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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<p>HYE SUN KANG,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>L'OREAL USA, INC., and BLOOMINGDALE'S, INC.,</p> <p style="text-align: center;">Defendants.</p>	<p>CIVIL ACTION NO.: 1:18-cv- 11682-VEC</p> <p style="text-align: center;"><u>Civil Action</u></p> <p style="text-align: center;">SECOND AMENDED COMPLAINT</p>
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Plaintiff, Hye Sun Kang, through her undersigned counsel, Pashman Stein Walder Hayden, A Professional Corporation, complains against the Defendants as follows:

PARTIES

1. Plaintiff Hye Sun Kang ("Ms. Kang") is an individual who resides at 4135 45th Street, Apt 1L, Sunnyside, New York, 11194.
2. Defendant L'Oreal USA, Inc. ("L'Oreal") is a company located at 10 Hudson Yards, New York, New York, 10001.
3. Defendant Bloomingdale's Inc. ("Bloomingdale's") is a nationwide retailer with numerous locations, including the location at 1000 Third Avenue, New York, New York, 10022.

JURISDICTION and VENUE

4. The Court has jurisdiction over all causes of action set forth herein based upon 28 U.S.C. § 1331, and pursuant to the supplemental jurisdiction of this Court, over all non-federal causes of action under 28 U.S.C. § 1367.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) as, upon information and belief, a substantial part of the events giving rise to the claim occurred in the Southern District of New York and pursuant to 28 U.S.C. § 1391(b)(1), as both Defendants reside in New York State.

FACTUAL ALLEGATIONS

Ms. Kang's Employment with L'Oreal and Bloomingdale's

6. From approximately July 6, 2015 to May 18, 2017, Ms. Kang was a sales associate for L'Oreal and worked at the Bloomingdale's store located at 1000 Third Avenue, New York, New York 10022.

7. Bloomingdale's was a joint employer of Ms. Kang and provided her job training, work hours, workspace; supervised her work; and controlled her work environment and the rules of her employment.

8. Bloomingdale's had a special relationship with Ms. Kang and had specialized knowledge about her by virtue of being Ms. Kang's joint employer, who controlled her hours, set policies, supervised and observed her day to day work, and controlled her

work environment.

9. Ms. Kang, who is of Korean descent, worked on a sales team with three other sales associates: a male employee of Brazilian descent, a male employee of Puerto Rican descent, and a female employee of Egyptian descent.

10. As was customary and encouraged in her industry, sales associates who worked on sales teams cultivated regular clients and customers who frequently shopped for cosmetics products through members of the sales team.

Ms. Kang's Unfounded Detention and Arrest on April 19, 2017

11. On April 19, 2017, without any warning or notice, Ms. Kang was approached and detained by the Bloomingdale's Asset Protection department.

12. Ms. Kang was brought into a room on the premises and was informed that one of her Chinese clients, Mr. Kevin Chen, had made purchases using fraudulent Bloomingdale's credit cards.

13. A Bloomingdale's representative accused Ms. Kang of acting in concert with Mr. Chen and aiding and abetting his fraud.

14. Upon information and belief, Ms. Kang, and not any other member of her sales team, was accused of engaging in a criminal conspiracy with Mr. Chen because she is ethnically East Asian or Asian.

15. The Bloomingdale's representatives did not make any similar accusations against the other three non-Asian members of

Ms. Kang's sales team, even though those members of the sales team also had significant sales and dealings with Mr. Chen.

16. Upon information and belief, Ms. Kang was interrogated without notice, warning, or counsel by the Bloomingdale's Asset Protection department for approximately 3 hours.

17. While Ms. Kang was detained and interrogated, she suffered extreme physical and emotional distress, had her job threatened, and was forced to sign a written statement after being told exactly what to write several times.

18. Upon exiting the interrogation room, she was immediately confronted by law enforcement authorities, who were presumably called in during her interrogation. Ms. Kang was immediately arrested, charged, and processed.

19. After her arrest, she had to spend the night in a prison holding cell while waiting for her initial hearing.

20. Ms. Kang, who has no prior criminal history or record whatsoever, was then sent to jail at Rikers Island while her family scrambled to post her bail.

21. She was forced to spend 12 hours in prison.

22. During her initial arraignment, the District Attorney's Office referred to her as being "Chinese American," based on Bloomingdale's discriminatory description of her.

23. Ms. Kang posted bail and awaited resolution of her case.

24. On September 29, 2017, the District Attorney

unilaterally, and without any hearing, motion, negotiations, or offers, dropped all charges against Ms. Kang.

25. Upon information and belief, the District Attorney dropped these charges because it learned that Ms. Kang was not of Chinese descent, was not involved in any fraudulent scheme with Mr. Chen, did not knowingly or intentionally assist him with committing fraud.

Ms. Kang's Unfounded Termination from Her Employment

26. Despite the District Attorney's Office realizing the mistake and dropping the case against her unilaterally, Bloomingdale's contacted Ms. Kang's other employer L'Oreal and falsely told them that Ms. Kang was involved in an alleged fraud, was part of a Chinese fraud ring, had violated store policies, and that she would no longer be permitted to work at Bloomingdale's.

