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Nicole Cogdell, et al. v. The Wet Seal, Inc., et al.

Judge Andrew J. Guilford

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Nicole Cogdell, et al. v. The Wet Seal, Inc., et al.

Keywords

Nicole Cogdell, The Wet Seal, SACV 12-01138 AG (ANx), Consent Decree, Disparate Treatment, Hostile Work Environment, Assignment, Compensation, Constructive Discharge, Promotion, Terms and Conditions, Termination, Retail, Employment Law, Title VII

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21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA

23 NICOLE COGDELL, *et al.*,

CASE NO. SACV 12-01138 AG (ANx)

24 Plaintiffs,

**SETTLEMENT AGREEMENT AND
JOINT STIPULATION**

25 v.

26 THE WET SEAL, INC., *et al.*,

Complaint filed: July 12, 2012
Judge: Hon. Andrew J. Guilford

27 Defendants.

Hearing Date: June 10, 2013
Time: 10:00 a.m.
Courtroom: 10D – Judge Guilford

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13 Wet Seal GC, Inc., and Wet Seal GC, LLC

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1 Plaintiffs Nicole Cogdell, Kai Hawkins, Myriam Saint-Hilaire, and
2 Michelle Guider, individually and on behalf of all others similarly situated
3 (“Plaintiffs”), and Defendants The Wet Seal, Inc., The Wet Seal Retail, Inc., Wet
4 Seal GC, Inc., and Wet Seal GC, LLC (“Defendants,” “Wet Seal,” or “the
5 Company”), by and through their respective Counsel of record, agree to resolve the
6 above-captioned case on a class basis through this Settlement Agreement and Joint
7 Stipulation (“Settlement Agreement”). The proposal was negotiated at arm’s length
8 by experienced Counsel, and, in the opinion of the Parties’ Counsel, fairly and
9 adequately addresses the claims of systemic employment discrimination raised by
10 Plaintiffs’ Complaint and Amended Complaint. The injunctive provisions contain
11 many best practices that will benefit the Class and future African-American
12 employees for years to come. The monetary relief represents a reasonable
13 compromise under all the circumstances. It should also be noted that this
14 Settlement Agreement has been negotiated under the leadership of Wet Seal’s new
15 Board of Directors and new Chief Executive Officer to resolve matters whose
16 genesis preceded his arrival and the constitution of the new Board. The proposed
17 Settlement Agreement reflects Wet Seal’s commitment to its updated policies and
18 practices that promote equal employment opportunity, prohibit discrimination and
19 harassment based upon race and color in all employment practices, and prohibit
20 retaliation against any current or former employee of Wet Seal.

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I.

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DEFINITIONS

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25 1. “Action” means the civil action entitled *Nicole Cogdell et al. v.*
26 *The Wet Seal, Inc. et al.*, Case No. SACV 12-01138 AG (ANx), pending before the
27 United States District Court for the Central District of California.

28 2. “Claims Administrator” shall mean Settlement Services, Inc.

1 (“SSI”), a division of Garden City Group, Inc. (or an administrator mutually agreed
2 to by the Parties and approved by the Court if SSI for some reason cannot serve),
3 which shall perform the duties of: (i) using the data provided by Wet Seal to
4 prepare the Claim Forms with the dates and number of Work Weeks for each Class
5 Member in each Covered Position during the Covered Time Frame; (ii) mailing to
6 Class Members the Notice attached as Exhibit “1,” Claim Form attached as Exhibit
7 “2,” and Wet Seal Letter attached as Exhibit “3”; (iii) tracking returned Claim
8 Forms, Exclusion Statements and Objections; (iv) establishing and operating a
9 website designed to provide information to and communication with Class
10 Members; (v) maintaining a toll-free number for communicating with Class
11 Members and responding to questions from Class Members; (vi) providing timely
12 reminder postcards to Class Members who have not submitted Claim Forms or
13 Exclusion Statements; (vii) receiving and evaluating Claim Forms for timeliness
14 and validity and notifying the Parties of untimely and/or invalid claims;
15 (viii) considering the evidence submitted by Class Members and Class Counsel in
16 support of their claims, and considering the evidence of Wet Seal in support and in
17 opposition to claims in implementing the allocation plan set forth in Paragraphs
18 38(d) and 39(b) to determine whether and how much each Participating Class
19 Member should recover from the Settlement Fund; (ix) calculating the amounts due
20 to each Class Member pursuant to the Settlement; (x) notifying the Parties of and
21 resolving any disputes regarding claims by Class Members; (ix) providing
22 payments, along with IRS Forms W-2 and 1099-MISC, to the Class Members who
23 submit timely and valid Claim Forms; (x) utilizing the National Change of Address
24 Database maintained by the United States Postal Service and/or mail forwarding
25 information and/or skip tracing methods as reasonable to update the mailing list and
26 take steps to send notice to current mailing addresses; (xi) filing tax returns and
27 paying all required taxes on the settlement; and (xii) performing any other duties as
28 are described herein or necessary to carry out its responsibilities set forth in this

1 Settlement Agreement.

2 3. "Claim Form" shall mean Exhibit "2," the form approved by the
3 Parties and subject to Court approval that each Class Member must submit to
4 recover a portion of the Settlement proceeds.

5 4. "Class" or "Class Members" shall mean all African-American
6 and/or Black persons who worked in Wet Seal and Arden B. stores in a Covered
7 Position at any time from May 8, 2008 through the date of Preliminary Approval of
8 the Settlement by the Court ("Class Members"), except those individuals who
9 previously signed a general release of claims. The names of those individuals will
10 be provided to Class Counsel and the Claims Administrator with a request that they
11 be kept confidential.

12 5. "Class Counsel" shall mean Bill Lann Lee, Julie Wilensky,
13 Shira Wakschlag, and Lewis, Feinberg, Lee, Renaker & Jackson, P.C.; Nancy C.
14 DeMis, Susan R. Fiorentino, and Gallagher, Schoenfeld, Surkin, Chupein & DeMis,
15 P.C.; Elise Boddie, ReNika C. Moore, Ria Tabacco Mar, and NAACP Legal
16 Defense & Educational Fund, Inc.

17 6. "Court" shall mean the United States District Court for the
18 Central District of California.

19 7. "Covered Position" shall mean Store Assistant Manager, Co-
20 Manager, Acting Store Manager and Store Manager in a Wet Seal or Arden B.
21 store.

22 8. "Covered Time Frame" shall mean May 8, 2008 through the
23 date of Preliminary Approval of the Settlement.

24 9. "Enhanced Pay Fund," "Enhanced Promotion Fund" and
25 "Discretionary Termination/Other Fund" shall mean the funds associated with the
26 Enhanced Pay Fund, the Enhanced Promotion Fund and the Discretionary
27 Termination/Other Fund, as described in Paragraphs 39(b)(i)(2), (b)(ii)(2) and
28 (b)(iii)(3), respectively.

1 10. “Employer Payroll Taxes” shall mean the legally required
2 employer contributions to Social Security taxes, Medicare taxes, Federal
3 unemployment taxes and State unemployment taxes.

4 11. “Exclusion Statement” refers to the statement specified in
5 Paragraph 66 that a Class Member must submit to exclude himself or herself from
6 the release of claims pursuant to this Settlement.

7 12. “Final” means that the Settlement has been finally approved by
8 the District Court without material modification unless a Class Member objects or
9 Class Counsel appeals a reduction in their fees or costs awarded, in which case
10 “Final” means (i) the applicable date for seeking appellate review of the Court’s
11 final approval of the Settlement has passed without a timely appeal or request for
12 review having been made; or (ii) the United States Court of Appeals for the Ninth
13 Circuit or the United States Supreme Court has rendered a final judgment affirming
14 the District Court’s final approval without material modification, and the time for
15 any further appeal has expired.

16 13. “Final Approval Hearing” means the hearing to be conducted by
17 the Court to determine whether to finally approve and implement the terms of this
18 Settlement.

19 14. “Maximum Payment” shall mean the Seven Million Five
20 Hundred Thousand Dollars (\$7,500,000) amount to be paid by The Wet Seal on
21 behalf of itself and all Defendants pursuant to this Settlement.

22 15. “Notice” shall mean the Notice of Pendency of Class Action
23 Settlement attached as Exhibit “1.” It is the Notice approved by the Parties and
24 subject to Court approval which the Claims Administrator shall mail to each Class
25 Member explaining the terms of the Settlement and the claims process.

26 16. “Participating Class Members” shall mean those eligible Class
27 Members who submit timely and valid Claim Forms.

28 17. “Parties” shall mean Plaintiffs and Defendants.

1 18. “Pay Fund” shall mean a total of One Million Dollars
2 (\$1,000,000), which sum shall include Employer Payroll Taxes, allocated for the
3 settlement of pay claims.

4 19. “Plaintiffs” and “Class Representatives” shall mean Plaintiffs
5 Nicole Cogdell, Kai Hawkins, Myriam Saint-Hilaire and Michelle Guider.

6 20. “Preliminary Approval” shall mean the order issued by the
7 Court granting preliminary approval of the Settlement, Notice, Claim Form and
8 Wet Seal Letter.

9 21. “Promotion Fund” shall a mean a total of One Million Dollars
10 (\$1,000,000), which sum shall include Employer Payroll Taxes, allocated for the
11 settlement of promotion and job assignment claims.

12 22. “Settlement” shall mean the settlement of this Action as
13 embodied in this Settlement Agreement and Joint Stipulation between Plaintiffs and
14 Defendants.

15 23. “Settlement Fund” shall mean the fund created by SSI from the
16 Maximum Payment to provide individual monetary awards to eligible Class
17 Members and fund settlement administration expenses and Class Counsel’s
18 reasonable attorneys’ fees and costs, in accordance with the provisions of this
19 Settlement Agreement.

20 24. “Settlement Fund Account” shall mean the interest-bearing
21 account into which the Claims Administrator shall deposit the Settlement Fund.

22 25. “Termination/Other Fund” shall mean a total of Three Million
23 Five Hundred Eighty Thousand Dollars (\$3,580,000), which sum shall include
24 Employer Payroll Taxes, allocated to settle claims of discriminatory termination,
25 demotion, or discipline (resulting in loss of pay) based upon race or color; hostile
26 work environment based upon race or color; retaliation for complaining of race or
27 color discrimination or for complaining of harassment/hostile work environment
28 based upon race or color; and emotional distress and damage to reputation resulting

1 from the foregoing.

2 26. “The Wet Seal” or “Defendants” shall mean The Wet Seal, Inc.,
3 The Wet Seal Retail, Inc., Wet Seal GC, Inc., and Wet Seal GC, LLC.

4 27. “Wet Seal Letter” shall mean the letter attached as Exhibit “3”
5 from the Chief Executive Officer of The Wet Seal that the Claims Administrator
6 shall mail to Class Members with the Notice and Claim Form to reflect the fact that
7 the Company encourages Class Members to file Claim Forms.

8 28. “Work Weeks” shall be all weeks worked by Class Members in
9 a Covered Position at any time from May 8, 2008 through the date of Preliminary
10 Approval of the Settlement. Weeks worked consist of those weeks wherein The
11 Wet Seal’s records reflect that the Class Member received pay for work performed.

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II.

