

Conciliation Agreement
Between the
U.S. Department of Labor Office of Federal Contract Compliance Programs
And
Colonna's Shipyard, Inc.

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) initiated complaint investigations of Colonna's Shipyard, Inc. (Colonna's), located at 400 E. Indian River Road, Norfolk, VA 23523, beginning on March 5, 2021. OFCCP found that Colonna's failed to comply with Executive Order 11246, as amended (E.O. 11246 or the Executive Order) and its respective implementing regulations at 41 C.F.R. Part 60-1.

OFCCP notified Colonna's of the specific violations and the corrective actions required in two Notification of Results of Investigations (NORI) issued on December 3, 2021, and in a subsequent NORI issued on February 16, 2022.

In the interest of resolving the violations without engaging in further legal proceedings and in exchange for sufficient and valuable consideration described in this document, OFCCP and Colonna's enter into this Conciliation Agreement (Agreement) and its attachments, and the parties agree to all the terms therein.

The attachments to this Agreement are deemed incorporated into this Agreement.

II. General Terms and Conditions

1. In exchange for Colonna's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246, based on the violations alleged in the NORI. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if Colonna's violates any provision of this Agreement, as set forth in Paragraph 11, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review Colonna's compliance with this Agreement. As part of this review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. Colonna's will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all hard copy or electronic reports and documents it requests, including those specified in this Agreement.
3. Nothing in this Agreement relieves Colonna's of its obligation to fully comply with the requirements of E.O. 11246, Section 503 of the Rehabilitation Act of 1973, as amended (Section 503); and/or the Vietnam Era Veterans Readjustment Assistance Act, as amended, (VEVRAA), their implementing regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.

4. Colonna's and OFCCP agree that any release of claims required by this Agreement will only pertain to claims under E.O. 11246, Section 503, and/or VEVRAA.
5. Colonna's agrees that it will not retaliate against any potential or actual beneficiary of this Agreement or against any person who files a complaint, who has provided information or assistance, or who participates in any manner in any proceeding in this matter.
6. The parties understand the terms of this Agreement and enter into it voluntarily.
7. This Agreement, including its attachments, constitutes the entire Agreement and represents the complete and final understanding of the parties. This Agreement contains all of the terms binding the parties and it supersedes all prior written and oral negotiations and agreements. Any modifications or amendments to this Agreement must be agreed upon in writing and signed by all parties. If an administrative error is found, OFCCP will work in good faith with all parties to make the corrections.
8. This Agreement becomes effective on the day it is signed by the District Director (Effective Date).
9. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
10. This Agreement will expire sixty (60) days after Colonna's submits its final progress report required in Section VIII, below, unless OFCCP notifies Colonna's in writing before the expiration date that Colonna's has failed to fulfill all of its obligations under the Agreement. In this instance, the Agreement is automatically extended until the date that OFCCP determines that Colonna's has met all of its obligations under the Agreement.
11. If Colonna's violates this Agreement:
 - a. The procedures at 41 C.F.R. 60-1.34 will govern:
 - i. OFCCP will send Colonna's a written notice stating the alleged violations and summarizing any supporting evidence.
 - ii. Colonna's shall have fifteen (15) days from receipt of the notice to respond, except in those cases in which such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
 - iii. If Colonna's is unable to demonstrate that it has not violated the Agreement, or if OFCCP's alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceeding through any other requirement.

- iv. In the event of a breach of this Agreement by Colonna's, OFCCP may elect to proceed to a hearing on the entire case and seek full make-whole relief, and not be limited to the terms agreed to in the Agreement.
 - b. Colonna's may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 C.F.R. 60-1.27, and/or other appropriate relief for violating this Agreement.
- 12. Colonna's denies any violation of the Executive Order, Section 503 or VEVRAA, nor has there been an adjudication on the merits regarding any such violation.
- 13. OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
- 14. The parties understand and agree that nothing in this Agreement is binding on other governmental departments or agencies other than the Office of Federal Contract Compliance Programs of United States Department of Labor.
- 15. Each party shall bear its own fees and expenses with respect to this matter.
- 16. This Agreement is limited to the facts of this case. Neither this Agreement, nor any part of the negotiations that occurred in connection with this Agreement, shall constitute admissible evidence with respect to any OFCCP policy, practice or position in any lawsuit, legal proceeding, administrative proceeding, compliance evaluation or audit, except for legal or administrative proceedings concerning the enforcement or interpretation of this specific Agreement.
- 17. All references to "days" in this Agreement, and in the Timeline included as Attachment B, are calendar days. If any deadline for an obligation scheduled to be performed under this Agreement falls on a weekend or a Federal holiday, that deadline will be extended to the next business day.

