLASS ACTION NOTICE


an advertised "Market Price" and haven't received a refund or credit, a class action settlement may affect your rights.



FRAME 3

CLASS ACTION NOTICE

SettlementWebsite.com [Learn More](#)




728x90 px

FRAME 1

CLASS ACTION NOTICE


If you purchased a Saks Fifth Avenue branded product from Saks OFF 5TH in California that was discounted from an advertised "Market Price"



FRAME 2

CLASS ACTION NOTICE


and haven't received a refund or credit, a class action settlement may affect your rights.



FRAME 3

CLASS ACTION NOTICE

SettlementWebsite.com [Learn More](#)



300x250 px

Google Search Ad

Sponsored

www.SettlementWebsite.com

Class Action Notice - Saks OFF 5TH Settlement

Did you buy a Saks Fifth Avenue branded item that was discounted from "Market Price?" A class action settlement may affect your rights.



EXHIBIT E
CLAIM FORM

NUNEZ v. SAKS OFF 5TH LLC, SAKS & COMPANY LLC, AND SAKS FIFTH AVENUE LLC, CLAIM FORM

YOU MUST SUBMIT YOUR CLAIM FORM NO LATER THAN _____.

PERSONAL INFORMATION. Please legibly print or type the following information requested below. *This information will be used to deliver your Merchandise Certificate and communicate with you if any problems arise with your claim.*

Name (first, middle, and last): _____

Residential Street Address: _____

City, State, and ZIP code: _____

Email Address: _____

Telephone Number: (_____) _____

CONFIRMATION OF CLASS MEMBERSHIP. I declare that I believe that, during the period of time between January 1, 2011 and [Date], I purchased from a Saks OFF 5TH store in California, online at ***.saksoff5th.com or any other website URL currently or previously redirecting to ***.saksoff5th.com, or on any Saks OFF 5TH mobile apps, with bill to or ship to addresses in California, Saks Fifth Avenue-branded merchandise at a discount from the advertised “Market Price,” which item was not returned by me, on my behalf or otherwise, for a refund or credit.

Please provide information about the purchase(s) that you are claiming above:

Approximate Month and Year of Purchase	Approximate Location (City) of Purchase	Approximation of Total Spent on Claimed Items

[Note for Claims Administrator: The online Claim Form should provide a means for the Class Member to upload a picture of a receipt. If the Class Member does not upload a receipt, the following disclosure should be provided.]

You have not uploaded any proofs of purchase or receipts. If you would like to mail them to the Claims Administrator to support your claim, please send them to _____.

The Claims Administrator and/or Saks OFF 5TH may verify your claim.

ACKNOWLEDGMENT. I have received notice of the class action Settlement in this case and I am a member of the class of persons described in the notice. I agree to release all the claims, known and unknown, stated in Section 2.9 of the Settlement Agreement. I submit to the jurisdiction of the Superior Court of California, County of San Diego, with regard to my claim and for purposes of enforcing the release of claims stated in the Settlement Agreement. I am aware that I can obtain a copy of the full notice and Settlement Agreement at _____ or by writing the Claims Administrator at the email address _____ or the postal address _____. I agree to furnish additional information to support this claim if required to do so.

IF SUBMITTED ELECTRONICALLY:

I agree that by submitting this Claim Form I certify under the penalty of perjury of the laws of the State of California that the foregoing is true and correct to the best of my knowledge and that checking this box constitutes my electronic signature on the date of its submission.

IF SUBMITTED BY U.S. MAIL:

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

Dated: _____

Signature: _____

EXHIBIT F
[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS SETTLEMENT

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

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

Plaintiff,

vs.

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.

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS SETTLEMENT**

On _____ (month) ____ (day), this Court heard plaintiff Randy Nunez’s motion for final approval of the class action settlement. This Court reviewed: (a) the motion and the supporting papers, including the Settlement Agreement and Release (“Settlement Agreement”);¹ (b) any objections filed with or presented to the Court; (c) the Parties’ responses to any objections; and (d) counsels’ arguments. Based on this review and the findings below, the Court found good cause to grant the motion.

