

**Conciliation Agreement**  
**Between the United States Department of Labor**  
**Office of Federal Contract Compliance Programs**  
**And**  
**NaphCare, Inc.**  
**2090 Columbiana Road, Suite 4000**  
**Birmingham, Alabama 35216**

**PART I: General Provisions**

1. This Agreement is between the Office of Federal Contract Compliance Programs (hereinafter, OFCCP) and NaphCare, Inc. (hereinafter NaphCare).
2. The violations identified in this Agreement were found during a compliance evaluation of NaphCare at its establishment located at 950 22<sup>nd</sup> Street North, Suite 825, Birmingham, Alabama, which began on September 28, 2010 and they were specified in a Notice of Violation issued April 5, 2012. OFCCP alleges that NaphCare violated Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212) and their 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 NaphCare of any violation of Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212) and their implementing regulations.
4. The provisions of this Agreement will become part of NaphCare's affirmative action programs (AAPs). Subject to the performance by NaphCare of all promises and representations contained herein and in its affirmative action programs, all named violations in regard to the compliance of NaphCare with all OFCCP programs will be deemed resolved. However, NaphCare 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. NaphCare 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 NaphCare's compliance. NaphCare shall permit access to its premises during normal business hours for these purposes.
6. Nothing herein is intended to relieve NaphCare from the obligation to comply with the requirements of Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212) and their implementing regulations, or any other equal employment statute or executive order or its implementing regulations.
7. NaphCare 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 or who files a complaint or who participates in any manner in any proceedings under Executive Order 11246,

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as amended; Section 503 of the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212) and their implementing regulations at Title 41 CFR Chapter 60.

8. This Agreement will be deemed to have been accepted by the Government on the date of signature by the District Director for OFCCP, unless the Regional Director or the Director, OFCCP, indicates otherwise within 45 days of the District Director's signature on this Agreement.
9. If, at any time in the future, OFCCP believes that NaphCare has violated any portion of this Agreement during the term of this Agreement, NaphCare will be promptly notified of that fact 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 NaphCare with 15 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 NaphCare has violated this Conciliation Agreement, OFCCP may seek enforcement of this Agreement itself and shall not be required to present proof of the underlying violation resolved by this Agreement.

Liability for violation of this Agreement may subject NaphCare to sanctions set forth in Section 209 of the Executive Order, 41 CFR 60-300.66 and 41 CFR 60-741.66 and/or other appropriate relief.

**PART II: Specific Provisions**

1. **VIOLATION:** Compensation data provided by NaphCare for all employees as of July 13, 2010 revealed that NaphCare provided lower compensation to (b) (7) (c) a minority (b) (7) (c) (b) (7) (c) employee, than to a similarly situated non-minority employee in the (b) (7) (c) job title. Time in Company, time in current job, experience and performance did not explain the compensation disparity. Accordingly, OFCCP finds that NaphCare failed to afford equal employment opportunity in compensation to one minority (b) (7) (c) who was paid less than one non-minority comparator because of race, in violation of 41 CFR 60-1.4(a)(1).

Additionally, the aforementioned compensation data revealed that NaphCare provided lower compensation to both (b) (7) (c) and (b) (7) (c) female (b) (7) (c) (b) (7) (c) than to two male employees working in the lower-level (b) (7) (c) job title. Time in Company, time with company, experience, and performance did not explain the compensation disparity. Accordingly, OFCCP finds that NaphCare failed to afford equal employment opportunity in compensation to two female (b) (7) (c) who were paid less than two male lower-level (b) (7) (c) because of gender, in violation of 41 CFR 60-1.4(a)(1).

**REMEDY:** Although NaphCare affirms that this disparity in pay was unintentional, NaphCare

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will adjust the pay rates as follows:

NaphCare will provide (b) (7)(C) with \$5.96 per hour in salary adjustments. Additionally, NaphCare will disburse to (b) (7)(C) \$45,076.18 in back pay and \$3,213.50 in interest totaling \$48,289.68. The money will be paid to (b) (7)(C) in a lump sum, less deductions required by law. This payment will be reduced by withholdings for federal income tax, state, and/or local income tax, and (b) (7)(C) share of FICA. (b) (7)(C) shall receive an IRS Form W-2 for her share of the back pay and benefits and an IRS Form 1099 for her share of the interest amount.

