

JUDGE FURMAN

14 CV 9181

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

XIAO XIAO, JIALI CHEN, MAN XU,  
TIAN TIAN ZOU, individually and on behalf of  
all other similarly-situated individuals,

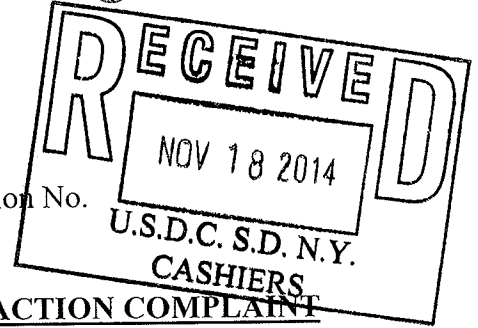
Plaintiffs,

v.

SEPHORA USA, INC., and LVMH MOET  
HENNESSY LOUIS VUITTON INC.,

Defendants.

Civil Action No.



CLASS ACTION COMPLAINT

Jury Trial Demanded

Plaintiffs Xiao Xiao, Jiali Chen, Man Xu and Tiantian Zou (collectively, "Plaintiffs"), on behalf of themselves and all other similarly-situated individuals, by and through undersigned counsel Wigdor LLP and Imbesi Christensen, as and for their Class Action Complaint against Defendants Sephora USA, Inc. and LVMH Moet Hennessy Louis Vuitton, Inc. (collectively, "Sephora," the "Company" or "Defendants"), hereby allege as follows:

NATURE OF THE CLAIMS

1. Despite significant media coverage of so-called "shop and frisk" cases – where companies have been accused of discriminating against minority customers while shopping in retail stores – Sephora has brazenly taken this practice to the internet. Specifically, Sephora has blocked and/or deactivated accounts of customers of perceived Chinese/Asian descent based on the ill-founded and discriminatory belief that all Chinese/Asian customers abuse discount sales to engage in bulk purchasing for re-sale.

2. This is a class action alleging unlawful discriminatory conduct by Sephora towards customers involved in its "Beauty Insider" rewards program who are and/or are perceived as being of Chinese/Asian descent (the "Class" or "Class Members"), in violation of

42 U.S.C. § 1981 (“Section 1981”) and 41 U.S.C. § 1982 (“Section 1982”) and in breach of customer contracts (“Breach of Contract”).

**JURISDICTION AND VENUE**

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1343 and 1367(a).

4. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. §§ 1391(b) and (c) because a substantial part of the events and omissions giving rise to this action occurred in this district and because Defendants have corporate offices that can be found and conduct business in this district.

**PARTIES**

5. Plaintiff Xiao Xiao is a woman of Chinese descent who resides in New York, New York. At all relevant times herein, Ms. Xiao was a member of Defendants’ Beauty Insider program and a customer of Sephora.

6. Plaintiff Jiali Chen is a woman of Chinese descent who resides in Columbus, Ohio. At all relevant times herein, Ms. Chen was a member of Defendants’ Beauty Insider program and a customer of Sephora.

7. Plaintiff Man Xu is a woman of Chinese descent who resides in Philadelphia, Pennsylvania. At all relevant times herein, Ms. Xu was a member of Defendants’ Beauty Insider program and a customer of Sephora.

8. Plaintiff Tiantian Zou is a woman of Chinese descent who resides in Queens, New York. At all relevant times herein, Ms. Zou was a member of Defendants’ Beauty Insider program and a customer of Sephora.

9. Defendant Sephora USA, Inc. is a Delaware corporation with its headquarters in San Francisco, California and corporate offices in New York, New York. Sephora owns and operates approximately 1,900 stores in 29 countries worldwide, with approximately 360 stores across North America.

10. Defendant LVMH Moet Hennessy Louis Vuitton Inc. (“LVMH”) is a Delaware corporation with its headquarters in New York, New York. LVMH owns Sephora, and Sephora is a wholly owned subsidiary of LVMH.

### **FACTUAL ALLEGATIONS**

#### **Overview**

11. Sephora is a retail cosmetics chain that operates approximately 1,900 stores in 29 countries worldwide, with over 360 stores across North America.

12. In 1998, Sephora opened its first U.S. store in New York, and launched its online store, [www.Sephora.com](http://www.Sephora.com), the following year.

13. In 2007, Sephora initiated a client loyalty program called “Beauty Insider,” a rewards based system, similar to frequent flyer mileage rewards programs. Customers enrolled in Beauty Insider accumulate points based on the value of purchases made in Sephora stores or online. Each dollar spent within the program correlates to a point earned.

14. Currently, Sephora offers three tiers of Beauty Insider membership.

15. First, any customer can enroll in the basic Beauty Insider program and earn points with their purchases.

16. Second, customers who spend a minimum of \$350 (earning 350 points) in a calendar year qualify for membership as a “Very Important Beauty Insider” or “VIB.” VIB is a

premium level of Beauty Insider that provides such members access to exclusive gifts, event invitations, and early access to select products.

