

EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement” or “Settlement Agreement”), dated as of July 17, 2019, is made and entered into by and among the following Parties: Anna Carroll (“Representative Plaintiff”), individually and on behalf of the Settlement Class, by and through Nicholas Armstrong and Oscar M. Price IV of Price Armstrong, LLC (“Class Counsel”); and (ii) Macy’s Inc., Macy’s Retail Holdings, Inc., and Macy’s Systems and Technology, Inc. (collectively, “Macy’s”), by and through its duly authorized representative.

RECITALS

A. On July 9, 2018, Representative Plaintiff filed her initial complaint in the United States District Court for the Northern District of Alabama (the “Court”) in an action styled *Anna Carroll v. Macy’s Inc. et al.*, Case No. 2:18-cv-01060-RDP (the “Litigation”). Representative Plaintiff filed an amended complaint on October 19, 2018 (the “Complaint”).

B. The Complaint asserts claims against Macy’s for negligence and violation of Alabama’s Deceptive Trade Practices Act. Each of these claims arises out of a third-party criminal cyber attack, as defined further in Section I below (the “Cyber Attack”).

C. Macy’s denies all material allegations of the Complaint. Macy’s specifically denies that it is liable in any way for the Cyber Attack and that Representative Plaintiff and Settlement Class Members are entitled to any relief from Macy’s. Nevertheless, given the risks, uncertainties, burden, and expense of continued litigation, Macy’s has agreed to settle the Litigation on the terms set forth in this Agreement, subject to Court approval.

D. This Agreement resulted from good faith, arm’s-length settlement negotiations, including a full-day mediation session before JAMS mediator Jeffrey Grubman, Esq. Prior to and during this mediation, Macy’s shared information with Class Counsel regarding the Cyber Attack. Class Counsel and Macy’s Counsel also participated in numerous direct discussions about possible resolution of the Litigation.

E. Class Counsel conducted a thorough examination and evaluation of the relevant law and facts to assess the merits of the claims to be resolved in this settlement and how best to serve the interests of the putative class in the Litigation. Based on this investigation and the negotiations described above, Class Counsel have concluded, taking into account the sharply contested issues involved, the risks, uncertainty and cost of further prosecution of the Litigation, and the substantial benefits to be received by the Settlement Class pursuant to this Agreement, that a settlement with Macy's on the terms set forth in this Agreement is fair, reasonable, adequate and in the best interests of the putative class.

F. The Parties understand, acknowledge, and agree that the execution of this Agreement constitutes the settlement and compromise of disputed claims. This Agreement is inadmissible as evidence against any of the Parties except to enforce the terms of the Agreement and is not an admission of wrongdoing or liability on the part of any of the Parties to this Agreement. It is the Parties' desire and intention to effect a full, complete, and final settlement and resolution of all existing disputes and claims as set forth herein.

G. The settlement contemplated by this Agreement is subject to preliminary and final approval by the Court, as set forth herein. This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle all claims and causes of action asserted, or that could have been asserted, against Macy's and the Released Persons (as defined in Section I below) arising out of or relating to the Cyber Attack, by and on behalf of the Representative Plaintiff and Settlement Class Members, and any other such actions by and on behalf of any other consumers and putative classes of consumers originating, or that may originate, in jurisdictions in the United States.

I. DEFINITIONS.

As used in the Settlement Agreement, the following terms have the meanings specified below:

1.1 "Approved Claims" means Settlement Claims completed using a Claim Form found to be valid by and in an amount approved by the Settlement Administrator.

1.2 “Claims Administration” means the processing of Claim Forms received from Settlement Class Members and the processing of payment of Approved Claims by the Settlement Administrator.

1.3 “Claims Deadline” means the deadline by which Settlement Class Members must submit any Settlement Claims. Settlement Claims submitted after the Claims Deadline will not be timely and will not qualify for approval as set forth in Section II and will be rejected. The Claims Deadline shall be set by the Court in the Preliminary Approval Order. The Parties propose a Claims Deadline that is the 180th day after the commencement of the Notice Program pursuant to ¶ 4.5.

1.4 “Claim Form” shall mean the claim form attached as Exhibit A, or a claim form approved by the Court that is substantially similar to Exhibit A.

