

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement” or “Settlement Agreement”) is entered into by and between Sephora USA, Inc. (“Defendant”), and Auste Salkauskaite (“Plaintiff”) both individually and on behalf of the Settlement Class (as defined herein), in the case *Salkauskaite, et al. v. Sephora USA, Inc.*, Case No. 1:18-cv-08507, United States District Court for the Northern District of Illinois (the “Litigation,” as further defined in Paragraph 12 herein). Defendant and Plaintiff are each referred to as a “Party” and are collectively referred to herein as the “Parties.”

I. FACTUAL BACKGROUND AND RECITALS

1. On November 11, 2018, Plaintiff Auste Salkauskaite filed a class action lawsuit in the Circuit Court of Cook County, Illinois, Chancery Division against Defendant and Modiface, Inc. (“Modiface”) alleging violations of the Illinois Biometric Information Privacy Act, 740 ILCS § 14/1, *et seq.* (“BIPA”) and negligence.
2. On December 27, 2018, Defendant removed the case to the Northern District of Illinois where it was assigned to the Honorable Andrea R. Wood.
3. On May 7, 2019, Modiface filed its motion to dismiss Plaintiff’s complaint for lack of personal jurisdiction. On the same day, Plaintiff subsequently filed her First Amended Complaint with leave of Court.
4. On May 24, 2019, Sephora answered the allegations of the First Amended Complaint, denying the allegations set forth therein and posing affirmative defenses. On the same day, Modiface filed a renewed motion to dismiss for lack of personal jurisdiction, which was granted on May 30, 2020.
5. The Parties thereafter agreed to attempt to resolve the Litigation through mediation. On December 1, 2020 the parties participated in a full-day mediation overseen by the Honorable Morton Denlow (Ret.) of JAMS in Chicago, Illinois.
6. Following more than two weeks of additional arms-length negotiations, the Parties reached a settlement in principle on December 16, 2020, with the assistance of Judge Denlow, by which the Parties agree to resolve all matters pertaining to, arising from, and associated with the Litigation, including all claims Plaintiff and Settlement Class Members have or may have had against Defendant and any Released Parties, as that term is defined herein.
7. The Parties have agreed to settle the Litigation on the terms and conditions set forth herein in recognition that the outcome of the Litigation is uncertain and that achieving a final result through litigation would require substantial additional risk, discovery, time and expense.

8. Defendant denies all charges of wrongdoing or liability of any kind whatsoever that Plaintiff or Settlement Class Members have asserted in this Litigation or may in the future assert. Despite Defendant's belief that it is not liable for, and has good defenses to, the claims alleged in the Litigation, Defendant desires to settle the Litigation, and thus avoid the expense, risk, exposure, inconvenience, and distraction of continued litigation of any action or proceeding relating to the matters being fully settled and finally put to rest in this Settlement Agreement. Neither this Settlement Agreement, nor any negotiation or act performed or document created in relation to the Settlement Agreement or negotiation or discussion thereof is, or may be deemed to be, or may be used as, an admission of, or evidence of, any wrongdoing or liability.
9. Following arms-length negotiations, including mediation before an experienced mediator, the Parties now seek to enter into this Settlement Agreement. Plaintiff and Class Counsel have conducted an investigation into the facts and the law regarding the Litigation and have concluded that a settlement according to the terms set forth below is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiff and the Settlement Class recognizing: (1) the existence of complex and contested issues of law and fact; (2) the risks inherent in litigation; (3) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement; (4) the magnitude of the benefits derived from the contemplated settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof, as well as the potential of no recovery whatsoever; and (5) Plaintiff's determination that the settlement is fair, reasonable, adequate, and will substantially benefit the Settlement Class Members.
10. Considering the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, the Parties are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in their respective best interests.
11. In consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Litigation be settled and compromised, and that the Releasing Parties release the Released Parties of the Released Claims, without costs as to the Released Parties, Plaintiff, Class Counsel, or the Settlement Class, except as explicitly provided for in this Agreement, subject to the approval of the Court, on the following terms and conditions.
12. In order to avoid any jurisdictional challenges to the Settlement, the Parties have filed, or imminently shall file, a Stipulation to Remand in the Northern District of Illinois. The Parties anticipate that upon remand, the case shall become pending before the Circuit Court of Cook County, Illinois, Chancery Division, with the case

number 2018-CH-14379. For the avoidance of doubt, the “Litigation” as defined herein encompasses this same lawsuit in any forum.

II. DEFINITIONS

As used in this Agreement, the following terms have the meanings specified below:

13. “Administrative Expenses” shall mean costs of administration of the Agreement, including but not limited to costs associated with the Settlement Administrator (as defined below), costs in providing notice, communicating with Settlement Class Members, and disbursing payments to the proposed Settlement Class Members.
14. “Approved Claims” shall mean complete, valid, and timely claims submitted by Settlement Class Members that have been approved for payment by the Settlement Administrator.
15. “Claim Form” shall mean the form that Settlement Class Members may submit to the Settlement Administrator to make a claim for compensation under this Settlement. The Claim Form shall be substantially in the form attached hereto as Exhibit A.
16. “Claims Deadline” shall mean the date by which all Claim Forms must be postmarked (if mailed) or submitted (if filed electronically) to be considered timely and shall be set as a date no later than sixty-three (63) days following the Notice Date, subject to Court approval. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Notice and the Claim Form.
17. “Class,” “Settlement Class,” “Class Member,” or “Settlement Class Member” shall mean each member of the settlement class, as defined in Section III of this Agreement, who does not timely elect to be excluded from the Settlement Class.
18. “Class Counsel” shall mean Evan M. Meyers, Eugene Y. Turin, and Timothy P. Kingsbury of McGuire Law, P.C.
19. “Counsel” or “Counsel for the Parties” means both Class Counsel and Defendant’s Counsel, collectively.
20. “Court” shall mean the Honorable Anna M. Loftus of the Circuit Court of Cook County, Illinois, Chancery Division and her successors, if any, or any other judge who shall have jurisdiction over the pending Litigation upon its remand.
21. “Defendant” shall mean Sephora USA, Inc.
22. “Defendant’s Counsel” shall mean Robert E. Shapiro, Maile H. Solís, Connor T. Gants, and David B. Lurie of Barack Ferrazzano Kirschbaum & Nagelberg LLP.

23. “Effective Date” shall mean the date when the Settlement Agreement becomes Final.
24. “Fee and Expense Application” shall mean the motion to be filed by Class Counsel, in which they will seek approval of an award of attorneys’ fees, costs, and expenses, as well as an Incentive Award for the Class Representative.
25. “Fee Award” means the amount of attorneys’ fees and reimbursement of costs and expenses awarded by the Court to Class Counsel.
26. “Final” shall mean the later of (i) if there are no objectors, the date of entry of the Final Approval Order; (ii) if there are one or more objectors, the date upon which the time expires for filing or noticing any appeal of the Final Approval Order; (iii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to any Fee Award, the date of completion, in a manner that finally affirms and leaves in place the Final Approval Order without any material modification, of all proceedings arising out of the appeal(s) (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal(s) following decisions on remand); or (iv) the date of final dismissal of any appeal or the final dismissal of any proceeding on appeal with respect to the Final Approval Order.
27. “Final Approval Hearing” means the hearing before the Court where the Plaintiff will request a judgment to be entered by the Court approving the Settlement Agreement, approving the Fee Award, and approving an Incentive Award to the Class Representative.
28. “Final Approval Order” shall mean an order entered by the Court that:
 - i. Certifies the Settlement Class pursuant to 735 ILCS 5/2-801;
 - ii. Finds that the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and approves and directs consummation of this Agreement;
 - iii. Dismisses Plaintiff’s claims pending before it with prejudice and without costs, except as explicitly provided for in this Agreement;
 - iv. Approves the Release provided in Section IX and orders that, as of the Effective Date, the Released Claims will be released as to the Released Parties;
 - v. Reserves jurisdiction over the Settlement and this Agreement; and