NaphCare will provide (b) (7)(C) with \$1.81 per hour in salary adjustments. Additionally, NaphCare will disburse to (b) (7)(C) \$13,581.30 in back pay and \$964.53 in interest totaling \$14,545.83. The money will be paid to (b) (7)(C) in a lump sum, minus deductions required by law. This payment will be reduced by withholdings for federal income tax, state, and/or local income tax, and (b) (7)(C) share of FICA. (b) (7)(C) shall receive an IRS Form W-2 for her share of the back pay and benefits and an IRS Form 1099 for her share of the interest amount.

NaphCare will not retaliate, harass, or engage in any form of reprisal or other adverse action against these female (b) (7)(C) based on or in relation to the terms or provisions of this Remedy.

Within 120 days of the District Director's signature on this Agreement, NaphCare will provide training on its equal employment opportunity programs for all persons involved in determining compensation for NaphCare's employees. NaphCare will update this training annually thereafter.

NaphCare will immediately review and revise, as appropriate, its compensation system to ensure that this violation ceases. In addition, NaphCare will review its compensation system at least annually and revise IT, as needed, to ensure that this violation does not recur.

2. **VIOLATION:** NaphCare failed to identify in the personnel records it keeps, where possible, the gender, race, and ethnicity of each applicant, or Internet Applicant, as defined in 41 CFR 60-1.3, whichever is applicable to the particular position. 41 CFR 60-1.12(c) (1) (ii).

**REMEDY:** NaphCare will identify in the personnel records it keeps, where possible, the gender, race, and ethnicity of each applicant or Internet Applicant, as defined in 41 CFR 60-1.3, whichever is applicable to the particular position.

3. **VIOLATION:** NaphCare failed to provide equal opportunity to qualified individuals with disabilities and qualified disabled veterans in its online job application procedures. Specifically, NaphCare failed to ensure that individuals with disabilities and disabled veterans can a) use its online application system, b) request an accommodation to be able to use its online application system, or c) access and use timely alternative application procedures. 41 CFR 60-300.5(a)(1)(i) and 41 CFR 60-741.5(a)(1)(i).

**REMEDY:** NaphCare will make its internal and external online application systems accessible to qualified individuals with disabilities and disabled veterans by implementing at least the following:

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a) *Online features* that include prominent display of i) a notice outlining NaphCare's accommodation process and ii) options for those applicants who cannot use the online system because of a disability to apply in an alternate way. At a minimum, this display will contain the name of the person to contact, and the process for requesting an accommodation.

b) *Procedures for contacting NaphCare other than online*, to participate in NaphCare's application process as timely and equally as other applicants for NaphCare's vacancies.

NaphCare will audit and evaluate its online and offline application procedures to determine whether they are providing equal opportunity to individuals with disabilities and disabled veterans and take corrective action, if warranted.

4. **VIOLATION:** NaphCare failed to list, on an ongoing basis, all employment openings, as defined by 41 CFR 60-300.5(a) 2 and 6, with the state workforce agency job bank or with the local employment delivery system serving the location where openings occur. Additionally, NaphCare failed to undertake outreach and positive recruitment activities that are reasonably designed to effectively recruit disabled veterans, recently separated veterans, other protected veterans and Armed Forces service medal veterans. 41 CFR 60-300.5(a) 2-6 and 41 CFR 60-300.44(f).

**REMEDY:** NaphCare will list, on an ongoing basis, all employment openings, as defined by 41 CFR 60-300.5(a) 2 and 6, with the Alabama State Job Bank or with the Alabama Career Center serving the location where openings occur. NaphCare will contact the resource identified below as part of NaphCare's outreach and positive recruitment activities to recruit qualified disabled veterans, recently separated veterans, other protected veterans and Armed Forces service medal veterans:

Birmingham Career Center  
3440 3<sup>rd</sup> Avenue South, Birmingham, Alabama 35222  
Contact: (b) (7) (c)  
Telephone: (205) 254-1300

**FUTURE CONDUCT:** NaphCare will not repeat the above violations.

**PART III: Reporting**

NaphCare will submit two reports, as stated below, to the Assistant District Director—Birmingham, United States Department of Labor, Office of Federal Contract Compliance Programs, Medical Forum Building, 950 22<sup>nd</sup> Street North, Suite 660, Birmingham, Alabama 35203.