1.5 “Claims Period” shall mean the time for Settlement Class Members to submit claims, running from the commencement of the Notice Program through the Claims Deadline.

1.6 “Class Counsel” shall mean Nicholas Armstrong and Oscar M. Price IV of Price Armstrong, LLC.

1.7 “Costs of Settlement Administration” means all actual costs associated with or arising from Claims Administration and the Notice Program as set forth in Section IV. The Costs of Settlement Administration shall be paid to the Settlement Administrator by Macy’s. The Costs of Settlement Administration shall be paid separate from and in addition to the Settlement Fund.

1.8 “Cyber Attack” means the criminal cyberattack from May 1, 2018, through June 11, 2018, involving unauthorized access or unauthorized attempted access to online customer profiles, and Personal Information associated with those profiles, using valid user credentials.

1.9 “Effective Date” means the first date by which all of the events and conditions specified in ¶ 10.1 herein have occurred and been met.

1.10 “Judgment” means the Court’s order and judgment finally approving the Settlement Agreement and the settlement, substantially in the form attached as Exhibit F.

1.11 “Parties” means, collectively, Macy’s and Representative Plaintiff, individually and on behalf of the Settlement Class.

1.12 “Personal Information” means any information that could be used to identify, locate, or contact a person (whether on its own or in combination with other information) or to pay for a transaction. The term “Personal Information” is intended to be construed broadly and includes, without limitation, payment card numbers, expiration dates, security and service codes, and any other payment card related information, as well as names, physical and email addresses, home addresses, birth dates, phones numbers, answers to security questions, and any other personally identifying information.

1.13 “Preliminary Approval Order” means the Court’s Order preliminarily approving the Settlement Agreement and the settlement, substantially in the form attached as Exhibit E.

1.14 “Released Persons” means Macy’s Inc., Macy’s Retail Holdings, Inc., Macy’s Systems and Technology, Inc., and Bloomingdales, Inc., and their current and former parents, subsidiaries, affiliated companies, joint ventures, assigns, and divisions, whether indirect or direct, as well as these entities’ respective predecessors, successors, directors, officers, employees, principals, managers, agents, attorneys, insurers, shareholders, and reinsurers.

1.15 “Released Claims” shall mean any and all claims, rights, rights of set-off and recoupment, demands, actions, obligations, and causes of action of any and every kind, nature, and character, known and unknown (including “Unknown Claims”), that any Settlement Class Member has, has asserted, could have asserted, or could assert against any of the Released Persons based on, relating to, concerning, or arising out of the Cyber Attack (including but not limited to the theft or compromise of Personal Information) or the allegations, facts, or circumstances described in the Litigation and/or Complaint. “Released Claims” include, without limitation, negligence, negligence per se, breach of contract, breach of implied contract, breach of fiduciary duty, breach of confidence, invasion of privacy, misrepresentation (whether fraudulent, negligent, or innocent), unjust enrichment, bailment, wantonness, failure to provide adequate notice pursuant to any breach notification statute or common law duty, any federal, state, or

local statutory or regulatory claims, including, but not limited to, pursuant to consumer protection laws, unfair and deceptive trade practice laws, and further including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys' fees, costs, and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, the appointment of a receiver, and any other form of relief.

1.16 "Representative Plaintiff" means Anna Carroll.

1.17 "Settlement Agreement" or "Agreement" means this agreement.

1.18 "Settlement Claim" means a claim or request for settlement benefits as provided for in Section II of this Settlement Agreement.

1.19 "Settlement Administrator" means KCC Class Action Services, LLC, as agreed by the Parties, which is experienced in formulating and effectuating notice programs and administering class action claims, generally and specifically those of the type provided for and made in cyber-attack litigation.

1.20 "Settlement Class" means all residents of the United States who Macy's sent a notification in July 2018 concerning suspected unauthorized activity as a result of the Cyber Attack. The Settlement Class specifically excludes: (i) Macy's and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge or Magistrate Judge to whom the action is assigned and any member of those Judges' staffs or immediate family members; and (iv) any other person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity or occurrence of the Cyber Attack or who pleads *nolo contendere* to any such charge.

1.21 "Settlement Class Member" and "Settlement Class Members" mean all persons who fall within the definition of the Settlement Class.

