

Conciliation Agreement

Between

THE U.S. DEPARTMENT OF LABOR

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

And

THE HILLSHIRE BRANDS COMPANY, formerly known as
SARA LEE FOOD AND BEVERAGE,
315 VILAS ROAD
STORM LAKE, IOWA 50588

PART I: PRELIMINARY STATEMENT

The Office of Federal Contract Compliance Programs (“OFCCP”) evaluated The Hillshire Brands Company’s facility, formerly known as Sara Lee Food and Beverage, located at 315 Vilas Road, Storm Lake, Iowa (“Hillshire”) and found that Hillshire was not in compliance with Executive Order 11246, as amended (“E. O. 11246”), and its implementing regulations at 41 C.F.R. Section(s) 60-1, 60-2, 60-3. OFCCP notified Hillshire of the specific violations found and the corrective actions required in a Notice of Violations issued on July 1, 2016. In the interest of resolving the violations without engaging in further legal proceedings and in exchange for the good and valuable consideration described in this document, OFCCP and Hillshire enter this contract (“Conciliation Agreement” or “Agreement”) and agree to all the terms stated below.

PART II. GENERAL TERMS AND CONDITIONS

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

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

result in irreparable injury to the employment rights of affected employees or applicants.

3) If Hillshire 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 proceedings through any other requirement.

4) OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.

B. Hillshire may be subject to the sanctions set forth in Section 209 of Executive Order, and /or other appropriate relief for violation of this Agreement.

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

PART III: SPECIFIC VIOLATIONS AND REMEDIES

1. HIRING DISCRIMINATION

A. STATEMENT OF VIOLATION. OFCCP alleges that Hillshire discriminated against 159 qualified White applicants and 80 Black/African-American applicants (Class Members) based on race in Production positions at the Storm Lake facility. The alleged discrimination occurred during the period of January 1, 2012 to December 31, 2012 ("review period"). OFCCP contends that Hillshire's failure to afford White and Black/African-American applicants equal employment opportunities in hiring constitutes a violation of Section 202, Paragraph 1 of Executive Order 11246, as amended, and 41 CFR § 60-1.4(a)(1).

OFCCP's alleges that its analysis of applicant and hiring data demonstrates that Hillshire's selection process had an adverse impact on the hiring of White applicants for Production positions. Of (b) (7)(E) White applicants (b) (7)(E) White applicants were hired, whereas of (b) (7)(E) Hispanic applicants (b) (7)(E) Hispanic applicants were hired. This resulted in a hiring shortfall of 25 White hires and a disparity that was statistically significant at (b) (7)(E) standard deviations.¹

Additionally, OFCCP alleges that its analysis of applicant and hiring data

¹ After issuance of the Notice of Violations, Hillshire produced documents that were taken into consideration by OFCCP, slightly altering the statistical analysis.

demonstrates that Hillshire's selection process had an adverse impact on the hiring of Black/African-American applicants for Production positions. Of (b) (7)(E) Black/African-American applicants (b) (7)(E) or (b) (7)(E) Black/African-American applicants were hired, whereas of (b) (7)(E) Hispanic applicants, (b) (7)(E) or (b) (7)(E) Hispanic applicants were hired. This resulted in a hiring shortfall of 4 Black/African-American hires and a disparity that was statistically significant at (b) (7)(E) standard deviations.

B. REMEDY FOR AFFECTED CLASS.

Hillshire agrees to: (a) make reasonable efforts to locate all 159 White and 80 Black Class Members and provide all located White and Black Class Members with a make whole remedy, including back pay with interest; (b) make job offers to qualified Eligible Class Members (as defined later in this Agreement) in the Production positions at the current rate of pay until one of the following has occurred: 29 Eligible Class Members (25 Whites from Class Member List 1 and 4 Blacks from Class Member List 2) are placed, the White and Black Eligible Class Member lists are exhausted, or the reporting period described in this Agreement in Part IV (January 1, 2018 to December 31, 2018)² has ended without a need for twenty-nine (29) hires; (c) prevent retaliation, harassment, and any other form of reprisal or adverse action to Class Members based on or in relation to the terms of this Remedy; (d) review Hillshire's selection process and eliminate any practices that may have adversely contributed to the alleged selection disparities; (e) develop procedures to review at least annually, the selection process for ensuring nondiscrimination, and (f) take action to assure that this alleged violation does not occur in the future.

