

## CONCILIATION AGREEMENT

Between

THE U.S. DEPARTMENT OF LABOR

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

and

MAXFIELD CANDY COMPANY

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

The Office of Federal Contract Compliance Programs ("OFCCP") evaluated Maxfield Candy Company's ("Maxfield") facility located at 1050 South 200 West, Salt Lake City, Utah. Based on that review, OFCCP asserted that Maxfield was not in compliance with the Executive Order 11246, as amended ("E.O. 11246"), and its implementing regulations at 41 CFR Sections 60-1, 60-2, and 60-3. OFCCP notified Maxfield of the specific violations found and the corrective actions required in a Notice of Violations issued on December 28, 2012, and in a Notice to Show Cause issued on January 27, 2014. 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 Maxfield enter this Conciliation Agreement ("Agreement") and agree to all the terms stated below.

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

1. In exchange for Maxfield'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 Maxfield violates this Agreement. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. It is understood that Maxfield has ceased operations, sold its facility and has no employees. However, in the event that Maxfield reopens and recommences operations, it 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. Maxfield 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. It is understood that Maxfield has ceased operations, sold its facility, has no employees and engages in no contracts with the United States Government. However, in the event that Maxfield reopens and recommences operations which include Government contracting, Maxfield understands that nothing in this Agreement relieves Maxfield of its obligation to fully comply with the requirements of E.O. 11246, Section 503 of the Rehabilitation Act of 1973 (“Section 503”), the Vietnam Era Veterans’ Readjustment Assistance Act of 1974 (“VEVRAA”), their revised implementing regulations at 41 CFR Part 60-741 (2014) and 41 CFR Part 60-300 (2014), and other applicable equal employment laws.
4. Maxfield promises not to harass, intimidate, threaten, discriminate, or otherwise retaliate against any individual because the individual: benefits from this Agreement, files a complaint or participates in any investigation or proceeding under E.O. 11246, Section 503, and/or VEVRAA, or engages in any activity listed at 41 CFR 60-1.32(a).
5. The parties understand the terms of this Agreement and enter into it voluntarily.
6. This document and its attachments contain the complete and final understanding of the parties with respect of the matters referenced herein. This Agreement contains all terms by which the parties are bound and it supersedes all prior written or oral negotiations and agreements. There will be no modifications or amendments to this Agreement unless they are in writing, signed by all parties.
7. If one or more provisions of this Agreement are rendered unlawful or unenforceable, the remaining provisions will remain in full force and effect.
8. This Agreement becomes effective on the day it is signed by the Regional Director of the Southwest and Rocky Mountain 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 Maxfield submits the final progress report required in Part IV (D), below, unless OFCCP notifies Maxfield in writing prior to the expiration date that Maxfield has not fulfilled all of its obligations under the Agreement, in which case the Agreement is automatically extended until the date that OFCCP determines Maxfield has met all of its obligations under the Agreement.
10. If Maxfield violates this Agreement,
  - A. The procedures set forth at 41 CFR 60-1.34 will govern:
    - 1) If OFCCP believes that Maxfield violated any term of the Agreement while it was in effect, OFCCP will send Maxfield a written notice stating the alleged violations and summarizing any supporting evidence.

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- 2) Maxfield 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 Maxfield is unable to demonstrate that it has not violated the Agreement, or if OFCCP alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceeding through any other requirement.
  - 4) OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
- B. Maxfield may be subject to the sanctions set forth in Section 209 of the Executive Order and/or other appropriate relief for violation of this Agreement.
11. This Agreement does not constitute an admission by Maxfield of any violation of E.O. 11246, Section 503, VEVRAA, or other laws, nor has there been an adjudicated finding that Maxfield violated any laws.

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

1. **VIOLATION:** OFCCP found that Maxfield's hiring process is not in compliance with 41 CFR 60-1.4(a)(1). OFCCP's analysis of Maxfield's hiring process and selection procedures revealed that Maxfield discriminated against non-Hispanic<sup>1</sup> and male applicants for Production positions during the period of September 24, 2008 through September 23, 2010.

