

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by ELIOT
SPITZER, ATTORNEY GENERAL OF THE STATE OF
NEW YORK,

Plaintiffs,

**MEMORANDUM
AGREEMENT**

-against-

05 Civ.

MACY'S EAST, INC.,

Defendant.

This Memorandum Agreement ("Agreement") is entered into by and between plaintiffs,
THE PEOPLE OF THE STATE OF NEW YORK, by ELIOT SPITZER, ATTORNEY
GENERAL OF THE STATE OF NEW YORK, and defendant, MACY'S EAST, INC.
("Macy's").

WHEREAS, Macy's is subject to 42 U.S.C. §§ 1981 and 1982, New York Executive Law
§ 296, New York Civil Rights Law § 40, and the common law doctrine on false imprisonment;

WHEREAS, the Office of the Attorney General ("OAG") has alleged that Macy's has
violated 42 U.S.C. §§ 1981 and 1982, New York Executive Law § 296, New York Civil Rights
Law § 40, and the common law doctrine on false imprisonment;

WHEREAS, Macy's denies any such violations and/or any wrongdoing or liability; and

WHEREAS, the OAG and Macy's desire to avoid incurring any further time, costs and
expenses and the uncertainty of litigation and seek to resolve all matters embraced in this action
as between the plaintiffs (and OAG) and Macy's without resort to further litigation; and

WHEREAS, in consideration of the covenants and undertakings set forth herein and intending to be legally bound thereby, the OAG, on behalf of itself and the plaintiffs, and Macy's, and each of them, agree to the terms of this Agreement;

NOW, THEREFORE, it is hereby AGREED AND APPROVED as follows:

PART ONE: DEFINITIONS

Throughout this Agreement, the following terms shall have the following meanings:

- 1.1. "**Agreement**" means this Memorandum Agreement.
- 1.2. "**Anonymous Audit**" means a test in which the treatment of individuals of different Races and/or Ethnicities by Macy's Security is examined through testers posing as Customers.
- 1.3. "**Civil Demand Form**" means the form presented to Detainees that purports to document their agreement to pay Macy's a civil penalty for theft of Macy's merchandise.
- 1.4. "**Court**" means the United States District Court for the Southern District of New York, which shall have jurisdiction over this Agreement and the parties to this Agreement.
- 1.5. "**Customer**" means a person **who** enters a Macy's store in order to **shop** there.
- 1.6. "**Customer Contact**" means an interaction between a Security Employee and a Customer initiated by the Security Employee during which the Customer is stopped, questioned and/or searched that may or may not result in a Detention.
- 1.7. "**Detention**" or "**Detainment**" means Macy's holding in custody an individual suspected of theft of Macy's merchandise.
- 1.8. "**Detainee**" means an individual held in Detention by Macy's.
- 1.9. "**Effective Date**" means the date that this Agreement is ordered by the Court.

- 1.10. **"Federated"** means Federated Department Stores, Inc. and its subsidiaries and operating divisions.
- 1.11. **"Juvenile"** means a person under 16 years of age.
- 1.12. "Macy's" means Macy's East, Inc., as well as any of its employees, agents, officers, assigns, representatives or subsidiaries.
- 1.13. **"Macy's Stores"** means all Macy's stores located geographically within the State of New York except those stores at which only furniture and related household goods are sold.
- 1.14. **"NPD"** means Non-Productive Detainment, which is the Detention of a Customer who is ultimately not found to be in possession of any **unpurchased** Macy's merchandise.
- 1.15. **"Processing"** means the obtaining of biographical information from a Detainee and preparing and approving the paperwork related to the Detention.
- 1.16. **"Profiling"** means intentionally relying, to any degree, on Race and/or Ethnicity rather than the behavior of an individual when selecting which individuals to subject to surveillance, questioning and/or detention for suspected shoplifting.
- 1.17. **"Race and/or Ethnicity"** means black, Hispanic, Asian, Native American, white, or other as currently denoted by Macy's in its SIS Database.
- 1.18. **"Racial Distribution"** means the breakdown, in percentage terms, of black persons, Hispanics, Asians, Native Americans, whites, and other persons in a specified population.
- 1.19. **"Security Apprehension Report"** means the report created to document shoplifting apprehensions and detentions at Macy's.
- 1.20. **"Security Employees"** means all individuals employed by Macy's Security Department in a full- or part-time capacity with responsibilities relating to asset protection, including, but not limited to, store detectives, visual security officers, assistant store security

managers, store security managers, regional security vice-presidents, regional investigators, special investigations unit managers, the director of security operations and administration, and the group vice-president of security.

