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18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

20 RUIQI YE and YOLIN HAN, individually
21 and on behalf of all other similarly-situated
22 individuals,

23 Plaintiffs,

24 v.

25 SEPHORA USA, INC.,

26 Defendant.

Case No.: 3:14-cv-05237-EMC

27 **PLAINTIFFS' NOTICE OF MOTION**
28 **AND MOTION FOR FINAL**
APPROVAL OF CLASS ACTION
SETTLEMENT

Date: May 25, 2017

Time: 1:30 p.m.

Courtroom: 5, 17th Floor

Judge: Hon. Edward M. Chen

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Chun-Hoon v. McKee Foods Corp.,
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Churchill Village, LLC v. Gen. Elec.,
 361 F.3d 566 (9th Cir. 2004) 14, 22

Class Plaintiffs v. City of Seattle,
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Curtis-Bauer v. Morgan Stanley & Co., Inc.,
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Custom LED, LLC v. eBay, Inc.,
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Dennis v. Kellogg Co.,
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Garner v. State Farm. Mut. Auto. Ins. Co.,
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Greko v. Diesel U.S.A., Inc.,
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Hanlon v. Chrysler Corp.,
 150 F.3d 1011 (9th Cir. 1998) 14, 15

In re Netflix Privacy Litig.,
 No. 11 Civ. 0379 (EJD), 2013 WL 1120801 (N.D. Cal. Mar. 18, 2013) 17, 18

In re Omnivision Techs.,
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In re Syncor ERISA Litig.,
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Lane v. Facebook, Inc.,
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1 *Nachshin v. AOL, LLC*,
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3 *Noll v. Ebay, Inc.*,
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5 *Officers for Justice v. Civil Serv. Comm’n*,
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7 *Pierce v. Rosetta Stone, Ltd.*,
 8 No. 11 Civ. 1283 (SBA), 2013 WL 5402120 (N.D. Cal. Sept. 26, 2013) 21

9 *Rodriguez v. W. Publ’g Corp.*,
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15 *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*,
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17 *Wren v. RGIS Inventory Specialists*,
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19 **Other Authorities**

20 Fed. R. Civ. P. 23(e) 2, 14

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NOTICE OF MOTION

1
2 Plaintiffs Ruiqi Ye and Yolin Han hereby give notice that on May 25, 2017 at 1:30 p.m.,
3 or as soon thereafter as the matter may be heard, in the courtroom of the Honorable Edward M.
4 Chen, United States District Judge for the Northern District of California, 450 Golden Gate
5 Avenue, 17th Floor, Courtroom 5, San Francisco, California, Plaintiffs and Class Counsel in the
6 above captioned action will and hereby do move this Court for an Order (a) granting Plaintiffs’
7 Motion for Final Approval of Class Action Settlement; (b) granting Service Awards to Named
8 Plaintiffs in the amount of \$5,000.00 each; and (c) granting Plaintiffs’ Motion for Class
9 Counsel’s Fees and Expenses in the amount of \$418,560.00 for work performed throughout this
10 action and \$90,000.00 in costs. *See* Ex. 1.
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13 As discussed in the accompanying memorandum, the proposed class action settlement is
14 fair, reasonable and appropriate under applicable law, and is well-justified under the
15 circumstances of this matter.

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17 This motion is based upon this notice of motion and motion; the accompanying
18 memorandum of points and authorities; the declaration of Jeanne M. Christensen filed in support,
19 the exhibits attached hereto; the proposed Class Settlement Agreement previously filed with the
20 Court and all papers filed in support thereof; the pleadings and papers on file in this action; any
21 matters of which the Court may or must take judicial notice; and on such additional papers and
22 arguments as may be presented at or before the hearing of this matter.
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MEMORANDUM OF POINTS AND AUTHORITIES

1
2 Plaintiffs Ruiqi Ye and Yolin Han (“Plaintiffs”) hereby submit this Memorandum of
3 Points and Authorities in support of their motion for final approval of the Settlement of this
4 Action and entry of the Proposed Final Order and Judgment (“Judgment”).¹

5
6 **I. INTRODUCTION**

7 The Court has preliminarily approved the proposed Settlement reached by the parties in
8 this Action, and approved the parties’ proposed notice program. *See* Dkt. No. 161. Notice has
9 been disseminated to the Class as directed by the Court. By this motion, Plaintiffs respectfully
10 request that the Court conduct a final review of the Settlement, and approve the Settlement as
11 fair, reasonable and adequate, as required by Rule 23. Fed. R. Civ. P. 23(e)(2).

12 The Settlement is an extraordinary result for the Class. The product of extensive arms-
13 length negotiations between the parties and their experienced and informed counsel, the
14 Settlement is fair, reasonable, and adequate given the claims, the alleged harm, and the parties’
15 respective litigation risks.

16 Pursuant to the terms of the Settlement, Defendant Sephora USA, Inc. (“Sephora”) will
17 pay \$950,000.00 to establish a non-reversionary Settlement Fund from which Class Members
18 who submit valid claims will be sent cash payments or Electronic Gift Cards. It is expected that
19 100% of net settlement funds will be distributed to the Class, with at least 11% (or even more)²
20 of Class Members receiving payments. With this claims rate, Authorized Claimants stand to
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24 ¹ Unless otherwise defined herein, this Memorandum of Points and Authorities
25 incorporates by reference the defined terms set forth in the Settlement Agreement filed on
26 December 9, 2016, and all such terms shall have the same meaning herein. *See* Dkt. No. 147-2.

27 ² The Claims Administrator has sent out deficiency letters to claimants whose forms did
28 not initially show their claims to be valid. *See* Ex. 5, Declaration of Kelly Kratz (“Kratz Decl.”)
at ¶ 14. The final deadline for valid deficiency responses is April 28, 2017, and as such, if there
are additional claims that have been converted to valid prior to the Fairness Hearing, Class
Counsel will update the Court.

1 receive \$123.86 in cash or \$247.73 in Electronic Gift Card amounts, should the Court approve
2 Class Counsel's fees and expenses, the Service Awards to Named Plaintiffs and the Claims
3 Administrator's administrative costs.

4 Moreover, the Settlement provided for a robust, multi-pronged notice program and user-
5 friendly claims process that have been implemented by the Claims Administrator and the parties.