1. Notice. Within 75 calendar days after the Effective Date of this Agreement (March 16, 2018), Hillshire will notify the White and Black Class Members listed in Attachment A (the "Class Members") of the terms of this Agreement by First Class Mail. Hillshire will use the last known address as provided by OFCCP for each Class Member. Hillshire shall include the Notice to Affected Class (Attachment B, hereinafter "Notice"), Information Verification & Employment Interest Form (Attachment C, hereinafter "Interest Form"), Release of Claims Form, (Attachment D, hereinafter "Release"), and postage paid return envelope.

Each Class Member (or her/his legal representative in the event she/he is deceased) shall be instructed to respond within 180 calendar days of the effective date of the Agreement (June 29, 2018). Every thirty (30) days after the first notice

² If Hillshire has not been successful in fulfilling the hiring obligation as described in Part III B 4 within twelve (12) months, the reporting period may be extended by an additional twelve (12) months for this specific purpose.

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is sent, Hillshire will provide OFCCP with a Microsoft Excel report listing the Class Members who have responded with completed forms, forms that are returned undeliverable, or forms that are returned incomplete. With this report, Hillshire will specify the deficiencies and attach an electronic copy of the incomplete paperwork. This report shall be sent to the attention of (b) (7)(E), (b) (7)(C)

OFCCP will then attempt to obtain and provide updated addresses to Hillshire within fifteen (15) calendar days after receipt of these reports. Within five (5) calendar days of receipt of the updated addresses, Hillshire will send, by First Class Mail, a second Notice, Interest Form, Release, and postage-paid return envelope to all individuals for whom updated addresses were provided by the OFCCP.

If a Class Member responds to either the first or second mailing and submits an incomplete response (including, but not limited to, one where a Social Security number was not provided), within ten (10) days of receipt of the incomplete forms, Hillshire will send a letter to request the information indicating that information is missing and inviting a response. If the Class Member does not respond to the letter or a second incomplete form is received, Hillshire (or the Settlement Administrator) will send a follow-up postcard within five (5) days advising the Class Member that all information must be completed and post marked by the deadline to participate in the settlement payout. Each attempt to obtain missing information will provide contact information for Hillshire or the Settlement Administrator, along with OFCCP contact information. If the Class Member does not respond to these inquiries or fails to provide the missing information within five (5) days, Hillshire must provide OFCCP with a copy of the forms that confirm the missing information. OFCCP will have fifteen (15) days to follow up with that individual to attempt to obtain the missing information. Hillshire will provide this notification to OFCCP by emailing Compliance Officer (b) (7)(E), (b) (7)(C). In that email, Hillshire will specify the deficiencies and attach an electronic copy of the incomplete paperwork.

2. Eligibility. Class Members to receive payment and/or future employment consideration shall consist of those individuals who responded to the first or second mailing and returned signed copies of the Interest Form and unaltered Release postmarked within 180 calendar days of the Effective Date of the Agreement (June 29, 2018) and shall be referred to in this Agreement as "Eligible Class Member". Any Eligible Class Member indicating an interest in employment will be eligible to be considered for hire for the Production position. Any Eligible Class Members listed on Attachment A who did not respond within 180 calendar days of the Effective Date of the Agreement (June 29, 2018), shall

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not receive any portion of the Settlement Fund or a job offer under this Agreement.

Within 195 calendar days of the Effective Date of the Agreement (July 16, 2018), Hillshire will provide OFCCP with a list of the Eligible Class Members (individuals who returned the Interest Form and unaltered Release by the postmark deadline). Within 210 calendar days of the Effective Date of the Agreement (July 30, 2018), OFCCP will approve the final lists of Eligible Class Members. All Eligible Class Members who appear on the final list of Eligible Class Members approved by OFCCP are entitled to an equal share of the Settlement Fund described below, regardless of whether they are interested in employment with Hillshire.

