

## **Conciliation Agreement**

**Between**

**The U.S. DEPARTMENT OF LABOR**

**OFFICE OF FEDERAL CONTRACT COMPLIANCE  
PROGRAMS**

**And**

**THE AMERICAN BOTTLING COMPANY**

### **I. PRELIMINARY STATEMENT**

The Office of Federal Contract Compliance Programs (“OFCCP”) evaluated The American Bottling Company (“ABC”) establishment located at 2400 Holly Hall Street, Houston, Texas, beginning on November 24, 2012. OFCCP found that ABC failed to comply with Executive Order 11246 as amended (“E.O. 11246” or “the Executive Order”), and its implementing regulations at 41 Code of Federal Regulations (“CFR”) Chapter 60.

OFCCP notified ABC of the specific violations and the corrective actions required in a Notice of Violations (NOV) issued on December 19, 2019.

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 ABC enter into this Conciliation agreement (“Agreement”) and its attachments, and the parties agree to all the terms herein.

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

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

1. In exchange for ABC’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 NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if ABC violates any provision of this Agreement, as set forth in Paragraph I, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review ABC’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. ABC 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 ABC 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), the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA), their implementing regulations at 41 CFR Chapter 60, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.
4. ABC 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. ABC 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 corrections.
8. This Agreement becomes effective on the day it is signed by the Regional Director of the Southwest and Rocky Mountain Region (the "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 ABC submits its final progress report required in Section VIII, below, unless OFCCP notifies ABC in writing before the expiration date that ABC 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 ABC has met all of its obligations under the Agreement.
11. If ABC violates the Conciliation Agreement:
  - a. The procedures set forth at 41 CFR § 60-1.34 will govern:
    - i. OFCCP will send ABC a written notice stating the alleged violations and summarizing any supporting evidence.

- ii. ABC 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 ABC 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.
  - iv. In the event of a breach of this Agreement by the contractor, 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. ABC 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. ABC denies any violation of the Executive Order, Section 503 or VEVRAA, and there has been no 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 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 5, 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. VIOLATIONS AND REMEDIES**

1. VIOLATION: OFCCP found that ABC was not in compliance with 41 CFR § 60-1.4(a) (1). OFCCP’s analysis of ABC’s hiring process and selection procedures for full-time Merchandiser positions revealed alleged discrimination against female and Black applicants during the period November 24, 2012 through November 24, 2014. OFCCP’s analysis resulted in a statistically significant hiring disparity with a shortfall of 16 female applicants and 26 Black applicants.

2. VIOLATION: OFCCP found that ABC was not in compliance with 41 CFR § 60-1.4(a) (1). OFCCP's analysis of ABC's hiring process and selection procedures for part-time Merchandiser positions revealed alleged discrimination against Black applicants, when compared to similarly-situated Hispanic applicants (favored group), during the period November 24, 2013 through November 24, 2014. OFCCP's analysis resulted in a statistically significant hiring disparity with a shortfall of 7 Black applicants.
3. VIOLATION: OFCCP found that ABC was not in compliance with 41 CFR § 60-1.4(a) (1). OFCCP's analysis of ABC's hiring process and selection procedures for full-time Loader positions revealed alleged discrimination against Black applicants, when compared to similarly-situated Hispanic applicants (favored group), during the period November 24, 2012 through November 23, 2013. OFCCP's analysis resulted in a statistically significant hiring disparity with a shortfall of 4 Black applicants.
4. VIOLATION: OFCCP found that ABC was not in compliance with 41 CFR § 60-1.4(a) (1). OFCCP's analysis of ABC's hiring process and selection procedures for full-time Loader positions revealed alleged discrimination against female applicants during the period November 24, 2012 through November 24, 2014. OFCCP's analysis resulted in a statistically significant hiring disparity with a shortfall of 12 female applicants.

