

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX**

-----X  
CINTHIA CAROLINA REYES ORELLANA, individually  
and on behalf of all similarly situated retail customers,

**Index No.: 303108/2015**

Plaintiffs,

-against-

**CLASS ACTION  
COMPLAINT**

MACY'S RETAIL HOLDINGS, INC. d/b/a MACY'S f/k/a  
MACY'S EAST a/k/a MACY'S, INC.; LAW OFFICES OF  
PALMER, REIFLER and ASSOCIATES, P.A.,

Defendants.

-----X  
Plaintiff, CINTHIA CAROLINA REYES ORELLANA, by her attorneys USAR LAW GROUP,  
P.C., suing on behalf of herself and all others similarly situated pursuant to Article 9 of the  
CPLR, for a Complaint against the defendants, respectfully alleges that:

**PRELIMINARY STATEMENT**

1. This is a class action asserting the illegality of various shoplifting prevention practices employed by the defendants in exacting certain monetary penalties from their customers.
2. For unsuspecting consumers, shopping at Macy's department stores within the State of New York, has become a perilous undertaking. A shopper's innocent furtive look or her sudden, unusual, or "suspicious" movement, may quickly subject her to costly, humiliating, and onerous-to-dispute shoplifting accusations by Macy's. Accusations which regularly result in arrest, criminal charges, prosecution, financial burden, and relentless on the spot monetary civil penalty demands and later on written demands threatening further civil prosecution while the criminal prosecutions are pending. Indeed, the main objective of these shoplifting accusations is to collect civil penalties. Such civil penalty demands derive from New York

General Obligations Law §11-105 (the "Act"), a civil statute that broadly empowers private retailers to unilaterally impose and collect monetary penalties from customers based on a simple allegation of shoplifting. The Act does not require the commencement of a civil proceeding, nor a finding of guilt in any court, in order to impose and collect civil penalties. Since the enactment of the Act, Macy's has accused tens of thousands of shoppers of shoplifting, and coerced them into making civil penalty payments and ultimately collected monies amounting to millions of dollars. This coercive collection practice or scheme has become so profitable that Macy's, a department store in the business of selling retail goods, has dedicated an entire unit within its existing store, which operates like a typical jail, equipped with holding cells, where alleged shoplifters are held for hours on end, and are pressured, threatened, and often harassed, until they find no reprieve but to make civil penalty payments to Defendant's. This coercive and exploitative collection practice which Defendants engage in under color of law, is in violation of the Due Process Clause of the New York and U.S. Constitutions.

3. Among others, this class action seeks from the Court (1) a declaratory judgment putting an end to Defendants' practice of collecting monies from Macy's customers by declaring that GOL §11-105 is unconstitutional, (2) a preliminary and permanent injunction preventing Defendants from abusing the shopkeeper's privilege and from demanding civil monetary penalties from Macy's customers, (4) establishing certain standards by which Defendants can or cannot accuse a shopper with shoplifting, and (5) disgorging Defendants of the unlawful monies they have so far collected from the customers whom Defendants have accused of shoplifting.

**PARTIES**

4. Plaintiff Cinthia Carolina Reyes Orellana ("Cinthia") is a 29-year-old female, resident of the the City and State of New York, and is of Hispanic/Latin American descent.
5. Defendant Macy's Retail Holdings, Inc. d/b/a Macy's f/k/a Macy's East a/k/a Macy's, Inc., (collectively "Macy's") was and still is a domestic corporation organized and existing under the laws of the State of New York; with its principal place of business situated in the County of New York, City of New York, and the State of New York.
6. Macy's operates about 885 department stores in 45 States, the District of Columbia, Guam, and Puerto Rico, under the name of 'Macy's' and Bloomingdale's, including 42 stores in New York State.
7. At all relevant times herein, Defendant Macy's acted under color of state law in that NYPD authorized Macy's loss prevention employees to perform the actions described herein.
8. Plaintiff represents a class of Macy's customers who were detained and coerced into making monetary civil payments to Macy's for allegedly committing or attempting to commit petit larceny.
9. Defendant Law Offices of Palmer, Reifler and Associates, P.A. ("Palmer") is a law firm duly organized and existing under the laws of the State of Florida.
10. Palmer represents Macy's in its attempts to collect monetary civil penalties from Macy's customers accused of shoplifting by mailing letters demanding payment from such customers.

**JURISDICTION and VENUE**

11. This Court has personal jurisdiction over each of the non-domiciliary defendants because each of them transacts business within the State of New York within the meaning of CPLR § 302(a)1, and each of them committed a tortuous act inside the State of New York or outside

the State of New York causing injury within the State of New York within the meaning of CPLR §§ 302(a)2 and 302(a)3, and/or the non-domiciliary defendants do business in the State of New York.

**CLASS ACTION ALLEGATIONS**

12. Pursuant to CPLR Article 9, the named Plaintiff seeks to represent a certified Plaintiff class consisting of:

Class 1:

All Macy's customers residing within the NY State who were detained by Macy's loss prevention employees and subsequently have paid monetary civil penalties either directly to defendant Macy's, and/or to defendant Palmer upon receiving a demand letter from Palmer.

Class 2:

All Macy's customers residing within the NY State who were detained by Macy's loss prevention employees in an unreasonable time and manner in violation of GBL §218.

13. Other sub-classes may be formed.
14. The members of the class are so numerous as to render joinder impracticable. Based on information made public by the New York State, Office of Attorney General ("OAG"), Defendant Macy's acknowledged that thousands of people are apprehended and detained each year by Macy's loss prevention employees. For example, from October 2012 through October 2013, Macy's loss prevention employees detained approximately 6,000 individuals in New York State.
15. Furthermore, joinder is impracticable because many members of the class are effectively barred from bringing an individual claim against Defendants because they have taken plea agreements extinguishing any claims they may have against Defendants. Many members of the class are not aware of the fact that their constitutional rights have been violated and that

they have the right to seek redress in court. Many members of the class are without the means to retain an attorney to represent them in a civil and consumer rights lawsuit. There is no appropriate avenue for the protection of the class members' constitutional rights other than a class action.

16. The class members share a number of questions of law and fact in common, including, but not limited to:

- a) whether defendants abused and continues to abuse the shopkeeper's privilege, i.e., whether the manner, duration, condition of detainments are reasonable;
- b) whether Defendants received monetary benefits unlawfully as a result of violating GOL §11-105;
- c) whether Defendants are liable for repayment of funds received unlawfully, interest on the funds unlawfully received, attorneys' fees paid by Plaintiffs who may have had to seek legal advice and services as a result of receiving a demand letter from Defendants, damages for the emotional distress upon Plaintiffs and damages for Defendants' wrongful conduct alleged herein;
- d) whether Defendants were negligent, reckless, malicious or acted in flagrant disregard of Plaintiffs' rights and the rights of the Class Members Plaintiff seek to represent, in failing to investigate and determine whether Defendants were entitled to demand civil monetary penalties, attorneys' fees, and/or punitive damages against Plaintiff and the Class Members Plaintiff seeks to represent, converting Plaintiff's and the Class Members' funds unlawfully, and failing to return unlawfully received funds
- e) whether the GOL § 11-105 is unconstitutionally vague and/or overbroad; and
- f) whether defendants violate the due process of Macy's customers in demanding and extracting civil penalties without a hearing or adjudication on the merits.

17. The named Plaintiffs' claims are typical of those of the class. Like the other members of the class, the named Plaintiffs have been and likely will be victims again of Macy's loss prevention policies and/or practices in that they have been and likely will continue to be detained and being held unreasonable time and manner without the reasonable articulable suspicion of criminal conduct required under the New York constitution and coerced into make payments to the defendants.

### **Background**

18. It is well-established that a retail mercantile establishment like Defendant Macy's has a right to detain a customer who the retailer has reasonable ground to believe was committing or attempting to commit larceny of merchandise on its premises, for the purpose of investigating and questioning such larceny. This is commonly referred to as a "Shopkeeper's Privilege" and codified further in NY General Business Law § 218. However, the detainment must be conducted in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by the owner of the retail mercantile establishment.

19. The New York legislature further expanded the scope of the shopkeeper's privilege by enacting General Obligation Law Section 11-105.

20. The GOL 11-105, titled "Larceny in Mercantile Establishment," gives power to the retail mercantile establishments to impose and collect civil monetary penalties from customers who commit larceny. The Act requires no conviction or guilty plea on the part of retailers in order to impose and collect civil monetary penalties.

21. GOL 11-105 specifically provides, in pertinent part:

...  
*An adult or emancipated minor who commits larceny against the property of a mercantile establishment shall be civilly liable to the operator of such establishment in an amount consisting of:*

*(a) the retail price of the merchandise if not recovered in merchantable condition up to an amount not to exceed fifteen hundred dollars; plus*

*(b) a penalty not to exceed the greater of five times the retail price of the merchandise or seventy-five dollars; provided, however, that in no event shall such penalty exceed five hundred dollars.*

*6. Parents or legal guardians of an unemancipated minor shall be civilly liable for said minor who commits larceny against the property of a mercantile establishment to the operator of such establishment in an amount consisting of:*

*(a) the retail price of the merchandise if not recovered in merchantable condition up to an amount not to exceed fifteen hundred dollars; plus*

*(b) a penalty not to exceed the greater of five times the retail price of the merchandise or seventy-five dollars; provided, however, that in no event shall such penalty exceed five hundred dollars.*

*7. A conviction or a plea of guilty for committing larceny is not a prerequisite to the bringing of a civil suit, obtaining a judgment, or collecting that judgment under this section.*

*8. The fact that an operator of a mercantile establishment may bring an action against an individual as provided in this section shall not limit the right of such merchant to demand, orally or in writing, that a person who is liable for damages and penalties under this section remit the damages and penalties prior to the commencement of any legal action.*

...

22. Said Statute, as written, enables private retailers like Defendant Macy's to immediately impose and demand civil penalties from customers without establishing their guilt based solely upon a mere suspicion of shoplifting.

23. The Act gives incentive to retailers to accuse shoppers in order to charge civil penalties because the retailers simply collect monies without actually selling or losing any merchandise.

24. The Act in essence is used as a tool that allows retail mercantile establishments to generate extra revenue at the expense of innocent customers.

**Macy's adopted and implemented policies and procedures designed to collect civil penalties at the time of apprehension of customers**

25. Defendant Macy's has taken immediate steps to implement the Act after its enactment.

26. Macy's adopted and implemented new loss prevention policies and procedures to facilitate its money collection efforts from suspected shoplifters pursuant to GOL 11-105.

27. Macy's unlawfully used the Act to generate revenue at the expense of vulnerable and innocent consumers.

28. From time to time, Macy's has modified and/or altered and/or changed, its loss prevention policies and procedures to maximize its money collection activities from suspected shoplifters.
29. Macy's has adopted loss prevention policies and procedures where Macy's loss prevention employees are required, encouraged, even rewarded, and/or permitted to stop and/or detain shoppers when they move between floors, or walk past more than one register carrying items they have not yet purchased.
30. There are no signs and or any written notices restricting shoppers from grabbing an item on one floor and moving to another floor.
- 31.
32. Since the enactment of the Act, Defendant Macy's has repeatedly, consistently, and deliberately abused its "Shopkeeper's Privilege."
33. Since the enactment of the Act, Defendant Macy's has exploited the power given to it by:
  - a. falsely and frivolously making shoplifting accusations;
  - b. imprisoning accused shoplifters for unreasonable times;
  - c. threatening and coercing accused shoplifters into signing documents amounting to confessions;
  - d. demanding civil penalties from alleged shoplifters while they are under duress;
  - e. misrepresenting facts to the police thereby causing the commencement of criminal arrests and prosecutions;
  - f. deliberately failing to provide to law enforcement and prosecuting authorities readily available exculpatory evidence;
  - g. continuously demand civil penalties from alleged shoplifters by mailing threatening demand letters.
34. Macy's abused its Shopkeeper's Privilege primarily to increase revenue which Macy's generated through the use of the Act.
35. Since the enactment of the Act, Macy's has collected millions of dollars from its customers whom Macy's accused of shoplifting.