6
7 The effectiveness of the notice program, the simplicity of the claims process, and the
8 adequacy of the Settlement are all reflected in the very positive reaction from the Class thus far.
9 The deadline for Class Members to submit claims, request to be excluded, or object was April 3,
10 2017. Approximately 1,698 valid claims were submitted, out of 13,879 Class Members who
11 received the Notice. Only one class member has objected to the Settlement and requested to
12 speak at the Fairness Hearing, and only three Class Members have opted out of the Settlement.
13 This single objection should be overruled. Class Counsel obtained an excellent result for the
14 Class, despite the very real risks of facing adverse rulings on Plaintiffs' class certification motion
15 or on the merits. Plaintiffs therefore respectfully submit that the objection should be overruled,
16 and that the Court should grant final approval of the Settlement and award attorneys' fees and
17 expenses for Class Counsel and service awards for the Plaintiffs in the amounts requested.
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20 **II. BACKGROUND**

21 **A. Plaintiffs' Allegations**

22 In 2014, a sale for Sephora's Very Important Beauty Insider ("VIB") members was
23 scheduled to occur from November 6-10, 2014 (the "Sale"). *See* Dkt. No. 1 at ¶ 19. Beginning
24 late in the day on November 5, 2014, Sephora's website began experiencing intermittent outages
25 or "crashes" that prevented all website access. *Id.* at ¶ 27. The outages continued for an
26 approximate 30-hour period before the site regained connectivity and customers were once again
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1 able to make online purchases. *Id.* at ¶ 28. During this 30-hour period, Plaintiffs contend that
 2 the Information Technology (“IT”) Department at Sephora believed excessive account creation
 3 and/or logins were responsible for the outages. *Id.* at ¶¶ 30-31. Specifically, Plaintiffs allege that
 4 the IT Department said that it deactivated accounts associated with three e-mail service providers
 5 based in China that use Chinese as the default language: @qq.com; @126.com; and @163.com
 6 (the “Chinese Domains”) because it had seen evidence of excessive account creation and/or
 7 logins from the Chinese Domains that it believed could only be explained through “bots” or
 8 automated scripts. *Id.* at ¶ 32.

10 During the 30-hour outage, the IT Department implemented a code (the “Code”) to
 11 deactivate all online accounts associated with the Chinese Domains. *See* Dkt. No. 146 at p. 4.
 12 Plaintiffs allege that the Code impacted thousands of users and prevented them from the ability
 13 to make purchases online during the Sale. *See* Dkt. No. 1 at ¶¶ 33-34. For a period of weeks,
 14 Plaintiffs allege that many of these users continued to be deactivated and their accounts were not
 15 restored until after this action was filed.³ As a result, Plaintiffs allege that these users were
 16 denied the 20% discount during the Sale and the ability to make purchases online and the ability
 17 to accumulate points, and also lost access to their accumulated points. *Id.* at ¶¶ 50-55.

20 **B. Class Counsel’s Investigation and Discovery**

21 Before filing suit, Class Counsel conducted a thorough factual investigation, including
 22 tracking and analyzing Sephora’s public statements regarding the deactivation of accounts,
 23 reviewing Sephora’s purported terms of service and the methods by which such terms were
 24

26 ³ Class Members learned about the deactivation when they received the following message
 27 from Sephora, “Sorry, your account has been locked for security reasons. Please call Customer
 28 Service at 1-877-737-4672.” *See* Dkt. No. 146 at n.4. Other users learned about the
 deactivations from reading Sephora’s Facebook statement posted on November 7, 2014. *See*
 Dkt. No. 1 at ¶¶ 43-46.

1 communicated to consumers, and speaking with numerous customers about their experiences
2 with the Sale as well as reviewing documentation from those customers. *See* Dkt. No. 167 at p.
3 7. Class Counsel also conducted considerable legal research regarding the legal issues raised,
4 and expected to be raised, in the litigation. *Id.* at pp. 7-8.

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6 Class Counsel's investigative efforts continued after the Complaint was filed, including
7 through significant formal discovery. *Id.* at p. 8. Among other things, Class Counsel deposed
8 two senior Sephora executives, propounded written discovery, reviewed and analyzed thousands
9 of documents produced by Defendant (including, but not limited to, internal correspondence and
10 documents regarding the events that precipitated the mass deactivation of accounts), reviewed
11 and analyzed technical data in conjunction with technology consultants, and reviewed and
12 analyzed pertinent customer data to evaluate potential class damages. Class Counsel engaged in
13 multiple meet and confer conference calls with Defendant's counsel regarding the appropriate
14 scope of discovery and Defendant's search for and production of responsive materials. *Id.*
15 Moreover, Class Counsel continued to speak with potential Class Members about their
16 experiences during the Sale. *Id.*

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19 There was significant litigation activity as well, requiring Class Counsel to research and
20 address important issues. There were a number of substantial discovery disputes that led
21 Plaintiffs to research and file motions to compel. *See* Dkt. Nos. 65, 84. Moreover, in filing
22 Plaintiffs' motion for class certification, Plaintiffs were required to conduct legal research and
23 closely analyze the substantive issues, including Sephora's defenses, both for purposes of making
24 their motion, and also to be in a position to advance the case and address those arguments at the
25 mediation and the settlement conference before Judge Corley. *See* Dkt. No. 167 at p. 8.
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1 **C. Settlement Negotiations**

2 The Settlement is the product of extensive, hard-fought settlement negotiations and
3 related efforts by Class Counsel. *See* Dkt. No. 146 at pp. 17-18. In October 2015, the parties
4 participated in a mediation session with The Hon. Edward A. Infante (ret.), an experienced
5 mediator and former U.S. Magistrate Judge in this District. The parties continued negotiations
6 through Judge Infante, but negotiations stalled. *See* Dkt. No. 167 at pp. 8-9. Thereafter,
7 Plaintiffs filed a motion to compel discovery on April 29, 2016. *See* Dkt. No. 84. The parties
8 appeared before The Hon. Laurel Beeler to address discovery disputes on May 12, 2016. *See*
9 Dkt. No. 94. Following further discovery and depositions, Plaintiffs' motion for class
10 certification was fully briefed by August 25, 2016 and scheduled for oral argument on September
11 8, 2016. *See* Dkt. Nos. 114-123, 126-129. At the same time, the parties agreed to engage in
12 further mediation. *See* Dkt. No. 167 at p. 9.

13 The parties engaged in an all-day settlement conference before The Hon. Jacqueline S.
14 Corley on August 24, 2016. With Judge Corley's assistance, the parties reached a settlement and
15 drafted terms. *Id.* After the parties reached agreement in principle on the merits they were able
16 to reach an agreement, with Judge Corley's assistance, regarding Class Counsel's request for
17 attorneys' fees and expenses. *Id.*

18 Following the mediation, Class Counsel worked hard on negotiating and finalizing the
19 written settlement agreement, forms of notice, claim form, exclusion form and other exhibits to
20 the settlement agreement, and worked closely with the Claims Administrator on the design and
21 implementation of the notice program and claims process. *Id.*

22 **D. Preliminary Settlement Approval**

23 On January 26, 2017, the Court granted preliminary approval of the Settlement, and
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1 ordered that Notice be disseminated to the Class pursuant to the parties' proposed multi-pronged
2 notice program. *See* Dkt. No. 161.