17. Third, the most exclusive level of Beauty Insider members is called “VIB Rouge,” which is reserved for customers who spend \$1,000 or more (earning a minimum of 1,000 points) in a calendar year. VIB Rouge members are entitled to benefits beyond those of the basic and VIB members.

18. Annually, Sephora offers an exclusive five-day sale to VIB and VIB Rouge members, during which all purchases made by these customers in-person at Sephora stores or online are sold at a 20% discount.

19. According to marketing emails sent by Sephora, there are no restrictions on the items available for the 20% reduction and no limitations on the number or quantities of items a customer may purchase during the five-day period.

**The November 6 through 10, 2014 Discount Offer to VIB and VIB Rouge Members**

20. Beginning in October 2014, VIB and VIB Rouge customers began receiving notifications via email and regular mail about the exclusive annual 20% discount sale scheduled for November 6 through 10, 2014 (the “Discount Offer”). The Discount Offer was available to customers both in stores and online.

21. To receive the 20% discount in stores, customers were required to present a copy of their personalized Discount Offer in email or print format.

22. To redeem the offer online, customers were required to simply enter a promotional code, “GIFTVIB,” during the online checkout process.

23. As part of the Discount Offer, VIB and VIB Rouge customers received information allowing them to “share” their 20% discount with one friend during the five-day period.

24. However, the friend would only be eligible to purchase a single item.

25. To receive the benefit in a physical Sephora location, the friend was required to be present with the VIB or VIB Rouge member in the Sephora store at the time of purchase.

26. To receive the benefit online, the friend would be required to enter a “unique, one-time promo code” which would be received by email.

27. Upon information and belief, VIB or VIB Rouge members were eligible to exercise their discounts under the Discount Offer beginning at 12:00 a.m. on November 6, 2014.

**The Sephora.com Website Crash on November 6, 2014**

28. Sometime on November 6, 2014, the Sephora website crashed and no customers were able to access their accounts or make any purchases.

29. During the late evening on November 6, 2014, access to the website was restored.

30. Sephora posted an online statement on November 7, 2014, on its Facebook page, explaining that the crash was due to excessive online traffic.

31. Specifically, the Company claimed that the website malfunctioned due to “high levels of bulk buys for reselling purposes in North America and other countries.”

32. The Company’s statement on Facebook set forth the following details:

In an effort to restore website functionality, some of our loyal North American and international customers were temporarily blocked.... We have, indeed, de-activated accounts due to reselling – a pervasive issue throughout the industry and the world. As part of our ongoing commitment to protecting our clients and our brands, we have identified certain entities who take advantage of promotional opportunities to purchase products in large volume on our website and re-sell them through other channels. After careful consideration, we have deactivated these accounts in order

to optimize product availability for the majority of our clients, as well as ensure that consumers are not subject to increased prices or products that are not being handled or stored properly.

33. Shockingly, what Sephora declined to disclose in its public statement was the fact that on November 6, 2014, it only blocked and/or deactivated the VIB and VIB Rouge accounts that were:

- (i) associated with email addresses with names that appeared to signify Chinese/Asian race/ethnicity/national origin/descent regardless of the web domain used; and/or
- (ii) using web domains originating in China/Asia, including *inter alia*, qq.com, 126.com and 163.com.

34. By the time Sephora's website functionality was restored, thousands of VIB and VIB Rouge customers' accounts had been blocked or deactivated.

35. Upon information and belief, more than 95% of these blocked and deactivated accounts belonged to individuals residing in the United States.

36. These customers were not "bulk buyers" or entities involved in "retail re-selling" of Sephora products.

37. Rather, they were predominately individuals, many making cosmetic purchases between \$350 and \$999 in a calendar year who did not even qualify for the highest tier of membership, VIB Rouge.

38. Significantly, Sephora did not block the accounts of VIB or VIB Rouge customers whose accounts were not associated with Chinese/Asian web domains or customers with surnames that did not appear to be Chinese/Asian.

39. In addition, as a result of Sephora's alleged attempts to "fix" the website, thousands of Beauty Insider customers who had basic membership only – not VIB or VIB Rouge members – also had their accounts blocked or deactivated simply because their accounts were

associated with Chinese/Asian web domain addresses and/or actual or perceived Chinese/Asian surnames.

40. Clearly, customers who failed to purchase even \$350 worth of items in a calendar year were not involved in “bulk purchases” or retail re-sales of Sephora products.

41. Importantly, customers who do not have email addresses with Chinese/Asian web domains and/or names that are or appear to be of Chinese/Asian descent did not have their accounts blocked or deactivated during the period of the Discount Offer.

42. To date, no explanation has been provided by Sephora as to why customers of or perceived to be of Chinese/Asian descent were singled out while seemingly non-Chinese/Asian customers were permitted account accessibility once the website was restored.