REMEDY for Violations #1 thru #4: ABC agrees to ensure equal employment in its hiring practices for full-time and part-time Merchandiser positions, and full-time Loader positions, and provide an appropriate remedy to the class of rejected Black and female applicants to include back pay, hiring, and benefits. ABC recently provided EEO training to recruiters and human resources employees involved in the hiring and selection process to ensure the violations do not recur. ABC agrees to take the following corrective actions in accordance with the deadlines set forth in the Timeline (Attachment 5):

- a) Revision of the Hiring Process, Implementation, and Training: ABC has revised its policies and procedures that the company uses to recruit, track, and hire applicants for full-time and part-time Merchandiser positions, and full-time Loader positions ("Revised Hiring Process"), which includes the following:
  - i. Procedures to recruit job seekers for full-time and part-time Merchandiser positions, and full-time Loader positions including mandatory postings, outreach efforts, and the use of the Internet as a recruitment procedure.
  - ii. The qualifications and criteria to be used to place job seekers and applicants into full-time and part-time Merchandiser, and full-time Loader applicant pool(s).
  - iii. The qualifications and criteria to be used to eliminate and/or select job seekers and applicants at each step of the hiring process, including the qualifications and criteria to be used in any application screen, panel interview, post-hiring screen, or other selection procedure.

- iv. Procedures to ensure job seekers and applicants are tracked, and decisions are documented at each step in the hiring process.
- v. Procedures to ensure that documents are retained in accordance with 41 CFR § 60-1.12(a) and Part 60-3.

ABC will fully implement the Revised Hiring Process. ABC has recently provided training to all individuals involved in any way in recruiting, selecting or tracking job seekers and applicants for full-time and part-time Merchandiser positions, and full-time Loader positions.

- b) Notification: In accordance with the Timeline, ABC must notify the Class Members of the terms of this Agreement by mailing by first class mail, to each Class Member the Notice to Affected Class (Attachment 2, "Notice"), Information Verification & Employment Interest Form (Attachment 3, "Interest Form"), the Release of Claims Under Executive Order 11246 (Attachment 4, "Release"), and a postage paid return envelope. ABC will notify OFCCP of all letters returned as undeliverable on a weekly basis. In addition, ABC will provide OFCCP with a list of the Class Members who have not yet responded to the Notice and/or have not returned a fully executed Interest Form and Release in accordance with the Timeline (including, for example, any Class Members who have returned only one of the two required forms or who failed to sign a form as required). OFCCP will then attempt to obtain and provide updated addresses to ABC. OFCCP may also attempt to locate the Class Members who have not responded, and any Class Members who submitted incomplete forms during this same period. For all such Class Members where OFCCP obtains updated contact information, OFCCP will provide relevant details, in writing, to ABC. ABC agrees to mail by first class mail a second Notice, Interest Form, Release, and postage paid return envelope to all Class Members for whom updated addresses are obtained.
- c) Eligibility: All Class Members listed on Attachments 1A-1C who sign and return the Interest and Release forms to ABC by the deadline set forth in the Notice ("Eligible Class Members") and meet the race and gender requirements, will be eligible for a payment, and those Eligible Class Members who indicate an interest in employment will be eligible to be considered for a job pursuant to this Agreement. If a Class Member receives but does not return the Release and Interest Forms to ABC by the prescribed deadline, the Class Member will no longer be entitled to any relief pursuant to this Agreement.

By the date indicated in the Timeline, ABC will provide OFCCP with a list of Eligible Class Members who returned the Claim Form and Release by the due date, along with a copy of each executed Claim Form and Release it received. OFCCP will approve the final list of Eligible Class Members or discuss with ABC any issues necessary to finalize the list, such as the inclusion or exclusion of certain individuals. The monetary payment discussed in paragraph (e) below will be divided equally among all Eligible Class Members on the final approved list. All

Eligible Class Members will be entitled to a share of the monetary settlement regardless of whether they are interested in employment with ABC.

- d) Employment: As positions become available, ABC will consider for employment qualified Eligible Class Members who fully execute an Interest Form and Release, who are not currently employed by ABC, and who express an interest in employment with ABC. ABC will continue to consider and hire qualified Eligible Class Members until ABC satisfies its hiring requirements as listed below or until the list of Eligible Class Members expressing an interest in employment is exhausted, whichever occurs first.
- 42 (16 female and 26 Black) Eligible Class Members are hired into the full-time Merchandiser position,
  - 7 Eligible Black Class Members are hired into the part-time Merchandiser position, and
  - 16 (12 female and 4 Black) Eligible Class Members are hired into the full-time Loader position<sup>1</sup>.

