

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 11 August 2017**

Case No.: 2016-OFC-00004

In the Matter of

**OFFICE OF FEDERAL CONTRACT  
COMPLIANCE PROGRAMS,  
U.S. DEPARTMENT OF LABOR**  
Plaintiff

v.

**B&H FOTO & ELECTRONICS CORP.**  
Defendant

**ORDER APPROVING CONSENT DECREE**

This case arises under Executive Order 11246 (30 Fed. Reg. 12319), as amended by Executive Order 11375 (32 Fed. Reg. 14303), Executive Order 12086 (43 Fed. Reg. 46501), Executive Order 13672 (79 Fed. Reg. 42971), Executive Order 13279 (67 Fed. Reg. 77141); § 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793; § 4212 of the Vietnam Era Veterans' Readjustment Assistance Act, 38 U.S.C. § 4212 ("VEVRAA"); and the rules and regulations pursuant to 41 C.F.R. Chapter 60. Jurisdiction over this action exists under Sections 208 and 209 of Executive Order 11246, 41 C.F.R. § 60, and 41 C.F.R. Part 60-30.

The case was docketed in the Office of Administrative Law Judges on February 24, 2016, when the Regional Solicitor, New York Regional Office, U.S. Department of Labor, on behalf of the Office of Federal Contract Compliance Programs, filed the Administrative Complaint. The matter was assigned to the undersigned on April 8, 2016. On April 18, 2016, I issued an Initial Prehearing Order and Notice of Hearing scheduling this matter for hearing commencing on November 7 through November 10, 2016. An Order Resetting the Hearing Dates and Prehearing Deadlines for March 20 through 24, 2017 and March 27 through March 31, 2017 was issued by the undersigned on June 6, 2016. On January 5, 2017, a telephonic conference call was conducted with the parties to discuss evidentiary issues presented in dueling motions to compel. The parties were requested to submit their availability for a new hearing date. An Order Rescheduling Hearing for August 21 through August 25, 2017 and August 28 through September 1, 2017 was issued on February 6, 2017. On March 1, 2017, the parties filed a Joint Motion to Request a Stay of Discovery wherein, the parties reached an agreement in principal to resolve the administrative proceeding and to focus on finalizing the terms of the settlement agreement. I received a fully executed Consent Decree and Order from the parties on August 4, 2017.

The regulations at 41 C.F.R. § 60-30.13 provide the applicable standards for approving consent findings. After reviewing the terms of the parties' agreement, I am satisfied that it conforms to the requirements set forth in § 60-30.13(b)(1)-(4) and it is a satisfactory resolution of the issues raised in the Administrative Complaint. The terms of the Consent Decree are hereby adopted, incorporated in full and made part of this Order.

SO ORDERED.



Digitally signed by THERESA TIMLIN  
DN: CN=THERESA TIMLIN,  
OU=Administrative Law Judge, O=US  
DOL Office of Administrative Law  
Judges, L=CHERRY HILL, S=NJ, O=US  
Location: CHERRY HILL NJ

**THERESA C. TIMLIN**  
Administrative Law Judge

Cherry Hill, New Jersey

## SERVICE SHEET

Case Name: **OFCCP - NEW YORK, NY v. B&H FOTO & ELECTRONICS CORP.**

Case Number: **2016OFC00004**

Document Title: **ORDER APPROVING CONSENT DECREE**

I hereby certify that a copy of the above-referenced document was sent to the following this 11th day of August, 2017:



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HILL, S=NJ, O=US  
Location: CHERRY HILL NJ

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**UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

IN THE MATTER OF:

**OFFICE OF FEDERAL CONTRACT  
COMPLIANCE PROGRAMS,  
U.S. DEPARTMENT OF LABOR,**

*Plaintiff,*

v.

**B&H FOTO & ELECTRONICS CORP.,**

*Defendant.*

Case No. 2016-OFC-00004

**CONSENT DECREE AND ORDER**

Plaintiff, Office of Federal Contract Compliance Programs, U.S. Department of Labor (“OFCCP”) commenced this action by filing an administrative complaint against B&H Foto & Electronics Corp. (“B&H”) on February 24, 2016, alleging violations of the obligations imposed upon federal contractors and subcontractors by Executive Order 11246 (30 Fed. Reg. 12319), as amended (“E.O. 11246”), and the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 (“VEVRAA”), Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 (“Rehabilitation Act”), and their implementing regulations at 41 C.F.R. Chapter 60, from at least January 31, 2011, at its warehouse facility located at 63 Flushing Avenue, Building 664, in Brooklyn, New York, 11205.

OFCCP and B&H desire to resolve this action and therefore have entered into a complete and satisfactory compromise and settlement of the claims raised in the administrative complaint, as set forth herein. This Consent Decree (“Decree”) constitutes a full and final resolution of all issues arising from OFCCP’s compliance review of B&H’s warehouse facility at 63 Flushing

Avenue, Brooklyn, New York, 11205. The parties agree that this Decree shall constitute the final administrative order in this case.

**I. JURISDICTION AND PROCEDURAL HISTORY**

1. The U.S. Department of Labor, Office of Administrative Law Judges, has jurisdiction in this matter pursuant to Sections 208 and 209 of E.O. 11246, 41 C.F.R. Part 60-1, 41 C.F.R. Part 60-30, 41 C.F.R. Part 60-300, and 41 C.F.R. § 60-741.65.
2. Defendant B&H is a retailer of photography, video, audio, and digital imaging products, both domestically and internationally.
3. B&H is a corporation with a principal office at 420 Ninth Avenue, New York, New York, 10001, and maintains a warehouse at 63 Flushing Avenue, Building 664, Brooklyn, New York, 11205.
4. B&H has been a government contractor or subcontractor within the meaning of E.O. 11246 and at all relevant times has been subject to the contractual obligations imposed on government contractors and subcontractors by E.O. 11246 and the implementing regulations issued thereunder.
5. OFCCP initiated a compliance review of B&H's warehouse facility at 63 Flushing Avenue, Building 664, in January 2013.
6. OFCCP issued a Notice of Violations to B&H on March 31, 2014. Subsequently, a Show Cause Notice and an amended Notice of Violations were issued on February 27, 2015, advising B&H of OFCCP's findings. Conciliation efforts were unsuccessful and the matter was referred to the Office of the Solicitor of Labor for administrative enforcement.

## **II. GENERAL PROVISIONS**

7. This Decree shall constitute the final Administrative Order in this case and shall have the same force and effect as an order made after a full hearing and final review by the Administrative Review Board.
8. This Decree constitutes full and final settlement and resolution of all issues, actions, causes of action and claims arising out of the administrative complaint filed in this matter. There will be no modifications or amendments to this Decree unless they are in writing and signed by all parties.
9. This Decree does not constitute an admission by B&H of any violation of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212), and their implementing regulations at 41 C.F.R. Chapter 60, and B&H does not admit to any violation alleged by OFCCP in the above-captioned administrative proceeding.
10. The Effective Date of this Decree shall be the date on which this Decree is signed by the Administrative Law Judge.
11. This Decree shall be binding on B&H, its successors, assigns, divisions and subsidiaries, and shall apply to B&H's policies and procedures related to its hiring, compensation, and promotion of workers in B&H's Brooklyn Navy Yard Warehouse, located at 63 Flushing Avenue, Building 664, at the Brooklyn Navy Yard, its planned future warehouse facility located at 400 Cedar Lane, Florence Township, New Jersey, 08518, or any other warehouse facility to which B&H relocates the warehouse functions currently performed at Building 664 in the Brooklyn Navy Yard, during the term of this Decree (hereinafter

the “Warehouses”). The term “Job Group(s)” used throughout this Decree shall refer to the Job Groups B&H utilized at its Brooklyn Navy Yard Warehouse or the equivalent job titles and/or functions at the Warehouse(s) covered by this Decree.

12. Nothing herein relieves B&H from compliance with the requirements of E.O. 11246, Section 503, VEVRAA and/or 41 C.F.R. Chapter 60. Compliance with this Decree shall constitute compliance only with respect to those issues which are within the scope of this Decree.
13. In computing any time period specified in this Decree, every calendar day shall be counted unless otherwise specified herein. Any time an action or deadline falls on a weekend or Federal holiday, the deadline for any such actions shall be the next business day.
14. As long as it remains a federal contractor subject to E.O. 11246, Section 503, and VEVRAA, B&H will not harass, intimidate, threaten, coerce or discriminate, or otherwise retaliate against any individual because the individual has provided either information or assistance to OFCCP (or its agents, servants or employees) during the course of this litigation; benefits from this Decree; 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 C.F.R. § 60-1.32(a), 41 C.F.R. § 60-300.69 or 41 C.F.R. § 741.69.
15. The Office of Administrative Law Judges shall retain jurisdiction of this proceeding for the sole purpose of enforcing implementation of this Decree in accordance with its terms, for a period of 30 months following the Effective Date of this Decree. However, in the event that B&H has not satisfied its obligations under this Decree at the expiration of 30



months, the Office of Administrative Law Judges shall retain jurisdiction until 90 days after such time as B&H has satisfied its obligations. Other than as provided above, this Decree shall terminate in its entirety 30 months following the Effective Date of this Decree, and no provisions of this Decree shall survive beyond this Decree's termination.

16. B&H agrees that OFCCP may review compliance with this Decree as described herein.
17. This Decree does not preclude OFCCP from initiating enforcement proceedings based on complaint investigations initiated pursuant to 41 C.F.R. §§ 60-1.21 through 1.24, or based on OFCCP's monitoring of B&H's compliance with the terms of this Decree in accordance with the provisions set forth in this Decree. During the term of this Decree, OFCCP will not conduct compliance evaluations of the Warehouses pursuant to 41 C.F.R. § 60-1.20 and/or pursuant to OFCCP's administratively neutral selection system.