3. Monetary Settlement. In settlement of all claims for back pay, interest and other monetary relief to Eligible Class Members, Hillshire agrees to pay \$275,000.00, less legally required payroll deductions (such as federal, state and/or local taxes and the Eligible Class Members' share of FICA taxes), in equal shares among all Eligible Class Members on the final approved list. This amount of \$275,000.00 shall be referred to hereafter as the "Settlement Fund." The Settlement Fund is a negotiated amount that represents back pay and interest less interim earnings, and takes into account the tenure of those persons hired into the Production positions during the review period.

Hillshire or its Settlement Administrator will pay the Internal Revenue Service ("IRS") the employer's share of Social Security withholdings and will mail each Eligible Class Member the required IRS forms at the end of the year. Hillshire will disburse the Settlement Fund within 30 calendar days after OFCCP approves the final list of Eligible Class Members.

For purposes of complying with this Agreement, on the forty-six (46) calendar day (or next business day) after the Effective Date of this Agreement (February 15, 2018), Hillshire shall establish, and deposit within, a federally-insured interest-bearing account at the prevailing interest rate, the sum of \$275,000.00. Hillshire shall notify OFCCP within five (5) calendar days after the deposit has been made that these actions are complete. Hillshire shall identify a person who can be contacted in order to obtain the account balance and interest information. The interest earned on the Settlement Fund following the Effective Date of this Agreement shall be included in the distribution to Eligible Class Members.

This monetary relief is not contingent upon accepting any job offer. Within 240 calendar days of the Effective Date of the Agreement (August 28, 2018), Hillshire shall send a check by certified mail to each Eligible Class Member representing each person's pro rata share of the Settlement Fund. After mailing the checks,

Hillshire will provide OFCCP with a Microsoft Excel report containing the certified mail tracking number for each Eligible Class Member.

Every thirty (30) days after the first checks are sent, Hillshire will provide OFCCP with a Microsoft Excel report listing the Class Members for whom checks are returned undeliverable. With this report, Hillshire will specify the address via e-mail sent to (b) (7)(E), (b) (7)(C). OFCCP will have 15 calendar days to attempt to locate updated address information for the Eligible Class Member whose check was returned and, if OFCCP obtains an alternate address in the designated time period, OFCCP will provide the updated address information to Hillshire and Hillshire will arrange for the check to be re-mailed, by certified mail, within 15 calendar days of receiving the alternate or corrected address. Any checks that remain uncashed 90 days after issuance (November 26, 2018) shall be void. With respect to the uncashed funds, Hillshire will arrange for a second distribution in equal shares to all Eligible Class Members who cashed their check, if the total amount of the undelivered checks would result in a payment of \$40.00 or more to each of those Eligible Class Members. The second distribution of uncashed funds will be mailed no later than fifteen (15) calendar days after the initial checks are void (December 11, 2018, if there is a need). If the amount remaining after the first distribution would result in a payment of less than \$40.00 to each Eligible Class Member or if there is any remainder after the second distribution, Hillshire agrees to use the remainder to conduct internal EEO training or support diversity and inclusion efforts such as hiring an EEO and/or Diversity & Inclusion subject matter expert to provide training to the HR population, sponsorship and/or collaboration with community recruitment, or provide training on AAP goals or training in the areas of the alleged Storm Lake violations. Hillshire will confirm with OFCCP how these funds will be used after distribution of the settlement. The Settlement Fund account will close 120 days after the second distribution of uncashed funds (April 10, 2019), and any balance remaining in the Settlement Fund shall revert to Hillshire to be used in accordance with this paragraph.

4. Employment. Any Eligible Class Member who expresses an interest in employment will be eligible for future employment consideration for a Production position, provided he/she fully completes an employment application, is 18 years of age, is legally authorized to work in the United States, and successfully completes a drug screen. These are the only job requirements that are to be used by Hillshire in determining qualifications for employment in the Production position. Notwithstanding the above language, any Eligible Class Member who meets these qualifications but has been terminated at any time from Hillshire or any of its parents or subsidiary companies for gross misconduct or sexual harassment will not be eligible for future employment.

