

SETTLEMENT AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
JO-ANN STORES, INC.

The parties to this agreement (“Agreement”) are the United States of America and Jo-Ann Stores, Inc. The parties hereby agree as follows.

A. DEFINITIONS

1. “ADA” means the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*, and its implementing regulations issued by the United States of America (“United States”) in effect on the Effective Date (as defined below) of this Agreement.
2. “Title III” means Title III of the ADA, 42 U.S.C. §§12181-12189 (1990), and the implementing regulations in 28 C.F.R. Part 36 and Appendix A in effect on the Effective Date of this Agreement.
3. “Standards” means the ADA Standards for Accessible Design, 28 C.F.R. Part 36, Appendix A, in effect on the Effective Date of this Agreement.
4. Unless otherwise defined herein, all special terms used in this document shall have the meaning used in the ADA, Title III, and/or the Standards, to the extent such terms are defined therein.
5. “Accessible Features” means features of facilities and equipment that are available to the public. Features of facilities and equipment that are not available to the public and not required by local, state, or federal law to be accessible to the public are not Accessible Features.
6. “Maintenance of Accessible Features” means maintaining in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities under Title III of the ADA. 28 C.F.R. §36.211(a).
7. “Existing” when used with respect to “Store” (as defined below), means a Store or facility designed and constructed before January 26, 1993, the date the ADA’s New Construction (as defined below) regulations went into effect.
8. “Barrier Removal” means removing architectural barriers where such removal is readily achievable, *i.e.*, easily accomplishable and able to be carried out without much difficulty or expense. 28 C.F.R. §36.304.
9. “Barriers” means architectural barriers subject to Barrier Removal.
10. “Alteration” and other forms of “Alter” mean modification to a Store, which has occurred since January 26, 1992, in a manner that affects or could affect the usability of that Store or part thereof, within the meaning of 42 U.S.C. §12183(a)(2) and 28 C.F.R. §36.402, §36.403, and App. A §3.5.
11. “New Construction” means a Store or facility designed and constructed for first occupancy after January 26, 1993. 28 C.F.R. §36.401(2).

12. "Jo-Ann" means Jo-Ann Stores, Inc., and includes all of its controlled affiliates and controlled subsidiaries.

13. "Store" means a store operated by Jo-Ann, and includes all types of such stores, including traditional and "superstores."

B. FACTS

14. Jo-Ann's headquarters are in Hudson, Ohio. Jo-Ann owns and/or operates approximately eight hundred forty (840) Stores throughout the United States. Approximately six (6) percent of the Stores are located in the State of Michigan.

15. The Department of Justice ("Department") opened an investigation of Jo-Ann pursuant to the ADA, which authorizes the Department to investigate alleged violations of Title III. 42 U.S.C. §12188(b)(1)(A)(i). The investigation was initiated upon the receipt of complaints from persons, including Ms. Amy Powers and Ms. Joyce Simpson, who alleged that some Jo-Ann Stores do not comply with Title III and its implementing regulations, including the Standards. Specifically, the complaints alleged the existence of Barriers such as inaccessible Store entrances, and Store aisles too cluttered with merchandise on the floor for wheelchair users to enter the aisles.

16. The Department's investigation of the complaints confirmed these allegations to the satisfaction of the Department. As part of its investigation, the Department conducted accessibility surveys of a sampling of Jo-Ann Stores. During the course of its investigation, the Department determined that Barriers existed at some Jo-Ann Stores, and that these Barriers violated either the ADA's requirement to maintain accessible features so that they are readily accessible to and usable by persons with disabilities, or the ADA's requirements for New Construction, Alterations, or Barrier Removal.

17. Jo-Ann cooperated fully with the Department's investigation and enters this Agreement for the sole purpose of addressing accessibility issues. By entering this Agreement, Jo-Ann makes no admission of liability regarding failure to comply with the ADA, or any other law. Further, because Jo-Ann welcomes persons with disabilities at its Stores, Jo-Ann has agreed to implement certain measures to assure that all of its Stores are accessible to persons with disabilities.