### **III. SPECIFIC PROVISIONS**

18. The parties desire to enter into a just and reasonable resolution of this matter without further proceedings. To that end, they have negotiated in good faith and have executed this Decree with the following specific provisions:

#### **A. BACK PAY AND INTEREST**

19. In settlement of all claims for back pay, interest, and other monetary relief, within 25 days of the Effective Date of this Decree, B&H shall deposit \$3,220,000.00 (three million two hundred twenty thousand dollars) into an escrow account. The \$3,220,000.00 shall be allocated as follows: a total of \$2,466,820.49 in back pay and interest for the compensation claim, consisting of \$2,090,525.94 in back pay and \$376,294.55 in interest; a total of \$407,595.26 in back pay and interest for the promotion claim, consisting of \$345,419.18 in back pay and \$62,176.08 in interest; and a total of \$345,584.25 in back

pay and interest for the hiring claim, consisting of \$292,868.00 in back pay and \$52,716.25 in interest. Within 30 days of the Effective Date of this Decree, B&H will notify OFCCP that this action has been taken and will identify to OFCCP a person who can be contacted regarding the account.

20. The total monetary settlement of \$3,220,000.00 is a negotiated amount that represents estimated back pay and interest for the hiring, compensation, and promotion claims set out in the administrative complaint (the “Monetary Settlement”). No expenses incurred in the creation, maintenance, distribution, or administration of the Monetary Settlement will be funded from the Monetary Settlement.
21. The back pay and interest amount, less legal deductions required by law on the portion representing back pay only (such as federal, state and/or local taxes and FICA), will be distributed among the eligible class members in accordance with the provisions of Section III of this Decree.
22. As soon as practicable and no later than five days from the Effective Date of this Decree, B&H shall identify and communicate to OFCCP the identity of a third-party claims administrator (“Administrator”), subject to OFCCP’s determination for good cause that the identified individual is not an appropriate candidate, to handle certain administrative tasks outlined below. B&H shall bear all costs associated with the selection and retention of the Administrator and the performance of his/her duties under this Decree.

## **B. HIRING**

### *Notice to Hiring Class Members*

23. Within 30 days from the Effective Date of this Decree, B&H, via the Administrator, shall notify the Hiring Class Members listed in Attachment A (hereinafter “List”) of the terms

of this Decree by distributing Attachment B (hereinafter “Notice”), Attachment C (hereinafter “Verification and Interest Form”), Attachment D (hereinafter “Release of Claims Form”), an Internal Revenue Service (“IRS”) Form W-4, and a postage-paid, self-addressed return envelope (“Hiring Class Notice Package”). On the same date that appears on the Notice, the Administrator will mail the Hiring Class Notice Package to all Hiring Class Members by regular mail and, where an email address is available, by email as well, to the addresses provided by OFCCP. The contact information for Hiring Class Members shall be for attorneys’ and the Administrator’s eyes only.

24. Each Hiring Class Member listed on Attachment A (or their legal representative in the event they are deceased) shall be given 60 days from the date of mailing to respond to the Notice. Twenty days after the last response was due, the Administrator shall provide OFCCP with: (1) certification that he or she sent Attachments B, C, D, and IRS Form W-4 to the Hiring Class Members, specifying how he or she sent these documents to each Hiring Class Member (whether, in addition to regular mail, by email); (2) a list of Hiring Class Members who did not respond to the Notice or whose Hiring Class Notice Package was returned as undeliverable (hereinafter the “Hiring Class Non-Responder List”) and (3) the names of any Hiring Class Members who responded that they were interested in hiring remedies without returning a signed Release of Claims Form or who did not otherwise fully complete the form.
25. After the Administrator has provided OFCCP with the information in paragraph 24, OFCCP will attempt for 30 days to locate those Hiring Class Members not located by B&H and/or to obtain signed Release of Claims Forms and/or any additional information omitted from the forms. No otherwise eligible class member will be denied back pay

solely on the basis of his or her failure to submit a signed IRS W-4 Form to B&H. OFCCP will provide B&H with a list of Hiring Class Members that it locates (“OFCCP’s Located Hiring Class Member List”) within 20 days after the expiration of this 30-day period.

26. Within 20 days of B&H receiving OFCCP’s Located Hiring Class Member List, the Administrator will mail a second Hiring Class Notice Package (“Second Notice”) to any Hiring Class Members on OFCCP’s Located Hiring Class Member List. These Hiring Class Members will have 30 days from the date of the Second Notice to respond.
27. Within 20 days from the date the last response from Hiring Class Members is due, B&H will provide OFCCP with the final list of all Hiring Class Members who were located and returned and signed the Verification and Interest Form and Release of Claims Form (“Proposed Final Hiring Class List”). OFCCP shall have up to 45 days from receipt of the Proposed Final Hiring Class List to approve the Proposed Final Hiring Class List or work with B&H to revise the Proposed Final Hiring Class List. The parties will make every effort and negotiate in good faith to resolve any dispute between them about inclusion or exclusion of any Hiring Class Member on the Proposed Final Hiring Class List, but no Hiring Class Member shall be listed on the Proposed Final Hiring Class List unless he or she returned, fully completed and signed the Verification and Interest Form and Release of Claims Form. The Proposed Final Hiring Class List approved by OFCCP shall become the Final Hiring Class List upon the expiration of the 45-day period. OFCCP will provide B&H with a copy of any changes it proposes to the Proposed Hiring Class List on or before the 40<sup>th</sup> day after receipt of the Proposed Final Hiring Class List so that the parties can resolve any concerns in good faith prior to the expiration of the 45

days. The Final Hiring Class List shall only include Hiring Class Members who have returned, fully completed and signed the Verification and Interest and Release of Claims Forms (“the Hiring Class Members on the Final Hiring Class List”). Hiring Class Members who have not returned, fully completed and signed the Verification and Interest and Release of Claims Forms prior to the expiration of these 45 days forfeit all rights to any relief under this Decree, including but not limited to any monetary, employment, or other benefits provided for in this Decree.

28. Copies of executed Verification and Interest and Release of Claims Forms shall be provided by B&H to OFCCP upon request.

*Distribution of Monetary Remedies to Hiring Class Members*

29. The Administrator will distribute to all Hiring Class Members on the Final Hiring Class List payments of equal amounts from the \$292,868.00 in back pay and \$52,716.25 in interest allocated to the hiring claim, in accordance with the procedures outlined herein. Within 30 days of receiving the Final Hiring Class List, the Administrator will mail two checks using the most current addresses provided by OFCCP to B&H as updated by the forms submitted by the Hiring Class Members in the Final Hiring Class List, by certified mail, to the Hiring Class Members on the Final Hiring Class List: one for back pay and one for interest. The amounts of each check issued shall be calculated by dividing \$345,584.25 (the sum of \$292,868.00 in back pay and \$52,716.25 in interest) by the number of Hiring Class Members on the Final Hiring Class List. Back pay wages will be subject to all legally required payroll deductions and FICA withholdings. B&H will pay to the IRS the employer’s share of the legally required withholdings. B&H will issue, as

required by law: (1) IRS Forms W-2 for that portion of the payment representing back pay; and (2) IRS Forms 1099 for that portion of the payment representing interest.

30. Within 30 days of making the payments to the Hiring Class Members on the Final Hiring Class List, the Administrator shall provide OFCCP with: (1) a certified list verifying that it has made payments to Hiring Class Members on the Final Hiring Class List; (2) a certified list of all checks cashed by Hiring Class Members on the Final Hiring Class List who were mailed checks pursuant to this Decree; and (3) a certified list of all checks returned as undeliverable.
31. OFCCP will have 30 days from receipt of B&H's list of checks returned as undeliverable to locate and provide updated addresses for these Hiring Class Members on the Final Hiring Class List to B&H. The Administrator will re-mail the checks by certified mail within 15 days of receiving any new updated addresses from OFCCP. Any check sent to a Hiring Class Member on the Final Hiring Class List which remains uncashed for 180 days after the date of the check was issued shall be void.
32. With respect to any uncashed checks, B&H will deposit the monies with New York State, Office of the State Comptroller, Office of Unclaimed Funds, or with the equivalent state agencies of the last known addresses for the eligible affected Hiring Class Members, in accordance with any and all applicable laws and regulations. No portion of these funds shall revert back, directly or indirectly, to B&H or any affiliate.

*Non-Monetary Hiring Class Remedies*

33. B&H will compile a list, in chronological order by date of response to the Notice, of those Hiring Class Members on the Final Hiring Class List who indicated an interest in full-time employment at B&H's Warehouse at the Brooklyn Navy Yard on the

Verification and Interest Form, and who are not currently working for B&H (hereinafter the “Employment Offer List”). If multiple Hiring Class Members on the Final Hiring Class List respond on the same date, they will be listed by alphabetical order of their last names. For all hiring for full time positions at the Brooklyn Navy Yard Warehouse after March 31, 2018 for Job Group 801 or equivalent positions that are expected to last for at least three months, B&H will extend job offers in writing at the current rate of pay to these individuals on the Employment Offer List, provided each is eligible to work in the United States. As job openings occur, offers will be made until 10 women, 8 Blacks, and 5 Asians from the Employment Offer List have accepted positions or until the Employment Offer List is exhausted, whichever is first, but in no event shall the obligation to make such offers continue beyond 30 months from the Effective Date of this Decree. The individuals from the Employment Offer List who are hired under this Decree will be provided with an acceptable time frame to report to work of at least two weeks.

### **C. COMPENSATION**

#### *Notice to Compensation Class Members*

34. Within 30 days from the Effective Date of this Decree, B&H, via the Administrator, shall notify the Compensation Class Members listed in Attachment E (hereinafter “List”) of the terms of this Decree by distributing Attachment F (hereinafter “Notice”), Attachment G (hereinafter “Verification and Interest Form”), Attachment H (hereinafter “Release of Claims Form”), and a postage-paid, self-addressed return envelope (“Compensation Class Notice Package”). On the same date that appears on the Notice, the Administrator will mail the Compensation Class Notice Package, by certified mail and regular mail to the last known address of each person on the List.