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Within 190 calendar days of the Effective Date of the Agreement (July 9, 2018), Hillshire shall establish a priority employment list for the Eligible Class Members listing individuals in the order of the date their Interest Form and Release are received by Hillshire ("Priority Employment List"). For those Eligible Class Members whose Interest Form and Release are received on the same date, the order of priority for that day shall be based on the date of the Eligible Class Members' first original employment application with Hillshire (if known) and by alphabetical order the Eligible Class Members' last name if the original application date is not known. Hillshire shall be given credit for any Eligible Class Members whom Hillshire previously hired at the facility and up to 365 calendar days after the end of the review period (referenced in Part III, 1.A), thereby reducing the respective hiring obligation. Any class member from the class list who was previously hired shall not be offered a job pursuant to this conciliation agreement. Along with submission of the Priority Employment List, Hillshire shall submit to OFCCP documentation of each such Eligible Class Member's previous hire's hire date, start date, job title and termination date, if applicable.

As Production positions become available, Hillshire will use the Priority Employment List to make written offers to apply for employment to qualified Eligible Class Members (not currently employed by Hillshire) who have expressed an interest in employment with Hillshire.³ Hillshire shall attempt to call each Eligible Class Member a minimum of two (2) times to arrange an appointment for that class member to come to the facility and fill out an application for the purposes described in the note below. Hillshire shall keep record of these calls, including the date and time of the call as well as the number used. If Hillshire was not able to contact the individual by phone, Hillshire shall immediately send the letter containing each written offer to apply by first class mail. The letter shall instruct the Eligible Class Member to respond, in person or in writing, to the offer within fourteen (14) days after receipt of the offer, or the offer will be withdrawn by Hillshire. In the event that the letter is not responded to within fourteen (14) days of the date of mailing, the offer shall be considered withdrawn fifteen (15) days after the date of mailing. Hillshire shall continue to make offers for employment as described using the Priority Employment List until one of the following has occurred: Twenty-five (25) White and four (4)

³ Eligible Class Members will be required to fill out an application for the express purpose of confirming that the requirements described in this Agreement are met. Information on the application will not be used as a screening mechanism or as an extension of a process wherein applicants are compared to one another for the purpose of selection. Upon completion of the application, applicants who successfully pass the drug screen will be confirmed as a hire. Class members will not be required to complete an interview or undergo any other screening procedure apart from the drug screen.

Black/African-American Eligible Class Members are placed, the Eligible Class Member list is exhausted, or the reporting period described in this Agreement in Part IV (January 1, 2018 through December 31, 2018, see Note 2) has ended without a need for 29 Productions hires.

The Eligible Class Members hired into the Production position pursuant to this Agreement must be paid \$12.57/hr. or the current starting wage rate for the Production position, whichever is higher, and must be provided with the same benefits and opportunity to earn overtime and shift differentials as other Production employees. In addition, all Eligible Class Members hired and still employed after ninety (90) days will receive one week of paid vacation and be eligible for paid bereavement time and holidays for benefits related to retroactive seniority. Once hired, all Eligible Class Members will be subject to the same standards for attendance, performance, and job-bidding requirements as other employees at the facility.

Hillshire shall submit as part of its first and second progress reports to OFCCP the reasons for not hiring an Eligible Class Member on the Priority Employment List who received a job offer for a Production position. Notwithstanding the procedures set forth in this section, if an Eligible Class Member applies for a Production position and is hired after the effective date of this Agreement, but prior to the OFCCP's final approval of the Eligible Class Member list, that hiring decision will be credited against Hillshire's preferential hiring obligation.

C. NON-MONETARY REMEDIES. Hillshire will ensure that all applicants are afforded equal employment opportunities. Hillshire agrees to evaluate and immediately cease using the selection procedures, practices, and/or policies which have an adverse impact on the hiring of White and Black/African-American applicants for Production positions since having changed the applicant tracking system as noted below. Hillshire agrees to continue and/or to implement the corrective actions detailed below.

- 1) Use Non-Discriminatory Selection Procedures: Hillshire agrees to comply with all OFCCP regulations concerning selection procedures, including 41 C.F.R Part 60-3. Hillshire will not use any selection procedure that, after evaluation and review, it determines to have an adverse impact, as defined in 41 C.F.R. § 60-3.4D, on applicants of a particular race unless there is no reasonable alternative and it properly validates the procedure pursuant to these regulations.
- 2) Review and Revisions Required: Hillshire will revise, in writing, the practices, policies and procedures it uses to select applicants for Production positions (hereinafter "Revised Hiring Process"). Specifically, during the review period, Hillshire used an electronic Recruiting System (Taleo). However, the system has

since been changed to SAP e-Recruitment Electronic hiring process. Therefore, it appears that actions have been taken to remedy any questionable record-keeping issues.