43. The blocking and/or deactivation of specific customer accounts based on the actual or perceived race/ethnicity/descent of the accountholder was not related in any meaningful way to the restoration of website functionality.

#### **Sephora’s Disingenuous Offer to Assist Blocked Beauty Insider Customers**

44. As part of Sephora’s public statement on November 7, 2014, the company claimed to establish a help line for customers who could not access their accounts:

We have established a VIB hotline to ensure that if we are able to verify that your account was erroneously deactivated, it is reactivated immediately. Please call 877-VIB-ONLY (1-877-842-6659). If you experience any difficulties placing your order please contact us at 1-877-SEPHORA (1-877-737-4672) or email us at [client.service@sephora.com](mailto:client.service@sephora.com).

45. As evident on Sephora’s Facebook page and in a related thread on a Reddit webpage, during the remaining days of the Discount Offer, attempts by customers of actual and/or perceived Chinese/Asian race/ethnicity/national origin/descent to receive assistance from Sephora customer service were fruitless.

46. For example, in response to the November 7, 2014 statement, customers posted the following on Sephora's Facebook page:

My account got locked up too. After calling the customer service several times, all I got was "this is a business decision, there's no estimate of how long the suspension will last and no specific reason can be provided". What did I do wrong?! I never purchased large quantity of beauty products from Sephora (if that's what Sephora wanted), my total points in the account is less than 300 and my points for this year is only around 180. I made purchases at both the original prices and the discounted prices, and my account is linked to only one US address, I really don't understand why I was suspected as a reseller. Just because I have a Chinese name and registered with a Chinese email address?! Tell me this is not called racist!!

I'm a [R]ouge member, but right now I can buy NOTHING on the Sephora website. I called customer service and the lady said my account was disactivated, and I needed to go to a retail store! That's ridiculous! I mean I've spent so much money in your store and this is the way you treat me?! Because I'm a Chinese, so you guys disactivate my account??? Is this kind of discrimination? Who can tell me if I can sue them beause of this? Sooooooo disappointed:(

Disgusting. Those ones who are not a reseller at all get blocked also and almost we are Asians. By calling the sephora customer service they told me I violated the term of uses. What term of uses? Okay the reason is I refresh the website too many times because Of the down of the website? Ridiculous. And I can't unblock account? This sale and this company is awful. Never want to buy something again, bye~

47. By November 10, 2014, Sephora's Facebook page was flooded with hundreds of posts by customers with actual or perceived Chinese/Asian surnames or email addresses with Chinese/Asian web domains expressing their frustration and inability to receive any assistance from Sephora customer service or the 1-877-842-6659 service line.

48. To date, Sephora has failed to provide any explanation as to why Beauty Insider customers at all three levels with non-Chinese/Asian surnames or non-Chinese/Asian web



domain email addresses were not blocked or deactivated during the period of the Discount Offer, while thousands of actual or perceived Chinese/Asian customers' accounts were blocked, and remain blocked, or have had their accounts permanently deactivated.

**Damages to Potential Class Members**

49. The Beauty Insider membership agreement sets forth that deactivation of an account will result in the loss of all accumulated reward points.

50. In relevant part, the agreement reads: "If your Membership is revoked, any points in your account will automatically expire."

51. As a result of Sephora's decision to block and/or deactivate the accounts of actual or perceived Chinese/Asian customers, such Beauty Insider customers have lost their accumulated rewards points.

52. Moreover, for those VIB and VIB Rouge customers deactivated, their VIB status was lost. Therefore, in order to return to their prior membership status, these individuals must spend an additional \$350 or \$1,000 in a calendar year. Other benefits associated with membership, including products that members could redeem in exchange for points, coupons, free shipping and free beauty consultations were also lost.

53. Following the November 6, 2014 blocking and/or deactivation of basic Beauty Insider, VIB and VIB Rouge members of actual or perceived Chinese/Asian descent, Sephora continued to send promotional emails to those same blocked and/or deactivated customers for additional discounts and offers despite the fact that these customers were unable to sign into their Sephora accounts.

54. For example, on November 8, 2014, Sephora sent a promotional email to VIB and VIB Rouge customers about the Discount Offer entitled “Final days for 20% off + Urban Decay Reward.”

55. The promotional email included another link to the 20% off coupon and a promotional code for online use. It also offered an eye products gift set redeemable for 500 points, exclusively to VIB members.

56. As set forth above, the blocked and/or deactivated customers were not able to redeem points they had earned or purchase items from Sephora.

### **ALLEGATIONS OF THE CLASS REPRESENTATIVES**

#### **Plaintiff Xiao Xiao**

57. The class is represented by Plaintiff Xiao Xiao (“Ms. Xiao”), who was subjected to discrimination and other unlawful conduct at Sephora’s online store at Sephora.com, accessed from New York, New York.