- 1.21. "**Security Records**" means, for applicable Macy's Stores, Security Apprehension Reports, Security Information Reports, Customer Contact Logs, the Security Information System Database and the information contained therein, any proprietary database reflecting NPDs and the information contained therein, NPD Alerts, Reports of Investigation, Civil Demand Forms, any document reflecting the number, frequency and/or location of security apprehensions or NPDs, any document reflecting a statement by a Detainee, any document reflecting a statement of a Security Employee concerning contact with a Customer, a Detention or an NPD, and any document reviewed by or prepared in connection with the duties of the Security Monitor set forth in Part Four.
- 1.22. "**SIS Database**" means Macy's proprietary Security Information System.
- 1.23. "**Statement Form**" means the form presented to Detainees that requests them to admit to theft of Macy's merchandise.
- 1.24. "**Statistically Significant**" means a probability value of 0.05 or less, that is, a probability of five (5) percent or less that a disparity between two groups or numbers could have occurred by chance.
- 1.25. "**The Five Steps**" means the procedure required for making shoplifting apprehensions set forth in the Level I Manual for Training Detectives and Visual Security Officers as of the Effective Date.
- 1.26. "**Tier I Macy's Stores**" means the Macy's stores at Herald Square, Valley Stream, Albany Colonie, Albany Crossgates, and White Plains.

PART TWO: ACKNOWLEDGMENT OF LEGAL OBLIGATIONS

- 2.1. Macy's acknowledges and understands its obligations under the terms and conditions of 42 U.S.C. §§ 1981 and 1982, New York Executive Law § 296, New York Civil Rights Law § 40, and the common law doctrine of false imprisonment.
- 2.2. This Agreement is a contract and shall, upon approval of the Court, also constitute an order of this Court.

PART THREE: MONETARY RELIEF

- 3.1. Plaintiffs shall recover from Macy's the sum of six hundred thousand dollars (\$600,000) as damages, attorneys' fees, and costs of investigation. Macy's shall satisfy this provision by delivering to the OAG, within twenty-one (21) days of the Effective Date, a certified check payable to the order of "The State of New York" in the amount of six hundred thousand dollars (\$600,000).

PART FOUR: SECURITY MONITOR

- 4.1. By January 10, 2005, Macy's shall create the position of Security Monitor and prepare a written job description for that position. The Security Monitor shall be responsible for ensuring compliance with this Agreement. The Security Monitor, either personally or through a designee, shall:
 - (a) oversee the development of the enhanced training programs described in Part Seven below;
 - (b) take appropriate steps to ensure that Security Employees, Sales Associates, and Sales Managers at all Macy's Stores are trained as described in Part Seven below;
 - (c) review, investigate and respond to complaints about Security Employees, as set forth in Part Nine below;

- (d) monitor Security Employees at all Macy's Stores through unannounced visits, document reviews and other measures to ensure compliance with this Agreement, and, where warranted, retrain employees and take other appropriate corrective actions to remedy any deficiencies or problems;
- (e) compile and evaluate data concerning Security Employees' contact with Customers and Detainees, as set forth in Part Ten below;
- (f) collect information sufficient to prepare, and then prepare, the reports described in Part Eleven below; and
- (g) assist security managers and other supervisors in meeting the obligations set forth in this Agreement.

4.2. Within four (4) months of the Effective Date, Macy's shall appoint the Security Monitor, who shall have the responsibilities set forth in paragraph 4.1 above.

4.3. The Security Monitor shall report directly to the Group Vice President of Security for Macy's East. Copies of all written reports prepared by the Security Monitor and his or her designees, including but not limited to reports prepared pursuant to Part Eleven, shall be provided to the Chief Operating Officer of Macy's East.

PART FIVE: RECORDKEEPING

From the Effective Date forward:

5.1. Maintenance and Completeness of Security Records.

- (a) During the term of this Agreement, Macy's shall continue to collect and maintain the data that it currently captures on all Detentions and NPDs in the SIS database, including the Race and/or Ethnicity of each Detainee and each Customer involved in a NPD.

- (b) All Security Records shall be maintained during the term of this Agreement.
- (c) Macy's shall take reasonable steps to ensure that all Security Records, including but not limited to all fields on any security-related computer databases, are completed in a full, accurate, and timely manner.