- vi. Finds that, pursuant to 735 ILCS 5/2-1301, there is no just reason for delay of entry of final judgment with respect to the foregoing.
29. “Incentive Award” shall have the meaning ascribed to it as set forth in Section XVII of this Agreement.
30. “Litigation” shall have the meaning set forth in this Agreement’s preamble and in Paragraph 12.
31. “Notice” means the direct notice of this proposed Settlement, which is to be provided substantially in the manner set forth in this Agreement and in Exhibits C, D, and E and is consistent with the requirements of Due Process.
32. “Notice Date” means the date by which the Notice is disseminated to the Settlement Class, which shall be a date no later than twenty-one (28) days after entry of the Preliminary Approval Order.
33. “Objection/Exclusion Deadline” means the date by which a written objection to this Settlement Agreement must be postmarked and/or filed with the Court, and the date by which a request for exclusion submitted by a person within the Settlement Class must be postmarked or submitted electronically, and which shall be designated as a date approximately forty-two (42) days after the Notice Date, as approved by the Court.
34. “Parties” shall mean Plaintiff and Defendant, collectively.
35. “Plaintiff” or “Class Representative” shall mean the named class representative, Auste Salkauskaite.
36. “Preliminary Approval Order” shall mean the Court’s order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and directing notice of the Settlement to the Settlement Class substantially in the form of the Notice set forth in this Agreement.
37. “Released Claims” shall refer collectively to both the “Sephora Released Claims” and “Modiface Released Claims” as those terms are defined herein.
38. “Sephora Released Claims” shall mean any and all claims that are, could have been, or could be asserted by Releasing Parties under the Illinois Biometric Information Privacy Act and its applicable analogues elsewhere, and all related claims, including statutory and common law claims, during the relevant time period, including but not limited to all claims arising out of the facts alleged in the First Amended Complaint in the Action.
39. “Modiface Released Claims” shall mean any and all claims that are, could have been, or could be asserted by Releasing Parties under the Illinois Biometric

Information Privacy Act and its applicable analogues elsewhere, and all related claims, including statutory and common law claims, during the relevant time period, arising out of or related to Sephora Virtual Artist Kiosk, including but not limited to all claims arising out of the facts alleged in the First Amended Complaint in the Action.

40. “Released Parties” shall refer collectively to both the “Sephora Released Parties” and “Modiface Released Parties” as those terms are defined herein.
41. “Sephora Released Parties” shall refer jointly and severally, and individually and collectively, to Defendant Sephora USA, Inc., any of its affiliates, and any of its and their past, present, and future direct or indirect parents, subsidiaries, divisions, affiliates, predecessors, successors, assigns, associates, holding companies, board members, agents, insurers, reinsurers, directors, officers, shareholders, principals, representatives, and attorneys.
42. “Modiface Released Parties” shall refer jointly and severally, and individually and collectively, to Modiface, Inc., any of its affiliates, and any of its and their past, present, and future direct or indirect parents, subsidiaries, divisions, affiliates, predecessors, successors, assigns, associates, holding companies, board members, agents, insurers, reinsurers, directors, officers, shareholders, principals, representatives, and attorneys.
43. “Releasing Parties” shall refer, jointly and severally, and individually and collectively, to Plaintiff, the Settlement Class Members, and to each of their predecessors, successors, heirs, beneficiaries, conservators, trustees, executors, administrators, representatives and assigns, and anyone claiming by, through, or on behalf of them.
44. “Settlement Administrator” means, subject to Court approval, KCC, LLC, the entity mutually selected and supervised by the Parties to administer the Settlement.
45. “Settlement Fund” means or refers to the settlement fund to be established by Defendant in the amount of \$1,250,000.00 (One Million Two Hundred Fifty Thousand Dollars). Defendant represents, based on a good faith investigation, that it estimates in good faith that there are approximately 6,500 persons in the Settlement Class.
46. “Settlement Website” means a website established and administered by the Settlement Administrator, which shall contain information about the Settlement, including electronic copies of Exhibits C, D, and E (or any forms of these notices that are approved by the Court), this Settlement Agreement, and all Court documents related to the Settlement. A phone number for the Settlement Administrator shall be provided. The URL of the Settlement Website shall be www.VirtualMakeupBIPASettlement.com, or such other URL that the Parties may

agree to and that is approved by the Court. Settlement Class Members shall be able to submit Claim Forms via the Settlement Website.

47. “Sephora Virtual Artist Kiosk” or “SVA Kiosk” shall mean the kiosks, software, and/or hardware used and/or operated and/or supported and/or designed and/or manufactured by Defendant and/or Modiface in order to allow virtual makeup try-on within Sephora retail stores.

III. SETTLEMENT CLASS CERTIFICATION

48. For the purposes of the Settlement only, the Parties stipulate and agree that: (1) the Class shall be certified in accordance with the definition contained in Paragraph 50, below; (2) Plaintiff shall represent the Class for settlement purposes and shall be the Class Representative; and (3) Plaintiff’s Counsel shall be appointed as Class Counsel.
49. Defendant does not consent to certification of the Class for any purpose other than to effectuate the Settlement. If the Court does not enter Final Approval of the Settlement, or if for any other reason final approval of the Settlement does not occur, is successfully objected to, or challenged on appeal, any certification of any Class will be vacated and the Parties will be returned to their positions with respect to the Litigation as if the Agreement had not been entered into, including, but not limited to, a stipulated return of the Litigation to the United States District Court for the Northern District of Illinois. In the event that Final Approval of the Settlement is not achieved: (a) any Court orders preliminarily or finally approving the certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in this Agreement, that Defendant did not oppose the certification of a Class under this Agreement, or that the Court preliminarily approved the certification of a Class, shall not be used or cited thereafter by any person or entity, including in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class.
50. Subject to Court approval, the following Settlement Class shall be certified for settlement purposes:
- “All natural persons who pushed a button to interact with any Sephora Virtual Artist Kiosk within the state of Illinois from July 1, 2018 to the date of the Preliminary Approval Order.”
51. Excluded from the Settlement Class are all persons who timely elect to exclude themselves from the Settlement Class, the Court and staff to whom this case is assigned, and any member of the Court's or staff's immediate family.

52. If for any reason the Settlement is not approved, the Court does not enter a Preliminary Approval Order and/or a Final Approval Order, or final settlement and resolution of this Litigation as provided for in this Agreement is not reached, Defendant's agreement to certification of the Settlement Class shall not be used or cited for any purpose in the Litigation or otherwise, including but not limited to in any request for class certification in the Litigation or any other proceeding.

IV. SETTLEMENT OF LITIGATION AND ALL CLAIMS AGAINST THE RELEASED PARTIES

53. Final Approval of this Settlement Agreement will settle and resolve with finality, on behalf of Plaintiff and the Settlement Class, the Litigation, and the Sephora Released Claims, and any other claims that have been brought, could have been brought, or could be brought now or at any time in the future against the Sephora Released Parties by the Releasing Parties in the Litigation, or any other proceeding arising out of, in any manner related to, or connected in any way with the Sephora Released Claims.
54. Final Approval of this Settlement Agreement will settle and resolve with finality, on behalf of Plaintiff and the Settlement Class, the Litigation, and the Modiface Released Claims, and any other claims that have been brought, could have been brought, or could be brought now or at any time in the future against the Modiface Released Parties by the Releasing Parties in the Litigation, or any other proceeding arising out of, in any manner related to, or connected in any way with the Modiface Released Claims.

V. SETTLEMENT FUND

55. Establishment of Settlement Fund

- a. Defendant agrees to establish a Settlement Fund in the amount of \$1,250,000.00 (One Million Two Hundred Fifty Thousand Dollars), which will fully resolve this action on a class-wide basis. The Settlement Fund will be used to pay for all (i) Approved Claims; (ii) an Incentive Award to the Class Representative; (iii) the Fee Award; and (iv) costs of administration of the Agreement to the Settlement Administrator, including without limitation payment of Administrative Expenses. Each Class Member who submits a timely and valid claim form shall be paid a *pro rata* distribution so that each claimant receives the same amount.
- b. Within thirty (30) days after the entry of the Preliminary Approval Order, Defendant shall fund the Settlement Fund in the amount of \$50,000 (Fifty Thousand Dollars), which shall be used to pay Administrative Expenses. On or before thirty (30) days after the Effective Date, Defendant shall fund the remainder of the Settlement Fund. Provided that Final Approval of this Agreement is granted by the Court without material change, material

amendment, or material modification, the Settlement Fund will be used to satisfy Approved Claims for Settlement Class Members in exchange for a comprehensive release and the covenants set forth in this Agreement, including, without limitation, a full, fair and complete release of all Released Parties from Released Claims, and dismissal of the Litigation with prejudice.