36. Macy's law prevention policies and procedures are covert and arbitrary. For example, a customer is not allowed to move between floors without paying for merchandise. This policy has never been posted or otherwise made known to Macy's customers.
37. Under Macy's policies and procedures, a loss prevention officer first approaches a customer who will soon be accused of shoplifting, and asks him/her to go with him/her to the basement where numerous holding cells are located.
38. In the basement, a loss prevention officer searches the customer's body and belongings.
39. Macy's loss prevention officers then lock up the customer in a holding cell.
40. Macy's loss prevention officers take the customer's biographical information, including his/her name, address, telephone number.
41. Macy's loss prevention officers take the customer's mugshot against his/her will.
42. Macy's loss prevention officers force the customer to sign documents that are purportedly confessions.
43. Macy's loss prevention officers demand payment of civil penalties from the customer.
44. Macy's loss prevention officers tell the customer that he/she has no choice but to pay the monetary civil penalties.
45. The customers are given an option to pay either by cash or by credit card.
46. Macy's loss prevention employees unlawfully take advantage of shoppers by demanding payment while they are under the pressure of imminent criminal charges.
47. Whenever the customer makes less than full payment, he/she is given information on how to complete the payment of the remaining balance.
48. Macy's loss prevention officers then sign a boilerplate supporting deposition which becomes part and the basis of the subsequent criminal prosecution, and subsequently call the NYPD.

49. The supporting deposition is a pre-printed form that does not reflect the particular facts behind the shoplifting allegations.
50. Macy's loss prevention officers falsely represent to the NYPD that an adequate investigation has been done and that the suspect's actions warrant prosecution.
51. Macy's has surveillance cameras throughout the department stores that Macy's operates.
52. Macy's loss prevention employees oversee, monitor, use, and or maintain the surveillance of the cameras.
53. Macy's loss prevention employees do not or fail to provide camera surveillance evidence to law enforcement prior to, or at any other point during an accused shoplifter's criminal arrest process.
54. Macy's loss prevention officers knowingly and intentionally misrepresent to and conceal from the NYPD the facts surrounding each shoplifting incident they report to the NYPD.
55. The NYPD then arrests and prosecutes the suspect based on Macy's loss prevention officers' misrepresentations.
56. At the NYPD, the customer is booked, fingerprinted, and photographed.
57. The customer is then charged with larceny or shoplifting, Penal Law 155, and criminal possession of stolen property, Penal Law 165.
58. The customer then is given a Desk Appearance Ticket with a court appearance date.

**Macy's Continues to Demand the Payment of Civil Penalties**

59. While the criminal charges against the accused customers are pending, Macy's continues to demand civil penalties by directly mailing demand letters to the accused customers who are now defendants in a criminal proceeding.

60. The demand letters by Macy's threatens the accused with higher settlement amounts, attorneys' fees, and/or punitive damages if payment is not made.
61. The Act does not authorize Macy's to collect higher penalties, attorneys' fees, and/or punitive damages.
62. Macy's threats against accused customers of higher penalties, attorneys' fees, and punitive damages are unlawful.
63. The threat of higher settlement amounts, attorneys' fees, and/or punitive damages are designed solely to intimidate and pressure the accused customers.
64. The threat of higher settlement amounts, attorneys' fees, and/or punitive damages are designed solely to coerce the accused customer into making payments to Macy's.
55. When the accused customers do not or refuse to pay the civil penalties, Macy's refers the accused customers to defendant Palmer.
66. Macy's loss prevention officers obtain personal information of customers suspected of shoplifting and electronically transmit that information to defendant Palmer; i.e., the names, telephone numbers, and addresses of such customers accused of shoplifting on Macy's department stores and/or premises.
67. Macy's continues to demand payment civil penalties via mailed letters threatening the customer with civil litigation through its collection arm, defendant Palmer.
68. Macy's and/or its collection arm defendant Palmer mails multiple demand letters to the accused customer while criminal charges against the accused are still pending.
69. Macy's and/or its collection arm defendant Palmer, deliberately mails letters when the suspect is under the most pressure, i.e., while the criminal proceedings against them are pending.

70. The vast majority of the customers charged with shoplifting are members of minority groups, such as African American, Hispanic, Asian, and/or Middle Eastern.
71. Macy's deliberately targets members of minority groups and accuses them with shoplifting because such customers are more likely to take a plea offer during criminal proceedings.
72. Macy's rarely if ever actually brings a civil lawsuit against a suspected shoplifter in order to collect the civil penalties it previously imposed and/or demanded.
73. Since Macy's implemented its money collection scheme, Macy's has been accused of violating the civil rights of many of its customers.
74. Since Macy's implemented its money collection scheme, Macy's has been subject of numerous investigations regarding its shoplifting prevention practices.
75. Since Macy's implemented its money collection scheme, Macy's has been widely criticized for violating the civil rights of its minority customers.
76. From October 2012 through October 2013, Macy's loss prevention employees detained approximately 6,000 individuals at its stores in New York State alone.
77. Macy's investigated and detained African Americans, Hispanics, and other minority customers for alleged shoplifting at significantly higher rates relative to its white/nonminority customers.
78. Most of the customers charged with shoplifting cannot afford to pay a private attorney.
79. Most, if not all, cases against Macy's customers charged with shoplifting are disposed through a plea agreement which is not evidence of guilt, yet it bars the customers from bringing a claim against Macy's.

80. Specifically, the customers are encouraged to take a plea agreement called Adjournment in Contemplation of Dismissal ("ACD"). Once a plea deal is reached, an accused in effect loses any remedies that he or she may have against Macy's.

81. Defendant Macy's knows that the criminal proceedings against its customers charged with shoplifting are disposed through plea bargaining.

82. Macy's deliberately withholds evidence that may reveal its money collection scheme.

### **NY Office of Attorney General's Investigations**

#### **a) The 2005 Memorandum Agreement**

83. In a lawsuit filed in the US District Court, Southern District of New York in 2005, the Office of the Attorney General ("OAG") alleged that Macy's has violated 42 U.S.C. §§ 1981 and 1982, New York Executive Law § 296, New York Civil Rights Law § 40, and the common law doctrine on false imprisonment. The OAG alleged that Macy's security employees have focused their attention on African American and Hispanic customers and that the percentage of non-whites among those arrested at Macy's for shoplifting was far greater than the percentage of whites arrested for petit larceny either in the municipalities in which Macy's stores are located or at retailers comparable to Macy's in those municipalities.

84. Macy's denied the OAG's allegations of wrongdoing or liability. However, on or about December 13, 2005 Macy's entered into a court-ordered agreement (the "Macy's Agreement") with the OAG whereby Macy's agreed to adopt and implement a number of measures to resolve all matters surrounding the OAG's foregoing lawsuit against them. The Macy's Agreement was set to expire in 2008.

**b) The 2014 Assurance of Discontinuance**

85. Shortly after the expiration of the Macy's Agreement, there was an increasing number of lawsuits by Macy's customers against defendant Macy's, accusing them among other things, of false imprisonment, malicious prosecution, violations of civil rights. Nearly all complainants in the foregoing lawsuits have been members of minority groups.
86. In or about October 2013, the OAG too, publicly announced that it received a number of complaints suggesting that Macy's may be engaging in a potential pattern of unlawful racial profiling of its customers and requested a list of documents to investigate the racial profiling allegations against Macy's.
87. In or about August 2014 the OAG and Macy's executed a document titled "Assurance of Discontinuance." (**Exhibit A**). Macy's agreed to implement new policies and procedures in order to prevent discrimination at Macy's stores.
88. Despite its pledge to the OAG, on two different occasions, Macy's continued its loss prevention practices which resulted in shoplifting accusations of its non-white customers at far greater numbers than its white customers.
89. Despite its pledge to the OAG on two different occasions, Macy's continued and still continues demanding monetary civil penalties from Macy's customers whom Macy's merely accuses of shoplifting.

**PLAINTIFF'S INDIVIDUAL ALLEGATIONS**

90. Cinthia Carolina Reyes Orellana ("Plaintiff" or "Cinthia") is a twenty-nine year old female from Honduras, and resident of the State of New York.
91. Plaintiff has never been arrested and has no criminal history whatsoever.

92. Plaintiff was a regular customer of Macy's until she became the subject of Macy's discriminatory, humiliating, and harassing conduct described herein.
93. Shoppers at Macy's department stores often grab an item on one floor and then proceed to another floor and or department to grab additional items before making a final purchase.
94. On or about the 18<sup>th</sup> day of July, 2014, at approximately 5:00 PM, Plaintiff was inside Macy's department store, namely Macy's Herald Square store 151 West 34th Street (the "Store").
95. Plaintiff went to the Macy's Herald Square store to shop for goods.
96. Plaintiff walked around one of the floors of the Store looking through the discount clothing racks in a manner consistent with that of a typical shopper.
97. Plaintiff picked out several items and eventually proceeded to the dressing room with said items to try them on within the Store in order to decide whether to purchase said items.
98. In a manner consistent with other shoppers, Plaintiff went into one of the dressing rooms on the same floor where she had been browsing the discount clothing racks to try on some items before making a final purchase.
99. After trying on some of the items, Plaintiff left some of the unwanted items behind in the dressing room, and then exited the dressing room with the items she liked and might end up purchasing.
100. Plaintiff placed the items she had when she exited the dressing room in full view.
101. Plaintiff walked around the floor of the store with the items in full view, and continued browsing for other items she might want to purchase.
102. Plaintiff proceeded one floor down from where she had been browsing via the escalators with the items still in full view.

103. Shortly after Plaintiff stepped off the escalator, Plaintiff was abruptly grabbed by a woman who identified herself as a Macy's security guard.
104. The security guard snatched Plaintiff's purse from Plaintiff's shoulder along with the two items that were in full view, and then addressed Plaintiff in English.
105. Plaintiff informed the security guard that she didn't speak English, and the security guard then began to address Plaintiff in Spanish, accusing Plaintiff of wanting to steal the items that Plaintiff was carrying.
106. The security guard then called for another security guard, who arrived and joined in physically escorting the Plaintiff down to a holding area.
107. Plaintiff was paraded through the Store in full view of other customers and employees.
108. Plaintiff was horrified and humiliated that she was being accused of being a thief in front of other shoppers who looked on as she was physically taken to a lower level.
109. Plaintiff insisted that the security guards were making a huge mistake, and that she was not attempting to steal anything, that the items were in full view and that she was still shopping and that she intended on purchasing the items she was carrying.
110. Plaintiff was taken to a separate enclosed area, where there were many holding cells, like the kind found in a prison/police jail.
111. The cells have locking doors that can only be accessed from the outside by security guards/Macy's Personnel.
112. Outside of the cells are desks and computers where security guards remain while they question alleged shoplifters.
113. Plaintiff was patted down and then placed inside one of the cells.



114. The security guard kept possession of the Plaintiff's handbag and the two items she had been carrying.
115. The security guard took inventory of the Plaintiff's handbag, going through every pocket, and telling Plaintiff that she was checking for stolen items and/or for weapons.
116. Plaintiff had cash in her wallet, in the amount of approximately \$200.00.
117. The security guard then locked the Plaintiff inside the cell and began to question the Plaintiff.
118. The security guard took notes and questioned Plaintiff and told Plaintiff that if she complied she would be able to go home.
119. Plaintiff's cell phone which was in Plaintiff's handbag received repeated calls and the security guard refused to allow the Plaintiff to answer or use her phone.
120. Plaintiff begged the security guard to allow her to notify someone or answer the calls.
121. The guard asked Plaintiff if she had any small/minor children.
122. Plaintiff answered in the negative and the security guard told Plaintiff that because she did not have any small/minor children she had no right to make any calls and/or to notify a relative.
123. The security guard then lowered the volume on Plaintiff's cell phone and refused Plaintiff's repeated requests to make a call to a relative.
124. The security guard told Plaintiff not to worry that she would be out soon, and that she just needed to sign some papers that the security guard would give her.
125. The security guard then went through Plaintiff's identification documents, her passport which Plaintiff had been carrying, and asked Plaintiff where she had obtained the passport.
126. The security guard continued to question Plaintiff and demanded that Plaintiff admit guilt in order for her to let her go home.

