

U.S. Department of Labor

**Employment Standards Administration
Office of Federal Contract
Compliance Programs
Boston District Office
JFK Federal Building, Room E-235
Boston, MA 02203**

**Telephone No: (617) 624-6780
Fax No: (617) 624-6702**



Reply to the Attention of:

CONCILIATION AGREEMENT

**Between
THE U. S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS
and
ALDEN MERRELL FINE DESSERTS, A DIVISION OF H. J. HEINZ COMPANY L.P.
4 Graf Road
Newburyport, MA 01950
OFCCP Case No. R00135642**

PART I: GENERAL PROVISIONS:

1. This Conciliation Agreement ("Agreement") is between the Office of Federal Contract Compliance Programs ("OFCCP") and Alden Merrell Fine Desserts, a division of H. J. Heinz Company L.P. ("Alden Merrell").
2. The violations identified in this Agreement were found during a compliance evaluation of Alden Merrell's facility located at 4 Graf Road Newburyport, MA, 01950, which began on July 22, 2006 and were specified in a Notice of Violations issued on July 10, 2007 and a Show Cause Notice issued on January 14, 2008. OFCCP alleges that Alden Merrell has violated Executive Order 11246, as amended ("Executive Order"), and its implementing regulations at 41 CFR Chapter 60 due to the specific violations cited in Part II below.
3. This Agreement does not constitute an admission by Alden Merrell of any violation of the Executive Order and its implementing regulations.
4. The provisions of this Agreement will become part of Alden Merrell's written affirmative action program ("AAP"). Subject to the performance by Alden Merrell of all promises and representations contained herein and in its AAP, all named violations in regard to the compliance of Alden Merrell with all OFCCP programs will be deemed resolved. However, Alden Merrell is advised that the commitments contained in this Agreement do not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.

5. Alden Merrell agrees that OFCCP may review compliance with this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents, as may be relevant to the matter under investigation and pertinent to Alden Merrell's compliance. Alden Merrell shall permit access to its premises during normal business hours for these purposes.
6. Nothing herein is intended to relieve Alden Merrell from the obligation to comply with the requirements of the Executive Order, Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 ("Section 503") and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 ("VEVRAA"), and their implementing regulations, or any other equal employment statute or executive order or its implementing regulations.
7. Alden Merrell agrees that there will be no retaliation of any kind against any beneficiary of this Agreement or against any person who has provided information or assistance to OFCCP, or who files a complaint, or who participates in any manner in any proceeding under the Executive Order, Section 503, and/or VEVRAA.
8. This Agreement will be deemed to have been accepted by OFCCP on the date of signature by the Regional Director for OFCCP (the "Regional Director"), unless the Director of OFCCP indicates otherwise within 45 calendar days of the Regional Director's signature on this Agreement. The term "effective date" as used throughout this Agreement is the date of the signature of the Regional Director.
9. If at any time in the future, OFCCP believes that Alden Merrell has violated any portion of this Agreement during the term of this Agreement, OFCCP will promptly notify Alden Merrell in writing. This notification will include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification will provide Alden Merrell with 15 calendar days from receipt of the notification to respond in writing, except where OFCCP alleges that such a delay would result in irreparable injury.

Enforcement proceedings for violation of this Agreement may be initiated at any time after the 15-day period has elapsed (or sooner, if irreparable injury is alleged) without issuing a Show Cause Notice.

Where OFCCP believes that Alden Merrell has violated this Agreement, OFCCP may seek enforcement of this Agreement itself and shall not be required to present proof of the underlying violations resolved by this Agreement.

Violation of this Agreement may subject Alden Merrell to sanctions set forth in Section 209 of the Executive Order and/or other appropriate relief.

PART II: SPECIFIC PROVISIONS:

1. **ALLEGED VIOLATION:** OFCCP found that Alden Merrell was not in compliance with 41 CFR 60-1.4(a)(1). Specifically, OFCCP asserts that Alden Merrell's compensation decisions and policies adversely affected (b) (7)(E) Hispanic employees in bakery, finishing and sanitation assistant positions ("Affected Assistants") and (b) (6), (b) (7)(E) Hispanic employees in Production positions ("Affected Production Workers"), who are identified in Attachment 1 to this Agreement.

REMEDY:

- (a) **Notification:** Within fifteen (15) calendar days from the effective date of this Agreement, Alden Merrell shall notify the (b) (7)(E) Affected Assistants and the (b) (7)(E) Affected Production Workers of the terms of this Agreement by mailing by first class mail, return receipt, to each Affected Assistant and Production Worker, the Notification Letter (Attachment 1A, "Notice 1A"), the Information Verification Form (Attachment 1B, "Verification Form 1B"), the Release of Claims Under Executive Order 11246 (Attachment 1C, "Release 1C"), and a postage paid return envelope. Alden Merrell will notify OFCCP weekly of all letters returned as undeliverable. In addition, within 45 calendar days of the effective date, Alden Merrell will provide a list to OFCCP of the Affected Assistants and Production Workers who have not yet returned a fully executed Verification Form 1B and Release 1C. OFCCP will then initiate efforts to locate those individuals and will provide any updated contact information to Alden Merrell. OFCCP will send updated contact information to Alden Merrell within thirty (30) calendar days after receiving the list from Alden Merrell of those Affected Assistants and Production Workers who did not respond to the first mailing.