- c. All funds provided to the Settlement Administrator by Defendant under this Agreement shall be maintained by an escrow agent as a Court-approved Qualified Settlement Fund pursuant to Section 1.468B-1, *et seq.*, of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended, and shall be deposited in an interest-bearing account.
 - d. If the Settlement Agreement is not finally approved, the Settlement Fund belongs to Defendant, less any Administrative Expenses paid to date. Plaintiff shall have no financial responsibility for any Administrative Expenses paid out of the Settlement Fund in the event that the Settlement Agreement is not finally approved.
 - e. The amount of any uncashed checks after the expiration date, less any funds necessary for settlement administration, will be distributed to a *cy pres* recipient(s) selected by the Parties and approved by the Court. In no event will any portion of the \$1,250,000.00 Settlement Fund revert to or remain with Defendant.
 - f. The Settlement Fund represents the total extent of Defendant's monetary obligations under the Settlement Agreement. Defendant's contributions to the Settlement Fund shall be fixed under this Agreement and final. Defendant shall in no event, including but not limited to the identification of a number of Class Members that exceeds Defendant's estimated class size set forth in Paragraph 45, have any obligation to make further payments to the Settlement Fund, and Defendant shall have no financial responsibility or obligation relating to the Settlement beyond the Settlement Fund.
 - g. The Court may require changes to the method of allocation to Settlement Class Members without invalidating this Settlement Agreement, provided that the other material terms of the Settlement Agreement are not altered, including but not limited to the scope of the Release, the scope of the Settlement Class, and the terms and amount of the Settlement Fund.
56. To file a claim for relief under the Settlement, Settlement Class Members must timely submit a valid Claim Form. Settlement Class Members who timely submit a valid Claim Form and have an Approved Claim shall be entitled to a *pro rata* payment from the Settlement Fund after deductions for Administrative Expenses, any Fee Award, and any Incentive Award to the Class Representative. Thus, each

Settlement Class Member who timely submits a valid Claim Form shall receive the same amount of the Settlement Fund as each other Settlement Class Member who timely submits a valid Claim Form.

VI. SUBMISSION AND EVALUATION OF CLAIMS

57. All claims must be submitted on a Claim Form. The Claim Form will require each Settlement Class Member to provide his or her full name, mailing address, contact telephone number, and contact email address; an affirmation that he/she pushed a button to interact with a Sephora Virtual Artist Kiosk within the state of Illinois during the relevant time period; and a signature.
58. The Claim Form must be submitted (either electronically submitted or else postmarked) on or before the Claims Deadline. The Claim Form shall be substantially in the form attached hereto as Exhibit A.
59. Completed Claim Forms shall be submitted directly to the Settlement Administrator either electronically via the Settlement Website, via electronic mail, or via U.S. Mail, for processing, assessment, and payment.
60. Any Claim Form that lacks the requisite information will be deemed to be incomplete and ineligible for payment. For any partially-completed Claim Forms, the Settlement Administrator shall attempt to contact the Settlement Class Member who submitted the Claim Form at least one time by regular U.S. mail (i) to inform the Settlement Class Member of any error(s) and/or omission(s) in the Claim Form, and (ii) to give the Settlement Class Member one opportunity to cure any errors and/or omissions in the Claim Form. The Settlement Class Member shall have until the Claims Deadline, or fourteen (14) days after the Settlement Administrator sends the regular mail notice to the Settlement Class Member regarding the deficiencies in the Claim Form, whichever is later, to cure the error(s) and/or omission(s) in the Claim Form.
61. A Settlement Class Member is not entitled to any compensation from the Settlement Fund if he or she submits a Claim Form after the Claims Deadline, and/or if the Claim Form is incomplete after an opportunity to cure any error(s) and/or omission(s), as provided in Paragraph 60, or contains false information.
62. Within fourteen (14) days after the Claims Deadline, the Settlement Administrator shall process all Claim Forms submitted by Settlement Class Members and shall determine which claims are valid and initially approved and which claims are initially rejected. The Settlement Administrator may accept or reject any Claim Form submitted, and may, upon its discretion, request additional information prior to initially rejecting or accepting any Claim Form submitted. The Settlement Administrator shall employ reasonable procedures to screen Claim Forms for abuse and/or fraud, and shall deny Claim Forms which are incomplete and/or where there is evidence of abuse and/or fraud.

63. Within fourteen (14) days of the Claims Deadline, the Settlement Administrator will submit to Counsel for the Parties a report listing all initially approved Claims (“Initially Approved Claims List”), and shall include an electronic PDF copy of all such initially approved Claim Forms. Within fourteen (14) days after the Claims Deadline, the Settlement Administrator will also submit to the Parties a report listing all initially rejected Claims (“Initially Rejected Claims List”), and shall include an electronic PDF copy of all such initially rejected Claim Forms.
64. Counsel for the Parties shall have twenty-one (21) days after the date they receive the Initially Approved Claims List and related Claim Forms to audit and challenge any initially approved claims. Within twenty-one (21) days after Counsel for the Parties receive the Initially Approved Claims List and related Claim Forms, they shall serve opposing counsel via email with a Notice of Claim Challenges identifying by claim number any initially approved claim they wish to challenge and the reasons for the challenge.
65. Similarly, Counsel for the Parties may challenge any claim initially rejected by the Settlement Administrator. Counsel for the Parties shall have twenty-one (21) days after the date they receive the Initially Rejected Claims List and related Claim Forms to audit and challenge any initially rejected claims. Within twenty-one (21) days after Counsel for the Parties receive the Initially Rejected Claims List and related Claim Forms, they shall serve opposing counsel via email with a Notice of Claim Challenges identifying by claim number any initially rejected claim they wish to challenge and the reasons for the challenge.
66. Counsel for the Parties shall meet and confer in an effort to resolve any disputes over any challenged claims. If the challenges are not withdrawn or resolved, the decision of the Settlement Administrator will be upheld. The date all claims are finalized without any further dispute shall be referred to as the “Claims Finalization Date.” If neither Class Counsel nor Defendant’s Counsel have any challenges to the initial claims determination reached by the Settlement Administrator, then the Claims Finalization Date shall be the date both Class Counsel and Defendant’s Counsel inform each other by email that the Parties do not have any objection to the claims determination made by the Settlement Administrator or the time for informing each other of such challenges has lapsed.
67. Within seven (7) days of the Claims Finalization Date, the Settlement Administrator shall provide Counsel for the Parties a spreadsheet setting forth the claim number, claimant name, and claimant address, and totaling the amount to be paid for each claimant, which shall be an equal amount for each approved claim (the “Final Claims List”).

VII. TIMING OF PAYMENTS FROM SETTLEMENT FUND

68. On or before thirty-seven (37) days after the Effective Date, the Settlement Administrator shall pay to Class Counsel from the Settlement Fund the amount awarded by the Court in the Fee Award. The Fee Award shall be paid solely from the Settlement Fund via electronic wire transfer to an account designated by Class Counsel.
69. The Incentive Award shall be paid solely from the Settlement Fund by check made payable to Plaintiff written by the Settlement Administrator on or before thirty-seven (37) days after the Effective Date and mailed to the address identified on the W-9 tax form provided by Plaintiff to the Settlement Administrator in advance thereto.
70. Upon the later of ten (10) business days after the Claims Finalization Date or sixty (60) days after the Effective Date, the Settlement Administrator shall send a check by First Class U.S. Mail to each Settlement Class Member on the Final Claims List. The Settlement Administrator shall notify the Parties that all Approved Claims have been paid within five (5) business days of the last of such payment and shall notify the Parties of the date of issuance of the checks.
71. In the event that checks sent to Settlement Class Members are not cashed within one hundred (100) days after their date of issuance, whether because the checks were not received or otherwise, those checks will become null and void. The amount of the uncashed checks after the expiration date will be distributed subject to Paragraph 55(e) above.

VIII. PROSPECTIVE RELIEF

72. Without admitting any liability, Defendant represents that, as a result of the Litigation, it agrees as part of this Settlement to implement measures to comply with BIPA with respect to its SVA Kiosks, so long as it elects to operate SVA Kiosks in the State of Illinois, including:
 - a. Defendant shall make publicly available “SVA Privacy Policy” explaining what information Defendant gathers from its SVA kiosks and how that information is handled and when it is destroyed;
 - b. Defendant shall prevent the camera in the SVA kiosks from operating until a customer presses a button on its SVA kiosk and begins interacting with it; and
 - c. Defendant shall implement a consent functionality that appears on its SVA kiosk screens prior to the SVA kiosk utilizing the camera functionality and the virtual makeup try-on functions of the software.

IX. RELEASE

73. In addition to the effect of any final judgment entered in accordance with this Agreement, upon final approval of this Agreement, and for other valuable consideration as described herein, the Released Parties shall be fully, finally, and completely released, acquitted, and forever discharged from any and all Released Claims.
74. As of the Effective Date, and with the approval of the Court, all Releasing Parties hereby fully, finally, and forever release, waive, discharge, surrender, forego, give up, abandon, and cancel all Released Claims against the Released Parties. As of the Effective Date, all Releasing Parties will be forever barred and enjoined from prosecuting any action against the Released Parties asserting any and/or all Released Claims.
75. Each Releasing Party waives any and all defenses, rights, entitlements, and benefits that may be derived from the provisions of applicable law in any jurisdiction that, absent such waiver, may limit the extent or effect of the release contained in this Agreement.
76. The Released Parties do not admit any liability or wrongdoing. The Settlement Agreement may not be construed in whole or in part as an admission of fault, liability, or wrongdoing by the Released Parties. The Released Parties agree to this settlement to avoid the burden and expense of litigation without in any way acknowledging any fault, liability, or wrongdoing of any kind.
77. This Settlement shall be subject to approval of the Court. As set forth in Section XVI, Defendant shall have the right to withdraw from the Settlement if the Court does not approve the material aspects of the Settlement Agreement.

X. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER

78. Plaintiff, through Class Counsel, shall submit this Agreement, together with its Exhibits, to the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Agreement, conditional certification of the Settlement Class, appointment of Class Counsel and the Class Representative, and entry of the Preliminary Approval Order, substantially in the form of Exhibit B, which order shall seek a Final Approval Hearing date and approve the Notices and Claim Form for dissemination in accordance with the applicable notice provisions of this Agreement. Defendant shall not oppose the Motion for Preliminary Approval.
79. At the hearing on the Unopposed Motion for Preliminary Approval, the Parties will jointly appear and support the granting of the Unopposed Motion for Preliminary Approval.

80. Should the Court decline to preliminarily approve any material aspect of the Settlement Agreement, the Settlement Agreement will be null and void, the Parties will have no further obligations under the Agreement, and the Parties will revert to their prior positions in the Litigation as if the Settlement had not occurred, including, but not limited to, a stipulated return of the Litigation to the United States District Court for the Northern District of Illinois.
81. At the time of the submission of this Settlement Agreement to the Court as described above, the Parties shall request that, after Notice is given, the Court hold a Final Approval Hearing approximately ninety-five (95) days after entry of the Preliminary Approval Order and approve the Settlement of the Litigation as set forth herein.
82. At least ten (10) days prior to the Final Approval Hearing, or by some other date if so directed by the Court, Plaintiff will move for: (i) final approval of the Settlement; (ii) final appointment of the Class Representative and Class Counsel; and (iii) final certification of the Settlement Class, including for the entry of a Final Order and Judgment, and file a memorandum in support of the motion for final approval.

XI. NOTICE TO PROPOSED SETTLEMENT CLASS MEMBERS

83. Class List

- a. Defendant, with the assistance of the Settlement Administrator as appropriate, shall create a class list, in electronic form, based on readily available information already within its possession (“Class List”).
- b. The Class List shall include all telephone numbers with Illinois area codes that users submitted to Sephora Virtual Artist Kiosks in order to be sent text messages, based on information in Defendant’s records. Defendant shall provide the Class List to the Settlement Administrator and Class Counsel within seven (7) days after entry of the Preliminary Approval Order. Defendant shall also make commercially reasonable efforts to provide the Settlement Administrator and Class Counsel any contact information in its possession associated with any telephone numbers contained in the Class List, including name, mailing address, and email address information.

84. Type of Notice Required

- a. The Notice, which shall be substantially in the form of Exhibits C, D, and E attached hereto, shall be used for the purpose of informing proposed Settlement Class Members, prior to the Final Approval Hearing, that there is a pending settlement, and to further inform Settlement Class Members how they may: (a) obtain a copy of the Claim Form; (b) protect their rights regarding the Settlement; (c) request exclusion from the Settlement Class and the proposed Settlement, if desired; (d) object to any aspect of the

proposed Settlement, if desired; and (e) participate in the Final Approval Hearing, if desired. The Notice shall make clear the binding effect of the Settlement on all persons who do not timely request exclusion from the Settlement Class.

- b. Dissemination of the Notice shall be the responsibility of the Settlement Administrator, provided that any means of dissemination other than those provided for herein shall be approved by the Parties. The text of the Notice shall be agreed upon by the Parties and shall be substantially in the forms attached as Exhibits C, D, and E hereto.
- c. Individual notice (substantially in the form of Exhibit C) shall be sent via U.S. Mail where the address information can be determined by the Settlement Administrator.
- d. Individual notice (substantially in the form of Exhibit D) may also be sent via email, in the discretion of the Settlement Administrator, where the email address can be determined by the Settlement Administrator.
- e. Notice of the settlement (substantially in the form of Exhibit E) shall be posted to the Settlement Website by the Notice Date.
- f. Notice of the settlement shall also be provided via online banner advertising. The form, content, and websites for distribution of the online banner advertising shall be determined by the Settlement Administrator, subject to the approval of the Parties.

85. **Notice Deadline**

- a. By the Notice Date, the Settlement Administrator shall disseminate a copy of the Notice in the form of Exhibit C by U.S. Mail to the Settlement Class Members identified on the Class List for whom a mailing address is readily determinable, or a copy of the Notice in the form of Exhibit D by email to any Settlement Class Members identified on the Class List for whom an email address is readily determinable, but a mailing address is unknown.

XII. EXCLUSIONS

86. **Exclusion Period**

- a. Settlement Class Members will have up to the Objection/Exclusion Deadline to exclude themselves from the Settlement in accordance with this Section. If the Settlement is finally approved by the Court, all Settlement Class Members who have not opted out, as provided in Paragraph 87, by the end of the Objection/Exclusion Deadline will be bound by the Settlement and will be deemed a Releasing Party as defined herein, and the

relief provided by the Settlement will be their sole and exclusive remedy for any and all Released Claims.

87. **Exclusion Process**

- a. A member of the Settlement Class may request to be excluded from the Settlement Class in writing by a request postmarked, or submitted electronically via the Settlement Website, on or before the Objection/Exclusion Deadline.
- b. In order to exercise the right to be excluded, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his/her name, address, telephone number, and email address; the case name and number of this Litigation, a statement that he/she wishes to be excluded from the Settlement Class; and his/her signature. A request to be excluded that is sent to an address other than that designated in the Class Notice, or that is not electronically submitted or postmarked within the time specified, shall be invalid and the person serving such a request shall be considered a member of the Settlement Class and shall be bound as Settlement Class Members by the Agreement, if approved.
- c. Any member of the Settlement Class who elects to be excluded shall not: (i) be bound by the Settlement or any order or judgment of the Litigation; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement. A member of the Settlement Class who requests to be excluded from the Settlement Class also cannot object to the Settlement Agreement. Any member of the Settlement Class who attempts to both object to and exclude themselves from this Settlement Agreement will be deemed to have excluded themselves and will forfeit the right to object to the Settlement or any of its terms.
- d. The request for exclusion must be personally signed by the person requesting exclusion. So-called “mass” or “class” exclusion requests shall not be allowed.
- e. Within three (3) business days after the Objection/Exclusion Deadline, the Settlement Administrator shall provide Class Counsel and Defendant’s Counsel a written list reflecting all timely and valid exclusions from the Settlement Class.
- f. A list reflecting all individuals who timely and validly excluded themselves from the Settlement shall also be filed with the Court at the time of the motion for final approval of the Settlement.

XIII. OBJECTIONS

88. The Notices shall advise Settlement Class Members of their rights, including the right to be excluded from or object to the Settlement Agreement and its terms. The Notices shall specify that any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Final Approval Hearing only if, on or before the Objection/Exclusion Deadline approved by the Court, the person making an objection shall file notice of his/her intention to do so and at the same time: (i) file copies of such papers he/she proposes to submit at the Final Approval Hearing with the Clerk of the Court; and (ii) send copies of such papers via United States mail, hand delivery, or overnight delivery to both Class Counsel and Defendant's Counsel. A copy of the objection must also be mailed to the Settlement Administrator at the address that the Settlement Administrator will establish to receive requests for exclusion or objections, Claim Forms, and any other communication relating to this Settlement.
89. Any Settlement Class Member who intends to object to this Settlement must include in any such objection: (i) his/her full name, address, email address, and current telephone number; (ii) the case name and number of the Litigation; (iii) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (iv) the identification of any other objections he/she has filed, or has had filed on his/her behalf, in any other class action cases in the last four years; and (v) the objector's signature. If represented by counsel, the objecting Settlement Class Member must also provide the name and telephone number of his/her counsel. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he/she must state as such in the written objection, and must also identify any witnesses he/she may call to testify at the Final Approval Hearing and all exhibits he/she intends to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection.
90. Any Settlement Class Member who fails to timely file and serve a written objection and notice of intent to appear at the Final Approval Hearing pursuant to this Agreement, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

XIV. FINAL APPROVAL HEARING

91. The Parties will jointly request that the Court hold a Final Approval Hearing approximately ninety-five (95) days after entry of the Preliminary Approval Order. At the Final Approval Hearing, the Parties will request that the Court consider whether the Settlement Class should be certified as a class pursuant to 735 ILCS § 5/2-801 for settlement and, if so, (i) consider any properly-filed objections, (ii) determine whether the Settlement is fair, reasonable and adequate, was entered into in good faith and without collusion, and should be approved, and shall provide

findings in connections therewith, and (iii) enter the Final Approval Order, including final approval of the Settlement Class and the Settlement Agreement, and a Fee Award.

