

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement"), the terms of which are set forth in Parts II and III below, is made and entered into between J. C. Penney Corporation, Inc. ("Respondent") and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section ("IER") (together, the "Parties").

### I. BACKGROUND

WHEREAS, on January 4, 2017, IER received a charge filed by [REDACTED] ("Charging Party") against Respondent, DJ# 197-18-352 (the "IER Charge"), alleging that Respondent terminated Charging Party after Respondent's personnel at the Miami International Mall store (the "Location") rejected her unexpired Permanent Resident Card ("PRC") for purposes of reverifying her employment authorization in violation of the unfair immigration-related employment practices provisions of 8 U.S.C. § 1324b ("Act");

WHEREAS, on January 19, 2017, IER notified Respondent that it had initiated an investigation of the IER Charge to determine whether Respondent had discriminated against the Charging Party in violation of 8 U.S.C. § 1324b(a)(6);

WHEREAS, on March 24, 2017, IER notified Respondent that it also had initiated an independent investigation, DJ# 197-74-584, to determine whether Respondent had engaged in a pattern or practice of unfair immigration-related employment practices in violation of 8 U.S.C. § 1324b(a)(6);

WHEREAS, IER concluded, based upon its charge-based and independent investigations (together, "IER Investigations"), that there is reasonable cause to believe that Respondent committed unfair documentary practices in violation of 8 U.S.C. § 1324b(a)(6) by: (1) rejecting the Charging Party's unexpired PRC as proof of her continued employment eligibility because of its upcoming expiration date, resulting in the termination of her employment; (2) engaging in a pattern or practice of reverifying individuals who both marked "alien authorized to work" on the Form I-9 and presented Social Security cards by requiring them to produce, anew, their Social Security cards for corporate-level review based exclusively on their citizenship status; and (3) requiring at least seven non-U.S. citizens to produce DHS-issued immigration documents for reverification purposes, rather than allowing them to present their choice of valid documents, based on their citizenship status;

WHEREAS the Parties agree that this Agreement does not constitute any admission by Respondent of any liability, act or unlawful behavior;

WHEREAS, the Parties wish to resolve the IER Investigations without further delay or expense, and hereby acknowledge that each party is voluntarily and freely entering into this Agreement to settle the Parties' disputes concerning, constituting, or otherwise relating to the IER Investigations; and

NOW, THEREFORE, in consideration of the mutual promises contained below, and to fully and finally resolve the IER Investigations, the Parties agree as follows:

## II. TERMS OF SETTLEMENT

1. This Agreement becomes effective as of the date of the latest signature below, which date is referenced hereafter as the "Effective Date." The "Term of this Agreement" shall be two (2) years following the Effective Date.
2. Respondent shall pay a civil penalty to the United States Treasury in the amount of Fourteen Thousand Four Hundred and Thirty Dollars and No Cents (\$14,430.00). Respondent shall pay the monies discussed in this paragraph via the FedWire electronic fund transfer system within ten (10) business days of the Effective Date of this Agreement or receipt of fund transfer instructions from IER, whichever is later. On the day of payment, Respondent shall confirm via email to Gloria Yi at [Gloria.Yi@usdoj.gov](mailto:Gloria.Yi@usdoj.gov) and Michaela Olson at [Michaela.Olson@usdoj.gov](mailto:Michaela.Olson@usdoj.gov) that payment was made.
3. Respondent agrees to pay, within fifteen (15) days from the Effective Date, the amount of Eleven Thousand One Hundred Seventy-Seven Dollars and Sixty Cents (\$11,177.60) in back pay to the Charging Party, less any deductions and withholdings required by law. On the day of payment, Respondent shall confirm via email to Gloria Yi at [Gloria.Yi@usdoj.gov](mailto:Gloria.Yi@usdoj.gov) and Michaela Olson at [Michaela.Olson@usdoj.gov](mailto:Michaela.Olson@usdoj.gov) that payment was issued to the Charging Party.
4. This Agreement resolves any and all disputes, investigations, claims, charges, causes of action, and/or other liability under 8 U.S.C. § 1324b between IER, and Respondent, relating to or arising from the IER Investigations, through the Effective Date. IER shall not seek from Respondent any additional civil penalty for the pattern or practice of unfair immigration-related practices or unfair documentary practices in violation of 8 U.S.C. § 1324b(a)(6) that are the subject of the IER Investigations through the Effective Date.
5. Pursuant to 8 U.S.C. § 1324b, Respondent shall not discriminate against applicants or employees based on citizenship, immigration status, or national origin, during the recruitment, hiring, firing, and employment eligibility verification and reverification (together, "EEV") process.
6. Respondent shall avoid discrimination in the EEV process by (a) honoring documentation that on its face reasonably appears to be genuine, relates to the person, and satisfies the requirements of 8 U.S.C. § 1324a(b); (b) not requesting more or different documents than are required by law; and (c) permitting all employees to present any document or combination of documents acceptable by law.