III. Alleged Discrimination Violation

- 1. **VIOLATION:** Colonna's discriminated against the complainant identified in Attachment A (Complainant) by terminating [REDACTED] employment because [REDACTED] disclosed and discussed the pay of others, in violation of 41 C.F.R. 60-1.4(a)(3).

IV. Financial Remedy

- 1. **Settlement Amount.** The total settlement amount of \$6,250.00 includes \$5,934.41 in back pay and \$315.59 in interest to resolve the violation set forth above, as follows:
- 2. **Allocation**
 - a. **Total Amount to be Allocated.** The back pay and interest amounts will be distributed to the Complainant as explained in this Section. The amount distributed

will deduct for the Complainant's share of payroll deductions required by law on the portion representing back pay only, such as federal (FICA/Federal Unemployment Tax Act (FUTA)), state or local insurance premiums or taxes.

- b. **Complainant's Eligibility to Receive Payments.** The settlement will be distributed to the Complainant (identified in Attachment A) if [REDACTED] timely responds to the Notice Process as explained below (hereinafter, Eligible Complainant).
- c. **Payments to Eligible Complainant.** Colonna's will issue a check or make an electronic payment to the Eligible Complainant in the stated amount, along with appropriate tax reporting forms (such as W-2 and Internal Revenue Service (IRS) Form 1099) by the date set forth on the Timeline. OFCCP will receive timely documentation of the payment made and any payments returned undelivered, or any checks not cashed, as set forth on the Timeline. A check that remains uncashed 180 days after the initial date the check was mailed to the Eligible Complainant will be void.
- d. **Tax Payments, Forms and Reporting.** Colonna's will pay Colonna's share of social security withholdings, and any other tax payments required by law from additional funds separate from the Settlement Fund. Colonna's shall mail to the Eligible Complainant an IRS Form W-2 for that portion of the payment representing back pay and an IRS Form 1099 for that portion of the payment representing interest. These IRS forms will be provided to the Eligible Complainant either at the time of payment, electronically or with the settlement check, or at the end of the year, as required by the IRS. The Eligible Complainant will not be required to complete a W-4 or W-9 in order to receive a payment under this settlement.

3. Notice Process

- a. **OFCCP and Colonna's Obligations under the Notice Process.** The Notice Process set forth in this Agreement is intended to provide the Complainant a meaningful opportunity to understand [REDACTED] rights and obligations and act on them in a timely manner.
- b. **Notice Documents.** Colonna's will distribute the Notice Documents to the Complainant identified in Attachment A consistent with the sample Notice Documents contained in Attachment C. The Notice Documents may include a Notice, Release of Claims and Income Verification Forms. The Notice Documents may also include other materials such as standard OFCCP or U.S. Department of Labor materials, instructions or a cover sheet, or other information that better enables the Complainant to understand [REDACTED] rights and obligations and act on them in a timely manner. The Notice Documents will make clear the information about the settlement is being provided by on behalf of the U.S. Department of Labor. As specified in the Timeline and as otherwise necessary to fulfill this Agreement, the parties will meet and confer on any reasonable modifications of the sample Notice Documents or additions to the material distributed by Colonna's, if proposed by either party.

- c. **Timeline.** Attachment B sets forth the agreed Timeline for Notice and for the parties' other obligations under this Agreement. The parties will meet and confer on any reasonable modifications to the Timeline proposed by either party.
- d. **Search for Complainant.** OFCCP shall provide Colonna with complete contact information in its possession or its authority to obtain on the Complainant by the date set forth in the Timeline.
- e. **Distribution of Mail Notice to Complainant.** Colonna's will provide initial notice by regular first-class mail. Colonna's will send copies of all the Notice Documents as defined above, including a postage-paid return envelope, by first class mail to the best available mailing address for the Complainant, by the date set forth in the Timeline. If the envelope from the initial mail notice is returned with forwarding addresses, Colonna's will re-mail the Notice Documents within five (5) days of receipt of the forwarding address.

Based on the response to the initial mail notice, the parties will meet and confer by the date set forth in the Timeline to assess the results of the initial mail notice and to ensure that the second round of mail notice maximizes the potential response rate. A second mail notice will be sent to the Complainant with a valid address if [REDACTED] fails to respond to the first mail notice unless the parties agree otherwise.

