

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS
MAY 17 2001

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JAMES W. McCORMACK, CLERK
By: [Signature]
DEP. CLERK

EURLENE ROBINSON; RASHAD L.
ATKINSON; CARLA DROUGHN;
DAVID FITZPATRICK; KIRESTIN J.
HARRIS; JANICE L. MEDLEY; WILLIE
L. TOOMBS, JR.; KAHLIL WATKINS;
and TAMERA L. WILLIAMS, on
behalf of themselves and all other persons
similarly situated.

Plaintiffs,

vs.

4:98cv00739 SWW

SEARS, ROEBUCK AND CO.,

Defendant.

ORDER

Before the Court is a joint motion of the parties for preliminary approval of settlement agreement [doc.#195]. The Court has carefully considered the settlement agreement, which is attached to this Order, and hereby preliminarily approves said agreement.¹ The Court will in due course consult with the parties regarding a date for a fairness hearing and other matters requiring the Court's attention.²

IT IS SO ORDERED this 17th day of May 2001.

THIS DOCUMENT ENTERED ON
DOCKET SHEET IN COMPLIANCE
WITH RULE 58 AND/OR 79(a) FRCP
ON 5-18-01 BY [Signature]

[Signature]
CHIEF JUDGE
UNITED STATES DISTRICT COURT

¹ Because this approval is preliminary, the Court may later disapprove in part or in whole the settlement agreement should circumstances not now before the Court arise which necessitates such disapproval.

² The motion by plaintiffs for preliminary approval and enforcement of settlement agreement [doc.#187] is moot and need not be addressed. The Clerk is directed to remove this motion from the pending motions report.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION

EURLENE ROBINSON; RASHAD ATKINSON;)	
CARLA DROUGHN; DAVID FITZPATRICK;)	
KIRESTIN J. HARRIS; JANICE MEDLEY;)	
WILLIE L. TOOMBS, JR.; KAHLIL WATKINS;)	
and TAMERA L. WILLIAMS, on behalf of)	
themselves and all other persons similarly)	
situated,)	4:98 CV 00739 SWW
)	
Plaintiffs,)	
)	
v.)	
)	
SEARS, ROEBUCK AND CO.,)	
)	
Defendant.)	

SETTLEMENT AGREEMENT

I. INTRODUCTION

WHEREAS Plaintiffs, Rashad Atkinson, Carla Droughn, David Fitzpatrick, Kirestin Harris, Janice Medley, Eurlene Robinson, Willie Toombs, Jr., Kahlil Watkins, and Tamera Williams (collectively "Class Representatives") filed a complaint (the "Complaint") individually and on behalf of other similarly situated nonwhite persons against Sears pursuant to Title VII of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. §§ 2000e – 2000e-17), Section 1 of the Civil Rights Act of 1866 (codified as amended at 42 U.S.C. § 1981), and the Arkansas Civil Rights Act of 1993 (codified as amended at Ark. Code Ann. § 16-123-101 to 108). The Complaint alleged that Plaintiffs and similarly situated nonwhite employees at the Sears store located at 600 South University Avenue in Little Rock, Arkansas ("University Store") had been discriminated against in placement, compensation, promotions, training, and other privileges and conditions of employment.

WHEREAS, Sears, by its Answer and in other pleadings, denied and continues to deny all allegations that Plaintiffs and the class they sought to represent had suffered any discrimination at Sears.

WHEREAS, from November 1998 to the present, the parties have engaged in extensive discovery and trial preparation on both class certification issues and the merits of Plaintiffs' and potential class members' claims and Sears' defenses including but not limited to, document review, deposition testimony and expert statistical analysis.

WHEREAS, the Court granted Plaintiffs' motion for class certification. The Court certified a class of current and former nonwhite hourly non-commission employees of Sears University Store who allege discrimination in the areas of pay, placement, promotion and evaluation. Class members must have been employed at the University Store between November 4, 1995 and July 14, 2000 ("Class" or "Class Members").

WHEREAS, since August 2000, the parties have engaged in settlement negotiations, in correspondence and face-to-face negotiation and participated in arduous arms-length negotiations, including utilizing the services of a private independent mediator who assisted the parties in reaching the Settlement Agreement ("Agreement" or "Settlement Agreement") memorialized herein.

WHEREAS, after extensive discussion between and among the parties and counsel, and based upon counsels' full review of the record compiled in this case, the parties have determined that it is in their best interests to settle this case on the terms and provisions set forth herein, given the risks and uncertainties of protracted litigation.