Within fifteen (15) calendar days of receiving updated contact information for non-responding Affected Assistants and Production Workers from OFCCP, Alden Merrell will mail by first class mail, return receipt, a second Notice 1A, Verification Form 1B, Release 1C, and postage paid return envelope to each non-responding Affected Assistant and Production Worker for whom OFCCP provided an updated address.

All Affected Assistants and Production Workers who sign and return the Verification Form 1B and Release 1C to Alden Merrell within 120 calendar days of the effective date of this Agreement ("Eligible Affected Assistants and Production Workers") will receive a share of the monetary settlement. If an Affected Assistant or Production Worker has not returned the Verification Form 1B and Release 1C to Alden Merrell within 120 calendar days of the effective date of this Agreement, the Affected Assistant or Production Worker will no longer be entitled to any relief pursuant to this Agreement.

Within 125 calendar days of the effective date of this Agreement, Alden Merrell will provide OFCCP with a list of all Eligible Affected Assistants and Production Workers, along with a copy of each executed Verification Form 1B and Release 1C it received. Within 135 calendar days from the effective date, OFCCP will review and approve the final list of Eligible Affected Assistants and Production Workers or discuss with Alden Merrell any issues necessary to finalize the list, such as the inclusion or exclusion of certain Affected Assistants and Production Workers.

(b) **Monetary Settlement:**

Alden Merrell will pay the sum total of \$23,122.07 (back pay of \$20,505.70 and interest of \$2,616.37) to be divided and distributed among the Eligible Affected Assistants who have signed and returned the Verification Form and Release within 120 calendar days of the effective date of this Agreement. The back pay and interest, less legal deductions required by law (such as federal, state and/or local taxes and FICA) on the portion representing back pay only, will be distributed to the Eligible Affected Assistants in an amount equal to the amount that their actual pay was less than their predicted pay, as listed on Attachment 1, plus the interest amount listed on Attachment 1 in the line with the Affected Assistant's ID #.

Alden Merrell will pay the sum total of \$16,420.93 (back pay of \$14,562.83 and interest of \$1,858.10) to be divided and distributed among the Eligible Affected Production Workers who have signed and returned the Verification Form and Release within 120 calendar days of the effective date of this Agreement. The back pay and interest, less legal deductions required by law (such as federal, state and/or local taxes and FICA) on the portion representing back pay only, will be distributed to the Eligible Affected Production Workers in an amount equal to the amount that their actual pay was less than their predicted pay, as listed on Attachment 1, plus the interest amount listed on Attachment 1 in the line with the Affected Production Worker's ID #.

Alden Merrell will pay to the Internal Revenue Service ("IRS") the employer's share of social security withholdings, and shall mail to each Eligible Affected Assistant and Production Worker an IRS W-2 Form representing 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 mailed to the Eligible Affected Assistants and Production Workers at the end of the year. Alden Merrell will disburse the monetary settlement, in the amounts listed on Attachment 1, to the Eligible Affected Assistants and Production Workers within 150 calendar days of the effective date of this Agreement.

Within five (5) days of Alden Merrell's receipt of a check to an Eligible Affected Assistant or Production Worker returned as undeliverable, Alden Merrell shall notify OFCCP of this fact via e-mail or facsimile. OFCCP will attempt to locate the Eligible Affected Assistant or Production Worker and if OFCCP obtains an alternate address, Alden Merrell will remail the check.

2. ALLEGED VIOLATION: OFCCP found that Alden Merrell is not in compliance with 41 CFR 60-1.4(a)(1). Specifically, OFCCP's analysis of Alden Merrell's hiring process and selection procedures during the period of May 1, 2004 through February 27, 2007 (hereinafter "review period") for entry-level baking assistant, finishing assistant and sanitation assistant positions (collectively, "entry-level factory assistant positions") found that non-Hispanic applicants were significantly less likely to be hired than similarly-situated Hispanic applicants.

OFCCP's analysis of the refined hiring data showed a statistically significant disparity disadvantaging non-Hispanics. OFCCP found that of (b) (7) (E) non-Hispanic applicants, three were hired; whereas, of ninety-three Hispanic applicants, (b) (7) (E) were hired. This resulted in a hiring shortfall of 29 non-Hispanics.

In addition to the statistical analysis, OFCCP found anecdotal evidence and inconsistencies in the selection process that support OFCCP's statistical findings.