127. The security guard prepared papers which she demanded that Plaintiff sign in exchange for letting Plaintiff go home.

128. The security guard demanded that Plaintiff pay a fine for attempting to steal items.

129. The security guard told Plaintiff that she would be able to go home if she complied with signing the forms and paying the fine.

130. The security guard took \$100 from Plaintiff for which she was given a Macy's receipt.

**(Exhibit B).**

131. The Macy's receipt given to Plaintiff is consistent with those given to shoppers upon making a purchase, it includes a notice of coupons, free gifts, and discounts.

132. The security guard continued to insist that Plaintiff sign the documents so that Plaintiff could be allowed to go home.

133. Plaintiff was coerced into signing the documents.

134. At or about 8:00 PM, the NYPD officers came to the store and put Plaintiff under arrest.

135. The Security guard provided the arresting NYPD officer with a boiler plate supporting deposition form. **(Exhibit C).**

136. Plaintiff was taken to the NYPD Midtown South Precinct where she was fingerprinted, photographed, and issued a Desk Appearance Ticket. Plaintiff was charged with petit larceny and criminal possession of stolen property.

137. On or about July 25, 2014 while the criminal charges against Plaintiff were pending, the Plaintiff received a letter from Macy's demanding from her a remaining balance of \$199.80 in settlement of a civil claim resulting from the incident that took place on July 18, 2014. **(Exhibit D).**

138. The Macy's letter threatened Plaintiff with a demand for higher settlement amount, attorneys' fees and/or punitive damages if payment was not received within 10 days of the said letter.
139. On or about August 6, 2014, Plaintiff received another letter, this time from defendant Palmer demanding \$199.80 to be paid within 20 days in connection with the July 18, 2014 incident.
140. On or about September 2, 2014, Plaintiff received a third letter from defendant Palmer demanding \$199.80 to be paid within 100 days. **(Exhibit E)**.
141. On or about September 17, 2014, defendant Palmer incessantly repeated its previous demand in a fourth letter sent to Plaintiff.
142. Plaintiff refused the defendants' demands for payments.
143. On or about August 5, 2015, all charges against Plaintiff were dismissed.

**FIRST CAUSE OF ACTION (FALSE IMPRISONMENT/ARREST AGAINST MACY'S  
AND PALMER)**

144. The allegations set forth in paragraphs 1-143 are incorporated herein.
145. The Macy's loss prevention employees' restraint of plaintiff and Class Members' liberty was entirely without probable cause or any sufficient legal excuse whatsoever and constituted false imprisonment.
146. As a direct and proximate result of the actions of Macy's loss prevention employees, defendant's' agent and employee, acting within the scope of their employment, plaintiff and Class Members were greatly injured in their reputation and credit in the community, were subjected to public scorn and ridicule, and was caused great mental anguish and anxiety.

147. Plaintiff and Class Members were damaged as a result of the willful, wrongful, and malicious conduct by Defendants.

**SECOND CAUSE OF ACTION: (ABUSE OF PROCESS AGAINST MACY'S)**

148. The allegations set forth in paragraphs 1-143 are incorporated herein.
149. Defendant Macy's caused and continues to cause a false accusatory instrument, i.e., Supporting Deposition, to be filed against Plaintiff and Class Members.
150. Defendant Macy's intended to cause Plaintiff and Class Members harm throughout the Criminal Proceedings, without excuse or justification, by fabricating subsequent false claims that Plaintiff and Class Members had stolen Macy's property.
151. By knowingly providing false accounts of the alleged incidents, Defendant Macy's used the criminal process in a perverted manner to obtain a collateral objective to cover initial detainment of Plaintiff and Class Members and the subsequent improper arrest and prosecution.
152. As a result of the foregoing abuse of process, Plaintiff and Class Members have been damaged.

**THIRD CAUSE OF ACTION (ASSAULT/BATTERY AGAINST DEFENDANT MACY'S)**

153. The allegations set forth in paragraphs 1-143 are incorporated herein.
154. Defendant Macy's, through its loss prevention employees, battered Plaintiff and Class Members.
155. Plaintiff and Class Members have been damaged as a result of wrongful, negligent, and illegal act of Macy's

**FOURTH CAUSE OF ACTION (UNJUST ENRICHMENT AGAINST MACY'S AND PALMER)**

156. The allegations set forth in paragraphs 1-143 are incorporated herein.
157. Defendants have received, and continue to receive, a benefit at the expense of Plaintiff and the Class Members, and have knowledge thereof.
158. Defendants have deceptively charged, attempted to collect amount that they have unjustly retained at the expense of Plaintiff and the Class Members.
159. The circumstances are such that it would be inequitable for Defendants to retain the benefit without paying the value thereof to Plaintiff and the Class Members.
160. By reason of same, Plaintiff and Class Members are entitled to actual and punitive damages against the defendants.

**FIFTH CAUSE OF ACTION (VOID FOR VAGUENESS UNDER NY STATE CONSTITUTION ARTICLE I, § 6 and U.S.C. § 1983)**

161. The allegations set forth in paragraphs 1-143 are incorporated herein.
162. New York civil recovery statute, GOL § 11-105, allows retail mercantile establishments to unilaterally impose and collect monetary penalties upon a simple allegation of larceny. The statute does not require a finding of guilt or commencement of a proceeding. Empowered with the Shopkeeper's Privilege, the retail mercantile establishments use, and continue to use, the GOL 11-105 as a profit making tool. The statute lacks standard by which retail mercantile establishments may demand civil penalties from customers allegedly committed or attempted to commit larceny. Additionally, non-white retail customers have indisputably become the primary target of the GOL § 11-105. It is therefore unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment.

**WHEREFORE**, Plaintiff demands relief against Defendants, jointly and severally as follows:

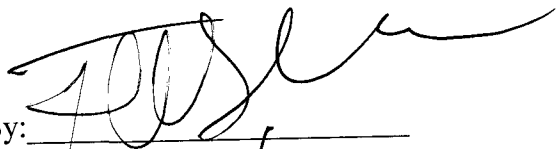
- A. A declaratory judgment putting an end to Defendants' practice of collecting monies from Macy's customers by declaring that New York GOL §11-105 is unconstitutional;
- B. Granting a preliminary and permanent injunction enjoining Defendants from sending demand letters to Plaintiff and the Class Members who have been accused of committing or attempting to commit larceny at Macy's stores;
- C. Granting a preliminary and permanent injunction enjoining Defendants from abusing the Shopkeeper's Privilege and from demanding civil monetary penalties from Plaintiff and the Class Members;
- D. An equitable relief establishing certain standards by which Defendants can or cannot accuse a shopper with larceny at Macy's stores;
- E. A judgment disgorging Defendants of the unlawful monies they have so far collected from the Class Members whom Defendants have accused of shoplifting.
- F. Awarding punitive damages to Plaintiff and other Class members in an amount that would punish Defendants for the willful, wanton, and reckless misconduct alleged in this Complaint and that would effectively deter Defendants from future civil rights violations, discrimination and other unlawful behavior, in an amount to be determined at trial;
- G. Awarding Plaintiff reasonable attorney's fees, costs and disbursements of this action; and
- H. Granting such other and further relief as this Court deems just and proper.

**REQUEST FOR JURY TRIAL**

163. Plaintiff demands a jury trial.

Dated: Queens, New York  
November 2, 2015

USAR LAW GROUP, P.C.

By: 

- Faruk Usar, Esq.  
Katherine Barenboim, Esq.  
Attorneys for Plaintiff  
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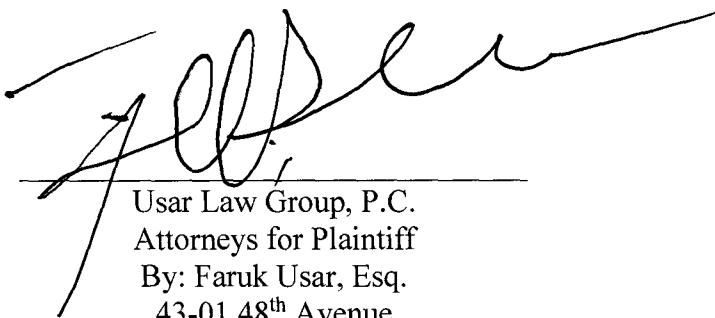
**ATTORNEY'S VERIFICATION**

FARUK USAR, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury pursuant to Rule 2106 of the Civil Practice Law and Rules:

I am an attorney at USAR LAW GROUP, P.C., attorneys of record for Plaintiff(s), CINTHIA CAROLINA REYES ORELLANA. I have read the annexed COMPLAINT and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, are based upon facts, records, and other pertinent information in my files.

This verification is made by me because Plaintiff(s) are/is not presently in the county wherein I maintain my offices.

**DATED:** Queens, New York  
November 2, 2015

A handwritten signature in black ink, appearing to read 'Faruk Usar', is written over a horizontal line.

Usar Law Group, P.C.  
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# **EXHIBIT A**

OFFICE OF THE ATTORNEY GENERAL  
OF THE STATE OF NEW YORK  
CIVIL RIGHTS BUREAU

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IN THE MATTER OF THE INVESTIGATION OF  
ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL OF  
THE STATE OF NEW YORK,

**AOD No. 14-104**

OF

MACY'S RETAIL HOLDINGS, INC.

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**ASSURANCE OF DISCONTINUANCE**

In February 2013, the Office of the Attorney General of the State of New York ("OAG") began to investigate, pursuant to New York State Executive Law § 63(12), Macy's Retail Holdings, Inc. ("Macy's" or "Respondent") to determine whether Macy's engaged in unlawful racial profiling of customers and prospective customers, in violation of Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a; 42 U.S.C. § 1981; New York Human Rights Law, N.Y. Executive Law § 296; and New York Civil Rights Law § 40. This Assurance of Discontinuance ("Assurance") is entered into by and between the OAG and Macy's.

**PART ONE: DEFINITIONS**

Throughout this Assurance, the following terms shall have the following meanings:

- A. "Anonymous Audit" means an unannounced visit by the Security Monitor to ensure compliance with this Assurance.
- B. "Apprehension" means the stopping and detaining of an individual suspected of theft of Macy's merchandise or credit card fraud.
- C. "Assurance" or "AOD" means this Assurance of Discontinuance.

- D. "Department" means the separate selling areas within the Herald Square store in which different lines and/or brands of merchandise are sold.
- E. "Detention" or "Detainment" means Macy's holding in custody an individual suspected of theft of Macy's merchandise or credit card fraud.
- F. "Effective Date" means the date this Assurance is executed.
- G. "Employee" or "Employees" means individuals employed by Macy's who work at Macy's stores in the State of New York.
- H. "Independent Expert" is a third-party with expertise in compliance with anti-discrimination laws and in prevention of unlawful racial profiling in retail loss prevention who will be identified and designated by Macy's subject to OAG approval, and who will, for the OAG, review Macy's compliance with this Assurance.
- I. "Loss Prevention Employees" means all individuals employed by Macy's Loss Prevention Department in the State of New York in a full- or part-time capacity with responsibilities relating to asset protection, including, but not limited to: store detectives (including those who operate the closed-circuit television cameras), visual security officers, loss prevention managers, district directors of loss prevention, and regional vice presidents of loss prevention.
- J. "Loss Prevention Records" means hardcopy and electronic external apprehension case files maintained in the SIS Database for the stores in the State of New York and which include: external apprehension reports, trespass notices, statements of admission, civil demand forms, photographs of customers detained and merchandise recovered, and any applicable videos;

files related to any Non-Productive Detainments; Customer Interaction Reports; Sales Associate Tip Reports; and non-privileged data regarding the racial distribution of Macy's customers at stores in the State of New York procured by Macy's for purposes of complying with this Assurance.