For purposes of its analysis, OFCCP relied on applicant flow and hire logs provided by Maxfield, applications, interviews with managers, employees and unsuccessful applicants, and other personnel data to identify which applicants comprised the Production applicant pool. OFCCP included in the Production applicant pool those applicants who applied for, were considered for, or were hired into any production-related position, including Cook, Operator, Material Handler and Packer positions. OFCCP also included in the applicant pool applicants who did not specify the job for which they were applying. OFCCP did not include in the Production applicant pool applicants who applied for Sales or Administrative positions. Additionally, OFCCP excluded from the applicant pool all duplicate applicants, all applicants who were hired into another job at Maxfield, and applicants who applied outside this period.

OFCCP made refinements to the applicant pool based on its analysis of the data and information obtained during the compliance evaluation. Based on OFCCP's review of this

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<sup>1</sup> An analysis by race yielded Hispanic applicants as the favored group in hiring for Production positions at a statistically significant rate. The group "non-Hispanic" as referenced here includes each of the following individual races: white, black, Asian, American Indian, Hawaiian/Pacific Islander, and two or more (non-Hispanic) race applicants.

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data and information, OFCCP removed from its analysis: applicants who were not age 18 or over; applicants who did not pass the E-Verify screen for eligibility to work in the U.S.; and those applicants who were offered a Production position but were not hired.

OFCCP's analysis of the refined applicant and hiring data for the September 24, 2008 through September 23, 2010 period, which represent three hiring seasons for Maxfield, showed a statistically significant disparity that negatively affected non-Hispanic applicants for Production positions. OFCCP analyzed the data and found that of (b) (7) (e) non-Hispanic applicants, (b) (7) (e) or (b) (7) (e)% were hired; of (b) (7) (e) Hispanic applicants, (b) (7) (e) or (b) (7) (e)% were hired. This resulted in a disparity in hiring that was statistically significant at (b) (7) (e) standard deviations yielding a shortfall of 88 non-Hispanics.

OFCCP's analysis of the refined applicant and hiring data for the September 24, 2008 through September 23, 2010 period also showed a statistically significant disparity that negatively affected male applicants for Production positions. OFCCP analyzed the data and found that of (b) (7) (e) male applicants, (b) (7) (e) or (b) (7) (e)% were hired; of (b) (7) (e) female applicants, (b) (7) (e) or (b) (7) (e)% were hired. This resulted in a disparity in hiring that was statistically significant at (b) (7) (e) standard deviations yielding a shortfall of 27 males.

OFCCP concludes that Maxfield's hiring practices resulted in discrimination against 140 non-Hispanic applicants and 104 male applicants who applied for Production positions during Season 3<sup>2</sup>. In addition to the statistical case, OFCCP maintains it found anecdotal evidence that supports OFCCP's statistical findings.

**REMEDY:** Because Maxfield sold its assets on April 2, 2013 and the successor company has ceased operations, OFCCP agrees that the remedy shall be limited to the following corrective actions, which Maxfield agrees to undertake:

- a. **Notice.** Within 15 calendar days of the Effective Date of this Agreement, OFCCP will notify the non-Hispanic and male applicants listed on Attachments 1A and 1B of the terms of this Agreement by mailing by first class mail to each individual in the affected class the Notice to Affected Class (Attachment 2, "Notice"), Information Verification Form (Attachment 3), and a postage paid return envelope. Within 30 calendar days of the Effective Date of this Agreement, OFCCP will send a second Notice, Information Verification Form, and postage paid return envelope to the individuals in the affected class whose mailing was returned undeliverable and for whom updated addresses were found.
- b. **Eligibility.** All members of the affected class (listed on Attachments 1A and 1B), who complete, sign and return the Information Verification Form to OFCCP within 60 calendar days of the effective date of this Agreement ("Eligible Class Members") will receive a share of the monetary settlement pursuant to this Agreement. If an individual receives, but does not return, the Information Verification Form to OFCCP within 60 calendar days of the effective date of this Agreement, he/she will no longer be entitled to a payment under this Agreement.