REMEDY: Alden Merrell agrees to immediately cease using the practices and/or policies that OFCCP alleges negatively affect non-Hispanic applicants in the hiring process and will take the following corrective action:

- (a) Revision of the Hiring Process, Implementation and Training: Within 30 calendar days of the effective date of this Agreement, Alden Merrell will revise, in writing, the practices, policies and procedures it uses to recruit, track and hire applicants for entry-level factory assistant positions. The revisions will relate to individuals hired for entry level-factory assistant positions in non-temporary capacities as well as those whose services are engaged by Alden Merrell through temporary staffing agencies, as temporaries (hereinafter the "Revised Hiring Process"). The Revised Hiring Process will contain the following:
- Procedures to recruit applicants for non-temporary entry-level factory assistant positions, including how, when and where such positions are posted, outreach efforts, and the use of the Internet as a recruitment procedure.
 - Procedures to ensure that applicants are tracked and decisions are documented at each step in the hiring process to ensure compliance under the Executive Order. Internal reports relating to the foregoing procedures will be generated, and shared with all levels of management, on a semi-annual basis.
 - Procedures to ensure that documents are retained in accordance with 41 CFR 60-1.12(a) and 60-3.
 - Procedures to ensure that at least the sources identified below are notified whenever Alden Merrell has non-temporary full-time openings in the entry-level factory assistant positions. Further, Alden Merrell shall provide a permanent open posting to the entities listed below. The open posting shall state that all

individuals interested in temporary positions located at Alden Merrell, which may lead to a non-temporary employee position at Alden Merrell, should contact the temporary staffing agencies being utilized by Alden Merrell. Alden Merrell shall ensure that the entities listed below are provided with the contact information for all temporary staffing agencies utilized by Alden Merrell. Alden Merrell shall provide OFCCP with a copy of its permanent open posting, as well as identify the staffing agencies it is utilizing, with the first progress report required under this Agreement. Alden Merrell is not limited to using the sources identified below.

Northern Essex Community College
Haverhill Campus
100 Elliott Street
Haverhill, MA 01830
Phone: 978-556-3000
Fax: 978-727-5739

ValleyWorks Career Center
80 Merrimack Street
Landmark Building
Haverhill, MA 01830
Phone: 978-722-7000

CareerOneStop Website
Service Center
info@careeronestop.org
Toll free: 877-348-0502
TTY: 877-348-0501
www.CareerOneStop.org

ValleyWorks Career Center
Heritage Place
439 South Union Street
Building #2
Lawrence, MA 01843
Phone: 978-722-7000

America's Job Exchange
North Shore Career Center
181 Union Street
Lynn, MA 01901
<http://www.americasjobexchange.com>
Telephone: 781-593-0555
Fax: 617-727-3712
POC: (b) (6), (b)(7)(C) Director

NH Works Salem
29 South Broadway
Salem, NH 03079-3026
(603) 893-9185

(b) (6), (b)(7)(C) @detma.org

NH Works Portsmouth
10 West Street
Concord, NH 03302-1140
(603) 228-4100, Ext. 34117

Alden Merrell shall provide its recruitment sources with explanations of current and future job openings, copies of position descriptions, and worker specifications. Alden Merrell shall further establish and maintain a current list of diverse recruitment resources and community organizations, develop formal arrangements for applicant referrals, follow up on the referrals, and provide the disposition of each referral. Alden Merrell shall provide advance notice to the recruitment sources of its determination that a non-temporary full-time employment opportunity will be

available to allow sufficient time for recruitment and referral of qualified candidates; such notice will be given as soon as practicable and in no event later than five (5) days after Alden Merrell has determined an employment opportunity will be available.

Alden Merrell will submit a copy of the written Revised Hiring Process to OFCCP within 60 calendar days of the effective date of this Agreement.

Thereafter, within 90 calendar days of the effective date of this Agreement, Alden Merrell will fully implement the Revised Hiring Process and will train all individuals involved in any way in recruiting, selecting or tracking applicants for entry-level factory assistant positions on the Revised Hiring Process. The training will include instruction in the proper implementation of the recruitment, tracking and selection procedures, the neutral application of the specified qualifications and criteria that will be used at each step in the hiring process, the 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 60-3.

Nothing in this Agreement precludes Alden Merrell from utilizing temporary staffing agencies for temporary personnel.

- (b) Notification: Within fifteen (15) calendar days of the effective date of this Agreement, Alden Merrell shall notify the non-Hispanic applicants listed on Attachment 2 ("Class Members") of the terms of this Agreement by mailing by first class mail, return receipt, to each Class Member: the Notification Letter (Attachment 2A, "Notice 2A"), the Information Verification & Employment Interest Form (Attachment 2B, "Interest Form 2B"), the Release of Claims Under Executive Order 11246 (Attachment 2C, "Release 2C"), and a postage paid return envelope. Alden Merrell will notify OFCCP weekly of all letters returned as undeliverable. In addition, within 45 calendar days of the effective date, Alden Merrell will provide a list to OFCCP of those Class Members who have not yet returned a fully executed Interest Form 2B and Release 2C. OFCCP will then initiate efforts to locate those Class Members and will provide any updated contact information to Alden Merrell within thirty (30) calendar days.

Within fifteen (15) calendar days of receiving updated mailing addresses from OFCCP, Alden Merrell agrees to mail by first class mail, return receipt, a second: Notice 2A, Interest Form 2B, Release 2C, and postage paid return envelope to each Class Member for whom OFCCP provided an updated address.