XV. FINAL APPROVAL ORDER

92. The Parties shall jointly seek entry of a Final Approval Order, the text of which the Parties shall agree upon. The dismissal orders, motions or stipulation to implement this Section shall, among other things, seek or provide for a dismissal with prejudice and waiving any rights of appeal.
93. The Parties shall jointly submit to the Court a proposed Final Approval Order that, without limitation:
- a. Approves finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of 735 ILCS 5/2-801 and directing its consummation according to its terms;
 - b. Dismisses, with prejudice, all claims of the Settlement Class against Defendant in the Litigation, without costs and fees except as explicitly provided for in this Agreement; and
 - c. Reserves continuing and exclusive jurisdiction over the Settlement and this Agreement, including but not limited to the Litigation, the Settlement Class, the Settlement Class Members, Defendant, and the Settlement for the purposes of administering, consummating, supervising, construing and enforcing the Settlement Agreement and the Settlement Fund.
94. Class Counsel shall use their best efforts to assist Defendant in obtaining dismissal with prejudice of the Litigation and take all steps necessary and appropriate to otherwise effectuate all aspects of this Agreement.

XVI. TERMINATION OF THE SETTLEMENT

95. The Settlement is conditioned upon preliminary and final approval of the Parties' written Settlement Agreement, and all terms and conditions thereof without material change, material amendments, or material modifications by the Court (except to the extent such changes, amendments or modifications are agreed to in writing between the Parties). All Exhibits attached hereto are incorporated into this Settlement Agreement. Accordingly, either Party may elect to terminate and cancel this Settlement Agreement within ten (10) days of any of the following events:
- a. The Stipulation for Remand referenced in Paragraph 12 herein is denied;

- b. This Settlement Agreement is changed in any material respect to which the Parties have not agreed in writing;
- c. The Court refuses to grant the Preliminary Approval Order of this Agreement in any material respect;
- d. The Court refuses to grant final approval of this Agreement in any material respect;
- e. The Court refuses to enter a final judgment in this Litigation in any material respect; or
- f. The Court's order granting preliminary or final approval is substantially modified or reversed.

In addition, Defendant may elect to terminate this Settlement if more than 10% of the Settlement Class Members timely and validly exclude themselves from the Settlement.

- 96. In the event the Settlement Agreement is not approved or does not become final, or is terminated consistent with the provisions herein, the Parties, pleadings, and proceedings will return to the *status quo ante* as if no settlement had been negotiated or entered into, and the Parties will negotiate in good faith to establish a new schedule for the Litigation.

XVII. ATTORNEYS' FEES, COSTS AND EXPENSES AND INCENTIVE AWARD

- 97. At least twenty-one (21) days prior to the Objection/Exclusion Deadline, Class Counsel will file a Fee and Expense Application that seeks a Fee Award in an amount not to exceed thirty-five percent (35%) of the Settlement Fund, or \$437,500.00 (Four Hundred Thirty-Seven Thousand Five Hundred Dollars), plus reimbursement of reasonable costs and expenses.
- 98. The amount of the Fee Award shall be determined by the Court based on a petition from Class Counsel. Class Counsel has agreed, with no consideration from Defendants, to limit their fee request to no more than thirty-five percent (35%) of the Settlement Fund, plus reasonable costs and expenses. Payment of the Fee Award shall be made from the Settlement Fund and should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded pursuant to this section shall remain in the Settlement Fund and be distributed to Settlement Class Members as part of their Approved Claims, or as the Court may otherwise direct.
- 99. Notwithstanding any contrary provision of this Agreement, the Court's consideration of the Fee Award is to be conducted separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement

Agreement, and any award made by the Court with respect to Class Counsel's attorneys' fees or expenses, or any proceedings incident thereto, including any appeal thereof, shall not operate to terminate or cancel this Agreement or be deemed material thereto.

100. Prior to or at the same time as Plaintiff seeks final approval of the Settlement Agreement, Class Counsel shall move the Court for an Incentive Award for the Class Representative in an amount not to exceed \$10,000.00 (Ten Thousand Dollars), and Defendant agrees that it will not oppose such a request.
101. Class Counsel shall provide the Settlement Administrator with its completed W-9 form before the payment of the Fee Award is due.
102. In no event will Defendant's liability for attorneys' fees, expenses, and costs, Administration Expenses, and/or an Incentive Award exceed its funding obligations set out in this Agreement. Defendant shall have no financial responsibility for this Settlement Agreement outside of the Settlement Fund. Defendant shall have no further obligation for attorneys' fees or expenses to any counsel representing or working on behalf of either one or more individual Settlement Class Members or the Settlement Class. Defendant will have no responsibility, obligation, or liability for allocation of the Fee Award, Administrative Expenses, the Incentive Award, or any other costs, fees, and/or expenses among Class Counsel, Plaintiff, and/or Class Members except for payment of the Settlement Fund.

XVIII. MISCELLANEOUS REPRESENTATIONS

103. The Parties agree that the Settlement Agreement provides fair, equitable and just compensation, and a fair, equitable, and just process for determining eligibility for compensation for any given Settlement Class Member related to the Released Claims.
104. The Parties (i) acknowledge that it is their intent to consummate this Settlement Agreement, and (ii) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement. Class Counsel and Defendant's Counsel agree to cooperate with each other in seeking Court approval of the Preliminary Approval Order, the Settlement Agreement, and the Final Approval Order, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement.
105. The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff and the Settlement Class, and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly,

the Parties agree not to assert in any forum that the Litigation was brought by Plaintiff or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis.

106. Nothing express or implied in this Agreement is intended or shall be construed to confer upon or give any person or entity other than the Parties, Released Parties, and Settlement Class Members any right or remedy under or by reason of this Agreement. Each of the Released Parties is an intended third-party beneficiary of this Agreement with respect to the Released Claims and shall have the right and power to enforce the release of the Released Claims in his, her or its favor against all Releasing Parties.
107. The Parties have relied upon the advice and representation of counsel, selected by themselves, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully this Settlement Agreement, including its Exhibits, and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by this Settlement.
108. Any headings used herein are used for the purpose of convenience only and are not meant to have legal effect.
109. The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any prior or subsequent breach of this Agreement.
110. This Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents.
111. This Agreement may not be amended, modified, altered, or otherwise changed in any manner except by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.
112. The Parties agree that Exhibits A through E to this Settlement Agreement are material and integral parts thereof and are fully incorporated herein by this reference.
113. The Parties may agree, subject to the approval of the Court where required, to reasonable extensions of time to carry out the provisions of the Agreement.
114. Except as otherwise provided herein, each Party shall bear its own costs.

115. Plaintiff represents and warrants that he has not assigned any claim or right or interest therein as against the Released Parties to any other person or party.
116. The Parties represent that they have obtained the requisite authority to enter this Settlement Agreement in a manner that binds all Parties to its terms.
117. The Parties specifically acknowledge, agree and admit that this Settlement Agreement and its Exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders or other documents shall be considered a compromise within the meaning of Illinois Rules of Evidence Rule 408, and any other equivalent or similar rule of evidence, and shall not (1) constitute, be construed, be offered, or received into evidence for any purpose, including, without limitation, as an admission of the validity of any claim or defense, or the truth of any fact alleged or other allegation in the Litigation or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, or (2) be used to establish a waiver of any defense or right, or to establish or contest jurisdiction or venue. Should any Party request that the other Party destroy any settlement correspondence in furtherance of any obligation of confidentiality, the other Party agrees to comply with such request. To the extent the non-requesting Party requires a copy of said settlement correspondence for its records, the requesting Party shall provide a redacted copy removing any material subject to the confidentiality obligation.
118. The Parties also agree that this Settlement Agreement and its Exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders or other documents entered in furtherance of this Settlement Agreement, and any acts in the performance of this Settlement Agreement are not intended to establish grounds for certification of any class involving any Settlement Class Member other than for certification of the Settlement Class for settlement purposes.
119. This Settlement Agreement, whether approved or not approved, revoked, or made ineffective for any reason, and any proceedings related to this Settlement Agreement and any discussions relating thereto, shall be inadmissible for any purposes, including, without limitation, as evidence of any liability or wrongdoing whatsoever and shall not be offered as evidence of any liability or wrongdoing in any court or other tribunal in any state, territory, or jurisdiction, or in any manner whatsoever. Further, neither this Settlement Agreement, the Settlement contemplated by it, nor any proceedings taken under it, will be construed or offered or received into evidence as an admission, concession or presumption that class certification is appropriate, except to the extent necessary to consummate this Agreement and the binding effect of the Final Order and Judgment.
120. The provisions of this Settlement Agreement, and any orders, pleadings or other documents entered in furtherance of this Settlement Agreement, may be offered or received in evidence solely (1) to enforce the terms and provisions hereof or

thereof, (2) as may be specifically authorized by a court of competent jurisdiction after an adversary hearing upon application of a Party hereto, (3) in order to establish payment, or an affirmative defense of preclusion or bar in a subsequent case, (4) in connection with any motion to enjoin, stay or dismiss any other action, and/or (5) to obtain Court approval of the Settlement Agreement.