Eligible Class Members will be considered in the order that ABC receives their Interest Forms. If ABC receives more than one Interest Form on any given day, those Eligible Class Members will be considered for employment based on the date of their original application, with the earliest date being considered first. ABC must complete its hiring obligations under this section within 24 months of the Effective Date of this Agreement or until the list of Eligible Class Members expressing an interest in employment is exhausted. If ABC is not able to hire the above shortfalls or exhaust the list of Eligible Class Members expressing an interest in employment within 24 months, OFCCP may extend the term of this Agreement until ABC satisfies its hiring requirements.

Eligible Class Members will be allowed at least two (2) weeks to report for work after receiving a written job offer by ABC. Pursuant to this Agreement, Eligible Class Members hired into full-time Merchandiser, part-time Merchandiser, and full-time Loader positions must be paid the current wage rate for full-time Merchandiser, part-time Merchandiser, and full-time Loader positions, and must be provided with the same benefits and opportunity to earn overtime and shift differentials as other similarly situated employees.

- e) Monetary Settlement. ABC agrees to distribute \$590,000.00 (back pay of \$531,000 and interest of \$59,000) in equal shares among all Eligible Class Members on the final approved list. The monetary settlement is a negotiated amount that represents estimated back pay and takes into account tenure, applicable seniority-buy outs, interest, and interim earnings. The back pay and interest amount, less legal deductions required by law on the portion representing back pay only (such as federal, state and/or local taxes and the Eligible Class Members' share of FICA taxes), will be distributed in equal shares among all Eligible Class Members on the final approved

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<sup>1</sup> Black female hires in Full-Time Merchandiser or Full-Time Loader positions can be applied to both shortfalls.

list. ABC 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 that portion of the payment representing interest. These IRS forms will be mailed in the time required by law. ABC will disburse the monetary settlement in accordance with the Timeline after OFCCP approves the final list of Eligible Class Members.

By the date indicated in the Timeline, ABC will provide OFCCP with a list of Eligible Class Members via e-mail sent to District Director Karen Hyman at (b) (6), (b) (7)(C)@dol.gov whose check was returned as undeliverable. OFCCP will attempt to locate the Eligible Class Members and if OFCCP obtains an alternate address, ABC will re-mail checks by the date indicated in the Timeline. Any check that remains uncashed as of the deadline set forth in the Timeline will be void. With respect to any uncashed funds, ABC will make a second distribution to all Eligible Class Members who cashed their first check within the required period if the remaining uncashed amount will result in a second payment of \$30.00 or more to such Eligible Class Members. ABC will mail the second distribution to such Eligible Class Members by the date specified in the Timeline.

If the total amount of the uncashed funds would result in a payment of less than \$30.00 to such Eligible Class Members, ABC will use those uncashed funds to provide training in equal employment opportunity to its personnel in addition to the training it is obligated to provide in the Revised Hiring Process described in Part III – Paragraph (a) of Remedy for Violation 1.

5. VIOLATION: ABC failed to preserve personnel or employment records in accordance with the requirements of 41 CFR § 60-1.12(a) and 60-3. Specifically, from November 24, 2012 through November 24, 2014, ABC failed to preserve and make available to OFCCP complete and accurate employment records, including interview questionnaires and offer letters.

REMEDY: ABC will ensure that all records are collected and maintained in accordance with the requirements of 41 CFR § 60-1.12(a) and 60-3.

6. VIOLATION: ABC failed to maintain and have available an accurate adverse impact analysis in accordance with the requirements of 41 CFR § 60-3.15A(2) and 60-3.4. Specifically, ABC submitted an adverse impact analysis, which used an inaccurate applicant pool for its analysis that was inconsistent with the Internet Applicant provision.