WHEREAS, to resolve completely and to secure the total and final settlement of all claims Plaintiffs and Class Members have against Sears arising out of allegations of discrimination

in pay, promotion and evaluation as set forth in Plaintiffs' Amended Complaint, the parties hereby stipulate and agree as follows:

II. JURISDICTION

The parties agree that this Court has jurisdiction over the parties and the subject matter of this action and that venue is proper in this district. This Court shall retain jurisdiction of this action during the duration of the Agreement for the purpose of entering all orders, judgments and agreements which may be necessary to implement the relief provided herein for a period of one year from the date upon which final approval of the Agreement is granted by the Court (the "Effective Date").

III. EFFECTIVE DATE AND DURATION OF AGREEMENT

The injunctive provisions and agreements contained herein shall be implemented on the Effective Date. Except as otherwise provided herein, the provisions of this Agreement and the agreements contained herein shall remain in effect for one year from the Effective Date.

IV. NO ADMISSION OF LIABILITY

Sears denied and continues to deny any legal liability arising out of any of the claims in this lawsuit. The Court has made no findings concerning Sears' alleged violations of Title VII, or any other federal, state, or local law, regulation, order, or rule prohibiting race discrimination. Accordingly, this Agreement shall not constitute, and shall not be used in this or any other case or action as an admission or evidence of any violation of Title VII, or any other federal, state, or local law, regulation, order, or rule. If for any reason settlement is not effectuated, no evidence of this proposed Agreement shall be admissible for any purpose in this or any other action.

V. SCOPE AND EFFECT OF SETTLEMENT

A. Settlement Scope

This Agreement is intended to and does effectuate the full, final, and complete

resolution of all allegations of discriminatory, unlawful employment practices because of race, occurring on or before the Preliminary Approval Date, that were or could have been brought by or on behalf of the Plaintiffs and the members of the class as defined by the Court under the discrimination charges filed by the Plaintiffs with the EEOC or under the original and amended complaints filed herein, including but not limited to all claims arising under federal, state, and local laws, and all claims for attorney's fees and costs. For purposes of this Agreement, Preliminary Approval Date is the date on which the Court grants its preliminary approval of the settlement and authorizes notice to be sent to the Class.

B. Release of Claims

The negotiation and entry of this Agreement have been undertaken by the parties for the purpose of settling all claims of race discrimination which the Plaintiffs and the Class Members brought or could have brought under the charges filed by them with the EEOC or in the original and amended complaints filed herein by the Plaintiffs. On the Effective Date, the Plaintiffs and all Class Members, both individually and as a class, for themselves, their attorneys, spouses, executors, representatives, heirs, successors, and assigns, or any other persons who could claim through them, in consideration of the monetary and injunctive relief set forth herein, the sufficiency of which is expressly acknowledged, fully and finally release and forever discharge Sears, its affiliated or subsidiary companies, and each of their respective present, former or future officers, directors, shareholders, agents, employees, representatives, consultants, attorneys, successors and assigns and their respective pension, profit-sharing, savings and other employee benefit plans of any nature, and those plans' fiduciaries, representatives, trustees and administrators (the "Released Parties") from any and all past and/or present claim, right, demand, charge, complaint, action, cause of action, obligation, or liability of any and every kind for individual and/or class injunctive and monetary

relief based upon any and all claims of employment discrimination because of race whether or not known, arising in any way out of the alleged facts, circumstances and occurrences underlying the allegations contained in the original and all amended complaints filed in this action or before the EEOC, whether such causes of action were or could have been based in tort; contract; any collective bargaining agreement; public policy; or any federal, state, or local law, statute, common law or administrative regulation, which arose before the Preliminary Approval Date and which were raised or could have been raised in these actions, including, but not limited to, any and all claims for alleged race discrimination relating to initial placement, compensation, job assignments, job or department transfers, training, scheduling, allocation of hours, full-time or part-time status, promotion, evaluations, or to the terms, conditions, or privileges of employment, and further including, without limitation, any such claims of race discrimination that any Class Member may have filed or caused to be filed in any complaint before any court of law, or before any administrative agency (state, federal or local), or before any arbitrator or board, prior to the Preliminary Approval Date (the "Released Claims"). This Agreement releases all class and individual claims of race discrimination underlying the allegations contained in Plaintiffs' EEOC charges or in the original complaint and all amended complaints in this action for both monetary and injunctive relief and which arose before the Preliminary Approval Date except as hereinafter stated. This release is not applicable to and does not pertain to any claim a Class Member may possess as a commissioned employee of the Sears University Store, either individually or as a member of the Class. This Agreement also resolves all claims for attorneys' fees and expenses, including claims for attorneys' fees and expenses incurred in connection with the implementation of this Agreement. This Release shall survive the expiration of the Agreement.

