

SETTLEMENT AGREEMENT AND GENERAL RELEASE

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE (the "Agreement") is made and entered into by and among Kmart Corporation ("Respondent"), [REDACTED] ("Charging Party"), and the United States Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices ("Office of Special Counsel").

WHEREAS, on March 12, 2004, the Office of Special Counsel received a charge filed by the Charging Party against Respondent alleging unfair documentary practices in violation of the unfair immigration-related employment practices provisions of 8 U.S.C. § 1324b (the "Act"). The charge referred to in this paragraph will hereinafter be referred to as the "Charge."

WHEREAS, on or about February 18, 2005, the Office of Special Counsel filed a Complaint with the United States Department of Justice, Executive Office for Immigration Review, Office of the Chief Administrative Hearing Officer, which was assigned OCAHO Case No. 05B00025 and which alleged that Respondent had committed alleged unfair documentary practices in violation of the Act at its Store Number 4399 with respect to Charging Party [REDACTED] and twenty-four other specifically identified individuals. The complaint referred to in this paragraph will hereinafter be referred to as the "Complaint."

WHEREAS, Respondent specifically denies the allegations contained in the Charge and the Complaint and further denies that it acted unlawfully with respect to Charging Party [REDACTED] the twenty-four other individuals identified in the Complaint, or any other current or former employee in any way.

WHEREAS, Respondent, Charging Party, and the Office of Special Counsel acknowledge that they are voluntarily entering into this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained, the sufficiency of which are hereby acknowledged, it is agreed as follows:

1. Respondent agrees to pay the Charging Party thirteen thousand, eight hundred dollars (\$13,800.00) in back pay minus required tax deductions and any other items as to which a withholding obligation may exist. Charging Party agrees that she is not otherwise entitled to the consideration being promised and paid by Respondent hereunder and that no further wages, commissions, back pay, attorneys' fees, severance pay, or other employment benefits are due her from Respondent or any of its affiliates or any of their past and present officers, directors, shareholders, employees, volunteers, agents, parent corporations,

predecessors, subsidiaries, affiliates, branches, insurers, benefit plans, estates, successors, assigns, or attorneys.

In addition, Respondent has reached a tentative agreement with [REDACTED] to pay back pay, minus required tax deductions and any other items as to which a withholding obligation may exist, in the following amounts: to [REDACTED] in the amount of two-thousand, two-hundred fifty dollars (\$2,250.00); to [REDACTED] in the amount of four-thousand, five-hundred and three dollars and forty-eight cents (\$4,503.48), and to [REDACTED] in the amount of two-thousand, one-hundred dollars and forty-two cents (\$2,100.42). Payment of these amounts, however, is contingent upon [REDACTED] and [REDACTED] each entering into a Settlement Agreement and General Release with Respondent, the terms and conditions of which are acceptable to Respondent.

2. The payment to the Charging Party discussed in the preceding paragraph shall be paid directly to the Charging Party by certified or registered mail, return receipt requested, within ten days from the date Respondent receives a fully signed copy of this Agreement. Respondent will provide the Office of Special Counsel with a copy of the cover letter and check, including attachments, within the ten-day period.
3. Respondent agrees to pay a civil penalty to the United States Treasury in the amount of five-hundred dollars for each of the twenty-eight counts of alleged document abuse identified in the complaint, totaling fourteen thousand dollars (\$14,000.00).
4. The civil penalty discussed in the preceding paragraph shall be made by check payable to the "United States Treasury c/o Mac McConkey" and mailed by express delivery service, along with a copy of the fully signed settlement agreement, to the following address within 30 days of Respondent's receipt of a fully signed copy of this Agreement:

Mr. Mac McConkey
U.S. Department of Justice
Civil Rights Division
1425 New York Avenue, N.W.
Room 5050
Washington, D.C. 20005

On the same day the check is mailed, an e-mail will be sent to Sarah DeCosse at sarah.decosse@usdoj.gov providing the express delivery service tracking number for this mailing.

5. Respondent agrees that it shall not engage in unfair documentary practices in violation of 8 U.S.C. § 1324b and will treat all individuals equally, without regard to citizenship or immigration status or national origin, during the

employment eligibility verification and reverification process as required by law.