All Class Members who sign and return the Interest Form 2B and Release 2C to Alden Merrell within 120 calendar days of the effective date of this Agreement ("Eligible Class Members") will equally share the monetary settlement and, if indicating an interest in employment, will be eligible to be considered for a job pursuant to this Agreement in the order in which their Interest Form 2B was received

by Alden Merrell, up to the hiring of 29 Class Members by Alden Merrell. If a Class Member does not return the Interest Form 2B and Release 2C to Alden Merrell within 120 calendar days of the effective date of this Agreement, the Class Member will no longer be entitled to any relief pursuant to this Agreement.

Within 125 calendar days of the effective date of this Agreement, Alden Merrell will provide OFCCP with the list of Eligible Class Members, along with a copy of each executed Interest Form 2B and Release 2C. Within 135 calendar days from the effective date, OFCCP will review and approve the final list of Eligible Class Members or discuss with Alden Merrell any issues necessary to finalize the list, such as the inclusion or exclusion of certain Class Members.

- (c) *Monetary Settlement Alden Merrell shall pay the sum total of \$96,060.04 (back pay of \$85,190.40 and interest of \$10,869.64) to be equally divided and distributed among the Eligible Class Members who have signed and returned the Interest form and Release within 120 days of the effective date of this Agreement. The monetary settlement is a negotiated amount that represents estimated back pay plus interest and takes into account interim earnings. The payment to each Eligible Class Member of his/her share of the sum total settlement shall be subject to legal deductions required by law (such as federal, state and/or local taxes and FICA) on the portion representing back pay only. Alden Merrell will pay the Internal Revenue Service ("IRS") the employer's share of social security withholdings, and shall mail to each Eligible Class Member an IRS W-2 Form for 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 to the Eligible Class Members at the end of the year. Alden Merrell will disburse the monetary settlement within 150 calendar days of the effective date of this Agreement.*

Within five (5) calendar days of Alden Merrell's receipt of a check to an Eligible Class Member returned as undeliverable, Alden Merrell shall notify OFCCP of this fact via e-mail or facsimile. OFCCP will attempt to locate the Eligible Class Member and if OFCCP obtains an alternate address, Alden Merrell will remail the check. Any check that remains uncashed within 120 days after the initial date the check was mailed to the Eligible Class Member shall be void. With respect to any uncashed funds, Alden Merrell shall make a second distribution in the amount of the uncashed funds which would then be equally divided and distributed among the Eligible Class Members who cashed their first check if the amount of the uncashed funds would result in a payment of \$5.00 or more to each Eligible Class Member who cashed the first check. Any such distribution is subject to legal deductions required by law. If the total amount of uncashed funds would result in a payment of less than \$5.00 to each Eligible Class Member who cashed the first check, Alden Merrell shall use those uncashed funds to provide training in equal employment opportunity to its personnel in addition to training it is obligated to provide in the Revised Hiring Process described in paragraph (a) above.

(d) *Employment: As non-temporary entry-level factory assistant positions become available during the term of this Agreement, Alden Merrell will consider for employment qualified Eligible Class Members not currently employed by Alden Merrell who expressed an interest in employment with Alden Merrell before it makes other new hires, until twenty-nine (29) Eligible Class Members have successfully completed the selection process and are hired into non-temporary entry-level factory assistant positions, or until the list of Eligible Class Members expressing an interest in employment is exhausted, whichever occurs first. Eligible Class Members shall be considered during the term of this Agreement in the order that Alden Merrell receives their Interest Forms 2B expressing an interest in employment. Alden Merrell shall initiate its hiring of Eligible Class Members 45 days after the effective date of this Agreement.*

Eligible Class Members will be allowed at least two weeks to report for work after receiving a written job offer from Alden Merrell. The Eligible Class Members hired into entry-level factory assistant positions pursuant to this Agreement shall be paid \$9 per hour or the current wage rate for the entry-level factory assistant position, whichever is higher, and shall be provided with the same benefits, opportunity to earn overtime and shift differentials as other newly-hired entry-level factory assistant employees to the extent permitted by the applicable collective bargaining agreement. For purposes of job retention, job bidding, overtime, recall rights, and scheduling leave, seniority will be based on the Eligible Class Member's actual date of hire.

Nothing in this Agreement requires Alden Merrell to hire an Eligible Class Member if a non-temporary entry-level factory assistant position is not open and available.

3. **ALLEGED VIOLATION:** Alden Merrell failed to collect and maintain personnel and employment records in accordance with the requirements of 41 CFR 60-1.12(a) and 60-3. Specifically, during the review period, Alden Merrell failed to retain applications for employment, submitted by walk-in applicants, for the required two-year period.

REMEDY: Alden Merrell will ensure that its records are collected and maintained in accordance with the requirements of 41 CFR 60-1.12(a) and 60-3. Alden Merrell shall produce a report to OFCCP detailing its record retention practices, which will discuss the policies and data that is being tracked, no later than sixty (60) days after the effective date of this Agreement.