3 **III. THE SETTLEMENT**

4 The following summarizes the Settlement's key terms.

5 **A. The Settlement Class**

6 The Settlement Class is defined as follows: all Sephora customers who (i) had one or
7 more Sephora "Beauty Insider" account(s) with VIB or VIB Rouge status as of November 4,
8 2014 that was associated with an e-mail address from the domain @qq.com, @126.com, or
9 @163.com; (ii) had their account(s) deactivated as a result of the computer code that Sephora
10 implemented on or about November 6, 2014; and (iii) attempted to but were unable to make a
11 purchase at www.sephora.com using their "Beauty Insider" account(s) at some point in
12 November 2014. *See* Ex. 2 at §§ 1.2, 1.7, 3. Sephora customers who meet all of the above
13 criteria are part of the Settlement Class and eligible to submit a Claim Form.

14 **B. Benefits to the Class**

15 **1. The Settlement Fund**

16 Pursuant to the terms of the Settlement, Sephora will pay \$950,000.00 to establish a non-
17 reversionary Settlement Fund to be used for: (a) providing cash payments and Electronic Gift
18 Cards to Class Members who submitted valid claims ("Authorized Claimants"); and (b) payment
19 of administrative costs,⁴ attorneys' fees and expenses, and service awards to Plaintiffs. As
20 discussed herein, it is expected that the entire Settlement Fund (net of administrative costs,
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26 ⁴ The Claims Administrator estimates that the total administrative costs will be
27 approximately \$25,663.00. *See* Kratz Decl. at ¶ 18. The estimate increased subsequent to the
28 preliminary approval hearing primarily because the Claims Administrator did not initially
estimate the cost of sending Notice by mail to Authorized Claimants, or that some Authorized
Claimants would only have addresses outside of the U.S. *See* Dkt. No. 167 at n.6.

1 attorneys' fees and expenses, and service awards) will be distributed to Authorized Claimants,
 2 with at least 11% (or even more) of Class Members receiving payments.

3 **a. Payments to Authorized Claimants**

4 Pursuant to the Settlement, payments will be sent via mailed check or Electronic Gift
 5 Card to all Class Members who submit a timely and valid claim. *See* Ex. 2 at § 3.2. Payment
 6 amounts for Authorized Claimants will depend on the number of timely, valid claims that are
 7 submitted and will be distributed on a pro rata basis. Based the number of Authorized Claimants,
 8 the Settlement will provide \$123.86 in cash or \$247.73 in an Electronic Gift Card per person out
 9 of the net Settlement Fund should the Court approve Class Counsel's fees and expenses, the
 10 Service Awards to Named Plaintiffs and the Claims Administrator's administrative costs. *See*
 11 Christensen Decl. at ¶ 24.⁵ No amount of the Net Settlement Proceeds will revert to Sephora.
 12 Notably, as discussed below, the Settlement provides for further redistributions of any uncashed
 13 checks or unredeemed Gift Card funds to the National Asian Pacific American Women's Forum
 14 ("NAPAWF"), a non-profit organization.

15 **b. The Claim Process**

16 All Class Members had the opportunity to submit claims for settlement payments. Class
 17 Members had the option of submitting claims electronically via the Settlement Website, by mail,
 18 or by e-mail. The Claim Form, which was approved by the Court, is straightforward and user-
 19 friendly. *See* Dkt. No. 161 at ¶ 9. Class Members had until April 3, 2017 to submit claims,
 20 which was 45 days after the Notice was mailed out by the Claims Administrator. *See* Ex. 2 at §
 21 1.5; Dkt. No. 161; Kratz Decl. at ¶ 6.

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 28 ⁵ All exhibits and paragraphs are referred to herein as "Ex. __" and "¶ __," respectively,
 and attached to the Declaration of Jeanne M. Christensen ("Christensen Decl.").

1 The Claims Administrator has processed all Claim Forms submitted. To that end,
 2 Sephora provided the Claims Administrator with the best data and information available to
 3 Sephora regarding the Class Members' accounts (the "Data"). *See* Ex. 2 at § 4.2. Using the
 4 information provided by Class Members in their Claim Forms, and as can best be determined
 5 through Sephora's Customer Data, the Claims Administrator verified claims. *See* Kratz Decl. at
 6 ¶¶ 13-14. To all Class Members whose forms were deficient, the Claims Administrator sent cure
 7 letters, asking the claimants to provide additional information. *Id.* at ¶ 15. In response to the
 8 cure letters, an additional 26 valid claims were made as of April 19, 2017. *Id.* The Claims
 9 Administrator has verified that as of April 19, 2017, there are a total of 1,698 Authorized
 10 Claimants. *Id.* at ¶ 17.

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 13 **c. Mailing of Settlement Payments**

14 Payments to Authorized Claimants will be made by mailed check or Electronic Gift Card
 15 to the physical or e-mail address, respectively, they provided in their Claim Forms.⁶ *See* Ex. 2 at
 16 §§ 4.2-4.3.

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 18 **d. Disposition of Residual Funds**

19 Should funds remain in the Settlement Fund after payments to Authorized Claimants (due
 20 the number of Authorized Claimants and the cap on the amount to be distributed per Authorized
 21 Claimant), they will be collected into a *cy pres* fund and delivered to NAPAWF. None of the
 22 Settlement Fund will revert to Defendant. *Id.* at § 3.

23 Authorized Claimants who select to receive checks will have 180 days from the date of
 24 the issuance to negotiate them. *Id.* at § 3.3. If any checks are not negotiated within that time
 25 period, they will be cancelled and the value of those check(s) will be distributed to NAPAWF.
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 28 ⁶ The Electronic Gift Card will arrive via e-mail in the form of a fully-transferrable "code" that can be used at Sephora.com or in stores.

1 *Id.* Any funds that are unclaimed (*e.g.*, due to uncashed checks) 180 days after the deadline for
2 mailing the initial settlement payment checks will be collected into a *cy pres* fund and delivered
3 to NAPAWF. *Id.* at § 3.1.4.

4 Authorized Claimants who select to receive an Electronic Gift Card will have one year
5 from the date of issuance to redeem the full value. *Id.* at § 3.4. Any funds that remain on an
6 Electronic Gift Card at the end of that year will expire and the value of the residual funds, if any,
7 will be distributed to the NAPAWF. *Id.*; Dkt. No. 152 at p. 11-14; *see also* Ex. 4 at 10:15-11:2.

9 **C. Opt-Out and Objection Procedures**

10 Any person within the Class had the option to opt-out of the Class by sending a written
11 request, clearly stating their desire to be excluded, to the Claims Administrator or submitting a
12 Request for Exclusion via the Settlement Website or by mail, postmarked by the opt-out deadline
13 of April 3, 2017. *See* Ex. 2 at § 6.3.1.

14 Any Class Member also had the option to object to the Settlement, Class Counsel's fee
15 application, and/or the requests for Plaintiffs' service awards, by mailing an objection to the
16 Settlement Administrator, postmarked by the objection deadline of April 3, 2017. *Id.* at § 6.3.3.

