

## **CONCILIATION AGREEMENT**

Between

**THE U. S. DEPARTMENT OF LABOR**

**OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS**

and

**GORDON FOOD SERVICE, INC.**

**1300 GEZON PARKWAY**

**WYOMING, MICHIGAN 49509**

### **PART I. PRELIMINARY STATEMENT**

The Office of Federal Contract Compliance Programs ("OFCCP") evaluated Gordon Food Service Inc.'s Great Lakes East Division/Warehouse Department ("GFS East") business unit located at 7770 Kensington Court, Brighton, Michigan and found that GFS East was not in compliance with the Executive Order 11246, as amended ("E.O. 11246"), Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 ("Section 503"), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 ("VEVRAA"), and their implementing regulations at 41 CFR Parts 60-1, 60-2, 60-3, 60-300, 60-300 (2014), 60-741, and 60-741 (2014). OFCCP notified GFS East of the specific violations found and the corrective actions required in a Notice of Violation issued on September 1, 2015. In the interest of resolving the violations without engaging in further legal proceedings and in exchange for the good and valuable consideration described in this document, OFCCP and GFS East enter into this contract ("Conciliation Agreement" or "Agreement") and agree to all the terms stated below.

### **PART II. GENERAL TERMS AND CONDITIONS**

1. In exchange for GFS East's fulfillment of all obligations in Parts III and IV of the Agreement, OFCCP agrees not to institute administrative or judicial enforcement proceedings under E.O. 11246, Section 503, and/or VEVRAA based on the violations described in more detail in Part III below. However, OFCCP has the right to initiate legal proceedings to enforce the Agreement itself or to correct and obtain relief for the violations described in Part III if GFS East violates this Agreement. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. GFS East agrees that OFCCP may review its compliance with this Agreement at the Brighton, Michigan establishment. As part of such review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. GFS East will permit access to its premises at the Brighton, Michigan establishment during normal

business hours for these purposes and will provide OFCCP with all reports and documents requested.

3. GFS East understands that nothing in this Agreement relieves GFS East of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing regulations, and other applicable equal employment laws.
4. GFS East promises not to harass, intimidate, threaten, discriminate, or otherwise retaliate against any individual because the individual: benefits from this Agreement, files a complaint or participates in any investigation or proceeding under E.O. 11246, Section 503, and/or VEVRAA, or engages in any activity listed at 41 CFR 60-1.32(a).
5. The parties understand the terms of this Agreement and enter into it voluntarily.
6. This document and its attachments contain the complete and final understanding of the parties with respect to the matters referenced herein. This Agreement contains all terms by which the parties are bound and it supersedes all prior written or oral negotiations and agreements. There will be no modifications or amendments to this Agreement unless they are in writing, signed by all parties.
7. If one or more provisions of this Agreement are rendered unlawful or unenforceable, the remaining provisions will remain in full force and effect.
8. This Agreement becomes effective on the day it is signed by the Regional Director of the Midwest Region (the "Effective Date") unless the Director of OFCCP indicates otherwise within 45 calendar days of the date the Regional Director signs the Agreement.
9. In computing any time period specified in this Agreement, every calendar day shall be counted unless otherwise specified herein.
10. This Agreement will expire sixty (60) calendar days after GFS submits the final progress report required in Part IV (D), below, unless OFCCP notifies GFS in writing prior to the expiration date that GFS East has not fulfilled all of its obligations under the Agreement, in which case the Agreement is automatically extended until the date that OFCCP determines GFS has met all of its obligations under the Agreement.
11. If GFS East violates this Agreement,
  - A. The procedures set forth at 41 CFR 60-1.34 will govern:
    - 1) If OFCCP believes that GFS East violated any term of the Agreement while it is in effect, OFCCP will send GFS East a written notice stating the alleged violations and summarizing any supporting evidence.
    - 2) GFS East will have 15 calendar days from receipt of such notice to demonstrate in writing that it has not violated the Agreement, unless such a delay would result in irreparable injury to the employment rights of affected employees or applicants.

- 3) If GFS East is unable to demonstrate that it has not violated the Agreement, or if OFCCP alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceeding through any other requirement.
- 4) OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.

B. GFS East may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 CFR 60-300.66 (2014), 41 CFR 60-741.66 (2014) and/or other appropriate relief for violation of this Agreement.

12. This Agreement does not constitute an admission by GFS East of any violation of E.O. 11246, Section 503, VEVRAA, or other laws, nor has there been an adjudicated finding that GFS East violated any laws.

### **PART III. SPECIFIC VIOLATIONS AND REMEDIES**

#### **1. HIRING DISCRIMINATION: SEX**

A. STATEMENT OF VIOLATION. OFCCP alleges that GFS East discriminated against 230 qualified female applicants (Class Members) based on sex in the Laborers-Unskilled Job Group (80), at the Brighton, Michigan establishment. The alleged discrimination occurred during the period of January 1, 2011 through September 30, 2012. OFCCP contends that GFS East's failure to afford female applicants equal employment opportunities in hiring constitutes a violation of Section 202, Paragraph 1 of Executive Order 11246, as amended, and 41 CFR 60-1.4(a)(1). OFCCP found that there was a statistically significant disparity in the hiring of Laborers-Unskilled Job Group (80) based on sex.

Specifically, personnel activity data provided by GFS East for the period January 1, 2011 through September 30, 2012, revealed that from a qualified pool of 233 Female applicants, GFS East hired (b) (7) (E) Females (b) (7) (E) for positions within the Laborers – Unskilled Job Group (80). During the same period, from a qualified pool of (b) (7) (E) Male applicants, GFS East hired (b) (7) (E) Males (b) (7) (E) into positions within the Laborers – Unskilled Job Group (80). This disproportionate hiring pattern is statistically significant at the level of (b) (7) (E) standard deviations, with a shortfall of 8 Female hires.