- K. "NPD" means Non-Productive Detainment, which is the detention of a customer who is ultimately not found to be in possession of any unpaid-for Macy's merchandise that the customer intended to steal, or in possession of any fraudulently purchased Macy's merchandise.
- L. "Profiling" means intentionally relying on race, color, ethnicity and/or national origin rather than the behavior of an individual as the basis for selecting which individuals to subject to surveillance, questioning, investigation and/or detention for suspected shoplifting or credit card fraud.
- M. "Sales Employees" means the individuals employed by Macy's, as sales associates or sales managers, at Macy's stores in the State of New York.
- N. "Security Monitor" means the employee designated by Macy's, and approved by the OAG (whose approval shall not be unreasonably withheld), and/or his/her designee, who conducts internal oversight of the loss prevention policies and practices for all Macy's stores located in the State of New York.
- O. "SIS Database" means Macy's proprietary Security Information System.
- P. "The Five Steps" means the procedure required for making shoplifting apprehensions set forth in Macy's LP Procedure EX-101, as of the Effective Date.

Q. "Tier I Stores" means the Macy's stores at Herald Square, Staten Island, Queens, Kings Plaza, Walden, Carousel, Greece Ridge, White Plains, Marketplace, Boulevard, Colonie, Medley Center, and Poughkeepsie.

R. "Tier II Stores" means the remaining Macy's stores within the State of New York, aside from those identified as "Tier I Macy's Stores."

S. "7-911" means the internal phone line used by Sales Employees at the Macy's Herald Square store to contact the Loss Prevention Department, to, among other things, make reports and tips regarding customers suspected of shoplifting and/or credit card fraud.

## **PART TWO: ATTORNEY GENERAL'S FINDINGS**

### **Background**

1. Macy's operates forty-two (42) stores in the State of New York.
2. In 2003, the OAG opened an investigation into whether Macy's East, Inc. was engaging in racial profiling and unlawful detention practices. On January 14, 2005, by agreement of the parties, the OAG filed a Complaint against Macy's East, Inc. in the United States District Court for the Southern District of New York. For purposes of entry of an agreed-upon Consent Decree, the OAG alleged that Macy's East, Inc.'s asset protection policies and practices, including its handcuffing policies, violated various anti-discrimination laws.
3. On January 18, 2005, the Court approved the agreed-upon Consent Decree pursuant to which Macy's East, Inc. agreed to, among other things, create an internal Security Monitor position responsible for oversight of its New York security departments' practices; implement certain new detention policies;

implement a new handcuffing policy; submit to regular anonymous audits; provide appropriate training on apprehensions and detentions; and maintain and provide certain records and reports as to its compliance with the Consent Decree's terms. The term of the Consent Decree ended on January 18, 2008.

#### **2013-14 Investigation**

4. In February 2013, the OAG commenced a new investigation of Macy's loss prevention policies and practices after receiving complaints that Macy's had allegedly profiled customers on the basis of race, ethnicity and/or national origin, and detained and had allegedly falsely accused African Americans, Hispanics, and other minorities at rates far greater than those for white customers. The OAG also reviewed complaints filed with courts in New York State alleging unlawful profiling and/or improper apprehensions and detentions.
5. Macy's has cooperated with the OAG during the course of this investigation.
6. In total, the OAG reviewed the allegations of approximately 18 African American, Latino and minority customers who claimed that they had been apprehended and detained at Macy's stores from 2007 to 2014, despite not having stolen, or having attempted to steal, any Macy's merchandise.
7. Among the allegations reviewed by the OAG were the following:
  - An African American consumer was stopped and detained by Loss Prevention Employees (or security guards) after traveling between floors by escalator with merchandise draped on her arm. According to the consumer, the merchandise was not concealed, and was visibly and openly displayed.

- An African American woman was apprehended and detained by Loss Prevention Employees once she stepped off an escalator and was told by the Loss Prevention Employees that the store has a policy of detaining shoppers who move from floor to floor without first paying for merchandise.
  - An African American man returned to Macy's to exchange clothing. According to the customer, he did not have any items concealed but nonetheless was apprehended and detained by Loss Prevention Employees, who told him that the store maintains a policy of stopping, detaining and questioning shoppers who travel more than two floors within the store without paying for merchandise.
8. The OAG also reviewed the allegations of several individuals who complained about how they were treated while detained by Macy's. For example, some detained customers complained that they were not permitted to make phone calls. Several limited English proficient customers claimed that they were denied access to an interpreter and were required to sign "trespass notices" even though they could not understand the notices. These notices were written in English.
9. In addition to receiving complaints from customers, the OAG met with two former Macy's sales representatives for the Herald Square department store. These former sales representatives alleged that Loss Prevention Employees at the Herald Square store had tracked and followed African American, Latino and other minority shoppers at rates far greater than that of white customers.

**Macy's Data Regarding Stops**

10. The OAG reviewed data provided by Macy's on all the stops and detentions made by Loss Prevention Employees at its New York State stores from October 2012 through October 2013. From October 2012 through October 2013, Loss Prevention Employees at the Herald Square flagship store apprehended and detained 1,947 individuals. From October 2012 through October 2013, Loss Prevention Employees detained approximately 6,000 individuals at stores in New York State.
11. The OAG's review of the data and other information shows that Macy's investigated and detained African Americans, Hispanics, and other minorities for allegedly shoplifting at significantly higher rates relative to whites.

**Macy's Maintained Certain Policies After The Expiration of The Consent Decree**

12. The Consent Decree required that Macy's revise certain policies and practices, and adopt several reforms and new policies. Macy's complied. After the Consent Decree expired in 2008, Macy's maintained a number of these reforms and policies. ("Consent Decree reforms")
13. Under the terms of the Consent Decree, Macy's was required to adopt a policy of handcuffing detainees based only on an individualized assessment of the risk posed by each subject, in the specific context of their detention. After the Consent Decree expired in 2008, Macy's continued this policy.
14. The Consent Decree also required Macy's to train its Loss Prevention Employees on prohibitions regarding racial profiling. Macy's did so and it continues this training program today.



15. Specifically, Macy's LP Training Bulletin AP-003, titled "Prohibition Against 'Profiling,'" states in part: "LP personnel who engage in profiling, or who fail to report any instances of profiling they may witness to their supervisor, will face severe disciplinary action, up to and including possible termination of employment."
16. Macy's also maintains a written policy on racial profiling in its LP Standards of Conduct, LP Procedure AP-001, dated August 17, 2011, which states in pertinent part: "Macy's LP Personnel will initiate their observations and investigations strictly on the basis of a person's actions and activities, and will seek to avoid the influence of any biases or prejudices."
17. Macy's also maintains, and trains its LP Personnel on, a written policy outlining the steps that are to be observed by Macy's detectives prior to conducting a customer stop. This policy, the Five Steps, LP Procedure EX-101, provides that the "Five Steps are designed to eliminate guesswork and ensure that 'probable cause' and 'intent' are firmly established before a Macy's Detective makes any apprehensions for shoplifting."

#### **Macy's Post-Consent Decree Policies**

18. Despite improvements in some areas and the maintenance of certain Consent Decree reforms, Macy's continues to stop and detain a higher percentage of its minority shoppers than non-minority shoppers. The OAG has identified several policies and practices maintained by Macy's since entering into the Consent Decree with the OAG that cause the OAG concern in this regard.

19. First, Macy's policies call for Loss Prevention Employees to stop customers whom, in stores of four floors or more, are observed traveling with concealed merchandise more than two floors from the original location of the merchandise. Several complainants reported to the OAG that Loss Prevention Employees apprehended and detained them when they were carrying merchandise between floors, when they did not have an intention to steal the items. The policy fails to either define or provide examples of what amounts to concealment, leaving Loss Prevention Employees with insufficient guidance.
20. Second, although Macy's retained the Security Monitor position following the expiration of the Consent Decree, Macy's made changes to the Security Monitor's oversight function and role that adversely impacted the Security Monitor's ability to address detention and profiling issues at Macy's stores in the State of New York. Specifically, Macy's sought to develop its own early warning system by requiring the Security Monitor to analyze the racial distribution of apprehensions in comparison to the racial distribution of each store's customer demographics.
21. While Macy's developed this early warning system on its own volition, this particular approach has limited the Security Monitor's ability to address profiling issues. Specifically, the OAG observed a significant lapse of time between when a store is identified for review in connection with its loss prevention policies, procedures and/or practices and the time when the Security Monitor is deployed to the particular store to investigate whether there are any problems at the store. Based on information provided by Macy's, including travel demands associated

with the Security Monitor role, the Security Monitor now may take as much as one month before reporting to stores identified for review.

22. Finally, information reviewed by the OAG indicates that some of the investigations that result in apprehensions of customers for suspected shoplifting or other illegal activity result from Sales Employees making reports or providing tips to loss prevention which, in turn, lead to Loss Prevention Employees observing the customers. The OAG's investigation revealed that Sales Employee reports and tips are not systematically recorded and documented. This information highlights the importance of training for Sales Employees on loss prevention policies and the prohibition on racial profiling, and the need for more comprehensive data collection and record-keeping.

### **PART THREE: PROSPECTIVE RELIEF**

WHEREAS, Macy's owns and operates forty-two (42) stores in New York State;

WHEREAS, Macy's is subject to 42 U.S.C. § 2000a et seq., the New York Human Rights Law, N.Y. Executive Law § 296 and the New York Civil Rights Law § 40, which prohibit public accommodations from discriminating against people by denying them access to goods or services on the basis of, among other things, their race or national origin;

WHEREAS, Macy's is subject to 42 U.S.C. § 1981, which provides that "all persons ... shall have the same right ... to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white persons;"

WHEREAS, Macy's is subject to New York General Business Law § 218, which prohibits retail establishments from conducting unreasonable detentions on or in the vicinity of their property;

WHEREAS, New York State Executive Law § 63(12) prohibits repeated or persistent illegal acts in the transaction of business;

WHEREAS, the OAG seeks to ensure that all individuals, regardless of their race or national origin, have equal access to goods and services provided by public accommodations;

WHEREAS, Macy's is committed to maintaining a retail environment that is welcoming to customers of all races and ethnic backgrounds and free of racial discrimination, and to taking additional action specified by this Assurance to prohibit racial profiling;

WHEREAS, Macy's neither admits nor denies the OAG's Findings set forth in Paragraphs 1 – 22;

WHEREAS, the OAG is willing to accept the terms of this Assurance pursuant to New York Executive Law § 63(15) and discontinue its investigation of Macy's; and

WHEREAS, the parties believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between Macy's and OAG, as follows:

**PART FOUR: GENERAL COMPLIANCE WITH THE LAW**

23. Macy's acknowledges and understands its obligations under, and the terms and conditions of, all applicable federal, state and local laws, including but not limited

to Title II of the Civil Rights Act of 1964 and the New York State and New York City Human Rights Laws. Macy's agrees to implement the policies and procedures set forth in this Assurance at its stores in the State of New York as part of its compliance with the laws that ensure that no person, on the ground of race, color, ethnicity or national origin is denied the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of its stores.

**PART FIVE: INDEPENDENT EXPERT**

24. The OAG shall evaluate Macy's compliance with this Assurance based on, among other things, a review of all reports and other documents submitted to it by Macy's under this Assurance. Within ninety (90) days of the Effective Date, Macy's shall identify and designate, at Macy's cost, an Independent Expert. The designation of the Independent Expert will be subject to OAG review and approval (which approval shall not be unreasonably withheld). Macy's will pay up to Three Hundred Thousand Dollars (\$300,000) over the term of the Assurance to the OAG for reasonable fees and costs charged by the Independent Expert. Additional allocations for the Independent Expert will be considered on a case-by-case basis and are subject to the approval of Macy's and the OAG.
25. Within forty-five (45) days of the designation of the Independent Expert, she or he shall prepare and provide to the OAG and Macy's a written plan ("Expert Plan"), reflecting the processes and procedures that the Expert shall follow to evaluate compliance with each component of this Assurance on at least a biannual basis. The Expert Plan shall be subject to the OAG's approval and must be

consistent with the terms of this Assurance. Upon the OAG's approval, the Expert shall implement the processes and procedures set forth in the Expert Plan throughout the duration of the Assurance.