- a) create a job description and selection process for Production positions which describes the essential functions; the minimum qualifications including required skills; and the criteria in each step of the hiring process, including any application screens, interviews, credit checks, review of criminal history, reference checks, testing, or other selection procedures;
 - b) develop specific, job-related qualification standards for Production positions that reflect the duties, functions, and competencies of the position to minimize the potential for race stereotyping or other unlawful discrimination;
 - c) ensure policies and qualification standards that are uniformly applied to all applicants; and
 - d) list clearly on its recruiting materials and job postings the minimum qualifications, including required skills and certifications.
- 3) Recordkeeping and Retention: Hillshire will write and implement procedures to ensure that applicants are tracked and decisions are documented at each step in the hiring process. Hillshire will write and implement procedures to ensure that documents are retained in accordance with 41 C.F.R. § 60-1.12(a) and Part 60-3.
- 4) Training: By March 30, 2018, Hillshire must train all individuals involved in recruiting, selecting, or tracking of applicants for Production positions on the Revised Hiring Process. The training will include instruction in: the proper implementation of the recruitment, tracking and selection procedures; neutral application of the specified qualifications and criteria that will be used at each step in the hiring process; procedures to be used to document the decisions made at each step in the hiring process; and the procedures to be used to ensure that documents are retained in accordance with 41 C.F.R. § 60-1.12(a) and Part 60-3. Hillshire will meet with management and all individuals responsible for the selection process and review its equal employment obligations and nondiscrimination policies related to hiring. Specific attention will be directed to ensure that White and Black/African-American applicants, who benefit from the provisions of this Agreement, are not retaliated against.
- 5) Monitoring: Hillshire agrees to monitor selection rates at each step of its selection process for the Production positions. Where it is determined that a selection procedure has an adverse impact, as defined in 41 C.F.R. §60-3.4D, on the hiring

of applicants of a particular race or gender, Hillshire will eliminate the procedure, choose an alternative procedure, or if no procedure exists that does not have an adverse impact, Hillshire will validate the current procedure in accordance with the Uniform Guidelines on Employee Selection Procedures (UGESP) codified at 41 C.F.R. Part 60-3. Hillshire agrees to maintain and make available to OFCCP records concerning the impact of the selection process for the Production position at the Storm Lake, Iowa facility. This includes the number of persons hired by race, the number of applicants who applied by race, and the selection procedures utilized. This information will be maintained until the expiration of this Agreement or as long as required by the regulations, whichever is later.

2. RECORDKEEPING VIOLATION

- A. **STATEMENT OF VIOLATION.** Hillshire failed to preserve personnel and employment records for a period of not less than two years from the date of a) making the record or b) the personnel action involved, whichever occurred later in violation of 41 C.F.R. § 60-1.12(a). Specifically, during the review period, OFCCP alleges that Hillshire failed to preserve interview notes, e-mails between human resources and hiring managers, and other records created for all applicants that were considered for vacancies in the Production positions. Hillshire asserts some of the personnel and employment records were lost during a fire and flood which occurred at the facility.
- B. **REMEDY.** Hillshire will ensure that its records are collected and maintained in accordance with the requirements of 41 C.F.R. § 60-1.12(a).

3. AFFIRMATIVE ACTION PROGRAM VIOLATION

- A. **STATEMENT OF VIOLATIONS.** Hillshire failed to perform an in-depth analysis of its total employment process to determine where impediments to equal employment opportunity exist as well as measure the effectiveness of its affirmative action program, in violation of 41 C.F.R. § 60-2.17(b). Specifically, OFCCP alleges that Hillshire failed to analyze its personnel activity (applicant flow, hires, terminations, promotions, and other personnel actions) to determine whether there were selection disparities and to determine the effectiveness of its Affirmative Action Program.
- B. **REMEDY.** Hillshire will perform in-depth analysis of its total employment process to determine whether and where impediments to equal employment opportunity exist. Hillshire will evaluate:

1) the workforce by organizational unit and job group to determine whether there are problems of utilization or distribution based on race or sex;

2) personnel activity (specifically applicant flow, hires, terminations, promotions, and other personnel actions) to determine whether there are selection disparities;

3) compensation system(s) to determine whether there are gender, race, or ethnicity-based disparities; and

4) selection, recruitment, referral, and other personnel procedures to determine whether they resulted in disparities in the employment or advancement of women.

Additionally, Hillshire will perform these analyses annually and incorporate these analyses and determinations into its AAPs (in accordance with 41 CFR 60-2.17) developed during the effective dates of this Agreement.

4. AFFIRMATIVE ACTION PROGRAM VIOLATION

A. STATEMENT OF VIOLATION. Hillshire failed to execute action-oriented programs designed to correct any problem areas identified, and to audit their results, in violation of 41 C.F.R. § 60-2.17(c) Specifically, OFCCP alleges that Hillshire failed to demonstrate that it made good faith efforts to identify and remove barriers, expand employment opportunities, and produce measureable results.

B. REMEDY. Hillshire will execute action-oriented programs designed to correct all problem areas identified. Hillshire will demonstrate that it has made good faith efforts to remove identified barriers and expand employment opportunities for qualified women and minorities. Hillshire will preserve all documentation it makes or keeps in either electronic or hard copy format to audit the progress of Hillshire's AAPs and to demonstrate Hillshire's good faith efforts. Hillshire will incorporate these analyses and determinations into Hillshire's now-current AAPs. Hillshire will perform these analyses and up-date these action-oriented programs annually and incorporate them into Hillshire's AAPs developed during the effective dates of this Agreement.

5. AFFIRMATIVE ACTION PROGRAM VIOLATION

A. STATEMENT OF VIOLATION. Hillshire failed to implement its auditing system that periodically measures the effectiveness of its total AAPs, in violation of 41 C.F.R § 60-2.17(d). Specifically, OFCCP alleges that Hillshire did not analyze its applicant data or selection process to measure the impact of its selection decisions on White and Black/African-American applicants.

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- B. REMEDY: Hillshire will implement its auditing system that periodically measures the effectiveness of its total affirmative action program as required by 41 C.F.R. § 60-2.17(d).

PART IV: REPORTING

1. Hillshire must submit the documents and reports described below to: Maxine Manus, District Director, Omaha Area Office, 222 South 15th Street, Suite 504B, Omaha, Nebraska, 68102.

A. Within the prescribed timeframes, Hillshire must submit all documents and information referenced in sections Part III 1.B.

B. Within sixty (60) calendar days of the Effective Date of the Agreement (March 1, 2018), Hillshire must submit a copy of the written Revised Hiring Process described in section Part III C.

C. By April 27, 2018, Hillshire must submit documentation that all managers, supervisors, and other personnel involved in recruiting, selecting, or tracking applicants for Production positions have been trained on the Revised Hiring Process. The documentation must include the dates of the training, the names and job titles of all attendees, an outline of the topics discussed in the training, and the name and job titles of each person who conducted the training.

D. Hillshire must submit at least two (2) progress reports covering each six month period this Agreement is in effect. If Hillshire has not been successful in fulfilling the hiring obligation as described in Part III B 4 within twelve (12) months, the reporting period may be extended by an additional twelve (12) months for this specific purpose. The first progress report will be due July 31, 2018 and must cover January 1, 2018 to June 30, 2018. The second progress report will be due January 31, 2019 and must cover July 1, 2018 to December 31, 2018. If further reports are necessary as previously described, the third progress report will be due July 31, 2019 and must cover January 1, 2019 to June 30, 2019, and the fourth progress report will be due January 31, 2020 and must cover July 1, 2019 to December 31, 2019. Hillshire will submit the following in each progress report:

- 1) Documentation of monetary payments to all Eligible Class Members as specified in section III will be provided with the second progress report. The documentation must include the names of Eligible Class Members who were paid, and, for each Eligible Class Member, the number and the amount of the check and the date the check cleared the bank. Hillshire must provide OFCCP with copies of all canceled checks upon request;
- 2) Documentation of specific hiring activity for Eligible Class Members who were hired as Production employees in accordance with this Agreement, including