18. The United States does not assert that this Agreement or the modifications contemplated herein will necessarily bring Jo-Ann's Stores into compliance with all aspects of the ADA, and nothing in this Agreement is intended to constitute an interpretation of the legal requirements of the ADA by the United States. Rather, this Agreement is entered by the parties for the purpose of compromising disputed claims and avoiding the expenses and risks of litigation. This Agreement is a compromise, and it is not intended to reflect any interpretations of any provisions of the ADA by the United States, and it shall not be used or introduced into evidence in any other case or proceeding other than between the parties to this Agreement.

19. During the pendency of this Agreement, the United States agrees to refrain from filing a civil lawsuit against Jo-Ann for failure to comply with Title III of the ADA, the Standards, or the implementing regulations, provided however, that the United States reserves the right to file a civil lawsuit to enforce this Agreement in accordance with the provisions of paragraph 38 below.

C. JURISDICTION

20. All Jo-Ann Stores in the United States are places of public accommodation within the meaning of 42 U.S.C. §12181(7)(A) and 28 C.F.R. §36.104. Jo-Ann is subject to Title III because it is a private entity that owns, leases, or operates a place of public accommodation. 42 U.S.C. §§12181(6), (7); 28 C.F.R. §36.104.

21. The United States, by and through the Department, enters into this Agreement pursuant to its authority, under 42 U.S.C. §12188(b) and 28 C.F.R. §36.503, to enforce the ADA.

D. REMEDIAL ACTION TO BE TAKEN BY JO-ANN

22. Within forty five (45) days of the Effective Date (as defined in paragraph 43) of this Agreement, Jo-Ann agrees to implement a nationwide policy requiring all Stores to maintain in operable working condition all Accessible Features in all its Stores so that they are readily accessible to and usable by persons

with disabilities. As part of the implementation of this policy, Jo - Ann will instruct all Store Team Leaders to take immediate measures to ensure that movable Store displays and merchandise are placed in such a manner that they do not obstruct accessible features, including entrance doors, aisles, and other pathways.

23. Within one hundred eighty (180) days of the Effective Date of this Agreement, Jo - Ann will educate all Store Team Leaders about the obligations of Jo - Ann under the ADA, including, but not limited to, how to maintain and operate Jo - Ann Stores in a manner that ensures all customers with disabilities are afforded equivalent service. Jo - Ann will provide a report to the Department within thirty (30) days of the conclusion of this initial education, documenting its completion and content. Jo - Ann will develop training materials to include information relevant to ADA compliance and will annually educate all Store Team Leaders about the Jo - Ann's obligations under the ADA. Jo - Ann will also incorporate this training into its "Superstore University" curriculum. Notwithstanding the forgoing, if the above referenced 180-day time period for the initial education would cause any portion of such education to occur during the final quarter of any calendar year, then Jo - Ann will have until the end of the first quarter of the next calendar year to complete such education.

24. Within ninety (90) days of the Effective Date of this Agreement, Jo - Ann shall designate or hire an ADA consultant ("Consultant") with expertise in the requirements of the ADA and the Standards, who will have authority and responsibility for assisting Jo - Ann in implementing its remedial program as described below. Jo - Ann will notify the Department of the identity of the Consultant within ninety (90) days of the Effective Date of this Agreement.

25. Within one hundred twenty (120) days of the Effective Date of this Agreement, Jo - Ann, with the assistance of its Consultant, shall develop a document called a "Survey Form" to be used to inspect every Jo - Ann Store to identify deviations from the Standards, and/or Architectural features subject to Barrier Removal, as applicable. The Survey Form shall include, but not be limited to: assessment of access routes to the Store entrance, width of Store entrance doors, hardware and opening pressure of Store entrance doors, slope and dimensions of entrance landings, width of route from entrance to all merchandise display areas, Maintenance of Accessible Features such as adequate aisle widths, width of route from merchandise display areas to fabric cutting areas and checkout counters, and the heights of tables and counters. The Survey Form will include a section for the analysis of parking facilities and exterior paths of travel, but notwithstanding any other provisions hereof to the contrary, Jo - Ann's obligation to inspect and report on parking facilities and exterior paths of travel will be limited to those parking facilities and exterior paths of travel in areas which it owns or over which it has exclusive control. The Survey Form will also include alternate sections for the analysis of features and facilities depending on whether the subject Store is Existing or New Construction and whether the particular feature has been Altered. Once created, Jo - Ann will provide a copy of the Survey Form to the Department for review and approval. The Department shall provide its response to the Survey Form within forty five (45) days. The Department's response shall be in writing, and if the Survey Form is not approved, the Department shall provide written technical assistance regarding any deficiencies noted in the form. If modification of the Survey Form is required by the Department, this process will be repeated until the Department approves the Survey Form. The date that Jo - Ann receives notice that the Survey Form has been approved by the Department is referenced hereinafter as the "Approval Date."