4. **ALLEGED VIOLATION:** Alden Merrell failed to monitor its personnel activity as required by 41 CFR 60-2.17(d)(1).

REMEDY: Alden Merrell agrees to fully implement an internal audit and reporting system relating to all jobs at Alden Merrell no later than sixty (60) days from the effective date of this Agreement, to ensure that all candidates are included in its applicant pool. Alden Merrell will review its auditing system at least annually to ensure it measures the effectiveness of its total affirmative action program in accordance with 41 CFR 60--

2.17(d)(1)-(4). The internal audit and reporting system will adequately reflect that Alden Merrell:

- (a) Monitors records of personnel activity relating to entry-level factory assistant positions, including referrals from recruitment sources (fee-based or free), placements, transfers, promotions, terminations, and compensation, at all levels to ensure it is satisfying its obligations under the Executive Order;
 - (b) Requires internal reporting relating to entry-level factory assistant positions on a scheduled basis as to the degree to which equal employment opportunity and organizational objectives are attained;
 - (c) Reviews report results relating to entry-level factory assistant positions with all levels of management; and
 - (d) Advises top management of program effectiveness relating to entry-level factory assistant positions and submits recommendations to improve unsatisfactory performance.
5. ALLEGED VIOLATION: Alden Merrell failed to comply with 41 CFR 60-3.4(A) and 41 CFR 60-3.15. Specifically, Alden Merrell failed to maintain and have available for inspection records or other information for each job which will identify adverse impact of the selection process for each job by race, ethnicity and gender.
- REMEDY: Effective on the date of signature by the Regional Director for OFCCP of this Agreement, Alden Merrell agrees to maintain complete and accurate records of applicants by race, gender and ethnicity to allow Alden Merrell to identify adverse impact in the selection processes for each job.
6. Alden Merrell will ensure that the above five (5) alleged violations do not recur.

PART III: REPORTING:

1. Alden Merrell will submit various reports to OFCCP, and shall send each report described below to:

Reba Beatty
District Director
U.S. Department of Labor
Office of Federal Contract Compliance Programs
Boston District Office
JFK Federal Building Room E-235,
Boston, MA. 02203
2. Alden Merrell will submit three semi-annual progress reports. The first semi-annual progress report shall be due seven months from the effective date of this Agreement and

shall cover the six-month period beginning with the effective date. Each subsequent report shall cover the successive six-month period, and shall be submitted 30 calendar days after the close of that six-month period.

3. Pursuant to Alleged Violations 1 and 2, Alden Merrell will submit the following:
 - (a) Pursuant to paragraph (a) of the Remedy for Alleged Violation 2, with the first progress report Alden Merrell will provide OFCCP with documentation that all managers, supervisors and other personnel involved in the Revised Hiring Process for non-temporary and temporary entry-level factory assistant positions have been trained in the recruitment, selection and tracking procedures to be used in 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 content of the training or any materials provided to participants or used by the trainers to conduct the training, and the name and job title of each person who conducted the training.
 - (b) With the first progress report, Alden Merrell will provide OFCCP with copies of introductory communications sent by Alden Merrell to recruitment and/or outreach sources to assist with its recruitment and hiring of applicants for non-temporary and temporary entry-level factory assistant positions.
 - (c) In each progress report, to the extent this information has not yet been provided to OFCCP, documentation of monetary payments to all Eligible Affected Assistants and Production Workers and Eligible Class Members as specified in paragraph (b) for Alleged Violation 1 and paragraph (c) for Alleged Violation 2 will be included. The documentation shall include the names of Eligible Affected Assistants and Production Workers and Eligible Class Members who were paid, and for each Eligible Affected Assistant and Production Worker and Eligible Class Member, the number(s) and the amount of the check(s) and the date(s) the check(s) cleared the bank. Alden Merrell agrees to provide OFCCP with copies of all canceled checks upon request.
 - (d) In each progress report, documentation of specific hiring activity for Eligible Class Members who were hired into entry-level factory assistant positions in accordance with this Agreement, including name, date of hire, job title hired into, and rate of pay, will be included.
 - (e) In each progress report, for any Eligible Class Members who were hired and subsequently separated their employment, Alden Merrell will provide the reason for the separation along with all relevant documentation (e.g., written resignation, policies on termination of employment, disciplinary actions taken leading up to termination).
 - (f) In each progress report, for any Eligible Class Members who were considered for employment but were not hired, Alden Merrell will provide the reason for non-

placement along with all relevant documentation (e.g., documentation that the Eligible Class Member declined a job offer).