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name, date of hire, job title hired into, rate of pay, and proof of retroactive seniority and benefits;

- 3) For Eligible Class Members who were considered for employment but were not hired, Hillshire 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) The total number of applicants and hires and the breakdown by race, gender and ethnic group of applicants and hires for Production positions during the reporting period; including all temporary, part time, and seasonal workers who applied for employment through the company website;
- 5) For Production positions, the results of Hillshire'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 groups set forth in 41 C.F.R. § 60-3.4B (for purposes of the adverse impact analysis, Hillshire must not include hires made of Eligible Class Members pursuant to this Agreement in that analysis; Hillshire must combine the data for the current report with the data from the previous report(s) to analyze at least a 12-month period;
- 6) 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 Hillshire's evaluation of the individual components of the selection process for adverse impact; and/
- 7) The actions taken by Hillshire upon determining that any component of the selection process has an adverse impact on members of groups set forth in section Part III above.

OFCCP will respond to Hillshire via email within thirty (30) calendar days after receipt of each progress report and provide regular status updates as appropriate. If it is determined that an onsite visit is necessary to confirm compliance as described in Part II #2, OFCCP will provide a minimum of five (5) days' notice prior to any site visit, and sufficient time for collection, copying and transmission of any reports or documents requested.

2. Hillshire will retain all records and data pertinent to the violations resolved by this Agreement and/or used to prepare required reports until this Agreement expires or as long as required by OFCCP's regulations, whichever date occurs later.

PART V: Signatures

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

The person signing the Conciliation Agreement on behalf of The Hillshire Brands Company personally warrants she/he is fully authorized to do so, that The Hillshire Brands Company has entered into this Conciliation Agreement voluntarily and with full knowledge of the effect thereof, and that execution of this Agreement is fully binding on The Hillshire Brands Company. This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and The Hillshire Brands Company.

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

VICKI PEARSON
Director Affirmative Action
The Hillshire Brands Company
F/K/A Sara Lee Food and Beverage
Storm Lake, Iowa

DATE: 12/14/18

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

LOLA HITHON
VP, Employee Relations & Compliance
The Hillshire Brands Company
F/K/A Sara Lee Food and Beverage
Storm Lake, Iowa

DATE: 12-14-17

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

WALKER PLANK
Assistant District Director
Omaha Area Office
Midwest Region, OFCCP

DATE: 12/18/2017

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

BRADLEY A. ANDERSON
Regional Director
Midwest Region, OFCCP

DATE: 12/20/2017

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

MAXINE L. MANUS
District Director
Omaha Area Office
Midwest Region, OFCCP

DATE: 12/18/2017

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

Compliance Officer
Omaha Area Office
Midwest Region, OFCCP

DATE: 12-18-2017

Attachment A Class Member List

Hillshire Class Members List 1 of 2

White Class Members

Ofccp #	(b) (7)(C), (b) (7)(E)
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157	(b) (7)(C), (b) (7)(E)
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Hillshire Class Members List 2 of 2

Black/African American Class Members

Ofccp #	Last Name	First Name
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70	(b) (7)(C), (b) (7)(E)
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You may be eligible to get money and a job because of a legal settlement between The Hillshire Brands Company and the U.S. Department of Labor

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

ARE YOU AFFECTED?

White and Black/African-American applicants who applied and were not hired for Production positions at Hillshire Brands' Storm Lake, Iowa facility, formerly known as Sara Lee Food and Beverage, between January 1, 2012 and December 31, 2012, are covered by this settlement.

WHAT IS THIS SETTLEMENT ABOUT?

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) conducted a review of Hillshire Brands' hiring practices during January 1, 2012 through December 31, 2012. OFCCP is the government agency responsible for enforcing the equal employment opportunity and affirmative action requirements that apply to federal contractors. OFCCP issued a Notice of Violations alleging that Hillshire Brands discriminated against White and Black/African-Americans in hiring for the Production positions during January 1, 2012 through December 31, 2012. Hillshire Brands denies those claims. Ultimately, although Hillshire Brands disagreed with OFCCP's findings, Hillshire Brands has agreed to resolve the claims through a Conciliation Agreement. A Conciliation Agreement is a legal document that explains the terms of an agreement to settle a Notice of Violations issued by OFCCP.