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RECITALS

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16 29. This Settlement resolves the class action Complaint against
17 Defendants, captioned “*Nicole Cogdell, et al. v. The Wet Seal, Inc., et al.*,” United
18 States District Court for the Central District of California, Case No. SACV 12-
19 01138 AG (ANx),” filed on July 12, 2012. This is a putative class action filed by
20 Plaintiffs Cogdell, Hawkins, and Saint-Hilaire on behalf of current and former
21 African-American retail store management employees of The Wet Seal alleging
22 that it has a policy and practice of intentionally discriminating against African-
23 American employees in store management positions with respect to pay, promotion,
24 job assignments, discipline, demotion, termination (actual or constructive), and
25 other terms and conditions of employment. Plaintiffs Cogdell, Hawkins, and Saint-
26 Hilaire further contend that they were retaliated against for opposing practices they
27 believed to be unlawful, and Plaintiff Cogdell contends that she was subjected to a
28 hostile work environment. Plaintiffs’ First Amended Complaint contains causes of

1 action for: (1) violations of 42 U.S.C. § 1981; and (2) violations of Title VII of the
2 Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.). The First Amended
3 Complaint makes similar allegations, adds another named Plaintiff Michelle
4 Guider, and seeks an order reinstating Plaintiffs and Class Members to their rightful
5 positions; other injunctive relief; all lost pay and benefits sustained by Plaintiffs and
6 the Class as a result of The Wet Seal's conduct according to proof; compensatory
7 damages for emotional distress; front pay; punitive damages; costs incurred,
8 including reasonable attorneys' fees; and pre-judgment and post-judgment interest.

9 30. Plaintiffs believe the allegations of violations of 42 U.S.C.
10 § 1981 and Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.) are
11 meritorious, and that the Action is appropriate for class action treatment.

12 31. Defendants deny any liability or wrongdoing of any kind
13 associated with the claims alleged, and contend that, for any purpose other than this
14 Settlement, this Action is not appropriate for class action treatment. Defendants
15 further contend that they have not violated 42 U.S.C. § 1981, Title VII of the Civil
16 Rights Act of 1964 (42 U.S.C. § 2000e et seq.) or any other law or regulation.

17 32. The Parties exchanged disclosures required by Federal Rule of
18 Civil Procedure 26, as well as both formal and informal discovery. Defendants
19 produced electronic data from its human resources information and payroll
20 databases, as well as 100,000 pages of responsive documents, including policies,
21 personnel records, statistical data, loss prevention documents, emails and arbitration
22 agreements. Class Counsel conducted an in-depth investigation of the claims, both
23 before and after the filing of the Action, by interviewing numerous current and
24 former Wet Seal managers and employees, creating a comprehensive litigation data
25 base of tagged discovery documents; analyzing employment records of Class
26 Members and comparator white employees, retaining expert analysts to review Wet
27 Seal personnel and statistical data, and preparing expert statistical analyses of
28 trends in promotions, compensation, demotions, and terminations, and damage

1 calculations. Class Counsel also assisted the EEOC in compiling its investigative
2 file of documents and identifying witnesses, and reviewed the determination of the
3 EEOC and the investigative file the EEOC compiled, including depositions of Wet
4 Seal officials and personnel documents. Class Counsel also investigated the
5 suitability of the named Plaintiffs' claims for class treatment; the adequacy of the
6 named Plaintiffs to represent the proposed Class; and other class certification
7 requirements. The Parties' Counsel exchanged their expert statistical analyses and
8 other evidence. Class Counsel also conducted many interviews by phone and in
9 person with potential Class Members and witnesses, and represented individual
10 Plaintiffs and Class Members before the EEOC. Class Counsel therefore had an
11 adequate basis to assess the claims advanced.

12 33. After good-faith, arm's-length negotiations over five months,
13 the Parties reached an agreement to settle the Action pursuant to the terms and
14 conditions set forth below. Lead Counsel for all Parties have decades of experience
15 litigating employment discrimination actions and class actions. Based on their own
16 independent investigation and evaluation, Class Counsel believe that the Settlement
17 is fair, reasonable, and adequate and is in the best interests of the Class Members in
18 light of all known facts and circumstances, including the risk of significant delay.
19 It should also be noted that a substantial number of Class Members might be
20 required to commence individual arbitrations to assert their claims in the absence of
21 this Settlement because of Mutual Agreements to Arbitrate Claims. The
22 prosecution and defense of these cases might impose a substantial burden on the
23 Parties because these arbitrations could be filed anywhere in the United States
24 where Wet Seal operates stores. Defendants and Defendants' Counsel also agree
25 that the Settlement is fair, reasonable, and adequate.

26 34. The Parties agree that the Court shall certify the Class solely for
27 the purpose of implementing the terms of this Settlement. The Parties agree that
28 certification for settlement purposes under the more lenient standard courts have

1 applied to settlements (*e.g.*, manageability is not an issue) is in no way an
2 admission that class certification is proper under the more stringent standard
3 applied for litigation purposes and that evidence of this limited stipulation for
4 settlement purposes only shall not be deemed admissible in this or any other
5 proceeding. It is Defendants' position that if the Action were to be litigated, class
6 certification would be inappropriate, *inter alia*, because individual issues
7 predominate. Plaintiffs believe that the requirements of Rule 23 are met under
8 either standard.

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III.

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TERMS OF SETTLEMENT

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35. Injunctive Relief Provisions:

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(a) General Non-Discrimination Provisions:

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(i) Wet Seal shall continue to maintain and implement non-discrimination policies and practices designed to afford equal employment opportunity.

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(ii) Wet Seal reaffirms its commitment and acknowledges its legal obligation not to retaliate against persons who participate in the Action; oppose, file a charge or assert claims of retaliation or unlawful discrimination or harassment based on race or color against Wet Seal; testify, furnish information, or participate in any manner in any investigation, proceeding or hearing in connection with any charge or complaint of discrimination on the basis of race and/or color; testify, furnish information, or participate in any manner in connection with the monitoring or implementation of this Settlement Agreement; or seek and/or receive any monetary and/or non-monetary relief pursuant to this Settlement Agreement, or assist others in doing so.

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1 (iii) Isolated incidents or allegations of discrimination
2 or harassment based upon race or color, or retaliation for complaints of
3 discrimination or harassment based upon race or color, shall not give rise to a claim
4 for breach of this Agreement, nor shall discrimination, harassment and retaliation
5 on which Wet Seal takes prompt corrective action.

6 (b) Communications:

7 (i) Wet Seal, Inc. shall maintain on its external website
8 a page or pages expressing its commitment to non-discrimination, diversity, and
9 inclusion.

10 (ii) Wet Seal shall make available its non-
11 discrimination policies to all employees upon hire and shall continuously post these
12 policies together with a message in support thereof from its CEO, updated annually,
13 on its intranet website and at its stores. Wet Seal employees shall record in writing
14 or electronically their receipt of these documents.

15 (iii) Wet Seal shall incorporate its commitment to non-
16 discrimination, diversity, and inclusion, as well as its complaint procedure, in its
17 Employee Handbook and distribute the revised Employee Handbook to all
18 employees no later than July 1, 2013. The revised Employee Handbook shall be
19 provided to new employees upon hire and shall be available continuously on the
20 Company's intranet website.

21 (c) Marketing: Wet Seal shall include African-Americans of
22 various skin tones to reflect diversity in its marketing materials, provided that no
23 single marketing or advertising piece need include persons of all races and skin
24 tones.

25 (d) Partnerships: To further its commitment to diversity
26 among its employees, Wet Seal shall consult and partner with organizations
27 dedicated to the advancement and well-being of African Americans and other
28 minority groups, including but not limited to the NAACP, and shall notify them

1 that Wet Seal's job openings are posted on its careers website.

2 (e) Non-Discrimination and Diversity Training: All training
3 required by Paragraph 35(e)(i) through (iii) below may be delivered on an
4 individual or group basis by computer program, live "discussion" format, video
5 format, written materials, or any combination of these or other formats tailored to
6 be effective in communicating the material.

7 (i) Sales associates who work more than 480 hours (or
8 3 months) in a 12-month period shall participate in: (1) at least one-half (1/2) hour
9 of training on non-discrimination, diversity, and inclusion (a) within nine (9)
10 months preceding or three (3) months following the date of Preliminary Approval,
11 or (b) within three (3) months following the individual's hire as a sales associate,
12 whichever occurs later; and (2) at least one-half (1/2) hour of additional training
13 described above every twelve (12) months after the participant last received such
14 training.

15 (ii) Corporate executives; salaried employees in the
16 departments of Store Operations, Loss Prevention, Human Resources, Merchandise,
17 and Marketing; and Regional Directors, District Directors, Store Managers, Co-
18 Managers, and Assistant Managers shall participate in: (1) at least one (1) hour of
19 training on non-discrimination, diversity, and inclusion (a) within nine (9) months
20 preceding or three (3) months following the date of Preliminary Approval, or (b)
21 within three (3) months following the individual's hire into, or promotion to, one of
22 the positions listed herein, whichever occurs later; and (2) at least one (1) hour of
23 additional training described above every twelve (12) months after the participant
24 last received such training.

25 (iii) Corporate executives; salaried managers of people
26 in the departments of Store Operations, Loss Prevention, Human Resources,
27 Merchandise, and Marketing; and Regional Directors, District Directors, Store
28 Managers, Co-Managers, and Assistant Managers shall participate in at least one

1 (1) hour of training on Wet Seal’s job posting; hiring and promotion; compensation;
2 performance evaluation; corrective action; and internal complaint procedure
3 policies and practices within nine (9) months preceding or three (3) months
4 following the date of Preliminary Approval, or within three (3) months following
5 the individual’s hire into, or promotion to, one of the positions listed herein,
6 whichever occurs later.

7 (iv) Wet Seal shall produce to Class Counsel copies of
8 the training under this Paragraph 35(e).

9 (f) Investigations Training: Salaried employees in the
10 departments of Loss Prevention and Human Resources, as well as Regional
11 Directors and Store Operations’ management in the chain of command over store
12 personnel, shall participate in: (1) at least one (1) hour of training on how to
13 conduct effective and non-discriminatory investigations of suspected misconduct of
14 employees and/or customers, including proper procedures and documentation, (a)
15 within nine (9) months preceding or three (3) months following the date of
16 Preliminary Approval, or (b) within three (3) months following the individual’s hire
17 into, or promotion to, one of the positions listed herein, whichever occurs later; and
18 (2) at least one (1) hour of additional training described above every twelve (12)
19 months after the participant last received such training.

20 (g) Diversity and Inclusion Council: Wet Seal shall maintain
21 a Diversity and Inclusion Council of at least twelve (12) members, who shall be
22 responsible for advising the Company on topics including but not limited to: non-
23 discrimination, diversity, and inclusion; how the Company can encourage equal
24 employment in recruiting, hiring, compensating, assigning, and promoting;
25 succession planning including mentoring and professional development; and
26 retention of African-American and other employees belonging to protected groups.
27 The Council members shall include no fewer than three (3) individuals who are
28 African American or Black, including at least two (2) from retail management

1 positions.

2 (h) New Human Resources Compliance Team: Wet Seal
3 shall employ four (4) Regional Human Resources Managers and two (2) Human
4 Resources Coordinators (or equivalent programmatic positions) who shall be
5 responsible for investigating complaints; compliance with hiring and promotion
6 processes; and performance management, including corrective action measures, as
7 further set forth below in Paragraph 35 (j) through (p).

8 (i) Equal Employment Opportunity Data: Between May 15,
9 2013 and fifteen (15) calendar days following Preliminary Approval of the
10 Settlement Agreement, Wet Seal shall issue a voluntary survey to every employee
11 who is actively employed by Defendants on the day the survey is issued, requesting
12 that the employee furnish his or her current home address and gender and
13 race/ethnic group as defined on the EEO-1 form. Thereafter, Wet Seal shall ask
14 new employees to self-identify race/ethnic group and gender upon hire for the
15 duration of the Settlement Agreement. The survey shall ask respondents to list all
16 races/ethnic groups with which the employee identifies.

17 (j) Internal Complaint Procedure:

18 (i) Wet Seal shall maintain an Internal Complaint
19 Procedure to provide for the filing, investigation and, if appropriate, remedying of
20 complaints of discrimination, retaliation, or hostile work environment by
21 employees or applicants for employment. Wet Seal shall maintain a practice of
22 investigating such complaints through Regional Human Resources Managers,
23 Human Resources Coordinators, corporate Human Resources personnel and/or one
24 or more external compliance services providers or legal counsel. Wet Seal's policy
25 shall provide that persons who engage in discriminatory conduct shall be subject to
26 appropriate discipline, up to and including discharge.