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<sup>2</sup> Numbers are based on analyses of all data submitted by Maxfield and omitting multiple applications.

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Within 65 calendar days of the effective date of this Agreement, OFCCP will provide Maxfield with a list of the Eligible Class Members (individuals who returned the completed Information Verification Form by the deadline) and a copy of each document. Within 10 calendar days after receiving the list, OFCCP will discuss with Maxfield any issues necessary to finalize the list, such as the inclusion or exclusion of certain individuals. The monetary payment discussed in paragraph d. below will be divided equally among all Eligible Class Members on the final approved list.

- d. Monetary Settlement. Within 10 days of the effective date of this Agreement, Maxfield will deposit the full amount of the back pay and interest specified in this Section into a separate account for Eligible Class Members. Within 80 calendar days of the effective date of this Agreement, Maxfield agrees to distribute \$93,727 (\$82,000.00 in back pay and \$11,727.00 in interest), less legal deductions required by law from back pay only (such as federal, state and/or local taxes and the Eligible Class Members' share of FICA taxes), in equal shares among all Eligible Class Members on the final approved list. Maxfield will pay the Internal Revenue Service ("IRS") the employer's share of social security withholdings and will mail each Eligible Class Member an IRS W-2 Form reporting the portion of the payment representing back pay and an IRS Form 1099 for the portion of the payment representing interest. These IRS forms will be mailed by Maxfield to the Eligible Class Members either with the settlement checks or at the end of the year.

Within five calendar days of Maxfield's receipt of a check to an Eligible Class Member returned as undeliverable, Maxfield will notify OFCCP of this fact via e-mail sent to (b) (7) (e) (b) (7) (e) @dol.gov and Carolyn Russell, russell.carolyn@dol.gov. OFCCP will attempt to locate the Eligible Class Member and if OFCCP obtains an alternate address, Maxfield will re-mail the check within 10 calendar days of receiving an alternate or corrected address.

Within 150 calendar days of the effective date of this Agreement, Maxfield will provide to OFCCP copies of all canceled checks to date, and OFCCP will attempt to contact those Eligible Class Members who have not yet cashed their checks.

Any check that remains uncashed 90 days after the initial date the check was mailed to the Eligible Class Member will be void. Within 200 calendar days of the effective date of this Agreement, Maxfield will make a second distribution, equally dividing the total uncashed funds, if any, to all Eligible Class Members who cashed their first check.

- e. Hiring: Because Maxfield is no longer in control of the location under review, and the successor company has ceased operations, there is no hiring remedy. Nothing in this Agreement shall be construed to imply that Maxfield has actually been the employer of any Class Member for E-verify or I-9 purposes.
2. VIOLATION: OFCCP found that Maxfield failed to maintain and have available for inspection personnel and employment records in accordance with the requirements of 41 CFR 60-1.12 and 41 CFR Part 60-3. Specifically, during the September 24, 2008 through

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September 23, 2010 period, Maxfield failed to preserve and make available to OFCCP complete and accurate employment records, including applications or other documentation of all applicants who expressed interest in working for the company. The records provided to OFCCP for the review period showed nearly one-to-one hiring ratios for the Season 1 and Season 2 hiring periods. Further, Maxfield failed to collect and maintain complete and accurate records of the gender, race, and ethnicity of all applicants and hires. Maxfield failed to maintain and provide documentation of employee contact information collected by production managers at the end of each production season that was used to inform terminated employees when the new production season began.

REMEDY: Because Maxfield sold its assets on April 2, 2013 and the successor company has ceased operations, there is no remedy for the failure to maintain records.

3. VIOLATION: Maxfield failed to properly conduct adverse impact analyses on its selection procedures in accordance with the requirements of 41 CFR 60-2.17(b), 41 CFR 60-3.4 and 41 CFR 60-3.15A. Specifically, Maxfield failed to identify adverse impact against any group as specified in 60-3.4(B). Additionally, Maxfield failed to conduct adverse impact analyses on each racial and ethnic group which constituted at least two percent of the labor force in the relevant labor area or two percent of the applicable workforce, and it failed to evaluate the individual components of the selection process for adverse impact.