7. Respondent shall not intimidate, threaten, coerce, or retaliate against any person for his or her participation in IER's investigation or exercise of any right or privilege secured by 8 U.S.C. § 1324b.
8. Respondent shall post IER's "If You Have The Right to Work" poster ("IER Poster") measuring no smaller than 8.5" x 11," an image of which is available at <https://www.justice.gov/crt/worker-information#poster> in all places where notices to employees and job applicants are normally posted. The IER Poster will be posted within thirty (30) days of the Effective Date and will remain posted for at least two (2) years thereafter. Respondent shall post the IER Poster in English and Spanish.
9. Within sixty (60) days of the Effective Date, Respondent will review any of its existing employment policies that relate to nondiscrimination based on protected traits or characteristics. To the extent that it has such policies that do not already include such provisions, Respondent will revise them to:
  - (a) Prohibit discrimination on the basis of citizenship, immigration status, or national origin: (1) in the hiring and firing process; and (2) during the Form I-9/E-Verify EEV process;
  - (b) Include citizenship, immigration status, and national origin as prohibited bases of discrimination, and ensure inclusion of these bases in any similar Equal Employment Opportunity (EEO) statements Respondent includes in printed or electronic materials available to the public or employees;
  - (c) Refer applicants and employees who complain, formally or informally, of discrimination in the hiring, firing, or Form I-9/E-Verify EEV processes to IER by directing the affected individual to the IER Poster and/or IER's worker hotline (800-255-7688) and website, <https://www.justice.gov/ier>, and advise the affected individual of his or her right to file a charge of discrimination with IER; and
  - (d) Provide that Respondent shall not take any reprisal action against an employee for having opposed any employment practice made unlawful by 8 U.S.C. § 1324b, or for filing any charge, or participating in any lawful manner in any investigation or action under 8 U.S.C. § 1324b.
10. During the Term of this Agreement, Respondent shall ensure that all employees, can readily access the most current version of the Form I-9, USCIS Employment Eligibility Verification Handbook for Employers (M-274) ("Handbook"), available at [www.uscis.gov/I-9Central](http://www.uscis.gov/I-9Central), and, if Respondent uses E-Verify in the jurisdiction the employee is located, the most current USCIS E-Verify Manual (M-775) ("Manual"), available at [www.uscis.gov/e-verify/publications/manuals-and-guides/e-verify-user-manual](http://www.uscis.gov/e-verify/publications/manuals-and-guides/e-verify-user-manual). Copies of these documents and future revisions

of the Form I-9, Handbook, Manual and guidance can be obtained from the United States Citizenship and Immigration Services at [www.uscis.gov](http://www.uscis.gov).

11. Within one hundred and eighty (180) days of the Effective Date, Respondent shall train all (i) employees who have a substantive role in formulating and/or conducting training on Respondent's EEV policies, (ii) employees, including General Managers, at each store location who supervise individuals who have a substantive role in the EEV process, and (iii) employees who perform EEV as part of their job duties, such as completing the Form I-9 and/or using the E-Verify system (collectively, "HR Personnel") at each store location, on their obligations to comply with 8 U.S.C. § 1324b and the EEV processes as they relate to discrimination on the basis of citizenship, immigration status, and national origin, as follows:
  - (a) Due to technological constraints that affect the ability of Respondent personnel to view a live IER presentation via webinar, the trainings shall consist of (i) participation in a live IER training as described in Paragraph 11(b) and (ii) viewing a free IER presentation as described in Paragraph 11(c);
  - (b) Within thirty (30) days of the Effective Date, at least one active HR Personnel member assigned to each store location within a one hundred (100) mile radius of IER's office in Washington, D.C. will participate in a live IER presentation on a date and time, and at a location agreed upon by the Parties. IER will audio-record the presentation including questions asked during the session;
  - (c) Within thirty (30) days of the presentation described in Paragraph 11(b), IER will prepare a recorded presentation ("IER recorded training") that Respondent will use to train all other active HR Personnel at each store location who did not participate in the training under Paragraph 11(b). In addition:
    - i. Respondent may not modify the IER recorded training without IER's express approval;
    - ii. Respondent will ensure that its personnel will be able to access the IER recorded training on Respondent's internal training platform as needed and on-demand; and
    - iii. At IER's discretion, IER may request that Respondent remove, delete, or otherwise make unavailable, the IER recorded training, and Respondent will timely comply with that request. If IER makes such a request within 180 days of the Effective Date, IER will provide Respondent with training materials. All HR Personnel who have not completed the training described in paragraph 11 will

review the materials IER provided to satisfy Respondent's paragraph 11 training obligations.