26. If the approved Survey Form proves to be inadequate after it has been approved by the Department, Jo - Ann may submit a revised Survey Form to the Department for review and approval. The parties will act with reasonable promptness to expedite the preparation, review, and approval of any such revised Survey Form. Notwithstanding any other provision hereof to the contrary, all dates, time frames, and deadlines shall be tolled from the time Jo - Ann submits a revised Survey Form to the Department until the revised Survey Form has been approved by the Department.

27. Within thirty (30) days of the Approval Date, Jo - Ann shall begin to survey all of its Stores. Jo - Ann will have sole discretion to determine the priority and sequence in which Stores are surveyed. The surveys shall be conducted by or under the supervision of the Consultant. All persons conducting surveys shall be trained in the requirements of the Standards, how to conduct the survey and record the results on the Survey Form, and in the recognition of violations of the ADA Standards and Barriers to accessibility to persons with disabilities. All surveys will result in a written evaluation, *i.e.*, the completed Survey Form, which identifies all aspects of the subject Store that do not meet the Standards and/or which constitute Barriers, as applicable.

28. Within one (1) year of the Approval Date, Jo-Ann will survey no less than twenty five (25) percent of its then operating Stores. Within two (2) years of the Approval Date, Jo-Ann will survey no less than fifty (50) percent of its then operating Stores. Within three (3) years of the Approval Date, Jo-Ann will survey no less than seventy five (75) percent of its then operating Stores. Within four (4) years of the Approval Date, Jo-Ann will survey one hundred (100) percent of its then operating Stores. At the conclusion of each of the above referenced milestones, Jo-Ann will provide the Department with a list of Stores that have been surveyed. This information will include the Store location and the date or dates of the survey. Jo-Ann will maintain copies of the completed Survey Forms for at least three years, and will make selected Survey Forms available to the Department within thirty (30) days of a written request. Notwithstanding the availability of the Survey Forms to the Department, the original blank Survey Form, any subsequent versions thereof, and the completed Survey Forms shall remain the property of Jo-Ann, and they shall not be subject to disclosure except as required by due process of law. The parties acknowledge that Jo-Ann expressly reserves all legal rights and privileges associated with the creation and use of the original Survey Form, and any subsequent versions thereof.

29. Within one year of the completion of each survey, Jo-Ann will conform all elements that deviate from the Standards and/or which constitute Barriers as identified in the Survey Form. Notwithstanding the foregoing, the United States acknowledges that Jo-Ann is consolidating some of its Stores, and if a surveyed Store is closed within one year of its survey, Jo-Ann need not make any improvements to that Store. Likewise, if a Store is closed prior to being surveyed, Jo-Ann shall have no obligations under this Agreement regarding any such Store.

30. If Jo-Ann believes that it is technically infeasible to meet the requirements of paragraph 29 with respect to conforming any particular element of any Store, it will take the following steps. Jo-Ann will notify the Department of this contention, in writing, in a timely manner, and explain and justify the technical infeasibility. The requirement of timeliness is satisfied if notice is sent within thirty (30) days of the day the survey of the subject Store is completed. The written notification must propose, in detail, an alternative accommodation, or explain in detail why no alternative accommodation is reasonably possible. If the United States objects to the alternative accommodation or the explanation as to why no alternative accommodation is reasonably possible, it will notify Jo-Ann within forty five (45) days of aforesaid notice from Jo-Ann. If Jo-Ann does not agree with the Department's response, Jo-Ann shall provide notice within fifteen (15) days of its disagreement and representatives of the parties shall meet and confer within forty five (45) days after Jo-Ann provides its notice of disagreement in an effort to resolve the dispute.