27 (ii) Wet Seal shall continuously post the procedure for
28 filing internal complaints and its policy prohibiting retaliation on Wet Seal's

1 intranet website. Wet Seal shall communicate the complaint process and policy
2 against retaliation to new employees upon hire. In addition, on at least an annual
3 basis, Wet Seal shall display information about its complaint process and policy
4 against retaliation on the home page of its intranet website for at least seven (7)
5 consecutive days.

6 (iii) Wet Seal shall maintain the files of investigations
7 of complaints of discrimination, harassment and retaliation and shall track the
8 filing, investigation completion, and remedying of internal complaints.

9 (iv) The Vice President of Human Resources and each
10 Regional Human Resources Manager shall have access to the case investigation
11 files and the log reflecting the filing, investigation completion and remedying of
12 internal complaints and shall monitor activity associated with internal complaints
13 within the scope of their respective responsibilities as complaints are made and
14 processed.

15 (k) Job Analysis and Job Criteria:

16 (i) Wet Seal has retained Development Dimensions
17 International (“DDI”), a human resource training and consulting company, to
18 conduct and document a job analysis and to develop selection criteria for each in-
19 store position that are job-related, reliable, and consistent with business necessity.
20 No later than August 1, 2013, in consultation with DDI, Wet Seal shall implement
21 these selection criteria for store management and District Director positions.

22 (ii) Wet Seal shall permit Class Counsel to monitor
23 Wet Seal’s compliance with its obligations under this Paragraph 35(k), including
24 making available to Class Counsel the job analyses and job-related criteria.

25 (l) Job Posting:

26 (i) Commencing no later than June 1, 2013 and
27 continuing thereafter, Wet Seal shall post all open store management and District
28 Director positions, including promotional opportunities, through an online applicant

1 tracking system (ATS) accessible to all Wet Seal store-level employees. The ATS
2 shall also be accessible to external applicants for store management and District
3 Director positions. Open positions shall be posted for no less than three (3)
4 business days before being filled. Wet Seal is not required to post: (a) openings
5 that must be filled on an emergency basis, (b) positions filled by a current employee
6 who is being displaced due to a store closure or other reduction in work force or is
7 returning from a leave of absence, or (c) positions filled by an internal rotation (not
8 a promotion) of a manager from a store of the same or higher classification.

9 (ii) Each job posting shall contain the open position
10 title, location, description of the job, and job-related criteria and requirements.
11 While the job requirements may include time-in-position requirements before
12 posting, no managerial sign-off shall be required for an employee to submit an
13 internal job posting application.

14 (m) Selection Procedures:

15 (i) Wet Seal has retained DDI to develop selection
16 procedures and processes, including screening and interview guides (“Selection
17 Procedures”), that are job-related, reliable, and consistent with business necessity
18 for the selection of personnel for all store management and District Director
19 positions, including those filled by promotion. Wet Seal shall require the use of the
20 Selection Procedures in selecting individuals for store management and District
21 Director positions. These Selection Procedures shall reiterate Wet Seal’s
22 commitment to diversity with respect to all protected groups, including race and
23 color, and encourage the hiring and promotion of qualified diverse candidates.

24 (ii) Wet Seal shall conduct training for staff involved in
25 the use of the Selection Procedures on their proper use (including the conduct of
26 structured interviews, the selection of qualified candidates using the structured
27 interviews and interview guides, and other elements of the hiring process), and on
28 the Company’s interest in hiring and promoting qualified African-American

1 candidates (as well as men and women of all races) into all open store management
2 and District Director positions for which they are qualified. This training may be
3 included in the training provided in Paragraph 35(e)(iii).

4 (iii) Regional Human Resources Managers shall review
5 proposed selections to District Director, Store Manager, Acting Store Manager and
6 Co-Manager before they are finalized in order to assure compliance with the
7 Selection Procedures. Wet Seal shall regularly, and no less frequently than every
8 six (6) months, monitor the impact of the Selection Procedures. In any Region in
9 which there is statistically significant adverse impact in selection rates, Wet Seal
10 shall review the documentation for a sample of the decisions, evaluate the likely
11 reasons for the impact, and implement proactive steps that it reasonably believes
12 shall eliminate or at least reduce the impact.

13 (iv) All Wet Seal Human Resources personnel
14 responsible for recruiting for store management and District Director openings shall
15 be responsible for good faith efforts to source and recruit qualified African-
16 American management candidates, among other candidates.

17 (n) Compensation:

18 (i) Wet Seal shall retain an outside compensation
19 specialist to review its compensation structure for store employees and provide
20 recommendations regarding that compensation structure. Wet Seal shall provide
21 Class Counsel with confirmation of the professional qualifications of the
22 compensation specialist, if DDI is not retained.

23 (ii) Wet Seal shall train its managers in how to set
24 compensation using the tools developed by the compensation specialist.

25 (iii) Wet Seal shall annually review the compensation of
26 store management employees by position, store, store classification, district, and
27 tenure in the job and with Wet Seal, along with the employees' race/ethnic group
28 and gender, to determine whether there has been compliance with Wet Seal's

1 policies against discrimination.

2 (o) Performance Management System and Corrective Action:

3 (i) Wet Seal has retained DDI to develop a
4 performance assessment system for store management positions that is job-related,
5 reliable, and consistent with business necessity for the evaluation of the
6 performance of store employees and District Directors.

7 (ii) Wet Seal shall develop and adopt criteria for taking
8 corrective action that are job-related, reliable, and consistent with business
9 necessity to provide for consistent and non-discriminatory application of
10 disciplinary measures, including but not limited to demotion and termination.

11 (iii) Wet Seal shall train managers responsible for
12 conducting performance reviews and discipline in how to conduct a performance
13 assessment using the tools developed by DDI and how to apply corrective action
14 measures in a non-discriminatory manner.

15 (iv) Wet Seal shall regularly, and no less frequently
16 than every six (6) months, monitor the impact of the performance appraisals. In
17 any Region, if there is statistically significant adverse impact in performance
18 appraisals, Wet Seal shall evaluate the likely reasons for it and implement proactive
19 steps that it reasonably believes shall eliminate or at least reduce the impact in the
20 future.

21 (p) Manager Assessment: All Regional Directors, District
22 Directors, Corporate executives, and salaried employees in the departments of
23 Human Resources, Store Operations and Loss Prevention shall be evaluated
24 annually on their ability to manage a diverse workforce, including in decisions
25 involving hiring, compensation, promotions, demotions, and terminations. An I/O
26 psychologist shall advise Wet Seal on how best to conduct and weigh this
27 evaluation.

28 (q) Implementation Period: Wet Seal shall use best efforts to

1 implement the programmatic relief set forth in the Settlement Agreement as soon as
2 reasonably practicable.

3 (r) Monitor:

4 (i) Wet Seal has designated Jennifer Ehrhardt, Vice
5 President and Corporate Controller, to monitor and ensure implementation of this
6 Settlement Agreement (“Monitor”). If at any time Ms. Ehrhardt is unable to serve
7 as the Monitor, Wet Seal shall designate another officer to replace her.

8 (ii) Wet Seal shall provide Class Counsel with the
9 Monitor’s qualifications and title.

10 (iii) The Monitor shall be authorized and empowered to
11 direct Human Resources and/or other employees with supervisory authority over
12 store management employees to take specific actions in furtherance of the
13 Settlement Agreement.

14 (iv) Wet Seal shall regularly provide the Monitor with
15 available quantitative data, separated by race, on the following with respect to store
16 management and District Director positions: the numbers of applicants, the number
17 considered for each job title, the number hired into each job title, the number
18 promoted into each job title (including the number of openings filled on an
19 emergency basis and positions filled by current employees who are displaced due to
20 a store closure or other reduction in work force), the number of unposted positions
21 in each job title filled by an internal rotation (not a promotion) of a manager from a
22 store of the same or higher classification, the numbers of employees hired into full-
23 time vs. part-time jobs in each job title, the relative placement of employees in
24 various categories of stores by job title, the relative compensation of employees by
25 job title, and the number voluntarily and involuntarily terminated from each job
26 title.

27 (v) The Monitor shall report at least twice annually to
28 Wet Seal’s Board of Directors regarding the implementation of this Settlement

1 Agreement.

2 (vi) The Monitor shall file a Certificate of Compliance
3 with the Court six (6) months after the Effective Date of this Settlement Agreement,
4 twelve (12) months after the Effective Date of this Settlement Agreement and
5 annually thereafter over the term of this Settlement Agreement. The Certificate of
6 Compliance shall inform the Court of when Wet Seal has implemented each of the
7 terms of the Settlement Agreement or, if some term has not been fully
8 implemented, Wet Seal's progress in implementing that term. The Certificate of
9 Compliance shall also confirm that the Monitor has conducted all audits required as
10 set forth in Paragraphs 35(m)(iii), (n)(iii), (o)(iv), and (r)(iv) and (v) of the
11 Settlement Agreement, the date of each audit, and either that the results of the audit
12 were satisfactory or that corrective action is in the process of being, or has been,
13 taken. In addition, the Certificate of Compliance shall also confirm that the
14 Monitor has undertaken those tasks set forth for the Monitor in this Paragraph 35(r)
15 of the Settlement Agreement, the Monitor has investigated Wet Seal's compliance
16 with the Settlement Agreement, and the Monitor is satisfied that Wet Seal is
17 complying with the Settlement Agreement and/or has taken or is in the process of
18 taking corrective action to assure future compliance.

19 (s) Dispute Resolution: The Parties shall promptly give
20 written notice to Counsel for the other Party (at Counsel's address of record on file
21 with the California State Bar) if any dispute arises under the Settlement Agreement.
22 The notice shall set forth the facts that relate to the dispute. Thereafter, upon the
23 request of any Party, the Parties shall meet in a good faith effort to resolve the
24 dispute. If they are unsuccessful, the Parties shall mediate the dispute before any
25 mediator to which they mutually agree at the time. In the absence of mutual
26 agreement, the Party against whom the dispute was asserted may select retired
27 United States District Court Judges Lourdes Baird or Gary Taylor to mediate the
28 dispute. Wet Seal shall pay the cost of the mediation.

1 (t) Employment Verification: Wet Seal shall maintain a
2 telephone line dedicated to employment verification. In response to inquiries to the
3 employment verification line from a prospective employer seeking a reference, Wet
4 Seal shall provide dates of employment and last position held. If the request is in
5 writing and authorizes disclosure, Wet Seal also shall verify last rate of base
6 compensation. In response to calls to the employment verification telephone line,
7 Wet Seal shall not provide substantive information regarding the employee's
8 performance, record of discipline, eligibility for rehire, or reason for separation
9 (except to prospective employers who are inquiring about law enforcement or
10 national security positions or as otherwise required by law). The Wet Seal Letter
11 shall inform Class Members of the existence and number of the employment
12 verification line and the information provided upon inquiry to the employment
13 verification line.

14 36. Recordkeeping and Reporting:

15 (a) Recordkeeping:

16 (i) Wet Seal shall retain the following employment-
17 related records for the Term of the Settlement Agreement or as required by state or
18 federal law, whichever is longer:

- 19 (1) Final marketing documents described in
20 Paragraph 35(c);
- 21 (2) Employment training program content and
22 handouts;
- 23 (3) Internal complaint procedure;
- 24 (4) Job analyses and job criteria;
- 25 (5) Performance assessment system;
- 26 (6) Corrective action process; and
- 27 (7) Monitor's Certificates of Compliance.

