

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into by and among Macy's Florida Stores, LLC, Macy's Puerto Rico, Inc., Macy's Retail Holdings, Inc., Macy's West Stores, Inc ("Respondent") and the United States Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices ("Office of Special Counsel").

WHEREAS, on April 26, 2012, the Office of Special Counsel opened an independent investigation of Respondent based on potential unfair documentary practices in violation of the unfair immigration-related employment practices provisions of 8 U.S.C. § 1324b (the "Act").

WHEREAS, the Office of Special Counsel concluded based upon its investigation that Respondent has committed unfair documentary practices during the employment eligibility reverification process, in violation of the Act, during the period from April 26, 2010, to June 28, 2013.

WHEREAS, Respondent denies that it committed immigration-related discrimination or engaged in unfair documentary practices in alleged violation of 8 U.S.C. § 1324b(a)(6) during the employment eligibility reverification process.

WHEREAS, the Office of Special Counsel and Respondent wish to resolve the OSC Charge without further delay or expense and hereby acknowledge that they are voluntarily entering into this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained and to fully and finally resolve all disputes among the parties hereto as of the date of this Agreement, it is agreed as follows:

1. Respondent agrees to pay a civil penalty to the United States Treasury in the amount of one hundred and seventy-five thousand dollars (\$175,000.00).
2. The monies discussed in paragraph 1 shall be paid via the FedWire electronic fund transfer system within ten (10) business days of Respondent's receipt of a fully signed copy of this Agreement and fund transfer instructions.
3. Respondent shall set aside a fund of one hundred thousand dollars (\$100,000) to compensate individuals who suffered economic damages, including suspension, termination, or other periods of lost work, as a result of Respondent's alleged employment eligibility reverification practices ("individual with economic damages") from April 26, 2010, to June 28, 2013.
 - (a) Within sixty (60) days following the effective date of this Agreement, Respondent agrees to (i) notify all individuals by U.S. mail, and where the Respondent has an electronic mail address for an individual, by electronic mail, whose employment eligibility was reverified by Respondent from April 26, 2010, to June 28, 2013, to determine if any such individuals are

entitled to compensation of lost wages and/or restoration of seniority, and (ii) to provide the Office of Special Counsel with contact information, including home address, telephone number, mobile number, and email address, for all individuals notified;

- (b) The language of the initial notice to be sent to individuals pursuant to paragraph 3(a) is set forth in Attachment A. All individuals will be given sixty (60) days to contact the Office of Special Counsel if the individual believes s/he lost wages and/or seniority;
- (c) Within one hundred and forty (140) days following the effective date of this Agreement, Respondent will provide the Office of Special Counsel with the payroll information for the four pay-periods before and four pay-periods after each worker's employment eligibility reverification(s), and with the date of birth, Social Security number, and Alien number of each individual who contacted the Office of Special Counsel pursuant to paragraph 3(b);
- (d) Within one-hundred and eighty five (185) days from the effective date of this Agreement, the Office of Special Counsel will determine the amount of back pay it believes each individual who has contacted the Office of Special Counsel pursuant to paragraph 3(b) is owed and/or any loss of seniority that the Office of Special Counsel believes should be restored. The Office of Special Counsel will provide Macy's with the amount of pay it believes each individual is owed as it makes the determination;
- (e) Within one-hundred and ninety-five (195) days from the effective date of this Agreement, Respondent will notify the Office of Special Counsel if it disagrees with any back pay or seniority award as determined by the Office of Special Counsel pursuant to paragraph 3(d);
- (f) Within two hundred and thirty (230) days from the effective date of this agreement, Respondent will send all individuals with economic damages a notice in the form of Attachment B indicating the award of back pay and/or restoration of seniority, in addition to a release of liability;
- (g) Respondent agrees to pay the amount owed and/or restore the loss of seniority to all economic victims within two hundred and sixty (260) days following the effective date of this Agreement, subject to Macy's receipt of any necessary documentation to process payment and an executed release of liability;
- (h) Any language in communications to individuals with economic damages relating to the release of claims against Respondent shall be submitted to the Office of Special Counsel for approval, and must be confined to the

release of claims referenced in this Agreement that Respondent intends to compensate or restore;

- (i) If the \$100,000 fund described in paragraph 3 is insufficient to cover the claims of individuals with economic damages, Respondent shall compensate these individuals a pro rata share of the \$100,000 sum. The Parties agree that Respondent's total liability to individuals with economic damages paid pursuant to paragraph 3 shall not exceed \$100,000;
- (j) Respondent agrees to provide to the Office of Special Counsel a certified record signed by Respondent's counsel of the name and relief of each individual compensated within ten (10) days of providing relief to the individuals with economic damages; and
- (k) For one (1) year following the effective date of this Agreement, the Office of Special Counsel reserves the right to seek compensation of lost wages and/or restoration of seniority for individuals who did not receive Respondent's initial notice if the \$100,000 fund was not exhausted.