1.22 "Unknown Claims" means any of the Released Claims that any Settlement Class Member, including Representative Plaintiff, does not know or suspect to exist in his/her favor at the time of the

release of the Released Persons that, if known by him or her, might have affected his or her settlement with, and release of, the Released Persons, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Representative Plaintiff expressly shall have, and each of the other Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, waived the provisions, rights, and benefits conferred by California Civil Code § 1542 to the extent applicable, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States (including, without limitation, Montana Code Ann. § 28-1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Settlement Class Members, including Representative Plaintiff, and any of them, may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Released Claims, but Representative Plaintiff expressly shall have, and each other Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, upon the Effective Date, fully, finally, and forever settled and released any and all Released Claims, including Unknown Claims. The Parties acknowledge, and Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

II. SETTLEMENT TERMS AND BENEFITS TO THE SETTLEMENT CLASS.

2.1 Macy's shall pay \$192,500.00 (the "Settlement Fund") to settle the Litigation and obtain a release of all Released Claims in favor of Macy's and the Released Persons. The Settlement Fund

shall be used to pay amounts to be paid to Settlement Class Members for Approved Claims as provided for in this Agreement. The Settlement Fund shall be paid to the Settlement Administrator fifteen (15) business days after the Effective Date and shall be maintained in an interest bearing account at a deposit institution mutually agreed to be the Parties.

2.2 All Settlement Class Members who submit an Approved Claim using the Claim Form, which is attached as Exhibit A to this Settlement Agreement, are eligible to receive:

2.2.1 Documented Expenses and Lost Time: Reimbursement for documented out-of-pocket expenses and lost time that were incurred as a result of the Cyber Attack for one or more of the following, not to exceed a total of \$1,500.00 per Settlement Class Member: (i) costs and expenses spent addressing identity theft or fraud; (ii) preventative costs including purchasing credit monitoring, placing security freezes on credit reports, or requesting copies of credit reports for review; (iii) other documented losses that were not reimbursed; and (iv) up to five hours of documented time spent dealing with the repercussions of the Cyber Attack (calculated at the rate of \$15.00 per hour). Settlement Class Members seeking reimbursement under ¶ 2.2.1 must complete and submit a written Claim Form to the Settlement Administrator, postmarked (or submitted electronically in accordance with the requirements for electronic submission of a Claim Form) on or before the Claims Deadline. The Settlement Class Member must submit reasonable documentation to support that the out-of-pocket expenses and lost time claimed were the result of the Cyber Attack.

2.2.2 Undocumented Time Spent: Any Settlement Class Member who spent time dealing with repercussions of the Cyber Attack, but does not have documentation of such time, will be eligible to submit a Settlement Claim for time spent in an amount of \$15 per hour up to two hours (for a total of \$30). Settlement Class Members are eligible to submit Settlement Claims for both Documented Expense Reimbursement, ¶ 2.2.1, and Undocumented Time Spent, ¶ 2.2.2, not to exceed a total of \$1,530.00 per Settlement Class Member. Settlement Class Members seeking reimbursement under ¶ 2.2.3 must complete and submit a written Claim Form to the Settlement Administrator, postmarked (or

submitted electronically in accordance with the requirements for electronic submission of a Claim Form) on or before the Claims Deadline. The Settlement Class Member must represent that the time and/or effort spent was incurred as a result of the Cyber Attack.

2.3 Settlement Class Members making claims must complete and submit a written Claim Form to the Settlement Administrator, postmarked (or, if submitted electronically in accordance with the requirements for electronic submission of a Claim Form, the date of such submission) on or before the Claims Deadline. The Claim Form must be verified by the Settlement Class Member with a statement that his or her Settlement Claim is true and correct, to the best of his or her knowledge and belief, and is being made under penalty of perjury. The Claim Form may be completed electronically in accordance with the requirements for electronic submission of a Claim Form, and notarization shall not be required.

2.4 Claims Process. The Settlement Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the claimant is a Settlement Class Member; and (2) the claimant has provided all information required to complete the Claim Form by the Claims Deadline.

2.5 If the total amount of Approved Claims submitted under ¶¶ 2.2-2.4 is less than the amount of the Settlement Fund, the Settlement Administrator shall make a pro rata increase to the amount of each Approved Claim such that the total amount of Approved Claims equals the Settlement Fund (i.e., \$192,500.00).