35. Each Compensation Class Member listed on Attachment E (or their legal representative in the event they are deceased) shall be given 60 days from the date of mailing to respond to the Notice. Fifteen days after the last response was due, the Administrator shall provide OFCCP with a list of Compensation Class Members who did not respond to the Notice or whose Compensation Class Notice Package was returned to the Administrator as undeliverable (hereinafter the “Compensation Class Non-Responder List”), as well as the names of any Compensation Class Members who responded that they were interested in compensation remedies but did not return a signed Release of Claims Form. Upon OFCCP’s request, the Administrator shall provide OFCCP with documentation demonstrating that B&H attempted to notify Compensation Class Members of the terms of this Decree in compliance with paragraph 34.
36. After B&H has provided OFCCP with the Compensation Class Non-Responder List, OFCCP will attempt for 30 days after receipt of this list to locate those Compensation Class Members on the Compensation Class Non-Responder List and/or obtain signed Release of Claims forms, and will provide B&H with a list of Compensation Class Members that it locates (“OFCCP Located Compensation Class Member List”) within 15 days after the expiration of this 30-day period.
37. Within 15 days of B&H receiving OFCCP’s Located Compensation Class Member List, the Administrator will mail a second Compensation Class Notice Package to any Compensation Class Members on OFCCP’s Located Compensation Class Member List (“Second Notice”). These Compensation Class Members will have 30 days from the date of the Second Notice to respond.



38. Within 15 days from the date the last response from Compensation Class Members is due, B&H will provide OFCCP with the list of all Compensation Class Members who were located and returned and signed the Verification and Interest Form and Release of Claims Form (“the Proposed Final Compensation Class List”). OFCCP shall have up to 30 days from receipt of the Proposed Final Compensation Class List to approve the Proposed Final Compensation Class List or work with B&H to revise the Proposed Final Compensation Class List. The parties will make every effort and negotiate in good faith to resolve any dispute between them about inclusion or exclusion of any Proposed Compensation Class Member on the Proposed Final Compensation Class List, but no Compensation Class Member shall be listed on the Proposed Final Compensation Class List unless he or she returned and signed the Verification and Interest and Release of Claims Forms. The Proposed Final Compensation Class List approved by OFCCP shall become the Final Compensation Class List upon the expiration of the 30-day period. OFCCP will provide B&H with a copy of any changes it proposes to the Proposed Compensation Class List on or before the 25<sup>th</sup> day after receipt of the Proposed Final Compensation Class List so that the parties can resolve any concerns in good faith prior to the expiration of the 30-day period. The Final Compensation Class List shall only include the Compensation Class Members who returned and signed the Verification and Interest and Release of Claims Forms (“the Compensation Class Members on the Final Compensation Class List”). Compensation Class Members who have not returned and signed the Verification and Interest and Release of Claims Forms prior to the expiration of these 30 days forfeit all rights to any relief under Sections III.A and III.C of this

Decree, including but not limited to any monetary or other benefits provided for in this Decree.

39. Copies of executed Verification and Interest Forms and Release of Claims Forms shall be provided by B&H to OFCCP upon request.

*Distribution of Monetary Remedies to Compensation Class Members*

40. Within 30 days of OFCCP's approval of the Final Compensation Class List, B&H shall make a one-time back pay and interest payment to each Compensation Class Member on the Final Compensation Class List who is employed by B&H. The amount of each check issued shall be calculated by dividing \$2,466,820.49 (the sum of \$2,090,525.94 in back pay and \$376,294.55 in interest) by the number of Compensation Class Members on the Final Compensation Class List. B&H shall make such payments in the manner in which such individual is normally paid his regular salary (*e.g.*, direct deposit, check), subject to all legally required payroll deductions and FICA withholdings as described herein. B&H shall mail IRS Forms W-2 and 1099 to each Compensation Class Member on the Final Compensation Class List who is employed by B&H in accordance with its legal obligation.
41. Within 30 days of receiving the Final Compensation Class List, B&H shall make a one-time back pay and interest payment to each Compensation Class Member on the Final Compensation Class List who is not employed with B&H. The amount of each check issued shall be calculated by dividing \$2,466,820.49 (the sum of \$2,090,525.94 in back pay and \$376,294.55 in interest) by the number of Compensation Class Members on the Final Compensation Class List. Back pay wages will be subject to all legally required payroll deductions and FICA withholdings. B&H shall mail IRS Forms W-2 and 1099 to

each Compensation Class Member on the Final Compensation Class List who is not employed by B&H in accordance with its legal obligation.

42. Within 30 days of making the payments to Compensation Class Members on the Final Compensation Class List, B&H shall provide OFCCP with documentation verifying that it has made payments to such individuals who are employed by B&H; copies of all checks cashed by such individuals, no longer employed by B&H, who were mailed checks pursuant to this Decree; and copies of all other envelopes and checks returned as undeliverable.
43. OFCCP will have 30 days from its receipt of copies of envelopes and checks returned as undeliverable pursuant to paragraph 42 to locate the Compensation Class Members on the Final Compensation Class List and provide any updated addresses for such individuals. B&H will re-mail the checks by certified mail within 15 days of receiving the new updated addresses from OFCCP. Any check sent to a Compensation Class Member on the Final Compensation Class List which remains uncashed for 180 days after the date the check was issued shall be void.
44. With respect to any uncashed checks, B&H will deposit the monies with New York State, Office of the State Comptroller, Office of Unclaimed Funds, or with the equivalent state agencies of the last known addresses for the eligible affected Promotion Class Members, in accordance with any and all applicable laws and regulations. No portion of these funds shall revert back, directly or indirectly, to B&H or any affiliate.

*Non-Monetary Compensation Class Remedies*

45. Within 60 days of the Effective Date of this Decree, B&H will review base salary as well as the administration of non-base compensation for (a) the shipping worker job title in

Job Group 801 and (b) all employees in Job Group 800, for any indication of statistically significant (b) (7)(E) disparities based on race. B&H will remedy any inequity that cannot be explained by legitimate, non-discriminatory factors unrelated to sex or race through immediate salary adjustments that will be retroactive to the Effective Date of this Decree.

#### **D. PROMOTIONS**

##### *Notice to Promotion Class Members*

46. Within 30 days from the Effective Date of this Decree, B&H, via the Administrator, shall notify the Promotion Class Members listed in Attachment I (hereinafter "List") of the terms of this Decree by distributing Attachment J (hereinafter "Notice"), Attachment K (hereinafter "Release of Claims Form"), Attachment L (hereinafter "Verification and Interest Form"), and a postage-paid, self-addressed return envelope ("Promotion Class Notice Package") unless he is also listed in Attachment E and received notification via a Compensation Class Notice Package. On the same date that appears on the Notice, the Administrator will mail the Promotion Class Notice Package and/or the Compensation Class Notice Package, by certified mail and regular mail to the last known address of each person on the List.
47. Each Promotion Class Member listed on Attachment I (or their legal representative in the event they are deceased) shall be given 60 days to respond to either Attachment J or F. Fifteen days after the last response was due, the Administrator shall provide OFCCP with a list of Promotion Class Members who did not respond to Attachment J or F and/or whose Promotion Class Notice Package was returned as "undeliverable" (hereinafter the "Promotion Class Non-Responder List") as well as the names of any Promotion Class

Members who responded that they were interested in promotion remedies but did not return a signed Release of Claims Form. Upon OFCCP's request, the Administrator shall provide OFCCP with documentation demonstrating that B&H attempted to notify Promotion Class Members of the terms of this Decree in compliance with paragraph 46.

48. After B&H has provided OFCCP with the Promotion Class Non-Responder List, OFCCP will attempt for 30 days after receipt of this list to locate those Promotion Class Members on the Promotion Class Non-Responder List and/or obtain signed Release of Claims Forms, and will provide B&H with a list of Promotion Class Members that it locates ("OFCCP Located Promotion Class Member List") within 15 days after the expiration of this 30-day period.
49. Within 15 days of B&H receiving OFCCP's Located Promotion Class Member List, the Administrator will mail a second Promotion Class Notice Package to any Promotion Class Members on OFCCP's Located Promotion Class Member List ("Second Notice"). These Promotion Class Members will have 30 days from the date of the Second Notice to respond.
50. Within 15 days from the date the last response from Promotion Class Members is due, B&H will provide OFCCP with the list of all Promotion Class Members who were located and returned and signed the Verification and Interest Form and Release of Claims Form ("Proposed Final Promotion Class List"). OFCCP shall have 30 days from receipt of the Proposed Final Promotion Class List to approve the Proposed Final Promotion Class List or work with B&H to revise the Proposed Final Promotion Class List. The parties will make every effort and negotiate in good faith to resolve any dispute between them about inclusion or exclusion of any Proposed Promotion Class Member on the

Proposed Final Promotion Class List, but no Promotion Class Member shall be listed on the Proposed Final Promotion Class List unless he or she returned and signed the Verification and Interest and Release of Claims Forms. The Proposed Final Promotion Class List approved by OFCCP shall become the Final Promotion Class List upon the expiration of the 30-day period. OFCCP will provide B&H with a copy of any changes it proposes to the Proposed Promotions Class List on or before the 25<sup>th</sup> day after receipt of the Proposed Final Promotion Class List so that the parties can resolve any concerns in good faith prior to the expiration of the 30-day period. The Final Promotion Class List shall only include Promotion Class Members who have returned and signed the Verification and Interest and Release of Claims Forms (“the Promotion Class Members on the Final Promotion Class List”). Promotion Class Members who have not returned and signed Verification and Interest and Release of Claims Forms prior to the expiration of the 30-day period forfeit all rights to any relief under Sections III.A and III.D of this Decree, including but not limited to any monetary, promotional or other benefits provided for in this Decree.

51. Copies of executed Verification and Interest Forms and Release of Claims Forms shall be provided by B&H to OFCCP upon request.