This is a full and final release applying not only to all Released Claims of race discrimination that are currently known, anticipated, or disclosed to Class Members, but also to all Released Claims of race discrimination that are presently unknown, unanticipated, and undisclosed to any and all Class Members.

VI. INJUNCTIVE RELIEF PROVISIONS

As part of this Settlement Agreement, the parties have agreed to the following injunctive relief to be implemented at the University Store:

A. **Job Fair**

Sears will hold a job fair for all Class Members in or before August 2001. Through the job fair, Sears will fill all open commission sales, full-time, management, and management trainee positions for which there is a qualified Class Member. Other qualified Class Members will be considered for future vacancies to the extent they are qualified and apply for open positions. Sears will discuss its benefits and opportunities including, but not limited to, explaining the nature and requirements of commission sales, full-time, management, and management trainee positions. Sears' Vice-President of Diversity will attend the job fair and make a presentation to the attendees.

B. **Job Posting and Application Procedures**

Sears will seek qualified persons from within Sears before hiring from outside by posting all open positions for commissioned sales, management, sales coordinator, management training, and full-time positions as soon as practicable and before any such position is filled. Sears shall maintain appropriate records of all job postings for not less than one year following the posting. Postings for management and management trainee positions will include job descriptions and competency requirements. Sears will reaffirm this policy to all hiring personnel.

Sears will modify the employment application to permit an applicant to identify the department(s) and positions for which the applicant has an interest and/or preference. Sears will also modify the interview guide to ensure that different store areas and job posting procedures are discussed with each applicant.

Sears will require that the trainer and/or hiring officials, in connection with employee orientation, explain to new applicants the job posting and job application procedures and show new applicants the locations for job postings. Job applications will be located where jobs are posted.

Sears will inform all new applicants of the nature and requirements of job postings that are open, including commission sales and hourly assignments.

Sears will reaffirm with all employees with hiring responsibility that they must follow the pay-for-experience guidelines set forth in Sears Compensation Resource Guide, including appropriately documenting the employee's experience.

Sears will publish, during new employee orientation, by posting and by brochure dissemination, information pertaining to its management training program including any competency or mobility requirements.

C. Evaluations and Updating of Employment Records

Sears will reaffirm with all managers that they must follow Sears' guidelines for conducting employee evaluations.

Sears will require that managers, as part of the annual performance evaluation process, obtain updated personnel information for employees, such as educational achievements, for Sears' personnel records.

Sears will modify the one-time 60-day and annual employee evaluation form as necessary to permit employees to list their Sears career aspirations. If such employees are qualified

for promotion, they will be instructed regarding the process for getting their names on the “promotable log” in the human resources department.

Sears will communicate to all managers that employees with an overall evaluation score of 2.5 or more are eligible for pay increases and for promotions to full-time. These standards shall be applied without regard to race. At the conclusion of one (1) year following the Effective Date, the score required to be eligible for a promotion to full-time shall be prevailing company standard.

D. Monitoring and Reporting

Sears’ Vice President of Diversity will monitor Sears’ implementation of this Agreement for the term of the Agreement. In that regard, during the term of this Agreement, the Vice President of Diversity will submit quarterly reports which will be provided to Class Counsel pertaining to the progress of the injunctive relief provisions of this Agreement. Sears’ Vice President of Diversity will also review a log of all calls from University Store employees to the Sears’ Ethics Hotline.

The University Store General Manager will submit monthly monitoring reports pertaining to the progress of the injunctive relief provisions of this Agreement to the District Human Resources Manager for the University Store. The District Human Resources Manager for the University Store will submit quarterly monitoring reports pertaining to, but not limited to, job posting, promotable log, and the pay for experience policy compliance to the Vice President of Diversity.

VII. MONETARY RELIEF, NOTICE AND DISTRIBUTION

A. Creation of Qualified Settlement Fund

1. Class Counsel shall be responsible for establishing and maintaining a Qualified Settlement Fund ("QSF"), including the drafting of all necessary documentation and retaining a suitable administrator who will perform duties consistent with the terms of this Agreement, in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, (the "Code") and the regulations promulgated thereunder, including 26 C.F.R. § 1.468B-1, *et. seq.*, as may be amended hereafter. The QSF shall be administered at all times to comply with Section 468B of the Code and the applicable regulations, and the Court shall have continuing jurisdiction over the QSF. Class Counsel shall be responsible for the costs of establishing and maintaining the QSF, including all fees and costs incurred or charged by the administrator of the QSF. Sears shall have no obligations with respect to the establishment or maintenance of the QSF, or for the payment of the fees or costs of the administrator of the QSF. The administrator of the QSF shall apply for the tax identification number required for the QSF and timely provide that number to Sears. The administrator shall comply with all applicable federal, state and local tax laws and regulations, including all tax filing, payment, and reporting obligations under applicable law.