- f. **Distribution of Notice by Other Means.** Colonna's shall work with OFCCP to develop a recommended plan for Notice by other means in addition to first class mail.
- g. **Notice Deadline.** The final deadline for the Complainant to respond to the notice is set forth in the Timeline. The parties will prominently display this deadline on all materials they distribute in paper or online form regarding this Agreement and explain that failure to respond by this deadline will result in a forfeiture of any relief provided by this Agreement.
- h. **Technical Assistance.** The parties will timely respond to any inquiries from the Complainant using information consistent with this Agreement and the Notice Documents and will document all inquiries and the result. OFCCP will provide contact information for the Complainant to contact OFCCP regarding this Agreement. The parties will prominently display this contact information on all materials they distribute in paper or online form regarding this Agreement. Colonna's will provide OFCCP contact information to the Complainant with questions or concerns
- i. **Exchange of Information Regarding Complainant.** Colonna's and OFCCP will timely exchange information regarding the Complainant, including updated contact information and the results of any technical assistance provided.

- j. **Final List.** The final list will include the Complainant if [REDACTED] timely responds to the Notice by the deadline set forth in the Timeline. The parties will establish the Final List by the date set forth in the Timeline. The parties will meet and confer on any outstanding issues or questions regarding the Final List. OFCCP shall make the final determinations of eligibility but will make every effort to negotiate in good faith to resolve any dispute about the Final List. Colonna will provide to OFCCP any information necessary to determine the Final List.
- k. **Documentation of Payments.** By the deadline set forth in the Timeline, Colonna's will provide OFCCP with a copy of the cancelled check or electronic documentation of the payment to the Complainant, including the amount paid, the date payment was sent, the date payment was received, or the check cashed, and any uncashed or returned check.
- l. **Colonna's Expenses.** Colonna's will pay all expenses associated with carrying out its duties pursuant to this Section, from funds separate and apart from the amount designated in this Agreement for the Settlement.

V. Additional Individual Relief

- 1. **Personnel File.** Colonna's shall remove all references, if any, to any charge or allegation of discrimination against Colonna's and this complaint from the Complainant's personnel file. Colonna's will remove all references, if any, to any discipline or termination from the Complainant's personnel file. The reason for Complainant's separation from Colonna's will be listed as a voluntary separation. Colonna's human resources personnel, and other officials/managers responsible for providing employment references, may not disclose any information or refer to any charge of discrimination or this complaint in responding to requests for information about the Complainant. When fielding inquiries about the Complainant, Colonna's shall provide a neutral job reference consisting of employment dates and positions held and shall not discuss the reasons for the Complainant's job separation.

IV. Modifications to Employment Practices and Other Non-Monetary Relief

Workplace Environment

Colonna's will:

- a. Immediately cease using the employment policies and practices that negatively affect applicants or employees that discuss, disclose, or inquire about the pay of others consistent with applicable law.
- b. Within ninety (90) calendar days of the Effective Date of this Agreement, Colonna's will conduct an internal review to evaluate whether it has policies that prohibit or tend to restrict employees or applicants from discussing or disclosing their compensation or the compensation of others consistent with applicable law. Based on what it learns,

Colonna's will write improved guidelines for its pay transparency practices consistent with applicable law.

- c. Disseminate to all employees its revised employee manuals and handbooks to include the nondiscrimination provisions of 41 C.F.R. 60-1.4(a)(3).

VI. Alleged Technical Violations and Remedies

1. **VIOLATION:** Colonna's discriminated against its employees by prohibiting employees from discussing or disclosing the compensation of others. Specifically, Colonna's used the Code of Ethics and Standards to restrict employees from discussing or disclosing their compensation or the compensation of others, in violation of 41 C.F.R. 60-1.4(a)(3).

REMEDY: Within ninety (90) calendar days of the Effective Date of this Agreement, Colonna's will train all its employees who are involved in employee compensation decisions and all individuals with supervisory status on Colonna's non-discriminatory obligations for individuals who inquire about, discuss, or disclose compensation consistent with applicable law. Within 90 calendar days of the Effective Date of this Agreement, Colonna's will inform all its employees in writing of Colonna's non-discriminatory obligations for individuals who inquire about, discuss, or disclose their compensation or the compensation of another employee or applicant consistent with applicable law.