31. After Jo-Ann has surveyed and removed and/or otherwise corrected the Barriers in at least twenty five (25) percent of its Stores, the Department will identify fifteen (15) Stores for which it seeks detailed compliance information. Jo-Ann will ensure that an independent consultant (not the original ADA Consultant designated or hired by Jo-Ann) conducts surveys using the Survey Form and prepares reports ("Verification Reports") on each of these Stores within ninety (90) days. The Verification Reports will identify the Jo-Ann Store number and location, the date the Store was first occupied by Jo-Ann, which portions of the Store are Existing, Altered, or New Construction, and all Accessible Features that do not comply with the Standards and/or which constitute Barriers, as applicable.

32. Jo-Ann agrees to design and construct new Stores in compliance with the ADA and to ensure that any alterations made to Existing Stores or newly opened Stores are, to the maximum extent reasonably possible, readily accessible to, and usable by, persons with disabilities. 42 U.S.C. §12183(a)(2)(A)(iv); 28 C.F.R. §§36.402-406; 28 C.F.R. Pt. 36, App. A.

33. In Stores which have undergone Alterations, as defined by the Standards, Jo-Ann shall ensure, among other things, that if existing elements, spaces, or common areas within the Store are Altered, then each such Altered element, space, feature, or area shall comply with the applicable provisions of the requirements for New Construction. 42 U.S.C. §12183(a)(2)(A)(iv); 28 C.F.R. §§36.402-406; 28 C.F.R. Pt. 36, App. A. In addition to the requirements of Section 4.1.6(1) of the Standards, an Alteration that affects or could affect the usability of or access to an area containing a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the Altered area and the publicly available restrooms, telephones, and drinking fountains serving the altered area are readily accessible to, and usable by, persons with disabilities, unless such Alterations are disproportionate to the overall Alterations in terms of cost and scope.

E. NOTIFICATION

34. Jo-Ann will take all necessary steps to publish a copy of this Agreement on its Intranet site along with a brief set of explanatory questions and answers for-employees.

35. Within ninety (90) days of the Effective Date of this Agreement, Jo-Ann will post a notice at each entrance to each of its Stores that includes a universal sign of accessibility along with the following language: "It is the policy of Jo-Ann Stores, Inc. to make its stores accessible to persons with disabilities. If you are a person with a disability and you need assistance to access our store, please make your need known to any store employee."

F. PAYMENT OF DAMAGES

36. Jo-Ann will pay, by check, Two Thousand Dollars (\$2,000.00) each to Ms. Amy Powers and Ms. Joyce Simpson ("Complainants") as compensatory damages for alleged violations of the ADA. In conjunction with the execution of this Agreement, or as soon thereafter as reasonably possible, the Department will deliver to Jo-Ann, a writing which includes the tax identification numbers and mailing addresses for each of the Complainants. Each Complainant shall, in consideration of aforesaid agreement to pay damages, execute and deliver to Jo-Ann a release in a form to be prepared by counsel for Jo-Ann. Within ten (10) days after Jo-Ann has received both the requisite information from the Department and the executed release of either Complainant, Jo-Ann or its counsel shall transmit a check to said Complainant, made payable to the Complainant individually and solely, with a copy of each check and its transmittal communication to Judith E. Levy, Esq., Assistant United States Attorney, Eastern District of Michigan, 211 West Fort Street, Detroit, Michigan 48226.

G. ENFORCEMENT AND MISCELLANEOUS PROVISIONS

37. After the Department has evaluated the aforementioned Verification Reports and has also had the opportunity to conduct its own independent evaluation of these Stores, the Department will determine whether Jo-Ann is in "substantial compliance" with the terms of this Agreement. In the event that the Department makes a determination that Jo-Ann is not in substantial compliance with the Agreement, the Department will provide written notice of its findings. If Jo-Ann does not dispute the findings within ten (10) days of notice, it will pay civil penalties to the United States in a single payment of fifty five thousand dollars (\$55,000.00). If Jo-Ann disputes the Department's findings, the Department shall provide a written response prior to assessing aforesaid penalty. For purposes of this Agreement "substantial compliance" is defined as no less than thirteen (13) of the fifteen (15) subject Stores of the Verification Reports meeting all the requirements of this Agreement. In addition, if Jo-Ann is found not to be in substantial compliance with the Agreement it will endeavor to promptly identify and correct all aspects of the subject Stores which are not compliant.