17 There were three requests to be excluded from the Settlement and one objection. *See*
18 Kratz Decl. at ¶¶ 11-12. These four individuals represent just 0.24% of the total 1,698
19 Authorized Claimants and just 0.03% of the total Settlement Class. *See* Christensen Decl. at ¶
20 30.

21 **D. Release**

22 In exchange for the benefits provided pursuant to the Settlement, Named Plaintiffs and
23 Class Members who did not opt out will release Defendant and related entities from any claims
24 they may have related to the issues in the instant action. *See* Ex. 2 at § 7.1, *et seq.*; *see also* Dkt.
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1 No. 152 at pp. 3-4. Named Plaintiffs will also provide a general release to Defendant. *See* Ex. 2
2 at § 7.2.1 *et seq.*

3 **IV. NOTICE HAS BEEN DISSEMINATED TO THE CLASS PURSUANT TO THE**
4 **COURT-APPROVED NOTICE PROGRAM**

5 The multi-pronged program approved by the Court in the Preliminary Approval Order,
6 (*see* Dkt. No. 161) was implemented by the parties and the Claims Administrator. Such program
7 included direct notice (via e-mail and, where Sephora's billing records indicated a billing
8 address, by supplemental mail notice) and other methods of notice, and is well-designed and
9 tailored to ensure the best notice practicable under the circumstances. *See* Christensen Decl. at ¶
10 13; Kratz Decl. at ¶ 6.

11 **A. Mailed and E-mail Notice**

12 Pursuant to the Court-approved notice program, Sephora's Beauty Insider account
13 records were utilized to provide direct mail and e-mail notice where Class Members' contact
14 information was available. Sephora provided the Claims Administrator with Customer Data
15 which included, to the extent available, names, last known billing addresses (where available),
16 and e-mail addresses for Class Members. *See* Ex. 2 at § 4.2; Kratz Decl. at ¶ 4. On or before
17 February 17, 2017, the Claims Administrator updated the billing addresses in the Customer Data
18 through the National Change of Address Database, and mailed the Notice of Settlement to each
19 billing address, as updated. *See* Kratz Decl. at ¶ 5. A total of 10,604 Notices were mailed in
20 hard copy, with over 75% delivered on the first attempt. *Id.* at ¶ 8. Appropriate steps were taken
21 to re-mail Notices that were returned undeliverable and 515 Notices were re-mailed. *Id.*

22 On February 17, 2017, the Claims Administrator also e-mailed the Notice to each e-mail
23 address in the Customer Data. A total of 15,054 Notices were e-mailed, approximately 43.9% of
24 which (6,606 Notices) were successfully delivered (*i.e.*, did not bounce back). *See* Ex. 2 at § 4.3;
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1 Kratz Decl. at ¶ 7.

2 Between e-mail and mailed notices, a total of 13,879 Class Members received notice, or
3 approximately 92.2%. *See* Kratz Decl. at ¶¶ 6, 10.

4 **B. Additional Internet-Based Notice**

5 Additionally, on or about February 17, 2017, Sephora posted the Notice of Settlement on
6 its Facebook page and Internet home page. These notices remained posted until the end of the
7 Claim Period, April 3, 2017. *See* Christensen Decl. at ¶ 14.

8 **C. Settlement Website, E-mail Address and Toll-Free Number**

9 As directed by the Court, the Claims Administrator also established a Settlement Website,
10 www.beautyinsidersettlement.com, where Class Members could submit claims electronically,
11 obtain additional information, and access copies of the Complaint, the Settlement, the long-form
12 Class Notice, and Class Counsel's Fee Application. *See* Ex. 2 at § 4.3.

13 The Claims Administrator also established an e-mail address and a toll-free telephone
14 number where Class Members could obtain additional information and request a hard copy
15 Claim Form or long-form Notice. *See* Dkt. No. 167 at pp. 6-7; Kratz Decl. at Ex. A.

16 **V. THE RESPONSE FROM THE CLASS HAS BEEN VERY POSITIVE**

17 The response from the Class thus far has been very positive. The deadline for Class
18 Members to submit claims was April 3, 2017. The Claims Administrator reports that 3,229
19 claims were submitted (including 1,569 claims submitted online via the Settlement Website,
20 1,077 mailed claims and 583 claims submitted by other means such as e-mail). *See* Kratz Decl.
21 at ¶ 16. There were a total of 1,698 valid claims.⁷ *Id.* at ¶ 17. The overall take rate is

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27 ⁷ While a total of 3,229 claims were submitted, nearly half were deemed to be deficient.
28 Of the 1,531 claims that have been rejected, 109 were submitted after the close of the Claim
Period, 117 were duplicates (meaning that the same Class Member submitted multiple Claim
Ye, et al. v. Sephora USA, Inc.

1 approximately 11%. *See* Christensen Decl. at ¶ 23. Given the number of Authorized Claimants
2 and the rates at which they elected to receive cash vs. Electronic Gift Cards, it is projected that
3 each Authorized Claimant will receive \$123.86 in cash or \$247.73 in Electronic Gift Card. *Id.* at
4 ¶ 24. Class Members will claim the entirety of the net settlement fund. *Id.* at ¶ 25.

5 The deadline for Class Members to opt-out or object was April 3, 2017. Only three
6 persons have asked to be excluded, and just one objection has been submitted. *See* Kratz Decl. at
7 ¶¶ 11-12.

8 The objector's statement merely declared: "I chose to remain apart [sic] of settlement, but
9 I don't believe the settlement is fair and I will object in court," and as such, the basis of her
10 objection was not clear. *See* Christensen Decl. at ¶ 33. Class Counsel spoke with the objector by
11 telephone on or about April 12, 2017, where she was joined by her husband.⁸ *Id.* at ¶¶ 36-39.
12 The objector stated that she thought she deserved more money because the discrimination was so
13 severe and that any amount she might recover under this Settlement was not what she believed
14 the case is worth. *Id.* at ¶ 41. She stated that she at most spent approximately \$500.00 per year
15 on average at Sephora. *Id.* at ¶ 42. She did not attempt to contact any attorneys in 2014 when
16 the events surrounding the Sale occurred and she further stated that she was unaware that there
17 were any allegations of national origin or race discrimination because she was in the midst of her
18 final exams. *Id.* at ¶¶ 43-44. Her first indication that any potential discrimination had occurred
19 was when she received the Notice of Settlement. *Id.* at ¶ 45. Before she had an opportunity to
20 speak further, her husband stepped in and declared that he had read somewhere that his wife was
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26 Forms), and 1,305 Claim Forms were missing required information or did not include an e-mail
27 address from a Chinese Domain (and therefore did not reflect a claim from a genuine Class
28 Member). *See* Kratz Decl. at ¶¶ 13-14.

⁸ The objector claimed that she needed her husband on the line in case she could not understand Class Counsel. *Id.* at ¶ 38.