- 4. Any monies used to compensate individuals pursuant to paragraph 3 shall be paid by check or direct deposit payable to each respective individual. All checks shall be mailed via certified mail. Respondent may withhold applicable taxes and withholdings.
- 5. Respondent agrees that it shall not discriminate on the basis of citizenship status or national origin in violation of 8 U.S.C. § 1324b.
- 6. Respondent agrees that it will treat all individuals equally, without regard to citizenship or immigration status, or national origin, during the hiring, firing, and employment eligibility verification and re-verification process. Respondent shall avoid discrimination in the employment eligibility verification and re-verification process by (a) honoring documentation that on its face reasonably appears to be genuine, relates to the person, and satisfies the requirements of 8 U.S.C. § 1324a(b), (b) not requesting more or different documents than are required by law, and (c) permitting all employees to present any document or combination of documents acceptable by law.
- 7. Respondent agrees that it will not intimidate, threaten, coerce, or retaliate against any person for his or her participation in this matter or the exercise of any right or privilege secured by 8 U.S.C. § 1324b.
- 8. Respondent agrees to post an English and Spanish version of the Office of Special Counsel "If You Have The Right to Work" poster ("OSC Poster"), in color and measuring no smaller than 18" x 24", an image of which is available at <http://www.justice.gov/crt/about/osc/htm/worker.php#>, in all places where notices to employees and job applicants are normally posted. The Notice will be posted within thirty (30) days from the effective date of this Agreement and will remain posted for three (3) years thereafter.

9. For three (3) years from the effective date of this Agreement, Respondent agrees to ensure that all individuals who will have responsibility for formulating, carrying out, and/or conducting training on Respondent's employment eligibility verification and reverification policies, and all supervisors, managers, or other employees who have a substantive role communicating employment eligibility verification and reverification requirements, and/or conducting employment eligibility verification and reverification matters, such as completing the Form I-9 and/or using the E-Verify system ("Human Resources Personnel"), have access to the most current version of the Form I-9, USCIS Employment Eligibility Verification Handbook for Employers (M-274) ("Handbook"), available at www.uscis.gov/I-9Central, and for the Human Resources Personnel located in stores that use E-Verify, the most current USCIS E-Verify Manual (M-775) ("Manual"), available at www.uscis.gov/USCIS/Verification/E-Verify/E-Verify_Native_Documents/manual-employer_comp.pdf. Copies of these documents and future revisions of the Form I-9, Handbook, and Manual can be obtained from the United States Citizenship and Immigration Services at www.uscis.gov.

10. Within sixty (60) days of the effective date of this Agreement, Respondent will review its employment eligibility verification and reverification policies as they relate to nondiscrimination on the basis of citizenship status and national origin and shall, as necessary, revise such policies to:
 - (a) Prohibit (1) the requesting of employment eligibility verification and reverification documents from any individual prior to making an offer of employment; (2) discrimination on the basis of citizenship status or national origin in the hiring and firing process; and (3) any difference in treatment of individuals, on the basis of citizenship status or national origin, during the employment eligibility verification and reverification process.
 - (b) Refer through a written notice all applicants and employees who complain, informally or formally, of discrimination relating to employment eligibility verification as described in Respondent's training, to the Office of Special Counsel. Specifically, Respondent agrees to provide these individuals with a written notice approved by the Office of the Special Counsel.
 - (c) Provide that Respondent shall not take any retaliatory action against an employee for having opposed any employment practice believed to be unlawful under 8 U.S.C. § 1324b, or for filing any charge, or participating in any lawful manner in any investigation or action under 8 U.S.C. § 1324b.

During the two (2) years following the effective date of this Agreement (the "Reporting Period"), Respondent shall provide any policy revisions made pursuant to this paragraph

to the Office of Special Counsel for approval at least thirty (30) days prior to the effective date of such revised policies.

11. Within thirty (30) days of the effective date of this Agreement, Respondent agrees to revise and submit to the Office of Special Counsel for approval all written communication to employees regarding reverification of employment eligibility to explicitly provide List A or List C documentation, and to include the Form I-9 Lists of Acceptable Documents.
12. By October 31, 2013, all Human Resources Personnel shall receive mandatory training provided or approved by the Office of Special Counsel on their responsibilities to comply with 8 U.S.C. § 1324b, the appropriate use of E-Verify, and the employment eligibility verification and reverification process as it relates to discrimination on the basis of citizenship status or national origin.
 - (a) All employees will be paid their normal rate of pay to attend the training sessions during work hours, and Respondent shall bear any costs associated with this training that the employees would not normally incur.
 - (b) During the Reporting Period, all new Human Resources Personnel hired after this training has been conducted shall view a recording of the mandatory training within sixty (60) days of hire.
 - (c) All Human Resources Personnel who have viewed the mandatory training as required by this paragraph shall receive, at minimum, follow up training approved by the Office of Special Counsel lasting no less than thirty (30) minutes each subsequent year during the Reporting Period.
 - (d) Following the one hundred and twenty (120) day training period reflected in paragraph 12, only the Human Resources Personnel in compliance with the training requirements under this paragraph shall be permitted to take part in Respondent's employment eligibility verification and reverification processes, including, but not limited to, providing Form I-9 instructions to employees, requesting Form I-9 documentation from employees, or examining and recording Form I-9 documentation.
 - (e) On October 31, 2013, October 31, 2014, and November 2, 2015, counsel for Respondent shall certify to the Office of Special Counsel in the form of Attachment C that that Respondent has complied with the provision of this paragraph.
13. Within one hundred and twenty (120) days of the effective date of this Agreement, Respondent shall modify its electronic Form I-9 system to permit employees to complete Section 1 of the Form I-9 and to present documentation for Section 2 of the Form I-9 in a manner that complies with all employment eligibility verification laws and regulations.