4. Pursuant to Alleged Violations 2, 3 and 5, Alden Merrell will submit the following in each of the three progress reports:
 - (a) A list of all applicants, for non-temporary factory assistant positions (applicant flow log) during the reporting period, including:
 - a. Date of application;
 - b. Name, race and gender of applicant;
 - c. Position for which applying;
 - d. Specific referral source, e.g., employee referral, employment agency or name of outreach source;
 - e. Disposition, e.g., hired, offer made and declined, more qualified candidate selected, etc.
 - f. Selected candidate's date of hire, position and annual salary for all hires.
 - (b) A list of all recruitment/outreach sources contacted to obtain applicants for entry-level factory assistant positions.
 - (c) For each job opening, in both a temporary and non-temporary capacity, for entry-level factory assistant positions, the qualifications that Alden Merrell used and/or communicated to all recruitment sources, if any.
 - (d) For entry-level factory assistant positions in a non-temporary capacity, the results of Alden Merrell's analysis as to whether its total selection process has adverse impact, as defined in 41 CFR 60-3.4D, on those members of groups set forth in 41 CFR 60-3.4 B.¹
 - (e) For each instance where the total selection process has an adverse impact, as defined in 41 CFR 60-3.4D, the results of Alden Merrell's evaluation of the individual components of the selection process for adverse impact.
 - (f) A description of any action taken by Alden Merrell after determining that any component of the selection process has an adverse impact on members of groups set forth in subparagraph 5, above.
 - (g) Documentation showing that Alden Merrell shared internal reports relating to the recruitment, hiring and tracking of applicants for entry-level factory assistant positions with all levels of management responsible for personnel actions.
 - (h) Documentation showing that Alden Merrell advised top management of program effectiveness relating to the recruitment, hiring and tracking of applicants for entry-

¹ For purposes of the adverse impact analysis, Alden Merrell must not include hires made of Eligible Class Members pursuant to this Agreement in that analysis.

level factory assistant positions and submitted recommendations to improve unsatisfactory performance, when applicable.

5. If complete documentation is provided in one progress report, it need not be resubmitted in a subsequent progress report.
6. With respect to the adverse impact analyses, for all progress reports except the first, Alden Merrell 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.
7. Following the three progress reports, if 29 Eligible Class Members have not been hired or the Eligible Class Member list exhausted, Alden Merrell will submit additional reports ("Additional Reports") every six (6) months until it has hired 29 Eligible Class Members or exhausted the Eligible Class Member list. Each Additional Report shall include a list all Eligible Class Members who have been hired and all information and documentation listed in Sections 3.(d)-3.(f) of this part. (b) (6), (b)(7)(C)
8. Alden Merrell will retain records pertinent to the alleged violations resolved by this Conciliation Agreement and to the reports submitted under it, including the underlying information on which the reports are based, until the expiration date of the Conciliation Agreement or consistent with regulatory requirements, whichever is later.

All dates and deadlines in this Agreement may be modified or extended by written agreement of both parties.

EXPIRATION DATE:

This Conciliation Agreement will expire 60 calendar days after receipt of the final progress report; however, if 29 Eligible Class Members have not been hired or the Eligible Class Member list has not been exhausted, the Agreement will remain open until the earlier of: (i) Alden Merrell hiring 29 Eligible Class Members; (ii) Alden Merrell exhausting the Eligible Class Member list; or (iii) four years from the effective date of the Agreement.

The date of signature by OFCCP's Regional Director shall constitute the effective date of the Agreement.

PART IV: SIGNATURES:

This Conciliation Agreement is hereby executed by and between OFCCP and Alden Merrell.

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

Kevin J. Griffin
Plant Manager
Alden Merrell

Date: 6/16/11

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

Reba Beatty
District Director
OFCCP, Boston District Office

Date: 6/28/2011

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

Michelle Hodge
Regional Director
OFCCP, Northeast Regional Office

Date: 6/28/2011

ATTACHMENT 1
AFFECTED ASSISTANTS AND PRODUCTION WORKERS

**ATTACHMENT 1A
NOTIFICATION LETTER**

First Class, Return Receipt Requested

Name
Street Address
City, State, Zip

Dear _____:

Alden Merrell Fine Desserts, a division of H. J. Heinz Company L.P. ("Alden Merrell") and the Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") have entered into a Conciliation Agreement ("Agreement") to resolve alleged disparities in compensation between Hispanic and non-Hispanic employees in baking assistant, finishing assistant, sanitation assistant, and various production positions at its Newburyport, Massachusetts facility in 2006 and to resolve the matter without further legal proceedings. You have been identified as one of the Hispanic employees who was allegedly underpaid.

As part of the Agreement, you are eligible to receive a one-time, lump sum payment less lawful payroll deductions. Under the terms of the Agreement it may take up to six (6) months from the date of this letter before you receive your payment. In order to receive a payment, you must complete, sign and return the following two documents to the address below: (1) Information Verification Form and (2) Release of Claims Under Executive Order 11246. These two documents should be returned as soon as possible, but they must be returned to the following address no later than [DATE - 120 after the Effective Date of the Agreement] for you to receive a payment under the Agreement:

Alden Merrell Fine Desserts, Inc.
Attn: Kevin Griffin
4 Graf Road
Newburyport, MA 01950

Enclosed please find a postage paid return envelope that you can use to return the completed and signed documents.

By entering into the Agreement, Alden Merrell has not admitted nor has there been any adjudicated finding that Alden Merrell violated any laws. Alden Merrell has entered into the Agreement to resolve the issue of alleged disparities in compensation between Hispanic and non-Hispanic employees in baking assistant, finishing assistant, sanitation assistant, and various production positions at its Newburyport, Massachusetts facility without further legal proceedings.