REMEDY: ABC will conduct adverse impact analyses in accordance with 41 CFR § 60-3.4 and 60-3.15A, on at least an annual basis for purposes of determining whether adverse impact exists against applicants based on race, gender, or ethnic group in hiring, promotion, termination, and other personnel activities. These analyses will be done by job for each group constituting at least 2% of the labor force in the relevant labor area or 2% of the applicable workforce. If adverse impact is identified in the total

selection process, ABC will evaluate each individual component of the selection process for adverse impact.

If adverse impact is found to exist in any of the individual components of the selection process, ABC will validate each such component in accordance with the Uniform Guidelines on Employee Selection Procedures or utilize selection procedures which do not result in adverse impact.

#### **IV. REPORTS REQUIRED**

ABC must submit the documents and reports described below via email to:

Karen N. Hyman, District Director  
OFCCP-Houston District Office  
2320 La Branch Street, Suite 1103  
Houston, TX 77004

1. Pursuant to paragraph (a) of Remedy 1, within the prescribed Timeline, ABC will submit a copy of the written Revised Hiring Process.
2. Pursuant to paragraph (a) of Remedy 1, with the first progress report below, ABC will provide OFCCP documentation that all managers, supervisors and other personnel involved in recruiting, selecting, or tracking of applicants for full-time and part-time Merchandiser positions, and full-time Loader positions have been trained on the Revised Hiring Process. The documentation shall 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.
3. Within the prescribed timeframes, ABC shall submit all documents and information referenced in paragraphs (b) and (c) of Remedy 1. Such documents and information must include, but are not necessarily limited to, letters returned as undeliverable, a list of Eligible Class Members who have not responded to or returned a fully executed Interest Form and Release by the due date, and a list of Eligible Class Members who have timely returned a signed Interest Form and Release.

The above 3 items are due by the dates listed in the Timeline.

ABC must submit four progress reports covering each six-month period this Agreement is in effect. The first progress report will be due on January 30, 2021 and will cover the period July 1, 2020 through December 31, 2020. Each subsequent report must cover the successive six-month period and must be submitted within 30 calendar days after the close of that six-month period.

Pursuant to Violations 1 thru 4, ABC will submit the following in each semi-annual progress report:

1. Documentation of monetary payments to all Eligible Class Members as specified in paragraph (e) of Remedy 1. The documentation shall include the names of Eligible Class Members who were paid, and for each Eligible Class Member, the check number and the amount of the check. ABC shall provide OFCCP with copies of all canceled checks upon request;
2. Documentation of specific hiring activity for Eligible Class Members who were offered and/or hired into the impacted positions, including the name, date of offer/hire, the job title of the position offered/hired into, whether the offer was accepted and, if so, start date and the rate of pay;
3. For Eligible Class Members who were considered for employment but were not hired, ABC will provide the reason for non-selection along with all relevant documentation (e.g., failure to complete the selection process, failure to appear for interview, failure to submit to and/or satisfy pre-employment screening, and documentation that the Eligible Class Member declined a job offer, etc.).

ABC will continue submitting the information in subsections 1-3 above in the four (4) semi-annual progress reports until the monetary distribution process under this Agreement has been completed and the offer/hire obligations have been met or the list of Eligible Class Members have been exhausted, whichever occurs first. If complete documentation is provided in one or more progress reports, it need not be submitted in a subsequent progress report.

Pursuant to Violations 5-6, ABC will submit the following in each progress report:

- 1) The total number of job seekers for full-time and part-time Merchandiser positions, and full-time Loader positions during the respective reporting period.
- 2) The total number of applicants and hires and the breakdown by race, gender and ethnic group for full-time and part-time Merchandiser positions, and full-time Loader positions during the respective reporting period, including all part-time and seasonal workers.
- 3) The results of ABC's analysis as to whether its total selection process has adverse impact, as defined in 41 C.F.R. § 60-3.4D, on those members of the group set forth in 41 C.F.R. § 60-3.4B. For purposes of the adverse impact analysis, ABC must not include hires made of Eligible Class Members pursuant to this Agreement in that analysis. With respect to the adverse impact analysis, for all progress reports except the first, ABC shall combine the data for the current report with the data from the previous report(s) to analyze at least a 12-month period. OFCCP may analyze a period longer than 12 months to determine if adverse impact exists.
- 4) For each case where the total selection process has an adverse impact, as defined in 41 C.F.R. § 60-3.4D, the results of ABC's evaluation of the individual components of the selection process for adverse impact.