58. The treatment suffered by Ms. Xiao was the result of Defendants’ pattern and practice of discrimination and other unlawful conduct against customers of actual and/or perceived Chinese/Asian descent who shop at Sephora stores and on Sephora’s website throughout the United States.

59. In or around October 2014, Ms. Xiao joined the Beauty Insider program and received VIB status.

60. The email address associated with her account uses a Chinese web domain, @163.com.

61. Ms. Xiao received a VIB “welcome packet” from Sephora that read as follows:

Welcome to VIB. Your beauty addiction has officially paid off. As a very important beauty insider (VIB), you will receive all of your current beauty insider benefits, plus:

- Advance access to sales
- First dibs on our newest, hottest products
- Special gifts and limited edition offers
- Invitations to VIB only events
- Welcome offers
  - Take 10% off your next purchase
  - Enjoy a complimentary makeover
  - Get free shipping on your next purchase

62. Prior to November 6, 2014, Ms. Xiao received numerous emails from Sephora regarding the Discount Offer and she intended to make purchases during the November 6 through 10, 2014 sale period.

63. On November 7, 2014, Ms. Xiao attempted to log into her VIB account on Sephora.com to make a purchase and received the following message: “Sorry, your account has been locked for security reasons. Please call Customer Service at 1-877-737-4672 to reset your password.”

64. Ms. Xiao’s many attempts to contact and receive assistance from Customer Service all failed. She called the VIB customer service number five or six times between November 6 through 7, 2014.

65. Ms. Xiao received different information from the customer service representatives about her blocked account. One Sephora representative told her that nothing could be done and the decision to deactivate her account was final. Another customer service representative told Ms. Xiao that she was required to go to a physical Sephora store location to fix the problem. Two other customer service representatives told her that they would send her an email with a link to change her account password and that then she would be able to access her account. More

than ten days later, Ms. Xiao has not received an email from Sephora with a link to change her password.

66. To date, Ms. Xiao is blocked from accessing her VIB account online and is unable to redeem more than 350 previously accumulated points. If Ms. Xiao is forced to create a new account, she must spend another \$350 to earn the 350 points needed to achieve VIB status yet again.

67. The conduct engaged in, authorized, directed, acquiesced in and/or ratified by Defendants and their employees and agents, as described above, denied Ms. Xiao, on the basis of her actual and/or perceived race, national origin, ethnicity and/or descent, the right to make and enforce contracts, including the right to enjoy all of the benefits, privileges, terms and conditions of a contractual relationship as is available to White citizens, denied her the same right enjoyed by White citizens to purchase, hold and/or convey personal property as is enjoyed by White citizens, and breached an enforceable contract.

68. Through the actions described above, Defendants acted knowingly, intentionally, maliciously, and/or with willful, wanton and reckless disregard for Ms. Xiao's federally protected civil rights. In the alternative, Defendants engaged in a practice that had a disparate and discriminatory impact in derogation of the civil rights of customers of actual and/or perceived Chinese/Asian race/ethnicity/national origin/descent.

69. As a proximate result of the actions of Defendants, their agents and employees, as described above, Ms. Xiao has suffered and continues to suffer irreparable loss and injury, including, but not limited to, economic loss, mental anguish, emotional pain and suffering, humiliation, embarrassment, physical and emotional distress, loss of enjoyment of life,

interference with life's daily activities and a deprivation of her civil rights. For these injuries, Ms. Xiao seeks compensatory damages to the fullest extent permitted under the law.

70. Because Defendants acted knowingly, intentionally, maliciously and/or with willful, wanton and reckless disregard for Ms. Xiao and/or her federally protected rights, Ms. Xiao also seeks punitive damages.

**Plaintiff Jiali Chen**

71. Plaintiff Jiali Chen ("Ms. Chen"), a resident of Columbus, Ohio, joined Sephora's Beauty Insider program on or about July 13, 2013.

72. The email address associated with her account uses a Chinese web domain, @126.com.

73. In or around October 2014, Ms. Chen attained VIB status after spending more than \$350 on Sephora products and earning 350 Beauty Insider points in a calendar year.

74. Ms. Chen received a Welcome Packet from Sephora that was substantially similar to the one received by Ms. Xiao.

75. Prior to November 6, 2014, Ms. Chen received numerous emails from Sephora regarding the Discount Offer, and she intended to make purchases during the period of November 6 through 10, 2014.

76. On November 6, 2014, Ms. Chen attempt to log into her VIB account on Sephora.com to make a purchase and received the following message: "Sorry, your account has been locked for security reasons. Please call Customer Service at 1-877-737-4672 to reset your password."

77. Unfortunately, Ms. Chen's attempt to receive assistance from Customer Service failed.

78. On November 9, 2014, Ms. Chen submitted a written complaint to Sephora's customer service department. Specifically, Ms. Chen wrote:

I am writing to complain that my Sephora VIB account had been locked yesterday for no reason. I simply tried to log in on your website and got the message that my account was not available. Being a loyal Sephora customer, I really looked forward to your yearly sale and felt disappointing about your handling of the website throughout the weekend. I hope you can solve the problem for me. Thank you.