27. When Bloomingdale's told L'Oreal that Ms. Kang was involved in an alleged fraud, was part of a Chinese fraud ring, had violated store policies, and that she would no longer be permitted to work at Bloomingdale's, they intended for L'Oreal to rely on those statements.

28. Upon information and belief, L'Oreal terminated Ms. Kang because of Bloomingdale's false statements.

29. Ms. Kang, who now has an entirely unjustified arrest on her previously spotless record, has been unable to find substantially similar employment in her industry because she must

now disclose her arrest, however false the underlying accusation, on job applications and during interviews.

30. Meanwhile, other members of Ms. Kang's sales team, who also conducted sales for Mr. Chen, and who also engaged in the same kinds of conduct that Bloomingdale's claimed was a violation of store policies, remain employed because they are not of Asian descent.

31. Ms. Kang has been damaged by Defendants' conduct and their wrongful termination of her employment.

FIRST COUNT
Discrimination Based on Race, Ethnicity, or National Origin
Under the Civil Rights Act, 42 U.S.C. § 2000e-2
(against L'Oreal and Bloomingdale's)

32. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth at length herein.

33. The Civil Rights Act prohibits employers from discriminating against employees based on their race, ethnicity, and/or national origin.

34. Defendants discriminated against Plaintiff when they first accused her of participating in a fraudulent scheme and then terminated her employment based on her race, ethnicity, or national origin.

35. Defendants also discriminated against Plaintiff when they selectively terminated her employment based on alleged

violations of store policies, while not doing the same to other employees who engaged in the same or similar conduct.

36. In doing so, Defendants acted maliciously and with reckless indifference to Plaintiff's right to be free from race, national origin, and/or ethnicity discrimination.

37. As a result of Defendants' discriminatory conduct, Plaintiff is entitled to damages, in an amount to be determined at trial, including but not limited to past and future lost wages, and compensation for her past and future physical and emotional distress.

SECOND COUNT

**Discrimination Based on Race, Ethnicity, or National Origin
Under New York Executive Law § 296
(against L'Oreal and Bloomingdale's)**

38. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth at length herein.

39. The New York State Human Rights Law prohibits employers from discriminating against employees based on their race, ethnicity, and/or national origin.

40. Defendants discriminated against Plaintiff when they first accused her of participating in a fraudulent scheme because she is of East Asian descent and then terminated her employment based on her race, ethnicity, or national origin.

41. Defendants also discriminated against Plaintiff when

they selectively terminated her employment based on alleged violations of store policies, while not doing the same to other employees who engaged in the same or similar conduct.

42. In doing so, Defendants acted maliciously and with reckless inference to Plaintiff's right to be free from race, national origin, and/or ethnicity discrimination.

43. As a result of Defendants' discriminatory conduct, Plaintiff is entitled to damages, in an amount to be determined at trial, including but not limited to past and future lost wages, and compensation for her past and future physical and emotional distress.

THIRD COUNT
Negligent Misrepresentation
(against Bloomingdale's only)

44. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth at length herein.

45. Bloomingdale's had a special relationship with and/or specialized knowledge about Ms. Kang as her joint employer, who controlled her hours, set policies, supervised her work, and controlled her work environment.

46. Bloomingdale's provided false information to L'Oreal, Ms. Kang's other employer, about Ms. Kang by stating that she had violated store policies, while implying or stating that she was the only employee that had violated those store policies, that she

was a part of a Chinese fraud ring, and that she was no longer permitted to work at Bloomingdale's.

47. When Bloomingdale's told L'Oreal these false statements, they intended for L'Oreal to rely on those statements.

48. Relying on Bloomingdale's false statements, L'Oreal terminated Ms. Kang's employment, causing her damages.

49. Bloomingdale's also provided false information to the New York Police Department about Ms. Kang by claiming that she had broken the law and/or engaged in criminal conduct, including but not limited to, that she was working with others as part of a Chinese fraud ring, which caused Ms. Kang to be arrested while on Bloomingdale's property and immediately after interrogating her.

50. When Bloomingdale's gave the New York City Police Department these false statements, they intended for the police to rely on those statements.

51. Relying on Bloomingdale's false statements, the New York City Police Department arrested and charged Ms. Kang, and she was forced to spend the night at Rikers, causing her severe emotional distress, harm, and damage and further causing Ms. Kang to have a criminal history / prior arrest record which has hindered and/or prevented her from finding employment in her chosen field.

52. Because of these false and material misrepresentations made by Bloomingdale's, Plaintiff is entitled to damages under the common law in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Hye Sun Kang prays that judgment be entered by this Court in her favor and against Defendants L'Oreal and Bloomingdale's providing the following relief:

- a) Finding that the acts and practices complained of herein are in violation of the Civil Rights Act, and the New York State Human Rights Law.
- b) Finding that the actions and practices complained of herein constitute negligent misrepresentation.
- c) Awarding Plaintiff damages caused by Defendant's acts described herein, including but not limited to compensatory and punitive damages, costs, and attorney's fees.
- d) Awarding Plaintiff interest, including prejudgment and post-judgment interest, on the foregoing sums.
- e) Awarding such other and further relief as the Court deems equitable, just, and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff Hye Sun Kang hereby demands trial by jury on every issue so triable.

Dated: March 6, 2019

/s J. John Kim
J. John Kim (JK1979)
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