

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

STERLING JEWELERS INC.,

Defendant.

Civil Action No. 08-CV-0706

**SECOND AMENDMENT TO AND EXTENSION OF THE TERM OF THE
CONSENT DECREE**

V. INTRODUCTION

This action was filed on September 23, 2008 by Plaintiff United States Equal Employment Opportunity Commission (“EEOC”), an agency of the United States Government, alleging that Defendant Sterling Jewelers Inc. (“Sterling” or “Defendant”) violated Title VII of the Civil Rights Act of 1964 (“Title VII”) by engaging in a pattern or practice of discriminating against female retail sales employees with respect to pay and promotions (the “Litigation”).

On April 21, 2017, EEOC and Sterling (collectively, the “Parties”) agreed that this action should be resolved by entry of a consent decree, which was then entered by the Court on May 4, 2017 (Dkt. 435) (the “Decree”). On March 10, 2020, the Parties submitted an Amendment to and Extension of the Term of the Consent Decree (Dkt. 437) to extend by fifteen (15) months until November 4, 2021 certain portions of the Decree that concerned Sterling’s starting and merit compensation policies, practices, and tools (the “First Amendment”). Pursuant to the Decree and the First Amendment, the Parties’ designated Employment Practices Expert, Dr. Nancy Tippins, is required to perform her duties pursuant to Sections X(A)(3), (4), (5) and (6),

X(C) and XI(B) of the Decree, applying with equal force to Sterling's New Compensation Program (as defined in the First Amendment).

Both Sterling and Dr. Tippins have worked diligently during the Term of the Consent Decree to continue the important work called for in the Decree and First Amendment. However, Dr. Tippins has not completed certain statistical analyses under Section XI(B) of the Decree. Consequently, the Parties conferred and jointly propose to modify the Decree through entry of this Second Amendment to and Extension of the Term of the Consent Decree (the "Second Amendment").

Through this Second Amendment, the Parties jointly propose that with respect to the statistical analyses required under Section XI(B), the Parties will retain labor economist Dr. David Lamoreaux (the "Labor Economist") to complete those analyses. The Parties also jointly propose to extend the Term of the Decree as necessary to permit the Labor Economist to complete the statistical analyses required under Section XI(B). The Parties stipulate and consent to the entry of this Second Amendment as final and binding on the Parties, including Sterling's successors, assigns, subsidiaries, and any other entity with which Sterling may be merged or consolidated.

VI. JURISDICTION AND VENUE

B. This Court has jurisdiction over the Parties and subject matter of this Litigation. Venue is proper in this District. This Court has jurisdiction to implement and enforce the Decree and this Second Amendment.

C. The Court will retain jurisdiction over this Litigation for the duration of this Second Amendment for the purposes of entering of all orders, judgments and decrees that may be necessary to implement the relief provided in the Decree and this Second Amendment.

D. A material breach of any term of this Second Amendment by Sterling or the EEOC will be subject to Section XVII of the Decree and First Amendment, Dispute Resolution And Procedures For Enforcement Or Relief.

E. The Parties will not contest the validity of the Decree, the First Amendment or this Second Amendment, or the jurisdiction of the Court to enforce the Decree, the First Amendment or this Second Amendment and their terms.

VII. GENERAL PROVISIONS AND TERM OF THE DECREE

B. All provisions of this Second Amendment are effective immediately upon the date of entry of the Second Amendment by the Court (“Effective Date”).

C. For the purpose of allowing the Labor Economist to complete the statistical analyses required by Section XI(B) of the Decree, the provisions of the Decree that were extended by the First Amendment, will be extended by six (6) months from the date that Sterling retains the Labor Economist pursuant to this Second Amendment, except with respect to the obligations of the Employment Practices Expert as noted below. The Parties acknowledge that all provisions of the Decree that are not expressly extended under the First Amendment have expired on August 4, 2020 (the “Original Term”), and no further action by the Parties or the Court is necessary for those provisions.

D. The provisions of the First Amendment are herein incorporated and apply to the Second Amendment with equal force unless they are modified by the provisions below.

E. If, at the end of the Second Extended Term, any material dispute about implementation of or compliance with any then operative provisions of the Decree or this Second Amendment remains unresolved, the Second Extended Term may be extended by Court order upon an appropriate showing of the need for extension to resolve any material dispute. The Court will

retain jurisdiction of this matter solely for the purpose to enforce the Decree and this Second Amendment, until such time as all such disputes have been resolved.

F. During the Second Extended Term of the Decree, this Litigation will be administratively closed but will not be dismissed.

G. The Decree and this Second Amendment will expire at the end of the Second Amended Term, without further action by the Parties or the Court, unless the Term has been extended pursuant to this Section or by other order of the Court.

VIII. EMPLOYMENT PRACTICES EXPERT

This Section amends Section X of the First Amendment. The Parties agree that the Employment Practices Expert, Dr. Tippins, is relieved of her duties under the Decree. Within thirty (30) days of the Effective Date, Sterling shall report to the EEOC how it plans to or has already implemented the outstanding and revised recommendations issued by the Employment Practices Expert this year. If the Parties are in dispute regarding any of those recommendations, they will follow the dispute resolution procedure set forth in Section X(D) of the Decree.