*Distribution of Monetary Remedies to Promotion Class Members*

52. Within 30 days of OFCCP’s approval of the Final Promotion Class List, B&H shall make a one-time back pay and interest payment to each Promotion Class Member on the Final Promotion Class List who is employed by B&H. The amount of each check issued shall be calculated by dividing \$407,595.26 (the sum of \$345,419.18 in back pay and \$62,176.08 in interest) by the number of Promotion Class Members on the Final

Promotion Class List. B&H shall make such payments in the manner in which such individual is normally paid his regular salary (*e.g.*, direct deposit, check), subject to all legally required payroll deductions and FICA withholdings as described herein. B&H shall mail IRS Forms W-2 and 1099 to each Promotion Class Member on the Final Promotion Class List who is employed by B&H in accordance with its legal obligation.

53. Within 30 days of receiving the Final Promotion Class List, B&H shall make a one-time back pay and interest payment to each Promotion Class Member on the Final Promotion Class List who is not employed with B&H. The amount of each check issued shall be calculated by dividing \$407,595.26 (the sum of \$345,419.18 in back pay and \$62,176.08 in interest) by the number of Promotion Class Members on the Final Promotion Class List. Back pay wages will be subject to all legally required payroll deductions and FICA withholdings. B&H shall mail IRS Forms W-2 and 1099 to each Promotion Class Member on the Final Promotion Class List who is not employed by B&H in accordance with its legal obligation.
54. Within 30 days of making the payments to Promotion Class Members on the Final Promotion Class List, B&H shall provide OFCCP with documentation verifying that it has made payments to such individuals who are employed by B&H; copies of all checks cashed by such individuals, no longer employed by B&H, who were mailed checks pursuant to this Decree; and copies of all other envelopes and checks returned as undeliverable.
55. OFCCP will have 30 days from its receipt of copies of envelopes and checks returned as undeliverable pursuant to paragraph 54 to locate the Promotion Class Members on the Final Promotion Class List and provide any updated addresses for such individuals. B&H

will re-mail the checks by certified mail within 15 days of receiving the new updated addresses from OFCCP. Any check sent to a Promotion Class Member on the Final Promotion Class List which remains uncashed for 180 days after the date the check was issued shall be void.

56. With respect to any uncashed checks, B&H will deposit the monies with New York State, Office of the State Comptroller, Office of Unclaimed Funds, or with the equivalent state agencies of the last known addresses for the eligible affected Promotion Class Members, in accordance with any and all applicable laws and regulations. No portion of these funds shall revert back, directly or indirectly, to B&H or any affiliate.

*Non-Monetary Promotion Class Remedies*

57. As vacancies arise in Job Groups 500 and 501, B&H will extend promotion offers for the vacancy based on B&H's determination of the most qualified Promotion Class Member on the Final Promotion Class List who indicated interest in a promotion on the Verification and Interest Form. The offers will be made to such individuals in writing at the current rate of pay until 16 vacancies have been filled from the Promotion Class Members on the Final Promotion Class List or until the list is exhausted, whichever is first, but in no event shall the obligation to offer promotions continue beyond 30 months from the Effective Date of this Decree.
58. B&H will institute at the Warehouses a job advancement training and development program for all employees in Job Group 801 and 800 to assist such employees in obtaining the skills required for promotion into higher level Job Groups at the Warehouses. B&H will develop procedures to review, at least annually, the selection



process for promotions to any Job Groups at the Warehouses for the purpose of ensuring nondiscrimination.

#### **E. WORKPLACE ENVIRONMENT**

59. B&H will:

- a. Notify all employees of B&H's non-tolerance of harassment based on race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status, including providing assurances that B&H will not retaliate against any employee for making a harassment claim;
  - b. Prominently display at the Warehouses the name, job title, and telephone number of the B&H official to contact to report and/or secure relief from such harassment, as well as B&H's current hotline telephone number that employees may utilize to make harassment complaints in English or in Spanish;
  - c. Provide training in equal employment opportunity principles and in the identification and prevention of harassment based on race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status, to B&H's supervisory managers and supervisors, including any employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions and, separately, to B&H's other employees;
  - d. Provide the training referred to in paragraph 59(c) at least once a year;
  - e. Maintain a working environment free from harassment, intimidation, and coercion at all sites and in all facilities at which B&H's employees are assigned to work;
- and

- f. Document B&H's monitoring of its work environment for the presence of any forms of harassment, intimidation, or coercion.

#### **F. WORKPLACE CONSULTANT**

- 60. For a cost not to exceed \$125,000.00, B&H will retain a Workplace Consultant ("Consultant") for the purpose of evaluating the policies, procedures and practices relating to its Warehouse hiring, compensation and promotion processes and to take additional actions noted below. As soon as practicable, and no later than 30 days from the Effective Date of this Decree, B&H shall provide the names of three Consultant candidates to OFCCP, subject to OFCCP's determination for good cause that the identified individuals are not appropriate candidates. OFCCP shall have up to 15 days from receipt of the names to review B&H's submission. B&H and OFCCP must jointly agree upon the Consultant, who will have a relevant educational background and substantial experience in developing and implementing job-related and neutral employee selection processes. B&H will bear all costs associated with the selection and retention of the Consultant and the performance of his/her duties.
- 61. The Consultant's failure to complete all of its obligations set forth in this Decree for under \$125,000.00 shall not be a reason for B&H's non-compliance with any portion of this Decree.
- 62. The Consultant will evaluate the policies, procedures and practices relating to B&H's hiring, compensation and promotion of Warehouse workers, as well as the implementation, monitoring of, and training related to these policies, procedures and practices. As part of the evaluation, the Consultant will conduct on-site visits to the Warehouses. The Consultant will submit to B&H and OFCCP a proposal describing the

specific methodology to be used in conducting his/her evaluation, including the time necessary to conduct a comprehensive evaluation and to write a report containing his/her findings and recommendations, as well as all items to be evaluated, including but not limited to the following:

- a. Objective qualifications, criteria, and procedures for each Job Group to recruit, screen, interview, select, reject or hire individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status in compliance with E.O. 11246, Section 503 and VEVRAA;
- b. Procedures to recruit applicants for Warehouse positions, including mandatory posting, outreach efforts, and the use of the Internet as a recruitment procedure;
- c. Objective qualifications and criteria to be used to select and/or eliminate applicants at each step of the hiring and promotions process, including the qualifications and criteria to be used in any application screen, interview, test, post-hiring screening or other selection procedure;
- d. Procedures to limit subjectivity in the hiring, compensation and promotions process;
- e. Procedures to ensure that applicants are tracked and decisions are documented at each step in the hiring and promotion processes;
- f. Procedures to ensure that documents are retained in accordance with 41 C.F.R. § 60-1.12(a), Part 60-3.7, § 60-300.80 and § 60-741.80;
- g. Procedures to train all employees involved in the recruitment, hiring, compensation and promotion of personnel on the policies, procedures and

practices implemented in the Warehouses in order to provide a workplace free of discrimination.

63. The Consultant's proposal will include specific deadlines for conducting on-site visits, completing the evaluation, and preparing the report.
64. At the conclusion of the Consultant's evaluation, and no later than six months from the Effective Date of this Decree, the Consultant shall provide a report (hereinafter "Report") to B&H with a copy to OFCCP. The Report shall include the following:
  - a. A description of the evaluation conducted by the Consultant;
  - b. A summary of the Consultant's findings regarding B&H's current policies, procedures and practices relating to the recruitment, hiring, compensation and promotion of workers in its Warehouses;
  - c. The Consultant's findings and recommendations regarding each of the items set forth in paragraph 62 above, as well as any other items included in the Consultant's proposal; and
  - d. Any additional recommended actions or revisions to the policies, procedures and practices for recruitment, hiring, compensation and promotion to ensure equal opportunity for all applicants and employees in the Warehouses.
65. Within 30 days of receiving the Consultant's Report, if B&H or OFCCP disagrees with any of the Consultant's recommendations, B&H or OFCCP will provide to the other party a written explanation of any recommendations with which it disagrees, the reasons for the disagreement, and a description of proposed alternate measures to address the issues or concerns underlying the recommendations. Thereafter, the parties shall work

together in good faith to resolve these disagreements and finalize, within 45 days of receiving the Consultant's Report, the recommendations that B&H will implement.

66. When there is a final decision as to the recommendations that B&H will implement pursuant to the Consultant's Report, B&H shall work with the Consultant to fully implement all such recommendations, including training incumbent employees, within 120 days or within a longer time frame upon certification from the Consultant that 120 days is insufficient.
67. B&H, in consultation with the Consultant, will monitor the implementation of, and results achieved from, any revisions to its Warehouse personnel practices.
68. B&H shall work with the Consultant to develop and conduct an annual training program to be presented to all individuals involved in the revised recruiting, hiring, compensation and promotion practices that B&H implements after the Consultant's Report. This training program must be developed and conducted for incumbent employees within 120 days after finalizing the recommendations B&H will implement pursuant to the Consultant's Report. All incumbent employees involved in the revised recruiting, hiring, compensation and promotion processes must receive a minimum of two hours (or more depending on the recommendation of the Consultant) of in-person training. Upon OFCCP's request, B&H will provide OFCCP with a copy of all training materials used at this training program. The training program will include at least the following:
  - a. Instruction on the proper implementation of the recruitment, tracking and selection procedures; the neutral application of the specified qualifications and criteria that will be used at each step in the hiring, compensation and promotion processes; the procedures to be used to document the decisions made at each step

in these processes; 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; and

- b. Equal employment opportunity rights and responsibilities, including legal prohibitions against discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status, and B&H's commitment to diversity and non-discriminatory hiring.

- 69. For the remainder of the term of this Decree, all employees who are hired or promoted into a position in which they are involved in any way in recruitment, hiring, compensation or promotions decisions shall be required to attend the training described in paragraph 68 within 30 days of hire or promotion into such position.
- 70. B&H shall maintain and produce to OFCCP upon request sign-in sheets containing the printed names and signatures of all employees who attend the mandatory training described in paragraph 68.
- 71. B&H will provide informational training on its policies on equal employment opportunity rights and responsibilities, including the legal prohibitions against discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status or any other protected category to all incumbent Warehouse workers and to all new Warehouse workers.
- 72. Incumbent Warehouse workers will receive written notices in Spanish and English summarizing B&H's commitment to equal employment opportunity and affirmative action and providing the incumbents with information describing how to raise any issues, concerns, or complaints. The written notices shall be provided to the incumbent Warehouse workers within 30 days of the Effective Date of this Decree.