If you have any questions you may call [NAME] at Alden Merrell at [PHONE NUMBER], or OFCCP Assistant District Director Mandi B. Costa at 617-624-6780. Your call will be returned as soon as possible.

IF YOU FAIL TO COMPLETE AND RETURN THE ENCLOSED DOCUMENTS TO ALDEN MERRELL ON OR BEFORE [INSERT DATE 120 DAYS FROM THE EFFECTIVE DATE OF THE AGREEMENT], YOU WILL NOT RECEIVE A PAYMENT.

Sincerely,

(NAME)

Enclosures

Information Verification Form

Release of Claims under Executive Order 11246

**ATTACHMENT 1B
INFORMATION VERIFICATION FORM**

You must complete this form in order to receive a monetary payment under the terms of the Conciliation Agreement ("Agreement") between Alden Merrell Fine Desserts, a division of H. J. Heinz Company L.P. ("Alden Merrell") and the Department of Labor's Office of Federal Contract Compliance Programs. Please print legibly, except for the signature, which may be in print or cursive.

Name: _____

Address: _____

Telephone Nos.: Home _____ Cell _____ Work _____

Notify Alden Merrell at the address below if your address or phone number changes within the next twelve months:

Alden Merrell Fine Desserts, Inc.
Attn: Kevin Griffin
4 Graf Road
Newburyport, MA 01950

Your Social Security Number is required and will be used for tax purposes only: _____ - _____ - _____

To verify your eligibility for a monetary payment under the terms of the Agreement, it is necessary to determine if you are Hispanic or Latino (a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race). Are you Hispanic or Latino?

Yes

No

YOU MUST RETURN THIS FORM AND A SIGNED RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246, NO LATER THAN [INSERT DATE 120 DAYS FROM THE EFFECTIVE DATE OF THE AGREEMENT] TO:

Alden Merrell Fine Desserts, Inc.
Attn: Kevin Griffin
4 Graf Road
Newburyport, MA 01950

I, _____, certify the above is true and correct.
(print name)

Signature

Date

**ATTACHMENT 1C
RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246**

(b) (6), (b) (7)(C) This Release of Claims Under Executive Order 11246 ("Release") is a legal document. Essentially the document states that in return for Alden Merrell Fine Desserts, a division of H. J. Heinz Company L.P. ("Alden Merrell") paying you money, you agree that you will not file any lawsuit against Alden Merrell for violating Executive Order 11246 on the basis of alleged disparities in compensation between Hispanic and non-Hispanic employees in baking assistant, finishing assistant, sanitation assistant, and various production positions. It also says that Alden Merrell does not admit it violated any laws. This Release says you had sufficient time to review 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 \$ _____ (less deductions required by law) by Alden Merrell to me, which I agree is acceptable, I _____ agree to the following:

print
name

I.

I hereby waive, release and forever discharge Alden Merrell, 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 being under-compensated at any time through the effective date of this Release.

II.

I understand that Alden Merrell denies that it treated me unlawfully or unfairly in any way and that Alden Merrell 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 alleged disparities in compensation and to resolve the matter without further legal proceedings in the Compliance Review initiated by OFCCP on July 22, 2006. I further agree that the payment of the aforesaid sum by Alden Merrell to me is not to be construed as an admission of any liability by Alden Merrell.

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. 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 Alden Merrell by [DATE - 120 after the Effective Date of the Agreement] I will not be entitled to receive a payment (less deductions required by law) from Alden Merrell under the Conciliation Agreement.

IN WITNESS WHEREOF, I have signed this document on this _____ day of _____, 2011.

Signature

**ATTACHMENT 2A
NOTIFICATION LETTER**

First Class, Return Receipt Requested

Name
Street Address
City, State, Zip

Dear _____:

Alden Merrell Fine Desserts, a division of H. J. Heinz Company L.P. ("Alden Merrell") and the Department of Labor's Office of Federal Contract Compliance Programs have entered into a Conciliation Agreement ("Agreement") to resolve alleged disparities on the basis of national origin in selecting applicants for entry-level bakery assistant, finishing assistant, and sanitation assistant positions (collectively, "factory assistant positions") at its Newburyport, Massachusetts facility during the period May 2004 through February 2007 and to resolve the matter without further legal proceedings. You have been identified as one of the individuals who applied for an entry-level factory assistant position during that time period but was not hired.

As part of the Agreement, you are eligible to receive a payment of at least \$ 807.00 less lawful payroll deductions. Under the terms of the Agreement it may take up to six (6) months from the date of this letter before you receive your payment. In order to receive a payment, you must complete, sign and return the following two documents to the address below: (1) Information Verification and Employment Interest Form and (2) Release of Claims Under Executive Order 11246. These two documents should be returned as soon as possible, but they must be returned to the following address no later than [DATE - 120 after the Effective Date of the Agreement] for you to receive a payment under the Agreement:

Alden Merrell Fine Desserts, Inc.
Attn: Kevin Griffin
4 Graf Road
Newburyport, MA 01950

Enclosed please find a postage paid return envelope that you can use to return the completed and signed documents.