- 5) The actions taken by ABC upon determining that any component of the selection process has an adverse impact on members of the group set forth in subparagraphs 1 and/or 2 above.

OFCCP will review each progress report and respond in writing if the report is insufficient within 60 days of receipt.

ABC will retain all records and data pertinent to the violations resolved by this Agreement and to the reports submitted under it, including the underlying information on which the reports are based, until the expiration of this Agreement or consistent with regulatory requirements, whichever is later.

## **V. SIGNATURES**

This Conciliation Agreement is hereby executed by and between OFCCP and ABC.

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

**Kimberly Bennett**  
Vice President, Assistant General Counsel  
Keurig Dr Pepper

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

**Melissa L. Speer**  
Regional Director  
Southwest and Rocky Mountain Region  
OFCCP

DATE: June 30, 2020

DATE: July 1, 2020

## ATTACHMENTS

- 1A Affected Class Members-Full-time Merchandiser
- 1B. Affected Class Members-Part-time Merchandiser
- 1C. Affected Class Members-Full-time Loader
2. Notice to Affected Class
3. Information Verification Form and Employment Interest Form
4. Release of Claims Under Executive Order 11246
5. Timeline

**Attachment 1A - Full-Time Merchandisers  
Affected Class Members: Females**

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\*\*\* Part of the Black Part-Time Merchandiser Class, but only included on this class.

\$\$ Part of the Black Full-Time Loader Class, but only included on this class.

# Part of Female Full-Time Loader Class, but only included on this class.

Attachment 1A - Full-Time Merchandisers  
Affected Class Members: Blacks

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| 78  | (b) (6), (b) (7)(C) |
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| 118 | (b) (6), (b) (7)(C) |

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| 119 | (b) (6), (b) (7)(C) |
| 120 | (b) (6), (b) (7)(C) |
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| 159 | (b) (6), (b) (7)(C) |

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| 160 | (b) (6), (b) (7)(C) |
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| 201 | (b) (6), (b) (7)(C) |
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| 242 | (b) (6), (b) (7)(C) |
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| 283 | (b) (6), (b) (7)(C) |
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| 324 | (b) (6), (b) (7)(C) |
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| 365 | (b) (6), (b) (7)(C) |
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| 406 | (b) (6), (b) (7)(C) |
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| 447      | (b) (6), (b) (7)(C) |
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\*\*\* Part of the Black Part-Time Merchandiser Class, but only included on this class.

\$\$ Part of the Black Full-Time Loader Class, but only included on this class.

**Attachment 1B - Part-Time Merchandisers  
Affected Class Members: Blacks**

| COUNT | FIRST NAME          | LAST NAME |
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| 1     | (b) (6), (b) (7)(C) |           |
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| 39 | (b) (6), (b) (7)(C) |  |
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| 78  | (b) (6), (b) (7)(C) |
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| 119 | (b) (6), (b) (7)(C) |
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| 160 | (b) (6), (b) (7)(C) |
| 161 | (b) (6), (b) (7)(C) |
| 162 | (b) (6), (b) (7)(C) |
| 163 | (b) (6), (b) (7)(C) |
| 164 | (b) (6), (b) (7)(C) |
| 165 | (b) (6), (b) (7)(C) |
| 166 | (b) (6), (b) (7)(C) |
| 167 | (b) (6), (b) (7)(C) |
| 168 | (b) (6), (b) (7)(C) |
| 169 | (b) (6), (b) (7)(C) |
| 170 | (b) (6), (b) (7)(C) |
| 171 | (b) (6), (b) (7)(C) |
| 172 | (b) (6), (b) (7)(C) |
| 173 | (b) (6), (b) (7)(C) |
| 174 | (b) (6), (b) (7)(C) |
| 175 | (b) (6), (b) (7)(C) |
| 176 | (b) (6), (b) (7)(C) |
| 177 | (b) (6), (b) (7)(C) |
| 178 | (b) (6), (b) (7)(C) |
| 179 | (b) (6), (b) (7)(C) |
| 180 | (b) (6), (b) (7)(C) |