FINDINGS:

1. Upon review of the record, the Court hereby finds that the Settlement Agreement is, in all respects, fair, adequate, and reasonable, and therefore approves it.

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

1 2. The Court also finds that extensive arm's-length negotiations have taken place, in
2 good faith, between Class Counsel and Saks OFF 5TH's Counsel resulting in the Settlement
3 Agreement. Parts of these negotiations were presided over by the experienced JAMS Mediator
4 Robert A. Meyer.

5 3. The Settlement Agreement provides substantial value to the Class in the form of
6 Merchandise Certificates.

7 4. Defendants provided notice to Class Members in compliance with the Settlement
8 Agreement, due process, and California Rules of Court, rules 3.766 and 3.769(f). The notices:
9 (i) fully and accurately informed Class Members about the lawsuit and Settlement; (ii) provided
10 sufficient information so that Class Members could decide whether to accept the benefits offered,
11 opt-out and pursue their own remedies, or object to the Settlement; (iii) provided procedures for
12 Class Members to submit written objections to the proposed Settlement, to appear at the hearing,
13 and to state objections to the proposed Settlement; and (iv) provided the time, date, and place of
14 the final Fairness Hearing.

15 5. The Parties adequately performed their obligations under the Settlement Agreement.

16 6. For the reasons stated in the Preliminary Approval of Class Settlement and
17 Provisional Class Certification Order, and having found nothing in any submitted objections that
18 would disturb these previous findings, this Court finds and determines that the proposed Class, as
19 defined below, meets all of the legal requirements for Class certification, for Settlement purposes
20 only, under California Code of Civil Procedure § 382.

21 7. An award of [\$1,790,000] in attorneys' fees and costs to Class Counsel is fair and
22 reasonable in light of the nature of this case, Class Counsel's experience and efforts in prosecuting
23 this Action, and the benefits obtained for the Class.

24 8. Incentive award to plaintiff Randy Nunez of [\$10,000] total is fair and reasonable
25 in light of: (a) Plaintiff's risks (including financial, professional, and emotional) in commencing
26 this action as the Class Representative; (b) the time and effort spent by Plaintiff in litigating this
27 action as the Class Representative; and (c) Plaintiff's public interest service.

28

1 **IT IS ORDERED THAT:**

2 1. **Class Members.** The Class Members are defined as:

3 All persons, from January 1, 2011 to the date the Court enters the Preliminary
4 Approval Order (“Class Period”), who purchased one or more Saks Fifth Avenue-
5 branded products from a Saks OFF 5TH store in California. online at
6 ***.saksoff5th.com or any other website URL currently or previously redirecting
7 to www.saksoff5th.com, or on any Saks OFF 5TH mobile apps, with bill to or ship
8 to addresses in California at a discount from the advertised “Market Price,” and have
9 not received a refund or credit for their purchase(s) during the Class Period.
10 Excluded from the Class is Saks OFF 5TH’s Counsel, Saks OFF 5TH’s officers and
11 directors, and the judge presiding over the Action.

12 2. **Binding Effect of Order.** This Order applies to all claims or causes of action settled
13 under the Settlement Agreement, and binds all Class Members, including those who did not
14 properly request exclusion under Paragraph 7 of the Preliminary Approval of Class Settlement and
15 Provisional Class Certification Order. This order does not bind persons who submitted timely and
16 valid Requests for Exclusion. Attached as Exhibit 1 is a list of persons who properly requested to
17 be excluded from the Settlement.

18 3. **Release.** Plaintiff and all Class Members who did not properly request exclusion
19 are: (a) deemed to have released and discharged Saks OFF 5TH and all other Released Parties from
20 all claims arising out of or asserted in this Action and claims released under the Settlement
21 Agreement; and (b) barred and permanently enjoined from asserting, instituting, or prosecuting,
22 either directly or indirectly, these claims. The full terms of the release described in this paragraph
23 are set forth in Sections 2.9 and 2.10 of the Settlement Agreement and are specifically incorporated
24 herein by this reference.