1 entitled to a “statutory minimum” payment of “\$250,000.00” for the discrimination she allegedly
 2 experienced. *Id.* at ¶ 46. Class Counsel requested that they send information regarding such
 3 “statutory minimum” payments, but they have not yet sent it. *Id.* at ¶ 47. Later that week, the
 4 objector requested information regarding the Fairness Hearing via e-mail, which Class Counsel
 5 sent. *Id.* at ¶ 48. She stated that she plans to be present at the hearing, but she may be prevented
 6 if “business” that she and her husband have that is “worth in the millions of dollars” will cause
 7 them to be outside of the country on May 25, 2017. *Id.*; Ex. 8.

9 **VI. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT**

10 **A. The Legal Standards for Settlement Approval**

11 Courts in this circuit have long recognized that “there is a strong judicial policy that
 12 favors settlements, particularly where complex class action litigation is concerned.” *Schaffer v.*
 13 *Litton Loan Servicing, LP*, No. 05 Civ. 7673 (MMM), 2012 WL 10274679, at *7 (C.D. Cal. Nov.
 14 13, 2012) (quoting *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008)); *see also*
 15 *Churchill Village, LLC v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004); *Class Plaintiffs v. City*
 16 *of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Officers for Justice v. Civil Serv. Comm’n*, 688
 17 F.2d 615, 625 (9th Cir. 1982); *see also Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116
 18 (2d Cir. 2005) (emphasizing the “strong judicial policy in favor of settlements, particularly in the
 19 class action context”).

22 Under Rule 23(e), “[t]he claims, issues, or defenses of a certified class may be settled . . .
 23 only with the court’s approval.” Fed. R. Civ. P. 23(e). To meet the standard for approval, a
 24 settlement must be “fundamentally fair, adequate, and reasonable.” *Hanlon v. Chrysler Corp.*,
 25 150 F.3d 1011, 1026 (9th Cir. 1998). “It is the settlement taken as a whole, rather than the
 26 individual component parts, that must be examined for overall fairness.” *Id.* The district court
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1 has “the sound discretion” to approve or reject a settlement, since it has been ““exposed to the
2 litigants, and their strategies, positions and proof.”” *Id.* (quoting *Officers for Justice*, 688 F.2d at
3 626). Factors considered by the district court in assessing a proposed settlement include: (1) the
4 strength of the plaintiffs’ case; (2) the risk, expense, complexity, and likely duration of further
5 litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount
6 offered in the settlement; (5) the extent of discovery completed and the stage of the proceedings;
7 (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8)
8 the reaction of the class members to the proposed settlement.⁹ *Id.*

10 **B. The Relevant Factors Weigh in Favor of Granting Final Approval**

11 **1. Strength of the Case**

12 The proposed settlement fairly reflects the strength of Plaintiffs’ case. While Plaintiffs
13 believe their claims are meritorious, Sephora remains confident that its defenses are strong. *See*
14 Dkt. No. 152 (“Joint Supplemental Brief”) at pp. 6-10. As explained in the parties’ Joint
15 Supplemental Brief, Plaintiffs contend that they can prove their case by relying on certain
16 evidence, including: the fact that Sephora does not deny that it deactivated all accounts from the
17 Chinese Domains, damages could be ascertained through a random sampling of past Sale events
18 and purchases made by prior buyers, and sentiment based on the accusation of being “resellers”
19 is publicly available on Facebook, among other evidence. *Id.* at pp. 6-8.

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22 Sephora, meanwhile, contends that it can defeat Plaintiffs’ claims by pointing to: the
23 difficulty in certifying a 42 U.S.C. § 1981 (“Section 1981”) class; case law that indicates that
24 resellers cannot recover in a Section 1981 case; the absence of any proof of intentional
25 discrimination; and the unavailability of disparate impact as a means to recovery in a Section
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28 ⁹ The seventh factor is inapplicable here because there is no governmental entity involved.
Ye, et al. v. Sephora USA, Inc.

1 1981 case, among other evidence and theories. *Id.* at pp. 9-10.

2 Although Plaintiffs remain confident of their ability to prevail, they recognize that should
3 litigation proceed, this action is highly technical and relies on substantial evidence stored on
4 Sephora's databases that would need to be obtained and then analyzed. *See* Christensen Decl. at
5 ¶ 5. Furthermore, Plaintiffs would need to show that the technical data showed that there would
6 be no reasonable basis for Sephora's IT department to have taken the step of deactivating all
7 accounts, and that such deactivations were instead discriminatory. This would involve
8 substantial testimony from experts as well as high-level Sephora executives, which would also
9 entail significant motion practice. *Id.* at ¶ 6. Plaintiffs also recognize the risk of loss at trial, as
10 well as the inherent expense and delay associated with continuing to litigate. *Infra* at pp. 15-17.
11 In light of these factors, the proposed settlement reflects the strength and weaknesses of
12 Plaintiffs' case and represents a fair and reasonable outcome. *See* Christensen Decl. at ¶ 8.

13 **2. Risk, Expense, Complexity and Duration of Further Litigation**

14 The risks associated with further litigation also weigh in favor of final approval. As
15 described in Plaintiffs' Motion for Preliminary Approval, this case has been vigorously litigated
16 from the start. *See* Dkt. No. 167 at p. 2. In addition to aggressively opposing class certification,
17 Sephora would almost certainly move for summary judgment. *See Ching v. Siemens Indus., Inc.*,
18 No. 11 Civ. 4838 (MEJ), 2014 WL 2926210, at *4 (N.D. Cal. June 27, 2014). These procedural
19 obstacles substantially increase the risk that the Class would see no recovery at all. *See LaGarde*
20 *v. Support.com, Inc.*, No. 12 Civ. 0609 (JSC), 2013 WL 1283325, at *4 (N.D. Cal. Mar. 26,
21 2013). As such, this factor favors preliminary approval of the Settlement because it avoids
22 significant delays and provides all Class Members with an immediate, substantial benefit in the
23 form of cash or an Electronic Gift Card. *See Curtis-Bauer v. Morgan Stanley & Co., Inc.*, No. 06
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1 Civ. 3903 (TEH), 2008 WL 4667090, at *4 (N.D. Cal. Oct. 22, 2008) (“Settlement avoids the
2 complexity, delay, risk and expense of continuing with the litigation and will produce a prompt,
3 certain, and substantial recovery for the Plaintiff class.”). Sephora continues to deny that it has
4 discriminated against any of its customers. *See* Dkt. No. 152 at pp. 6-10. The history of this
5 case suggests that further litigation would continue to be prolonged and difficult.