In addition to the monetary distribution, Alden Merrell will be making job offers for entry-level factory assistant positions to a limited number of individuals receiving this notification letter. It is not certain that you will receive a job offer. If you are still interested in employment with Alden Merrell, please check the appropriate box on the enclosed Information Verification and Employment Interest Form. Individuals receiving this notification letter will be considered for entry-level factory assistant positions in the order that Alden Merrell receives their Information Verification and Employment Interest Forms expressing an interest in employment. You must have the qualifications that are required for the entry-level factory assistant positions in order to be eligible to receive one of these positions.

By entering into the Agreement, Alden Merrell has not admitted nor has there been any adjudicated finding that Alden Merrell violated any laws when you were not hired for the position for which you applied. Alden Merrell has entered into the Agreement to resolve the issue of alleged disparities in hiring without further legal proceedings.

If you have any questions you may call [NAME] at Alden Merrell at [PHONE NUMBER], or OFCCP OFCCP Assistant District Director Mandi B. Costa at 617-624-6780. Your call will be returned as soon as possible.

IF YOU FAIL TO COMPLETE AND RETURN THE ENCLOSED DOCUMENTS TO ALDEN MERRELL ON OR BEFORE [INSERT DATE 120 DAYS FROM THE EFFECTIVE DATE OF THE AGREEMENT], YOU WILL NOT RECEIVE A PAYMENT OR BE CONSIDERED FOR A JOB OFFER.

Sincerely,

(NAME)

Enclosures

Information Verification and Employment Interest Form
Release of Claims Under Executive Order 11246

ATTACHMENT 2B
INFORMATION VERIFICATION & EMPLOYMENT INTEREST FORM

You must complete this form in order to receive a monetary payment and/or be eligible for employment opportunities under the terms of the Conciliation Agreement ("Agreement") between Alden Merrell Fine Desserts, a division of H. J. Heinz Company L.P. ("Alden Merrell") and the Department of Labor's Office of Federal Contract Compliance Programs. Please print legibly, except for the signature, which may be in print or cursive.

Name: _____

Address: _____

Telephone Nos.: Home _____ Cell _____ Work _____

Notify Alden Merrell at the address below if your address or phone number changes within the next twelve months:

Alden Merrell Fine Desserts, Inc.
Attn: Kevin Griffin
4 Graf Road
Newburyport, MA 01950

Your Social Security Number is required: _____ - _____ - _____.

To verify your eligibility for a monetary payment under the terms of the Agreement, it is necessary to determine if you are Hispanic or Latino (a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race). Are you Hispanic or Latino?

Yes

No

Please indicate below whether you are currently interested in employment in an entry-level factory assistant position with Alden Merrell. If you complete, sign, and return this Information Verification and Employment Interest Form and the enclosed Release of Claims under Executive Order 11246, you remain eligible for the monetary payment whether or not you are interested in employment at this time.

Yes, I am still interested in employment with Alden Merrell in an entry-level factory assistant position.

No, I am not currently interested in employment with Alden Merrell in an entry-level factory assistant position.

YOU MUST RETURN THIS FORM AND A SIGNED RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246, NO LATER THAN [INSERT DATE 120 DAYS FROM THE EFFECTIVE DATE OF THE AGREEMENT] TO:

Alden Merrell Fine Desserts, Inc.
Attn: Kevin Griffin
4 Graf Road
Newburyport, MA 01950

I, _____, certify the above is true and correct.
(print name)

Signature

Date

ATTACHMENT 2C
RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246

(b) (6), (b)(7)(C)
gainst This Release of Claims Under Executive Order 11246 ("Release") is a legal document. Essentially the document states that in return for Alden Merrell Fine Desserts, a division of H. J. Heinz Company L.P. ("Alden Merrell") paying you money, you agree that you will not file any lawsuit against Alden Merrell for allegedly violating Executive Order 11246 in connection with its selection procedures for applicants for entry-level bakery assistant, finishing assistant, and sanitation assistant positions. It also says that Alden Merrell 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 at least \$ 807.00 (less deductions required by law) by Alden Merrell to me, which I agree is acceptable, I _____ agree to the following:
print
name

I.

I hereby waive, release and forever discharge Alden Merrell, 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 at any time through the effective date of this Release.

II.

I understand that Alden Merrell denies that it treated me unlawfully or unfairly in any way and that Alden Merrell 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 alleged disparities in hiring and to resolve the matter without further legal proceedings in the Compliance Review initiated by OFCCP on July 22, 2006. I further agree that the payment of the aforesaid sum by Alden Merrell to me is not to be construed as an admission of any liability by Alden Merrell.

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. 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 Alden Merrell by **[INSERT DATE 120 DAYS FROM THE EFFECTIVE DATE OF THE AGREEMENT]** I will not be entitled to receive a payment (less deductions required by law) from Alden Merrell under the Conciliation Agreement.

IN WITNESS WHEREOF, I have signed this document on this _____ day of _____, 2011.

Signature