5.2. Customer Contact Logs.

- (a) By January 10, 2005, Security Employees shall commence the use of Customer Contact Logs, which shall record any Customer Contacts that a Security Employee initiates except (a) contacts resulting from the EAS sensor alarm ringing and contact being made so that a security tag may be removed from a purchased item or (b) contacts that result in Detentions which will otherwise be entered into SIS as an apprehension. Each entry in a Customer Contact Log shall contain the following information:
 - (i) whether the Customer was questioned, searched or stopped;
 - (ii) the basis for initiating the Customer Contact;
 - (iii) the Race and/or Ethnicity of the Custom'er(s);
 - (iv) the name and agent number of the Security Employee(s) involved;
 - (v) the department(s) where the Customer Contact occurred; and
 - (vi) the time and date the Customer Contact Occurred.
- (b) The Customer Contact Logs shall be entered as part of the SIS database as soon as operationally feasible, and in no case later than four (4) months from the Effective Date.

5.3. Detention Practices. As soon as operationally feasible, and in no case later than four (4) months from the Effective Date, Macy's shall institute the following recordkeeping related to detention practices at Macy's Stores:

- (a) Justifications of Security Employees for using handcuffs shall be entered into the SIS Database and reported on the Security Apprehension Report that is generated from SIS.
- (b) The length of Processing for each Detainee shall be entered into the SIS Database. For any Processing exceeding one hour, a justification setting forth the reason(s) why the Processing exceeded one hour shall be entered into the SIS Database.
- (c) Whether a subject is referred to the local police for prosecution shall be entered into the SIS Database and reported on the Security Apprehension Report that is generated from SIS.

PART SIX: DETENTION POLICIES

6.1. Security Employee Practices. By January 10, 2005, Macy's shall republish to its Security Employees the following policies:

- (a) Security Employees shall provide their name if requested by a Customer; and
- (b) Security Employees shall identify themselves each time that they are involved in a Customer Contact and prior to detaining an individual suspected of theft of Macy's merchandise.

6.2. NPD Practices. NPDs shall continue to be investigated Pursuant to the procedures set forth in Macy's Level I Manual for Training Detectives and Visual Security Officers and Security Procedure A-214 as of the Effective Date.

6.3. Handcuffing Practices.

- (a) By January 10, 2005, in all Macy's Stores except the stores listed in paragraph 6.3(b), Macy's shall adopt a policy of handcuffing detainees based only an individualized assessment of the risk posed b y each subject, in the specific context of their detention; provided, however, that when local police require that Detainees being turned over to them be handcuffed, such individuals may be handcuffed prior to turning custody of such Detainees over to the police. Whenever handcuffs are used, a justification for such use shall be recorded in accordance with paragraph 5.3(a) of this Agreement.
- (b) By January 31, 2005, for the stores at Herald square, King's Plaza, Brooklyn, and Rego Park, and any other Macy's Stores that have, at any time during the five (5) years prior to the Effective Date, employed a policy of handcuffing all Detainees, Macy's shall determine what, if any, modifications to the detention facilities at these stores are necessary in order to implement the policy set forth in paragraph **6.3(a) above**. **Within four (4) months** of the Effective Date, Macy's shall implement any such modifications and shall adopt the policy set forth in paragraph 6.3(a) above at these stores.

6.4. Other Detention Practices. By January 31, 2005, Macy s shall amend its policies, as necessary, to provide that:

- (a) Normal Processing of Detainees presumptively 4hall last no more than one hour.
- (b) Detainees shall be permitted, upon request, to mike emergency phone calls in Detention before Processing for the following purposes:
 - (i) to arrange for the care of Juvenile dependents;

- (ii) by Juvenile Detainees to advise parents or guardians of their Detention;
and
- (iii) any other circumstances that Macy's in its discretion deems appropriate.
- (c) Security Employees shall be prohibited from presenting Juveniles with Civil Demand Forms and/or Statement Forms unless their parents or guardians are present.
- (d) Security Employees shall be prohibited from coercing Detainees into signing Civil Demand Forms and/or Statement Forms while in Detention.
- (e) Prior to asking Detainees to sign Civil Demand Forms and Statement Forms, Security Employees shall read aloud to Detainees the advice provided on those forms indicating that the signing of the forms is voluntary.
- (f) Civil Demand Forms and Statement Forms shall be translated into Spanish and Spanish-language forms shall be provided to Detainees who indicate that their primary language is Spanish.
- (g) If a Macy's employee with Spanish language capability is reasonably available in the store at the time of the Detention, Spanish interpretation shall be provided for Detainees who indicate that their primary language is Spanish and who are not fluent in English.
- (h) Macy's shall not confiscate and retain non-Federated merchandise in the possession of Detainees.

Within two months of the Effective Date, Macy's shall institute the foregoing amended policies.

PART SEVEN: TRAINING

- 7.1. Profiling Training for Security Employees. Within six (6) months of the Effective Date, Macy's shall re-train all Security Employees on Profiling in the retail asset protection context. Each Security Employee's participation in such training shall be recorded. The training shall include:
- (a) a clear definition of Profiling;
 - (b) an explanation of the legal prohibition against Profiling, including a summary of the relevant provisions of 42 U.S.C. §§ 1981 and 1982, New York Executive Law § 296, and New York Civil Rights Law § 40;
 - (c) examples of asset protection methods that constitute Profiling;
 - (d) examples of lawful asset protection methods;
 - (e) instruction that an employee who witnesses another employee engaging in Profiling is obligated to report the Profiling to a supervisory employee;
 - (f) an examination or other assessment of whether each Security Employee being trained comprehends what asset protection activities constitute Profiling and Macy's policy prohibiting Profiling;
 - (g) an explanation of the disciplinary consequences of engaging in Profiling;
 - (h) instruction that an anonymous audit program will be instituted to test whether Security Employees are engaging in Profiling;
 - (i) an opportunity to ask a supervisory employee questions about any information presented during the training program and/or Macy's policy prohibiting Profiling;
- and

(j) the name of a supervisory Security Employee who may be contacted if an employee has questions or concerns about Profiling or Macy's policy prohibiting Profiling.

7.2. Profiling Training for New Security Employees. Within one (1) month of the hiring of any new Security Employee (after the expiration of a period provided in paragraph 7.1), Macy's shall provide that employee with the training described in paragraph 7.1. Each new Security Employee's participation in such training shall be recorded.

7.3. General Training for Security Employees. Within six (6) months of the Effective Date, Macy's shall train all Security Employees who have a role in Detentions regarding the policies and procedures set forth in Part Six of this Agreement. All training required by this paragraph shall be incorporated into the Macy's Entry Security Level I Training Program for Security Employees for new employees.

7.4. Profiling Training for Non-Security Employees. Within twelve (12) months of the Effective Date, Macy's shall present computer-based or video training setting forth its policy against Profiling to all of its Sales Associates and Sales Managers at Macy's Stores, other than Security Employees. The video presentation shall include the content set forth at paragraph 7.1(a)-(e), (g)-(h), and (j) above.

7.5. Profiling Bulletin.

(a) By January 31, 2005, Macy's shall provide a written draft of an employee bulletin containing, at a minimum, the content set forth at paragraph 7.1(a)-(e), (g)-(h), and (j) above for the review and approval of the OAG, whose approval shall not be unreasonably withheld.

- (b) Within one (1) month of the OAG's approval of the bulletin, Macy's shall distribute the approved bulletin to all Security Employees, Sales Associates and Sales Managers at Macy's Stores.
- (c) Within one (1) month of the hiring of any new Security Employee, Sales Associate or Sales Manager, Macy's shall provide the bulletin to that employee.

7.6. OAG Approval of Training Materials, and Attendance at Training Sessions.

- (a) All materials used in the training programs described in paragraphs 7.1 through 7.5 shall be subject to the review and approval of the OAG, whose approval shall not be unreasonably withheld.
- (b) The OAG shall have the right to attend any training session or presentation conducted pursuant to this Part of the Agreement that is not computer-based, upon reasonable notice to Macy's.

PART EIGHT: ANONYMOUS AUDITS

- 8.1. Within three (3) months of the Effective Date, Macy's shall select, subject to the approval of the OAG (whose consent shall not be unreasonably withheld), an outside entity (hereinafter the "Auditor") to provide anonymous auditing services to Macy's. The Auditor selected pursuant to this paragraph shall have no prior financial relationship with Macy's except that Macy's may select an entity or person that Macy's has previously retained to perform its Integrity Shop audits.
- 8.2. Macy's shall pay for the full cost of the Auditor, including expenses and staff support, up to an annual cap of \$35,000.00.
- 8.3. Within one (1) month of the Auditor's selection, the Auditor shall develop with Macy's a plan for the auditing of Tier I Macy's Stores, which shall be subject to the review and

approval of the OAG, whose approval shall not be unreasonably withheld. The proposal shall describe the procedures and substance by which the Auditor shall conduct anonymous audits at Tier I Macy's Stores on a periodic basis to examine whether Macy's Security Employees are subjecting Customers of different Races and/or Ethnicities to different treatment as it relates to surveillance, questioning or detention for suspected shoplifting. Such audits shall commence within one (1) month of the OAG's approval of the proposal. Neither the Store's Security Employees being examined, nor any other Macy's employees working in or assigned to the departments at the Store being reviewed, shall be made aware of the timing, place, manner, or other aspects or details of the audits.

- 8.4. Audits shall be conducted at additional Macy's Stores as directed by the Security Monitor, as described below in paragraph 10.1.

PART NINE: COMPLAINTS

- 9.1. Security Complaint Form. By January 10, 2005, Macy's shall modify its current Security Complaint Form used to document customer complaints concerning security policies, procedures and/or employees to add the following information:

- (a) the name(s) of the Security Employee(s) involved in the incident that prompted the complaint;
- (b) a description of the Security Employee(s) involved in the incident, if the name is not known;
- (c) an optional block for the Race and/or Ethnicity of the complainant; and
- (d) the name, address, and phone number of any witnesses to the incident.

The revised Security Complaint Form shall be subject to the review and approval of the OAG, whose approval shall not be unreasonably withheld.

9.2. Availability of Security Complaint Form.

- (a) Security Complaint Forms shall be made available in English and Spanish.
- (b) Security Complaint Forms shall be made available in all Macy's Stores at the Administrative/Executive office, the gift wrap counter, the Security Office, and any other places where complaint forms pertaining to either customer service or security may be submitted.
- (c) Security Complaints will also be processed through Macy's on-line Tell Us What You Think procedure.

9.3. Review of Complaints. Complaints concerning handling or alleging differential treatment based on Race and/or Ethnicity, including but not limited to Profiling, by Security Employees shall be forwarded to and investigated by the Security Monitor.

- (a) The Security Monitor's investigation of each such complaint shall include:
 - (i) an interview of the complainant(s), if possible, and the documentation of said interview(s);
 - (ii) an interview of the Security Employee(s) involved in the incident and the documentation of said interview(s);
 - (iii) an interview of any witnesses and the documentation of said interview(s);
 - (iv) review of any video recordings of the incident described in the complaint;
 - (v) a written determination of whether the complaint is founded and the reasons for that determination; and
 - (vi) a written determination of whether retraining and/or discipline of the Security Employee(s) is necessary.
- (b) The written determination required by paragraph 9.3(a)(v) shall include:

- (i) a description of the facts of the complaint;
- (ii) a description of the statements and of other evidence gathered during the investigation;
- (iii) a description of the statements or other evidence relied upon in making the determination; and
- (iv) a conclusion as to whether the complaint was founded or unfounded.

9.4. Complaints Alleging NPDs. Complaints alleging the Detention of a Customer who is ultimately not found to be in possession of any **unpurchased** Macy's merchandise shall be investigated in the same manner as an NPD even if not reported as an NPD. Where the incident underlying such a complaint is not reported as an NPD, the Security Monitor shall:

- (a) determine which Security Employees were responsible for not reporting incident as an NPD;
- (b) take appropriate remedial action against any such Security Employee; and
- (c) record the remedial action taken and the reasons for such action.

9.5. The final determination of any investigation regarding any complaint investigated under this Part of the Agreement, if adverse, shall be reflected in the applicable employee's personnel file.

PART TEN: MONITORING

10.1. Review of Tier I Macy's Stores. Within (9) months of the Effective Date, and every six (6) months thereafter:

- (a) For each Tier I Macy's Store, the Security Monitor shall compare the Racial Distribution of individuals who were stopped, questioned or searched but not

detained during the prior six (6) months with the Racial Distribution of the store's Customers, as determined by a survey procured or conducted at Macy's expense.

To the extent that the representation of any applicable racial or ethnic group in the first distribution exceeds its representation in the second distribution by ten (10) or more percentage points, or five (5) or more percentage points for the Herald Square store, then the Monitor shall:

- (i) determine whether that disparity is related to particular Security Employees or store departments;
determine whether the disparity is a result of non-discriminatory factors or not and set forth the basis for this conclusion;
take appropriate remedial action, including directing and implementing anonymous auditing by the Auditor at particular stores in which significant disparities are found, retraining and/or disciplining of employees, and any other corrective measures; and
maintain records of any remedial action taken and the reasons for such action.
- (b) For each Tier I Macy's Store, the Monitor shall compare the Racial Distribution of individuals who were referred to the local police for prosecution during the prior six (6) months with the Racial Distribution of those detained during that period. To the extent that the representation of any applicable racial or ethnic group in the first distribution exceeds its representation in the second distribution by a Statistically Significant margin, then the Monitor shall:

- (i) determine whether that disparity is related to particular Security Employees;
 - (ii) determine whether the disparity is a result of non-discriminatory factors or not and set forth the basis for this conclusion;
 - (iii) take appropriate remedial action, including directing and implementing retraining and/or disciplining of employees, and any other corrective measures; and
 - (iv) maintain records of any remedial action taken and the reasons for such action.
- (c) For each Tier I Macy's Store, the Security Monitor shall compare the Racial Distribution of individuals who were handcuffed during the prior six (6) months with the Racial Distribution of those detained during that period. To the extent that the representation of any applicable racial or ethnic group in the first distribution exceeds its representation in the second distribution by a Statistically Significant margin, then the Monitor shall:
- (i) determine whether that disparity is related to particular Security Employees;
 - (ii) determine whether the disparity is a result of non-discriminatory factors or not and set forth the basis for this conclusion;
 - (iii) take appropriate remedial action, including directing and implementing retraining and/or disciplining of employees, and any other corrective measures; and

(iv) maintain records of any remedial action taken and the reasons for such action.

(d) For each Tier I Macy's Store, the Security Monitor shall calculate the total percentage of Detainees who were handcuffed during the prior six (6) months. If that percentage exceeds twenty (20) percent at that Macy's Store, then the Security Monitor shall, within one (1) month of having made such calculation:

- (i) review all Security Apprehension Reports for Detainees who were handcuffed at that store to determine whether handcuffing was justified in each case by a individualized determination as to risk or dangerousness;
- (ii) take appropriate remedial action, including conducting random review of Detentions at that store, directing the re-training and/or disciplining of employees, and implementing other corrective measures; and
- (iii) maintain records of the remedial action taken and the reasons for such action.

10.2. Review of Non-Tier I Macy's Stores. Within twelve (12) months of the Effective Date, and every year thereafter:

- (a) For four non-Tier I Macy's Stores each year, selected by the OAG with reasonable notice to Macy's, the Security Monitor shall follow the requirements set forth in paragraph 10.1(a);
- (b) For the stores at King's Plaza, Brooklyn, and R, go Park, and any other non-Tier I Macy's Stores that have, at any time during the five (5) years prior to the Effective Date, employed a policy of handcuffing all Detainees, the Security Monitor shall follow the requirements set forth in paragraphs 10.1(c) and 10.1(d).

10.3. Review of Adequacy of Records. The Security Monitor shall periodically review entries in the SIS Database and Customer Contact Logs for each Macy's Store to ensure compliance with the requirements of Part Five of this Agreement. To the extent that the Security Monitor finds non-compliance, he or she shall take appropriate remedial action and maintain records of any remedial action taken.

PART ELEVEN: REPORTING

- 11.1. Tier I Monitoring Report. Nine (9) months of the Effective Date, and every six (6) months thereafter, the Security Monitor shall prepare a report that documents Macy's efforts during the prior six (6) months to prevent Profiling in the Tier I Macy's Stores, evaluate the effectiveness of those efforts, and detail any corrective or remedial measures undertaken to redress any problems or issues identified (the "Tier I Monitoring Report"). Each Tier I Monitoring Report shall include, at a minimum, for each Tier I Macy's Store:
- (a) a section identifying whether all Security Employees employed during the prior six (6) months have received the training contemplated in Part Seven of this Agreement;
 - (b) a section summarizing, for the prior six (6) months, the findings and recommendations of any anonymous audits performed at the store, any corrective or remedial taken as a result, and the reasons such measures were deemed appropriate under the circumstances;
 - (c) a section identifying, for the prior six (6) months:
 - (i) the number of complaints concerning harrasment or alleging differential treatment based on Race and/or Ethnicity, including but not limited to Profiling, by Security Employees;