28 (ii) Wet Seal shall retain the following documents

1 related to the employment of District Directors, Store Assistant Managers, Co-
2 Managers, Acting Store Managers and Store Managers for two (2) years from the
3 date the document is created, or as required by state or federal law, whichever is
4 longer:

- 5 (1) Job postings;
- 6 (2) Job applications, including applications from
7 both internal and external applicants;
- 8 (3) Performance assessments;
- 9 (4) Corrective action notices;
- 10 (5) Race and ethnicity data by job category
11 required for the Employer Information Report (“EEO-1 Report”), including, for
12 employees who identify as Two or More Races, the specific races with which the
13 employee identifies; and
14 (6) Internal complaints of discrimination.

15 (iii) Wet Seal shall retain the following documents
16 related to applicants for the positions of Assistant Store Manager, Co-Manager,
17 Acting Store Manager, Store Manager, and District Director: Race and ethnicity
18 data by job category that would be required for the EEO-1 Report if the applicant
19 were hired, including, for applicants who identify as Two or More Races, the
20 specific races with which the applicant identifies.

21 (iv) Class Counsel shall, upon reasonable notice, be
22 entitled to review all documents, including electronic data in machine-readable
23 form, created or maintained pursuant to the provisions of this Settlement
24 Agreement, except, however, that Class Counsel shall not be entitled to review any
25 such documents that are protected by attorney-client privilege or attorney work
26 product doctrine (“privileged documents”).

27 (b) Reporting:

28 (i) At six (6)-month intervals through the Term of the

1 Settlement Agreement, Wet Seal shall provide Semi-Annual Progress Reports to
2 Class Counsel on Wet Seal's compliance with the Settlement Agreement's
3 requirements.

4 (ii) The Semi-Annual Progress Reports shall include
5 the following information reported for African-American men (including those who
6 report Two or More Races), African-American women (including those who report
7 Two or More Races), white men, white women, all men other than African-
8 American men, and all women other than African-American women:

9 (1) Composition (number and percent) of
10 incumbent employees by Covered Position in each store, district, region and
11 company-wide, and by store classification, at the end of the six-month period;

12 (2) Composition (number and percent) of
13 persons in each store classification and in each district, region, state and company-
14 wide, in the preceding six (6) months who were extended a good faith offer, hired,
15 or promoted (each of which shall be separately reported) into District Director,
16 Store Manager, Acting Store Manager, or Co-Manager;

17 (3) Composition (number and percent) of
18 persons in each store classification and in each district, region, state and company-
19 wide, in the preceding six (6) months who were demoted, involuntarily terminated
20 or voluntarily separated (each of which shall be separately reported) from Store
21 Manager, Acting Store Manager, Co-Manager, and Store Assistant Manager
22 positions; and

23 (4) Compensation rate paid to incumbent Store
24 Managers, Acting Store Managers, Co-Managers, and Store Assistant Managers in
25 each store, district, region, state, company-wide, and in each store classification, at
26 the end of the six-month period.

27 37. Maximum Payment: The Maximum Payment under the
28 Settlement is Seven Million Five Hundred Thousand Dollars (\$7,500,000).

1 38. Establishment of a Settlement Fund:

2 (a) No later than five (5) business days after the Court's
3 Preliminary Approval of this Settlement Agreement, The Wet Seal, on behalf of all
4 Defendants, shall transmit the Maximum Payment to the Claims Administrator for
5 the formation of a Settlement Fund.

6 (b) The Claims Administrator shall deposit the Maximum
7 Payment made by The Wet Seal into a Settlement Fund Account.

8 (c) Once the Claims Administrator receives the Maximum
9 Payment in good standing, Wet Seal shall have no responsibilities or liabilities with
10 respect to the Settlement Fund or Settlement Fund Account (or its administration or
11 distribution), and shall have no further monetary obligation hereunder to Class
12 Representatives, Participating Class Members, Class Counsel, the Claims
13 Administrator or other Class Members who do not file timely and valid Exclusion
14 Statements, with respect to this Action.

15 (d) The Settlement Fund Account shall be used for the sole
16 purpose of paying the timely and valid claims of the eligible Class Members,
17 including the Employer Payroll Taxes associated with those payments, Class
18 Counsel's reasonable attorneys' fees and costs as awarded by the Court (in an
19 amount not to exceed \$1,800,000), and all settlement administration expenses
20 incurred by the Claims Administrator (in an amount not to exceed \$120,000), in
21 accordance with the provisions of this Settlement Agreement. The Settlement Fund
22 consists of:

23 (i) Pay Fund: a total of One Million Dollars
24 (\$1,000,000) shall be paid in settlement of pay claims ("Pay Fund"), which sum
25 shall include Employer Payroll Taxes;

26 (ii) Promotion Fund: a total of One Million Dollars
27 (\$1,000,000) shall be paid in settlement of promotion claims (including claims of
28 discriminatory job assignments) ("Promotion Fund"), which sum shall include

1 Employer Payroll Taxes;

2 (iii) Termination/Demotion/Retaliation/Hostile Work
3 Environment/Emotional Distress Fund: a total of Three Million Five Hundred
4 Eighty Thousand Dollars (\$3,580,000) shall be paid in settlement of claims of
5 discriminatory termination, demotion, or discipline (resulting in loss of pay) based
6 upon race or color; harassment or hostile work environment based upon race or
7 color; retaliation for complaining of race or color discrimination or
8 harassment/hostile work environment; and emotional distress and damage to
9 reputation resulting from the foregoing (“Termination/Other Fund”), which sum
10 shall include Employer Payroll Taxes;

11 (iv) Claims Administration Fund: a total of One
12 Hundred Twenty Thousand Dollars (\$120,000) to cover all fees and expenses of the
13 Claims Administrator; and

14 (v) Class Counsel’s Attorneys’ Fees and Costs Fund: a
15 total of One Million Eight Hundred Thousand Dollars (\$1,800,000) to cover Class
16 Counsel’s reasonable attorneys’ fees and costs, or such lower amount ordered by
17 the Court as described in Paragraph 41(c).

18 39. Distribution to Participating Class Members:

19 (a) Submission of Claim Forms: The Claims Administrator
20 shall pay only those Class Members who submit timely and valid Claim Forms (the
21 “Participating Class Members”). To be timely, the Claim Forms must be
22 postmarked by the deadline indicated on the Notice and Claim Forms. To be valid,
23 Claim Forms must be completed in full, signed under penalty of perjury, attest that
24 the signatory is “African American” or “Black,” and returned to the Claims
25 Administrator, postmarked by the deadline.

26 (b) Allocation Plan:

27 (i) Pay Fund: The disbursement of the Pay Fund
28 portion of the Settlement Fund Account to eligible Class Members shall follow the

1 allocation plan described in this Paragraph 39(b)(i) and its subparagraphs. Each
2 Class Member who seeks to receive a monetary award must fill out the Claim
3 Form.

4 (1) Baseline Pay Fund Award: \$750,000 will be
5 allocated to the Baseline Pay Fund Award. Each Class Member who submits a
6 timely, valid claim for recovery shall receive a Baseline Pay Fund Award. The
7 Claims Administrator shall have discretion to add the amounts from any unclaimed
8 shares to the Enhanced Pay Fund or the Termination/Other Fund. In allocating the
9 Baseline Pay Fund Awards, the Claims Administrator shall determine a specific
10 dollar amount that each eligible Class Member will receive for each Work Week
11 that he or she worked for Defendants during the Covered Time Frame as a Store
12 Manager or Acting Store Manager, Co-Manager, and/or Store Assistant Manager.

13 (2) Enhanced Pay Fund Award: The Claims
14 Administrator, after considering information supplied by the Class Members, Class
15 Counsel and Wet Seal, may, in its discretion, allocate some or all of the remaining
16 Pay Fund to those eligible Class Members as to whom the Claims Administrator
17 has received specific facts in support of their claims under the Pay Fund, after
18 considering, assigning points to and weighting: (i) length of service as a retail
19 manager at Wet Seal; (ii) the Class Member's communications with Class Counsel
20 prior to May 8, 2013 concerning claims of discrimination based on race or color in
21 compensation; and (iii) the Class Member's complaints or claims of discrimination
22 based on race or color in compensation submitted to the EEOC or state agencies
23 prior to May 8, 2013. The Claims Administrator shall total the points applicable to
24 each eligible Class Member who fills out the Pay Fund section of the Claim Form
25 and supplies information related to his or her claim to the Pay Fund, determine each
26 eligible Class Member's proportionate share of the total points, and allocate each
27 eligible Class Member's proportionate share of the Pay Fund. For example, if the
28 amount available for distribution from the Pay Fund to eligible Class Members after

1 the Baseline Pay Fund Awards are calculated equals \$250,000, and if the Claims
2 Administrator awarded a total of 10,000 points to eligible Class Members
3 collectively and 20 points to a particular eligible Class Member, then that Class
4 Member would receive an award of \$500, since each point would be worth \$25
5 (\$250,000 divided by 10,000).

6 (ii) Promotion Fund: The disbursement of the
7 Promotion Fund portion of the Settlement Fund Account to eligible Class Members
8 shall follow the allocation plan described in this Paragraph 39(b)(ii) and its
9 subparagraphs. Each Class Member who seeks to receive a monetary award must
10 fill out the Claim Form.

11 (1) Baseline Promotion Fund Award: \$500,000
12 will be allocated to the Baseline Promotion Fund Award. Each Class Member who
13 submits a timely, valid claim for recovery shall receive a Baseline Promotion Fund
14 Award, and the Claims Administrator shall have discretion to add the amounts from
15 any unclaimed shares to the Enhanced Promotion Fund or the Termination/Other
16 Fund. In allocating the Baseline Promotion Fund Awards, the Claims
17 Administrator shall determine a specific dollar amount that each eligible Class
18 Member will receive for each Work Week that he or she worked for Defendants
19 during the Covered Time Frame as a Store Manager or Acting Store Manager, Co-
20 Manager, and/or Store Assistant Manager.

21 (2) Enhanced Promotion Fund Award: The
22 Claims Administrator, after considering information supplied by the Class
23 Members, Class Counsel and Wet Seal, may, in its discretion, allocate some or all
24 of the remaining Promotion Fund to those eligible Class Members as to whom the
25 Claims Administrator has received specific facts in support of their claims under
26 the Promotion Fund, after considering, assigning points to and weighting: (i) length
27 of service with Wet Seal up to a maximum of ten (10) years; (ii) length of service as
28 a manager in each Covered Position at Wet Seal; (iii) length of service as a manager

1 at other employers up to a maximum of five (5) years; (iv) evidence of expressions
2 of interest in promotion made to a supervisor regarding Co-Manager, Acting Store
3 Manager, Store Manager, or District Director positions; (v) communications with
4 Class Counsel prior to May 8, 2013 concerning claims of discrimination against the
5 Class Member based on race or color in promotions or job assignment;
6 (vi) complaints or claims of discrimination against the Class Member based on race
7 or color in job assignments in the Covered Positions, or promotion to Co-Manager,
8 Acting Store Manager, Store Manager, or District Director submitted to the EEOC
9 or state agencies prior to May 8, 2013; and (vii) the facts and documentary evidence
10 submitted to demonstrate discrimination against the Class Member based on race or
11 color with respect to job assignment in the Covered Positions or promotion to Co-
12 Manager, Acting Store Manager, Store Manager or District Director. The Claims
13 Administrator shall total the points applicable to each eligible Class Member who
14 fills out the Promotion Fund section of the Claim Form and supplies information
15 related to his or her claim to the Promotion Fund, determine each eligible Class
16 Member's proportionate share of the total points, and allocate each eligible Class
17 Member's proportionate share of the Promotion Fund. For example, if the amount
18 available for distribution from the Promotion Fund to eligible Class Members after
19 the Baseline Promotion Fund Awards are calculated equals \$500,000, the Claims
20 Administrator awarded a total of 10,000 points to eligible Class Members
21 collectively, and 30 points to a particular eligible Class Member, then that Class
22 Member would receive an award of \$1500, since each point would be worth \$50
23 (\$500,000 divided by 10,000).

24 (iii) Termination/Demotion/Retaliation/Hostile Work
25 Environment Fund/Emotional Distress Fund ("Termination/Other Fund"): The
26 disbursement of the Termination/Other Fund portion of the Settlement Fund
27 Account to eligible Class members shall follow the allocation plan described in this
28 Paragraph 39(b)(iii) and its subparagraphs. Each Class Member who seeks to

1 receive a monetary award must fill out the Termination/Other Fund section of the
2 Claim Form.

3 (1) Eligibility for Awards: Each Class Member
4 who was involuntarily terminated during the Covered Time Frame is eligible to
5 submit a claim for a Baseline Termination/Other Fund Award. That individual is
6 also eligible for a Discretionary Termination/Other Fund Award. Each Class
7 Member with a claim solely of discriminatory constructive discharge, demotion,
8 discipline resulting in loss of pay, retaliation, hostile environment, damage to
9 reputation, or emotional distress during the Covered time Frame shall not be
10 eligible for a Baseline Termination/Other Fund Award, but shall be eligible for a
11 Discretionary Termination/Other Fund Award.

12 (2) Baseline Termination/Other Fund Award:
13 \$500,000 will be allocated to the Baseline Termination/Other Fund Award. Each
14 Class Member who was involuntarily terminated, and submits a timely, valid claim
15 for recovery shall receive a baseline award. In allocating the Baseline
16 Termination/Other Fund Awards, the Claims Administrator shall determine a
17 specific dollar amount that each eligible Class Member who was involuntarily
18 terminated will receive depending on whether the Class Member was involuntarily
19 terminated by Defendants during the Covered Time Frame from a Store Manager or
20 Acting Store Manager position, a Co-Manager position, or a Store Assistant
21 Manager position. Any unclaimed shares shall be added to the Discretionary
22 Termination/Other Fund Award.

23 (3) Discretionary Termination/Other Fund
24 Award: The Claims Administrator, after considering information supplied by the
25 Class Members, Class Counsel and Wet Seal, may, in its discretion, allocate some
26 or all of the remaining Discretionary Termination/Other Fund to eligible Class
27 Members, after considering, assigning points to and weighting: (i) length of service
28 with Wet Seal; (ii) length of service as a manager at Wet Seal; (iii) facts and

1 documentary evidence that the Class Member was subject to discrimination based
2 on race or color in termination, demotion, or discipline (resulting in loss of pay), or
3 was subject to harassment/hostile work environment based on race or color;
4 (iv) facts and documentary evidence that the Class Member was subject to
5 retaliation for opposing discrimination based on race or color; (v) communications
6 by the Class Member with Class Counsel prior to May 8, 2013 concerning claims
7 of discrimination based on race or color in termination, demotion, or discipline
8 resulting in loss of pay, harassment/hostile work environment based on race or
9 color, or retaliation for opposing discrimination based on race or color;
10 (v) complaints or claims that the Class Member submitted to the EEOC or state
11 agencies prior to May 8, 2013 that he or she was subject to discrimination based on
12 race or color in termination, demotion, or discipline (resulting in loss of pay),
13 harassment or hostile work environment based on race or color, or retaliation for
14 opposing discrimination based on race or color; (vi) Class Member's knowledge
15 that he or she was targeted for termination, demotion or discipline (resulting in loss
16 of pay) because of race or color; (vii) emotional distress; (viii) damage to the Class
17 Member's reputation because the Class Member made complaints of
18 discrimination, harassment, termination, or hostile work environment based on race
19 or color, or was retaliated against for opposing discrimination based on race or
20 color; (ix) a period of unemployment during which the Class Member was making
21 reasonable efforts to find other employment and the length of that period; and (x) a
22 finding by the EEOC or state agency that a violation of Title VII or state
23 antidiscrimination law occurred with respect to the Class Member. No Class
24 Member who was terminated for unauthorized taking of Wet Seal's property, fraud,
25 falsification, assault/battery or other violence, harassment or discrimination based
26 upon protected group status, or retaliation against another for exercising protected
27 rights shall be eligible for a Discretionary Termination/Other Fund Award. The
28 Claims Administrator shall total the points applicable to all eligible Class Members

1 who fill out the Termination/Other Fund section of the Claim Form and supply
2 information related to his or her claim to the Termination/Other Fund, determine
3 each eligible Class Member's proportionate share of the total points, and allocate
4 each eligible Class Member's proportionate share of the Termination/Other Fund.
5 For example, if the amount available for distribution from the Termination/Other
6 Fund to eligible Class Members after the Baseline Termination/Other Fund Awards
7 are calculated equals \$3,080,000, the Claims Administrator awarded a total of
8 100,000 points to eligible Class Members collectively, and 400 points to a
9 particular eligible Class Member, then that Class Member would receive an award
10 of \$12,320, since each point would be worth \$30.80 (\$3,080,000 divided by
11 100,000).

12 (c) Tax Allocation: The monetary awards under the Pay
13 Fund and Promotion Fund shall be allocated Eighty Percent (80%) to lost wages
14 and Twenty Percent (20%) to interest. The monetary awards under the
15 Termination/Other Fund shall be allocated Fifteen Percent (15%) to lost wages and
16 Eighty-Five Percent (85%) to compensatory damages and interest.

17 (d) Payment of Taxes and Tax Reporting by the Claims
18 Administrator: The Claims Administrator shall be responsible for calculating and
19 withholding all required state and federal taxes and all tax reporting on payments
20 made under the Settlement. The Claims Administrator shall report all payments for
21 lost wages on an IRS Form W-2 as payments in settlement of claims for wages.
22 Therefore, the Claims Administrator shall deduct federal and state income taxes, the
23 employee's share of Social Security and Medicare tax, and any local income or
24 payroll tax that applies, pursuant to state and federal law, and remit them to the
25 taxing authorities. The Claims Administrator shall report on an IRS Form 1099-
26 MISC all payments made in settlement of claims for interest, emotional distress and
27 damage to reputation, and no payroll or tax withholdings shall be made from these
28 payments. The Participating Class Members and the Class Representatives shall be

1 responsible for correctly characterizing the settlement payments for tax purposes
2 and paying any taxes owing on said amounts. However, the Claims Administrator
3 shall calculate the Employer Payroll Taxes, pay them from the Settlement Fund and
4 file the appropriate returns with federal, state and local taxing authorities.

5 (e) Due Date for and Details of Settlement Payments: Within
6 fifteen (15) calendar days after the Settlement becomes Final, the Claims
7 Administrator shall send the settlement payments to the Participating Class
8 Members via first class mail and shall issue the payments due to the federal, state
9 and local taxing authorities. The Claims Administrator shall only issue the checks
10 in the name of the Participating Class Members or their estates, if applicable. The
11 Claims Administrator shall include with each check a statement showing the gross
12 amount of the payment and an itemized statement of all deductions made, including
13 those for federal and state income taxes, the employee's share of unemployment,
14 Social Security and Medicare tax, and any local income or payroll tax that applies.

15 (f) Uncashed Checks: If a Participating Class Member's
16 check is returned to the Claims Administrator, the Claims Administrator shall make
17 a reasonable effort to re-mail it to the Participating Class Member at his or her
18 correct address. It is expressly understood and agreed that the checks for the
19 individual Settlement payments shall become void and no longer available if not
20 cashed within 90 days after the initial mailing. The Parties intend to completely
21 distribute the funds in the Settlement Fund Account. Thus, on the one hundredth
22 and twentieth (120th) day following the initial mailing of the Settlement payments,
23 the Claims Administrator shall issue a check in the amount of uncashed checks to
24 the NAACP¹ and the National Congress of Black Women for scholarships to
25 students studying retail business management.

26
27 ¹ The NAACP is an organization separate from and unaffiliated with the NAACP
28 Legal Defense and Educational Fund, Inc. (LDF), which serves as one of Plaintiffs'
Counsel in this case.

1 (g) Final Accounting to the Court: Within thirty (30) days of
2 the distribution of the monies from the Settlement Fund, the Claims Administrator
3 shall furnish an accounting of all distributions from the Settlement Fund, including
4 the range of awards, median average award, and mean average award for each
5 specific Fund, to the Court with copies to Class Counsel and Wet Seal.

6 40. Claims Administrator: The Parties have selected Settlement
7 Services Inc. to serve as the Claims Administrator. The Claims Administrator shall
8 open and administer a Settlement Fund Account, an interest-bearing account with a
9 unique Taxpayer Identification Number. If the Court does not grant final approval
10 of the Settlement Agreement, the Claims Administrator shall return to The Wet Seal
11 (i) the sum of Five Million Five Hundred Eighty Thousand Dollars (\$5,580,000),
12 representing the full deposit of the Pay Fund, Promotion Fund and
13 Termination/Other Fund and the sum of One Million Eight Hundred Thousand
14 Dollars (\$1,800,000) representing the full deposit of Class Counsel's attorneys' fees
15 and costs, as well as interest that has accrued on the two amounts; and (ii) the
16 unspent portion of the Claims Administration Fund, as well as interest that has
17 accrued on that sum. The Claims Administrator shall perform the duties set forth in
18 this Settlement Agreement.

19 41. Class Counsel's Attorneys' Fees and Costs

20 (a) Plaintiffs will request, and Defendants do not oppose, an
21 award of attorneys' fees and costs in the amount of One Million Eight Hundred
22 Thousand Dollars (\$1,800,000), which is twenty-four percent (24%) of the
23 Maximum Payment, to compensate Class Counsel for all work already performed
24 in this Action to investigate, prepare, litigate and settle this Action, as well as all
25 work remaining to be performed in documenting the Settlement, securing Court
26 approval of the Settlement, administering the Settlement, ensuring that the
27 Settlement is fairly administered and implemented, monitoring Defendants'
28 performance under the Settlement Agreement, and obtaining dismissal of the

1 Action. These fees and costs are included in the Maximum Payment.

2 (b) Class Counsel shall file with the Court their application
3 for an award of attorneys' fees and costs no later than thirty (30) days following the
4 Court's Order Granting Preliminary Approval. The application shall be posted
5 simultaneously on the website established by the Claims Administrator designed to
6 provide information and communications with Class members as provided in
7 Paragraph 52 in order to permit Class Members to timely object.

8 (c) In the event that the Court approves an award of fees and
9 costs for an amount less than One Million Eight Hundred Thousand Dollars
10 (\$1,800,000), then the difference between \$1,800,000 and the approved award shall
11 be allocated to the Pay Fund, Promotion Fund, and Termination/Other Fund in the
12 same proportions provided in Paragraph 38 above; that is, 18% to the Pay Fund
13 (Paragraph 38(d)(i) above), 18% to the Promotion Fund (Paragraph 38(d)(ii)
14 above), and 64% to the Termination/Other Fund (Paragraph 38(d)(iii) above).

15 (d) The Parties agree that a reduction by the Court in the
16 attorneys' fees and costs awarded Class Counsel is not a basis for rendering the
17 entire Settlement voidable or unenforceable. Class Counsel agree to give written
18 notification within fifteen (15) calendar days of approval by the Court if they will
19 appeal a reduction in fees and costs awarded.

20 (e) Upon Final Approval, the Claims Administrator shall pay
21 the attorneys' fees and costs awarded by the Court to Class Counsel and issue Class
22 Counsel an IRS Form 1099-MISC to reflect that payment.

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IV.