25 4. **Class Relief.** Saks OFF 5TH will issue one (1) Merchandise Certificate to each
26 (i) Class Member who received direct notice via email and who does not timely request to be
27 excluded from or object to the Settlement; and (ii) Class Member who submitted a valid and timely
28 Claim Form and proof of Qualifying Purchase according to the terms and timeline stated in the
Settlement Agreement.

5. **Attorneys’ Fees and Costs and Incentive Award.** Class Counsel is awarded
\$1,800,000 in fees and costs. This award shall include \$10,000 to Plaintiff Randy Nunez as an

1 Individual Settlement Award. Payment shall be made pursuant to the timeline stated in Section 2.5
2 of the Settlement Agreement.

3 6.

4 7. **Court's Jurisdiction.** Pursuant to the Parties' request, the Court will retain
5 jurisdiction over this action and the parties until final performance of the Settlement Agreement.

6

7 DATED: _____

_____ SUPERIOR COURT JUDGE

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT G
[PROPOSED] FINAL JUDGMENT

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

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

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

Plaintiff,

vs.

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.

[PROPOSED] FINAL JUDGMENT

The Court hereby issues its Final Judgment disposing of all claims based upon the Settlement Agreement entered between Randy Nunez (“Plaintiff”) and Saks OFF 5TH LLC, Saks & Company LLC, and Saks Fifth Avenue LLC (“Saks” or “Defendants”) and the Court’s Order Granting Final Approval of Class Settlement.

IT IS ORDERED AND ADJUDGED THAT:

- In the Order Granting Final Approval of Class Settlement, the Court granted final certification, for purposes of Settlement only, of a Class defined as: All persons, from January 1, 2011 to the date the Court enters the Preliminary Approval Order (“Class Period”), who purchased one or more Saks Fifth Avenue-branded products at a Saks OFF 5TH store in California, online at ***.saksoff5th.com or any other website URL currently or previously redirecting to ***.saksoff5th.com, or on any Saks OFF 5TH mobile apps, with bill to or ship to addresses in

1 California at a discount from the advertised “Market Price,” and have not received a refund or credit
2 for their purchase(s) during the Class Period. Excluded from the Class is Saks OFF 5TH’s Counsel,
3 Saks OFF 5TH’s officers and directors, and the judge presiding over the Action.

4 2. All persons who satisfy the Class definition above are “Class Members.” However,
5 persons who timely submitted valid requests for exclusion are not Class Members. The list of
6 excluded persons is attached hereto as Exhibit 1.

7 3. In the Order Granting Final Approval of Class Settlement, the Court found that
8 notice of the Settlement Agreement and Release (“Settlement Agreement”) was provided to Class
9 Members by email for Class Members for whom Saks OFF 5TH had a valid email address, and a
10 Digital Publication Notice in compliance with Section 3.3 of the Settlement Agreement, California
11 Rules of Court, rules 3.766 and 3.769(f), and due process.

12 4. Plaintiff Randy Nunez is awarded \$10,000 total as Individual Settlement Award,
13 which shall be paid from the attorneys’ fees and costs award to Class Counsel as set forth in
14 paragraph 5 herein.

15 5. Class Counsel (Scott + Scott Attorneys at Law LLP and Lynch Carpenter, LLP) is
16 awarded \$1,790,000 in attorneys’ fees and costs.

17 6. To each Class Member who either (i) received direct notice via email and did not
18 timely request exclusion from or objected to the Settlement or (ii) submitted a timely and valid
19 Claim Form and proof of Qualifying Purchase and did not timely request exclusion from or objected
20 to the Settlement, Saks OFF 5TH shall issue one (1) Merchandise Certificate pursuant to
21 Sections 2.2 and 2.3 of the Settlement Agreement, which is incorporated herein.

22 7. All Class Members who did not validly and timely request to be excluded from the
23 Settlement, and each of their respective successors, assigns, legatees, heirs, and personal
24 representatives, shall waive and forfeit, and be deemed to have fully, finally and forever released
25 and discharged all manner of action, causes of action, claims, demands, rights, suits, obligations,
26 debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs,
27 expenses, and attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed
28 or contingent, which they have or may have, arising out of or relating to any of the acts, omissions

1 or other conduct that have or could have been alleged or otherwise referred to in the Complaint, or
2 any preceding version thereof filed in the Action, including, but not limited to, any and all claims
3 related in any way to the advertisement of prices by Saks OFF 5TH or any of its subsidiaries or
4 affiliates (including Unknown Claims) (collectively, “Class Released Claims”) against
5 Defendants and each of their direct or indirect parents, wholly or majority-owned subsidiaries,
6 affiliated and related entities, predecessors, successors and assigns, partners, privities, and any of
7 their present and former directors, officers, employees, shareholders, agents, representatives,
8 attorneys, accountants, insurers, and all persons acting by, through, under or in concert with it, or
9 any of them (collectively “Released Parties”).

10 As used in this release, the term “Unknown Claims” means with respect to the Class
11 Released Claims only, Plaintiff and the Class Members expressly waive and relinquish, to the
12 fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California
13 Civil Code, and any other similar provision under federal or state law, which provides:

14 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
15 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
16 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
17 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
18 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**
19 **DEBTOR OR RELEASED PARTY.**

20 As part of this agreement, Plaintiff and the Class Members state that they fully understand
21 that the facts on which the Settlement Agreement is to be executed may be different from the facts
22 now believed by Plaintiff and the Class Members and the Class Counsel to be true, and expressly
23 accept and assume the risk of this possible difference in facts, and agree that the Settlement
24 Agreement will remain effective despite any difference in facts. Further, Plaintiff and the Class
25 Members agree that this waiver is an essential and material term of this release and the Settlement
26 that underlies it, and that without such waiver the Settlement would not have been accepted.

27 8. In addition to the releases made by the Class Members set forth above, Randy Nunez
28 makes the additional following general release of all claims, known or unknown: Randy Nunez
and his successors, assigns, legatees, heirs, and personal representatives release and forever
discharge the Released Parties, from all manner of action, causes of action, claims, demands, rights,

1 suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties,
2 losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law
3 or equity, fixed or contingent.

4 In addition, Randy Nunez and his successors, assigns, legatees, heirs, and personal
5 representatives, expressly waive and relinquish, to the fullest extent permitted by law, the
6 provisions, rights and benefits of Section 1542 of the California Civil Code, and any other similar
7 provision under federal or state law, which provides:

8 A general release does not extend to claims that the creditor or releasing party does
9 not know or suspect to exist in his or her favor at the time of executing the release
10 and that, if known by him or her, would have materially affected his or her
settlement with the debtor or released party.

11 Plaintiff fully understands that the facts on which the Settlement Agreement is to be
12 executed may be different from the facts now believed by Plaintiff and his Counsel to be true, and
13 expressly accepts and assumes the risk of this possible difference in facts, and agrees that the
14 Settlement Agreement will remain effective despite any difference in facts. Further, Plaintiff agrees
15 that this waiver is an essential and material term of this release and the Settlement that underlies it,
16 and that without such waiver the Settlement would not have been accepted.

17 9. All Class Members are bound by this Final Judgment, by the Order Granting Final
18 Approval of Class Settlement, and by the terms of the Settlement Agreement.

19 NOW, THEREFORE, the Court, finding that no reason exists for delay, hereby directs the
20 Clerk to enter this Final Judgment forthwith.

21
22 DATED: _____
23 SUPERIOR COURT JUDGE

24
25
26
27
28