- (ii) the percentage of cases in which the complainant was interviewed;
 - (iii) the percentage of the complaints deemed founded;
 - (iv) the remedial action taken in response to any such complaints; and
 - (v) the reasons such measures were deemed appropriate under the circumstances;
- (d) a section summarizing any administrative complaints or lawsuits filed against Macy's during the prior six (6) months that allege inappropriate handcuffing or differential treatment based on Race and/or Ethnicity, including but not limited to Profiling, by Security Employees;
- (e) a section summarizing the results of the data analysis performed pursuant to paragraphs 10.1(a), 10.1(b), and 10.1(c), including:
- (i) the results of any customer surveys conducted or procured pursuant to paragraph 10.1(a);
 - (ii) the racial and ethnic distributions calculated pursuant to those paragraphs; and
 - (iii) any racial or ethnic disparities found in the comparisons mandated by those paragraphs;
- (f) a section detailing, for any disparities identified pursuant to paragraphs 10.1(a), 10.1(b), and 10.1(c):
- (i) Macy's determination as to the cause(s) of the disparity;
 - (ii) the steps undertaken by Macy's to make this determination;
 - (iii) any corrective action taken; and

- (iv) the reasons that Macy's believes that such corrective measures were appropriate, including, for cases in which Macy's retrained or disciplined a Security Employee who had previously been retrained or disciplined for discriminatory conduct, the reason that Security Employee was not terminated;
- (g) a section detailing any problems identified and remedial actions taken pursuant to paragraph 10.1(d);
- (h) a section summarizing the actions taken by the Security Monitor during the prior six (6) months to review the adequacy of Security Records and any resulting remedial action; and
- (i) an appendix that includes:
 - (i) disks containing the SIS database information for Tier I Macy's Stores for the prior six (6) months;
 - (ii) a copy of all anonymous audit reports prepared during the prior six (6) months;
 - (iii) a copy of any training programs on Profiling conducted during the prior six (6) months;
 - (iv) a complaint log that includes, for each complaint identified in paragraph 11.1(c) above, an indication of whether the complainant and any other witnesses were interviewed, an indication of whether the complaint was deemed founded, the reasons for that determination, and any remedial action taken as a result of the complaint; and

(v) copies of the administrative complaints or lawsuits identified in paragraph 11.1(d) above.

11.2. Reporting Requirements. Macy's shall provide to the OAG the Tier I Monitoring Reports within ten (10) months of the Effective Date and every six (6) months thereafter.

11.3. OAG Access to Records and Employees.

- (a) The OAG shall, upon reasonable notice to Macy's, have access at a reasonable time and place to review any non-privileged Macy's documents relating to the monitoring efforts set forth in Part Ten of this Agreement, Macy's Detention practices, or the implementation of this Agreement.
- (b) The OAG shall, upon reasonable notice to Macy's, have access at a reasonable time and place to Macy's employees and facilities as necessary to determine Macy's compliance with this Agreement.
- (c) The OAG acknowledges Macy's contention that all documents, materials, data or other information provided by Macy's to the OAG in accordance with the terms of this Agreement are confidential and proprietary. Accordingly, all information provided to the OAG by Macy's shall be marked "Confidential" and shall be deemed "Confidential Matter," provided that Macy's has not made such information generally available or provided the information to any media entity, outlet or employee, or otherwise provided the information to persons outside of Macy's with the expectation that it would become generally available. Except as provided within the Agreement or as otherwise required by law, the OAG shall not disclose to any third party any Confidential Matter. If any third party requests access to any Confidential Matter and the OAG determines that it is required by

law to produce such Confidential Matter, it shall give reasonable notice to Macy's of the request and of its determination to comply with said request at least ten days prior to providing the Confidential Matter.

PART TWELVE: REMEDIES FOR NONCOMPLIANCE

- 12.1. If the OAG determines that there has been noncompliance with the Agreement, the OAG shall notify Macy's in writing of any such determination within thirty (30) days of the alleged noncompliance.
- 12.2. Within thirty (30) days of receiving such notification Macy's shall submit in writing to the OAG its position on the determination of noncompliance.
- 12.3. At either party's request, Macy's and the OAG shall meet to discuss the OAG's determination and Macy's response. At such a meeting or thereafter, the parties may negotiate remedies for the noncompliance identified by the OAG.
- 12.4. If no agreement is reached, the OAG may petition the court for a determination whether Macy's should be required to implement the OAG's recommended remedies.

PART THIRTEEN: ANNUAL PROGRESS MEETINGS

- 13.1. Within one (1) year of the Effective Date, and on an annual basis thereafter, the OAG and Macy's shall meet to evaluate Macy's progress in complying with the terms of this Agreement.