6
7 Under any of these scenarios, continued litigation would increase the amount of
8 attorneys’ fees incurred, without necessarily improving the likelihood of a favorable resolution
9 and monetary recovery for the class members. *See* Dkt. No. 146 at pp. 13-16. In contrast, the
10 proposed settlement allows for immediate implementation of monetary relief. *Id.* at pp. 13-14.
11 In sum, the risks and potential delay of further litigation, especially in a case that has already
12 been litigated for over two and a half years, outweigh the immediate, concrete relief provided
13 under the proposed settlement agreement. *See, e.g., Greko v. Diesel U.S.A., Inc.*, No. 10 Civ.
14 2576 (NC), 2013 WL 1789602, at *5 (N.D. Cal. Apr. 26, 2013) (approving a final settlement,
15 and noting that “even with a strong case, further litigation would be time-consuming and
16 expensive”).
17

18 19 **3. Risk of Maintaining Class Status Through Trial**

20 The settlement is also reasonable in light of the risks associated with obtaining class
21 status and maintaining it through trial. This Court has not yet decided whether class certification
22 is appropriate. However, even if Plaintiffs’ request was granted, decertification is a risk. *See*
23 *Noll v. Ebay, Inc.*, 309 F.R.D. 593, 606 (N.D. Cal. 2015) (decertification of a class “at any time is
24 an inescapable and weighty risk that weighs in favor of a settlement.”) (citing *Rodriguez v. W.*
25 *Publ’g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009); *In re Netflix Privacy Litig.*, No. 11 Civ. 0379
26 (EJD), 2013 WL 1120801, at *6 (N.D. Cal. Mar. 18, 2013) (“The notion that a district court
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28

1 could decertify a class at any time is one that weighs in favor of settlement.”) (internal citations
2 omitted). Sephora opposed the class certification motion and argued that individualized issues
3 predominate. While Plaintiffs are confident that they would prevail in the certification motion
4 and defeat a decertification motion, the risks of engaging in further litigation counsel in favor of
5 approving the proposed settlement agreement. *See Greko*, 2013 WL 1789602, at *4 (“A motion
6 for decertification would, at the very least, entail significant expense, and if successful, would
7 have a dramatic effect on the ability of the absent class members to obtain any monetary
8 recovery whatsoever.”).

10 **4. Amount Offered in Settlement Versus Outcome at Trial**

11 The amount offered in the proposed settlement is fair and reasonable. As explained in
12 detail in Plaintiffs’ Motion for Preliminary Approval, as well as the parties’ Joint Supplemental
13 Brief, the monetary relief is substantial. The settlement provides for a \$950,000.00 settlement
14 fund, distributed through a claims process. *See* Dkt. No. 146 at p. 15. Class members had the
15 option of submitting claims through an online form, or via e-mail or U.S. mail. *Id.* After
16 payment of expenses of administration and the requested attorneys’ fees, Authorized Claimants
17 will receive approximately \$123.86 in cash or \$247.73 in an Electronic Gift Card. *See*
18 Christensen Decl. at ¶ 24; *see also* Ex. 2 at § 3.1.3.

21 The Settlement amount represents a fair value to Class Members given the attendant risks
22 of litigation, even though recovery could potentially be greater if Plaintiffs attained class
23 certification, succeeded on all claims at trial, and survived an appeal. *See Officers for Justice*,
24 688 F.2d at 628 (“It is well settled that a cash settlement amounting to only a fraction of the
25 potential recovery will not per se render the settlement inadequate or unfair.”). Plaintiffs allege
26 harm because of discriminatory bias in connection with Sephora’s decision to deactivate
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1 accounts associated with the Chinese Domains. Further, Plaintiffs allege that at a minimum,
2 customers were prevented from accessing or benefitting from the Sale.

3 Estimates regarding a maximum recovery for Plaintiffs would involve continued
4 discovery into data from past VIB online sales as to: (i) the average number of points redeemed
5 in prior sales events; (ii) the values of similarly offered promotions; and (iii) the assessment of
6 average purchase amounts, which would show average discounts received and average points
7 accrued. At best, a matrix of average purchases from online sales would provide a range of what
8 is a fair assessment of damages. *See* Dkt. No. 146 at p. 16. This information would help project
9 how much cost savings and points would have been received by Class Members had they not
10 been blocked from the Sale.
11

12 This recovery is extraordinary for a consumer case involving denial of online purchases,
13 as the amount that is recoverable by Plaintiffs is substantial as compared to the amount of
14 savings they were denied when their access to the website was cut off. *Id.*

15 For example, a VIB member (someone who makes purchases for a total of between
16 \$350.00 and \$999.00 in a year), even if she were to spend \$999.00 during the Sale, would only
17 have lost out on \$199.00 of cost-savings. *Id.* With this Settlement, that VIB member is eligible
18 to receive up to \$125.00 in cash, resulting in 63% of a total of \$199.00 cost-savings. *Id.* Of
19 course, many VIB members spend far less than \$999.00 during the Sale, with anyone who
20 intended to spend less than \$625.00 during the Sale fully recouping their lost savings if they elect
21 to receive a cash settlement award. *See Custom LED, LLC v. eBay, Inc.*, No. 12 Civ. 0350 (JST),
22 2013 WL 6114379, at *14 (N.D. Cal. Nov. 20, 2013) (explaining that “courts have held that a
23 recovery of only 3% of the maximum potential recovery is fair and reasonable when the
24 plaintiffs face a real possibility of recovering nothing absent the settlement”); *In re Omnivision*
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1 *Techs.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement awarding class
2 members 9% of potential damages). Here, based on the uncertainties of law and fact, and the
3 increased risks and costs necessary for continued litigation, the Settlement payment is fair and
4 reasonable. As such, this factor favors settlement.

5
6 In sum, the Settlement provides an avenue for obtaining significant monetary relief that is
7 faster, less expensive, and more convenient than fully litigating this action. As the Court
8 recognized at the preliminary approval hearing, the fund “is a fair number because of the risks
9 involved” taking into account the “risks in terms of certification questions” especially “in a
10 2[3](b)(3) case of predominance [that] could be an issue.” Ex. 4 at 18:15-22.

11 **5. Extent of Discovery Completed and the State of Proceedings**

12
13 The proposed settlement was reached after substantial investigation into the merits of this
14 case. Over two and a half years of litigation, the parties conducted substantial discovery that
15 included the review of over 10,000 documents produced by Sephora, many of which were highly
16 technical; Sephora deposing Plaintiff Ye in New York and Plaintiff Han in San Diego; Plaintiffs
17 deposing high-level Sephora employees in San Francisco; and discovery disputes litigated before
18 The Hon. Laurel Beeler. *Supra* at p. 4. This thorough investigation allowed both parties to fully
19 understand and evaluate Plaintiffs’ claims and Sephora’s defenses. The parties further developed
20 their cases through extensive motion practice, including full class certification briefing. *Supra* at
21 p. 5.

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23 The proposed settlement was reached through highly contested negotiations held at arms’
24 length, with the aid of first The Hon. Edward M. Infante (ret.) and then The Hon. Jacqueline S.
25 Corley, after two separate mediation sessions and numerous rounds of informal negotiation.
26 *Supra* at p. 5. At the time of settlement, the litigation was at a stage where both parties had a
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1 clear view of the strengths and weaknesses of their positions, which weighs strongly in favor of
2 approving the settlement. *See, e.g., Officers for Justice*, 688 F.2d at 627 (affirming the approval
3 of a consent decree, where the case had been “aggressively litigated . . . for six years,” resulting
4 in a large record and many pre-trial orders, assuring the court that the proposed settlement “was
5 not hastily arrived at”).