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MOTION FOR PRELIMINARY APPROVAL

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27 42. Promptly upon the execution of this Settlement, Plaintiffs shall
28 file a motion for preliminary approval of the Settlement, applying to the Court for

1 the entry of an Order:

2 (a) Scheduling a Final Approval Hearing on the question
3 whether the proposed Settlement should be approved as fair, reasonable, and
4 adequate as to the Class;

5 (b) Approving as to form and content the proposed Notice to
6 the Class;

7 (c) Approving as to form and content the proposed Claim
8 Form and instructions for Class Members;

9 (d) Approving as to form and content the proposed Wet Seal
10 Letter;

11 (e) Approving as to form and content the proposed Exclusion
12 Statement;

13 (f) Directing the mailing of the Notice, the Claim Form, and
14 the Wet Seal Letter by first-class mail to the Class Members;

15 (g) Preliminarily approving the Settlement;

16 (h) Preliminarily certifying the Class for purposes of
17 Settlement only; and

18 (i) Approving Bill Lann Lee, Esq., Julie Wilensky, Esq.,
19 Shira Wakschlag, Esq. and Lewis, Feinberg, Lee, Renaker & Jackson, P.C.; Nancy
20 C. DeMis, Esq., Susan R. Fiorentino, Esq. and Gallagher, Schoenfeld, Surkin,
21 Chupein & DeMis, P.C.; Elise Boddie, Esq., ReNika C. Moore, Esq., Ria Tabacco
22 Mar, Esq., and NAACP Legal Defense & Educational Fund, Inc. as Class Counsel;

23 (j) Approving Nicole Cogdell, Kai Hawkins, Myriam Saint-
24 Hilaire, and Michelle Guider as Class Representatives; and

25 (k) Approving Settlement Services, Inc. as the Claims
26 Administrator.

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V.

NOTICE TO THE CLASS MEMBERS

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43. Within ten (10) calendar days after the Court’s entry of the Order Granting Preliminary Approval of the Settlement, Wet Seal shall provide the Claims Administrator (either by uploading to an FTP site or on a computer disk) with: the (i) names, (ii) last known addresses, (iii) last known telephone numbers (if any), and (iv) Social Security numbers of the potential Class Members (*i.e.*, those who are designated in Wet Seal’s human resource information system as “Black or African American” or “Two of More Races” or are otherwise known by Wet Seal to fall within that definition, along with, for each potential Class Member, (v) the date of hire and, if applicable, most recent date of rehire by Wet Seal, (vi) the date of termination from Wet Seal, (vii) the reason code for termination, (viii) all positions held at Wet Seal since 2007, including job title and location, as well as the dates worked in each position; (ix) the number of Work Weeks worked in each Covered Position at a Wet Seal or Arden B. store during the Covered Time Frame, (x) the dates worked in each Covered Position during the Covered Time Frame, and (xi) the Class Member’s pay rate as of December 31 of each year from 2008 through 2012, as reflected in Wet Seal’s records. The Class list shall be retained by the Claims Administrator and shall not be shared with Class Counsel. Wet Seal shall also provide to the Claims Administrator for all other employees in Covered Positions during the Covered Time Frame with: (i) the date of hire or most recent date of rehire, (ii) the date of termination from Wet Seal, (iii) the reason code for termination, (iv) the date of promotion from each store management position, and (v) the employee’s pay rate as of December 31 of each year from 2008 through 2012.

44. Within twenty (20) calendar days after receipt of the Class Member information from Wet Seal, to the extent practicable, the Claims

1 Administrator shall perform reasonably diligent skip tracing, and mail to all Class
2 Members, by regular first-class U.S. mail, the Notice, the Claim Form and
3 instructions, the Wet Seal Letter, and a pre-addressed, postage-paid envelope (“the
4 Notice Packet”). The Notice, Claim Form, and Wet Seal Letter shall be provided in
5 the same form as Exhibits “1,” “2,” and “3,” respectively attached hereto, subject to
6 the Court’s approval. These documents shall be placed in an envelope which states
7 on the front: “IMPORTANT: DO NOT DISCARD. Please review the enclosed
8 materials. You may be eligible for payment under a proposed settlement with Wet
9 Seal.”

10 45. The Claims Administrator shall make Claim Forms available to
11 potential Class Members who submit oral, e-mail or written requests for Claim
12 Forms. The Claims Administrator shall mail the requested Claim Form via first-
13 class U.S. mail within two (2) business days after receiving a request.

14 46. If Wet Seal, or its Counsel, receives requests for Claim Forms or
15 for information regarding the Settlement, it shall refer such requestors to the toll-
16 free number and website address established by the Claims Administrator for the
17 purpose of administering this Settlement and inform the requestors that any
18 requests for Claim Forms or information should be directed to the Claims
19 Administrator.

20 47. The Claims Administrator shall retain copies of all written
21 requests for Claim Forms and all records of oral or e-mail requests for Claim Forms
22 until such time as it has completed its duties and responsibilities under this
23 Settlement Agreement.

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VI.

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CLAIM PROCESS

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28 48. Class Members shall have ninety (90) calendar days from the

1 mailing of the Notice Packet to mail their Claim Form to the Claims Administrator.
2 Class Members shall have forty-five (45) calendar days from the mailing of the
3 Notice Packet to mail their Exclusion Statement. No Claim Forms shall be honored
4 if postmarked after the deadline to submit claims, except as otherwise mutually
5 agreed by the Parties or ordered by the Court.

6 49. All Claim Forms must be signed under penalty of perjury to be
7 considered and must attest that the Class Member is “African American” or
8 “Black.” Failure to file a timely, valid Claim Form, for any reason whatsoever,
9 shall bar the potential Class Member from having his or her claim considered and
10 from receiving monetary compensation from the Settlement Fund Account.

11 50. Claims may be filed on behalf of deceased Class Members
12 through representatives of their estates if legally sufficient documentation is
13 provided. Any claims paid to a deceased Class Member shall be made payable to
14 the estate of the deceased Class Member.

15 51. Class Members who file a Claim Form must notify the Claims
16 Administrator of any change of address. A failure to notify the Claims
17 Administrator of a change of address may result in the forfeiture of a monetary
18 award.

19 52. The Claims Administrator shall be available through its toll-free
20 line and via e-mail through the Claims Website it will establish to provide
21 information on the settlement and respond to requests from Class Members for
22 assistance in completing and filing Claim Forms.

23 53. The Claims Administrator shall make the determination as to
24 whether a Claim Form is timely and complete. If a Class Member submits a timely
25 Claim Form that is rejected by the Claims Administrator as deficient in some
26 material respect (for example, the Class Member failed to sign it), the Claims
27 Administrator shall notify the Class Member in writing of the basis for the
28 deficiency and shall specify the additional information necessary to complete the

1 Claim Form, if it appears that such additional information would complete it. The
2 notice of deficiency and request for information shall be sent via first class mail and
3 inform the Class Member that a response must be returned no later than fifteen (15)
4 days from the date the request for information was mailed, or until the end of the
5 ninety (90)-day claims period, whichever comes later. The Claims Administrator
6 shall also provide the Class Member with Class Counsel's contact information in
7 case the Class Member wishes to seek Class Counsel's assistance. The Class
8 Member must provide the requested information, signed under penalty of perjury,
9 to the Claims Administrator by mail with a postmark no later than the deadline
10 specified in the notice of deficiency. Such additional information shall be
11 considered part of the original Claim Form and shall relate back to the original
12 filing date. The failure of a Class Member to timely respond to the request for
13 information may result in the denial of the Claim.

14 54. The Claims Administrator shall send postcard reminders and
15 second postcard reminders to Class Members who have not submitted claim forms
16 within forty-five (45) days and seventy (70) days, respectively, after the Claims
17 Administrator initially mails the Notice Packet.

18 55. The Claims Administrator shall provide Counsel for all Parties
19 with a weekly report showing the number of Claim Forms and Exclusion
20 Statements received, and any objections.

21 56. For Claim Forms post-marked and received after the filing
22 deadline, the Claims Administrator shall notify late-filing Class Members that their
23 Claims are untimely and that they are not eligible for any monetary award. The
24 Claims Administrator shall also inform late-filing Class Members that they may
25 seek a reconsideration of the determination that they filed untimely by requesting
26 the Claims Administrator to reconsider its determination. The Claims
27 Administrator may reverse its determination that a Claim Form was not timely filed
28 only if the Class Member proves that the Claim Form was deposited in the United

1 States Mail on or before the filing deadline and that the untimeliness determination
2 is erroneous.

3 57. The Claims Administrator shall make the determination as to
4 whether a Class Member is eligible for a monetary award and the amount of such
5 award. Within ten (10) days of the close of the Claims filing period, the Claims
6 Administrator shall send all ineligible claimants written notice of their ineligibility
7 for monetary relief. Any claimants wishing to seek reconsideration of their
8 ineligibility determinations must do so by returning a written request for
9 reconsideration to the Claims Administrator by mail with a postmark no later than
10 twenty-one (21) calendar days from the date of the notice of claim ineligibility.
11 Failure to file a timely request for reconsideration shall bar a claimant from
12 challenging a determination of ineligibility. The Claims Administrator shall
13 resolve the requests for reconsideration based on the written requests for review and
14 any other documentation or written information submitted by the claimant, or
15 deemed necessary by the Claims Administrator. The Claims Administrator may
16 seek further written information from the claimant, Wet Seal or Class Counsel. The
17 Claims Administrator shall attempt to expeditiously resolve any requests for
18 reconsideration within thirty (30) calendar days after the filing of the request for
19 review. The Claims Administrator's decisions shall be communicated to the
20 claimant in writing and shall be final and non-appealable.

21 58. Class Counsel may provide the Claims Administrator with
22 evidence that has a bearing on the awards, and Wet Seal shall provide the Claims
23 Administrator with the following: (i) evidence that Wet Seal believes substantiates
24 any Class Member's Claim; and (ii) evidence that Wet Seal believes reflects a
25 termination for unauthorized taking of Wet Seal's property, fraud, falsification,
26 assault/battery or other violence, harassment or discrimination based upon protected
27 group status, or retaliation against another for exercising protected rights. Wet Seal
28 shall provide any such information to Class Counsel at least fifteen (15) calendar

1 days before Wet Seal submits it to the Claims Administrator, shall give Class
2 Counsel the opportunity to refute or otherwise comment on it, and shall re-consider
3 its submission in whole or in part in light of any contrary evidence that Class
4 Counsel shares with Wet Seal.

5 59. Class Counsel and Wet Seal shall reasonably cooperate in
6 providing information which the Claims Administrator deems reasonably necessary
7 to assist in determining the eligibility of any Class Member for monetary relief.
8 Wet Seal or Class Counsel shall attempt to provide such information within
9 fourteen (14) calendar days after receiving any written request for information from
10 the Claims Administrator.

11 60. Wet Seal agrees that no term of a settlement agreement to which
12 it is a party with any current or former employee shall operate to limit or preclude a
13 signatory to such an agreement from providing to the Claims Administrator
14 pertinent information related to any Class Member's claim. Any such submission
15 of information by a signatory should be marked "Confidential" and sent directly to
16 the Claims Administrator or through the signatory's private legal counsel to the
17 Claims Administrator. Except as expressly provided in this Paragraph, Wet Seal
18 does not waive the confidentiality term or any other term of any settlement
19 agreement to which it is a party.

20 61. The determinations of the Claims Administrator on whether a
21 Class Member or claimant is eligible for an award and the amount of any award
22 shall be final and non-appealable.

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VII.

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RESOLUTION OF CLAIM DISPUTES

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62. Each Claim Form shall list: (i) the time period during the
Covered Time Frame that Wet Seal's records show that the Class Member worked

1 in each Covered Position; and (ii) the Class Member's total number of Work Weeks
2 in each Covered Position during the Covered Time Frame. If a Class Member who
3 receives a Claim Form wishes to dispute the time period(s) listed on the Claim
4 Form and/or their total number of Work Weeks, he or she may so notify the Claims
5 Administrator and produce evidence to the Claims Administrator indicating the
6 dates and/or number of Work Weeks he or she contends to have worked in a
7 Covered Position during the Covered Time Frame. Wet Seal shall review its
8 records and provide information to the Claims Administrator in response to any
9 such disputed claims. Wet Seal's records shall be presumed to be accurate. The
10 Claims Administrator shall evaluate the evidence submitted by the Class Member
11 and make the final decision as to which dates and/or number of Work Weeks in
12 each Covered Position should be applied. The determination by the Claims
13 Administrator shall be final and not subject to further review.