PART FOURTEEN: ENFORCEMENT

- 14.1. The Court shall retain jurisdiction over the parties and this matter for the term of three (3) years from the Effective Date.
- 14.2. The Court shall retain all applicable equitable powers necessary to enforce the terms of this Agreement and remedy any violations thereof, including but not limited to the power

to hold Macy's in contempt and to award damages, restitution, or monetary penalties, as allowed by law.

- 14.3. Macy's is responsible for the actions of its agents and employees with respect to the requirements of this Agreement.

PART FIFTEEN: JURISDICTION AND OTHER PROVISIONS

- 15.1. In return for the consideration provided for in this Agreement, Plaintiffs release Macy's from any and all past and present claims, liabilities, obligations, demands, and actions, whether known or unknown, that were brought, could have been brought, or that could be brought against Macy's for injunctive, declaratory, or monetary relief regarding Profiling and Detention practices. However, nothing in this Agreement is intended to, nor shall, limit the OAG's investigatory or compliance review powers otherwise provided by law or this Agreement.
- 15.2. Notwithstanding any provision of this Agreement to the contrary, the OAG may, in its sole discretion, grant written extensions of time for Macy's to comply with any provision of this Agreement.
- 15.3. This Agreement shall become effective upon its execution by all parties and its being ordered by the Court.
- 15.4. The signatories to this Agreement warrant and represent that they are duly authorized to execute this Agreement and that they have the authority to take all appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.
- 15.5. This Agreement represents the compromise of disputed claims which the Parties recognize would require protracted and costly litigation to determine. Macy's entry into

this Agreement is not and may not be used by any parson as an admission or evidence that Macy's has engaged in any practice that violate the law.

- 15.6. For purposes of interpreting this Agreement, individ als shall not be deemed to be third party beneficiaries of this Agreement, and shall have no right to enforce its terms.
- 15.7. This Agreement may be executed in multiple counterparts, each of which shall be deemed a duplicate original.
- 15.8. This Agreement is final and binding on the parties, in luding all principals, agents, representatives, successors in interest, assigns, and le al representatives thereof No assignment by any party hereto shall operate to reliev such party of its obligations herewith. However, the obligations imposed by this greement are solely those of Macy's; and, in the event that Macy's sells one or mo e of its stores to a non-Federated entity, the terms of this Agreement shall not apply to t e buyer of that store.
- 15.9. All of the terms of this Agreement are contractual and of merely recitals, and none may be amended or modified except by a writing executed y all parties hereto approved by the Court, or with Court approval.
- 15.10. This Agreement supersedes and renders null and void any and all written or oral prior undertakings or agreements between the parties regarding the subject matter hereof, except the Confidentiality Agreement to which the parties agreed at the outset of the OAG's investigation.
- 15.11. The parties hereby waive and shall not have any right to appeal any of the terms of this Agreement or in any way challenge the validity of any c f the terms of this Agreement in any forum.

15.12. If any provisions, terms, or clauses in this Agreement are declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Agreement shall remain valid and binding on the parties.

15.13. The parties may seek to enforce this Agreement by action before the Court to the full extent of the law; however, in the event of a dispute between the parties regarding any issue arising hereunder, the parties shall attempt in good faith to resolve the dispute before seeking the Court's intervention.

15.14. Failure by any party to seek enforcement of this Agreement pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.

15.15. All communications and notices regarding this Agreement shall be sent by first-class mail and, if twenty-five (25) pages or less in length, by facsimile, to:

OAG

Dennis Parker
Bureau Chief, Civil Rights Bureau
Office of the New York State
Attorney General
120 Broadway, 23rd Floor
New York, New York 10271

Tel. (212) 416-8240
Fax (212) 416-8074

Macy's

Mitchell Berger, Esq.
Operating Vice President and
Assistant General Counsel
Macy's East, Inc.
151 West 34th Street
New York, New York 10001

Tel. (212) 494-1655
Fax (212) 494-1968

This Agreement shall expire three (3) years from the Effective Date.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Memorandum Agreement on the dates written below.

ELIOT SPITZER
New York State Attorney General
120 Broadway
New York, New York 10271

MACY'S EAST, INC.
151 East 41st Street
New York, New York 10001

By: 
Dennis D. Parker
Bureau Chief
Civil Rights Bureau

Art Matura
Executive Vice President, Operations
Macy's East, Inc.

Attorney for Plaintiffs

Dated: **12/13/04**
New York, New York

Dated: **12/13/04**
New York, New York

SO ORDERED:

UNITED STATES DISTRICT JUDGE

Dated: New York, New York