121. Except as provided herein, there shall be no comments made to the press or any third party, or any other disclosure by or through the Parties or their attorneys or agents, comprising opinions as to the Litigation. Plaintiff, Class Counsel, and Defendant shall not make any public statement, including any statement to the press, regarding the Settlement Agreement or settlement aside from the following agreed upon statement: “[The Parties] have reached a proposed agreement and look forward to the Court’s review and decision” or words to that effect. This paragraph shall not be construed to limit or impede the notice requirements of Section XI above; nor shall this paragraph be construed to prevent Class Counsel or Defendant from notifying or explaining to potential Settlement Class Members or others that this case has settled and how to obtain settlement benefits; nor shall this paragraph limit the representations that the Parties or Counsel for the Parties may make to the Court to assist in its evaluation of the proposed settlement; nor shall this paragraph limit Defendant’s ability to discuss in a confidential manner the terms of this settlement with its clients and business partners. If a Party is required by a valid, enforceable subpoena or government information request to disclose information about the settlement, such Party shall provide reasonable prior notice (to the extent permitted by applicable law) to the other Party to allow the other Party to seek to prevent such disclosure. A Party may also provide necessary and accurate information about the settlement to its shareholders and other persons or entities as required by securities laws or other applicable laws or regulations.
122. This Agreement may be executed in one or more counterparts exchanged by hand, messenger, or PDF as an electronic mail attachment, and any such signature exchanged shall be deemed an original signature for purposes of this Settlement Agreement. All executed counterparts and each of them shall be deemed to be one and the same instrument, provided that counsel for the Parties to this Agreement all exchange signed counterparts.
123. This Agreement shall be binding upon, and insure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.
124. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and the Parties hereby submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.
125. This Agreement shall be governed by and construed in accordance with the laws of the state of Illinois.

126. This Agreement is deemed to have been prepared by counsel for all Parties as a result of arms-length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Agreement and its Exhibits, it shall not be construed more strictly against one Party than another.
127. Unless otherwise stated herein, any notice required or provided for under this Agreement shall be in writing and shall be sent by electronic mail or hand delivery, postage prepaid, as follows:

If to Class Counsel:

Eugene Y. Turin
Timothy P. Kingsbury
MCGUIRE LAW, P.C
55 W. Wacker Drive, 9th Fl.
Chicago, IL 60601
eturin@mcgpc.com
tkingsbury@mcgpc.com

If to Defendant's Counsel:

Robert E. Shapiro
Maile H. Solís
BARACK FERRAZZANO
KIRSCHBAUM & NAGELBERG LLP
200 West Madison St., #3900
Chicago, IL 60606
rob.shapiro@bfkn.com
maile.solis@bfkn.com

128. This Agreement shall be deemed executed as of the date that the last party signatory signs the Agreement.

[The remainder of this page is intentionally left blank.]

IN WITNESS HEREOF, the undersigned have caused this Settlement Agreement to be executed as of the dates set forth below.

AUSTE SALKUSKAITE, individually and on behalf of the Class as the Class Representative

SEPHORA USA, INC.

Signature: _____

Signature: _____

Date: _____

Date: _____

MCGUIRE LAW, P.C.,
as Class Counsel

BARACK FERRAZZANO KIRSCHBAUM
& NAGELBERG LLP,
as Defendant's Counsel

Signature:  _____

Signature: _____

Print Name: Eugene Y. Turin

Print Name: _____

Date: 02/04/2021

Date: _____

IN WITNESS HEREOF, the undersigned have caused this Settlement Agreement to be executed as of the dates set forth below.

AUSTE SALKUSKAITE, individually and on behalf of the Class as the Class Representative

Signature:  _____
Date: 2/4/2021

SEPHORA USA, INC.

Signature: _____
Date: _____

MCGUIRE LAW, P.C.,
as Class Counsel

Signature: _____
Print Name: _____
Date: _____

BARACK FERRAZZANO KIRSCHBAUM
& NAGELBERG LLP,
as Defendant's Counsel

Signature: _____
Print Name: _____
Date: _____

FILED DATE: 2/26/2021 3:09 PM 2018CH14379

IN WITNESS HEREOF, the undersigned have caused this Settlement Agreement to be executed as of the dates set forth below.

AUSTE SALKUSKAITE, individually and on behalf of the Class as the Class Representative

Signature: _____

Date: _____

SEPHORA USA, INC.

Signature: Eric J. Bojary

Date: 2-04-2021

MCGUIRE LAW, P.C., as Class Counsel

Signature: _____

Print Name: _____

Date: _____

BARACK FERRAZZANO KIRSCHBAUM & NAGELBERG LLP, as Defendant's Counsel

Signature: /s/ Robert E. Shapiro

Print Name: Robert E. Shapiro

Date: 2/5/2021

Exhibit A

CLAIM FORM

TO RECEIVE A CASH PAYMENT FROM THE SETTLEMENT FUND, YOU MUST COMPLETE THIS CLAIM FORM AND SUBMIT IT BY _____, 2021.

IMPORTANT NOTE: You must complete and submit this claim form by [Date] in order to receive payment. To complete this claim form, read the instructions below in Step 1; truthfully provide the requested information in Step 2; sign the certification in Step 3; and submit the claim form using one of the methods stated in Step 4.

Each Settlement Class Member is entitled to submit only one claim form regardless of the number of times he or she provided biometrics while using a Sephora Virtual Artist Kiosk. There can be only one claim for any given Settlement Class Member.

STEP 1 – DIRECTIONS

In the spaces below, print your (i) name, (ii) address, (iii) telephone number, and (iv) email address. Remember that only individuals who pushed a button to interact with a Sephora Virtual Artist Kiosk within the state of Illinois from July 1, 2018 to [Preliminary Approval] are eligible claimants.

STEP 2 – CLAIMANT INFORMATION

Name: _____
(First) (Middle Initial) (Last)

Address: _____
(Street)

(City) (State) (Zip Code)

Telephone number: (____) ____ - ____

Email Address: _____

FILED DATE: 2/26/2021 3:09 PM 2018CH14379

STEP 3 – CERTIFICATION

I hereby certify that:

I interacted with a Sephora Virtual Artist Kiosk within the state of Illinois between July 1, 2018 and [Preliminary Approval].

I certify that the above statement is true and correct, and that this is the only Claim Form that I have submitted or will submit. I also understand, acknowledge and agree that I am eligible to submit only one Claim Form as part of this settlement. I understand that this Claim Form will be reviewed for authenticity and completeness and that, if my claim is validated, I may be contacted by the Settlement Administrator to provide additional information as necessary to process the payments due to me under the Settlement.

Signature

Date

STEP 4 – METHODS OF SUBMISSION

Please complete the Claim Form above and return it by one of the following methods:

1. Online by visiting www.VirtualMakeupBIPASettlement.com and submitting an online Claim Form no later than midnight, U.S. Eastern Standard Time, on [Date]; OR
2. By emailing the completed Claim Form to info@VirtualMakeupBIPASettlement.com no later than midnight, U.S. Eastern Time, on [Date]; OR
3. By mailing via U.S. mail a completed and signed Claim Form to the Settlement Administrator, postmarked no later than [Date], and addressed to:

Sephora USA, Inc. BIPA Settlement
c/o [Settlement Administrator]
[Address]

Exhibit B

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

AUSTE SALKAUSKAITE, individually)
and on behalf of all others similarly)
situated,)
)
 Plaintiff,)
)
 v.)
)
 SEPHORA USA, INC., a Delaware)
corporation,)
)
 Defendant.)