14 63. The dispute-resolution procedure described in the preceding
15 Paragraph shall also apply in cases, if any, in which a person believes that he or she
16 was wrongly excluded from the Class list.

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VIII.

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OBJECTIONS TO THE SETTLEMENT

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21 64. Class Members who wish to object to the Settlement must
22 submit to the Claims Administrator, not later than forty-five (45) days after the date
23 that the Claims Administrator first mails the Notice Packet, a written statement
24 objecting to the Settlement and setting forth the grounds for the objection. This
25 statement also must indicate whether the Class Member intends to appear and
26 object to the Settlement at the Final Approval Hearing. The failure to so indicate
27 shall constitute a waiver of the right to appear at the hearing, unless the Court rules
28 otherwise. A Class Member who does not submit an objection in the manner and

1 by the deadline specified above shall be deemed to have waived all objections and
2 shall be foreclosed from making any objection to the Settlement, whether by appeal
3 or otherwise, absent a contrary order of the Court. Class Members who wish to
4 object to Class Counsel’s request for attorneys’ fees and costs may do so by
5 following the same procedure as described above.

6 65. The Claims Administrator shall record the date of receipt of the
7 objection and forward it to both Wet Seal and Class Counsel within two (2)
8 business days following receipt. The Claims Administrator shall also file the
9 original objections with the Clerk of the Court no later than five (5) days prior to
10 the scheduled Final Approval Hearing date. The Claims Administrator shall retain
11 copies of all written objections until such time as it has completed its duties and
12 responsibilities under this Settlement Agreement.

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IX.

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REQUESTS TO BE EXCLUDED FROM SETTLEMENT

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17 66. Eligible Class Members who wish to exclude themselves from
18 the Settlement (“opt out” of the Settlement) must submit to the Claims
19 Administrator, not later than forty-five (45) days after the date that the Claims
20 Administrator first mails the Notice Packet, a written, signed, dated “Exclusion
21 Statement,” which includes the following language:

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I understand that I am requesting to be excluded from the
class monetary settlement and that I shall receive no
money from the Settlement Fund created under the
Settlement Agreement entered into by Wet Seal. I
understand that if I am excluded from the class monetary
settlement, I may bring a separate legal action seeking
damages, but may receive nothing or less than what I

1 would have received if I had filed a Claim under the class
2 monetary settlement procedure in this Action. I also
3 understand that I may not seek exclusion from the class
4 for injunctive relief and that I am bound by the injunctive
5 provisions of the Settlement Agreement entered into by
6 Wet Seal.

7 67. Exclusion Statements may be submitted to the Claims
8 Administrator via U.S. Mail.

9 68. Named Plaintiffs may not submit an Exclusion Statement.

10 69. A Class Member who does not complete and submit a timely
11 Exclusion Statement in the manner and by the deadline specified above shall, if the
12 Court approves the Settlement, be bound by all terms and conditions of the
13 Settlement and by the Judgment, regardless of whether he or she submits a Claim
14 Form. An eligible Class Member who timely submits an Exclusion Statement shall
15 not participate in, or be bound by, the Settlement or the Judgment in any respect.
16 Persons who submit an Exclusion Statement shall not be permitted to file objections
17 to the Settlement or appear at the Final Approval Hearing to voice any objections to
18 the Settlement

19 70. The Claims Administrator shall date stamp the original of any
20 Exclusion Statement and serve copies on both Wet Seal and Class Counsel within
21 two (2) business days of receipt of such statement. The Claims Administrator shall
22 also file the original Exclusion Statements with the Clerk of the Court no later than
23 five (5) days prior to the date of the Final Approval Hearing scheduled by the
24 Court. The Claims Administrator shall retain copies of all Exclusion Statements
25 until such time as it has completed its duties and responsibilities under this
26 Settlement Agreement.

27 71. If an eligible Class Member completes and submits both a Claim
28 Form and an Exclusion Statement, the Claims Administrator shall contact the Class

1 Member to obtain clarification of the Class Member’s intent. In the event that the
2 Claims Administrator is unable to obtain clarification of the Class Member’s intent
3 by the time of the Final Approval Hearing, it shall be presumed that the Claim
4 Form is controlling, and such Class Member shall remain a member of the Class, be
5 paid a settlement payment pursuant to the Claim Form, and be bound by the terms
6 of the Settlement.

7 72. Eligible Class Members who do not submit either a valid and
8 timely Claim Form or a valid and timely Exclusion Statement shall be bound by all
9 of the terms of the Settlement and the release set forth herein.

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X.

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RESCISSION OF CLASS MEMBER EXCLUSION STATEMENTS

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14 73. The Parties recognize that some Class Members who initially
15 submit an Exclusion Statement may, upon further reflection, wish to withdraw or
16 rescind such Exclusion Statement. The Parties agree that Class Members shall be
17 permitted to withdraw or rescind their Exclusion Statements by submitting a
18 “Rescission of Exclusion Statement” to the Claims Administrator. The Rescission
19 of Exclusion Statement shall include the following language:

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I previously submitted an Exclusion Statement seeking
exclusion from the class monetary settlement. I have
reconsidered and wish to withdraw my Exclusion
Statement. I understand that by rescinding my Exclusion
Statement, I may be eligible to receive an award from the
Settlement Fund and may not bring a separate legal action
against Wet Seal seeking damages.

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74. A Class Member submitting such a Rescission of Exclusion
Statement shall sign and date the Statement and cause it to be delivered to the

1 Claims Administrator no later than the deadline for filing a Claim Form specified in
2 the Preliminary Approval Order. The Claims Administrator shall stamp the date
3 received on the original of any Rescission of Exclusion Statement and serve copies
4 on Counsel for Wet Seal and Class Counsel no later than (2) business days after
5 receipt thereof and shall file the date-stamped originals with the Clerk of the Court
6 no later than five (5) business days prior to the date of the Final Approval Hearing
7 scheduled by the Court. The Claims Administrator shall retain copies of all
8 Rescissions of Exclusion Statements until such time as the Claims Administrator is
9 relieved of its duties and responsibilities under this Settlement Agreement.

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11 **XI.**

12 **RIGHT OF REVOCATION**

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14 75. If eighty (80) or more of the Class Members validly elect not to
15 participate in the Settlement by filing an Exclusion Statement, Defendants shall
16 have the right to rescind the Settlement and all actions taken in its furtherance will
17 be null and void. Defendants must exercise this right within ten (10) days after the
18 Claims Administrator notifies the Parties of the valid elections not to participate
19 received, which the Claims Administrator shall do within ten (10) days after the
20 deadline for submission of the Exclusion Statements. The Parties agree that neither
21 side shall solicit or encourage opt-outs or exclusions from the Settlement.

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23 **XII.**

24 **ADDITIONAL BRIEFING AND FINAL APPROVAL**

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26 76. As soon as practicable following the deadline for the filing of
27 Claim Forms, Class Counsel shall file with the Court a motion for final approval of
28 the Settlement and a memorandum in support of their motion. Plaintiffs' Counsel

1 shall prepare the motion for final approval and provide Defendants' Counsel the
2 opportunity to review and comment on the motion before it is filed.

3 77. At the time that Plaintiffs file their motion for final approval of
4 the Settlement, Class Counsel shall provide the Court with a declaration executed
5 by the Claims Administrator, specifying the due diligence the Claims Administrator
6 has undertaken with regard to the mailing of the Notice; verifying its settlement
7 administration costs; and reporting on the number of claims, objections, disputes
8 (and status), Exclusion Statements submitted, median claim value, and amounts to
9 be paid to each Class Member who is receiving funds from the Settlement Fund.

10 78. Not later than five (5) court days before the Final Approval
11 Hearing, the Parties may file, jointly or separately, a reply in support of the motion
12 for final approval of the Settlement, in the event any opposition to the motion for
13 final approval has been filed. Likewise, Plaintiffs and Class Counsel may file a
14 supplemental memorandum in support of their motion for attorneys' fees and costs
15 reflecting any additional fees and costs incurred after the filing of the motion, or a
16 reply in support of their motion in the event that any opposition to their motion for
17 fees and costs has been filed. Defendants will not oppose this supplemental or
18 reply memorandum.

19 79. At or before the Final Approval Hearing, the parties shall
20 present a Judgment for the Court's entry in accordance with the terms of the
21 Settlement. After entry of the Judgment, the Court will have continuing jurisdiction
22 over the Action and the Settlement solely for purposes of enforcing the Settlement,
23 addressing settlement administration matters, and addressing such post-Judgment
24 matters as may be appropriate under court rules or applicable law.

25 80. Upon filing Plaintiffs' motion for final approval of the
26 Settlement, Plaintiffs shall submit a proposed Order or Orders:

27 (a) Approving the Settlement, adjudging the terms thereof to
28 be fair, reasonable, and adequate, and directing consummation of its terms and

1 provisions;

2 (b) Approving Class Counsel’s application for an award of
3 attorneys’ fees and reimbursement of costs;

4 (c) Certifying the Class for settlement purposes only; and

5 (d) Permanently enjoining all Class Representatives and
6 Class Members (other than those who timely filed Exclusion Statements) from
7 prosecuting against the Released Parties any and all Released Claims as defined in
8 Paragraph 81 below.

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XIII.

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RELEASE OF CLAIMS

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81. Claims Released by Class Representatives and Class Members:

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Upon the Court’s final approval of the Settlement, and except as to such rights or claims as may be created by the Settlement, the Class Representatives and the Class Members (other than those who file Exclusion Statements) hereby release and discharge all known and unknown “Released Claims” against the “Released Parties.” The “Released Parties” are: (i) the Defendants, (ii) all of their former and present parents, subsidiaries, and affiliates, and (iii) the current and former officers, directors, employees, partners, shareholders, agents, insurers, predecessors, successors, assigns, and legal representatives of all entities and individuals listed in (i) and (ii). The “Released Claims” are any and all claims that are asserted in or could have been asserted in Plaintiffs’ First Amended Complaint, to the fullest extent permitted by law, during the period from May 8, 2008 through the date of Preliminary Approval, including those related to: (i) allegations of discrimination and harassment against African-American and Black store management employees based on race and/or color with respect to compensation, selection, promotion, job assignments, demotion, discipline, actual and constructive termination, and other

1 terms and conditions of employment; and/or (ii) allegations of retaliation against
2 African-American and Black store management employees for opposition to
3 discrimination or harassment based on race or color. The Released Claims include
4 claims for damages and equitable relief of every nature, including but not limited to
5 back pay, front pay, reinstatement, instatement, benefits, emotional distress, and
6 other compensatory damages, damage to reputation, liquidated damages, penalties,
7 interest, and punitive damages. The Released Claims may have arisen under 42
8 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et
9 seq.), and all other federal, state and local laws.

10 82. Waiver of Unknown Claims: As to the Released Claims against
11 the Released Parties, the Class Representatives and Class Members each waive all
12 rights and benefits afforded by Section 1542 of the Civil Code of the State of
13 California, and do so understanding the significance of that waiver. Section 1542
14 provides:

15 **A GENERAL RELEASE DOES NOT EXTEND TO**
16 **CLAIMS WHICH THE CREDITOR DOES NOT**
17 **KNOW OR SUSPECT TO EXIST IN HIS OR HER**
18 **FAVOR AT THE TIME OF EXECUTING THE**
19 **RELEASE, WHICH IF KNOWN BY HIM OR HER**
20 **MUST HAVE MATERIALLY AFFECTED HIS OR**
21 **HER SETTLEMENT WITH THE DEBTOR.**

22
23 **XIV.**

24 **EFFECT OF DENIAL OF COURT APPROVAL**

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26 83. If the Court does not grant final approval of the Settlement, or if
27 the Court's final approval of the Settlement is reversed or materially modified on
28 appellate review, then this Settlement will become null and void. In such case, the

1 Settlement shall not be used or be admissible in any subsequent proceedings, either
2 in this Court or in any other Court or forum.