2.6 If the total amount of Approved Claims submitted under ¶¶ 2.2-2.4 exceeds the amount of the Settlement Fund, then each Approved Claim shall be reduced on a pro rata basis such that the total aggregate amount of Approved Claims does not exceed \$192,500.00. In no event shall Macy's be required to pay more than \$192,500.00 into the Settlement Fund.

2.7 All Costs of Settlement Administration shall be borne alone by Macy's and paid by Macy's to the Settlement Administrator separate from, and in addition to, the Settlement Fund.

2.8 Aggregate Limit. The aggregate amount of the Settlement Fund, Incentive Award pursuant to ¶ 8.3, Expense Award pursuant to ¶ 8.4, and attorneys' fees to Class Counsel pursuant to ¶¶

8.1-8.2 shall be capped at, and shall not exceed, \$257,500.00. In no event shall Macy's liability or obligation under the Settlement Agreement exceed the Aggregate Limit of \$257,500.00, plus the Costs of Settlement Administration.

III. PRELIMINARY APPROVAL AND FINAL APPROVAL

3.1 As soon as practicable after the execution of the Settlement Agreement, Class Counsel shall submit this Settlement Agreement to the Court and file a motion for preliminary approval of the settlement with the Court requesting entry of a Preliminary Approval Order in the form attached hereto as Exhibit E, or an order substantially similar to such form, requesting, *inter alia*:

- (a) Certification of the Settlement Class for settlement purposes only;
- (b) Preliminary approval of the Settlement Agreement;
- (c) Appointment of Nicholas Armstrong and Oscar Price, IV of Price Armstrong,

LLC as Class Counsel;

- (d) Appointment of Plaintiff Carroll as the Representative Plaintiff;
- (e) Approval of the Notice Program attached hereto as Exhibit D;
- (f) Approval of a summary notice form ("Summary Notice") substantially similar to

the one attached hereto as Exhibit B, the summary notice postcard form ("Summary Postcard Notice") substantially similar to the one attached as Exhibit G, and the long form notice ("Long Notice") substantially similar to the one attached hereto as Exhibit C, which together shall include a fair summary of the Parties' respective litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, the process and instructions for making Settlement Claims to the extent contemplated herein, and the date, time and place of the final approval hearing;

- (g) Appointment of the Settlement Administrator; and
- (h) Approval of a Claim Form substantially similar to that attached hereto as Exhibit

A.

3.2 The proposed Judgment that shall be filed with the motion for final approval shall be in a form as set forth in Exhibit F. Such proposed Judgment shall, among other things:

(a) Determine that the Settlement Agreement is fair, adequate, and reasonable;

(b) Finally certify the Settlement Class for settlement purposes only;

(c) Determine that the Notice Program satisfies due process requirements;

(d) Dismiss all claims in the Complaint with prejudice;

(e) Bar and enjoin any Settlement Class Members who did not exclude themselves from the Settlement Class by submitting a valid and timely opt out notice in accordance with the requirements of the Settlement Agreement from asserting any of the Released Claims; and

(f) Release and forever discharge Macy's and the Released Persons from the Released Claims, as provided for in this Settlement Agreement.

IV. NOTICE PROGRAM.

4.1 The Long Notice, Summary Notice, Summary Postcard Notice, and Claim Form shall be reviewed by the Settlement Administrator and may be revised as agreed upon by the Parties prior to submission to the Court for preliminary approval. Upon entry of the Preliminary Approval Order, and in order to comply with all applicable laws, including, but not limited to the Due Process clause of the United States Constitution and FED. R. CIV. P. 23, the Settlement Administrator shall cause notice to be disseminated to the Settlement Class pursuant to the Preliminary Approval Order and Paragraphs 4.1 to 4.5 of this Settlement Agreement (the "Notice Program"), the cost of which shall be included in the Costs of Settlement Administration. The Settlement Administrator's declaration regarding the Notice Program is attached hereto as Exhibit D.

4.1.1 Within 45 days after the Preliminary Approval Order, the Settlement Administrator shall: (a) send Settlement Class Members an email containing the Summary Notice and a link to the Settlement website (on which the Settlement Class Member may submit a claim electronically); and (b) for Settlement Class Members for which an email address is unavailable, send

the Summary Postcard Notice via U.S. mail. In the event of an email notice “bounceback,” the Settlement Administrator shall send the Settlement Class Member the Summary Postcard Notice via U.S. mail.