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| 181 | (b) (6), (b) (7)(C) |
| 182 | (b) (6), (b) (7)(C) |
| 183 | (b) (6), (b) (7)(C) |
| 184 | (b) (6), (b) (7)(C) |
| 185 | (b) (6), (b) (7)(C) |
| 186 | (b) (6), (b) (7)(C) |
| 187 | (b) (6), (b) (7)(C) |
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| 198 | (b) (6), (b) (7)(C) |
| 199 | (b) (6), (b) (7)(C) |
| 200 | (b) (6), (b) (7)(C) |

**Attachment 1C - Full-Time Loaders  
Affected Class Members: Females**

| COUNT | FIRST NAME          | LAST NAME |
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| 77  | (b) (6), (b) (7)(C) |
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| 80  | (b) (6), (b) (7)(C) |
| 81  | (b) (6), (b) (7)(C) |
| 82  | (b) (6), (b) (7)(C) |
| 83  | (b) (6), (b) (7)(C) |
| 84  | (b) (6), (b) (7)(C) |
| 85  | (b) (6), (b) (7)(C) |
| 86  | (b) (6), (b) (7)(C) |
| 87  | (b) (6), (b) (7)(C) |
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| 89  | (b) (6), (b) (7)(C) |
| 90  | (b) (6), (b) (7)(C) |
| 91  | (b) (6), (b) (7)(C) |
| 92  | (b) (6), (b) (7)(C) |
| 93  | (b) (6), (b) (7)(C) |
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**Attachment 1C - Full-Time Loaders  
Affected Class Members: Blacks**

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\*\*\* Part of the Black Part-Time Merchandiser Class, but only included on this class.

## ATTACHMENT 2

### NOTICE TO AFFECTED CLASS MEMBERS

Dear [NAME]:

We are writing to provide information about a legal settlement between the U.S. Department of Labor and The American Bottling Company ("ABC") that *may* benefit you. This settlement involves claims of alleged 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.

#### ARE YOU AFFECTED?

Female and Black or African American job seekers who applied and were rejected for Full-time Merchandiser and/or Loader positions during the period November 24, 2012 through November 24, 2014; and Part-Time Merchandiser positions during the period November 24, 2013 through November 24, 2014 at the ABC facility located at 2400 Holly Hall in Houston, Texas 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 ABC's hiring practices. OFCCP is the government agency responsible for enforcing the equal employment opportunity and affirmative action requirements that apply to federal contractors. OFCCP asserts that ABC discriminated against female and Black or African American applicants in hiring for Merchandiser and Loader positions during the timeframe described above. ABC denies those claims. Ultimately, OFCCP and ABC have agreed to resolve the issue through a Conciliation Agreement. A Conciliation Agreement is a legal document that explains the terms of an agreement to settle allegations raised by OFCCP. As a result, ABC has agreed to pay money to female and Black or African American job seekers who applied for Merchandiser and Loader positions at the ABC facility located at 2400 Holly Hall in Houston, Texas during the timeframe described above. ABC will also offer jobs to some of these class members. By entering into this Conciliation Agreement, ABC has not admitted, nor has there been any adjudicated finding, that ABC violated any laws when you were not hired for the position for which you applied.

#### WHAT DOES THIS MEAN FOR YOU?

Because you applied for a Merchandiser and/or Loader position during the relevant timeframe, this settlement may provide you with a payment of at least \$ \_\_\_\_\_ (before taxes). This payment represents your share of back wages and other payments ABC is making to settle the case. The final amount you will receive will be reduced by deductions for items such as income tax withholding and Social Security contributions.

ABC will be making job offers for part-time/full-time Merchandiser and Loader 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 ABC, please express your interest on the enclosed Claim Form. To be hired, you must complete an electronic application, successfully pass pre-employment screening, which includes a background check and drug screen; and accept the conditions of the job according to the job posting.

To receive these benefits, you will need to release (agree to 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 and/or the Settlement Administrator.

Please do not ignore these forms or throw them away. Otherwise, you could miss an opportunity to participate in this settlement.