79. In response, Sephora sent Ms. Chen the following email:

From: Gray Markets <IS5945\_63545@is.instant-service.com>  
Subject: RE: Compliment or Complaint (#8748-450336826-8328)  
Date: November 10, 2014 4:14:02 PM EST  
To: [REDACTED]@126.com

Thank you for contacting us regarding your Sephora account.

Sephora is dedicated to providing an exciting and reliable shopping experience. Our website is incredibly robust and designed to withstand a tremendous amount of volume. What caused the recent disruption was a high level of bulk buys and automated accounts for reselling purposes from North America and multiple countries outside the US.

The reality is that in taking steps to restore website functionality, some of our loyal North American and international clients got blocked. We understand how frustrating it is and are deeply sorry for the disruption to your shopping experience.

After careful consideration, we have deactivated these accounts in order to optimize product availability for the majority of our clients, as well as ensure that consumers are not subject to increased prices or products that are not being handled or stored properly.

At this time, we are not reactivating any blocked accounts.

Thank you for respecting our business decision.

LaVena  
Sephora Client Services

80. To date, Ms. Chen continues to be blocked from accessing her VIB account and is unable to redeem more than 350 accumulated points.

81. Ms. Chen was also denied the ability to participate in the Discount Offer.

82. If Ms. Chen is forced to create a new account, she must spend another \$350 to earn the 350 points needed to achieve VIB status again.

83. The conduct engaged in, authorized, directed, acquiesced in and/or ratified by Defendants and their employees and agents, as described above, denied Ms. Chen, on the basis of her actual and/or perceived race, national origin, ethnicity and/or descent, the right to make and enforce contracts, including the right to enjoy all of the benefits, privileges, terms and conditions of a contractual relationship as is available to White citizens, denied her the same right enjoyed by White citizens to purchase, hold and/or convey personal property as is enjoyed by White citizens, and breached an enforceable contract.

84. Through the actions described above, Defendants acted knowingly, intentionally, maliciously, and/or with willful, wanton and reckless disregard for Ms. Chen's federally protected civil rights. In the alternative, Defendants engaged in a practice that had a disparate and discriminatory impact in derogation of the civil rights of customers of actual and/or perceived Chinese/Asian race/ethnicity/national origin/descent.

85. As a proximate result of the actions of Defendants, their agents and employees, as described above, Ms. Chen has suffered and continues to suffer irreparable loss and injury, including, but not limited to, economic loss, mental anguish, emotional pain and suffering, humiliation, embarrassment, physical and emotional distress, loss of enjoyment of life, interference with life's daily activities and a deprivation of her civil rights. For these injuries, Ms. Chen seeks compensatory damages to the fullest extent permitted under the law.

86. Because Defendants acted knowingly, intentionally, maliciously and/or with willful, wanton and reckless disregard for Ms. Chen and/or her federally protected rights, Ms. Chen also seeks punitive damages.

**Plaintiff Man Xu**

87. Plaintiff Man Xu (“Ms. Xu”) is a resident of Philadelphia, Pennsylvania.

88. Ms. Xu joined Sephora’s Beauty Insider program and attained VIB status in August 2013. The VIB welcome packet Ms. Xu received was substantially similar to the one received by Ms. Xiao and Ms. Chen.

89. The email address associated with her account uses a Chinese web domain, @qq.com.

90. Like Ms. Xiao and Ms. Chen, prior to November 6, 2014, Ms. Xu received numerous emails from Sephora regarding the Discount Offer and she intended to make purchases during the November 6 through 10, 2014 time period.

91. On November 7, 2014, Ms. Xu attempted to log into her VIB account on Sephora.com to make a purchase.

92. She received the following message: “Sorry, your account has been locked for security reasons. Please call Customer Service at 1-877-737-4672 to reset your password.”

93. After learning that she could not place an order online, Ms. Xu called the Sephora telephone number to place an order via telephone and a customer service representative assisted Ms. Xu with her order. Ms. Xu ordered 21 items for a total of \$720.58, after the 20% discount.

94. On Saturday, November 8, 2014, she received an order confirmation email from Sephora which also congratulated her on attaining VIB Rouge status following the recent order.



95. On Sunday, November 9, 2014, Ms. Xu called the customer service number Sephora provided to customers with blocked or deactivated accounts. The customer service representative that she spoke with told her that “all customers with qq.com email addresses were blocked.” Ms. Xu was also informed by this same person that there was nothing that could be done to change the deactivated status of her membership account. Additionally, Ms. Xu was told that the order she had placed over the telephone on November 7, 2014, had been cancelled.

96. Despite further calls to Sephora, Ms. Xu has been unable to get an answer from Sephora as to why her order was cancelled and why her account is deactivated. To date, charges from the attempted order remain “pending” on her credit card but she has not received any of the items she attempted to purchase and she remains blocked from Sephora.