REMEDY: Because Maxfield sold its assets on April 2, 2013, and the successor company has ceased operations, there is no remedy to correct Maxfield's failure to properly conduct adverse impact analyses.

**PART IV. REPORTS REQUIRED**

1. Maxfield agrees to submit the documents and reports described below to OFCCP at:

Denver District Director  
U.S. Department of Labor  
Office of Federal Contract Compliance Programs  
1244 Speer Blvd., Suite 540  
Denver, CO 80204

- a. Within 10 days of this Agreement, Maxfield will notify OFCCP of the total amount deposited into a separate account for the benefit of Eligible Class Members as well as the name and contact number for the person who can provide information about this account.
- b. Within 95 calendar days of the effective date of this Agreement, Maxfield will submit all documents and information of monetary payments to all Eligible Class Members as referenced in Remedy 1(d) above, within the prescribed timeframes. For each Eligible Class Member who was sent a check in the first distribution, the documentation must

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- include: name of the Eligible Class Member, address to which the check was mailed, check number, amount of the check, and verification of mailing as available.
- c. Within 5 business days of its receipt of a returned check as undeliverable, Maxfield will notify OFCCP by email of this and OFCCP will attempt to locate that Eligible Class Member. If located, Maxfield will re-mail the check within 10 calendar days of receiving an alternate or corrected address and will notify OFCCP of the re-mailing.
  - d. Within 150 calendar days of the effective date of this Agreement, Maxfield will provide OFCCP with a list of Eligible Class Members who cashed their first checks along with the dates the checks cleared the bank and a copy of the canceled checks (*i.e.* documentation of those who were paid). Maxfield will also provide OFCCP with a list of the Eligible Class Members who did not cash their first checks along with a copy of any letters/envelopes returned as undeliverable, uncashed funds notifications, and the amount of uncashed funds (*i.e.* documentation of those who were not paid).
  - e. Within 205 calendar days of the effective date of this Agreement, Maxfield will submit documentation of the distribution of the total amount of uncashed funds (*i.e.* second distribution) to the Eligible Class Members as specified in Remedy 1(d) above. For each Eligible Class Member paid in the second distribution, the documentation must include: name of Eligible Class Member, address to which the check was mailed, check number, amount of the check, and verification of mailing as available. Within 265 calendar days, Maxfield will provide OFCCP with copies of all canceled checks from the second distribution and the dates the checks cleared the bank.
  - f. Maxfield will continue submitting the information above in progress reports until OFCCP determines that the back pay and interest has been fully paid and the Agreement has been implemented as applicable. If complete documentation is submitted in a prior report, it need not be resubmitted in a subsequent progress report.
2. Maxfield 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.
  3. All dates and deadlines in this Agreement may be modified or extended by written agreement.
  4. This Agreement shall remain in effect until the review and acceptance by OFCCP of Maxfield's final progress report.

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**PART V. SIGNATURES**

This Conciliation Agreement is hereby executed by and between the OFCCP and Maxfield.

Maxfield Candy Company

By:

**6 & 7c**

Kenneth Jacquin

Board Member, Maxfield Candy Company

OFCCP

**6 & 7c**

By:

Melissa L. Speer

Regional Director, OFCCP

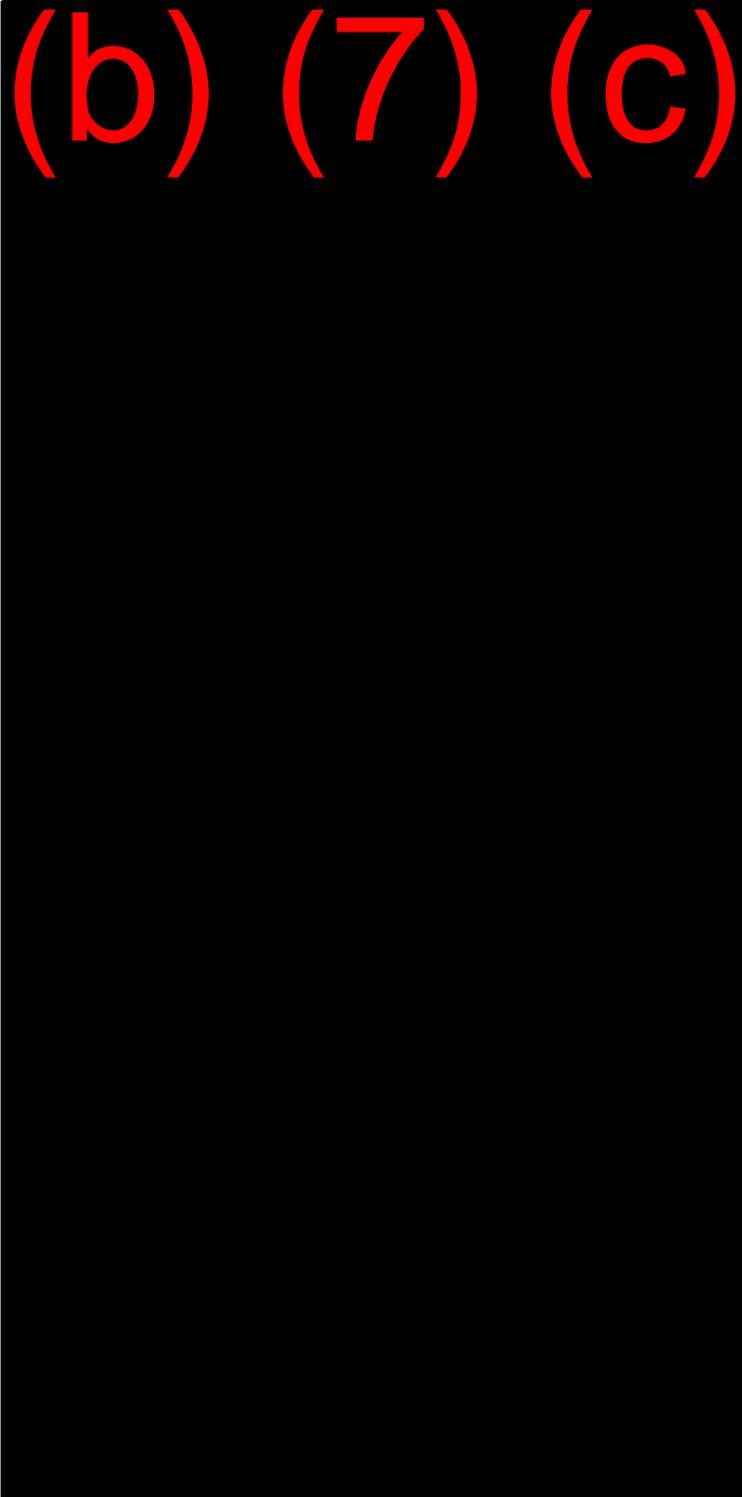
Date: May 20, 2015

Date: 5/22/2015