WHAT DOES THIS MEAN FOR YOU?

Because you applied for a Production position during the relevant time frame, and were not hired, this settlement may provide you with some specific benefits:

- (1) **You may be eligible to receive a payment of at least \$1,150.62 (before taxes).**
This payment represents your share of back wages and other payments Hillshire Brands is making to settle the lawsuit. The final amount you will receive will be reduced by deductions for items such as income tax withholding and Social Security contributions.
- (2) Hillshire Brands will be making job offers for Production 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 Hillshire Brands, please express your interest on the enclosed Claim Form.

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

WHAT IS YOUR NEXT STEP?

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

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

To be eligible for a payment and job, you must complete, sign, and return **both** the following enclosed documents, (1) Claim Form and (2) Release of Claims Form by June 29, 2018 to:

Settlement Administrator - OFCCP – Hillshire Brands

XXX
Address
Address

The documents must be received by June 29, 2018.

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

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

HOW CAN YOU GET MORE INFORMATION?

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

Attachment C

Interest Form – Affected Applicants

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

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

DEADLINE TO RESPOND IS JUNE 29, 2018

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

To receive an award such as money or a job offer, you must complete and return this Interest Form and the Release Form (Attachment D), postmarked on or before June 29, 2018, to:

Settlement Administrator OFCCP – Hillshire Brands XXX

Address

Address

If you do not submit a properly completed Interest Form and Release Form on or before June 29, 2018, then your claim will not be on time and **you will not receive any money from this settlement and you cannot be considered for a job offer.**

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

Attachment C

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

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

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

Name: _____
Home Phone: (____) _____ - _____ Cell Phone: (____) _____ - _____
Street Address: _____
City/State/Zip: _____
Email Address: _____

Please provide your social security number _____ - _____ - _____
Your Social Security Number is required in order to process your payment for tax purposes. Your Social Security Number will not be used for any other purpose.

Notify us at the address below if your address or phone number changes within the next twelve months, or contact us if you have any questions about this Interest form, the notice, or the settlement.

Settlement Administrator- OFCCP Hillshire Brands XXX

Address

Address

1-XXX-XXX-XXXX

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

- Yes, I am still interested in a Production position with Hillshire Brands in Storm Lake, Iowa.
- No, I am not currently interested in a Production position with Hillshire Brands in Storm Lake, Iowa.
- I am currently employed by Hillshire Brands.

Step 3: Sign and return along with the Release Form (Attachment D)

I certify the above as true and correct.

Signature

Date

RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246

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

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

In consideration of the payment of at least \$1,150.62 (less deductions required by law) and/or a potential job offer for a Production position by Hillshire to me, which I agree is acceptable, I agree to the following:

I.

I hereby waive, release and forever discharge Hillshire, its predecessors, successors, related entities, parents, subsidiaries, affiliates and organizations, and its and their shareholders, owners, directors, officers, employees, agents, successors, and assigns, of and from any and all actions, causes of action, damages, liabilities, and claims arising out of or actionable under Executive Order 11246, as amended, which I or my representatives (heirs, executors, administrators, or assigns) have or may have which relate in any way to its selection procedures for applicants for Production positions during the period of January 1, 2012 to December 31, 2012.

II.

I understand that Hillshire denies that it treated me unlawfully or unfairly in any way and that Hillshire entered into a Conciliation Agreement with the U.S. Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") and agreed to make the payment and/or a potential job offer described above to resolve without further legal proceedings all issues related to OFCCP's compliance reviews of Hillshire initiated on March 27, 2013. I further agree that the payment of the aforesaid sum and/or a potential job offer by Hillshire to me is not to be construed as an admission of any liability by Hillshire.

III.

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

I understand that if I do not sign this Release and return it to The Hillshire Brands Company by June 29, 2018, I will not be entitled to receive any *payment (less deductions required by law) and/or a potential job offer for the Production position.*

I UNDERSTAND AND AGREE TO THE ABOVE TERMS AND CONDITIONS

Your Signature: _____ Date: _____

Your Printed Name: _____