- (d) All employees will be paid their normal rate of pay during the training and any related travel, and Respondent shall bear all employee costs associated with these training sessions;
- (e) Respondent shall compile attendance records listing the individuals who completed the trainings described in this paragraph, including their full name, title, and the date of the training, and send them via email to [Gloria.Yi@usdoj.gov](mailto:Gloria.Yi@usdoj.gov) and [Michaela.Olson@usdoj.gov](mailto:Michaela.Olson@usdoj.gov). Respondent will provide attendance records to IER for the live session under Paragraph 11(b) within five (5) days of the training, and will provide attendance and/or participation records to IER for all other trainings on a biweekly basis; and
- (f) For the Term of this Agreement, all active HR Personnel who assumed or resumed their duties after the training described in this paragraph has been conducted shall attend an IER Employer/HR presentation or view a presentation that IER approves within sixty (60) days of hire or resuming their duties. Respondent shall compile and send attendance records via email to [Gloria.Yi@usdoj.gov](mailto:Gloria.Yi@usdoj.gov) and [Michaela.Olson@usdoj.gov](mailto:Michaela.Olson@usdoj.gov).

12. Within ninety (90) days of the Effective Date, Respondent shall provide all active HR Personnel at the Location and at its headquarters with training that assesses their understanding of the Form I-9 process and rules as follows:

- (a) Respondent shall require these individuals to answer ten (10) multiple choice measurement and assessment questions, as agreed upon by the Parties. The individuals answering the measurement and assessment questions may refer to written government resources, including but not limited to, the Form I-9 Lists of Acceptable Documents, M-274 Handbook, and/or USCIS's I-9 Central website, in answering the questions. Respondent shall review and score each individual's responses to the questions.
- (b) If any individual answers a measurement and assessment question incorrectly, Respondent shall, within three (3) business days, explain why the particular response is incorrect, and administer the question(s) again until the individual answers the question(s) correctly. Within ten (10) business days after completion of the measurement and assessment described in this paragraph, Respondent will provide IER with: (i) a list of the questions that individuals answered incorrectly; (ii) the number of individuals who answered the particular question(s) incorrectly; and (iii) a confirmation / certification that the assessment was given, scored, and any questions answered incorrectly were re-answered until correct.

13. During the Term of this Agreement, IER reserves the right to make reasonable inquiries to Respondent to determine Respondent's compliance with this Agreement.
14. If IER has reason to believe that Respondent is in violation of any provision of this Agreement, IER may, in its sole discretion, notify Respondent of the purported violation without opening an investigation. IER will then give Respondent forty (40) days from the date IER sends Respondent written notification to cure the violation to IER's satisfaction before IER deems Respondent to be in violation of this Agreement. IER shall send notification to the physical and/or electronic address(es) Respondent provides via email to [Gloria.Yi@usdoj.gov](mailto:Gloria.Yi@usdoj.gov) and [Michaela.Olson@usdoj.gov](mailto:Michaela.Olson@usdoj.gov).
15. This Agreement does not affect the right of any individual to file an IER charge alleging an unfair immigration-related employment practice, IER's authority to investigate or file a complaint on behalf of any such individual, or IER's authority to conduct an independent investigation of Respondent's employment practices.

### **III. ADDITIONAL TERMS OF SETTLEMENT**

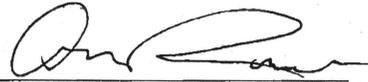
16. This Agreement sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements or understandings between the Parties pertaining to the IER Investigations. This Agreement is governed by the laws of the United States. This Agreement shall be deemed to have been drafted by both Parties and shall not be construed against any one party in the event of a subsequent dispute concerning the terms of the Agreement. The Parties agree that the paragraphs set forth in Part II of this Agreement (entitled "Terms of Settlement") are material terms, without waiver of either Parties' right to argue that other terms in the Agreement are material.
17. This Agreement may be enforced in the United States District Court for the Eastern District of Texas or any other court of competent jurisdiction to seek any remedy authorized at law or in equity. This provision does not constitute a waiver of sovereign immunity or any other defense the United States might have against a claim for enforcement or counterclaims asserted against it.
18. Should any court declare or determine that any provision(s) of this Agreement is/are illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected and said illegal or invalid part(s), term(s) or provision(s) shall be deemed not to be part of this Agreement. The Parties shall not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is invalid.
19. The Parties agree that, as of the Effective Date, litigation concerning the IER Investigations is not reasonably foreseeable. To the extent that any party previously implemented a litigation hold to preserve documents, electronically

stored information, or things related to the IER Investigations, the party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves either party of any other obligations imposed by this Agreement.

20. The Parties shall each bear their own costs, attorneys' fees and other expenses incurred in relation to or as a result of the IER Investigations or this Agreement.
21. 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. The Parties agree to be bound by electronic signatures, which may be transmitted by e-mail and deemed an original.

**J. C. Penney Corporation, Inc.**

By:



Anithea Dorch  
Vice President

Dated: 6/22/18

**Immigrant and Employee Rights Section**

By:

  
Jodi Danis  
Special Litigation Counsel

Dated: 6/25/18

Liza Zamd  
Acting Special Litigation Counsel

Gloria Yi  
Trial Attorney

Michaela Olson  
Paralegal Specialist