4.1.2 Within 45 days after the Preliminary Approval Order, the Settlement Administrator shall establish a dedicated settlement website and shall maintain and update the website throughout the Claims Period, with the Summary Notice, Long Notice, and Claim Form approved by the Court, as well as this Settlement Agreement. A toll-free help line shall be made available to address Settlement Class Members’ inquiries. The Settlement Administrator also will provide copies of the Long Notice and Claim Form approved by the Court to Settlement Class Members upon request.

4.2 The Notice Program shall be subject to approval by the Court as meeting constitutional due process requirements.

4.3 The Long Notice, Summary Notice, Summary Postcard Notice, and Claim Form approved by the Court may be adjusted by the Settlement Administrator, respectively, in consultation and agreement with the Parties, as may be reasonable and necessary and not inconsistent with such approval.

4.4 Prior to the final approval hearing, Class Counsel shall cause to be filed with the Court an appropriate affidavit or declaration from the Settlement Administrator with respect to complying with the Court-approved Notice Program.

4.5 The Notice Program shall be deemed to commence 45 days following entry by the Court of a Preliminary Approval Order in the form attached hereto as Exhibit E, or an order substantially similar to such form.

V. OPT-OUT PROCEDURES.

5.1 Each Settlement Class Member wishing to opt out of the Settlement Class shall individually sign and timely submit written notice of such intent to the designated Post Office box established by the Settlement Administrator. The written opt out notice must clearly manifest a person’s

intent to be excluded from the Settlement Class, be sent via first class postage pre-paid United States mail, and satisfy all of the requirements set forth below.

5.1.1 The written opt out notice must include the individual's name and address; the name of this Litigation (i.e., *Anna Carroll v. Macy's Inc. et al.*, Case No. 2:18-cv-01060-RDP (N.D. Ala.), the words "Request for Exclusion" or a clear statement that he or she wants to be excluded from the Settlement Class; and the individual's signature. The Settlement Administrator shall, upon receipt, promptly provide the Parties with copies of all completed opt-out notifications, and a final list of all who have timely and validly excluded themselves from the Settlement Class, which Class Counsel or Macy's may move to file under seal with the Court no later than 10 days prior to the final approval hearing.

5.1.2 To be effective, written opt out notice must be postmarked no later than 135 days from the date of preliminary approval.

5.2 All persons who submit valid and timely notices of their intent to be excluded from the Settlement Class shall not receive any benefits of or be bound by the terms of this Settlement Agreement. All persons falling within the definition of the Settlement Class who do not submit valid and timely notices of their intent to be excluded from the Settlement Class shall be bound by the terms of this Settlement Agreement and the Judgment entered thereon.

VI. OBJECTION PROCEDURES.

6.1 Each Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection. Such notice shall state: (i) the name of this Litigation (i.e., *Anna Carroll v. Macy's Inc. et al.*, Case No. 2:18-cv-01060-RDP (N.D. Ala.); (ii) the objector's full name, address, telephone number, and e-mail address (if any); (iii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class; (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (v) the identity of all counsel representing the objector; (vi) the identity of all counsel representing the objector who will appear at the final approval hearing; (vii) a

list of all persons who will be called to testify at the final approval hearing in support of the objection; (viii) a statement confirming whether the objector intends to personally appear and/or testify at the final approval hearing; (ix) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation); (x) a list, by case name, court, and docket number, of all other cases in which the objector (directly or through counsel) has filed an objection to any proposed class action settlement within the last 3 years; (xi) a list, by case name, court, and docket number, of all other cases in which the objector's counsel (on behalf of any person or entity) has filed an objection to any proposed class action settlement within the last 3 years; and (xii) a list, by case name, court, and docket number, of all other cases in which the objector has been a named plaintiff in any class action or served as a lead plaintiff or class representative.