B. REMEDY FOR AFFECTED CLASS. GFS East agrees to: (a) attempt to locate all 230<sup>1</sup> Class Members and provide all located Class Members with a make whole remedy, including back pay with interest; (b) make job offers to Class Members until eight (8) Class Members are placed, or the Class Member list is exhausted, in the Laborers-Unskilled Job Group (80) positions at the current rate of pay with a company service and seniority date representative of the original application date for the period January 1, 2011 through September 30, 2012; (c) prevent retaliation,

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<sup>1</sup> The number of eligible class members in Attachment A is different due to removal of duplicate applicants.

harassment, and any other form of reprisal or adverse action to Class Members based on or in relation to the terms of this Remedy; (d) review GFS East's selection process and eliminate those practices that led to the alleged discrimination; (e) develop procedures to review at least annually the selection process for ensuring nondiscrimination; and (f) take action to assure that this violation ceases and does not recur.

- 1) GFS East shall notify the Class Members listed on Attachment A of the terms of this Agreement no later than 30 calendar days after the Effective Date of this Agreement. GFS East shall mail the Notice to Class Member (Attachment B, hereinafter "Notice") to inform the Class Members of the settlement, and shall include the Interest Form (Attachment C, hereinafter "Interest Form") and a Release of Claims (Attachment D, hereinafter "Release").
- 2) Each Class Member listed on Attachment A (or her legal representative in the event she is deceased) shall be given up to 210 calendar days from the Effective Date of this Agreement to respond. Those individuals who do not respond (including unclaimed mail, undeliverable mail and incorrect addresses) within 30 calendar days of the date the Notice is mailed, shall be listed by name, and address. This list shall be sent to the OFCCP, Detroit District Office no later than 90 calendar days after the Effective Date of this Agreement. OFCCP shall have 60 calendar days from receipt of the listing of Class Members that did not respond to the Notice to provide GFS East with an updated list of addresses. No later than 30 calendar days after receiving the updated list of addresses from OFCCP, GFS East shall re-mail the Attachments to the identified individuals. The individuals receiving the second mailing shall be given up to 210 calendar days from the Effective Date of this Agreement to respond. The total number of Female Class Members to receive payment and/or future employment consideration shall consist of those individuals from Attachment A who have returned signed copies of the applicable attachments, including the Release, postmarked no later than 210 calendar days after the Effective Date of this Agreement. These individuals shall share equally in the Settlement Fund. GFS East shall complete its determination of eligible recipients, as defined above, no later than 230 calendar days after the Effective Date of this Agreement. Any individuals listed on Attachment A whose response is not postmarked within 210 calendar days of the Effective Date of this Agreement shall be ineligible to receive a portion of the Settlement Fund or employment consideration under this Agreement.
- 3) **Eligibility.** All members of the affected class (listed on Attachment A) who sign and return the Release and Interest Form to GFS East postmarked no later than 210 calendar days after the Effective Date of this Agreement, will receive an equal share of the monetary settlement and, if indicating an interest in employment, will be eligible to be hired for an entry level Laborers-Unskilled Job Group (80) position at the Brighton, Michigan establishment, provided they complete an application, pass a substance abuse screening test, pass a

job-related criminal background check, and present documents establishing that they are eligible to work in the United States.

No later than 250 calendar days after the Effective Date of this Agreement, GFS East will provide OFCCP with a list of the Eligible Class Members (individuals who returned the Interest Form by the deadline). No later than 270 calendar days after the Effective Date of this Agreement, OFCCP will approve the final list of Eligible Class Members or discuss with GFS East any issues necessary to finalize the list, such as (but not limited to), the inclusion or exclusion of certain individuals.

All Eligible Class Members who appear on the final list of Eligible Class Members approved by OFCCP are entitled to an equal share of the monetary settlement regardless of whether they are interested in employment with GFS East.

- 4) **Monetary Settlement.** In settlement of all claims for back pay, interest and other monetary relief to the affected class, GFS East agrees to distribute \$446,000.00 (\$414,602.00 in back pay and \$31,398.00 in interest), less legal deductions required by law from back pay only (such as federal, state and/ or local taxes and the Eligible Class Members' share of FICA taxes), in equal shares among all Eligible Class Members on the final approved list. GFS East will pay the Internal Revenue Service ("IRS") the employer's share of social security withholdings and will mail each Eligible Class Member an IRS W-2 Form reporting the portion of the payment representing back pay and an IRS Form 1099 for the portion of the payment representing interest. These IRS forms will be mailed at the end of the year. GFS East will disburse the monetary settlement within 30 calendar days after OFCCP approves the final list of Eligible Class Members.

This amount of \$446,000.00 shall be referred to hereafter as the "Settlement Fund." The monetary settlement is a negotiated amount that represents back pay and interest less interim earnings, and takes into account the tenure of those persons hired into the Laborers-Unskilled Job Group (80) positions during the review period.

GFS East shall establish a federally-insured interest bearing account at the prevailing interest rate, within 30 days of the Effective Date of this Agreement for purposes of complying with this Agreement. GFS East shall notify OFCCP within 15 days of the inception of the account that this action is complete. GFS East shall identify to OFCCP a person who can be contacted who will be able to provide the current balance of the account and interest. OFCCP shall be entitled to designate an individual who shall have the authority to make inquiries and obtain account information directly from the financial institution at which the Settlement Fund account is located.

In accordance with this Agreement, GFS East shall deposit the sum of \$446,000.00 into the account described above within thirty (30) days of the Effective Date of this Agreement.

The interest that accrues on the total Settlement Fund, from the Effective Date of this Agreement to the date on which the funds are withdrawn to make payments to the Class Members, will inure to the benefit of the Class Members who timely respond. The interest earned on the Settlement Fund following the Effective Date of this Agreement shall be distributed to those Class Members.