26. The Independent Expert shall meet with the Security Monitor every four (4) months to discuss the reports prepared and submitted to the OAG by the Security Monitor pursuant to Part Thirteen, as well as Macy's ongoing efforts to comply with this Assurance.
27. The Independent Expert shall complete, at a minimum, the following tasks as part of its Expert Plan on at least a biannual basis.
  - a. Review of:
    - i. efforts undertaken by Macy's to comply with provisions in Part Eight regarding the dissemination of the Anti-Profiling Policy;
    - ii. Macy's implementation of its revised Loss Prevention policies and procedures pursuant to Part Nine below;
    - iii. Macy's implementation of its enhanced training program for Sales and Loss Prevention Employees pursuant to Part Ten below;
    - iv. complaints alleging unreasonable detentions, racial profiling or racial discrimination in the loss prevention context received pursuant to Part Eleven to assess the extent to which Macy's responds to these complaints and investigates them in an adequate manner;
    - v. a representative sample of Detention, NPD, Customer Interaction and Sales Associate Tip Reports prepared by Loss Prevention

Employees pursuant to Part Seven to ensure that the reports are being completed in a full, accurate and timely manner; and

- vi. Macy's racial distribution analyses on Apprehensions/Detentions, NPDs, and local law enforcement referrals as required by Part Thirteen to determine whether there is evidence of racial disparities attributable to discriminatory factors, and if so, whether Macy's adequately investigated and addressed these issues.

28. The Independent Expert shall prepare biannual compliance evaluation reports and provide them to the OAG within thirty (30) days of the close of each of the six (6) biannual reporting periods. The reports, which may contain confidential, proprietary information produced by Macy's and intra-agency materials, shall not be disclosed to any person, except to the extent that such disclosure is required by law. The OAG will notify Macy's of any written request for disclosure pursuant to Section 89(5) of the Public Officers Law. The reports shall include:

- a. a description of the methodologies used by the Expert to assess Macy's compliance with the Assurance during the Reporting Period;
- b. a detailed description of the implementation of each monitoring step set forth in the Expert Plan; and
- c. the Expert's conclusion as to whether Macy's complied with the Assurance during the Reporting Period.

29. Should a review of the documents produced by Macy's provide the Expert with a good faith belief that Macy's has materially violated this Assurance, the Independent Expert shall notify the OAG and Macy's of such violation in writing

after which Macy's shall have thirty (30) days to cure the violation and/or object to the Expert's Report in writing to the OAG, after which the OAG shall make a determination regarding whether such material violation has occurred. Should the OAG determine, consistent with applicable law, that Macy's has materially violated this Assurance and failed to take all reasonable efforts to cure in thirty (30) days, the OAG may initiate an enforcement action pursuant to Paragraph 74 below.

30. The Independent Expert, or if necessary a replacement Independent Expert, shall be in place for the duration of this Assurance.
31. The Independent Expert shall have the same access to stores, documents and information as the OAG for the sole purpose of evaluating compliance with this Assurance.
32. The Independent Expert shall meet and confer with the OAG following the issuance of each compliance evaluation report to discuss the report and Macy's compliance with the terms of this Assurance.

#### **PART SIX: SECURITY MONITOR**

33. Macy's shall employ an internal full-time Security Monitor who will report to an executive outside the Loss Prevention Department. The designation of the Security Monitor will be subject to OAG review and approval (which approval shall not be unreasonably withheld). The Security Monitor shall monitor the Loss Prevention policies and practices at Macy's stores within the State of New York. The Security Monitor shall be responsible for ensuring Macy's compliance with this Assurance. To that end, the Security Monitor shall:



- a. oversee the revision and implementation of the enhanced training programs described in Part Ten below;
- b. oversee the policy development and revisions described in Parts Eight and Nine below;
- c. enforce the procedures set forth in the policy on the Security Monitor Program (AP-009), as revised pursuant to Part Nine below;
- d. take appropriate steps to ensure that Macy's Employees who interact with customers and detainees in Macy's stores in the State of New York are trained as described in Part Ten below;
- e. review and analyze Apprehension, NPD, Customer Interaction Reports and Sales Associate Tip Reports as described in Part Seven below to determine whether any Employees require retraining or other corrective action;
- f. review each four (4) months the Log of calls to 7-911 by Sales Employees at the Herald Square store to determine whether there are any Sales Employees identified in the Log who, during the prior four (4) months, made more than five (5) calls to report suspicious behavior by a customer that did not result in an Apprehension, or any Departments identified in the Log that, in the prior four (4) months, made more than fifteen (15) calls to report suspicious behavior by a customer that did not result in an Apprehension. For any Sales Employees for whom, or Departments for which, such disparities between calls and Apprehensions are found, investigate and determine to the extent possible the circumstances of the

calls to determine whether retraining or other remedial action is necessary and appropriate;

- g. review, investigate, and respond to complaints of unreasonable detentions as well as racial profiling or racial discrimination in the loss prevention context by Employees, as set forth in Part Eleven below;
- h. compile and evaluate data, and prepare and submit reports to the OAG as provided in Part Thirteen below;
- i. ensure that Macy's Loss Prevention provides its statement of admission, civil demand and trespass notice forms in the six most common non-English languages spoken by individuals with limited-English proficiency in the State of New York as reported in the United States Census Data to customers apprehended and detained for suspected shoplifting in the State of New York and, at the Herald Square store only, when a customer detained for suspected shoplifting and/or credit card fraud indicates that he or she has limited English language proficiency, provide oral interpretation through in-person translation from an Employee when available or through telephonic translation services when reasonably possible;
- j. assist Loss Prevention managers and district directors of Loss Prevention in complying with this Assurance;
- k. ensure that Macy's stores within the State of New York prominently post signs, in English and Spanish, regarding Macy's Customers' Bill of Rights, which includes information for submitting complaints about

alleged racial profiling or race discrimination, as set forth in Part Twelve below; and

1. meet with the Independent Expert every four (4) months.

#### **PART SEVEN: RECORDKEEPING**

34. During the term of this Assurance, Macy's shall continue to collect and maintain data in the SIS database on all Apprehensions and NPDs at Macy's stores in the State of New York. Specifically, Loss Prevention Employees in the State of New York shall continue to complete a detailed report for each Apprehension or NPD in which they are involved. Such reports shall include, at minimum:

- a. the date of the incident;
- b. store address;
- c. whether detainee was arrested by a local law enforcement agency;
- d. corresponding police report number, if applicable and available;
- e. arresting police officer name and badge number;
- f. detainee's identifying information (*e.g.*, name, address, phone number, and date of birth);
- g. detainee's gender and race and/or ethnicity information, as observed by the Loss Prevention Employee;
- h. itemization of any stolen merchandise; and
- i. written narrative of the incident, including Employee(s) involved, any witnesses to the incident, facts that establish basis for stopping and/or detaining detainee, including a description of continuous observation of

the detainee or reasons for interrupted observation, and any contemporaneous statements made by detainee.

35. Within thirty (30) days of the Effective Date, Loss Prevention Employees in Macy's stores in the State of New York shall also commence the use of Customer Interaction Reports, in which each such Loss Prevention Employee shall record any customer interactions ("Customer Interactions") that he or she initiates except (a) contacts resulting from sensor alarms ringing and contacts made so that a security tag may be removed from a purchased item; or (b) contacts that result in Apprehensions and Detentions which will otherwise be entered into SIS as apprehensions. Each entry in the Customer Interaction Report shall contain the following information:

- a. The basis for initiating the interaction with the customer;
- b. Whether the customer was investigated, questioned, searched or stopped;
- c. The gender, race, and/or ethnicity of the customer(s), based on a visual observation by the Loss Prevention Employee;
- d. The name of the Loss Prevention Employee involved;
- e. The Department in which the Customer Interaction occurred;
- f. The time and date on which the Customer Interaction occurred; and
- g. The outcome of the Customer Interaction (e.g., if a customer is flagged as a suspect for credit card fraud, whether the credit card was in fact fraudulent).

36. In addition to Detention, NPD and Customer Interaction reports, within thirty (30) days of the Effective Date, Macy's at its Herald Square store only shall

commence collecting data regarding Sales Employee reports and tips, including calls to 7-911, that lead to the Apprehension of a customer for suspected shoplifting and/or credit card fraud ("Sales Associate Tip Reports"). These reports shall include a description of:

- a. the suspicious activity reported by the Sales Employee;
- b. the gender, race and/or ethnicity of the customer(s), to the extent provided by the Sales Employee;
- c. the name of the Sales Employee making the report, to the extent provided by the Sales Employee;
- d. the date and approximate time on which the customer interaction occurred; and
- e. the Department in which the customer interaction occurred, to the extent provided by the Sales Employee.

37. During the term of this Assurance, at the Herald Square store, Macy's shall continue to maintain a log of calls made by Sales Employees to Loss Prevention using the 7-911 line ("Log") to report suspicious activity by customers, which shall include the name of the Sales Employee making the call, to the extent provided by the Sales Employee, the gender, race and/or ethnicity of the customer(s), to the extent provided by the Sales Employee, and the Department from which the call was made.

38. For stores in the State of New York, Macy's shall take reasonable steps to ensure that all Loss Prevention Records, including, but not limited to Apprehension, NPD, Customer Interaction Reports and Sales Associate Tip Reports, and all

corresponding fields in SIS, are completed in a full, accurate and timely manner. Unless not reasonably possible, Loss Prevention Employees involved in an Apprehension, NPD, Customer Interaction or Sales Associate Tip shall complete corresponding Loss Prevention Records by end of the day's shift or the end of their next shift.

39. All Loss Prevention Records shall be maintained during the term of this Assurance.

#### **PART EIGHT: ANTI-RACIAL PROFILING POLICY**

40. Within thirty (30) days of the Effective Date, Macy's shall submit to the OAG for its review and approval a written draft of an internal memorandum (to be signed by Macy's Chief Executive Officer) for distribution to all Employees setting forth Macy's Anti-Profiling policy. Macy's Anti-Profiling policy shall include:
  - a. a statement making clear the prohibition against Profiling by any Macy's Employee;
  - b. the definition of Profiling, which means intentionally relying on race, color, ethnicity and/or national origin, rather than the behavior of an individual, as the basis for selecting which individuals to subject to surveillance, questioning, investigation, and/or detention for suspected shoplifting or credit card fraud; and
  - c. a detailed description of Profiling practices that are prohibited, including but not limited to stopping, questioning, investigating or detaining a person on the basis of race, color, ethnicity, and/or national origin.

41. Within thirty (30) days of the OAG's approval of the memorandum, Macy's shall use best efforts to distribute the approved memorandum to all Employees.
42. Within three (3) weeks of the hiring of any new Employee, Macy's shall provide the memorandum to such Employee.
43. Macy's revised Anti-Profiling Policy shall be permanently and conspicuously posted on its Intranet, and, be disseminated once a year to all Employees (e.g. during in-store meetings or rallies or electronically).

**PART NINE: LOSS PREVENTION POLICIES AND PROCEDURES**

44. Within thirty (30) days of the Effective Date, Macy's shall draft and implement a policy regarding external law enforcement access to closed circuit television rooms at the stores in the State of New York.
45. Within thirty (30) days of the Effective Date, Macy's will revise LP Procedure EX-101, the Five Steps, to remove the "two floor" exception to the "Exit" Step so that customers traveling between floors with unconcealed merchandise are not stopped by Loss Prevention Employees.
46. Within thirty (30) days of the Effective Date, Macy's will revise LP Procedure A-009, Security Monitor Program, to the extent necessary to make it consistent with this Assurance.
47. Macy's policies and procedures revised pursuant to this Part will be subject to OAG approval, which shall not be unreasonably withheld.

**PART TEN: TRAINING**

48. Within ninety (90) days of the Effective Date, Macy's will revise its training materials on Profiling in the retail loss prevention context for Loss Prevention Employees and Sales Employees as necessary so that they include, at a minimum:
- a. an explanation of the legal prohibition against Profiling, including a summary of the relevant provisions of 42 U.S.C. §§ 1981 and 2000a, New York Executive Law § 296, and New York Civil Rights Law § 40;
  - b. examples and illustrations of actions that constitute Profiling on the basis of race, ethnicity, color, or national origin, and that describe, with specificity, permitted and prohibited conduct;
  - c. methods and strategies for more effective loss prevention that rely upon non-discriminatory factors, and examples and illustrations of suspicious customer behaviors;
  - d. community perspectives regarding the impact of discriminatory profiling;
  - e. an instruction that an Employee who witnesses another Employee engaging in Profiling is obligated to report the Profiling to a supervisory Employee;
  - f. assurance that Macy's shall not retaliate against any Employee, personnel or agent for opposing or reporting alleged discrimination in the service and/or treatment of customers;
  - g. an explanation of the disciplinary consequences of engaging in Profiling;
  - h. notice that Anonymous Audits will be conducted to determine whether Employees are engaging in Profiling;



- i. an opportunity to ask a supervisory Employee questions about any information presented during the training program and/or Macy's policy prohibiting Profiling; and
  - j. the name of a supervisory Loss Prevention Employee who may be contacted if an Employee has questions or concerns about Profiling or Macy's policy prohibiting Profiling.
- 49. The training for Loss Prevention Employees shall cover the policies and procedures and related record-keeping obligations set forth in Parts Seven, Eight, and Nine of this Assurance. Macy's shall also continue to train its Loss Prevention Employees on all subjects currently included in its LP training, including but not limited to the reasonable grounds for detentions; the prohibition on use of excessive force; the appropriate use of handcuffs; proper investigatory and interview tactics; and best practices with respect to the treatment of detainees in custody.
- 50. All materials used in the training programs described in this Part shall be subject to the review of the Independent Expert, as well as the review and approval of the OAG, whose approval shall not be unreasonably withheld. Such materials shall be provided to the OAG within ninety (90) days of the Effective Date.
- 51. Macy's will continue to train all Loss Prevention Employees annually on Profiling in the retail loss prevention context. This training may be computer-based. The first training for Loss Prevention Employees shall be conducted, and is required to be completed for all Loss Prevention Employees, within ninety (90) days of OAG approving training materials pursuant to Paragraph 48. Macy's will

also train all of its Sales Employees annually on Profiling in the loss prevention context. The first training shall be conducted, and is required to be completed for all Sales Employees, within five (5) months of the OAG approving the revised training materials.

52. Each Loss Prevention and Sales Employee's participation in the Profiling training shall be documented.
53. The Security Monitor shall ensure that Sales and Loss Prevention Employees complete the Anti-Profiling trainings at least once a year for the duration of this Assurance.
54. Upon implementation of the training program referenced above, within one (1) month of the hiring of any new Loss Prevention or Sales Employee, Macy's shall provide that Employee with the training described in this part. Each new Loss Prevention Employee's and Sales Employee's participation in such training shall be documented.
55. The OAG and/or the Independent Expert shall have the right to attend any training session or presentation conducted pursuant to this Part of the Assurance, upon reasonable notice to Macy's.

#### **PART ELEVEN: COMPLAINTS**

56. Macy's shall continue to accept customer complaints of alleged racial profiling or racial discrimination at its stores in the State of New York, through its Customers' Bill of Rights program, throughout the term of this AOD.
57. At its stores in the State of New York, Macy's shall continue to use the Loss Prevention Complaint Form that is currently part of LP Procedure OS-615,

throughout the term of this AOD. The Loss Prevention Complaint Form shall continue to request:

- a. the name(s) of the Employee(s) involved in the incident that prompted the complaint;
- b. a description of the Employee(s) involved in the incident, if the name is not known;
- c. a description of the complaint;
- d. an optional block for the demographic information on the complainant, including race and/or ethnicity, age and gender;
- e. the name, address, and phone number of any witnesses to the incident; and
- f. a statement indicating that complaints can also be submitted to the OAG and setting forth contact information for the OAG.

58. LP Complaint Forms shall be translated into Spanish and continue to be made available at all Macy's stores in the State of New York at the Customer Service Desk, the Administrative/Executive office, the Loss Prevention Office, and any other offices handling customer service. In addition, the Spanish and English Complaint Forms shall be made available in electronic format on Macy's website.

59. Complaints alleging differential treatment in the loss prevention context based on race, ethnicity and/or national origin, including but not limited to Profiling by Employees, shall be forwarded to and investigated by the Security Monitor. The Security Monitor's investigation of each such complaint shall include:

- a. an interview of the complainant(s), if possible, and the documentation of said interview(s);

- b. an interview of the Employee(s) involved in the incident and the documentation of said interview(s);
- c. an interview of any witnesses, if possible, and the documentation of said interview(s);
- d. review of any video recordings of the incident described in the complaint;
- e. a written determination of the final disposition of the complaint and the reasons for that determination; and
- f. a written determination of whether retraining and/or other corrective action with respect to the Employee is necessary.
- g. The written determination required by paragraph 59(e) shall include:
  - i. a description of the facts of the complaint;
  - ii. a description of the statements and other evidence gathered during the investigation;
  - iii. a description of the statements or other evidence relied upon in making the determination; and
  - iv. a conclusion as to whether the complaint was founded or unfounded.
- h. Complaints alleging the Apprehension or Detention of a customer who is ultimately not found to be in possession of any unpurchased merchandise that he/she intended to steal, or of any fraudulently purchased Macy's merchandise, shall also be investigated by the Security Monitor. Where the incident underlying such a complaint is not reported as an NPD, the Security Monitor shall:

- i. determine which Employees were responsible for not reporting the incident as an NPD;
    - ii. recommend appropriate remedial action against any such Employee(s) and inform the appropriate human resources executive of such action; and
    - iii. record the remedial action taken and the reasons for such action.
  - i. The final determination of any investigation regarding any complaint investigated under this Part of the Assurance, if adverse, shall be reflected in the applicable Employee's personnel file.
60. Macy's shall continue not to retaliate against any Employee for opposing or reporting alleged discrimination on the basis of race, ethnicity, or national origin in the service and/or treatment of customers and shall keep such complaints confidential to the extent possible.

**PART TWELVE: NOTICE TO THE PUBLIC**

61. Within thirty (30) days of the Effective Date, Macy's shall post its Customers' Bill of Rights, in English and Spanish, in a prominent location, accessible to the public, in each of its stores in the State of New York and will additionally maintain it on the Macy's, Inc. website.
62. Documentation of Macy's compliance with this Part shall be produced to the OAG pursuant to Part Thirteen.

**PART THIRTEEN: REPORTING**

63. Four (4) months after the Effective Date, and every four (4) months thereafter, the Security Monitor shall produce to the OAG a report that documents Macy's efforts during the prior four (4) months to comply with the terms of the AOD, evaluating the effectiveness of those efforts, and detailing any corrective or remedial measures undertaken to redress any problems or issues identified (the "Monitor's Report").
64. In addition, the Monitor's Report shall contain the following analyses:
  - a. For each of Macy's stores in the State of New York where there are more than ten Apprehensions per quarter, the Security Monitor shall compare the racial distribution of customers who are apprehended and/or detained for suspected shoplifting by Macy's Loss Prevention personnel during the prior four (4) months ("Apprehension/Detention Distribution") with the racial distribution of the Store's customers, as determined by surveys procured and conducted by Macy's ("Customer Distribution"). To the extent that the representation of any applicable racial or ethnic group in the Apprehension/Detention Distribution exceeds its representation in the Customer Distribution by twenty (20) percent or more, then the Monitor shall:
    - i. determine whether that disparity is related to particular Employees or store Departments;
    - ii. determine whether that disparity is a result of discriminatory factors, and set forth the basis for this conclusion;

- iii. if the Monitor determines that the disparity is the result of discriminatory factors, promptly take appropriate remedial action, including directing and implementing Anonymous Auditing at particular stores in which significant disparities are found, and retraining and/or recommending other corrective measures, in accordance with the revised Macy's policy on the "Security Monitor Program"; and
  - iv. maintain records of any remedial action taken and the reasons for such action.
- b. For each of the Macy's stores in the State of New York, the Security Monitor shall compare the racial distribution of NPDs with the Customer Distribution. To the extent that the representation of any applicable racial or ethnic group in the racial distribution of the NPDs exceeds its representation in the Customer Distribution by five (5) percent or more for the Tier I Stores or ten (10) percent or more for the remaining Tier II Stores, then the Monitor shall:
- i. determine whether that disparity is related to particular Employees or store Departments;
  - ii. determine whether the disparity is a result of discriminatory factors or not, and set forth the basis for this conclusion;
  - iii. if the Monitor determines that a disparity is the result of discriminatory factors, promptly take appropriate remedial action, including directing and implementing Anonymous Auditing at

particular stores in which such significant racial disparities are found, and retraining and/or recommending other corrective measures; and

iv. maintain records of any remedial action taken and the reasons for such action.

c. For each of the Macy's stores in the State of New York, the Security Monitor shall compare the racial distribution of the customers stopped by Macy's Loss Prevention personnel for suspected shoplifting and then referred to a local law enforcement agency for prosecution during the prior four (4) months ("Prosecution Distribution") with the racial distribution of the customers stopped by Macy's for suspected shoplifting. The Security Monitor shall investigate instances where Macy's appears to be disproportionately referring African Americans, Latinos or other minority customers to local law enforcement. In these instances, the Security Monitor shall:

- i. determine whether a particular Employee is responsible for referring a disproportionate number of minorities to local authorities for prosecution;
- ii. determine whether or not the referrals to local authorities are based on race, ethnicity, color, and/or national origin and set forth the basis for this conclusion;



- iii. if the referrals are based on race, ethnicity, color, and/or national origin, promptly take appropriate remedial action, including retraining and/or other corrective measures; and
  - iv. maintain records of any remedial action taken and the reasons for such action.
65. Every four (4) months, the Security Monitor shall also assess whether Loss Prevention Employees who, in the prior year, have been involved in an NPD or, or have received complaints about profiling, or have otherwise engaged in profiling require retraining or other corrective measures. As part of this assessment, the Security Monitor shall review Customer Interaction Reports for all Macy's stores in New York and Sales Associate Tip Reports for Macy's Herald Square store to determine whether any Loss Prevention or Sales Employees appear to be engaging in profiling.
66. The Security Monitor shall periodically review entries in the SIS Database for each Macy's store in the State of New York to ensure compliance with the requirements of Part Thirteen of this Assurance. To the extent that the Security Monitor finds non-compliance, he or she shall take appropriate remedial action and maintain records of any remedial action taken.
67. The OAG shall, upon reasonable notice to Macy's, have access at a reasonable time and place to review any non-privileged Macy's documents relating to the monitoring efforts set forth in Part Thirteen of this Assurance, Macy's Detention practices, and/or the implementation of this Assurance.

- a. The OAG shall, upon reasonable notice to Macy's, have access at a reasonable time and place to Macy's Employees and facilities as necessary to determine compliance with this Assurance.
- b. The OAG shall additionally set quarterly meetings (to be held every three months) with the Security Monitor to discuss the reports, any problems with compliance, and general monitoring in keeping with this Assurance.

**PART FOURTEEN: MONETARY PENALTY**

68. Macy's agrees to pay to the OAG the sum of \$650,000 which will be allocated as penalties, fees and OAG's costs related to the monitoring of this Assurance and the investigation.
69. Payment to the State for the amount referenced in paragraph 68 shall be made within twenty-one (21) days of the Effective Date of this Assurance and in the form of a check made out to the New York State Department of Law and forwarded to the Office of Attorney General, Civil Rights Bureau, 120 Broadway, New York, New York 10271, Attention: Kristen Clarke, Bureau Chief, Civil Rights Bureau. The payments shall reference the OAG Assurance of Discontinuance Number 14-104.

**PART FIFTEEN: SCOPE OF THE ASSURANCE, JURISDICTION, AND ENFORCEMENT PROVISIONS**

70. This Assurance shall be effective on the date that it is signed by an authorized representative of the OAG ("Effective Date").
71. This Assurance shall expire three (3) years after the Effective Date.

72. Notwithstanding any provisions of this Assurance to the contrary, the OAG shall consider requests, when necessary, for reasonable extensions by Macy's to perform any obligations required herein.
73. The signatories to this Assurance warrant and represent that they are duly authorized to execute this Assurance and that they have the authority to take all appropriate action required or permitted to be taken pursuant to the Assurance to effectuate its terms. Macy's shall not take any action or make any statement denying the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this Paragraph shall affect Macy's (i) testimonial obligations, or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of any liability or wrongdoing by Macy's or to prevent Macy's from so publicly stating.
74. The OAG may seek to enforce this Assurance through administrative or judicial enforcement proceedings, including a civil action in federal or state court, as appropriate, seeking specific performance of the provisions of this Assurance. Pursuant to New York State Executive Law § 63(15), evidence of a violation of this Assurance will constitute prima facie proof of a violation of 42 U.S.C. § 2000a; 42 U.S.C. § 1981; New York Human Rights Law, N.Y. Executive Law § 296; and New York Civil Rights Law § 40 in any civil action or proceeding hereafter commenced by the OAG in connection with this Assurance. However, in the event of a dispute among the Parties regarding any issue arising hereunder,

the Parties shall attempt in good faith to resolve the dispute before seeking administrative or judicial intervention.

75. If a court of competent jurisdiction determines that Macy's has breached this Assurance, Macy's shall pay to the OAG the cost, if any, of such determination and of enforcing this Assurance, including reasonable legal fees, expenses and court costs.
76. The failure by the OAG to enforce this entire Assurance or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of the OAG's right to enforce other deadlines and provisions of this Assurance.
77. If any provisions, terms, or clauses of this Assurance are declared illegal, unenforceable, or ineffective by a court of competent jurisdiction, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Assurance shall remain valid and binding on the Parties.
78. This Assurance constitutes the entire agreement between the Parties, and no other statement, promise or agreement, either written or oral, made by either Party or agents of either Party that is not contained in this Assurance shall be enforceable.
79. Nothing in this Assurance is intended to confer any right, remedy, obligation, or liability upon any person or entity other than the Parties.
80. Nothing in this Assurance is intended to, nor shall, limit the OAG's investigatory powers otherwise provided by law.

81. This Assurance is final and binding on Macy's, including principals, agents, representatives, successors in interest, assigns, and representatives thereof. No assignment shall operate to relieve Macy's of its obligations herewith.
82. This Assurance may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
83. All communications and notices regarding this Assurance shall be sent by first class mail and electronic mail, to:

Office of the Attorney General

Kristen Clarke

Chief

Civil Rights Bureau

Office of the New York State Attorney General

120 Broadway, 23rd Floor

New York, NY 10271

Tel.: (212) 416-8250

Fax : (212) 416-8074

Email: Civil.Rights@ag.ny.gov

Macy's Inc.

Macy's Retail Holdings, Inc.

General Counsel

7 West Seventh Street

Cincinnati, Ohio 45202

Security Monitor

151 West 34<sup>th</sup> Street

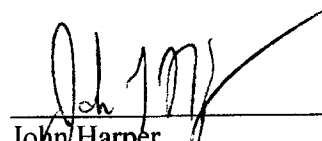
New York, New York 10001

IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: New York, New York  
August 18, 2014

**Macy's Retail Holdings, Inc.**

By:


  
\_\_\_\_\_  
John Harper  
President of Store Operations

CONSENTED TO:

Dated: New York, New York  
August 19, 2014

**ERIC T. SCHNEIDERMAN**  
Attorney General of the State of New York

By:

  
\_\_\_\_\_  
Kristen Clarke  
Bureau Chief

Dariely Rodriguez  
Assistant Attorney General  
Office of the New York State Attorney General  
Civil Rights Bureau  
120 Broadway, 23rd Floor  
New York, New York 10271  
Tel. (212) 416-8250  
Fax (212) 416-8074

# EXHIBIT B

Macy's  
Herald Square  
151 West 34th St.  
New York, NY 10001  
212-695-4400



R4199003020874087109

003-0208-7408  
10186171 0208 7:30 PM 7/18/2014

**PURCHASE**

Case ID: 7100304098920141  
CMN CVL RCVRY #N# 100.00  
400822318008 13/10

Total 100.00

Cash 100.00

**THANK YOU FOR SHOPPING AT MACY'S.**

Elizabeth Arden Free Gift  
with any Elizabeth Arden  
\$32.50 or more purchase  
Visit counter for more details

**CUSTOMER COPY**



lower price.

Reg. and Orig. prices are offering prices, and savings may not be based on actual sales. Some original prices not in effect during the past 90 days. Intermediate markdowns may have been taken. Additional discounts are taken off of already reduced prices.

THANK YOU FOR SHOPPING AT



Please save your receipt  
for returns or adjustments

Macy's will accept for exchange or return merchandise that does not completely satisfy you. Some restrictions apply and are posted in these specific departments.

With valid proof of purchase, you may exchange the item or receive a refund of the purchase price in the original form of payment. For cash refund, your original receipt is required.

Returns without proof of purchase that cannot be validated by our system will be issued store credit for the item's lowest selling price within the past 180 days.

If an item you purchased is offered at a lower price within 14 days of your original purchase, you may receive a price adjustment. Simply present your original receipt while the item is offered at the lower price.

Reg. and Orig. prices are offering prices, and savings may not be based on actual sales. Some original prices not in effect during the past 90 days. Intermediate markdowns may have been taken. Additional discounts are taken off of already reduced prices.

0-1789-6280-35

Failure to properly settle this Promissory Note may result in additional action being taken by Macy's against you in the full amount of your Promissory Note, plus attention of costs and fees.

This portion must be completed by Loss Prevention.

Case Number: 71 003 04 0489 204 name: Cynthia Reyes stores: 203

You have been imposed for the theft of merchandise. In accordance with the Civil Demand/Recovery law in this state, we make demand for the payment of \$19,489 from you.

Mail your payment to the pre-addressed envelope with this recoverable payment due within five (5) days of this incident to avoid receiving a notice related to your name. Acceptable forms of payment: check or money order (payable to Macy's CA) or credit card.

To arrange a payment plan or pay by phone, you must contact Macy's at 866-650-0766. 311 NYC NY

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Phone \_\_\_\_\_

Cardholder Name \_\_\_\_\_

Card Account Number \_\_\_\_\_

Expiration Date \_\_\_\_\_

Amount to be charged \_\_\_\_\_

Signature \_\_\_\_\_

Card must be included for all credit card payment. Order # 254 7 16 12 066 0150

# EXHIBIT C

Revised March 2005

SHOPLIFTING / TRESPASS SUPPORTING DEPOSITION

Penal Law §155.25, §165.40 and §140.10(a)

(TO BE COMPLETED BY STORE WITNESS ONLY)

Defendant's Name: Cynthia ReyesArrest # MI, Luiz Baez (print your name), am a Store Detective (title),  
for Macy's Herald Square (name of store), which is located at 151 West 34th St NYC 10011On 7.18.14 (date), at 5:30 PM (time), I observed the defendant inside the above-named store.  
(YOU MUST ANSWER ALL QUESTIONS BELOW.)OBSERVATION

1. Did you observe the defendant remove property?

☒ Yes, I observed the defendant remove (describe property, e.g., 3 t-shirts, 1 pair of pants, 2 packs of gum)  
2 shirts  
from a (describe where, e.g., shelf, rack, display) rack☐ No.

2. Did you observe the defendant conceal property?

☐ Yes, I observed defendant conceal (describe property) \_\_\_\_\_  
by placing said item(s) (describe where, e.g., inside a shopping  
bag, under his/her jacket, inside his/her right pants pocket) \_\_\_\_\_☒ No.3. If you did NOT observe the defendant remove or conceal property, why was the defendant stopped?☒ Not applicable.  
☐ I observed property in a bag defendant was carrying.  
☐ An electronic surveillance device was triggered when defendant went through the store sensor.  
☐ I was informed by \_\_\_\_\_ (Note: A separate supporting deposition MUST be  
supplied by this person) that he/she observed the defendant remove or conceal the property.

4. Did you observe the defendant outside the store; attempt to leave the store; or walk past more than one open register and move to another floor in possession of concealed property without paying for it?

☐ Yes, I observed the defendant outside the store in possession of the property without paying for it.  
☐ Yes, I observed the defendant attempt to leave the store in possession of the property without paying for it.  
☒ Yes, I observed the defendant walk past more than one open register and move to another floor.  
☐ No. (THIS IS NOT AN RAP CASE UNLESS A SUPPORTING DEPOSITION IS SUPPLIED BY ANOTHER  
PERSON WHO CAN ANSWER "YES" TO AT LEAST ONE OF THE ABOVE QUESTIONS IN #4.)RECOVERY

5. Did you recover the property from the defendant?

☒ Yes, I recovered (describe number of items and property, e.g., 3 t-shirts, 1 pair of pants, 1 pack of gum)  
2 shirts  
from (describe where, e.g., defendant's shopping bag, inside his/her jacket, defendant's right pants  
pocket) inside her beige shoulder bag, valued at (indicate total dollar  
amount, e.g., \$35.00) \$59.96, property which belonged to the above-named store and for which  
defendant had no receipt. I am the custodian of the property and defendant did not have permission or authority  
to take or possess the property.☐ No. If no, who recovered the property? \_\_\_\_\_ (Note: A separate  
supporting deposition MUST be supplied by this person.)TRESPASS

6. Is there a prior "Trespass Notice" showing that the defendant was not permitted to enter the above-named store?

☐ Yes. On 7/1/14, defendant received the attached notice that defendant was not permitted to enter the  
above-named store. (Trespass Notice MUST be from a date prior to the above incident. NOTE: A Trespass  
Notice issued in connection with this case should also be included with this paperwork.)  
☒ No.

NOTE:

False statements made herein are punishable as a Class A misdemeanor pursuant to section 210.45 of  
the Penal Law.Dated: 7.18.14Luiz Baez  
(Print Your Name)[Signature]  
(Your Signature)

# **EXHIBIT D**

## Payment Slip

Macy's Civil Recovery  
4880 Briarcliff Rd. NE, Suite 100  
3rd Floor  
Atlanta, GA 30345



Case ID: 7100304098920141

000009

Cinthia Reyes  
1639 Normant St 2  
Queens, NY 11385-

## Credit Card Payments (VISA, M/C, AMEX)

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

Card Account Number: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

Amount to be Charged: \_\_\_\_\_

Signature \_\_\_\_\_

Original Balance	Paid to Date	Amount Due	Amount of Your Payment
\$299.80	\$100.00	\$199.80	

Make Payable to: Macy's Loss Prevention Payment Center  
PO Box 90092, West Chester, OH 45071-9092

For assistance, please contact Macy's at 1-866-632-9756

(Remove this payment slip and return with your payment.)

## FINAL NOTICE

07/25/2014

FD03071

Dear Cinthia Reyes,

Our records indicate a remaining balance of \$199.80 in settlement of a civil claim resulting from a theft incident at a Macy's store on 07/18/2014.

This is the final notice you will receive prior to referring this matter to a law firm for follow up.

The state of New York has a law permitting retailers to recover civil damages from you as a result of this incident. Specifically, Section 11-105 of the General Obligation of the New York State Consolidated Laws provides that a person who commits larceny against the property of a mercantile establishment shall be civilly liable to the merchant for the retail price of damaged or unrecovered merchandise, up to \$1500, plus a penalty of 5 times the retail price of the merchandise or \$75, whichever is greater, but not to exceed \$500. This claim is separate from any criminal punishment or penalties that may arise from this incident.

Full payment must be received by our office within 10 days of the date of this letter. Should payment fail to be made, we may review the file and request a higher settlement amount, and if we ask a law firm to follow up, the amount may include a request for attorney's fees and/or punitive damages. Therefore, to avoid a higher demand request, please make payment in full according to the terms stated or call our office to set up suitable payment arrangements.