6. Respondent agrees to post a copy of the attached Notice provided by the United States Department of Justice (Attachment A) in the place in its Store Number 4399 where notices to employees and job applicants are normally posted. The Notice will be posted within thirty days from the date that Respondent receives a fully signed copy of this Agreement and will remain posted for one year thereafter.
7. Within sixty days of receipt of a fully signed copy of this Agreement, Respondent will educate those personnel at its Store Number 4399 who are responsible for formulating and/or carrying out Respondent's employment eligibility verification policy, including all managers and employees who have any role in completing the INS Form I-9, and/or who instruct employees or prospective employees on the proper completion of the form concerning their responsibilities under the Act.
8. Respondent will circulate Attachment B to all persons attending educational sessions required by Paragraph 7. Persons attending the training session shall complete Attachment B as evidence of Respondent's compliance with this paragraph. The original of Attachment B, including signatures, and a copy of the training materials will be mailed to the Office of Special Counsel by registered or certified mail, return receipt requested, within ten days of the training session or sessions.
9. For a period of one year from execution of this Agreement, Respondent agrees, upon request by the Office of Special Counsel, to provide the Office of Special Counsel with trimesterly reports regarding Kmart's compliance with the Agreement, copies of the Form I-9s completed at Store Number 4399 during the one-year period following execution of the Agreement, and other documents reflecting Kmart's compliance with the terms of this Agreement. The Office of Special Counsel will make copies of any documentation provided at its own expense.
10. The Charging Party agrees to withdraw with prejudice the Charge filed against Respondent on March 12, 2004, with the Office of Special Counsel. The Charging Party's signature on this Agreement will constitute a request for such withdrawal. The Office of Special Counsel agrees to accept the withdrawal of this Charge upon the satisfaction of paragraphs one and two of this agreement, and will seek dismissal of the Complaint, with prejudice, jointly with Respondent in accordance therewith.
11. The Charging Party hereby releases and discharges Respondent and all of its affiliates, including, without limitation, all of their past and present officers, directors, shareholders, owners, employees, volunteers, agents, parent corporations, predecessors, subsidiaries, affiliates, branches, insurers, benefit

plans, estates, successors, assigns, and attorneys (hereinafter collectively referred to as "Releasees") from any and all claims, charges, actions, causes of action, sums of money due, attorneys' fees, suits, debts, covenants, contracts, agreements, promises, demands, or liabilities (hereinafter collectively referred to as "Claims") whatsoever, in law or in equity, whether known or unknown, which Charging Party ever had, now has, or might in the future have against any of the Releasees based upon facts occurring prior to the date of this Agreement, specifically including, without limitation, any Claims that were asserted or could have been asserted in the Charge or the Complaint or any action stemming therefrom, and agrees not to file a lawsuit or other legal claim or charge, which includes commencing any proceeding against Respondent with the Office of the Chief Administrative Hearing Officer, Executive Office for Immigration Review, U.S. Department of Justice, with respect to the Charge, or to assert any claims against any of the Releasees, except to the extent that such agreement is prohibited by applicable law.

12. This Agreement may be enforced in the United States District Court for the District of Maryland.
13. It is understood and agreed by Charging Party and the Office of Special Counsel that this Agreement represents a settlement and compromise of disputed claims and neither this Agreement itself, any of the payments or covenants described herein, nor anything else connected with this Agreement is to be construed as an admission of any liability whatsoever on the part of Respondent or any of the other Releasees, by whom liability is expressly denied. This Agreement is neither an admission by Respondent of any act in violation of 8 U.S.C. § 1324b nor an admission by the United States of the merits of any of Respondent's defenses.
14. This Agreement, subject to paragraph fifteen below, resolves any and all differences between the parties relating to the Charge filed by the Charging Party and the Complaint through the date this Agreement is signed by all parties.
15. This Agreement does not affect the right of any individual (other than the Charging Party as set forth above in paragraphs ten and eleven) to file a charge alleging an unfair immigration related employment practice against Respondent with the Office of Special Counsel or the right of the Office of Special Counsel to investigate or file a complaint on behalf of any such individual, except that the Office of Special Counsel waives its right to seek any additional monetary penalties from Kmart for any of the twenty-eight alleged instances of document abuse referenced in the Complaint and in Paragraph 3 of this Agreement.
16. The Office of Special Counsel and Respondent agree, in the event the Charging Party does not sign this Agreement, or [REDACTED] OF [REDACTED] do not sign their respective agreements with Respondent, to be bound by the

terms of this Agreement except for paragraphs one and two, and that the failure to obtain the Charging Party's signature on this Agreement does not affect the validity of this Agreement. If the Charging Party fails to sign this Agreement, or [REDACTED] fail to sign their respective agreements, the Office of Special Counsel agrees that it will nonetheless close the investigation of the Charging Party's Charge in accordance with the terms of this Agreement, after Respondent complies with paragraphs three and four.

17. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be part of this Agreement. Respondent, the Office of Special Counsel, and the Charging Party agree that they will not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is invalid.
18. The Office of Special Counsel, Respondent, and the Charging Party agree to bear their own costs, attorneys' fees and other expenses incurred in this action.
19. This Agreement sets forth the entire agreement between the parties hereto, and fully supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter herein.
20. This Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement.

Kmart Corporation

Dated: 2/23/06

By: Dallas A. Ross, Associate General Counsel
[Name/Title]

Nigist Abebe, Charging Party

Dated: [REDACTED] 12-21-05

By: [REDACTED]

Office of Special Counsel

Dated:

Samuel Delgado 2/9/06

By:

William J. Sanchez

William J. Sanchez
Special Counsel
Office of Special Counsel for Immigration
Related Unfair Employment Practices