GFS East shall distribute the Settlement Fund plus interest that accrues on the interest bearing account, equally among the Eligible Class Members. This monetary relief is not contingent upon accepting any job offer. No later than 300 calendar days after the Effective Date of this Agreement, GFS East shall mail a check to each Eligible Class Member, representing each such person's pro rata share of the total amount in the Settlement Fund.

Within 15 calendar days of GFS East's receipt of a check sent to an Eligible Class Member returned as undeliverable, GFS East will notify OFCCP of this fact via e-mail sent to (b) (7)(C), (b) (7)(E) OFCCP will have 15 calendar days to attempt to locate the Eligible Class Member and if OFCCP obtains an alternate address in the designated time period, GFS East will re-mail the check within 15 calendar days of receiving an alternate or corrected address. Any check that remains uncashed 120 calendar days after the initial date the check was mailed to the Eligible Class Member will be void. With respect to any uncashed funds, GFS East will make a second distribution in equal shares to all Eligible Class Members who cashed their first check, if the total amount of the undelivered checks would result in a payment of \$20.00 or more to each of the located Eligible Class Members who cashed at least one of their checks from the first mailing. The second distribution of uncashed funds will be mailed within 120 days after the first distributions were mailed (if there is a need). If there is any remainder after the second distribution, or if the amount remaining would result in a payment of less than \$20.00 to each class member, GFS East will use the amount of the remainder to conduct internal EEO training in the Brighton, Michigan establishment.

A timeline referencing important Conciliation Agreement deadlines is included as Attachment E.

- 5) **Employment.** As positions become available, GFS East will make offers in writing to qualified Eligible Class Members not currently employed by GFS East who express an interest in employment with GFS East at the Brighton, Michigan establishment until eight (8) Eligible Class Members are hired in the Laborers-Unskilled Job Group (80) positions or until the list of Eligible Class

Members expressing an interest in employment is exhausted, whichever occurs first.

Eligible Class Members will be eligible for hire in the order that GFS East receives their Interest Forms. If GFS East receives more than one response on any given day, those Eligible Class Members will be eligible for hire based on the date of their original application. All Class Members interested in employment with GFS East at the Brighton, Michigan establishment must complete an updated application, pass a drug test and a job-related criminal background check, be willing to report to work within 14 calendar days and provide evidence that they are eligible/authorized to work in the U.S. These are the only job requirements that are to be used by GFS East. GFS East must initiate its hiring of Eligible Class Members within 60 days after the response deadline set out in the Interest Form and must complete its hiring obligations under this section within two years of the Effective Date of this Agreement. If GFS East is not able to hire eight (8) Eligible Class Members or exhaust the list of Eligible Class Members expressing an interest in employment within two years, OFCCP may extend the term of this Agreement for up to 24 months or until GFS East satisfies its hiring requirement(s), whichever occurs first.

Eligible Class Members will be allowed at least 14 calendar days to report for work after receiving a written job offer from GFS East. All job offers, including job offers made and documentation of reasons for rejection, will be available for review by OFCCP. The Eligible Class Members hired into Laborers-Unskilled Job Group (80) positions at the Brighton, Michigan establishment pursuant to this Agreement must be paid \$14.02/hr. or the current wage rate for the Laborers-Unskilled Job Group (80) positions at the Brighton, Michigan establishment, whichever is higher, and must be provided with the same benefits and opportunity to earn overtime and shift differentials as other Laborers-Unskilled Job Group (80) employees. In addition, all Eligible Class Members hired must receive retroactive seniority as of the date of the first original application after January 1, 2011 as their hire date for all purposes, including job retention, job bidding and benefits.

Notwithstanding the procedures set forth in this section, if an Eligible Class Member applies for a Job Group (80) Laborers – Unskilled position and is hired after the Effective Date of this Agreement and prior to the OFCCP’s final approval of the Eligible Class Member list, that hiring decision will be credited against GFS East’s preferential hiring obligation.

- C. **NON-MONETARY REMEDIES.** GFS East will ensure that all applicants are afforded equal employment opportunities. GFS East agrees to immediately cease using the selection procedures, practices, and/or policies which negatively affected the hiring of Female applicants for Laborers-Unskilled Job Group (80) positions at the Brighton, Michigan establishment. GFS East agrees to continue and/or to implement the corrective actions detailed below:

- 1) **Eliminate Allegedly Discriminatory Selection Procedures:** With respect to hiring into the Laborers – Unskilled Job Group (80), GFS East agrees to immediately cease use of the CRT test until it, or another comparable selection tool, has been validated in accordance with 41 CFR Part 60-3. GFS East agrees to comply with all OFCCP regulations concerning selection procedures, including 41 CFR Part 60-3. GFS East will not use any selection procedure that has an adverse impact, as defined in 41 CFR 60-3.4D, on applicants of a particular sex unless it properly validates the procedure pursuant to these regulations.
- 2) **Review and Revisions Required:** Within 60 days of the Effective Date of this Agreement, GFS East will revise, in writing, the practices, policies and procedures it uses to select applicants for Laborers – Unskilled Job Group (80) positions (“Revised Hiring Process”). Specifically, GFS East will at the Brighton, Michigan establishment:
  - a) create a job description and selection process for Laborers – Unskilled Job Group (80) positions which describes the essential functions; the minimum qualifications including required skills and certifications; and the criteria used in each step of the hiring process, including those used in any application screens, interviews, tests, credit checks, reviews of criminal history, reference checks, testing, or other selection procedures;
  - b) develop specific, job-related qualification standards for Laborers – Unskilled Job Group (80) positions that reflect the duties, functions, and competencies of the position;
  - c) ensure all policies and qualification standards are uniformly applied to all applicants regardless of sex; and
  - d) list clearly on its recruiting materials and job postings the minimum qualifications, including required skills and certifications.
- 3) **Recordkeeping and Retention:** GFS East will write and continue to implement procedures to ensure that applicants are tracked and decisions are documented at each step in the hiring process. GFS East will ensure that these procedures are conducted and that all documents pertaining to these procedures are retained in accordance with 41 CFR 60-1.12(a) and Part 60-3.
- 4) **Training:** Within six months of the Effective Date of this Agreement, GFS East must train all individuals involved in any way in recruiting, selecting, or tracking applicants for Laborers – Unskilled Job Group (80) positions at the Brighton, Michigan establishment on the Revised Hiring Process. The training will include (but is not limited to) instruction in: the proper implementation of recruitment, tracking and selection procedures; neutral application of specified qualifications and criteria that will be used at each step in the hiring process;