6 **6. Experience and Views of Class Counsel**

7
8 The experience and views of Counsel also support approving the proposed settlement
9 agreement. As set forth more fully in Plaintiffs’ Motion for Attorneys’ Fees and Expenses and
10 Service Awards to Named Plaintiffs (“Attorneys’ Fees Motion”), Class Counsel have significant
11 experience in discrimination and consumer cases, as well as class action litigation. *See* Dkt. No.
12 168 at pp. 8-11. Class Counsel have worked on this case for over two and a half years and are
13 familiar with Plaintiffs’ claims and Sephora’s defenses. The fact that Class Counsel believe that
14 this settlement is fair, reasonable, and adequate weighs in favor of final approval. *See, e.g.,*
15 *Pierce v. Rosetta Stone, Ltd.*, No. 11 Civ. 1283 (SBA), 2013 WL 5402120, at *5 (N.D. Cal. Sept.
16 26, 2013) (“Given the collective experience of the attorneys involved in this litigation, the Court
17 credits counsels’ view that the settlement is worthy of approval.”).

18 **7. The Reaction of the Class**

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20 Finally, the reaction of the class members weighs in favor of approving the settlement.
21 On February 17, 2017, Notice was sent to the 15,054 Class Members by e-mail using their
22 @126.com, @163.com or @qq.com address associated with their VIB account. *Supra* at pp. 10-
23 11. In addition, for the 10,604 Class Members for whom a valid billing address was on file,
24 Notice was also sent via First Class U.S. Mail. *Id.* Only three class members have opted out,
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1 and one objection to the settlement has been filed.¹⁰ This amounts to a 0.02% opt-out rate, and a
 2 0.007% objection rate. *See* Christensen Decl. at ¶ 28. Courts often infer that a settlement is fair,
 3 adequate, and reasonable when relatively few class members object to it. *See, e.g., Churchill*
 4 *Village, LLC*, 361 F.3d at 577 (affirming settlement approval where 45 of the approximately
 5 90,000 notified class members objected and 500 opted out). “Courts have repeatedly recognized
 6 that the absence of a large number of objections to a proposed class action settlement raises a
 7 strong presumption that the terms of a proposed class settlement action are favorable to the class
 8 members.” *Garner v. State Farm. Mut. Auto. Ins. Co.*, No. 08 Civ. 1365 (CW)(EMC), 2010 WL
 9 1687832, at *14 (N.D. Cal. Apr. 22, 2010) (internal quotation marks omitted); *see also, e.g.,*
 10 *Wren v. RGIS Inventory Specialists*, No. 06 Civ. 5778 (JCS), 2011 WL 1230826, at *11 (N.D.
 11 Cal. April 1, 2011) (same), *supplemented*, 2011 WL 1838562 (N.D. Cal. May 13, 2011); *Chun-*
 12 *Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (concluding that class
 13 members had an “overwhelming positive reaction” to the proposed settlement where “[a] total of
 14 zero objections and sixteen opt-outs (comprising 4.86% of the class)” were made from a class of
 15 329 members).

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 19 **C. The Proposed *Cy Pres* Beneficiary is Reasonable**

20 The Court should also approve the parties’ designated *cy pres* beneficiary. Under the
 21 agreement, excess settlement funds will be sent to the National Asian Pacific American Women’s
 22 Forum. *See* Ex. 2 at § 3.1.4. This organization is comprised of “the next best class of
 23 beneficiaries” in this lawsuit, as it is a non-profit organization that advocates on behalf of Asian
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 28 ¹⁰ The lone objector did not specify what components of the settlement she does not find to be fair. *See* Ex. 7. Based on Class Counsel’s discussions with the objector, it seems that she believes that she is entitled to a payment of \$250,000.00 due to a purported “statutory minimum” penalty that should be assessed. While she stated that she would provide additional information in support of her beliefs, to date, Class Counsel has not yet received any such information. Christensen Decl. at ¶¶ 46-47.

1 American and Pacific Islander (“AAPI”) women and girls to advance their civil rights, both
2 locally in California and nationally. *See Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir.
3 2012) (internal quotation marks omitted), *cert. denied*, 134 S. Ct. 8 (2013). As the Ninth Circuit
4 has explained, a *cy pres* award should “bear[] a substantial nexus to the interests of the class
5 members.” *Id.* at 821. This means that the award should account for “the nature of the plaintiffs’
6 lawsuit, the objectives of the underlying statutes, and the interests of the silent class members,
7 including their geographic diversity.” *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1036 (9th Cir.
8 2011); *see also Dennis v. Kellogg Co.*, 697 F.3d 858, 865 (9th Cir. 2012) (stating that a *cy pres*
9 award “must not benefit a group too remote from the plaintiff class” (internal quotation marks
10 omitted)). The parties’ designation of NAPAWF satisfies all of these requirements. The
11 organization was founded with the mission to build a movement to advance social justice and
12 human rights for AAPI women and girls by providing leadership development and advocacy
13 against discrimination. *See* Dkt. No. 146 at p. 10. In addition, the Court recognized at the
14 preliminary approval hearing that it was “satisfied that this organization [referring to NAPAWF]
15 is an appropriate *cy pres* recipient” based on the parties’ due diligence and the organization’s
16 mission statement. *See* Ex. 4 at 23:7-10.

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20 **D. Named Plaintiffs’ Request for Service Awards is Reasonable**

21 Plaintiffs’ request for service awards of \$5,000.00 for each of the two Class
22 Representatives should also be approved. As set forth in detail in the Attorneys’ Fees Motion,
23 Plaintiffs have devoted substantial time to the litigation and pursued this case for nearly three
24 years, without any guarantee of success. *See* Dkt. No. 167 at p. 21. As such, they are entitled to
25 service awards to compensate them for the work done, to make up for financial risks taken, and
26 to recognize their willingness to enforce the law in this case. *See Rodriguez*, 563 F.3d at 958-59;
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1 *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003); *see also, e.g., Wren*, 2011 WL 1230826,
2 at *31-32. In addition, the service awards are reasonable and appropriate because they were not
3 conditioned in any way on Plaintiffs' support for the Settlement Agreement. Each Plaintiff
4 maintained the right to separately and independently support, object to, or comment upon any
5 settlement at any point in the litigation, and neither Plaintiff had any conflicts with the class
6 overall.