6.1.1 To be timely, written notice of an objection in the appropriate form must be electronically filed in the Litigation's electronic docket via CM/ECF no later than 135 days from the date of preliminary approval, or if not electronically filed, sent via first class, postage-prepaid United States mail, postmarked no later than 135 days from the date of preliminary approval, to (a) the Clerk of Court, United States District Court, Hugo L. Black United States Courthouse, 1729 5th Avenue North, Birmingham, AL 35203, (b) Class Counsel, Nicholas Armstrong and Oscar Price, IV, Price Armstrong, LLC, 2226 1st Ave. S, Suite 105, Birmingham, Alabama 35233; and (c) counsel for Macy's, Kristine M. Brown, Alston & Bird LLP, 1201 West Peachtree Street, Atlanta, GA 30309. Objections shall not exceed twenty five (25) pages.

6.2 Any Settlement Class Member who fails to substantially comply with the requirements for objecting in ¶ 6.1 shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of ¶ 6.1. Without limiting the foregoing, any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the

Judgment to be entered upon final approval shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

VII. PLAINTIFF'S RELEASE.

7.1 Upon the Effective Date, each Settlement Class Member, including Representative Plaintiff, shall be deemed to have, and by operation of the Judgment shall have, completely, fully, finally, irrevocably, and forever released, relinquished, and discharged all Released Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Representative Plaintiff, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum in which any of the Released Claims are asserted.

VIII. PROPOSED CLASS COUNSEL'S ATTORNEYS' FEES, COSTS, AND EXPENSES; AND INCENTIVE AWARD TO REPRESENTATIVE PLAINTIFF.

8.1 The Parties did not negotiate the payment of the Representative Plaintiff's attorneys' fees, costs, expenses and/or incentive award to Representative Plaintiff, as provided for in ¶¶ 8.2 and 8.3, until after the substantive material terms of the settlement had been agreed upon, other than that Macy's would pay reasonable attorneys' fees, costs and expenses, and an incentive award to Representative Plaintiff as may be agreed to by Macy's and Class Counsel and as ordered by the Court. Macy's and Class Counsel then negotiated and agreed as follows:

8.2 Class Counsel will request up to \$60,000.00 from the Court for their attorneys' fees. Class Counsel agree to waive and hereby forego seeking attorneys' fees except as provided for in this Settlement Agreement. Macy's agrees not to object to a request consistent with this provision. Macy's shall pay the amount the Court awards to Class Counsel for attorneys' fees (the "Fee Award"). Macy's shall pay Class Counsel the Fee Award separate from, and in addition to, the Settlement Fund. Class Counsel agrees that if the Court awards attorneys' fees in an amount greater than that requested, then Class Counsel will not

accept any amount greater than requested but will instead deposit any such excess fees in the Settlement Fund for the benefit of Settlement Class Members. In this scenario, if Macy's has not yet funded the Settlement Fund at the time Class Counsel deposits the excess fees, the amount of the excess fees shall be credited against the amount Macy's is required to pay into the Settlement Fund (i.e., Macy's payment into the Settlement Fund shall equal [\$192,500.00 *minus* the amount of excess fees]). In the event that the Settlement Fund has been funded at the time Class Counsel deposits the excess fees, Macy's shall be entitled to a distribution from the Settlement Fund in an amount equal to the amount of the excess fees.

8.3 Class Counsel will request from the Court an incentive and/or service award for Representative Plaintiff in the amount of \$2,500.00. Macy's agrees not to object to this request, and to pay the amount the Court awards to Representative Plaintiff as an incentive and/or service award ("Incentive Award"), the sum of which shall not exceed \$2,500.00. The Incentive Award shall be paid by Macy's separate and apart from the Settlement Fund.

8.4 Class Counsel will request from the Court reasonable costs and expenses not to exceed \$2,500.00. Macy's agrees not to object to a request for reasonable costs and expenses incurred by Class Counsel and awarded by the Court ("Expense Award"), the sum of which shall not exceed \$2,500.00. Class Counsel agree to waive and hereby forego seeking any costs or expenses except as provided for in this Settlement Agreement. The Expense Award shall be paid by Macy's separate and apart from the Settlement Fund.

8.5 Within 15 business days after the Effective Date, Macy's shall pay the Court ordered Fee Award, Expense Award, and Incentive Award to Representative Plaintiff, as set forth above in ¶¶ 8.2-8.4, to an account established by Class Counsel. Class Counsel shall thereafter distribute the Fee Award and Expense Award among Class Counsel and the Incentive Award to Representative Plaintiff.