procedures to be used to document the decisions made at each step in the hiring process; and the procedures to be used to ensure that documents are retained in accordance with 41 CFR 60-1.12(a) and Part 60-3. GFS East will meet with management and all individuals responsible for the selection process at the Brighton, Michigan establishment and review its equal employment obligations and nondiscrimination policies related to hiring. Specific attention will be directed to ensure that Female applicants, who benefit from the provisions of this Agreement, are not retaliated against.

- 5) **Monitoring:** GFS East agrees to monitor selection rates at each step of its selection process for Laborers – Unskilled Job Group (80) positions at the Brighton, Michigan establishment. Where it is determined that a selection procedure has an adverse impact, as defined in 41 CFR 60-3.4D, on the hiring of applicants of a particular sex, GFS East will eliminate the procedure, choose an alternative procedure, or validate the procedure in accordance with the Uniform Guidelines on Employee Selection Procedures (“UGESP”) codified at 41 CFR Part 60-3. GFS East agrees to maintain and make available to OFCCP records concerning the impact of the selection process for Laborers-Unskilled Job Group (80) positions at the Brighton, Michigan establishment. This includes the number of persons hired by sex, the number of applicants who applied by sex, and the selection procedures utilized. This information will be maintained until the expiration of this Agreement or as long as required by the regulations, whichever is later.

## 2. RECORDKEEPING/ADVERSE IMPACT ANALYSIS VIOLATIONS

- A. **STATEMENT OF VIOLATION:** GFS East failed to perform in-depth analyses of its total employment process to determine whether and where impediments to equal employment opportunity exist. Specifically, GFS East did not perform in-depth analyses of its hiring processes to identify impediments to equal employment opportunity. This is a violation of 41 CFR 60-2.17(b).

**REMEDY:** GFS East agrees to perform in-depth analyses of its total employment process to determine whether and where impediments to equal employment opportunity exist. At a minimum, GFS East agrees to evaluate:

- 1) The workforce by organizational unit and job group to determine whether there are problems of minority or female utilization, or of minority or female distribution;
- 2) Personnel activity (applicant flow, hires, terminations, promotions, and other personnel actions) to determine whether there are selection disparities;
- 3) Compensation systems to determine whether there are gender-, race-, or ethnicity-based disparities;

- 4) Selection, recruitment, referral, and other personnel procedures to determine whether they result in disparities in the employment or advancement of minorities or women; and
- 5) Any other areas that might impact the success of the affirmative action program.

**B. STATEMENT OF VIOLATION:** GFS East failed to develop and execute action-oriented programs designed to correct any problem areas identified pursuant to 41 CFR 60-2.17(b) and to obtain established goals and objectives. Specifically, GFS East failed to demonstrate that it made good faith efforts and develop action oriented programs to correct the underutilization of females in its Laborers – Unskilled Job Group (80). This is a violation of 41 CFR 60-2.17(c).

**REMEDY:** GFS East will develop and execute action-oriented programs designed to correct any problem areas identified pursuant to 41 CFR 60-2.17(b) and to obtain established goals and objectives. GFS East shall develop action-oriented programs that demonstrate that it has made good faith efforts to correct the underutilization of females in its Laborers – Unskilled Job Group (80). GFS East will demonstrate that it has made good faith efforts to remove identified barriers, expand employment opportunities, and produce measurable results.

**C. STATEMENT OF VIOLATION:** GFS East failed to develop and implement an auditing system that periodically measures the effectiveness of its total affirmative action program. Specifically, GFS East failed to implement an auditing system that would monitor records of all personnel activity at all levels to ensure the nondiscriminatory policy is carried out. This is a violation of 41 CFR 60-2.17(d).

**REMEDY:** GFS East will develop and implement an auditing system that periodically measures the effectiveness of its total affirmative action program. GFS East will implement a system that will allow it to accurately represent personnel activities and more adequately monitor records of its recruitment efforts to ensure that its nondiscriminatory policy is carried out. Specifically, and at a minimum, GFS East agrees to:

- 1) Monitor records of all personnel activity, including referrals, placements, transfers, promotions, terminations and compensation, at all levels to ensure the nondiscriminatory policy is carried out;
- 2) Require internal reporting on a scheduled basis as to the degree to which equal employment opportunity and organizational objectives are attained;
- 3) Review report results with all levels of management; and
- 4) Advise top management of program effectiveness and submit recommendations to improve unsatisfactory performance.

- D. **STATEMENT OF VIOLATION:** GFS East used a selection procedure which had an adverse impact on the hiring of females without validating the procedure in accordance with UGESP. Specifically, GFS East did not complete a validation study of the CRT. This is a violation of 41 CFR 60-3.3(a).

**REMEDY:** GFS East agrees to immediately cease using the CRT as part of its selection process for the Laborers – Unskilled Job Group (80) until it, or another comparable selection tool, has been validated in accordance with UGESP. GFS East agrees that any future selection procedure for the Laborers – Unskilled Job Group (80) will adhere to UGESP.

- E. **STATEMENT OF VIOLATION:** GFS East failed to include, as part of its interim validity study, an investigation of suitable alternative selection procedures and suitable alternative methods of using the selection procedure which have as little adverse impact as possible. This is a violation of 41 CFR 60-3.3(b).

**REMEDY:** For hiring into the Laborers – Unskilled Job Group (80), GFS East agrees to investigate suitable alternative selection procedures and suitable alternative methods of using the selection procedure which have as little adverse impact as possible.

- F. **STATEMENT OF VIOLATION:** GFS East failed to evaluate the individual components of the selection process after determining that the total selection process for a job has an adverse impact. Specifically, GFS East’s analysis of its total selection process for the Laborers – Unskilled Job Group (80) revealed adverse impact against females. GFS East failed to evaluate the individual components of the total selection process. This is a violation of 41 CFR 60-3.4(c).

**REMEDY:** GFS East agrees to evaluate the individual components of the selection process for Laborers – Unskilled Job Group (80) for adverse impact if the total selection process for a job has an adverse impact. Furthermore, GFS East will evaluate individual components when: (1) the selection procedure is a significant factor in the continuation of assignments of incumbent employees caused by prior discriminatory employment practices, or (2) the weight of court decisions or administrative interpretations hold that a specific procedure is not job related in the same or similar circumstances.

### 3. VIOLATIONS PERTAINING TO APPLICATIONS

- A. **STATEMENT OF VIOLATION:** From January 1, 2011 through September 30, 2012, GFS East requested applicants to complete a limitation on claims statement during its online application process. Specifically, GFS East requested applicants to agree to a limitation period of within six months of the event giving rise to the claim, to file a complaint, by including the following in its application:

*Authorization To Work.*

*If I am selected for hire, I will be offered employment provided I verify that I am authorized to work as required by the Immigration Reform Control Act of 1986.*

*\*Limitation On Claims. I agree that any action or suit against Gordon Food Service arising out of my employment or termination of employment, including but not limited to claims arising under state or federal civil rights statutes, must be brought within six months of the event giving rise to the claim or be forever barred. I waive any statute of limitations to the contrary. Please provide your consent by selecting either I Agree or I Decline.*

This is in violation of 41 CFR 60-300.61(a) and 41 CFR 60-300.61(a) (2014).

**REMEDY:** For all requisitions opened and posted after the Effective Date of this Agreement, GFS East must immediately cease its policy and practice of limiting claims by combining the limitation with any other affirmation or topic. Any limitation on claims must be a stand-alone section. Additionally, for all requisitions opened and posted after the Effective Date of this Agreement, any limitation on claims including, but not limited to limitation provisions in applications and online inquiries will adhere to the complaint filing period of at least 300 days in accordance with 41 CFR 60-300.61(a) (2014).

- B. **STATEMENT OF VIOLATION:** GFS East made impermissible pre-offer inquiries on its application for employment as to whether an applicant has a disability and as to the nature or severity of such disability. Specifically, during the period of January 1, 2011 through September 30, 2012, GFS East asked on its application for employment “[d]o you require any accommodations to perform the essential functions of the position(s) for which you are applying? If you answered yes to the question above, please explain the type of accommodations necessary to enable you to perform the functions of the position(s) you have applied for.”

This is a violation of 41 CFR 60-741.23(a) and 41 CFR 60-741.23(a) (2014).

**REMEDY:** GFS East must refrain from making any written or verbal pre-offer inquiries, including, but not limited to, inquiries on its application for employment as to whether an applicant has a disability or as to the nature or severity of such a disability, except as permitted by 41 CFR 60-741.23(b) (2014).

- C. **STATEMENT OF VIOLATION:** From January 1, 2011 through September 30, 2012, GFS East requested applicants to complete a limitation on claims statement during its online application process. Specifically, GFS East requested applicants to agree to a limitation period of within six months of the event giving rise to the claim, to file a complaint, by including the following in its application:

*Authorization To Work.*

*If I am selected for hire, I will be offered employment provided I verify that I am authorized to work as required by the Immigration Reform Control Act of 1986.*

*\*Limitation On Claims. I agree that any action or suit against Gordon Food Service arising out of my employment or termination of employment, including but not limited to claims arising under state or federal civil rights statutes, must be brought within six months of the event giving rise to the claim or be forever barred. I waive any statute of limitations to the contrary. Please provide your consent by selecting either I Agree or I Decline.*

This is in violation of 41 CFR 60-741.61(b) and 41 CFR 60-741.61(b) (2014).

**REMEDY:** For all requisitions opened and posted after the Effective Date of this Agreement, GFS East must immediately cease its policy and practice of limiting claims by combining the limitation with any other affirmation or topic. Any limitation on claims must be a stand-alone section. Additionally, for all requisitions opened and posted after the Effective Date of this Agreement, any limitation on claims including, but not limited to limitation provisions in applications and online inquiries will adhere to the complaint filing period of at least 300 days in accordance with 41 CFR 60-741.61(b) (2014).

Finally, please note that nothing herein is intended to relieve GFS East from the obligation to comply with the requirements of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212), their implementing regulations, or any other equal employment statute or executive order or its implementing regulations. In addition, this Conciliation Agreement in no way limits the applicability of the revised regulations implementing Section 503 of the Rehabilitation Act of 1973, 41 CFR Part 60-741 (2014), and the revised regulations implementing Vietnam Era Veterans' Readjustment Assistance Act of 1974, 41 CFR Part 60-300 (2014).

**PART IV. REPORTS REQUIRED**

1. GFS East must submit the documents and reports described below to: Phyllis Lipkin, District Director, OFCCP, 211 West Fort Street, Suite 1320, Detroit, Michigan 48226.
  - A. No later than June 30, 2016, GFS East must submit a copy of the written Revised Hiring Process described in Part III.1.C.2.
  - B. (For the first report only) A statement signed by the General Manager of GFS East affirming that its limitation on claims policy and practice has been corrected, including but not limited to the correction of the limitation on claims application form statement identified in Part III.3 of this agreement as a stand-alone section. The statement will also affirm that any limitation on claims including, but not limited to limitation provisions in applications and online inquiries, will adhere to the complaint

filing period of at least 300 days in accordance with 41 CFR 60-300.61(a) (2014) and 41 CFR 60-741.61(b) (2014). Documentation that the limitation on claims policy and practice has been corrected must be provided with GFS East's report, including a copy of the revised application and online inquiries, and specification of the effective date of the change in policy and practice.

- C. (For the first report only) A statement signed by the General Manager of GFS East affirming that it has ceased its policy and practice of making pre-offer disability-related inquiries, except as permitted by 41 CFR 60-741.61(b) and 41 CFR 60-741.61(b) (2014). Documentation that this policy and practice has ceased must be provided with its report, including a copy of the revised online application documenting the deletion of the prohibited inquiries as identified in Part III of this Agreement and documentation evidencing that officials and staff involved in the employment process have been notified that making such inquiries in writing or verbally is a prohibited employment practice.
- D. No later than 210 calendar days after the Effective Date of this Agreement, GFS East must submit documentation that all managers, supervisors and other personnel involved in recruiting, selecting, or tracking applicants for Laborers – Unskilled Job Group (80) positions at the Brighton, Michigan establishment have been trained on the Revised Hiring Process. The documentation must include the dates of the training, the names and job titles of all attendees, an outline of the topics discussed in the training, and the name and job title of each person who conducted the training.
- E. Within the prescribed timeframes, GFS East must submit all documents and information referenced in Part III.1.B.
- F. GFS East must submit a progress report for the Brighton, Michigan establishment covering each six month period this Agreement is in effect. The first progress report will be due 210 calendar days after the Effective Date of this Agreement and must cover the six-month period following the Effective Date of this Agreement. The second report will be due 210 calendar days after the first report and cover the 180 days following the first reporting period. The third report will be due 210 calendar days after the second report and cover the 180 days following the second reporting period. The fourth report will be due 210 calendar days after the third report and cover 180 days after the third reporting period. GFS East will submit the following in each progress report:
  - 1) a. Documentation of attempts to contact all Class Members in Attachment A and the current disposition of each applicant contacted, including copies of the notification letters sent; and
  - b. Copies of all letters, including Attachment C, returned by Class Members, as well as those returned as undeliverable.
  - 2) Documentation of monetary payments to all Eligible Class Members as specified in Part III sections 1 B (3). The documentation must include the

names of Eligible Class Members who were paid, and, for each Eligible Class Member, the number and the amount of the check and the date the check cleared the bank. GFS East must provide OFCCP with copies of all canceled checks upon request;

- 3) Documentation of specific hiring activity for Eligible Class Members who were hired in Laborers – Unskilled Job Group (80) positions at the Brighton, Michigan establishment in accordance with this Agreement, including name, date of hire, job title hired into, rate of pay and proof of retroactive seniority and applicable benefits;
- 4) For Eligible Class Members who were considered for employment in Laborers – Unskilled Job Group (80) positions at the Brighton, Michigan establishment but were not hired, GFS East will provide the reason for non-placement along with all relevant documentation (e.g., documentation that the Eligible Class Member declined a job offer);
- 5) The total number of applicants and hires and the breakdown by gender of applicants and hires for Laborers – Unskilled Job Group (80) positions at the Brighton, Michigan establishment during the reporting period, including all temporary, part time, and seasonal workers who were referred to and/or assigned to work at GFS East by a staffing firm or employment agency;
- 6) For Laborers – Unskilled Job Group (80) positions at the Brighton, Michigan establishment, the results of GFS East’s analysis as to whether its total selection process has adverse impact, as defined in 41 CFR 60-3.4D, on females (for purposes of the adverse impact analysis, GFS East must not include hires made of Eligible Class Members pursuant to this Agreement in that analysis; GFS East must combine the data for the current report with the data from the previous report(s) to analyze at least a 12-month period);
- 7) For each case where the total selection process has an adverse impact, as defined in 41 CFR 60-3.4D, the results of GFS East’s evaluation of the individual components of the selection process for adverse impact;
- 8) The actions taken by GFS East upon determining that any component of the selection process for Laborers-Unskilled Job Group (80) positions at the Brighton, Michigan establishment has an adverse impact on females as set forth in Part III section 3 E above;
- 9) Copies of in-depth analysis of GFS East’s total employment process. This documentation must include the analysis at any areas that GFS East identifies as an impediment to equal employment opportunity;
- 10) Documentation of the actions GFS East has taken to eliminate impediments to equal employment opportunity, expand employment opportunities, and produce measureable results; and

- 11) Copies of reports and minutes of meetings generated as part of GFS East's internal audit and reporting system.
2. GFS East will retain all records and data pertinent to the violations resolved by this Agreement and/or used to prepare required reports until this Agreement expires or as long as required by OFCCP's regulations, whichever date occurs later.

**PART V. SIGNATURES**

This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument, and shall become effective when counterparts have been signed by each of the Parties and delivered to the other Parties; it being understood that all Parties need not sign the same counterparts.

The person signing the Conciliation Agreement on behalf of Gordon Food Service Inc.'s Great Lakes East Division/Warehouse Department personally warrants he is fully authorized to do so, that Gordon Food Service Inc.'s Great Lakes East Division/Warehouse Department has entered into this Conciliation Agreement voluntarily and with full knowledge of the effect thereof, and that execution of this Agreement is fully binding on Gordon Food Service Inc.'s Great Lakes East Division/Warehouse Department. This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Gordon Food Service, Inc.'s Great Lakes East Division/Warehouse Department.

(b) (6), (b) (7) (c)

Barry Bates  
Regional Vice President, US Distribution  
Gordon Food Service  
Great Lakes East Division

DATE: 5-4-16

(b) (6), (b) (7) (c)

Compliance Officer  
OFCCP, Detroit District Office

DATE: 5/9/2016

(b) (6), (b) (7) (c)

Phyllis E. Lipkin  
District Director  
OFCCP, Detroit District Office

DATE: 5/9/16

(b) (6), (b) (7) (c)

Bradley A. Anderson  
Regional Director  
OFCCP

DATE: 5/10/2016

**GORDON FOOD SERVICE, INC. BRIGHTON - ATTACHMENT A**

**CLASS MEMBER LIST**

1	(b) (7)(C), (b) (6)	39	(b) (7)(C), (b) (6)
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# *You may be eligible to get money and a job because of a legal settlement between Gordon Food Service and the U.S. Department of Labor*

*We are writing to provide information about a legal settlement between the U.S. Department of Labor and Gordon Food Service that may benefit you. This settlement involves claims of discrimination in hiring, and our records show that you may be one of the applicants covered by the settlement. If you take the steps described in this Notice by the deadline below, you may be eligible for a payment of back wages and/or a job with Gordon Food Service.*

## **ARE YOU AFFECTED?**

Females who applied and were not hired for Laborer – Job Group (80) positions at Gordon Food Service's Brighton, Michigan location between January 1, 2011 and September 30, 2012 are covered by this settlement.

## **WHAT IS THIS SETTLEMENT ABOUT?**

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) conducted a review of Gordon Food Service's hiring practices during January 1, 2011 through September 30, 2012. OFCCP is the government agency responsible for enforcing the equal employment opportunity and affirmative action requirements that apply to federal contractors. OFCCP issued a Notice of Violations alleging that Gordon Food Service discriminated against Females in hiring for Laborer – Job Group (80) positions during January 1, 2011 through September 30, 2012. Gordon Food Service denies those claims. Ultimately, although Gordon Food Service disagreed with OFCCP's findings, Gordon Food Service has agreed to resolve the claims through a Conciliation Agreement. A Conciliation Agreement is a legal document that explains the terms of an agreement to settle a Notice of Violations issued by OFCCP.

## **WHAT DOES THIS MEAN FOR YOU?**

Because you applied for the Laborer – Job Group (80) position during the relevant time frame, and were not hired, this settlement may provide you with some specific benefits:

- (1) **You may be eligible to receive a payment of at least \$2,359.79** (before taxes). This payment represents your share of back wages and other payments Gordon Food Service is making to settle the lawsuit. The final amount you will receive will be reduced by deductions for items such as income tax withholding and Social Security contributions.

- (2) Gordon Food Service will be making job offers for Laborer – Job Group (80) positions to some of the individuals receiving this notification. It is not guaranteed that you will receive a job offer. If you are interested in a job with Gordon Food Service, please express your interest on the enclosed Claim Form.

To get these benefits, you will need to release (give up) certain legal claims, and sign the enclosed Claim and Release forms.

### **WHAT IS YOUR NEXT STEP?**

You should read this Notice, the Claim and Release forms, and any other information you received from the U.S. Department of Labor or the Settlement Administrator, Rust Consulting, Inc.

Please do not ignore these documents or throw them away. Otherwise, you could miss an opportunity to receive money and job with Gordon Food Service.

To be eligible for a payment and job, you must complete, sign, and return **both** the following enclosed documents, (1) Claim Form and (2) Release of Claims Form by [X date] to: \_\_\_\_\_

Settlement Administrator  
OFCCP – Gordon Food Service  
c/o Rust Consulting, Inc.  
P.O. Box xxx  
Faribault, MN 55xxx

**The documents must be received by [insert actual date].**

You may receive some or all of these benefits only if these forms confirm that you are one of the individuals covered by the settlement. After correct completion and submission of these documents, a final decision will be made about your eligibility.

**If you fail to return both of the required documents by the deadline or if your documents do not verify your eligibility you will not be eligible to receive any money, consideration for job opportunities or any other relief provided to you by the settlement.**

### **HOW CAN YOU GET MORE INFORMATION?**

If you have any questions, you may contact (b) (7)(C), (b) (7)(E) or via e-mail at (b) (7)(C), (b) (7)(E) You can also visit the U.S. Department of Labor website about this case at [www.dol.gov/ofccp/cml](http://www.dol.gov/ofccp/cml).

# Claim Form – Affected Applicants

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PLEASE CAREFULLY READ THE ENCLOSED NOTICE BEFORE COMPLETING THIS CLAIM FORM.

## INSTRUCTIONS FOR FILING A CLAIM TO BE CONSIDERED FOR MONEY (BACK WAGES) AND/OR A JOB OFFER FROM THE SETTLEMENT

**DEADLINE TO RESPOND IS XX DAY, XX MONTH, XXXX YEAR**

If you complete this Claim Form, you may be eligible for a money payment from the settlement and you can express interest in a job offer. You can receive a money payment even if you do not express interest in a job.

To receive an award such as money or a job offer, you must complete and return this Claim Form and Release Form postmarked or hand-delivered on or before [*Deadline above*], to

Settlement Administrator  
OFCCP – Gordon Food Service  
c/o Rust Consulting, Inc.  
P.O. Box xxx  
Faribault, MN 55xxx

If you do not submit a properly completed Claim Form and Release Form on or before [*Deadline above*], then your claim will not be on time and **you will not receive any money from this settlement and you cannot be considered for a job offer.**

Enclosed is a stamped, pre-addressed envelope you can use.

\*\*\*

This Claim Form will only be used for the following purposes:

- (1) To confirm important information we need in order to make sure you are eligible to receive money under this settlement and process your payment, and
- (2) To allow you to express interest in the jobs being offered as a result of the settlement.

**Step 1: Please confirm the following contact information to process your payment (print legibly).**

Name: \_\_\_\_\_

Home Phone: \_\_\_\_\_

Cell Phone: \_\_\_\_\_

Email Address: \_\_\_\_\_

- I confirm that the address on the cover letter is correct.
- The address on the cover letter is not correct. My correct address is:

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Please provide your social security number** \_\_\_\_\_

*Your Social Security Number is required in order to process your payment for tax purposes. Your Social Security Number will not be used for any other purpose.*

**Notify us at the address below if your address changes within the next three months, or contact us if you have any questions about this claim form, the notice, or the settlement.**

Settlement Administrator  
OFCCP – Gordon Food Service  
c/o Rust Consulting, Inc.  
P.O. Box xxx  
Faribault, MN 55xxx  
1-xxx-xxx-xxxx

**Step 2: Inform us if you are interested in a position:**

Yes, I am still interested in a Laborer – Job Group (80) position with Gordon Food Service at Brighton, Michigan.

No, I am not currently interested in a Laborer – Job Group (80) position with Gordon Food Service at Brighton, Michigan.

I am currently employed by Gordon Food Service.

**Step 3: Sign and return along with the Release Form**

I certify the above as true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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## RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246

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**PLEASE CAREFULLY READ THE ENCLOSED NOTICE BEFORE COMPLETING THIS RELEASE. YOU MUST RETURN A SIGNED RELEASE TO RECEIVE MONEY AND/OR A POTENTIAL JOB OFFER FROM THE SETTLEMENT**

This Release of Claims under Executive Order 11246 ("Release") is a legal document. This document states that in return for Gordon Food Service ("Contractor") providing you with money and/or a potential job offer, you agree that you will not file any lawsuit against Contractor for allegedly violating Executive Order 11246 in connection with its selection procedures for applicants for Laborer – Job Group (80) positions. It also says that Contractor does not admit it violated any laws. This Release says you had sufficient time to look at the document, to talk with others about the document, including an attorney if you choose, and that no one pressured you into signing the document. Finally, it says that if you do not sign and return the document by a certain date, you will not receive any money and/or a potential job offer.

In consideration of the payment of at least \$2,359.79 (less deductions required by law) and/or a potential job offer for the Laborer – Job Group (80) position by Contractor to me, which I agree is acceptable, I agree to the following:

I.

I hereby waive, release and forever discharge Contractor, its predecessors, successors, related entities, parents, subsidiaries, affiliates and organizations, and its and their shareholders, owners, directors, officers, employees, agents, successors, and assigns, of and from any and all actions, causes of action, damages, liabilities, and claims arising out of or actionable under Executive Order 11246, as amended, which I or my representatives (heirs, executors, administrators, or assigns) have or may have which relate in any way to its selection procedures for applicants for Laborer – Job Group (80) positions during the period of January 1, 2011 through September 30, 2012.

II.

I understand that Contractor denies that it treated me unlawfully or unfairly in any way and that Contractor entered into a Conciliation Agreement with the U.S. Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") and agreed to make the payment and/or a potential job offer described above to resolve without further legal proceedings all issues related to OFCCP's compliance reviews of Contractor initiated on October 9, 2012. I further agree that the payment of the aforesaid sum and/or a potential job offer by Contractor to me is not to be construed as an admission of any liability by Contractor.

III.

I declare that I have read this Release and that I have had a full opportunity to consider and understand its terms and to consult with my advisors and seek legal advice. I further declare that I have decided of my own free will to sign this Release.

I understand that if I do not sign this Release and return it to [Settlement Administrator, OFCCP – Gordon Food Service, c/o Rust Consulting, Inc., P.O. Box xxx, Faribault, MN 55xxx] such that it is received by [DATE], I will not be entitled to receive any *payment (less deductions required by law) and/or a potential job offer for the Laborer – Job Group (80) position.*

IN WITNESS WHEREOF, I have signed this document of my own free will.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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# ATTACHMENT E

## TIMELINE

### Gordon Food Service Inc. Great Lakes East Division/Warehouse Department Conciliation Agreement

Activity	Responsible Party(ies)	Time Allocated	Deadline(s)	Conciliation Agreement Reference
<b>CONCILIATION AGREEMENT</b>				
Conciliation Agreement Signed	OFCCP GFS	45 Days	45 Days (After Effective Date)	Part II.8
<b>FINANCIAL REMEDIES</b>				
Settlement Fund Account is Established and Funded	GFS	30 Days	30 Days (After Effective Date)	Part III.1.B.4
Confirmation of Settlement Fund Account Establishment and Contact Person is conveyed to OFCCP	GFS	15 Days	15 Days (From Account Inception)	Part III.1.B.4
Initial Notices Mailed to Affected Class Members	GFS	30 Days	30 Days (After Effective Date)	Part III.1.B.1
Non-Response Class Member Listing sent to OFCCP	GFS	60 Days	90 Days (After Effective Date)	Part III.1.B.2
Search for Class Members not able to Locate	OFCCP	60 Days	150 Days (After Effective Date)	Part III.1.B.2
Re-mail Returned Initial Notices to any Forwarding Addresses Received	GFS	30 Days	180 Days (After Effective Date)	Part III.1.B.2
Notice Response Deadline for Affected Employees and Applicants	-	210 Days	210 Days (After Effective Date)	Part III.1.B.2
Determination of Eligible Class Member List Completed	GFS	20 Days	230 Days (After Effective Date)	Part III.1.B.2
Eligible Class Member List Provided to OFCCP	GFS	20 Days	250 Days (After Effective Date)	Part III.1.B.3
Eligible Class Member List Approved by OFCCP	OFCCP	20 Days	270 Days (After Effective Date)	Part III.1.B.3
Disbursement of Monetary Settlement to Class Members	GFS	30 Days	300 Days (After Effective Date)	Part III.1.B.4
Notification of Undeliverable Checks to OFCCP	GFS	15 Days	15 Days (After Receiving Undeliverable Check)	Part III.1.B.4
Search for Updated Contact Information for Any Undeliverable Checks	OFCCP	15 Days	15 Days (After GFS Notification)	Part III.1.B.4
Checks Reissued and Mailed for All Returned Checks	GFS	15 Days	15 Days (After Receiving Alternate Contact Information)	Part III.1.B.4
Second Disbursement of Monetary Settlement for Any Returned/Uncashed Checks	GFS	120 Days	120 Days (After the First Distribution)	Part III.1.B.4
Uncashed Checks are Voided	GFS	-	120 Days (After Initial Mailing)	Part III.1.B.4