2. The parties agree that there must be proper withholding of federal, state, and local income taxes, and the employees' share of FICA and Medicare on the portions of the settlement payments that are allocated to and constitute back wages. Accordingly, without limiting any other provision of this Agreement, the administrator shall be responsible for calculating the proper amount of withholding for federal, state, and local income taxes on the back wage portion of each Class Members' allocation, and the employees' share of FICA and Medicare on such portion, and the

administrator shall timely pay such tax amounts from the QSF to the applicable governmental authority or depository as required by the applicable tax law under the QSF's Tax Identification Number. Furthermore, the administrator shall be responsible for calculating the applicable federal and state unemployment taxes and the employer's share of FICA and Medicare on all amounts allocated to and constituting back wages to the class members, and the administrator shall timely pay such tax amounts from the QSF to the applicable governmental authority or depository as required by the applicable tax law under the QSF's Tax Identification Number; provided, however, that upon receipt of notice from the administrator at the time that payments are to be made to the applicable government authority, Sears shall make a payment to the QSF in the amount of the federal and state unemployment taxes and the employer's share of FICA and Medicare on all amounts allocated to and constituting back wages to the class members. Such payment shall be made by Sears within ten (10) days after notice of the amount due. The QSF shall act as the "employer" with respect to all such FICA, Medicare, and unemployment taxes on the back wage amounts.

a) Without limiting any other provision of this Agreement, the administrator shall determine if any other portion of payments to the class members are subject to withholding and if so make the applicable withholding required by applicable law. The administrator shall timely pay such withheld amounts to the applicable governmental authority or depository as required by the applicable law under the QSF's Tax Identification Number.

b) Without limiting any other provision of this Agreement, the administrator shall prepare, distribute, and file on behalf of the QSF any tax informational returns required for payments from the QSF, including, without limitation, IRS Forms W-2 and 1099. If required, the

administrator shall obtain IRS Form W-4 from each of the class members in order to establish the appropriate withholding amounts.

c) The administrator shall administer the QSF so that the QSF qualifies as a qualified settlement fund under Code Section 468B and the Treasury Regulations promulgated thereunder. The administrator shall take no action, or fail to take any action, that would cause the QSF not to qualify as a qualified settlement fund under Code Section 468 B and the Treasury Regulations thereunder.

d) The administrator shall provide a separate indemnity agreement to Sears.

B. Funding of QSF

In consideration of the releases, promises, and representations made by Plaintiffs, Class Members, and Class Counsel throughout this Agreement, Sears agrees to pay one million one hundred forty-two thousand dollars (\$1,142,000.00) (the "Class Fund") to the QSF for distribution to the Plaintiffs and Class Members in accordance with the terms and conditions of this Agreement. Within forty (40) days after final approval of the Settlement Agreement by the Court, Sears shall deliver to Class Counsel a check made payable to Robinson v. Sears Qualified Settlement Fund ("QSF") in the amount of the Class Fund. If any appeal or collateral attack is filed within thirty (30) days of the Effective Date, however, Sears will not deliver the check until all appeals and collateral attacks are finally resolved with no material change to the Agreement. In that event, the delivery of the check shall be made within thirty (30) days of the final resolution of all appeals and collateral attacks. Except for the payment of Sears' share of FICA, FUTA, SUTA and Medicare, Sears shall have no further obligations with respect to the administration or distribution of the Class Fund upon delivery of the Class Fund to Class Counsel. In the event that final approval of this Agreement is

denied or is ultimately reversed on appeal, Sears shall have no obligation to make any payments to Plaintiffs, Class Members or Class Counsel, and all releases pursuant to this Agreement shall be null and void.

C. Notice to the Class

Promptly following the Preliminary Approval Date, Class Counsel shall mail, via first class United States mail, postage prepaid, the Notice of Pendency of Class Action, Proposed Class Settlement, and Hearing on Final Approval ("Notice"), which is attached hereto as Exhibit "A." Class Counsel shall pay the expenses of the mailing. Class Counsel shall also cause the Notice attached hereto as Exhibit "B" to be published once a week for two (2) consecutive weeks in the Arkansas Democrat Gazette.