73. For the remainder of the term of this Decree, all new Warehouse workers shall be provided mandatory training within 30 days of their hire describing B&H's commitment to equal employment opportunity and affirmative action and providing the new hires with information describing how to raise related issues or concerns and to file complaints.
74. B&H shall maintain the hotline phone number, as described in paragraph 59(b), that permits employees to call and report, among other things, discrimination at any B&H facility, and will ensure that the hotline phone number is displayed where applicants for Warehouse positions complete the employment application.
75. Independent of the Consultant's obligations under this Decree, B&H shall: (a) provide the Consultant with the results of its adverse impact analyses for the Warehouses for which the impact is statistically significant (b) (7)(E) for a 6 or 12-month period; and (b) if statistically significant adverse impact is found for the Warehouses confer with the Consultant to determine whether there are any recommended changes to the hiring process.
76. The Consultant will review B&H's implementation of the agreed-to recommendations referenced in paragraphs 65 to 66 above at intervals of not more than every six months during the term of this Decree, and will provide B&H and OFCCP with the results of each review (hereinafter "Review"). The Consultant's Reviews will be sent to OFCCP in accordance with the schedule for the submission of the Progress Reports set forth in Paragraph 84 below, except that the final Review shall be due 14 days prior to the expiration of the 30-month term of this Decree and will cover the period of time from the first day after the period covered by the prior Review through the 15<sup>th</sup> day prior to the expiration of the 30-month term of this Decree.

77. If the Consultant determines in a Review that B&H has not implemented the agreed to recommendations referenced in paragraphs 65 to 66 above, then the parties shall comply with the provisions of 41 C.F.R. § 60-1.34.

#### **IV. COMPLIANCE WITH THE EXECUTIVE ORDER AND REPORTING**

78. As long as B&H remains a federal contractor subject to E.O. 11246, Section 503, and VEVRAA, B&H agrees to annually prepare and update Affirmative Action Plans (“AAPs”) for its Warehouses and to retain all supporting documentation as required by E.O. 11246, Section 503, VEVRAA, and their implementing regulations.
79. As long as B&H remains a federal contractor subject to E.O. 11246, Section 503, and VEVRAA, B&H will periodically perform in-depth analyses of its total employment processes to determine whether and where impediments to equal employment opportunity exist, and will develop and implement an auditing system to periodically measure the effectiveness of its total affirmative action program in accordance with 41 C.F.R. § 60-2.17(b) and (d). B&H will incorporate these analyses and determinations into its AAPs.
80. As long as B&H remains a federal contractor subject to E.O. 11246, Section 503, and VEVRAA, B&H shall ensure that its applicant, hire, personnel and employment records pertaining to its Warehouses are collected and maintained in accordance with the requirements of 41 C.F.R. Parts 60-1 and 60-3, 41 C.F.R. § 60-300.80(a) and 41 C.F.R. § 60-741.80(a).
81. As long as B&H remains a federal contractor subject to E.O. 11246, Section 503, and VEVRAA, B&H agrees that it will develop and implement an auditing system that periodically measures the effectiveness of its total AAP as required by 41 C.F.R. §§ 60-2.17(d), 60-300.44(h), and 60-741.44(h).



82. As long as B&H remains a federal contractor subject to E.O. 11246, Section 503, and VEVRAA, B&H agrees to periodically examine its hiring and promotion processes for adverse impact based on sex, race and/or ethnicity as required by 41 C.F.R. § 60-3.4 and 41 C.F.R. § 60-3.15A (2).
83. As long as B&H remains a federal contractor subject to E.O. 11246, Section 503, and VEVRAA, B&H agrees to list all employment openings as they occur with an appropriate employment service delivery system (ESDS) (either the state workforce agency job bank or a local ESDS) where the openings occur, in a manner and format that will allow the ESDS to provide priority referrals of protected veterans to B&H, as required by Paragraphs 2-6 of the Equal Opportunity Clause at 41 C.F.R. § 60-300.5(a). With its initial listing, and as subsequently needed to update the information, B&H must also advise the ESDS that it is a federal contractor that desires priority referrals of protected veterans for job openings at all locations within the state, and provide the ESDS with the name and address of each of its hiring locations within the state and the contact information for the contractor official responsible for hiring at each location, in accordance with Paragraph 4 of the Equal Opportunity Clause at 41 C.F.R. § 60-300.5(a). Should any of the information in the disclosures change since it was last reported to the ESDS, the contractor shall provide updated information simultaneously with its next job listing.
84. B&H agrees to prepare and submit five Consent Decree Progress Reports (“Progress Reports”) in accordance with the timing set forth herein. The first Progress Report shall be due 40 days after the expiration of the 6 month period that begins on the Effective Date. The second, third and fourth Progress Reports will be due no later than 40 days

following the last day of each of the next three successive six-month intervals that follow the first 6 month period after the Effective Date. The fifth Progress Report shall be due 45 days prior to the expiration of the 30-month term of this Decree. The reports shall be submitted to: Office of Federal Contract Compliance Programs, attn.: Eduardo Fontaine, Director, Regional Operations, 201 Varick Street, Room 750, New York, New York, 10014. The reports shall relate to the Warehouses. Each of the Progress Reports shall contain the following information for the six-month period covered by the report, except that the fifth progress report shall contain the following information for the twenty-fifth to twenty-seventh months of the term of this Decree:

- a. For each class member hired pursuant to this Decree, his or her name, job title, rate of pay, and starting date;
- b. The name of all class members who did not respond to the notification of available positions, refused a bona fide offer of employment or did not report to work, including the date of notification or offer, job position offered, rate of pay offered, and the date of refusal or failure to report to work;
- c. For each class member who was considered for a Job Group 801 position or a promotion into Job Group 500 or 501 pursuant to this Decree but not selected, his or her name and the reasons for the non-selection, including documentation supporting the non-selection;
- d. A description of the training provided to managers and employees in accordance with the training provisions of this Decree, including the names and job titles of the persons conducting the training and attending the training, an outline of the

content of the training, any materials provided to participants or used by the trainers to conduct the training, and the cost of the training to B&H;

- e. The total number of applicants and hires for Job Group 801 at the Warehouses during the reporting period, with a breakdown by race and sex;
- f. For all hires into Job Group 801 at the Warehouses during the reporting period, the starting rate of pay, with a breakdown by race and sex;
- g. A list of all internal placements into and within Job Groups 501, 500, and 101 broken down by employee identification number, race, sex, type of placement at issue, the job group and job title each individual on the list held prior to the placement at issue, the job group and job title each individual on the list held as a result of the placement at issue and the date each such placement occurred. For the purpose of complying with this paragraph, the term “internal placement(s)” includes but is not limited to transfers and promotions;
- h. The pool, if any, of all internal candidates who expressed interest in and/or were considered for the internal placements referred to in paragraph 84(g), broken down by name, race, sex, job group, and job title;
- i. The results of B&H’s evaluations and analyses of its applicants and hires for Job Group 801, as well as the starting rate of pay for all hires into Job Groups 800 and 801 during the reporting period;
- j. Evidence that B&H is providing separate or single-user restrooms and necessary changing facilities to female employees, including all paid receipts and photographs of restrooms;

- k. A report on B&H's monitoring of its work environment for the presence of any forms of harassment, intimidation, or coercion, including but not limited to verbal and visual displays and, where warranted, B&H's corrective action to include date(s) of the action and all associated costs expended to correct the action(s);
  - l. Copy of B&H's notification to all employees of its non-tolerance of harassment based on race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status;
  - m. Name, job title and telephone number of the B&H official to contact to report and/or secure relief from harassment;
  - n. Documentation verifying that each job opening was listed with the New York State Department of Labor or with the appropriate ESDS; and
  - o. The actions taken by B&H, where action is appropriate, after determining that any component of the selection process has an adverse impact on minorities or women.
85. In the first, third and fifth Progress Reports submitted pursuant to paragraph 84, B&H shall provide the following data for all employees employed by B&H in the Warehouses in Job Groups 800 or 801 as of a snapshot date within three months prior to the date the Progress Report is submitted to OFCCP: (1) employee ID; (2) job title; (3) performance rating; (4) race; (5) sex; (6) salary; (7) bonus paid during the prior year; (8) date of hire; (9) date in position; and (10) date of termination/rehire (if applicable).
86. If upon review of the results of any Progress Report produced in compliance with paragraphs 84 and 85, OFCCP has a reasonable basis to conclude from its review of any

Progress Report that B&H has violated this Decree, the parties shall comply with the provisions of 41 C.F.R. § 60-1.34.

87. B&H will retain all records pertinent to the violations resolved by this Decree and the reports submitted under it (including the underlying data/information upon which the reports are based) until the expiration date of this Decree, or consistent with regulatory timeframes, whichever is later.

**V. IMPLEMENTATION AND ENFORCEMENT OF THIS DECREE**

88. This Decree shall constitute the final administrative order in this case, and shall have the same force and effect as an order made after a full hearing and final review by the Administrative Review Board.
89. The entire record upon which this Decree is based shall consist solely of the administrative complaint, the answer to the administrative complaint by B&H, this Consent Decree and Order, and the attachments hereto.
90. The parties waive any further procedural steps provided in 41 C.F.R. Part 60-30 for a final administrative order.
91. The parties waive any right to challenge or contest the validity of the provisions of this Decree.
92. Each party agrees to pay its own fees, costs, and other expenses incurred at any stage of these proceedings.
93. No party shall bring enforcement proceedings for any alleged violation(s) of this Decree with the Office of Administrative Law Judges prior to providing 15 days' written notice to the other party, and the parties shall work together in good faith during the 15-day notice period to attempt to resolve any purported violation. The notice period shall not

apply in those cases in which such a delay would result in irreparable injury to the employment rights of affected Warehouse employees or applicants.