14. During the Reporting Period, the Office of Special Counsel reserves the right to make reasonable inquiries to Respondent necessary to determine Respondent's compliance with this Agreement. As a part of such review, the Office of Special Counsel may request written reports concerning compliance, or may request: access to Respondent's premises, examine Respondent's employees, and examine and copy Respondent's documents at the expense of the Office of Special Counsel. Respondent will comply with all reasonable requests.
15. Every six (6) months during the Reporting Period, Respondent shall provide the Office of Special Counsel with copies of all completed Forms I-9 in which section 3 of the Form I-9 has been completed, including attachments. Respondent shall provide the documents in electronic form unless requested otherwise.
16. During the Reporting Period, if the Office of Special Counsel has reason to believe that Respondent is in violation of any provision of this Agreement, the Office of Special Counsel shall promptly notify Respondent of the purported violation. Respondent will then be given a thirty (30) day period from the date it is notified by the Office of Special Counsel in which to cure the violation before Respondent is deemed by the Office of Special Counsel to be in violation of this Agreement.
17. Notwithstanding paragraph 18, this Agreement does not affect the right of any individual to file a charge alleging an unfair immigration related employment practice against Respondent with the Office of Special Counsel, the authority of the Office of Special Counsel to investigate or file a complaint on behalf of any such individual, or the authority of the Office of Special Counsel to conduct an independent investigation of Respondent's employment practices.
18. This Agreement resolves any and all differences between the parties relating to the investigation through the date this Agreement is signed by all parties.
19. The provisions of paragraphs 1 and 3 notwithstanding, the Office of Special Counsel shall not seek from Respondent any additional civil penalty for unfair documentary practices in violation of 8 U.S.C. § 1324b(a)(6) that are the subject of the investigation through the date this Agreement is signed by all parties.
20. This Agreement may be enforced in the United States District Court for the Southern District of Ohio and in the United States District Court for the Southern District of New York.
21. The Office of Special Counsel and Respondent agree that, as of the effective date of this Agreement, litigation concerning the violations of 8 U.S.C. § 1324b that the Office of Special Counsel has reasonable cause to believe that Respondent committed is not reasonably foreseeable. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to this matter, the party is no longer required to maintain such a litigation hold. Nothing

For Respondent:

Macy's Puerto Rico, Inc.

By:



Linda J. Balicki

Secretary, Macy's Puerto Rico, Inc. and
Vice President - Law

Dated: 6/26/13

Macy's Retail Holdings, Inc.

By:

[Name]
[Title]

Dated: _____

Macy's Florida Stores, LLC

By:

[Name]
[Title]

Dated: _____

Macy's West Stores, Inc.

By:

[Name]
[Title]

Dated: _____

Office of Special Counsel for Immigration-Related Unfair Employment Practices

By:



Seema Nanda
Deputy Special Counsel

Dated: 6/27/13

C. Sebastian Aloom
Special Litigation Counsel

Liza Zamd
Trial Attorney

Ronald Lee
Trial Attorney

For Respondent:

Macy's Puerto Rico, Inc.

By:

[Name]
[Title]

Dated: _____

Macy's Retail Holdings, Inc.

By:



Dated: 26 June 13

[Name] Debra Faye Coleman
[Title] GVP, Associate General Counsel - LAW
Assistant Secretary

Macy's Florida Stores, LLC

By:



Dated: 26 June 13

[Name] Debra Faye Coleman
[Title] GVP, Associate General Counsel - LAW
Assistant Secretary

Macy's West Stores, Inc.

By:



Dated: 26 June 13

[Name] Debra Faye Coleman
[Title] GVP, Associate General Counsel - LAW
Assistant Secretary

Office of Special Counsel for Immigration-Related Unfair Employment Practices

By:

Dated: _____

Seema Nanda
Deputy Special Counsel

C. Sebastian Aloit
Special Litigation Counsel

Liza Zamd
Trial Attorney

Ronald Lee
Trial Attorney