38. If the United States believes that Jo-Ann is not in compliance with this Agreement, notwithstanding any other provision to the contrary, the United States agrees to notify Jo-Ann in writing of the alleged noncompliance and further to exert a good faith effort to resolve the matter prior to taking any further action. If the parties are unable to reach a resolution within sixty (60) days of the date of the written notification of noncompliance, the United States may seek enforcement of the terms of the Agreement in the United States District Court. Should legal action be necessary, the parties agree to jurisdiction and venue in the United States District Court for the Northern District of Ohio or the Eastern District of Michigan. In the event that a court determines that Jo-Ann has failed to comply with any term in this Agreement, such failure to comply may be treated as a violation of Title III of the ADA and the United States may seek, and the court may assess civil penalties as provided in 42 U.S.C. §12188(b)(2)(C).

39. This Agreement shall be binding on Jo-Ann, its agents and employees. In the event that Jo-Ann seeks to transfer or assign all or a majority part of its interest in any Store covered by this Agreement and the successor or assign intends to operate a fabric and crafts store, as a condition of sale, Jo-Ann shall obtain the written accession of the successor or assign to any obligations remaining under this Agreement for the remaining term of this Agreement.

40. This Agreement constitutes the entire agreement between the parties relating to this matter and no other statement, promise, or agreement, either written or oral, made by any party or any agent of any party that is not contained in this Agreement shall be enforceable.

41. Any notices or other communications required by this Agreement shall be effective when delivered in

person, or by the United States Postal Service, via First Class mail or faster service, or by other widely used commercial delivery service, such as FedEx, UPS, or DHL, using a type of service that normally provides delivery within two (2) days or less. The persons and addresses for notice may be changed by providing written notice in accordance with this Agreement. Notice is considered effective on the date of delivery in the case of personal service, and on the third day following the mailing or sending otherwise. In the case of non-personal service, notice is considered effective regardless of whether or when the intended recipient actually receives same. Said notices and communications shall be provided to the persons and addresses listed below, as applicable.

If to Jo-Ann:

General Counsel
Jo-Ann Stores, Inc.
5555 Darrow Road
Hudson, Ohio 44236

If to the United States:

Judith E. Levy, Esq.
Assistant United States Attorney
Eastern District of Michigan
211 West Fort Street
Detroit, Michigan 48226

42. This Agreement is effective for a period ending five years after the Approval Date.
43. The effective date of this Agreement (“Effective Date”) is the date of the last signature accomplished below.
44. The persons executing this document on behalf of the respective parties, warrant that they are duly authorized to accomplish same and possess all requisite authority to bind the represented party to all provisions of this Agreement.
45. The parties agree that they have jointly participated in the preparation of this Agreement, and that as such, any rule of interpretation as construing the terms and conditions against the party preparing the Agreement is inapplicable. As such, in any interpretation of this Agreement, only the fair meaning of the words shall be used.
46. The parties agree that their intent in entering this Agreement is to create a binding agreement that will withstand legal challenges regarding its adequacy or legality. Therefore, should any provision hereof be found to be illegal or unenforceable for any reason, such provision shall be considered as stricken, to the minimum extent necessary to preserve the legality and enforceability of the Agreement, and the balance of the Agreement shall remain in full force and effect.
47. This Agreement may only be changed in a writing duly executed by the party to be charged.
48. The titles and headings used in this Agreement are for reference purposes only, and they shall not be used to limit or enhance the interpretation or application of the provisions hereof.
49. Where appropriate herein, the singular shall include the plural and vice versa.
50. The parties agree that two (2) copies of this original Agreement shall be prepared and that each of the parties shall retain an executed original. Either of these originals shall be considered as the sole original without reference to the other for any and all purposes related to this Agreement.

BY OUR SIGNATURES BELOW, WE AGREE TO THE FOREGOING.

For Jo-Ann Stores, Inc.:

For The United States of America:

Stephen J. Murphy
United States Attorney
Eastern District of Michigan

by: _____
David B. Goldston, Esq.
Senior Vice President, General
Counsel and Secretary

by: _____
Judith E. Levy, Esq.
Assistant United States Attorney

Date: July 18, 2006

Date: 7/18, 2006

[Return to Settlements](#)

[ADA Home Page](#)

Last updated October 26, 2006