94. Subject only to the timing provisions set forth in the preceding paragraph, enforcement proceedings for violation of this Decree may be initiated any time upon filing with the Office of Administrative Law Judges a motion for an order of enforcement and/or sanctions.
95. Liability for violation of this Decree may subject B&H and its successors, assigns, divisions or subsidiaries to the sanctions set forth in E.O. 11246 and its implementing regulations and other appropriate relief. B&H acknowledges that a lack of review by OFCCP and/or a lack of initiating enforcement proceedings by OFCCP will not be construed as approval of any of B&H's actions, policies, reports or procedures implemented during the course of this Decree.
96. If a motion for an order of enforcement is unopposed, the motion may be presented to the Administrative Law Judge without hearing, and the proposed order may be implemented immediately. If said application or motion is opposed by any party, the party in opposition shall file a written response within twenty days of service of such motion.

**WHEREFORE**, the parties move that an Order be entered adopting the above Consent Decree as the final disposition of this matter.

**IT IS SO ORDERED:**

DATED: \_\_\_\_\_  
ADMINISTRATIVE LAW JUDGE

AGREED BY:

NICHOLAS C. GEALE  
Acting Solicitor of Labor

JEFFREY S. ROGOFF  
Regional Solicitor

SUDWITI CHANDA  
Counsel for Civil Rights

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

ALLISON BOWLES  
Senior Trial Attorney

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

DUSTIN SALDARRIAGA  
Trial Attorney

SUMMER SILVERSMITH  
Trial Attorney

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New York, New York 10014

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

DANIEL V. DUFF

Attorney for Defendant

JACKSON LEWIS P.C.  
50 South Service Road, Suite 250  
Melville, New York 11747

DATED: August 2, 2017

## Attachment A-1: Hiring Class Member List (Female)

NO.	LAST NAME	FIRST NAME
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## Attachment A-1: Hiring Class Member List (Female)

NO.	LAST NAME	FIRST NAME
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## Attachment A-1: Hiring Class Member List (Female)

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## Attachment A-1: Hiring Class Member List (Female)

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## Attachment A-1: Hiring Class Member List (Female)

NO.	LAST NAME	FIRST NAME
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## Attachment A-1: Hiring Class Member List (Female)

NO.	LAST NAME	FIRST NAME
231	(b)(6), (b)(7)(C)	
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## Attachment A-1: Hiring Class Member List (Female)

NO.	LAST NAME	FIRST NAME
277	(b)(6), (b)(7)(C)	
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## Attachment A-1: Hiring Class Member List (Female)

NO.	LAST NAME	FIRST NAME
323	(b)(6), (b)(7)(C)	
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## Attachment A-1: Hiring Class Member List (Female)

NO.	LAST NAME	FIRST NAME
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## Attachment A-2: Hiring Class Member List (Black)

NO.	LAST NAME	FIRST NAME
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## Attachment A-2: Hiring Class Member List (Black)

NO.	LAST NAME	FIRST NAME
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## Attachment A-2: Hiring Class Member List (Black)

NO.	LAST NAME	FIRST NAME
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## Attachment A-2: Hiring Class Member List (Black)

NO.	LAST NAME	FIRST NAME
139	(b)(6), (b)(7)(C)	
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## Attachment A-2: Hiring Class Member List (Black)

NO.	LAST NAME	FIRST NAME
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## Attachment A-2: Hiring Class Member List (Black)

NO.	LAST NAME	FIRST NAME
231	(b)(6), (b)(7)(C)	
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## Attachment A-2: Hiring Class Member List (Black)

NO.	LAST NAME	FIRST NAME
277	(b)(6), (b)(7)(C)	
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## Attachment A-2: Hiring Class Member List (Black)

NO.	LAST NAME	FIRST NAME
323	(b)(6), (b)(7)(C)	
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## Attachment A-2: Hiring Class Member List (Black)

NO.	LAST NAME	FIRST NAME
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## Attachment A-2: Hiring Class Member List (Black)

NO.	LAST NAME	FIRST NAME
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Attachment A-2: Hiring Class Member List (Black)

NO.	LAST NAME	FIRST NAME
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## Attachment A-3: Hiring Class Member List (Asian)

NO.	LAST NAME	FIRST NAME
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## Attachment A-3: Hiring Class Member List (Asian)

NO.	LAST NAME	FIRST NAME
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## Attachment A-3: Hiring Class Member List (Asian)

NO.	LAST NAME	FIRST NAME
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**ATTACHMENT B**  
**NOTICE TO AFFECTED CLASS - HIRING**

**[DATE]**

Dear **[NAME]**:

B&H Foto & Electronics Corporation (“B&H”) and the U.S. Department of Labor’s Office of Federal Contract Compliance Programs (“OFCCP”) have entered into a Consent Decree (“Decree”) to remedy alleged violations of Executive Order 11246 (“E.O. 11246”) that OFCCP found during a compliance review of B&H’s Brooklyn Navy Yard, New York facility.

OFCCP alleges that, beginning no later than January 31, 2011, B&H failed to post warehouse positions available at its Brooklyn Navy Yard, New York facility that, OFCCP alleges, resulted in hiring discrimination against women, Blacks, and Asians. These warehouse positions include shipping workers, warehouse workers, receiving workers, general runners, and laborers.

The Decree does not constitute an admission by B&H of any violation of E.O. 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212), and their implementing regulations at 41 C.F.R. Chapter 60. B&H denies any violation of E.O. 11246, or any other law, and there has not been any adjudicated finding that B&H violated any laws. B&H entered into the Decree to avoid the costs associated with litigation. OFCCP and B&H have entered into the Decree to resolve the matter without resorting to further legal proceedings.

Based on New York State Department of Labor data, you have been identified as an individual who possibly would have applied for a job at B&H had you become aware of a posting for a warehouse worker job opening at its Brooklyn Navy Yard, New York facility. As part of the Decree, you have been identified as an individual eligible to receive a financial distribution of at least **\$345.58**, less deductions required by law. Under the terms of the Decree, it may take more than five 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 (1) Release of Claims, and (2) Information Verification & Employment Interest Form. While you should complete and mail back the forms as soon as possible, they ***must*** be postmarked to the address below no later than **sixty days** after the date of this Notice for you to be eligible to receive a payment or to be considered for a job offer or to receive any other consideration under the terms of the Decree, which govern this matter: Please also complete the enclosed IRS Form W-4.

(NAME)  
(ADDRESS)

You may use the enclosed postage-paid return envelope to return the completed and signed Information Verification & Employment Interest Form and Release of Claims.

In addition to the monetary distribution, B&H may make available full time employment opportunities for warehouse positions at the Brooklyn Navy Yard Warehouse after March 31, 2018 for Job Group 801 or equivalent positions that are scheduled to be filled and expected to last for at least three months (such positions include shipping workers, warehouse workers, receiving workers, general runners, and laborers) to a limited number of individuals receiving this notification. These positions will be located at B&H's Brooklyn Navy Yard facilities, which are scheduled to cease operations on or around September of 2017. It is not certain that you will receive a job offer. If you are interested in employment with B&H, please check the appropriate box on the enclosed Information Verification & Employment Interest Form. Those receiving this notice will be considered for positions in the order that B&H receives the Information Verification & Employment Interest Form expressing an interest in employment.

**QUESTIONS?**

**If you have any questions you may call [NAME OF ADMINISTRATOR] at [PHONE NUMBER], or OFCCP Regional Liaison (b) (6), (b) (7)(C) at (646) 264-3170.**

**IF YOU FAIL TO COMPLETE AND RETURN THE ENCLOSED DOCUMENTS TO B&H WITHIN 60 DAYS OF THE DATE OF THIS NOTICE, YOU WILL NOT BE ELIGIBLE TO RECEIVE A PAYMENT OR TO BE CONSIDERED FOR A JOB OFFER UNDER THE TERMS OF THE DECREE, WHICH GOVERN THIS MATTER.**

Sincerely,

(NAME)

Enclosures:

Information Verification & Employment Interest Form  
Release of Claims Under Executive Order 11246  
IRS Form W-4



**ATTACHMENT C**  
**INFORMATION VERIFICATION & EMPLOYMENT INTEREST FORM – HIRING**

**You must complete this form in order to be eligible for the monetary payment and/or employment opportunities under the terms of the Consent Decree between B&H Foto & Electronics Corporation (“B&H”) and the U.S. Department of Labor’s Office of Federal Contract Compliance Programs.**

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

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

Telephone: Home \_\_\_\_\_ Cell \_\_\_\_\_ Other \_\_\_\_\_

**Notify [NAME OF ADMINISTRATOR] at [address] if your contact information changes.**

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

**For purposes of this settlement, it is necessary to verify your gender and race (choose all that apply):**

- |                                   |                                                         |                                                           |
|-----------------------------------|---------------------------------------------------------|-----------------------------------------------------------|
| <input type="checkbox"/> Male     | <input type="checkbox"/> Female                         |                                                           |
| <input type="checkbox"/> White    | <input type="checkbox"/> Black                          | <input type="checkbox"/> Asian                            |
| <input type="checkbox"/> Hispanic | <input type="checkbox"/> American Indian/Alaskan Native | <input type="checkbox"/> Native Hawaiian/Pacific Islander |
| <input type="checkbox"/> Other    |                                                         |                                                           |

Please indicate below whether you are currently interested in employment in a Job Group 801 warehouse position with B&H. Such positions include shipping workers, warehouse workers, receiving workers, general runners, and laborers. Please note that these positions will be located at B&H’s Brooklyn Navy Yard facilities, which are scheduled to cease operations on or around September of 2017. If you complete, sign, and return this Information Verification & Employment Interest Form, and Release of Claims, you remain eligible for the monetary payment whether or not you are interested in employment at this time.