D. Objections and Exclusions

1. Objections

Class Members who wish to present objections to the proposed settlement must do so in writing. Written objections must be received by Class Counsel at least fourteen (14) days before the Final Approval hearing. Class Counsel shall stamp the date received on the original of any objection it receives and serve copies of the objections on Sears' counsel not later than two (2) business days after receipt thereof and shall file the date-stamped originals of any objections with the Clerk of Court no later than five (5) business days prior to the date of the Final Approval hearing.

2. Exclusions

Consistent with the Court's July 3, 2000 order, any potential Class Member, including the Named Plaintiffs, may request exclusion from the Class for purposes of monetary relief only. Class Members who wish to exclude themselves from membership in the Class for purposes of participation in the monetary portion of the settlement must do so in writing by filing with Class Counsel a signed and dated "Opt-Out" statement. Written Opt-Out statements must be received by Class Counsel at least twenty-one (21) days before the Final Approval hearing. Class Counsel shall stamp the date received on the original of any "Opt-Out" statement it receives and serve copies of the statements on Sears' counsel no later than two (2) business days after receipt thereof.

Only those Class Members who request exclusion in the time and manner set forth herein shall be excluded from the Class. The terms and provisions of this Agreement concerning monetary relief shall have no binding effect on any person who makes a timely request for exclusion in the manner required by this Agreement.

3. Excessive Number of Opt-Outs

In the event that sixty (60) or more of the total number of Class Members elect to opt out for purposes of participation in the monetary portion of this settlement, Sears may, at its option, void this Agreement. Sears shall notify Class Counsel of its decision to void this Agreement at least seven (7) days prior to the date set for the Final Approval hearing. In the event that Sears elects to void this Agreement, it shall have no obligations to pay any monetary relief, attorney's fees, expenses or implement any injunctive relief under this Agreement.

A. Class Monetary Distribution

1. Basic Eligibility for Payments from the Class Fund

Eligibility for payments from the Class Fund to Named Plaintiffs and Class Members shall be made in accordance with the following:

To qualify for any payment from the Class Fund, an individual must:

- (a) not have previously released his/her race discrimination claims against Sears;
- (b) not have filed an opt-out form; and
- (c) must have been employed as an hourly employee at the University Store between November 4, 1995 and July 14, 2000.

2. Distribution

Payment from the Class Fund will be paid as provided in this paragraph. The Class Representatives will be paid a dividend from the Class Fund of \$20,000.00 per representative. Those Class Members who submitted Affidavits will be paid a dividend of \$5,000.00 per person. These dividends are to be paid for the greater risks taken and burdens shouldered by these individuals in bringing this action and assisting in the action despite being identified by their employer and the public. The balance of the Class Fund will be distributed to the entire Class on the basis of their longevity with Sears as determined by Sears' records. Each Class Members' payment will be calculated based on the number of months that the Class Member worked at Sears as an hourly employee. Partial months of work will be counted as a complete month. Assuming that all Class Members are located, it is estimated that Class Members will receive a gross amount of approximately \$140.00 for each month they were employed at Sears. For example, Class Members

who have been employed by Sears throughout the period for which the case is certified should receive gross damages of approximately \$7,980.00.

It is contemplated by the parties to this Settlement Agreement that some members of this Class will not be located. The parties expect that some of the Notices of Pendency of Class Action, Proposed Class Settlement, and Hearing on Final Approval (Notice) will be returned to Class Counsel or the Administrator for one reason or another.

Class Counsel and the Administrator must use due diligence to locate missing or unlocatable Class Members (those Members whose Notice are returned to Class Counsel or Sears) for forty (40) days following the Effective Date. Sears agrees to cooperate in providing Class Counsel and the Administrator information necessary to assist in finding the unlocated Class Members. If Class Members cannot be located or do not come forward within forty (40) days from the Effective Date, their share of the Class Fund shall revert to the remainder of the Class, as detailed below.

If Class Members are determined to be missing or unlocatable, such persons will not be paid and their forfeited share shall revert to the Class Fund for distribution to the located Class Members as provided in this paragraph.

2. Reversion

None of the money paid for the benefit of the Class shall revert to Sears. Any payments that are returned to the Class Counsel or the Administrator shall again be deposited in the QSF. At least one hundred eighty (180) days and no later than two hundred ten (210) days following the distribution of the payments described in the paragraph above, any monies remaining in the account on account of any such returned payments or uncashed checks, after payment of any account

maintenance expenses, shall be distributed to the nine Class Representative Plaintiffs identified herein in equal shares, to be paid in the same manner as the initial payments or to charity at which time the QSF shall be closed.