8.6 The finality or effectiveness of the Settlement Agreement shall not depend upon the Court awarding any particular amount of attorneys' fees, costs, expenses, or service awards. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of any

attorneys' fees, costs and expenses, and/or service awards ordered by the Court to Class Counsel or Representative Plaintiff shall affect whether the Judgment is final or constitute grounds for cancellation or termination of this Settlement Agreement.

IX. ADMINISTRATION OF CLAIMS.

9.1 The Settlement Administrator shall administer and calculate the Settlement Claims submitted by Settlement Class Members and give reports as to both claims and distributions to Class Counsel and Macy's. Class Counsel and Macy's have the right to review and obtain supporting documentation and challenge those reports if they believe them to be inaccurate or inadequate. All Settlement Claims agreed to be paid in full or in part by Macy's shall be deemed valid up to the amount paid.

9.2 Payment of Approved Claims shall be made by the Settlement Administrator from the Settlement Fund. Payment shall be made by check and shall be mailed and postmarked within 60 days after the Effective Date, or within 30 days after the Claims Administrator has received all claims and made a final determination as to the amount to be paid for all Approved Claims, whichever is latest.

9.3 All Settlement Class Members who fail to timely submit a Settlement Claim for any benefits hereunder within the time frames set forth herein, or such other period as may be ordered by the Court, shall be forever barred from receiving any payments or benefits pursuant to the settlement set forth herein, but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the releases contained herein, and the Judgment.

9.4 No person shall have any claim against the Settlement Administrator, Released Persons, Class Counsel, Macy's, Macy's Counsel, and/or Representative Plaintiff based on distributions of benefits to Settlement Class Members.

X. CONDITIONS OF SETTLEMENT, CANCELLATION, OR TERMINATION.

10.1 The Effective Date of the settlement shall be conditioned on the occurrence of all of the following events:

(a) the Court has entered the Preliminary Approval Order and provided notice of a Final Fairness Hearing, as required by ¶ 3.1;

(b) the Court has entered the Judgment granting final approval to the Settlement Agreement (among other things) as set forth herein; and

(c) Either (i) thirty (30) days have passed after entry of the final Judgment (i.e., the Judgment is entered as a final judgment) and no appeal is taken after the Judgment's entry and no motion or other pleading has been filed with the Court (or with any other court) seeking to set aside, enjoin, or in any way alter the Judgment or to toll the time for appeal of the Judgment; or (ii) all appeals, reconsideration, rehearing, or other forms of review and potential review of the Judgment are exhausted, and the Judgment is upheld without any material modification of the terms of this Agreement of the Judgment.

10.2 If all of the conditions specified in ¶ 10.1 hereof are not satisfied, the Settlement Agreement shall be deemed terminated and/or canceled unless the Parties mutually agree in writing to proceed with the Settlement Agreement.

10.3 The Parties agree, for purposes of this settlement only, to the certification of the Settlement Class. If the Settlement Agreement is not approved by the Court or the Settlement Agreement is terminated and/or cancelled in accordance with its terms (including without limitation in accordance with ¶ 10.2 or ¶ 10.4), then (a) the Parties shall be restored to their respective positions in the Litigation as if the Agreement had never been entered into (and without prejudice to any of the Parties' respective positions on the issue of class certification or any other issue), and (b) the terms and provisions of the Settlement Agreement and statements made in connection with seeking approval of the Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*. The Parties' agreement to the certification of the Settlement Class is also without prejudice to any position

asserted by the Parties in any other proceeding, case or action, as to which all of their rights are specifically preserved.

10.4 The Settlement Agreement may be terminated and/or cancelled by any of the Parties if (i) the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily approve or finally approve the Settlement Agreement; (ii) an appellate court reverses the final approval order and/or Judgment, and the Settlement Agreement is not reinstated and finally approved without material change by the Court on remand; or (iii) the Court or any reviewing appellate court incorporates material terms or provisions into, or deletes or strikes material terms or provisions from, or materially modifies, amends, or changes, the proposed Preliminary Approval Order, Preliminary Approval Order, the proposed Judgment, the Judgment, or the Settlement Agreement.