To be eligible for a payment and/or job offer, you must complete, sign, and return both of the following enclosed forms: (1) the Information Verification/Claim Form; and (2) the Release of Claims. You should complete and mail back these forms as soon as possible using the enclosed postage-paid envelope. They *must* be received at the address below no later than [DATE 130 days from the effective date] for you to be entitled to participate in this settlement:

#### SETTLEMENT ADMINISTRATOR

Attention: NAME

POSITION

ADDRESS

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

If you fail to return both of the required forms by the deadline above, or if your documents do not verify your eligibility, you will not be eligible to receive any money under the settlement.

Sincerely,  
(NAME)

Enclosures

Information Verification/Claim Form  
Release of Claims Actionable under Executive Order 11246

**ATTACHMENT 3**

**INFORMATION VERIFICATION/CLAIM FORM**

You must complete this form in order to be eligible for the money payment from the settlement and you may express interest in a job offer under the terms of the Conciliation Agreement (“Agreement”) between The American Bottling Company hereinafter (“ABC”) and the Department of Labor’s Office of Federal Contract Compliance Programs. Please print legibly, except for the signature.

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

Address (City, State, Zip): \_\_\_\_\_

Telephone: Home: \_\_\_\_\_ Cell: \_\_\_\_\_ Work: \_\_\_\_\_

Notify ABC at the address below if your address or phone number changes.

(NAME)  
(POSITION)  
(CONTRACTOR)  
(ADDRESS)

Your entire Social Security Number (to be used for tax purposes only): \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

For purposes of this settlement, it is necessary to verify your GENDER and RACE:

Caucasian [ ] African American [ ] Hispanic [ ] Asian [ ] Native American [ ]

Male [ ] Female [ ]

This Information Verification/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 to process your payment, and
- (2) To allow you to express interest in the jobs being offered as a result of the settlement.

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

- Yes, I am still interested in a part-time Merchandiser position with ABC located in Houston, Texas.
- Yes, I am still interested in a full-time Merchandiser position with ABC located in Houston, Texas.
- Yes, I am still interested in a full-time Loader position with ABC located in Houston, Texas.
- No, I am not currently interested in a part-time or full-time Merchandiser position with ABC located in Houston, Texas.
- No, I am not currently interested in a full-time Loader position with ABC located in Houston, Texas.
- I am currently employed by ABC.

**If you select "Yes," ABC will send you an email with a link for you to complete an application for employment.**

**IF YOU FAIL TO COMPLETE AND RETURN THE ENCLOSED DOCUMENTS TO THE ADDRESS BELOW WITHIN     DAYS YOU WILL NOT BE ELIGIBLE TO RECEIVE A PAYMENT OR BE CONSIDERED FOR A JOB OFFER.**

I certify the above is true and correct.

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

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

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

**ATTACHMENT 4**

**RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246**

This Release of Claims under Executive Order 11246 ("Release") is a legal document. This document states that in return for the The American Bottling Company (hereinafter "ABC") providing you with money and a potential job offer, you agree that you will not file any lawsuit against ABC for allegedly violating Executive Order 11246 in connection with its selection procedures for applicants for full-time Merchandiser, part-time Merchandiser or full-time Loader positions. It also says that ABC 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 or a job offer.

In consideration of the payment of at least \$XXX (less deductions required by law) and a potential job offer by ABC to me, which I agree is acceptable, I \_\_\_\_\_ agree to the following:

I.

I hereby waive, release, and forever discharge ABC, its predecessors, successors, related entities, parents, subsidiaries, affiliates and organizations, and its and their shareholders, 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 my non-selection for employment into a full-time Merchandiser, part-time Merchandiser or full-time Loader position on the basis of my race and/or gender during the period of November 24, 2012 through at least November 24, 2014.

II.

I understand that ABC denies that it treated me unlawfully or unfairly in any way and that ABC 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 potential job offer described above to resolve alleged disparities in hiring and to resolve the matter without further legal proceedings in the compliance review OFCCP initiated on November 24, 2012. I further agree that the payment and potential job by ABC to me is not to be construed as an admission of any liability by ABC.

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.