No. 18-CH-14379

Hon. Anna M. Loftus

[PROPOSED] PRELIMINARY APPROVAL ORDER

This matter having come before the Court on Plaintiff’s Unopposed Motion in Support of Preliminary Approval of Class Action Settlement (the “Motion”), the Court having reviewed in detail and considered the Motion and memorandum in support of the Motion, the Class Action Settlement Agreement (“Settlement Agreement”) between Plaintiff Auste Salkauskaite and Defendant Sephora USA, Inc. (together, the “Parties”), and all other papers that have been filed with the Court related to the Settlement Agreement, including all exhibits and attachments to the Motion and the Settlement Agreement, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Capitalized terms used in this Order that are not otherwise defined herein have the same meaning assigned to them as in the Settlement Agreement.
2. The terms of the Settlement Agreement are preliminarily approved as fair, reasonable, and adequate. There is good cause to find that the Settlement Agreement was negotiated at arms-length between the Parties, who were represented by experienced counsel, and was reached with the assistance of the Hon. Morton Denlow (Ret.) of JAMS Chicago.

3. For settlement purposes only, the Court finds that the prerequisites to class action treatment under Section 2-801 of the Illinois Code of Civil Procedure – including numerosity, commonality and predominance, adequacy, and appropriateness of class treatment of these claims – have been preliminarily satisfied.

4. The Court hereby conditionally certifies, pursuant to Section 2-801 of the Illinois Code of Civil Procedure, and for the purposes of settlement only, the following Settlement Class consisting of:

“All natural persons who pushed a button to interact with any Sephora Virtual Artist Kiosk within the state of Illinois from July 1, 2018 to [date of Preliminary Approval].”

5. For settlement purposes only, Plaintiff Auste Salkauskaite is appointed as Class Representative.

6. For settlement purposes only, the following counsel are hereby appointed as Class Counsel:

Evan M. Meyers
Eugene Y. Turin
Timothy P. Kingsbury
MCGUIRE LAW, P.C.
55. W. Wacker Dr., 9th Fl.
Chicago, IL 60601

7. The Court recognizes that, pursuant to the Settlement Agreement, Defendant retains all rights to object to the propriety of class certification in the Litigation in all other contexts and for all other purposes should the Settlement not be finally approved. Therefore, as more fully set forth below, if the Settlement is not finally approved, and the Litigation resumes, this Court’s preliminary findings regarding the propriety of class certification shall be of no further force or effect whatsoever, and this Order will be vacated in its entirety.

8. The Court approves, in form and content, the postcard class notice, email notice, and long form class notice attached to the Settlement Agreement as Exhibits C, D, and E respectively, and finds that they meet the requirements of Section 2-803 of the Illinois Code of Civil Procedure and satisfy Due Process.

9. The Court finds that the planned notice set forth in the Settlement Agreement meets the requirements of Section 2-803 of the Illinois Code of Civil Procedure and constitutes the best notice practicable under the circumstances, where Class Members' identities are contained in Defendant's records and may be readily ascertained, satisfying fully the requirements of Due Process, and any other applicable law, such that the Settlement Agreement and Final Approval Order will be binding on all Settlement Class Members. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement is necessary in this action. The Parties, by agreement, may revise the Class Notice and Claim Form in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting for publication.

10. KCC, LLC is hereby appointed Settlement Administrator to supervise and administer the notice process, as well as to oversee the administration of the Settlement, as more fully set forth in the Settlement Agreement.

11. The Settlement Administrator may proceed with the distribution of Class Notice as set forth in the Settlement Agreement.

12. Settlement Class Members who wish to receive benefits under the Settlement Agreement must complete and submit a valid Claim Form in accordance with the instructions provided in the Class Notice on or before _____, **2021**. The Court hereby approves as to form and content the Claim Form attached to the Settlement Agreement as Exhibit A.

13. All Claim Forms must be either mailed via U.S. Mail to the address specified in the Claim Form or be electronically submitted to the Settlement Administrator via the settlement website or via electronic mail no later than _____, **2021**. Settlement Class Members who do not timely submit a Claim Form deemed to be valid in accordance with Section VI of the Settlement Agreement shall not be entitled to receive any portion of the Settlement Fund.

14. Settlement Class Members shall be bound by all determinations and orders pertaining to the Settlement, including with respect to Released Claims as set forth in the Settlement Agreement, whether favorable or unfavorable, unless such persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. Settlement Class Members who do not timely and validly request exclusion shall be so bound even if they have previously initiated other litigation or proceedings against Defendant or the Released Parties relating to the claims released under the terms of the Settlement Agreement.

15. Any Person within the Settlement Class may request exclusion from the Settlement Class by expressly stating his/her request in a written exclusion request. Such exclusion requests must be received by the Settlement Administrator at the address specified in the Class Notice in written form, by first class mail, postage prepaid, and postmarked, no later than _____, **2021**.

16. In order to exercise the right to be excluded, a person within the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his/her name and address, a signature, the name and number of the Litigation, and a statement that he or she wishes to be excluded from the Settlement Class. Any request for exclusion submitted via first class mail must be personally signed by the person requesting exclusion. No person within the Settlement Class, or any person acting on behalf of, in concert with, or in participation with that

person within the Settlement Class, may request exclusion from the Settlement Class of any other person within the Settlement Class.

17. Any person in the Settlement Class who elects to be excluded shall not: (i) be bound by any orders or the Final Approval Order; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of the Settlement Agreement.

18. Class Counsel may file any motion seeking an award of attorneys' fees, costs and expenses, as well as an Incentive Award for the Class Representative, in accordance with the terms of the Settlement Agreement, no later than _____, **2021**.

19. Any Settlement Class Member who has not requested exclusion from the Settlement Class and who wishes to object to any aspect of the Settlement Agreement, including the amount of the attorneys' fees, costs, and expenses that Class Counsel intends to seek and the payment of the Incentive Award to the Class Representative, may do so, either personally or through an attorney, by filing a written objection, together with the supporting documentation set forth below in Paragraph 20 of this Order, with the Clerk of the Court, and served upon Lead Class Counsel, Defendant's Counsel, and the Settlement Administrator no later than _____, **2021**. Addresses for Class Counsel, Defendant's Counsel, the Settlement Administrator, and the Clerk of Court are as follows:

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Class Counsel:</p> <p>Eugene Y. Turin MCGUIRE LAW, P.C. 55. W. Wacker Dr., 9th Fl. Chicago, IL 60601</p> | <p>Defendant's Counsel:</p> <p>Robert E. Shapiro BARRACK FERRAZZANO KIRSCHBAUM & NAGELBERG LLP 200 West Madison St., #3900 Chicago, IL 60606</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

| | |
|----------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Settlement Administrator:</p> <p>KCC, LLC P.O. Box _____ _____</p> | <p>Clerk of Court:</p> <p>Clerk of the Circuit Court of Cook County Chancery Division 50 W. Washinton Street, #802 Chicago, IL 60602</p> |
|----------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|

20. Any Settlement Class Member who has not requested exclusion and who intends to object to the Settlement must state, in writing, all objections and the basis for any such objection(s), and must also state in writing: (i) his/her full name, address, telephone number, and email address; (ii) the case name and number of this Litigation; (iii) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (iv) the identification of any other objections he/she has filed, or has had filed on his/her behalf, in any other class action cases in the last four years; and (v) the objector's signature. Objections not filed and served in accordance with this Order shall not be received or considered by the Court. Any Settlement Class Member who fails to timely file and serve a written objection in accordance with this Order shall be deemed to have waived, and shall be forever foreclosed from raising, any objection to the Settlement, to the fairness, reasonableness, or adequacy of the Settlement, to the payment of attorneys' fees, costs, and expenses, to the payment of an Incentive Award, and to the Final Approval Order and the right to appeal same.

21. A Settlement Class Member who has not requested exclusion from the Settlement Class and who has properly submitted a written objection in compliance with the Settlement Agreement, may appear at the Final Approval Hearing in person or through counsel to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement and/or Plaintiff's Counsel's Fee and Expense Application and/or the

request for an Incentive Award to the Class Representative are required to indicate in their written objection their intention to appear at the Final Approval Hearing on their own behalf or through counsel. For any Settlement Class Member who files a timely written objection and who indicates his/her intention to appear at the Final Approval Hearing on their own behalf or through counsel, such Settlement Class Member must also include in his/her written objection the identity of any witnesses he/she may call to testify, and all exhibits he/she intends to introduce into evidence at the Final Approval Hearing, which shall be attached.

22. No Settlement Class Member shall be entitled to be heard, and no objection shall be considered, unless the requirements set forth in this Order and in the Settlement Agreement are fully satisfied. Any Settlement Class Member who does not make his or her objection to the Settlement in the manner provided herein, or who does not also timely provide copies to Counsel for the Parties at the addresses set forth herein, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise, and shall be bound by the Settlement Agreement, the releases contained therein, and all aspects of the Final Approval Order.

23. All papers in support of the Final Approval of the Settlement shall be filed no later than ten (10) days before the Final Approval Hearing.

24. Pending the final determination of the fairness, reasonableness, and adequacy of the proposed Settlement, no Settlement Class Member may prosecute, institute, commence, or continue any lawsuit (individual action or class action) with respect to the Released Claims against any of the Released Parties.