VIII. ATTORNEY'S FEES AND EXPENSES

A. The parties have agreed that it is appropriate as part of the settlement underlying this Agreement for Sears to pay Class Counsel, on behalf of the Plaintiffs and Class Members, reasonable attorneys' fees, litigation expenses, and costs in this case, subject to the Court's approval thereof.

B. Sears has agreed to pay Class Counsel two hundred ninety nine thousand nine hundred thirty six and 75/100 dollars (\$299,936.75) for reasonable attorneys' fees, and one hundred seventeen thousand seven hundred eighty and 23/100 dollars (\$117,780.23) for litigation expenses, and costs as awarded by the Court for work performed or to be performed and costs and expenses incurred or to be incurred through the expiration of the Agreement. Included in this amount is approximately sixty-two thousand three hundred and forty-one dollars (\$62,341.00) for fees and expenses incurred or to be incurred by Class Counsel for administrative and monitoring work required to be performed by Class Counsel in the claims distribution process and after the Effective Date of the Agreement. Total payment to Class Counsel for fees, litigation expenses, and costs is four hundred seventeen thousand seven hundred seventeen and 00/100 dollars (\$417,717.00). This amount fully satisfies any arguable obligation Sears may have to pay attorneys' fees, litigation expenses, and costs for and on behalf of the Named Plaintiffs and the Class Members for any and all work performed and costs and expenses incurred through the expiration of this Agreement, with the exception of any fees and costs which may be awarded by the Court to Class Counsel if an enforcement proceeding before the Court is successful. Sears does not concede that it has or would

have any obligation to pay Class Counsel's fees in such an event and will oppose any petition for additional fees. Sears will pay Class Counsel by check to be delivered within forty (40) days after final approval of the Settlement Agreement by the Court along with the settlement check to the QSF. Sears will issue an IRS Form 1099 to James & Carter, PLC with respect to the payment.

C. Sears has also agreed to pay the fees of the mediator who was retained by the parties to assist in the settlement negotiations.

D. Under no circumstances shall Sears be required to pay the Named Plaintiffs or the Class Members any funds in excess of those set forth in Section VII above nor any legal fees or expenses to Class Counsel greater than those set forth in this Section VIII, unless the Court awards attorneys' fees and expenses to Class Counsel for the enforcement of this Settlement Agreement.

**IX. JUDGMENT TO BE ENTERED
APPROVING THE SETTLEMENT**

Upon final approval by the Court of this Settlement Agreement, the parties will request that the Judgment be entered by the Court in the form of Exhibit C.

X. RETAINED RIGHTS

A Nothing in this Agreement shall be construed to limit, modify, or compromise in any way the existing right of Sears and its management to exercise their discretion in making business decisions, including but not limited to the right to decide:

- (a) The number of employees to employ at the University Story as a whole or in any particular department, job classification (including, without limitation, part-time or full-time status), or job title;
- (b) The number and types of job classifications and job titles;
- (c) The guidelines for establishing employee compensation;

- (d) The specific or aggregate number of hours available for work in any particular department, job classification, or job title;
- (e) The labor costs for the University Store or any department;
- (f) The number and types of departments and services provided at the University Store;
- (g) The most efficient and productive manner for operating the University Store; and
- (h) The qualifications of any employee either in their current position or in consideration for training and/or promotion to another position.

However, notwithstanding these retained rights, such retained rights shall not be used to modify, abrogate, or circumvent the equitable relief specified in Section VI of this Settlement Agreement.

B Nothing in this Agreement is intended to preclude or prevent Sears from developing additional programs, policies or practices that further EEO compliance or that may enable Sears to identify the interests or preferences of its employees through other means.

XI. ENFORCEMENT OF THE AGREEMENT AND DISPUTE RESOLUTION PROCEDURES

A. Enforcement of the Agreement

For purposes of interpreting this Agreement, individual Class Members shall not be deemed to be third party beneficiaries of this Agreement, nor shall they have any right to enforce its terms. Only Class Counsel may seek to enforce this Agreement in Court. The Court alone shall have plenary authority to resolve all disputes arising under the Agreement.

At the request of Class Counsel or Sears, Class Counsel and Sears shall confer, as necessary, and an earnest effort shall be made by the parties to resolve promptly any differences or any disputes regarding the interpretation or implementation of the Agreement, including Sears' compliance with the Agreement. If any issue is not resolved informally, Class Counsel or Sears may seek relief from the Court.