IV.

I understand that if I do not sign this Release and return it to ABC [ON OR BEFORE \_\_\_\_ (DATE)], I will not be entitled to receive any payment (*less deductions required by law*) or a potential job offer from ABC.

IN WITNESS WHEREOF, I have signed this document on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

| <b>Company Name: American Bottling Company</b>   |  |                            |
|--|--|----------------------------|
| <b>Effective Date of Conciliation Agreement:</b>   |  | <b>07/01/2020</b>          |
| <b>Action Required</b>   | <b>Number of Calendar Days from Effective Date</b> | <b>Due Date</b>            |
| ABC will notify the Class Members listed in Attachments 1A, 1B, & 1C of the terms of this Agreement.   | 45   | 08/15/2020                 |
| ABC will notify OFCCP of all letters returned as undeliverable, weekly.  | Weekly   | Each Friday until complete |
| ABC will provide OFCCP with a list of class members who did not respond to the Notice and/or have not fully executed the Interest Form and Release.  | 75   | 09/14/2020                 |
| OFCCP will initiate efforts to locate those Class Members and will provide updated contact information to ABC.   | 85   | 09/24/2020                 |
| ABC agrees to mail by First Class Mail, a second Notice, Interest Form, Release, and postage paid, self-addressed return envelope to Class Members for whom updated addresses were obtained.     | 105  | 10/14/2020                 |
| Deadline to meet Class eligibility requirements.   | 180  | 12/28/2020                 |
| ABC will provide OFCCP with a list of all Eligible Class Members who returned the Claim Form and Release by the due date, along with a copy of each executed Claim Form and Release it received. | 185  | 01/02/2021                 |
| OFCCP will approve the final list of Class Members or discuss with ABC any issues necessary to finalize the list, such as the inclusion or exclusion of certain individuals.                     | 200  | 01/17/2021                 |
| ABC shall initiate its hiring of Eligible Class Members as positions become available following the Effective Date of this Agreement.  | 210  | 01/27/2021                 |
| ABC will distribute the \$590,000 monetary settlement after OFCCP approves and provides ABC with a copy of the final list of Eligible Class Members.   | 230  | 02/16/2021                 |
| Within 10 calendar days of ABC's receipt of an undeliverable check, ABC shall notify OFCCP via email.  | TBD  | TBD                        |

|  |     |            |
|--|-----|------------|
| ABC will re-mail a check within 10 calendar days of receiving an alternate or corrected address for an Eligible Class Member.  | TBD | TBD        |
| Any check that remains uncashed 30 days after the initial date the check was mailed to the Eligible Class Member will be void.   | TBD | TBD        |
| ABC will make a second monetary distribution to all Eligible Class Members who cashed their first check if the remaining un-cashed amount will result in a second payment of \$30 or more to each Eligible Class Member. | TBD | TBD        |
| If the total amount of uncashed funds is less than \$30 for each Eligible Class Member, ABC will use those funds to provide training in equal employment opportunity to its personnel.                                   | TBD | TBD        |
| ABC must complete its hiring obligations under this section within 24 months of the Effective Date of this Agreement or until the list of Eligible Class Members expressing an interest is exhausted.                    | 730 | 07/01/2022 |

| Progress Report   |     | Due Date   | Covered Period |      |            |
|---|-----|------------|----------------|------|------------|
|   |     |            | Beginning      |      | End        |
| First Report (due seven months from effective date of Agreement):   | 213 | 01/30/2021 | 07/01/2020     | thru | 12/31/2020 |
| Second Report Due (30 calendar days after end of the 6-month period):   |     | 07/30/2021 | 01/01/2021     | thru | 06/30/2021 |
| Third Report Due (30 calendar days after end of the 6-month period):  |     | 01/30/2022 | 07/01/2021     | thru | 12/31/2021 |
| Fourth Report Due (30 calendar days after end of the 6-month period):   |     | 07/30/2022 | 01/01/2022     | thru | 06/30/2022 |
| Expiration date of CA (60 days after receipt of the final progress report or on the date the District Director gives approval of the final report, whichever occurs earlier): |     | 09/28/2022 |                |      |            |