97. Ms. Xu is unable to redeem more than 750 accumulated points and she was also denied the ability to participate in the Discount Offer. If Ms. Xu is forced to create a new account, she must spend another \$350 to earn the 350 points needed to achieve VIB status.

98. The conduct engaged in, authorized, directed, acquiesced in and/or ratified by Defendants and their employees and agents, as described above, denied Ms. Xu, on the basis of her actual and/or perceived race, national origin, ethnicity and/or descent, the right to make and enforce contracts, including the right to enjoy all of the benefits, privileges, terms and conditions of a contractual relationship as is available to White citizens, denied her the same right enjoyed by White citizens to purchase, hold and/or convey personal property as is enjoyed by White citizens, and breached an enforceable contract.

99. Through the actions described above, Defendants acted knowingly, intentionally, maliciously, and/or with willful, wanton and reckless disregard for Ms. Xu’s federally protected civil rights. In the alternative, Defendants engaged in a practice that had a disparate and

discriminatory impact in derogation of the civil rights of customers of actual and/or perceived Chinese/Asian race/ethnicity/national origin/descent.

100. As a proximate result of the actions of Defendants, their agents and employees, as described above, Ms. Xu has suffered and continues to suffer irreparable loss and injury, including, but not limited to, economic loss, mental anguish, emotional pain and suffering, humiliation, embarrassment, physical and emotional distress, loss of enjoyment of life, interference with life's daily activities and a deprivation of her civil rights. For these injuries, Ms. Xu seeks compensatory damages to the fullest extent permitted under the law.

101. Because Defendants acted knowingly, intentionally, maliciously and/or with willful, wanton and reckless disregard for Ms. Xu and/or her federally protected rights, Ms. Xu also seeks punitive damages.

**Plaintiff Tiantian Zou**

102. Plaintiff Tiantian Zou ("Ms. Zou") is a resident of Queens, New York.

103. Ms. Zou joined the Beauty Insider program in March 2013, and received VIB status in October 2013. The VIB welcome packet Ms. Zou received was substantially similar to the one received by Ms. Xiao, Ms. Chen and Ms. Xu.

104. The email address associated with her account uses a Chinese web domain, @qq.com.

105. Like Ms. Xiao, Ms. Chen and Ms. Xu, prior to November 6, 2014, Ms. Zou received numerous emails from Sephora regarding the Discount Offer and she intended to make purchases during the November 6 through 10, 2014 time period.

106. On November 7, 2014, Ms. Zou attempted to log into her VIB account on Sephora.com to make a purchase.

107. She received the following message: “Sorry, your account has been locked for security reasons. Please call Customer Service at 1-877-737-4672 to reset your password.”

108. Ms. Zou submitted an email to Sephora’s customer service department on November 7, 2014, expressing her surprise at being blocked.

109. In response, on November 8, 2014, Sephora sent Ms. Zou the same email that was sent to Ms. Chen following her complaint. In that email, Sephora told Ms. Zou that the deactivation decision was final.

110. To date, Ms. Zou’s account remains blocked on Sephora. Ms. Zou is unable to redeem more than 1256 accumulated points and was also denied the ability to participate in the Discount Offer. If Ms. Zou is forced to create a new account, she must spend another \$350 to earn the 350 points needed to achieve VIB status.

111. The conduct engaged in, authorized, directed, acquiesced in and/or ratified by Defendants and their employees and agents, as described above, denied Ms. Zou, on the basis of her actual and/or perceived race, national origin, ethnicity and/or descent, the right to make and enforce contracts, including the right to enjoy all of the benefits, privileges, terms and conditions of a contractual relationship as is available to White citizens, denied her the same right enjoyed by White citizens to purchase, hold and/or convey personal property as is enjoyed by White citizens, and breached an enforceable contract.

112. Through the actions described above, Defendants acted knowingly, intentionally, maliciously, and/or with willful, wanton and reckless disregard for Ms. Zou’s federally protected civil rights. In the alternative, Defendants engaged in a practice that had a disparate and discriminatory impact in derogation of the civil rights of customers of actual and/or perceived Chinese/Asian race/ethnicity/national origin/descent.

113. As a proximate result of the actions of Defendants, their agents and employees, as described above, Ms. Zou has suffered and continues to suffer irreparable loss and injury, including, but not limited to, economic loss, mental anguish, emotional pain and suffering, humiliation, embarrassment, physical and emotional distress, loss of enjoyment of life, interference with life's daily activities and a deprivation of her civil rights. For these injuries, Ms. Zou seeks compensatory damages to the fullest extent permitted under the law.

114. Because Defendants acted knowingly, intentionally, maliciously and/or with willful, wanton and reckless disregard for Ms. Zou and/or her federally protected rights, Ms. Zou also seeks punitive damages.

#### **RULE 23 CLASS ACTION ALLEGATIONS**

115. Plaintiffs bring their Section 1981, Section 1982 and Breach of Contract claims as a class action pursuant to Federal Rule of Civil Procedure 23 ("Rule 23") on behalf of themselves and on behalf of all other similarly-situated persons. Plaintiffs propose a class definition, subject to modification as may become necessary and appropriate, as follows:

Sephora customers throughout the United States involved in its "Beauty Insider" rewards program who are and/or are perceived as being of Chinese/Asian race/ethnicity/national origin/descent and were blocked and/or had their accounts deactivated during the website crash on and following November 6, 2014.

116. Certification of the Class Members' claims as a class action is the most efficient and economical means of resolving the questions of law and fact common to Plaintiffs' claims and the claims of the Class Members.

117. Plaintiffs have standing to seek such relief because of the adverse effect that Defendants' unlawful practices have had on them individually and on the Class Members.

118. Without class certification, the same evidence and issues would be subject to re-litigation in a multitude of individual lawsuits with an attendant risk of inconsistent adjudications and conflicting obligations.

119. Certification of the Class Members' claims is the most efficient and judicious means of presenting the evidence and arguments necessary to resolve such questions for Plaintiffs, the Class Members and Defendants.

120. Plaintiffs' claims raise questions of law and fact common to the Class Members, including but not limited to:

- Whether Defendants discriminated against Plaintiffs and the Class Members on the basis of their actual ethnicity/national original/descent;
- Whether Defendants discriminated against Plaintiffs and the Class Members on the basis of their perceived ethnicity/national original/descent;
- Whether Defendants entered into enforceable contracts with the Plaintiffs and the Class Members;
- Whether Defendants breached their contractual obligations to Plaintiffs and the Class Members;

121. These common questions of law and fact arise from the same course of events, and each Class Member will make similar legal and factual arguments to prove liability.

122. Plaintiffs' claims are typical of the claims of the Class Members. The relief Plaintiffs seek for the unlawful practices complained of herein are also typical of the relief which is sought on behalf of the Class Members.

123. Plaintiffs' interests are co-extensive with those of the Class Members that they seek to represent in this case.

124. Plaintiffs are ready, willing and able to represent the Class Members fairly and to vigorously pursue their similar individual claims in this action.

125. Plaintiffs have retained counsel who are qualified and experienced in class action litigation, and who are able to meet the time and fiscal demands necessary to litigate a class action of this size and complexity.

126. The combined interests, experience and resources of Plaintiffs and their counsel to litigate the individual and Class Members' claims at issue in this case satisfy the adequacy of representation requirement of Rule 23(a)(4).

127. The common issues of fact and law affecting Plaintiffs' claims and those of the Class Members, including the common issues identified above, predominate over any issues affecting only individual claims.

128. A class action is superior to other available means for the fair and efficient adjudication of Plaintiffs' claims and the claims of the Class Members. There will be no difficulty in the management of this action as a class action.

129. The cost of proving Defendants' violations of Section 1981 and Section 1982 and Defendants' Breach of Contract makes it impracticable for Plaintiffs and the Class Members to pursue their claims individually.

130. Maintenance of a class action promotes judicial economy by consolidating a large class of plaintiffs litigating identical claims.

131. The claims of the Class Members interrelate such that the interests of the Class Members will be fairly and adequately protected in their absence.

132. Additionally, the questions of law and fact common to the NYLL Class arise from the same course of events and each class member makes similar legal and factual arguments to prove the Defendants' liability.

133. The number of individual Class Members is so numerous that joinder of all members is impracticable. While the exact number of Class Members is unknown to Plaintiffs at the present time, upon information and belief, there are thousands of individuals affected by the unlawful conduct alleged herein and who would likely qualify and/or participate as Class Members.

**FIRST CAUSE OF ACTION**  
**Violations of 42 U.S.C. Section 1981**  
***(On Behalf of Plaintiffs and the Class)***

134. Plaintiffs, on behalf of themselves and the Class Members, repeat and re-allege each of the preceding paragraphs as if fully set forth herein.

135. By the actions described above, among others, Defendants have denied Plaintiffs and the Class Members, on the basis of their actual and/or perceived race, national origin, ethnicity and/or descent, the same right to make and enforce contracts, including the enjoyment of all benefits, privileges, terms, and conditions of a contractual relationship as is enjoyed by White citizens of the United States, in violation of 42 U.S.C. § 1981.

136. By the actions described above, among others, Defendants have intentionally discriminated against Plaintiffs and the Class members on the basis of their actual and/or perceived race, national origin, ethnicity and/or descent.

137. In the alternative, by the actions described above, among others, Defendants have engaged in conduct that has had an unlawful discriminatory impact on individuals based on their race, national origin, ethnicity and/or descent.

138. As a result of Defendants' conduct, Plaintiffs and the Class Members have suffered and continue to suffer injuries and damages.

**SECOND CAUSE OF ACTION**  
**Violations of 42 U.S.C. Section 1982**  
***(On Behalf of Plaintiffs and the Class)***

139. Plaintiffs, on behalf of themselves and the Class Members, repeat and re-allege each of the preceding paragraphs as if fully set forth herein.

140. By the actions described above, among others, Defendants have denied Plaintiffs and the Class members, on the basis of their actual or perceived race, national origin, ethnicity and/or descent, the same right to purchase, hold and/or convey personal property as is enjoyed by White citizens of the United States, in violation of 42 U.S.C. § 1982.

141. By the actions described above, among others, Defendants have intentionally discriminated against Plaintiffs and the Class members on the basis of their actual and/or perceived race, national origin, ethnicity and/or descent.

142. In the alternative, by the actions described above, among others, Defendants have engaged in conduct that has had an unlawful discriminatory impact on individuals based on their race, national origin, ethnicity and/or descent.

143. As a result of Defendants' conduct, Plaintiffs and the Class Members have suffered and continue to suffer injuries and damages.

**THIRD CAUSE OF ACTION**  
**Breach of Contract**  
***(On Behalf of Plaintiffs and the Class)***

144. Each allegation contained in the preceding paragraphs, inclusive, is hereby repeated, re-alleged and incorporated by reference, as if fully set forth herein.

145. Defendants and Plaintiffs entered into enforceable contracts for which there was a meeting of the minds, and which consisted of an offer by Defendants to Plaintiffs and the Class Members, acceptance by Plaintiffs and the Class Members and consideration by all parties.



146. Defendants offered Plaintiffs and the Class Members the benefits of the Beauty Insider rewards program in exchange for signing up as a basic Beauty Insider and/or for spending certain amounts of money at Sephora.

147. Plaintiffs and the Class Members accepted Defendants' offer by, *inter alia*, signing up for the Beauty Insider rewards program, agreeing to certain terms of service and/or spending certain amounts of money at Sephora.

148. Plaintiffs and the Class Members fully performed all obligations under the contracts, but Defendants breached their obligations to Plaintiffs and the Class Members by, *inter alia*, blocking and/or deactivating Plaintiffs and the Class Members from their accounts and/or removing Beauty Insider status and/or reward points.

149. Plaintiffs and the Class Members have been damaged from Defendants' breach of contract, and have suffered and continue to suffer injuries and damages.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs on behalf of themselves and the Class Members they seek to represent, pray that the Court grant them relief as follows:

- A. Certify this case as a nationwide class action under Rule 23;
- B. Enter a declaratory judgment finding that the actions of Defendants alleged in this Complaint violate Section 1981, Section 1982 and constitute a breach of contract;
- C. Enter a permanent injunction enjoining Defendants from continuing to engage in the civil rights violations, discrimination and other unlawful conduct alleged in this Complaint;
- D. Enter a permanent injunction directing that Defendants take all affirmative steps necessary to remedy the effects of the civil rights violations, discrimination and other unlawful conduct alleged in this Complaint and to prevent repeated occurrences in the future;

- E. Award compensatory damages in an amount that would fully compensate Plaintiffs and other Class Members, plus prejudgment interest, in an amount to be determined at trial;
- F. Award punitive damages to Plaintiffs and other Class Members in an amount that would punish Defendants for the willful, wanton, and reckless unlawful conduct alleged in this Complaint that would effectively deter Defendants from future civil rights violations, discrimination, and other unlawful behavior, in an amount to be determined at trial;
- G. Award Plaintiffs and other Class Members their reasonable attorneys' fees, the fees and costs of experts, and costs of this action; and
- H. Order all other relief deemed just and equitable by the Court.

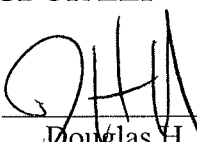
**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all issues of fact and damages stated herein.

Dated: November 18, 2014  
New York, New York

Respectfully submitted,

**WIGDOR LLP**

By:  \_\_\_\_\_  
Douglas H. Wigdor  
David E. Gottlieb  
Elizabeth Chen

85 Fifth Avenue  
New York, NY 10003  
Telephone: (212) 257-6800  
Facsimile: (212) 257-6845  
[dwigdor@wigdorlaw.com](mailto:dwigdor@wigdorlaw.com)  
[dgottlieb@wigdorlaw.com](mailto:dgottlieb@wigdorlaw.com)  
[echen@wigdorlaw.com](mailto:echen@wigdorlaw.com)

*Co-Counsel for Plaintiffs*

**IMBESI CHRISTENSEN**

By: /s/ Jeanne Christensen \_\_\_\_\_  
Jeanne Christensen

450 Seventh Avenue, 14th Floor  
New York, NY 10123  
Telephone: (212) 736-5588  
Facsimile: (866) 830-7484  
[jchristensen@lawicm.com](mailto:jchristensen@lawicm.com)

*Co-Counsel for Plaintiffs*