10.5 Notwithstanding any provision of this Settlement Agreement to the contrary, including but not limited to ¶ 10.4, and for the avoidance of any doubt, the finality or effectiveness of the Settlement Agreement shall not depend upon the Court awarding any particular amount of attorneys' fees, costs, expenses, or service awards. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of any attorneys' fees, costs and expenses, and/or service awards ordered by the Court to Class Counsel or the Representative Plaintiff shall affect whether the Judgment is final or constitute grounds for cancellation and/or termination of this Settlement Agreement.

10.6 Macy's shall have the sole discretion to terminate the Settlement Agreement if a certain number of Settlement Class Members submit valid requests to opt out as separately agreed to by the Parties and, if requested, submitted to the Court for *in camera review*.

XI. MISCELLANEOUS PROVISIONS.

11.1 The Parties (i) acknowledge that it is their intent to consummate this Settlement Agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement, and to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement.

11.2 The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Settlement Agreement compromises claims that are contested and shall not be deemed an admission by any of the Parties as to the merits of any claim or defense. The Parties each agree that the settlement was negotiated in good faith by the Parties, and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis.

11.3 The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

11.4 The Settlement Agreement, together with the Exhibits attached hereto, as well as the agreement pursuant to ¶ 10.6, constitute the entire agreement among the Parties hereto, and no representations, warranties or inducements have been made to any party concerning the Settlement Agreement other than the representations, warranties and covenants contained and memorialized in such document. Except as otherwise provided herein, each party shall bear its own costs. This agreement supersedes all previous agreements made by the Parties.

11.5 Class Counsel, on behalf of the Settlement Class, is expressly authorized by the Representative Plaintiff to take all appropriate actions required or permitted to be taken by the Settlement Class pursuant to the Settlement Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Settlement Class which they deem appropriate in order to carry out the spirit of this Settlement Agreement and to ensure fairness to the Settlement Class.

11.6 Each counsel or other person executing the Settlement Agreement on behalf of any party hereto hereby warrants that such person has the full authority to do so.

11.7 The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of executed counterparts shall be filed with the Court.

11.8 The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.

11.9 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement.

11.10 The Settlement Agreement shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of Alabama, and the rights and obligations of the Parties to the Settlement Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Alabama without giving effect to choice of law principles.

11.11 The final approval hearing shall be scheduled no earlier than 90 days after the notices are made in order to comply with the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715.

11.12 As used herein, “he” means “he, she, or it;” “his” means “his, hers, or its,” and “him” means “him, her, or it.”

11.13 All dollar amounts are in United States dollars.

11.14 Cashing a settlement check is a condition precedent to any Settlement Class Member’s right to receive settlement benefits. All settlement checks shall be void 90 days after issuance. If a check becomes void, the Settlement Class Member shall have until 150 days after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Settlement Class Member will have failed to meet a condition precedent to recovery of settlement benefits, the Settlement Class Member’s right to receive monetary relief shall be extinguished, and Macy’s shall have no obligation to make payments to the Settlement Class Member pursuant to this Settlement Agreement or provide any other type of monetary relief. If a re-issued check becomes void, the Settlement Class Member will have

failed to meet a condition precedent to recovery of settlement benefits, the Settlement Class Member's right to receive monetary relief shall be extinguished, and Macy's shall have no obligation to make payments to the Settlement Class Member pursuant to this Settlement Agreement or provide any other type of monetary relief.

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11.15 In the event any settlement checks become void and, pursuant to Section 11.14, the Settlement Class Member's right to relief under the Settlement is extinguished, any remaining funds shall be distributed pro rata to the remaining Settlement Class Members who have submitted valid, approved claims for benefits under this Settlement. However, in the event that it is not economically feasible to make a pro rata distribution as contemplated by this Section 11.15, the Settlement Administrator shall make a distribution of all remaining funds to a non-profit entity mutually selected by the Parties.

11.16 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused the Settlement Agreement to be executed:

Class Counsel

Macy's

Anna Carroll

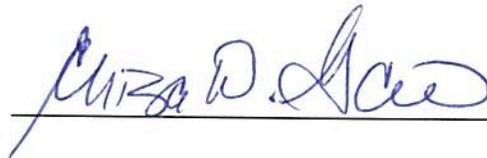
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