The **first report** shall be due 60 days after the date this Agreement is signed by the District Director, OFCCP. The first report shall consist of the following:

1. Copies of personnel forms confirming salary adjustments made to (b) (7) (c) and (b) (7) (c)
2. Evidence of back pay monies disbursed to (b) (7) (c) and (b) (7) (c) including copies of the cancelled checks and pay slips showing the gross amount and deductions required by law; and

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3. Results of NaphCare's review of its compensation system, to include findings, additional equity adjustments and back pay disbursed, if any.

The **second report** shall be due June 30, 2013 and shall cover the period June 1, 2012 through May 31, 2013. The second report shall consist of the following:

1. Pursuant to Remedy 1:
  - a. Results of NaphCare's follow-up annual review of its compensation system, including findings, additional equity adjustments and back pay, if any. This review shall be conducted at least 275 days following the review required in the first report;
  - b. Record of presentation of NaphCare's equal employment opportunity training to all persons involved in determining compensation for NaphCare's employees, including the date(s) of training, cost of training, and names and job titles of recipients;
2. Pursuant to Remedy 2:
  - a. The total number of applicants and hires for each job or job group during the reporting period;
  - b. For each job or job group, the breakdown of applicants, and hires by applicable race, gender and ethnic group, as identified in 41 CFR 60-3.4B;
  - c. For each job or job group, the results of NaphCare'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 60-3.4B;
  - d. For each job or job group, the qualification(s) that NaphCare used, if any, and the stage at which NaphCare used the qualification(s), as a screening device;
  - e. For each case where the total selection process has an adverse impact, as defined in 41 CFR 60-3.4D, the results of NaphCare's evaluation of the individual components of the selection process for adverse impact;
  - f. The actions taken by NaphCare, where action is appropriate, after determining that any component of the selection process has an adverse impact on members of groups identified in 41 CFR 60-3.4B;
3. Pursuant to Remedy 3: Documentation that NaphCare evaluated and audited its online and offline application systems and personnel processes to determine whether they are providing equal opportunity to individuals with disabilities. Audit documentation will list: a) each request for application-process accommodation; b) the accommodation made; c) the disposition of the application; d) when the applicant is not hired, the reason for nonhire; and e) documentation of any and all costs associated with NaphCare's revisions to its online and offline application systems, in the form of bills paid and work hours compensated; and
4. Pursuant to Remedy 4: Documentation that NaphCare a) listed all employment openings, as defined by 41 CFR 60-300.5 (a) 2 and 6, with the State Job Bank or Local Career Center serving the location where openings occur, along with b) a report on the number of referrals and the number of hires from those listings and from NaphCare's other positive outreach and recruitment activities targeting veterans, providing for the hires, to the extent known, the number of disabled veterans, recently separated veterans, other protected veterans and Armed Forces service medal veterans.

**TERMINATION DATE:** This Agreement will expire 90 days after OFCCP receives the second and final report required in Part III above or on the date that the District Director gives notice to NaphCare that NaphCare has satisfied its reporting requirements, whichever occurs earlier, unless OFCCP notifies NaphCare in writing prior to the end of the 90-day period that NaphCare has not satisfied its

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reporting requirements pursuant to this Agreement.

**INTEGRATION CLAUSE:** This Agreement represents the full Agreement between NaphCare and OFCCP and this Agreement supersedes any other agreements, oral or written. In signing this Agreement, neither NaphCare nor OFCCP relies upon any promise, representation of fact or law, or other inducement that is not expressed in this Agreement. This Agreement may be modified only by written agreement of the Parties affected and may not be modified by any oral agreement.

**PART IV: Signatures**

The person signing this Conciliation Agreement on behalf of NaphCare, Inc. personally warrants that he is fully authorized to do so; that NaphCare, Inc. 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 NaphCare, Inc. This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and NaphCare, Inc.

DATE: 7/18/12

(b) (7) (c)

**Connie Young**  
Chief Financial Officer and  
Chief Operating Officer  
NaphCare, Inc.  
2090 Columbiana Road, Suite 4000  
Birmingham, Alabama 35216

DATE: 7/19/12

(b) (7) (c)

Compliance Officer—Birmingham  
Office of Federal Contract  
Compliance Programs

DATE: 7-19-12

(b) (7) (c)

**Eunsook Kim**  
Assistant District Director—Birmingham  
Office of Federal Contract  
Compliance Programs

DATE: 07/26/12

(b) (7) (c)

**Miguel A. Rivera, Jr.**  
District Director—Orlando  
Office of Federal Contract  
Compliance Programs