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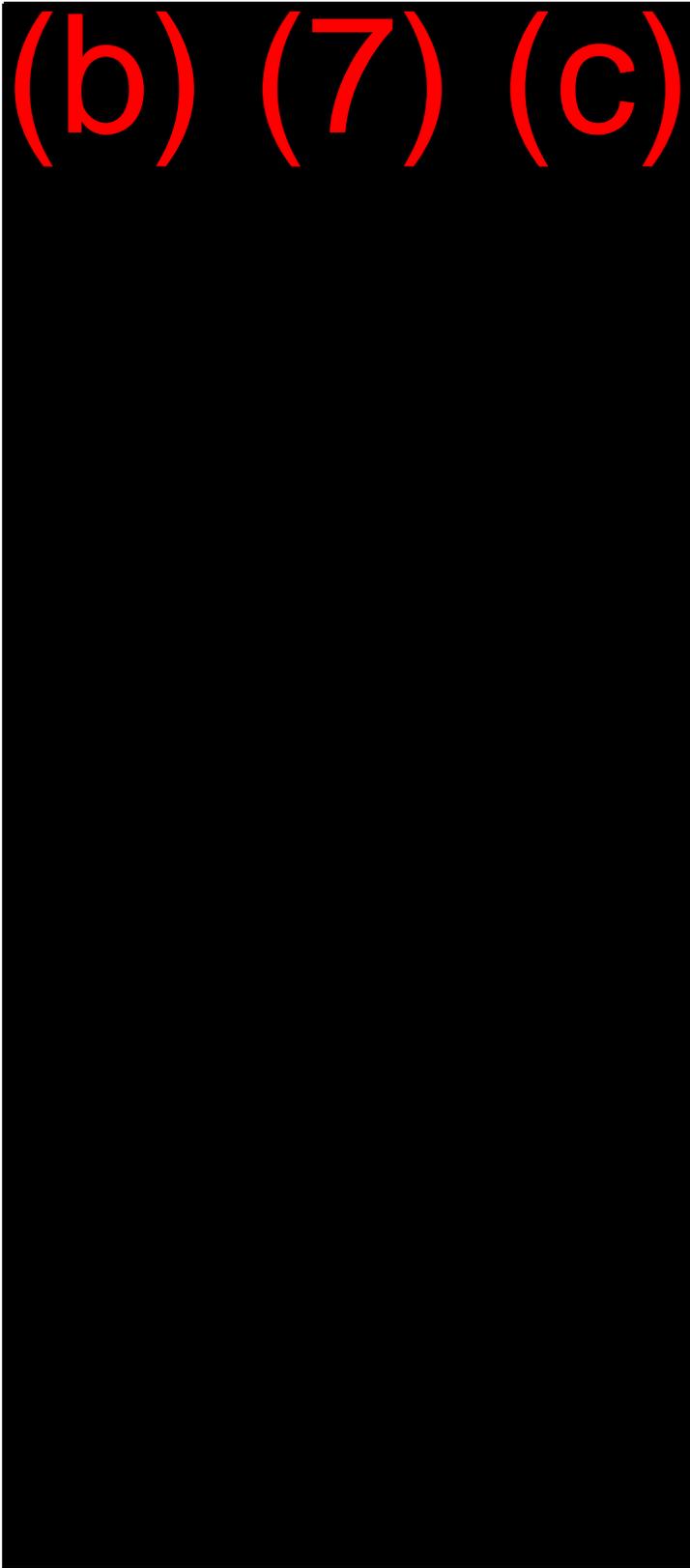
ATTACHMENT 1A  
AFFECTED CLASS MEMBERS – NON-HISPANIC

(b) (7) (c)



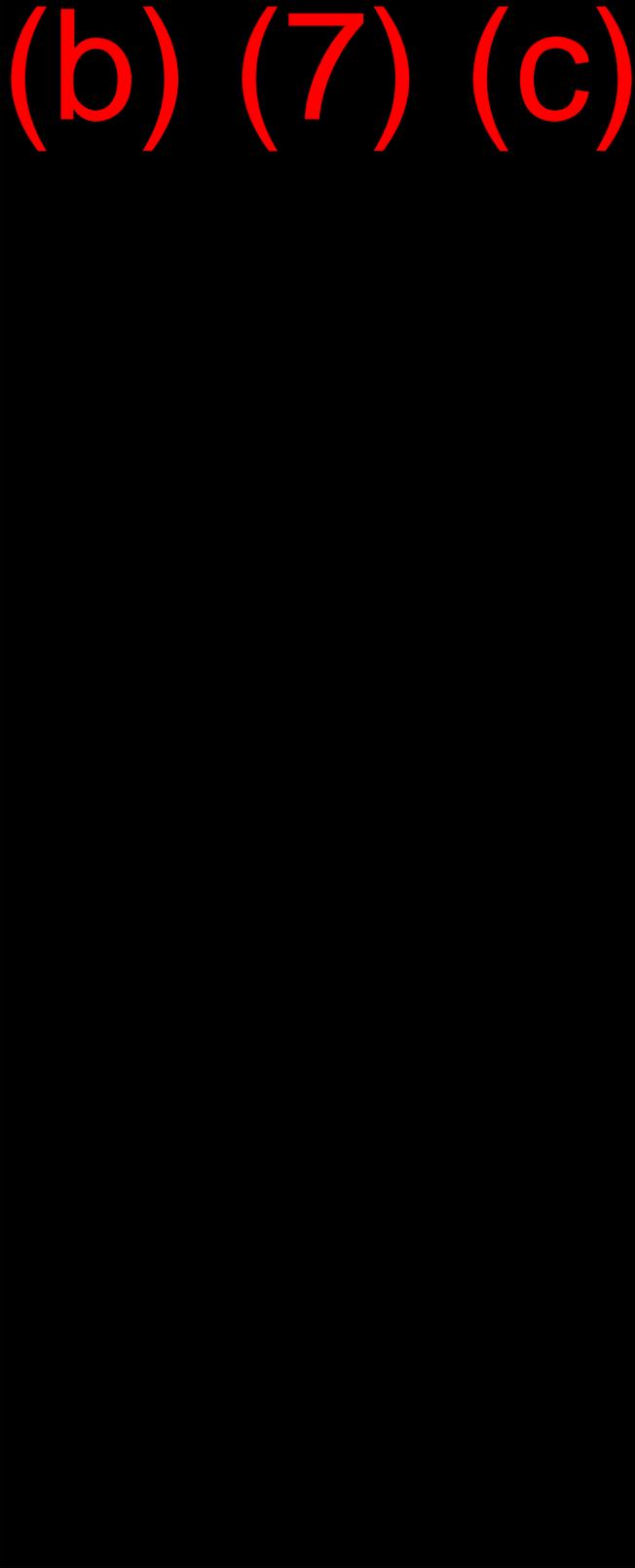
Maxfield Candy Company Conciliation Agreement

(b) (7) (c)



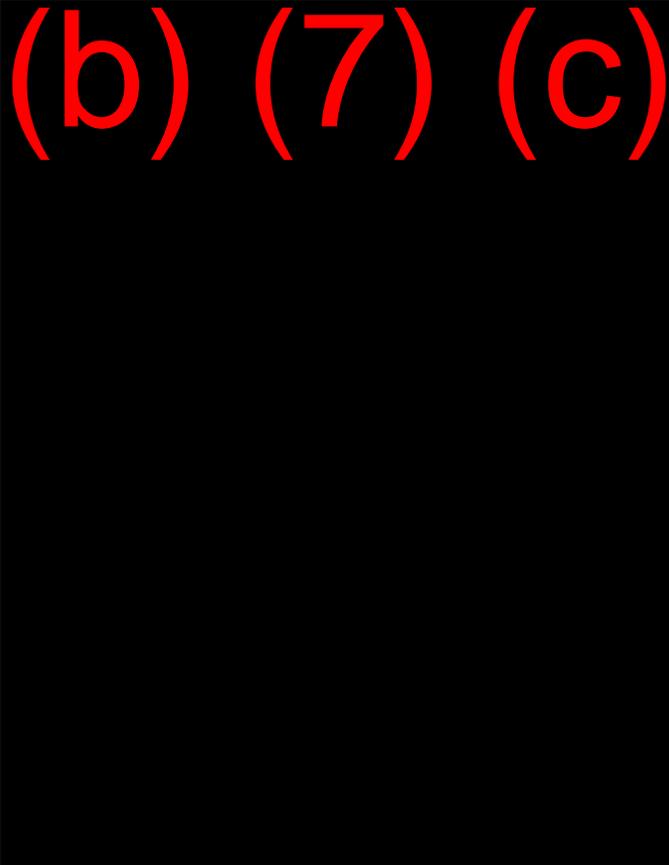
Maxfield Candy Company Conciliation Agreement

(b) (7) (c)



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(b) (7) (c)



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ATTACHMENT 1B  
AFFECTED CLASS MEMBERS – MALE<sup>1</sup>



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<sup>1</sup> Attachment 1B includes males not included in Attachment 1A.

**ATTACHMENT 2  
NOTICE TO AFFECTED CLASS**

Dear [NAME]:

Maxfield Candy Company (“Maxfield”) and the Department of Labor’s Office of Federal Contract Compliance Programs (“OFCCP”) have entered into a Conciliation Agreement (“Agreement”) to remedy the violations of Executive Order 11246 (“E.O. 11246”) that OFCCP found during a compliance review of Maxfield’s Salt Lake City, Utah, facility. OFCCP’s analysis of Maxfield’s hiring process and selection procedures revealed that during the period of September 24, 2008 through September 23, 2010 (“review period”) Maxfield discriminated against certain applicants for Production jobs. Maxfield has not admitted to any violation of E.O. 11246, and there has not been any adjudicated finding that Maxfield violated any laws. OFCCP and Maxfield entered into the Agreement to resolve the matter without resorting to further legal proceedings. You have been identified as an individual who applied for a Production job during that time period, but was not hired.

As part of this Agreement, you are eligible to receive a distribution of at least \$585.79 less lawful payroll deductions. Under the terms of this Agreement it may take up to six (6) months from the date of this letter before you receive your distribution. In order to be eligible for a payment, you must complete, sign, and return the enclosed Information Verification Form. You should complete and mail back the form as soon as possible; it *must* be postmarked to the address below no later than 90 days after the date this Notice was mailed out (postmarked) for you to be entitled to participate in this settlement:

U.S. Department of Labor  
Office of Federal Contract Compliance Programs  
Denver District Office  
1244 Speer Boulevard, Suite 540  
Denver, CO 80204

You may use the enclosed postage-paid return envelope to return the completed and signed Information Verification Form. If you have any questions you may call Compliance Officer (b) (7) (e) or Assistant District Director Carolyn Russell at (720) 264-3200. Your call will be returned as soon as possible.

**IF YOU FAIL TO COMPLETE AND RETURN THE ENCLOSED DOCUMENTS TO THE U.S. DEPARTMENT OF LABOR, OFCCP, WITHIN 90 DAYS OF THE DATE THE ENVELOPE CONTAINING THIS NOTICE WAS POSTMARKED, YOU WILL NOT BE ELIGIBLE TO RECEIVE A PAYMENT.**

Sincerely,

Nicole A. Huggins  
Denver District Director

Enclosure: Information Verification Form

**ATTACHMENT 3  
INFORMATION VERIFICATION FORM**

You must complete this form in order to be eligible for the monetary payment under the terms of the Conciliation Agreement ("Agreement") between Maxfield Candy ("Maxfield") and the Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP"). Please print legibly, except for the signature.

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

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

Telephone Nos.: Home \_\_\_\_\_ Cell \_\_\_\_\_ Work \_\_\_\_\_

*Please notify OFCCP at the address below if your address or phone number changes within the next 12 months.*

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

For purposes of this settlement, it is necessary to verify your gender and race:

Gender:

Male [  ]

Female [  ]

Race/Ethnicity:

Caucasian [  ]

Black/African-American [  ]

Hispanic [  ]

Asian [  ]

Native American [  ]

**IF YOU FAIL TO COMPLETE AND RETURN THE ENCLOSED DOCUMENTS TO THE ADDRESS BELOW WITHIN 90 DAYS OF THE DATE THE ENVELOPE CONTAINING THIS NOTICE WAS POSTMARKED, YOU WILL NOT BE ELIGIBLE TO RECEIVE A PAYMENT.**

U.S. Department of Labor  
Office of Federal Contract Compliance Programs  
Denver District Office  
1244 Speer Boulevard, Suite 540  
Denver, CO 80204

I, \_\_\_\_\_, certify the above is true and correct.  
*(print name)*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date