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XV.

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PARTIES' AUTHORITY

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84. The respective signatories to the Settlement represent that they
are fully authorized to enter into this Settlement and bind the respective Parties to
its terms and conditions.

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XVI.

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MUTUAL FULL COOPERATION

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85. The Parties agree to cooperate fully with each other to
accomplish the terms of this Settlement, including but not limited to executing such
documents and taking such other actions as may reasonably be necessary to
implement the terms of the Settlement. The Parties shall use their best efforts,
including all efforts contemplated by this Settlement and any other efforts that may
become necessary by order of the Court, or otherwise, to effectuate the terms of the
Settlement.

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XVII.

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NO PRIOR ASSIGNMENTS

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87. The Parties represent, covenant, and warrant that they have not

1 directly or indirectly assigned, transferred, encumbered, or purported to assign,
2 transfer, or encumber to any person or entity any portion of any liability, claim,
3 demand, action, cause of action, or right released and discharged in this Settlement.

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5 **XVIII.**

6 **NO ADMISSION OF LIABILITY**

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8 88. Nothing contained in this Settlement shall be construed or
9 deemed an admission of liability, culpability, negligence, or wrongdoing on the part
10 of Defendants. All of the Parties entered into this Settlement with the intention to
11 avoid further disputes and litigation, and the attendant inconvenience and expense.
12 This Settlement shall be inadmissible in evidence in any proceeding, except an
13 action or proceeding to approve, interpret, or enforce its terms.

14
15 **XIX.**

16 **NO WAIVER OF ENFORCEMENT OF ARBITRATION AGREEMENTS**

17
18 89. Nothing contained in this Settlement Agreement constitutes a
19 waiver of any term of or application of any Mutual Agreement to Arbitrate or other
20 arbitration agreement to which a current or former employee of Defendants is a
21 party, other than that signing a Mutual Agreement to Arbitrate does not preclude
22 anyone from being included in the Class for purposes of this Settlement or
23 enforcement of its provisions.

24
25 **XX.**

26 **ENFORCEMENT ACTIONS**

27
28 90. In the event that one or more of the Parties institute any legal

1 action or arbitration (not including the dispute resolution process described in
2 Paragraph 35(s)) against any other Party or Parties to enforce the provisions of this
3 Settlement, or to declare rights and/or obligations under this Settlement, the
4 successful Party or Parties shall be entitled to seek an order providing that the
5 unsuccessful Party or Parties pay the successful Party or Parties' reasonable
6 attorneys' fees and costs, including expert witness fees incurred in connection with
7 any enforcement actions, on the basis that the enforcement action is objectively
8 frivolous, unreasonable, or without foundation.

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XXI.

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NOTICES

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91. Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third (3rd) business day after mailing by United States first-class mail, return receipt requested, addressed as follows:

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To the Class:

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Bill Lann Lee
LEWIS, FEINBERG, LEE, RENAKER & JACKSON, P.C.
476 9th Street
Oakland, CA 94607

22

To Defendants:

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Nancy L. Abell
PAUL HASTINGS LLP
515 South Flower Street, 25th Floor
Los Angeles, CA 90071

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XXII.

CONSTRUCTION

92. The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm’s-length negotiations between the Parties, and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his, her, or its Counsel participated in its drafting.

XXIII.

CAPTIONS AND INTERPRETATIONS

93. Paragraph titles or captions contained in this Settlement Agreement are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision.

XXIV.

MODIFICATION

94. This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

XXV.

INTEGRATION CLAUSE

95. This Settlement Agreement contains the entire agreement

1 between the Parties relating to the resolution of the Action. All prior or
2 contemporaneous agreements, understandings, representations, and statements,
3 whether oral or written and whether by a Party or such Party's legal counsel, are
4 merged in this Settlement Agreement. No rights under this Settlement Agreement
5 may be waived except in writing.

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XXVI.

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BINDING ON ASSIGNS

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10 96. This Settlement Agreement shall be binding upon and inure to
11 the benefit of the Parties and their respective heirs, trustees, executors,
12 administrators, successors, and assigns.

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XXVII.

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CLASS COUNSEL SIGNATORIES

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17 97. It is agreed that because the members of the Class are so
18 numerous, it is impossible or impractical to have each Class Member execute this
19 Settlement Agreement. The Notice, Exhibit "1," shall advise all Class Members of
20 the binding nature of the release. Excepting only the Class Members who timely
21 submit an Exclusion Form, this Settlement Agreement shall have the same force
22 and effect as if it were executed by each Class Member.

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XXVIII.

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COUNTERPARTS

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27 98. This Settlement Agreement may be executed in counterparts,
28 and when each Party has signed and delivered at least one such counterpart, each

1 counterpart shall be deemed an original, and, when taken together with other signed
2 counterparts, shall constitute one Settlement Agreement, which shall be binding
3 upon and effective as to all Parties.

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XXIX.

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WAIVER OF APPEALS

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8 99. The Parties agree to waive all appeals from the Court's final
9 approval of this Settlement, unless the Court materially modifies the Settlement
10 Agreement; provided, however, that Plaintiffs may appeal any reduction in the
11 attorneys' fee award. Any reduction in the award of attorney's fees and costs will
12 not, however, constitute a material modification of the Settlement Agreement and
13 will not be grounds to void the Settlement.

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XXX.

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CLASS CERTIFICATION

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18 100. The Parties agree that the stipulation for Class Certification is
19 for settlement purposes only, and if for any reason the Settlement is not approved,
20 the stipulation will be of no force or effect. The Parties agree that certification for
21 settlement purposes under the lenient standard applied to settlements is in no way
22 an admission that class certification is proper under the more stringent standard
23 applied for litigation purposes, and that evidence of this limited stipulation for
24 settlement purposes only will not be deemed admissible in this or any other
25 proceeding.

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XXXI.

NO TAX ADVICE

101. Neither Class Counsel nor Counsel for Defendants intend anything contained herein to constitute legal advice regarding the taxability of any amount paid hereunder, nor shall it be relied upon as such.

XXXII.

COMMUNICATIONS

102. If Counsel for any of the Parties receives an inquiry about the Settlement from the media, Counsel may respond only after the motion for preliminary approval has been filed and may only discuss the terms of the Settlement or information contained in documents filed in this case. If Wet Seal receives an inquiry about the Settlement from the media, its representative(s) may respond to the inquiry with information about its diversity and inclusion initiatives or by reference to the Preliminary Approval Motion and Settlement Agreement on file with the Court. Before the date on which the Parties file their motion for preliminary approval of the Settlement, the Parties and their Counsel shall not initiate any contact with Class Members about the Settlement, except that Class Counsel, if contacted by a Class Member, may respond that a settlement has been reached and that the details shall be communicated in a forthcoming Court-approved notice. This Paragraph does not apply to communications between Class Counsel and the Named Plaintiffs or other individuals with whom they have entered into a retention agreement.

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XXXIII.

TERM OF SETTLEMENT AGREEMENT

103. The Term of the Settlement Agreement shall be three (3) years from the date of Preliminary Approval.

XXXIV.

COURT’S RETENTION OF JURISDICTION

104. The Settlement Agreement shall be entered as an order of the Court. The Court shall retain jurisdiction during the term of the Settlement Agreement to enforce its provisions and to resolve disputes under the Settlement Agreement.

XXXV.

NOTICE OF SATISFACTION OF JUDGMENT

105. Class Counsel shall file with the Court a notice of satisfaction of judgment in a form acceptable to Defendants within ten (10) days after the last of the following occurs: Wet Seal deposits with the Claims Administrator the Maximum Payment required to fulfill its obligation under this Settlement Agreement and the Claims Administrator submits its final accounting to the parties reflecting that checks were issued and mailed to all Class Members who submitted timely and valid Claim Forms pursuant to this Settlement.

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XXXVI.

NO ADMISSION OF LIABILITY

106. Nothing contained in this Settlement shall be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants. All of the Parties entered into this Settlement Agreement with the intention to avoid further disputes and litigation, and the attendant inconvenience and expense. This Settlement Agreement shall be inadmissible in evidence in any proceeding, except an action or proceeding to approve, interpret, or enforce its terms.

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EXECUTED BY PLAINTIFFS AND CLASS REPRESENTATIVES:——" " ~ ~

DATED: May 8, 2013

By: 
NICOLE COGDELL

By: YCA ti^^-C <LX JL W^>
KAI HAWKINS

ByL
MYRIAM SAINT-HILAIRE

By:
MICHELLE GUIDER

EXECUTED ON BEHALF OF DEFENDANTS:

DATED: May 8, 2013

By: _____
STEVEN H. BENRUBI
EXECUTIVE VICE PRESIDENT AND CHIEF
FINANCIAL OFFICER OF THE WET SEAL,
INC., who is authorized to sign on behalf of
THE WET SEAL, INC., THE WET SEAL
RETAIL, INC., WET SEAL GC, INC., AND
WET SEAL GC, LLC

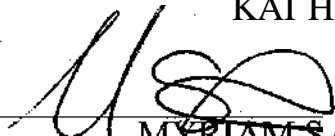
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EXECUTED BY PLAINTIFFS AND CLASS REPRESENTATIVES:

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By: 
MYRIAM SAINT-HR^IRE

By: MICHELLE GUIDER

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ByL KAf HAWKINS™

By: OTRXOTSIdNT,HILAIRE

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DATED: May 8, 2013

By_L NICOLE COGDELL

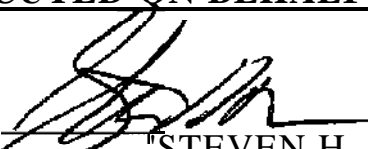
By: KAI HAWKINS

By: MYRIAM SAINT-HILAIRE

By_i MICHELLE GUIDER

EXECUTED ON BEHALF OF DEFENDANTS

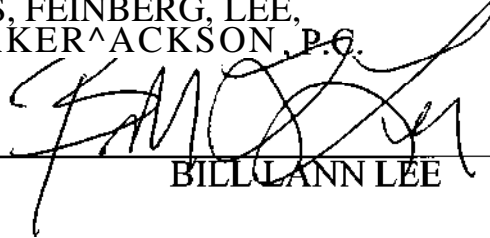
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BILL LANN LEE
JULIE WILENSKY
SHIRA WAKSCHLAG
LEWIS, FEINBERG, LEE,
RENAKER^ACKSON, P.C.

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4 By: _____



BILL LANN LEE

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6 ELISE C. BODDIE
7 RENIKA C. MOORE
8 RIA TABACCO MAR
9 NAACP LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.

10 By: _____

11 RENIKA C. MOORE

12 NANCY C. DEMIS
13 SUSAN R. FIORENTINO
14 GALLAGHER SCHOENFELD SURKIN
CHUPEIN AND DEMIS P.C.

15 By: _____

16 NANCY C. DEMIS

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18 Attorneys for Plaintiffs
19 NICOLE COGDELL, KAI HAWKINS, MYRIAM
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20 THE PROPOSED CLASS

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27 RETAIL, INC., WET SEAL GC, INC., AND WET
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!! *>* *YC. DEMIS*

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SEAL GC, LLC

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By: *fliMil Z • dkxl,*
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Attorneys for Defendants
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RETAIL, INC., WET SEAL GC, INC., AND WET
SEAL GC, LLC

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