- ☐ Yes, I am interested in employment with B&H in a Job Group 801 warehouse position
- ☐ No, I am not interested in employment with B&H in a Job Group 801 warehouse position

**IF YOU FAIL TO COMPLETE AND RETURN THE ENCLOSED DOCUMENTS TO THE ADDRESS BELOW WITHIN 60 DAYS OF THE ACCOMPANYING NOTICE TO AFFECTED CLASS – HIRING, YOU WILL NOT BE ELIGIBLE TO RECEIVE A PAYMENT, TO BE CONSIDERED FOR A JOB OFFER, OR TO RECEIVE ANY OTHER CONSIDERATION UNDER THE TERMS OF THE CONSENT DECREE, WHICH GOVERN THIS MATTER.**

(NAME)  
(ADDRESS)

By signing below, I certify the above information is true and correct.

Signature \_\_\_\_\_ Date \_\_\_\_\_

**ATTACHMENT D**  
**RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246 - HIRING**

This Release of Claims under Executive Order 11246 ("Release") is a legal document. This document states that in return for B&H Foto & Electronics Corporation ("B&H") paying you money, you agree that you will not file any lawsuit against B&H for allegedly violating Executive Order 11246 in connection with any claim that was raised or could have been raised by the complaint filed by the U.S. Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") in this matter. It also says that B&H 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, 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 a payment or be considered for a job offer or any other consideration under the terms of the Consent Decree, which govern this matter.

In consideration of the payment of at least \$345.58 (less deductions required by law) by B&H to me, which I agree is acceptable, I, [NAME], agree to the following:

**I.**

I hereby waive, release and forever discharge B&H its predecessors, successors, related entities, parents, subsidiaries, affiliates and organizations, and its and their shareholders, directors, officers, employees, agents, successors, and assigns, of and from any and all actions, causes of action, damages, liabilities, and claims arising out of or actionable under Executive Order 11246, as amended, for alleged failure to hire, failure to promote, or compensation discrimination under Executive Order 11246, based on any acts or omissions or other events known or unknown, occurring at any time prior to the date of my signature on this Release, including those that were raised or could have been raised by the complaint filed by the OFCCP in this matter, which I or my representatives (heirs, executors, administrators, or assigns) have or may have.

**II.**

I understand that B&H denies that it treated me unlawfully or unfairly in any way and that B&H entered into a Consent Decree with the OFCCP and agreed to make the payment described above to resolve alleged disparities in hiring and to resolve the matter without further legal proceedings in the compliance review initiated by OFCCP for the period of January 31, 2011 through January 31, 2013. I further agree that the payment of the aforesaid sum or any other consideration provided to me by B&H is not an admission of any liability by B&H.

**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.

**IV.**

I understand that if I do not sign this Release and return it to B&H within sixty days after the date of this Notice, I will not be eligible to receive a payment or to be considered for a job offer or any other consideration under the terms of the Consent Decree, which govern this matter.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# Attachment E: Compensation Class Member List

NO.	EMP. ID	LAST NAME	FIRST/MIDDLE NAME
1	(b)(6), (b)(7)(C)		
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Attachment E: Compensation Class Member List

NO.	EMP. ID	LAST NAME	FIRST/MIDDLE NAME
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## Attachment E: Compensation Class Member List

NO.	EMP. ID	LAST NAME	FIRST/MIDDLE NAME
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Attachment E: Compensation Class Member List

NO.	EMP. ID	LAST NAME	FIRST/MIDDLE NAME
136	(b)(6), (b)(7)(C)		
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**ATTACHMENT F**  
**NOTICE TO AFFECTED CLASS – COMPENSATION AND PROMOTIONS**

**[DATE]**

Dear **[NAME]**:

B&H Foto & Electronics Corporation (“B&H”) and the U.S. Department of Labor’s Office of Federal Contract Compliance Programs (“OFCCP”) have entered into a Consent Decree (“Decree”) to remedy alleged violations of Executive Order 11246 (“E.O. 11246”) that OFCCP found during a compliance review of B&H’s Brooklyn Navy Yard, New York facility.

OFCCP alleges that, beginning no later than January 31, 2011, B&H used a compensation practice that discriminated against Hispanics at its Brooklyn Navy Yard, New York facility who worked in Job Group 801 as shipping workers, or as an employee in Job Group 800. OFCCP also alleges that, beginning no later than January 31, 2011, B&H used a promotion practice at its Brooklyn Navy Yard, New York facility that discriminated against Hispanics.

The Decree does not constitute an admission by B&H of any violation of E.O. 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212), and their implementing regulations at 41 C.F.R. Chapter 60. B&H denies any violation of E.O. 11246, or any other law, and there has not been any adjudicated finding that B&H violated any laws. B&H entered into the Decree to avoid the costs associated with litigation. OFCCP and B&H have entered into the Decree to resolve the matter without resorting to further legal proceedings.

You have been identified as one of the individuals who worked in Job Group 801 as a shipping worker, or as an employee in Job Group 800. You have also been identified as an individual who might have been eligible for a position in the 500 and 501 Job Groups during the relevant time period, but may not have been considered for placement. Under the Decree, you may be eligible to receive a payment of at least **\$18,203.32**, less deductions required by law. Under the terms of the Decree it may take more than five months from the date of this letter before you receive your payment.

In order to be eligible for a payment, you must complete, sign, and return the enclosed (1) Release of Claims and (2) Information Verification & Interest Form. While you should complete and mail back the forms as soon as possible, they ***must*** be postmarked to the address below no later than **sixty days** after the date of the postmark of this Notice for you to be eligible to receive a payment under the terms of the Decree, which govern this matter:

(NAME)  
(ADDRESS)

You may use the enclosed postage-paid return envelope to return the completed and signed Release of Claims and Information Verification Form.



In addition to the monetary distribution, B&H may be making job placements for positions in the 500 and 501 Job Groups to a limited number of individuals receiving this notification. It is not certain that you will receive a job placement. If you are still interested in being placed into these positions with B&H, please check the appropriate box on the enclosed Information Verification & Interest Form. Those receiving this notice will be considered for positions in the 500 and 501 Job Groups in the order that B&H receives the Information Verification & Interest Form expressing an interest in promotions.

**QUESTIONS?**

**If you have any questions you may call [NAME OF ADMINISTRATOR] at [PHONE NUMBER], or OFCCP Regional Liaison (b) (6), (b) (7)(C) at (646) 264-3170.**

**IF YOU FAIL TO COMPLETE AND RETURN THE ENCLOSED DOCUMENTS TO B&H WITHIN 60 DAYS OF THE DATE OF THIS NOTICE, YOU WILL NOT BE ELIGIBLE TO RECEIVE A PAYMENT UNDER THE TERMS OF THE DECREE, WHICH GOVERN THIS MATTER.**

Sincerely,

*(NAME)*

Enclosures:

Information Verification & Interest Form  
Release of Claims Under Executive Order 11246

**ATTACHMENT G**  
**INFORMATION VERIFICATION & INTEREST FORM –**  
**COMPENSATION AND PROMOTIONS**

**You must complete this form in order to be eligible for the monetary payment and/or employment opportunities under the terms of the Consent Decree between B&H Foto & Electronics Corporation (“B&H”) and the U . S . Department of Labor’s Office of Federal Contract Compliance Programs.**

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

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

Telephone: Home \_\_\_\_\_ Cell \_\_\_\_\_ Other \_\_\_\_\_

**Notify [NAME OF ADMINISTRATOR at [address] if your contact information changes.**

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

**For purposes of this settlement, it is necessary to verify your race (choose all that apply):**

- |                                   |                                                         |                                                           |
|-----------------------------------|---------------------------------------------------------|-----------------------------------------------------------|
| <input type="checkbox"/> White    | <input type="checkbox"/> Black                          | <input type="checkbox"/> Asian                            |
| <input type="checkbox"/> Hispanic | <input type="checkbox"/> American Indian/Alaskan Native | <input type="checkbox"/> Native Hawaiian/Pacific Islander |
| <input type="checkbox"/> Other    |                                                         |                                                           |

Please indicate below whether you are currently interested in being placed into a position within the 500 and 501 Job Groups (the jobs within these job groups include Receiving Quality Assurance, Returns Evaluator, RTV Vendor Liaison, Inventory Specialist, Customer Service Agent, and Inventory Associate) with B&H. If you complete, sign, and return this Information Verification and Employment Interest Form, you remain eligible for the monetary payment whether or not you are interested in employment within the 500 and 501 Job Groups at this time.

☐ Yes, I am interested in placement with B&H within the 500 and 501 Job Groups.

☐ No, I am not currently interested in placement with B&H within the 500 and 501 Job Groups.

**IF YOU FAIL TO COMPLETE AND RETURN THE ENCLOSED DOCUMENTS TO THE ADDRESS BELOW WITHIN 60 DAYS OF THE DATE OF THE ACCOMPANYING NOTICE TO AFFECTED CLASS – PROMOTION, YOU WILL NOT BE ELIGIBLE TO RECEIVE A PAYMENT, TO BE CONSIDERED FOR A JOB PLACEMENT, OR TO RECEIVE ANY OTHER CONSIDERATION UNDER THE TERMS OF THE CONSENT DECREE, WHICH GOVERN THIS MATTER.**

(NAME)  
(ADDRESS)

By signing below, I certify the above information is true and correct.

Signature \_\_\_\_\_ Date \_\_\_\_\_

**ATTACHMENT H**  
**RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246 –**  
**COMPENSATION AND PROMOTIONS**

This Release of Claims under Executive Order 11246 (“Release”) is a legal document. This document states that in return for B&H Foto & Electronics Corporation (“B&H”) paying you money, you agree that you will not file any lawsuit against B&H for allegedly violating Executive Order 11246 in connection with any claim that was raised or could have been raised by the complaint filed by the U.S. Department of Labor, Office of Federal Contract Compliance Programs (“OFCCP”) in this matter. It also says that B&H 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, 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 or be considered for a job placement or any other consideration under the terms of the Consent Decree, which govern this matter.

In consideration of the payment of at least \$18,203.32 (less deductions required by law) by B&H to me, which I agree is acceptable, I, [NAME], agree to the following:

**I.**

I hereby waive, release and forever discharge B&H its predecessors, successors, related entities, parents, subsidiaries, affiliates and organizations, and its and their shareholders, directors, officers, employees, agents, successors, and assigns, of and from any and all actions, causes of action, damages, liabilities, and claims arising out of or actionable under Executive Order 11246, as amended, for alleged failure to hire, failure to promote, or compensation discrimination under Executive Order 11246, based on any acts or omissions or other events known or unknown, occurring at any time prior to the date of my signature on this Release, including those that were raised or could have been raised by the complaint filed by the OFCCP in this matter, which I or my representatives (heirs, executors, administrators, or assigns) have or may have.

**II.**

I understand that B&H denies that it treated me unlawfully or unfairly in any way and that B&H entered into a Consent Decree with the U.S. Department of Labor, Office of Federal Contract Compliance Programs (“OFCCP”) and agreed to make the payment described above to resolve alleged disparities in promotions and to resolve the matter without further legal proceedings in the compliance review initiated by OFCCP for the period of January 31, 2011 through January 31, 2013. I further agree that the payment of the aforesaid sum or any other consideration provided to me by B&H is not an admission of any liability by B&H.

**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.

**IV.**

I understand that if I do not sign this Release and return it to B&H within sixty days after the date of this Notice, I will not be eligible to receive a payment or to be considered for a job placement or any other consideration under the terms of the Consent Decree, which govern this matter.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Attachment I: Promotion Class Member List

NO.	EMP. ID	LAST NAME	FIRST/MIDDLE NAME
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## Attachment I: Promotion Class Member List

NO.	EMP. ID	LAST NAME	FIRST/MIDDLE NAME
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Attachment I: Promotion Class Member List

NO.	EMP. ID	LAST NAME	FIRST/MIDDLE NAME
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## Attachment I: Promotion Class Member List

NO.	EMP. ID	LAST NAME	FIRST/MIDDLE NAME
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Attachment I: Promotion Class Member List

NO.	EMP. ID	LAST NAME	FIRST/MIDDLE NAME
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Attachment I: Promotion Class Member List

NO.	EMP. ID	LAST NAME	FIRST/MIDDLE NAME
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## Attachment I: Promotion Class Member List

NO.	EMP. ID	LAST NAME	FIRST/MIDDLE NAME
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## Attachment I: Promotion Class Member List

NO.	EMP. ID	LAST NAME	FIRST/MIDDLE NAME
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Attachment I: Promotion Class Member List

NO.	EMP. ID	LAST NAME	FIRST/MIDDLE NAME
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**ATTACHMENT J**  
**NOTICE TO AFFECTED CLASS - PROMOTIONS**

**[DATE]**

Dear **[NAME]**:

B&H Foto & Electronics Corporation (“B&H”) and the U.S. Department of Labor’s Office of Federal Contract Compliance Programs (“OFCCP”) have entered into a Consent Decree (“Decree”) to remedy the alleged violations of Executive Order 11246 (“E.O. 11246”) that OFCCP found during a compliance review of B&H’s Brooklyn Navy Yard, New York facility.

OFCCP alleges that, beginning no later than January 31, 2011, B&H used a promotion practice at its Brooklyn Navy Yard, New York facility that discriminated against Hispanics.

The Decree does not constitute an admission by B&H of any violation of E.O. 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212), and their implementing regulations at 41 C.F.R. Chapter 60. B&H denies any violation of E.O. 11246, or any other law, and there has not been any adjudicated finding that B&H violated any laws. B&H entered into the Decree to avoid the costs associated with litigation. OFCCP and B&H have entered into the Decree to resolve the matter without resorting to further legal proceedings.

You have been identified as an individual who might have been eligible for a position in the 500 and 501 Job Groups during the relevant time period, but may not have been considered for placement. Under the Decree, you may be eligible to receive a payment of at least **\$1,072.62**, less deductions required by law. Under the terms of the Decree it may take more than five months from the date of this letter before you receive your payment.

In order to be eligible for a payment, you must complete, sign, and return the enclosed (1) Release of Claims and (2) Information Verification & Interest Form. While you should complete and mail back the forms as soon as possible, they *must* be postmarked to the address below no later than **sixty days** after the date of this Notice for you to be eligible to receive a payment or to be considered for a job placement or to receive any other consideration under the terms of the Decree, which govern this matter:

(NAME)  
(ADDRESS)

You may use the enclosed postage-paid return envelope to return the completed and signed Release of Claims and Information Verification & Interest Form.

In addition to the monetary distribution, B&H may be making job placements for positions in the 500 and 501 Job Groups to a limited number of individuals receiving this

notification. It is not certain that you will receive a job placement. If you are still interested in being placed into these positions with B&H, please check the appropriate box on the enclosed Information Verification & Interest Form. Those receiving this notice will be considered for positions in the 500 and 501 Job Groups in the order that B&H receives the Information Verification & Interest Form expressing an interest in promotions.

**QUESTIONS?**

**If you have any questions you may call [NAME OF ADMINISTRATOR] at [PHONE NUMBER], or OFCCP Regional Liaison (b) (6), (b) (7)(C) at (646) 264-3170.**

**IF YOU FAIL TO COMPLETE AND RETURN THE ENCLOSED DOCUMENTS TO B&H WITHIN 60 DAYS OF THIS NOTICE, YOU WILL NOT BE ELIGIBLE TO RECEIVE A PAYMENT OR TO BE CONSIDERED FOR A JOB PLACEMENT UNDER THE TERMS OF THE DECREE, WHICH GOVERN THIS MATTER.**

Sincerely,

*(NAME)*

Enclosures:

Release of Claims Under Executive Order 11246  
Information Verification & Interest Form

**ATTACHMENT K**  
**RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246 - PROMOTIONS**

This Release of Claims under Executive Order 11246 ("Release") is a legal document. This document states that in return for B&H Foto & Electronics Corporation ("B&H") paying you money, you agree that you will not file any lawsuit against B&H for allegedly violating Executive Order 11246 in connection with any claim that was raised or could have been raised by the complaint filed by the U.S. Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") in this matter. It also says that B&H 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, 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 or be considered for a job placement or any other consideration under the terms of the Consent Decree, which govern this matter.

In consideration of the payment of at least \$1,072.62 (less deductions required by law) by B&H to me, which I agree is acceptable, I, [NAME], agree to the following:

**I.**

I hereby waive, release and forever discharge B&H its predecessors, successors, related entities, parents, subsidiaries, affiliates and organizations, and its and their shareholders, directors, officers, employees, agents, successors, and assigns, of and from any and all actions, causes of action, damages, liabilities, and claims arising out of or actionable under Executive Order 11246, as amended, for alleged failure to hire, failure to promote, or compensation discrimination under Executive Order 11246, based on any acts or omissions or other events known or unknown, occurring at any time prior to the date of my signature on this Release, including those that were raised or could have been raised by the complaint filed by the OFCCP in this matter, which I or my representatives (heirs, executors, administrators, or assigns) have or may have.

**II.**

I understand that B&H denies that it treated me unlawfully or unfairly in any way and that B&H entered into a Consent Decree with the U.S. Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") and agreed to make the payment described above to resolve alleged disparities in promotions and to resolve the matter without further legal proceedings in the compliance review initiated by OFCCP for the period of January 31, 2011 through January 31, 2013. I further agree that the payment of the aforesaid sum or any other consideration provided to me by B&H is not an admission of any liability by B&H.

**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.

**IV.**

I understand that if I do not sign this Release and return it to B&H within sixty days after this Notice, I will not be eligible to receive a payment or to be considered for a job placement or any other consideration under the terms of the Consent Decree, which govern this matter.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**ATTACHMENT L**  
**INFORMATION VERIFICATION & INTEREST FORM - PROMOTIONS**

**You must complete this form in order to be eligible for the monetary payment and/or employment opportunities under the terms of the Consent Decree between B&H Foto & Electronics Corporation ("B&H") and the U . S . Department of Labor's Office of Federal Contract Compliance Programs.**

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

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

Telephone: Home \_\_\_\_\_ Cell \_\_\_\_\_ Other \_\_\_\_\_

**Notify [NAME OF ADMINISTRATOR] at [address] if your contact information changes.**

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

**For purposes of this settlement, it is necessary to verify your race (choose all that apply):**

- |                                   |                                                         |                                                           |
|-----------------------------------|---------------------------------------------------------|-----------------------------------------------------------|
| <input type="checkbox"/> White    | <input type="checkbox"/> Black                          | <input type="checkbox"/> Asian                            |
| <input type="checkbox"/> Hispanic | <input type="checkbox"/> American Indian/Alaskan Native | <input type="checkbox"/> Native Hawaiian/Pacific Islander |
| <input type="checkbox"/> Other    |                                                         |                                                           |

Please indicate below whether you are currently interested in being placed into a position within the 500 and 501 Job Groups (the jobs within these job groups include Receiving Quality Assurance, Returns Evaluator, RTV Vendor Liaison, Inventory Specialist, Customer Service Agent, and Inventory Associate) with B&H. If you complete, sign, and return this Information Verification and Employment Interest Form, you remain eligible for the monetary payment whether or not you are interested in employment within the 500 and 501 Job Groups at this time.

☐ Yes, I am interested in placement with B&H within the 500 and 501 Job Groups.

☐ No, I am not currently interested in placement with B&H within the 500 and 501 Job Groups.

**IF YOU FAIL TO COMPLETE AND RETURN THE ENCLOSED DOCUMENTS TO THE ADDRESS BELOW WITHIN 60 DAYS OF THE DATE OF THE ACCOMPANYING NOTICE TO AFFECTED CLASS – PROMOTION, YOU WILL NOT BE ELIGIBLE TO RECEIVE A PAYMENT, TO BE CONSIDERED FOR A JOB PLACEMENT, OR TO RECEIVE ANY OTHER CONSIDERATION UNDER THE TERMS OF THE CONSENT DECREE, WHICH GOVERN THIS MATTER.**

(NAME)  
(ADDRESS)

By signing below, I certify the above information is true and correct.

Signature \_\_\_\_\_ Date \_\_\_\_\_