Payment may be made by any of the following methods:

- \* By Mail: Check or Money Order made payable to Macy's Loss Prevention. Please use the pre-addressed envelope and payment stub enclosed for your convenience.
- \* By Phone: All major credit cards are accepted by calling 1-866-632-9756.
- \* In Store: Payments are accepted at all Macy's store locations. Bring your payment and case number to any Loss Prevention representative to process your payment. Checks returned unpaid by your financial institution are subject to a service charge.

You may contact Macy's Civil Recovery department at 1-866-632-9756.

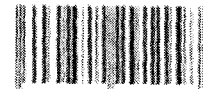
Sincerely,  
Macy's Loss Prevention Dept.

## Pay at Store!

- ◆ Present this letter to any associate.

## Sales Associate Instructions

- ◆ Input Associate Number and PIN and Select **T1 Purchase**.
- ◆ Scan this Dept/CL UPC barcode:



Note: If unable to scan, manually input 012/10 and press Enter.

- ◆ Scan this **Case ID** barcode:  
7100304098920141



Note: If barcode will not scan, manually input the entire number located above the barcode and press Tab.

- ◆ Input Customer's last name and Press Tab. Note: Use Last Name **"Reyes"**
- ◆ Input the amount customer wishes to pay.
- ◆ Select **T1 Checkout**
- ◆ Immediately process a Special Function - Duplicate Receipt (18) and give to LP.

# EXHIBIT E



LAW OFFICES OF

**PALMER, REIFLER & ASSOCIATES, P.A.**

1900 Summit Tower Boulevard, Suite 600 Orlando, Florida 32810-5920

FLORIDA



Post Office Box 607774  
Orlando, Florida 32860-7774

FLORIDA

Telephone (407) 875-8032  
Toll Free (888) 572-5637  
Facsimile (407) 875-0739

8/6/2014

CINTHIA REYES  
1639 NORMAN ST # 2  
RIDGEWOOD NY 11385-5702

Re: Macy's  
REYES  
File #: NY-7638893-MACY  
PIN # 2286

**SETTLEMENT OFFER**

Dear CINTHIA REYES:

This Law Firm represents Macy's concerning its statutory civil claim against you in connection with an incident in their store 3 on 7/18/2014. While you may have previously made partial payment to our client, a balance of \$199.80 remains.

Pursuant to common law and N.Y. Gen. Oblig. Law § 11-105 "Larceny in mercantile establishments", Macy's may consider moving forward with a statutory civil "penalty" claim against you for the remaining balance.

You may settle this matter by making payment to us in the amount of \$199.80 within twenty (20) days of the date of this letter. Upon receipt of full payment and clearance of funds, you will receive a written release of the statutory civil "penalty" claim.

Payment should be made payable and mailed to Law Offices of Palmer, Reifler & Associates, P.A., Post Office Box 607774, Orlando, Florida 32860-7774. Please include the file number shown above on your payment. If you wish to discuss alternative payment arrangements, you may call us at (888) 572-5637. Money Orders, Checks, MasterCard, Visa, American Express, Discover, Money Gram, Electronic Checks and Debit Cards are also accepted. You may also pay on-line through our secure website: [WWW.PALMERPAY.COM](http://WWW.PALMERPAY.COM).

Should you wish to discuss settlement, you may contact the undersigned. Should you have any questions regarding this letter, you may want to seek the advice of an attorney. If you cannot afford an attorney, you may call the legal services office in the county where you live.

Yours very truly,

Betty A. Llantín\*  
Of Counsel to the Firm

\*Admitted in New York, New Jersey and Florida  
BAL/III  
MACYS-CPANTC1-NY

Se Habla Español

## FREQUENTLY ASKED QUESTIONS

**Why am I receiving this letter?**

Our client (the retailer) has forwarded your file to the Law Offices of Palmer, Reifler & Associates, P.A. to make a restitution and/or civil damages settlement request. Civil laws have been enacted by state legislatures allowing for civil remedies which to a certain extent are used to compensate retailers for a variety of losses, costs and expenses associated with theft and shoplifting generally as well as the legal damages associated with the specific incident in question. These laws were often enacted in part to serve as a deterrent against theft offenders or responsible individuals apart from any possible criminal punishment and to make it less likely for the theft offenders to commit theft again. Restitution may be requested to compensate the retailer for any actual loss associated with the incident, such as damage to merchandise or theft of cash, while civil damages may be requested to reimburse the retailer for additional losses associated with theft incidents and can sometimes include both actual damage and exemplary damage components. The exemplary damage component of these civil damages requests is often allowed to be requested even if the merchandise or property was recovered and not damaged.

**What happens if the store has its merchandise or property back?**

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If there is a criminal court action, then you need to comply with the rules of the criminal court regarding the criminal matter. Payment of this civil damages request does not relieve you of any obligations associated with a possible criminal proceeding, but does ensure that you will be relieved of civil damages liability for the incident.

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Failure to respond to our client's request for settlement within the time specified in the Settlement Offer may, depending on the jurisdiction, result in the request of a higher settlement amount. Refusal to pay the requested settlement amount may also, at the discretion and direction of our client, result in the filing of a civil lawsuit against you.

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- \* **PalmerPay** ([www.PalmerPay.com](http://www.PalmerPay.com))
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  - \* Automated payment system that also allows you to check your balance and get other payment related information
- \* **MoneyGram**
  - \* Must have Palmer Reifler receive code 5517 and file number (found on enclosed letter)
- \* **Toll-Free Number** (1-888-572-5637)
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**Hours of Operation:**

**Lobby Hours By Appointment Only:** M-F: 9am -5pm EST

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Sun.: 10am-5pm EST

- \* **Via Mail**

Law Offices of Palmer, Reifler & Associates, P.A.

P.O. Box 607774

Oriando, FL 32860-7774

**Credit / Debit Card Payment Slip**

File Number: \_\_\_\_\_

File Number is located on the top right corner of letter received

Name on File: \_\_\_\_\_

Name of the addressed person on the letter



Card Holder Name: \_\_\_\_\_

Card Number: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

Payment: \_\_\_\_\_

Convenience Fee: \$14.50

A \$14.50 credit/debit service fee is added for each transaction

**Total:** \_\_\_\_\_

By signing this form you are authorizing us to perform a credit/debit transaction

Phone: \_\_\_\_\_

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

LAW OFFICES OF  
**PALMER, REIFLER & ASSOCIATES, P.A.**

1900 Summit Tower Boulevard, Suite 600 Orlando, Florida 32810-5920

FLORIDA



Post Office Box 607774  
Orlando, Florida 32860-7774

FLORIDA

Telephone (407) 875-8032  
Toll Free (888) 572-5637  
Facsimile (407) 875-0739

9/2/2014

CINTHIA REYES  
1639 NORMAN ST # 2  
RIDGEWOOD NY 11385-5702

Re: Macy's  
REYES  
File #:NY-7638893-MACY  
PIN # 2286

**SECOND SETTLEMENT OFFER**

Dear CINTHIA REYES:

This Law Firm represents Macy's concerning its statutory civil claim against you in connection with an incident in their store 3 on 7/18/2014. You have failed to make full payment after written demand to do so.

Pursuant to common law and N.Y. Gen. Oblig. Law § 11-105 "Larceny in mercantile establishments", Macy's is requesting that you settle this matter by making payment to us in the amount of \$199.80 within ten (10) days of the date of this letter.

Therefore, if you desire, you may make up to three (3) monthly payments of no less than \$66.60 each, so long as the first payment is postmarked within ten (10) days of the date of this letter. Upon receipt of your full payment and clearance of funds, you will receive a written release of the statutory civil "penalty" claim.

Payment should be made payable and mailed to Law Offices of Palmer, Reifler & Associates, P.A., Post Office Box 607774, Orlando, FL 32860-7774. Please include the file number shown above on your payment. If you wish to discuss alternative payment arrangements, you may call us at (888) 572-5637. Money Orders, Electronic Checks, Money Gram, MasterCard, Visa, American Express, Discover, and Debit Cards are also accepted. You may also pay on-line through our secure website: [WWW.PALMERPAY.COM](http://WWW.PALMERPAY.COM).

Should full payment fail to be made, provided the prior request was under the state statutory maximum, a higher settlement request may be made. Therefore, please make payment in full according to the terms stated or call our office to set up suitable payment arrangements.

Please make full payment according to the terms herein.

Yours very truly,

Betty A. Llantín\*  
Of Counsel to the Firm

\*Admitted in New York, New Jersey and Florida  
BAL/III  
MACYS-CPANTC2-NY

Se Habla Español

LAW OFFICES OF

**PALMER, REIFLER & ASSOCIATES, P.A.**

1900 Summit Tower Boulevard, Suite 600 Orlando, Florida 32810-5920

FLORIDA



Post Office Box 607774  
Orlando, Florida 32860-7774

FLORIDA

Telephone (407) 875-8032  
Toll Free (888) 572-5637  
Facsimile (407) 875-0739

9/17/2014

CINTHIA REYES  
1639 NORMAN ST # 2  
RIDGEWOOD NY 11385-5702

Re: Macy's  
REYES  
File #:NY-7638893-MACY  
PIN # 2286

Dear CINTHIA REYES:

As you are aware, this Law Firm represents Macy's concerning its civil claim against you in connection with an incident in their store 3 on or about 7/18/2014. We previously made demand for payment but our records reflect that a balance of \$199.80 remains unpaid.

**YOUR IMMEDIATE ACTION IS REQUIRED TO PREVENT FURTHER DEMAND.**

Our client hereby demands that payment of \$199.80 be made within ten (10) days of the date of this letter. Since you failed to resolve this civil matter in a timely manner, our client may now choose to pursue its full civil remedies. However, if the amount demanded above is paid within ten (10) days of the date of this letter, our client will agree to forego its remaining civil options.

Please make full payment according to the terms listed above. Payment should be made payable and mailed to Law Offices of Palmer, Reifler & Associates, P.A., Post Office Box 607774, Orlando, FL 32860-7774. Please include the file number shown above on your payment. Major credit/debit cards are also accepted. You may also pay online through our secure website: [www.PalmerPay.com](http://www.PalmerPay.com). If you wish to discuss alternative payment arrangements, you may call us toll free at 1-888-572-5637.

Yours very truly,

Betty A. Llantín\*  
Of Counsel to the Firm

\*Admitted in New York, New Jersey and Florida  
BAL/III  
MACY-CPA-NTC3-DEF

Se Habla Español

## FREQUENTLY ASKED QUESTIONS

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**\$14.50**

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**Total:** \_\_\_\_\_

By signing this form you are authorizing us to perform a credit/debit transaction

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

CINTHIA CAROLINA REYES ORELLANA, individually and  
On behalf of all similarly situated retail customers,

Plaintiffs,

-against-

MACY'S RETAIL HOLDINGS, INC. d/b/a MACY'S  
f/k/a MACY'S EAST a/k/a MACY'S, INC.;  
LAW OFFICES OF PALMER, REIFLER and ASSOCIATES, P.A.,

Defendants.

### CLASS ACTION COMPLAINT

USAR LAW GROUP, P.C.

Attorney(s) for Plaintiff

Office and Post Office Address, Telephone

4301 48<sup>th</sup> Avenue, Woodside, NY 11377

P.O. Box 4232 Sunnyside, NY 11104

Tel: (718) 392 4447 Fax: (718) 392 4448

To

Signature (Rule 130-1.1-a)

Print name beneath

Faruk Usar, Esq.

Defendant(s)

Service of a copy of the within is hereby admitted.  
November 2, 2015

Attorney(s) for

Dated: \_\_\_\_\_

#### PLEASE TAKE NOTICE:

☐ NOTICE OF ENTRY

that the within is a (certified) true copy of a  
duly entered in the office of the clerk of the within named court on

☐ NOTICE OF SETTLEMENT

that an order  
will be presented for settlement to the HON.  
within named Court, at

on

at

M.

Dated,

of which the within is a true copy  
one of the judges of the

Yours, etc.

USAR LAW GROUP, P.C.  
4301 48<sup>th</sup> Avenue, Woodside, NY 11377  
P.O. Box 4232, Sunnyside, NY 11104  
Phone: 718.392.4447  
Fax: 718.392.4448