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 8 CONSUMER ADVOCACY GROUP, INC.

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 10 **COUNTY OF LOS ANGELES**

12 CONSUMER ADVOCACY GROUP, INC.,
 13 in the public interest,

14 Plaintiff,

15 v.

16 SAKS FIFTH AVENUE, LLC, a
 17 Massachusetts Limited Liability Company;
 18 SAKS & COMPANY, LLC, a Delaware
 Limited Liability Company;
 19 GHBC GROUPE, INC., a Delaware
 Corporation;
 20 SAKS FIFTH AVENUE, INC., a
 21 Massachusetts Corporation;
 22 GILT GROUP, INC., a Business Entity Form
 Unknown;
 23 and DOES 1-30,

24 Defendants.

CASE NO.

COMPLAINT FOR PENALTY AND
 INJUNCTION

Violation of Proposition 65, the Safe
 Drinking Water and Toxic Enforcement
 Act of 1986 (*Health & Safety Code*, §
 25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL
 CASE (exceeds \$25,000)

1 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges three causes of action
2 against defendants SAKS FIFTH AVENUE, LLC; SAKS & COMPANY, LLC; GHBC
3 GROUPE, INC. SAKS FIFTH AVENUE, INC; GILT GROUPE INC., and DOES 1-30 as
4 follows:

5
6 **THE PARTIES**

- 7 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
8 organization qualified to do business in the State of California. CAG is a person within
9 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting
10 as a private attorney general, brings this action in the public interest as defined under
11 Health and Safety Code Section 25249.7, subdivision (d).
- 12 2. Defendant SAKS FIFTH AVENUE, LLC (“SAKS LLC”) is a Massachusetts Limited
13 Liability Company, doing business in the State of California at all relevant times herein.
- 14 3. Defendant SAKS & COMPANY, LLC (“SAKS CO”) is a Delaware Limited Liability
15 Company and doing business in the State of California at all relevant times herein.
- 16 4. Defendant GHBC GROUPE, INC., (“GHBC”) is a Delaware Corporation, doing business
17 in the State of California at all relevant times herein.
- 18 5. Defendant SAKS FIFTH AVENUE, INC., (“SAKS INC”) is a Massachusetts
19 Corporation, doing business in the State of California at all relevant times herein.
- 20 6. Defendant GILT GROUP, INC., (“GILT”) is a Business Entity Form Unknown doing
21 business in the State of California at all relevant times herein.
- 22 7. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-30,
23 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
24 Complaint to allege their true names and capacities when ascertained. Plaintiff is
25 informed, believes, and thereon alleges that each fictitiously named defendant is
26 responsible in some manner for the occurrences herein alleged and the damages caused
27 thereby.

1 8. At all times mentioned herein, the term “Defendants” includes SAKS LLC, SAKS CO,
2 GHBC, SAKS INC, GILT, and DOES 1-30.

3 9. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
4 times mentioned herein have conducted business within the State of California.

5 10. Upon information and belief, at all times relevant to this action, each of the Defendants,
6 including DOES 1-30, was an agent, servant, or employee of each of the other
7 Defendants. In conducting the activities alleged in this Complaint, each of the Defendants
8 was acting within the course and scope of this agency, service, or employment, and was
9 acting with the consent, permission, and authorization of each of the other Defendants.
10 All actions of each of the Defendants alleged in this Complaint were ratified and
11 approved by every other Defendant or their officers or managing agents. Alternatively,
12 each of the Defendants aided, conspired with and/or facilitated the alleged wrongful
13 conduct of each of the other Defendants.

14 11. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
15 Defendants was a person doing business within the meaning of Health and Safety Code
16 Section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
17 employees at all relevant times.

18 **JURISDICTION**

19 12. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
20 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
21 those given by statute to other trial courts. This Court has jurisdiction over this action
22 pursuant to Health and Safety Code Section 25249.7, which allows enforcement of
23 violations of Proposition 65 in any Court of competent jurisdiction.

24 13. This Court has jurisdiction over Defendants named herein because Defendants either
25 reside or are located in this State or are foreign corporations authorized to do business in
26 California, are registered with the California Secretary of State, or who do sufficient
27 business in California, have sufficient minimum contacts with California, or otherwise

1 intentionally avail themselves of the markets within California through their manufacture,
2 distribution, promotion, marketing, or sale of their products within California to render
3 the exercise of jurisdiction by the California courts permissible under traditional notions
4 of fair play and substantial justice.

5 14. Venue is proper in the County of Los Angeles because one or more of the instances of
6 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
7 because Defendants conducted, and continue to conduct, business in the County of Los
8 Angeles with respect to the consumer product that is the subject of this action.

9 **BACKGROUND AND PRELIMINARY FACTS**

10 15. In 1986, California voters approved an initiative to address growing concerns about
11 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
12 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
13 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
14 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections
15 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
16 from contamination, to allow consumers to make informed choices about the products
17 they buy, and to enable persons to protect themselves from toxic chemicals as they see
18 fit.

19 16. Proposition 65 requires the Governor of California to publish a list of chemicals known to
20 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
21 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
22 chemicals and chemical families. Proposition 65 imposes warning requirements and
23 other controls that apply to Proposition 65-listed chemicals.

24 17. All businesses with ten (10) or more employees that operate or sell products in California
25 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
26 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
27 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and
28

1 reasonable” warnings before exposing a person, knowingly and intentionally, to a
2 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

3 18. Proposition 65 provides that any person "violating or threatening to violate" the statute
4 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.

5 "Threaten to violate" means "to create a condition in which there is a substantial
6 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

7 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
8 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

9 19. Plaintiff identified certain practices of manufacturers and distributors of Di(2-
10 ethylhexyl)phthalate (“DEHP”)-bearing products of exposing, knowingly and
11 intentionally, persons in California to DEHP of such products without first providing
12 clear and reasonable warnings of such to the exposed persons prior to the time of
13 exposure. Plaintiff later discerned that Defendants engaged in such practice.

14 20. On January 1, 1988, the Governor of California added DEHP to the list of chemicals
15 known to the state to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to
16 Health and Safety Code Sections 25249.9 and 25249.10, twenty (20) months after
17 addition of DEHP to the list of chemicals known to the State to cause cancer, DEHP
18 became fully subject to Proposition 65 warning requirements and discharge prohibitions.

19 21. On October 24, 2003, the Governor of California added DEHP to the list of chemicals
20 known to the State to cause reproductive and developmental toxicity (*Cal. Code Regs.* tit.
21 27, § 27001(c)). DEHP is known to the State to cause developmental and male
22 reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
23 25249.10, twenty (20) months after addition of DEHP to the list of chemicals known to
24 the State to cause reproductive toxicity, DEHP became fully subject to Proposition 65
25 warning requirements and discharge prohibitions.

SATISFACTION OF PRIOR NOTICE

1
2 22. On or about May 22, 2019 Plaintiff gave notice of alleged violations of Health and Safety
3 Code Section 25249.6, concerning consumer products exposures, subject to a private
4 action to SAKS LLC, SAKS CO, SAKS INC., GHBC, GILT, and to the California
5 Attorney General, County District Attorneys, and City Attorneys for each city containing
6 a population of at least 750,000 people in whose jurisdictions the violations allegedly
7 occurred, concerning Plastic Cosmetic Bags.

8 23. On or about June 17, 2019 Plaintiff gave notice of alleged violations of Health and Safety
9 Code Section 25249.6, concerning consumer products exposures, subject to a private
10 action to SAKS LLC, SAKS CO, SAKS INC, GHBC, GILT, and to the California
11 Attorney General, County District Attorneys, and City Attorneys for each city containing
12 a population of at least 750,000 people in whose jurisdictions the violations allegedly
13 occurred, concerning Plastic Cosmetic Bags.

14 24. On or about September 6, 2019 Plaintiff gave notice of alleged violations of Health and
15 Safety Code Section 25249.6, concerning consumer products exposures, subject to a
16 private action to SAKS CO and to the California Attorney General, County District
17 Attorneys, and City Attorneys for each city containing a population of at least 750,000
18 people in whose jurisdictions the violations allegedly occurred, concerning ID and Card
19 Holder.

20 25. Before sending the notice of alleged violations, Plaintiff investigated the consumer
21 products involved, the likelihood that such products would cause users to suffer
22 significant exposures to DEHP, and the corporate structure of each of the Defendants.

23 26. Plaintiff's notice of alleged violation included Certificates of Merit executed by the
24 attorney for the noticing party, CAG. The Certificates of Merit stated that the attorney
25 for Plaintiff who executed the certificates had consulted with at least one person with
26 relevant and appropriate expertise who reviewed data regarding the exposures to DEHP,
27 the subject Proposition 65-listed chemical of this action. Based on that information, the
28

1 attorney for Plaintiff who executed the Certificates of Merit believed there was a
2 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
3 to the Certificates of Merit served on the Attorney General the confidential factual
4 information sufficient to establish the basis of the Certificates of Merit.

5 27. Plaintiff's notice of alleged violations also included Certificates of Service and a
6 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
7 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

8 28. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
9 gave notice of the alleged violations to SAKS LLC, SAKS CO, GHBC, SAKS INC,
10 GILT and the public prosecutors referenced in Paragraphs 22-24.

11 29. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
12 any applicable district attorney or city attorney has commenced and is diligently
13 prosecuting an action against the Defendants.

14 **FIRST CAUSE OF ACTION**

15 **(By CONSUMER ADVOCACY GROUP, INC. and against SAKS LLC, SAKS CO,**
16 **SAKS INC., GHBC, GILT, and DOES 1-10 for Violations of Proposition 65, The**
17 **Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§**
18 **25249.5, *et seq.*))**

19 **Beauty Accessories**

20 30. Plaintiff repeats and incorporates by reference paragraphs 1 through 29 of this complaint
21 as though fully set forth herein.

22 31. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
23 distributor, promoter, or retailer of Plastic Cosmetic Bags ("Cosmetic Bags I"), including
24 but not limited to: "FIFTH CITY;" "BODY:100%POLYVINYLCHLORIDE;"
25 "LINING:100%POLYESTER;" "MADE IN CHINA;" "978 SOF020 GOLD;" "NS;"
26 "\$9.99;" "8 11005 02599 4."

27 32. Cosmetic Bags I contain DEHP.

1 33. Defendants knew or should have known that DEHP has been identified by the State of
2 California as a chemical known to cause cancer and reproductive and developmental
3 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants
4 were also informed of the presence of DEHP in Cosmetic Bags I within Plaintiff's notice
5 of alleged violations further discussed above at Paragraph 22.

6 34. Plaintiff's allegations regarding Cosmetic Bags I concerns "[c]onsumer products
7 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
8 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
9 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
10 *25602(b)*. Cosmetic Bags I are consumer products, and, as mentioned herein, exposures
11 to DEHP took place as a result of such normal and foreseeable use.

12 35. Plaintiff is informed, believes, and thereon alleges that between May 22, 2016 and the
13 present, each of the Defendants knowingly and intentionally exposed their employees and
14 California consumers and users of Cosmetic Bags I, which Defendants manufactured,
15 distributed, or sold as mentioned above, to DEHP, without first providing any type of
16 clear and reasonable warning of such to the exposed persons before the time of exposure.
17 Defendants have distributed and sold Cosmetic Bags I in California. Defendants know
18 and intend that California consumers will use Cosmetic Bags I, thereby exposing them to
19 DEHP. Defendants thereby violated Proposition 65.

20 36. The principal routes of exposure are through dermal contact, ingestion and inhalation.
21 Persons sustain exposures by handling Cosmetic Bags I without wearing gloves or any
22 other personal protective equipment, or by touching bare skin or mucous membranes with
23 gloves after handling Cosmetic Bags I, as well as through direct and indirect hand to
24 mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed
25 from Cosmetic Bags I.

26 37. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
27 Proposition 65 as to Cosmetic Bags I have been ongoing and continuous, as Defendants
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- 1 engaged and continue to engage in conduct which violates Health and Safety Code
2 Section 25249.6, including the manufacture, distribution, promotion, and sale of
3 Cosmetic Bags I, so that a separate and distinct violation of Proposition 65 occurred each
4 and every time a person was exposed to DEHP by Cosmetic Bags I as mentioned herein.
- 5 38. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
6 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
7 violations alleged herein will continue to occur into the future.
- 8 39. Based on the allegations herein, Defendants are liable for civil penalties of up to
9 \$2,500.00 per day per individual exposure to DEHP from Cosmetic Bags I, pursuant to
10 Health and Safety Code Section 25249.7(b).
- 11 40. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
12 filing this Complaint.

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14 **SECOND CAUSE OF ACTION**

15 **(By CONSUMER ADVOCACY GROUP, INC. and against SAKS LLC, SAKS CO,**
16 **GHBC, SAKS INC, GILT, and DOES 11-20 for Violations of Proposition 65, The**
17 **Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§***
18 **25249.5, *et seq.*))**

19
20 **Cosmetic Bag**

- 21 41. Plaintiff repeats and incorporates by reference paragraphs 1 through 40 of this complaint
22 as though fully set forth herein.
- 23 42. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
24 distributor, promoter, or retailer of Plastic Cosmetic Bags (“Cosmetic Bags II”),
25 including but not limited to: ““FIFTH CITY;” “MADE IN CHINA;” “978 SOF021
26 PINK;” “811005026007.””
- 27 43. Cosmetic Bags II contain DEHP.
- 28 44. Defendants knew or should have known that DEHP has been identified by the State of
California as a chemical known to cause cancer and reproductive and developmental
toxicity and therefore was subject to Proposition 65 warning requirements. Defendants

1 were also informed of the presence of DEHP in Cosmetic Bags II within Plaintiff's notice
2 of alleged violations further discussed above at Paragraph 23.

3 45. Plaintiff's allegations regarding Cosmetic Bags II concerns "[c]onsumer products
4 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
5 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
6 exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, §
7 25602(b). Cosmetic Bags II are consumer products, and, as mentioned herein, exposures
8 to DEHP took place as a result of such normal and foreseeable use.

9 46. Plaintiff is informed, believes, and thereon alleges that between June 17, 2016 and the
10 present, each of the Defendants knowingly and intentionally exposed their employees and
11 California consumers and users of Cosmetic Bags II, which Defendants manufactured,
12 distributed, or sold as mentioned above, to DEHP, without first providing any type of
13 clear and reasonable warning of such to the exposed persons before the time of exposure.
14 Defendants have distributed and sold Cosmetic Bags II in California. Defendants know
15 and intend that California consumers will use Cosmetic Bags II, thereby exposing them to
16 DEHP. Defendants thereby violated Proposition 65.

17 47. The principal routes of exposure are through dermal contact, ingestion and inhalation.
18 Persons sustain exposures by handling Cosmetic Bags II without wearing gloves or any
19 other personal protective equipment, or by touching bare skin or mucous membranes with
20 gloves after handling Cosmetic Bags II, as well as through direct and indirect hand to
21 mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed
22 from Cosmetic Bags II.

23 48. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
24 Proposition 65 as to Cosmetic Bags II have been ongoing and continuous, as Defendants
25 engaged and continue to engage in conduct which violates Health and Safety Code
26 Section 25249.6, including the manufacture, distribution, promotion, and sale of
27 Cosmetic Bags II, so that a separate and distinct violation of Proposition 65 occurred
28

1 each and every time a person was exposed to DEHP by Cosmetic Bags II as mentioned
2 herein.

3 49. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
4 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
5 violations alleged herein will continue to occur into the future.

6 50. Based on the allegations herein, Defendants are liable for civil penalties of up to
7 \$2,500.00 per day per individual exposure to DEHP from Cosmetic Bags II, pursuant to
8 Health and Safety Code Section 25249.7(b).

9 51. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
10 filing this Complaint.

11 **THIRD CAUSE OF ACTION**

12 **(By CONSUMER ADVOCACY GROUP, INC. and against SAKS CO and DOES**
13 **21-30 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
14 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

15 **Women's Accessories**

16 52. Plaintiff repeats and incorporates by reference paragraphs 1 through 51 of this complaint
17 as though fully set forth herein.

18 53. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
19 distributor, promoter, or retailer of ID and Card Holder ("Card Holder"), including but
20 not limited to: "Leatherette ID Badge Holder "Ooh la la". "Saks Fifth Avenue New York,
21 NY 10281"; "Dept. 958, Style 110-017, Color Multi, Size No size"; "RN#92087,
22 CA#00234"; "UPC 8 43232 11091 4"; "Made in China".

23 54. Card Holder contains DEHP.

24 55. Defendants knew or should have known that DEHP has been identified by the State of
25 California as a chemical known to cause cancer and reproductive and developmental
26 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants
27 were also informed of the presence of DEHP in Card Holder within Plaintiff's notice of
28 alleged violations further discussed above at Paragraph 24.

1 56. Plaintiff's allegations regarding Card Holder concerns "[c]onsumer products
2 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
3 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
4 exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, §
5 25602(b). Card Holder is a consumer products, and, as mentioned herein, exposures to
6 DEHP took place as a result of such normal and foreseeable use.

7 57. Plaintiff is informed, believes, and thereon alleges that between September 6, 2016 and
8 the present, each of the Defendants knowingly and intentionally exposed their employees
9 and California consumers and users of Card Holder, which Defendants manufactured,
10 distributed, or sold as mentioned above, to DEHP, without first providing any type of
11 clear and reasonable warning of such to the exposed persons before the time of exposure.
12 Defendants have distributed and sold Card Holder in California. Defendants know and
13 intend that California consumers will use Card Holder, thereby exposing them to DEHP.
14 Defendants thereby violated Proposition 65.

15 58. The principal routes of exposure are through dermal contact, ingestion and inhalation.
16 Persons sustain exposures by handling Card Holder without wearing gloves or any other
17 personal protective equipment, or by touching bare skin or mucous membranes with
18 gloves after handling Card Holder, as well as through direct and indirect hand to mouth
19 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
20 Card Holder.

21 59. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
22 Proposition 65 as to Card Holder have been ongoing and continuous, as Defendants
23 engaged and continue to engage in conduct which violates Health and Safety Code
24 Section 25249.6, including the manufacture, distribution, promotion, and sale of Card
25 Holder, so that a separate and distinct violation of Proposition 65 occurred each and
26 every time a person was exposed to DEHP by Card Holder as mentioned herein.

1 60. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
2 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
3 violations alleged herein will continue to occur into the future.

4 61. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to DEHP from Card Holder, pursuant to
6 Health and Safety Code Section 25249.7(b).

7 62. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
8 filing this Complaint.

9 **PRAYER FOR RELIEF**

10 Plaintiff demands against each of the Defendants as follows:

- 11 1. A permanent injunction mandating Proposition 65-compliant warnings;
12 2. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);
13 3. Costs of suit;
14 4. Reasonable attorney fees and costs; and
15 5. Any further relief that the court may deem just and equitable.

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18 Dated: 01-24, 2020

YEROUSHALMI & YEROUSHALMI

19
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21 BY: 

Reuben Yeroushalmi
Attorneys for Plaintiff,
CONSUMER ADVOCACY GROUP, INC.