25. A hearing (the “Final Approval Hearing”) shall be held before the Court on _____, 2021 at _____ a.m/p.m. in Courtroom 2410 of the Richard J. Daley Center, 50 W. Washington St., Chicago, IL 60602 (or at such other time or location as the Court may

without further notice direct) for the following purposes:

- (a) to finally determine whether the applicable prerequisites for settlement class action treatment under 735 ILCS 5/2-801 have been met;
- (b) to determine whether the Settlement is fair, reasonable and adequate, and should be approved by the Court;
- (c) to determine whether the judgment as provided under the Settlement Agreement should be entered, including an order prohibiting Settlement Class Members from further pursuing Released Claims as set forth in the Settlement Agreement;
- (d) to consider the application for an award of attorneys' fees, costs and expenses of Class Counsel;
- (e) to consider the application for an Incentive Award to the Class Representative;
- (f) to consider the distribution of the Settlement Fund pursuant to the Settlement Agreement; and
- (g) to rule upon such other matters as the Court may deem appropriate.

26. The Final Approval Hearing may be postponed, adjourned, transferred or continued by order of the Court without further notice to the Settlement Class. At or following the Final Approval Hearing, the Court may enter a judgment approving the Settlement Agreement and a Final Approval Order in accordance with the Settlement Agreement that adjudicates the rights of all Settlement Class Members.

27. Settlement Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

28. All discovery and other proceedings in the Litigation as between Plaintiff and Defendant are stayed and suspended until further order of the Court except such actions as may be

necessary to implement the Settlement Agreement and this Order.

29. For clarity, the deadlines set forth above and in the Settlement Agreement are as follows:

- Notice to be completed by:** _____, 2021
- Fee and Expense Application:** _____, 2021
- Objection/Exclusion Deadline:** _____, 2021
- Final Approval Submission:** _____, 2021
- Final Approval Hearing:** _____, 2021 at _____
- Claims Deadline:** _____, 2021

IT IS SO ORDERED.

ENTERED: _____

Hon. Anna M. Loftus
Circuit Court Judge

Exhibit C

**YOU MAY BE ENTITLED TO A CASH PAYMENT FROM A CLASS ACTION SETTLEMENT
IF YOU INTERACTED WITH A SEPHORA VIRTUAL ARTIST KIOSK IN ILLINOIS
BETWEEN JULY 1, 2018 AND [PRELIMINARY APPROVAL].**

Para una notificación en Español, visitar www.VirtualMakeupBIPASettlement.com

A proposed settlement has been reached in a class action lawsuit alleging that Sephora USA, Inc. unlawfully collected individuals' biometrics while they interacted with Sephora Virtual Artist Kiosks in Illinois. The case is *Salkauskaite, et al. v. Sephora USA, Inc.*, Case No. 2018-CH-14379 (Cir. Ct. Cook Cnty., Illinois), currently pending in the Circuit Court of Cook County, Illinois, Chancery Division. Defendant denies the allegations and denies any wrongdoing. The parties have decided to settle their dispute. The Defendant's agreement to settle this matter is not an admission of any wrongdoing, and the Court has not made any determination that Defendant violated the law.

Why am I being contacted? Our records indicate that you may have interacted with a Sephora Virtual Artist Kiosk in Illinois during the time period at issue, and that you may, therefore, be eligible to receive a payment from the Settlement.

Who's Included in the Class? All individuals who interacted with any Sephora Virtual Artist Kiosk within the state of Illinois from July 1, 2018 to [Preliminary Approval].

What Does the Settlement Provide? The Settlement creates a Settlement Fund to pay valid claims, settlement Administration Expenses, attorneys' fees, costs and expenses, and an Incentive Award to the Class Representative. Each Class Member who submits a timely, valid Claim Form may receive a *pro rata* distribution from the Settlement Fund, although the exact amount will depend on certain unknown factors to be determined, including how many Settlement Class Members submit valid Claim Forms. To receive an equal cash payment from the Settlement Fund, you must complete and submit a Claim Form by XX, XX, 2021. To obtain a Claim Form, please visit www.VirtualMakeupBIPASettlement.com. You may submit your Claim Form at that website, via email, or by mail. For more information about this Settlement, including its benefits, your options, and how to submit a claim, please visit www.SephoraBIPASettlement.com or call for more information. Defendant has also agreed to alter its practices regarding the disclosures it makes on its Sephora Virtual Artist Kiosks, as explained in the detailed notice and Settlement Agreement at the website listed below.

Your Rights May Be Affected. If you do not want to be legally bound by the Settlement, you must exclude yourself by XX, XX, 2021. If you do not exclude yourself, you will release any claims you may have against Defendant, as more fully described in the Settlement Agreement. If you stay in the Settlement, you may object to it by XX, XX, 2021. The Notice available at the website listed below explains how to exclude yourself or object. The Court is scheduled to hold a hearing on XX, XX, 2021 to consider whether to approve the Settlement, Class Counsel's request for attorneys' fees of up to 35 percent of the Settlement Fund plus costs, and an Incentive Award for the Class Representative in an amount up to \$10,000.00. You can appear at the hearing, but you do not have to. If you want, you can hire your own attorney, at your own expense, to appear or speak for you at the hearing.

***For more information and for a Claim Form, visit www.VirtualMakeupBIPASettlement.com
or call 1-XXX-XXX-XXX.***

Exhibit D

**YOU MAY BE ENTITLED TO A CASH PAYMENT FROM A CLASS ACTION SETTLEMENT
IF YOU INTERACTED WITH A SEPHORA VIRTUAL ARTIST KIOSK IN ILLINOIS
BETWEEN JULY 1, 2018 AND [PRELIMINARY APPROVAL].**

*For more information, visit www.VirtualMakeupBIPASettlement.com
Para una notificacion en Espanol, visitar www.VirtualMakeupBIPASettlement.com.*

A proposed settlement has been reached in a class action lawsuit regarding biometric facial geometry allegedly collected by Sephora USA, Inc. when individuals interacted with its Sephora Virtual Artist Kiosks. The case is *Salkauskaite v. Sephora USA, Inc.*, Case No. 2018-CH-14379 (Cir. Ct. Cook Cnty., Illinois), currently pending in the Circuit Court of Cook County, Illinois, Chancery Division. The proposed Settlement is not an admission of wrongdoing by the Defendant, and the Defendant denies that it violated the law. The Court has not decided who is right or wrong. Rather, to avoid the time, expense, and uncertainty of litigation, the parties have agreed to settle the lawsuit. That Settlement has been preliminarily approved.

Am I a Member of the Settlement Class?

You are a member of the Settlement Class if you interacted with any Sephora Virtual Artist Kiosk within the state of Illinois from July 1, 2018 to [Preliminary Approval].

What Can I Get From the Proposed Settlement?

The Settlement creates a Settlement Fund to pay valid claims, Settlement Administration Expenses, attorneys' fees, costs and expenses, and an Incentive Award to the Class Representative. Each Class Member who submits a timely, valid Claim Form will receive a *pro rata* distribution from the Settlement Fund. The exact amount of the payment depends on certain unknown factors to be determined, including how many Settlement Class Members submit Claim Forms. To receive an equal cash payment from the Settlement Fund, you must submit a Claim Form by **XX, XX, 2021**. Class Members can file a Claim Form online at www.VirtualMakeupBIPASettlement.com, or visit the website and download a Claim Form and submit it by email or mail. Visit the website below or call for more information on filing your claim. Defendant has also agreed to alter its practices with respect to the disclosures it makes regarding its Sephora Virtual Artist Kiosks, as explained in the detailed Notice and Settlement Agreement at the website listed below.

What are my Options?

Please visit the settlement website, www.VirtualMakeupBIPASettlement.com, for details about your options and related deadlines. If you do not want to be legally bound by the Settlement, you must exclude yourself by **XX, XX, 2021**. If you do not exclude yourself, you will release any claims you may have against Defendant, as more fully described in the Settlement Agreement, available at the settlement website. You may also object to the Settlement by making a valid objection by **XX, XX, 2021**. The long form notice, available on the website, explains how to exclude yourself or object. The Court will hold a hearing on **XX, XX, 2021**, to consider whether to approve the Settlement and a request by Class Counsel for attorneys' fees of up to 35 percent of the Settlement Fund, plus costs and expenses, for their work in the case. The Court will also consider an Incentive Award payment in an amount of up to \$10,000.00 to the Class Representative. You can appear at the hearing, but you do not have to. If you want, you can hire your own attorney, at your own expense, to appear or speak for you at the hearing.

***For more information and for a Claim Form, visit www.VirtualMakeupBIPASettlement.com
or call #-###-###-####.***