IX. EQUAL EMPLOYMENT PROCEDURES FOR COMPENSATION

A. Analyses Regarding Compensation

This Section amends Section XI(B) of the Decree. The Labor Economist shall conduct statistical analyses of initial pay and merit increases for its Female Retail Sales Employees (as defined in the Decree), and for the period covered by the Decree and the First Amendment. For the avoidance of doubt, the Labor Economists' statistical analyses shall not analyze any documents, data, or information concerning Sterling's compensation practices after November 4, 2021, which is the original expiration date of the First Amendment. The Labor Economist's statistical analyses shall use scientifically recognized statistical techniques and a sufficient sample size of data to identify any statistically significant disparities based on gender in either

initial pay or merit increases that are adverse to Female Retail Sales Employees and caused by any practice or procedure that is not job-related or consistent with business necessary.

More specifically, the Labor Economist shall develop a multivariate regression model that reflects how initial pay decisions and merit increase decisions were made at Sterling during the studied period in terms of the relevant factors to include in the regression analysis as either control factors or to stratify the regression model(s), and will use appropriate statistical tests to determine whether a factor should be used as a control factor or to stratify the model. The potentially relevant factors that the Labor Economist should consider include, but are not limited to, brand, district, location, store, ERI (cost of living data), position, month hired, year hired, prior work experience, and performance. At EEOC's request, the Labor Economist will run a multivariate regression approach suggested by EEOC with controls for each brand, location, position, month hired, year hired, and employee's total sales for the first 12 months employed, and other possible identified performance measures for the hired employees. The Labor Economist shall use their independent judgment to determine which regression model(s) ultimately are appropriate.

To the extent that the Labor Economist finds statistically significant disparities in initial pay adverse to Female Retail Sales Employees, there shall be additional analyses conducted to assess whether any factors that may be causing such disparities are job related and consistent with business necessity, including but not limited to analyses assessing statistical correlation between such factor(s) and relevant performance measures such as employee's total sales for the first 12 months employed (appropriately normalized for hours worked and seasonality in jewelry sales), commissions earned, current and prior years' performance ratings, earnings from incentive programs, and other possible identified performance measures for the hired employees.

Sterling will compensate the Labor Economist and bear any costs necessary to the performance of the Labor Economist's duties under this Section XI(B). If it becomes necessary to replace the Labor Economist during the Second Extended Term due to death or disability, or other reasons, the Parties will select a replacement by mutual agreement. If the Parties cannot agree on a replacement, Fred Alvarez (or his replacement) will facilitate the selection of a replacement from submissions presented by the Parties.

B. Access To Information for the Labor Economist

Sterling shall provide the Labor Economist with reasonable access to information, data, proprietary system data and reports, including, but not limited to all the data and documents already provided to the Employment Practices Expert, as well as Sterling personnel necessary to perform his duties under this Second Amendment. Sterling shall ensure that the EEOC is copied on all such communications with the Labor Economist or is provided access to a copy promptly thereafter. The Parties shall cooperate in facilitating and attending any telephone conference or meeting the EEOC, Sterling, or the Labor Economist requests to discuss matters relevant to the Decree as amended by the First and Second Amendment.

C. Written Report by the Labor Economist

By no later than August 1, 2022, the Labor Economist will prepare a written report that summarizes the statistical analyses he conducted and the results of those analyses. This report and the results of the Labor Economist's analyses are Confidential Information pursuant to the Confidentiality Order entered in the Litigation, Docket No. 206. The EEOC shall strictly maintain the confidentiality of all such evaluations, recommendations, and reports to which it obtains access. Sterling will ensure that all such evaluations, recommendations, or reports shall be communicated promptly to Sterling senior management officials with responsibility and authority over the matters that are the subject of the evaluations, recommendations, or reports.

If the Labor Economist's report identifies any statistically and practically significant pay disparities that negatively impact Female Retail Sales Employees and cannot be explained by legitimate business justifications, the Parties will meet and confer to discuss an appropriate remedy. If the parties cannot resolve a dispute regarding the results of the Labor Economist's analyses or how to address those results, the Parties may appeal to Fred Alvarez (or his replacement), who shall decide the dispute. Any party that disagrees with Fred Alvarez's decision may appeal it to the District Court, which shall review such determination under an abuse of discretion standard.

X. RECOGNITION OF EXPIRATION OF VARIOUS PROVISIONS OF THE DECREE

The Following sections of the Decree have now expired and no further action is required by the Parties or the Court regarding these sections:

- B. Section XI(A) regarding job descriptions for retail sales employees;
- C. Section XII of the Decree regarding promotion procedures;
- D. Sections XIII(A), (B), (C), (D), (G), and (H) regarding the Compliance Officer;
- E. Section XIV regarding training;
- F. Section XV regarding internal policies;
- G. Sections XVI(A)(2), (3), (5), (8), (9), and (10) regarding records to be kept;
- H. Section XVI(D) regarding reporting; and
- I. Section XVIII regarding posting of notice.

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

/s/ Jeffrey Burstein

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SO ORDERED, ADJUDGED, AND DECREED this ____ day of _____, ____.

United States District Judge Richard J. Arcara