7
8 **E. Class Counsel's Request for Fees and Expenses is Reasonable**

9 Plaintiffs' request for attorneys' fees and costs to Class Counsel is also reasonable. As
10 explained in the Attorneys' Fees Motion, Class Counsel achieved excellent results. Sephora has
11 agreed to pay up to \$125.00 in cash or \$250.00 in Electronic Gift Cards to VIB members affected
12 by the mass deactivations in November 2014. Moreover, the accounts that had been deactivated
13 were reactivated shortly after this action was filed. Absent this litigation, the likelihood of these
14 accounts being reactivated was extremely low. *See* Dkt. No. 167 at p. 9. Pursuant to the
15 Settlement Agreement, Class Counsel agreed not to seek an award of fees in excess of
16 \$418,560.00 and expenses up to and including \$90,000.00 expended in this litigation. *See* Ex. 2
17 at § 5.1. These amounts are reasonable in light of the duration of the litigation, the complexity of
18 the issues, and the excellent results that Class Counsel achieved. As of the date of this brief, the
19 only objection that has been received makes no mention of any objection to the Attorneys' Fees
20 Motion.
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23 **VII. CONCLUSION**


24 For the foregoing reasons, Plaintiffs and Class Counsel respectfully request that the
25 Court enter an Order: (a) granting Plaintiffs' Motion for Final Approval of Class Action
26 Settlement; (b) awarding attorneys' fees and expenses for Class Counsel; (c) approving service
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1 awards for the Plaintiffs in the amounts requested; (d) approving administration costs to the
2 Claims Administrator in the amount requested; and (e) granting such other and further relief as
3 may be appropriate.

4 Dated: April 20, 2017
5 New York, New York

Respectfully submitted,

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

RUIQI YE and YOLIN HAN, individually
and on behalf of all other similarly-situated
individuals,

Plaintiffs,

v.

SEPHORA USA, INC.,

Defendant.

Case No.: 3:14-cv-05237-EMC

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT; MOTION FOR
APPROVAL OF CLASS COUNSEL'S
FEES AND EXPENSES AND SERVICE
AWARDS TO NAMED PLAINTIFFS;
AND FOR ENTRY OF JUDGMENT
AND ORDER OF DISMISSAL**

This matter came before the Court on Plaintiffs' Motion for Final Approval of Settlement and for Entry of the Judgment and Order of Dismissal and Motion for Approval of Class Counsel's Fees and Expenses (the "Final Approval Motions"). Defendant agreed, for settlement purposes only, not to oppose the Final Approval Motion.

1. Based upon the Court's review of Plaintiffs' Final Approval Motions, including the

1 Declaration of Jeanne M. Christensen, Esq. (“Christensen Decl.”), and all other papers submitted in
2 connection with Plaintiffs’ Final Approval Motions, as well as the discussion held between the Court
3 and the parties on the record at the May 25, 2017 Final Approval Hearing, the Court grants final
4 approval of the settlement memorialized in the Settlement Agreement, attached to the Christensen
5 Decl. as **Exhibit 2**. Capitalized terms used in this Order shall have the same meanings as set forth in
6 the Settlement Agreement, unless otherwise defined herein.
7

8 2. For settlement purposes, the Court certifies the following class under Fed. R. Civ. P.
9 23(e) (“Settlement Class”):

10 All Sephora customers who meet all of the following criteria: (i) had
11 one or more Sephora “Beauty Insider” account(s) with VIB or VIB
12 Rouge status as of November 4, 2014 that was associated with an
13 email address from the domain @qq.com, @126.com, or @163.com;
14 (ii) had their account(s) deactivated as a result of the computer code
15 that Sephora implemented on or about November 6, 2014; and (iii)
16 attempted to but were unable to make a purchase at
17 www.sephora.com using their “Beauty Insider” account(s) at some
18 point in November 2014.

19 3. The Settlement Class meets all of the requirements for class certification under Fed.
20 R. Civ. P. 23(a) and (b)(3).

21 4. Wigdor LLP and Anderson & Poole, P.C., which the Court previously appointed as
22 Class Counsel, satisfy the adequacy requirements of Fed. R. Civ. P. 23(a)(4).

23 5. The Court approves the settlement and all terms set forth in the Settlement
24 Agreement, and finds that the settlement is, in all respects, fair, adequate, reasonable, and binding on
25 all members of the Settlement Class who have not timely and properly opted out pursuant to
26 Paragraph 6.3 of the Settlement Agreement.

27 6. The Court grants Plaintiffs’ Motion for Attorneys’ Fees and Expenses to Class
28 Counsel and awards Class Counsel \$418,560.00 in attorneys’ fees, plus \$90,000.00 in costs and
expenses reasonably expended litigating and resolving the lawsuit. These amounts shall be paid

1 from the Settlement Amount.

2 7. The Court finds reasonable the Service Awards for Class Representatives Ruiqi Ye
3 and Yolin Han in the amounts of \$5,000.00 each. These amounts shall be paid from the Settlement
4 Amount.

5 8. The Court authorizes the payment of the Claims Administration fees to Dahl
6 Administration LLC, estimated to be \$25,663.00 as set forth in the Declaration of Kelly Kratz,
7 attached to the Christensen Decl. as **Exhibit 5**, which shall be paid from the Settlement Amount.

9 9. The “Effective Date” of the Agreement will be the last to occur of the following: (a)
10 the date of final affirmance on appeal of the Judgment; (b) the date of final dismissal of any appeal
11 from the Judgment or the final dismissal of any proceeding to review the Judgment; or (c) if no
12 appeal is filed, the expiration date of the time for the filing or noticing of any appeal from the
13 Court’s Judgment.
14

15 10. No later than 10 business days after the Effective Date, Defendant shall transmit the
16 funds necessary to the Claims Administrator to cover the total payments to be sent to Authorized
17 Claimants.
18

19 11. The Claims Administrator will disburse the first distribution of settlement checks to
20 the Authorized Claimants, Court-approved attorneys’ fees and costs, Court-approved enhancement
21 awards, and Court-approved Claims Administrator’s fees within 14 days after receipt of the funds
22 from Defendant.

23 12. The Claims Administrator shall provide verification to Class Counsel and Defendant’s
24 Counsel that it has distributed the Settlement Benefits, retain copies of all of the endorsed
25 Settlement Checks with releases, and provide Defendants’ Counsel with the original or copies of the
26 endorsed Settlement Checks (both sides) in accordance with the Settlement Agreement.
27
28

1 13. Upon the fulfillment of all settlement terms, the entire Litigation will be dismissed
2 with prejudice, and without costs, expenses or attorneys' fees to any party except as provided in the
3 Settlement Agreement and this Order. All Class Members who did not opt out in accordance with
4 the terms of the Settlement Agreement are permanently enjoined from asserting, pursuing, and/or
5 seeking to reopen claims that have been released in accordance with the terms of the Settlement
6 Agreement.
7

8 14. The Court retains jurisdiction over the interpretation and implementation of the
9 Settlement Agreement.

10 IT IS SO ORDERED.

11 Date: _____, 2017

12 Hon. Edward M. Chen
13 United States District Judge
14 Northern District of California