XII. CONFIDENTIALITY AND RETURN OF DOCUMENTS PROVIDED TO CLASS COUNSEL UNDER THE TERMS OF THIS AGREEMENT

The parties acknowledge that certain information provided by Sears pursuant to this Agreement is required for the sole purpose of investigating, monitoring and enforcing Sears' compliance with this Agreement. All records, reports and other documents generated, maintained or produced pursuant to the terms of the Agreement shall be kept confidential and used solely for the purpose of monitoring compliance with this Agreement. Class Counsel shall not disclose such information to any person, except as is reasonably necessary to enforce, monitor or administer the provisions of this Agreement or to comply with otherwise applicable laws.

If Class Counsel desires to disclose information made confidential by this Agreement, Class Counsel shall promptly notify Sears of the information it seeks to disclose and the reasons for disclosing it. If Sears objects to the disclosure, the disclosure shall not occur unless the parties have agreed to the disclosure or the Court has granted Class Counsel's request to disclose the information based upon a finding that good cause exists for such disclosure. However, this confidentiality provision shall not bar Class Counsel from disclosing such information to the Court in any enforcement proceeding consistent with the terms of the Stipulated Protective Order entered in this action. Within thirty (30) days after expiration of this Agreement, Class Counsel shall return to Sears' counsel all documents produced by Sears pursuant to the terms of this Agreement.

XIII. MISCELLANEOUS PROVISIONS

A. Construction of Agreement

Each party has been given an opportunity to participate in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any party.

B. Entire Agreement

The parties represent and warrant that no promise or inducement has been offered or made except as set forth herein and that they are entering into and executing this Agreement without reliance on any statement or representation not set forth within this Agreement. The consideration stated herein is the sole consideration for this Agreement. This Agreement reflects the entire agreement between the parties and supersedes all prior or contemporaneous agreements, discussions, or representations, oral or written, with respect to the subject matter hereof.

C. Cooperation

The parties agree to cooperate in implementing the terms of this Settlement Agreement. Sears agrees to furnish Class Counsel such employment information as is necessary to make the monetary distribution as provided by this Settlement Agreement.

D. Modification

Sears and Class Counsel shall have the right to seek relevant modification of the Agreement to ensure that its purposes are fully effectuated following good faith negotiations as to such modifications. Sears and Class Counsel may jointly agree to modify the Agreement with the approval of the Court. No modifications or amendments to this Agreement shall be valid unless made in writing and signed by or on behalf of Sears and Class Counsel. The parties agree that additional consideration for modifications or amendments to this Agreement is unnecessary provided that the modifications or amendments are made according to the terms of this Paragraph.

E. Severability

Whenever possible, each provision and term of this Agreement shall be interpreted in such a manner as to be valid and enforceable; provided, however, that in the event any provision or term of this Agreement should be determined to be or rendered invalid or unenforceable (by an

Act of Congress, or otherwise), all other provisions and terms of this Agreement and the application thereof to all persons and circumstances subject thereto shall remain unaffected to the extent permitted by law; provided, however, that if any Class Member who has not opted out and who has received payment brings an action against Sears and a court determines that the Release or any part thereof is invalid or unenforceable, such Class Member shall be required to forfeit and return to Sears all payments received by the Class Member under the Agreement.

F. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, successors and assigns.

G. Discovery of Additional Facts or Claims

The parties are aware that hereafter there may be a discovery of claims or facts in addition to or different from those they now know or believe to be true with respect to the matters related herein. Nevertheless, it is the intention of the parties to settle and release fully, finally, and forever all such matters, and all claims relative thereto, which do not now exist, may exist, or heretofore have existed between them, whether suspected or unsuspected. In furtherance of this intention, the release given herein shall be and remain in effect as a full and complete release of all such matters, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto.

H. Commitment to Defend Agreement

Sears and Class Counsel shall make a good faith effort to defend this Agreement from any legal challenge whether by appeal, collateral attack or objection.

I. Calculation of Time

In computing any period of time prescribed or allowed by this Agreement, unless otherwise stated, such computation or calculation shall be made consistent with Federal Rules of Civil Procedure 6(a) and (e).

J. Deadlines

Sears, Class Counsel and the Court recognize that from time to time unforeseen events, such as exigent business circumstances, cause delays in the accomplishment of objectives no matter how well intentioned and diligent the parties may be. Accordingly, with regard to the provisions of this Agreement that require certain acts to be taken within specified time periods, Sears and Class Counsel understand and agree that Court approval shall not be required for reasonable extensions of deadlines. In the event that either Sears or Class Counsel determines that an action required by this Agreement cannot be taken within the specified time period, that party shall promptly notify the other party that it anticipates a delay. Such notice shall include the reasons for the delay and a proposed alternative deadline. Sears and Class Counsel shall endeavor to cooperate in reasonably rescheduling such deadlines. However, unless the parties agree to an alternative deadline, all deadlines set forth in this Settlement Agreement shall remain in effect.