2. **VIOLATION:** Colonna's failed to incorporate the nondiscrimination provisions of 41 C.F.R. 60-1.4(a)(3) into its employee manuals, in violation of 41 C.F.R. § 60-1.35(c).

REMEDY: Within ninety (90) calendar days of the effective date of this Agreement, Colonna's will incorporate the nondiscrimination provisions of 41 C.F.R. 60-1.4(a)(3) into its employee manuals.

VII. OFCCP Monitoring Period

1. **Recordkeeping.** Colonna's agrees to retain all records relevant to the violation cited in Sections III and VII above and the reports submitted in compliance with Paragraph 2, below. These records include underlying data and information such as Human Resources Information System (HRIS) and payroll data, job applications and personnel records, and any other records or data used to generate the required reports. Colonna's will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.
2. **Contractor Reports.**
 - a. **Schedule and Instructions.** Colonna's agrees to furnish OFCCP with the following report during the Monitoring Period according to the following schedule: Progress Report: Due on July 18, 2022.

The progress report will include:

i. For Discrimination Violation 1:

- 1) A copy of the Notice to Complainant sent to the Complainant identified in Attachment A.
- 2) A copy of the Claim Form and Release of Claims under Executive Order 11246 returned by the Complainant identified in Attachment A.
- 3) Documentation of the monetary payment to the Complainant as specified in the Remedy to Violation 1 in Part III. The documentation must include a copy of the check and the date the check cleared the bank.
- 4) A copy of Complainant's personnel file reflecting the changes specified in Part V of this Agreement.

ii. For Technical Violation 1:

- 1) Documentation of training, for all employees involved in compensation and all employees who hold supervisory status, on Colonna's non-discrimination obligations for employees and applicants who inquire about, discuss, or disclose compensation. This documentation will include:
 - Date, time, and place of the training;
 - Name and job title of each trainer;
 - A sign-in sheet listing the name and job title of each attendee; and
 - Copies of the training and presentation materials presented.
- 2) Documentation of the written notification to employees informing them of Colonna's non-discrimination obligations for individuals who inquire about, discuss, or disclose compensation and their rights under 41 C.F.R. § 60-1.4(a)(3), which can be met with acknowledgements reflecting receipt of the most recent handbook containing the same.

iii. For Technical Violation 2:

- 1) A copy of Colonna's revised employee manual incorporating the provisions of 41 C.F.R. § 60-1.4(a)(3).
- 2) The employee roster as of the effective date of the revised manual. The roster should include the employees' name, job title, and designation as a supervisor or non-supervisor.
- 3) Documentation to show each employee, identified in item ii above, received a copy of the employee manual identified in item i above.
- 4) Copies of the modified policies created in accordance with Part VI of this Agreement, if not contained in the employee manual provided pursuant to VII(2)(a)(iii)(1) above.

Colonna's will submit the report to Shanae Moody, District Director at

(b) (6), (b) (7)(C). Colonna's and OFCCP have a common interest in the information being provided in the reports pursuant to this Agreement. To the extent any of the reports Colonna's provides in accordance with this agreement are customarily kept private or closely-held, and Colonna's believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, Colonna's will provide such reports to OFCCP marked as "Confidential." In the event of a FOIA request, OFCCP will treat any such documents received as confidential documents to the maximum extent of law.

3. **Close of Monitoring Period and Termination of Agreement.** This Agreement shall remain in effect until the monitoring period is completed. The monitoring period will close once OFCCP accepts Colonna's final progress report as set forth in Part II, Paragraph 10 above. If OFCCP fails to notify Colonna's in writing within sixty (60) days of the date of the final progress report that Colonna's has not fulfilled all of its obligations under the Agreement, OFCCP will be deemed to have accepted the final report and the Monitoring Period and this Agreement will terminate. If OFCCP notifies Colonna's within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines Colonna's has met all of its obligations under the Agreement.

IX. SIGNATURES

The person signing this Agreement on behalf of Colonna's personally warrants that he or she is fully authorized to do so, that Colonna's has entered into this Agreement voluntarily and with full knowledge of its effect, and that execution of this Agreement is fully binding on Colonna's.

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Colonna's Shipyard, Inc., 400 E. Indian River Road, Norfolk, VA 23523.

(b) (6), (b) (7)(C)

Bob Boyd
VP, Strategic Growth and Development
Colonna's Shipyard, Inc.

DATE: 3.9.22

(b) (6), (b) (7)(C)

Shanae Moody
District Director
OFCCP, Arlington District Office

DATE: March 10, 2022

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(E)

Compliance Officer
OFCCP, Arlington District Office

DATE: 03/10/2022

Attachments:

- A. List of Affected Employee
- B. Timeline
- C. Notice Documents

ATTACHMENT A

COMPLAINANT

1. (b) (6), (b) (7)(C)

ATTACHMENT B

ACTIVITY	DATE
Colonna's mails/emails Notice Documents (First Mailing)	April 1, 2022
Deadline for Complainant to Reply to First Notice	May 2, 2022
Colonna's Notifies OFCCP if complainant failed to respond to first Notice	May 2, 2022
OFCCP provides Colonna's the complainant's updated contact information	May 2, 2022
Colonna's Mails/Emails Notice Documents (Second Mailing)	May 19, 2022
Deadline for Complainant to Reply to Second Notice	June 3, 2022
Colonna's mails/electronically deposits back-pay and interest check/amount	June 18, 2022
Progress Report Due	July 18, 2022

ATTACHMENT C

NOTICE TO COMPLAINANT

Dear (b) (6), (b) (7)(C):

Colonna's Shipyard, Inc. (Colonna's) and the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) have entered into a Conciliation Agreement (Agreement) to remedy the violations of Executive Order 11246 (E.O. 11246) that OFCCP found during the investigation of your complaint against Colonna's. Colonna's has not admitted to any violation of E.O. 11246 and there has not been any adjudicated finding that Colonna's violated any laws. OFCCP and Colonna's entered into the Agreement to resolve the matter without resorting to further legal proceedings.

Under the Agreement, you may be eligible to receive a payment of \$6,025.00 (\$5,934.41 in back pay and \$315.59 in interest) (less deductions required by law). Under the terms of the Agreement, it may take up to six months from the date of this letter before you receive your payment. To be eligible for a payment, you must complete, sign, and return the enclosed Release of Claims Form. This form should be mailed as soon as possible to the address or email address below. **In order for you to be eligible to participate in the settlement, your documents must be received by [insert date 30 days of the postmarked date on the envelope containing this notice].**

[Name]
[Position]
Company Name
[Address]
[Email Address]

You may use the enclosed postage-paid return envelope to return the completed and signed Release of Claims Form.

If you have any questions you may call [name] at Colonna's at [phone number], or OFCCP Compliance Officer (b) (6), (b) (7)(E) at (b) (6), (b) (7)(E). Your call will be returned as soon as possible.

IF YOU FAIL TO COMPLETE AND RETURN THE ENCLOSED DOCUMENT TO COLONNA'S BY [Insert date] YOU WILL NOT BE ELIGIBLE TO RECEIVE A PAYMENT.

Sincerely,

[Name]

Enclosure
Release of Claims Form

RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246, AS AMENDED

PLEASE CAREFULLY READ THE ENCLOSED NOTICE BEFORE COMPLETING THIS RELEASE. YOU MUST RETURN A SIGNED RELEASE TO RECEIVE MONEY FROM THE SETTLEMENT

This Release of Claims (Release) under Executive Order 11246 is a legal document. This document states that in return for Colonna's Shipyard, Inc. (Colonna's) providing you with money, you agree that you will not file any lawsuit against Colonna's for allegedly violating Executive Order 11246, as amended, in connection with discrimination on the basis of discussing, disclosing, or inquiring about pay. It also says that Colonna's 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.

In consideration of the payment of \$6,250.00 (less deductions required by law) by Colonna's to me, which I agree is acceptable, I agree to the following:

I.

I hereby waive, release and forever discharge Colonna's, 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 to my termination on the basis of my disclosing or discussing pay at any time prior to the date of my signature on this Release. By signing this agreement, I agree that I have been made whole for any claim that could have been brought under Executive Order 11246, as amended, relating to my termination with Colonna's through the Effective Date of this Release.

II.

I understand that Colonna's denies that it treated me unlawfully or unfairly in any way and that Colonna's 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 described above to resolve without further legal proceedings all issues related to OFCCP's complaint investigation of Colonna's initiated on March 5, 2021. I further agree that the payment of the aforesaid sum by Colonna's to me is not to be construed as an admission of any liability by Colonna's.

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 Colonna's such that it is received by [insert date], I will not be entitled to receive any payment (less deductions required by law).

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

Signature: _____ Date: _____

Printed Name: _____