K. Notices

All notices and other communications required under this Agreement shall be in writing and delivered either personally or by depositing the same, postage prepaid, in the United States mail, addressed to the party hereto to whom the same is directed at the following addresses:

To the Named Plaintiffs and Class Members:

Daniel R. Carter, Esq.
Holly E. Isaac, Esq.
James & Carter, PLC
500 Broadway, Suite 400
Superior Federal Building
Little Rock, Arkansas 72201-3343

To Sears:

Peggy Davis, Esq.
John Dickman, Esq.
Winston & Strawn
35 West Wacker Drive
Chicago, Illinois 60601

The parties may from time to time change their address for the purposes of this Section by providing written notice, return receipt requested, of such change to the other parties.

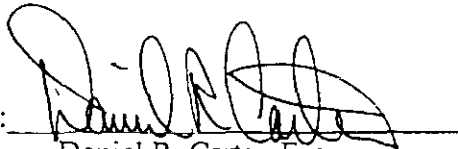
L. Return of Documents

The parties agree that the Stipulated Protective Order entered by the Court remains in full force and effect, and Sears has elected under Paragraph 6 of the Stipulated Protective Order to have Confidential materials, including copies thereof, returned to Sears immediately following the Effective Date.

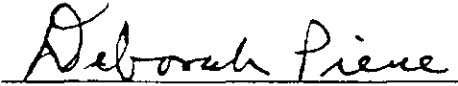
M. Counterparts

This Agreement may be executed in multiple counterparts, each of which when so executed shall constitute an original.

IN WITNESS WHEREOF, the parties have executed and agreed to this Agreement consisting of 24 pages.

By: 
Daniel R. Carter, Esq.
Holly E. Isaac, Esq.
JAMES & CARTER, PLC
Attorneys for the Class
500 Broadway, Suite 400
Superior Federal Building
Little Rock, Arkansas 72201-3343

Date: May 3, 2001

By: 
Deborah Pierce
Vice President, Employment Practices
SEARS, ROEBUCK & CO.
3333 Beverly Road
Hoffman Estates, Illinois 60179

Date: May 1, 2001

The provisions of the foregoing Agreement are hereby approved, and compliance with all provisions is HEREBY ORDERED.

Dated: _____, 2001

By: _____
Judge
United States District Court

F I L E C O P Y

bm

UNITED STATES DISTRICT COURT
Eastern District of Arkansas
U.S. Court House
600 West Capitol, Suite 402
Little Rock, Arkansas 72201-3325

May 18, 2001

* * MAILING CERTIFICATE OF CLERK * *

Re: 4:98-cv-00739.

True and correct copies of the attached were mailed by the clerk to the following:

Peggy A. Davis, Esq.
Winston & Strawn
35 West Wacker Drive
Chicago, IL 60601-9703

Gerald C. Peterson, Esq.
Winston & Strawn
35 West Wacker Drive
Chicago, IL 60601-9703

Peter C. Warman, Esq.
Winston & Strawn
35 West Wacker Drive
Chicago, IL 60601-9703

John M. Dickman, Esq.
Winston & Strawn
35 West Wacker Drive
Chicago, IL 60601-9703

Columbus R. Gangemi Jr., Esq.
Winston & Strawn
35 West Wacker Drive
Chicago, IL 60601-9703

Aida M. Alaka, Esq.
Winston & Strawn
35 West Wacker Drive
Chicago, IL 60601-9703

David A. Couch, Esq.
Dover & Dixon
TCBY Building
425 West Capitol Avenue
Suite 3700

Little Rock, AR 72201-2692

Philip E. Dixon, Esq.
Dover & Dixon
TCBY Building
425 West Capitol Avenue
Suite 3700
Little Rock, AR 72201-2692

Steve L. Riggs, Esq.
Dover & Dixon
TCBY Building
425 West Capitol Avenue
Suite 3700
Little Rock, AR 72201-2692

Paul J. James, Esq.
James & Carter, PLC
Superior Federal Building
500 Broadway, Suite 400
Post Office Box 907
Little Rock, AR 72203-0907

Holly Hambrick Isaac, Esq.
James & Carter, PLC
Superior Federal Building
500 Broadway, Suite 400
Post Office Box 907
Little Rock, AR 72203-0907

press

Date:

5/18/01

James W. McCormack, Clerk

BY:

