

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
ENTERED

OCT 03 2003

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

MERCANTILE THRIFT STORE, INC.,  
d/b/a VALUE VILLAGE,

Defendant.

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CIVIL ACTION NO. H-02-1348

Michael N. Milby, Clerk of Court

AGREED ORDER

This Agreed Order ("Agreed Order") is entered into this 9<sup>th</sup> day of September, 2003 by and between the Equal Employment Opportunity Commission ("EEOC" or "Plaintiff"), both individually and on behalf of the stipulated Settlement Class as defined herein; and Mercantile Thrift Stores, Inc., d/b/a Value Village, including all of its past, present and future officers, directors, shareholders, representatives, affiliates, agents, employees, attorneys, successors, assigns and any of its or their heirs, executors, administrators, subsidiaries, divisions, parent companies, partnerships, limited partnerships, partners, predecessors, trustees, employees, representatives and attorneys; (collectively referred to herein as "Mercantile").

WHEREAS, Plaintiff, through its counsel, has filed Civil Action H-02-1348, styled *Equal Employment Opportunity Commission v. Mercantile Thrift Store, Inc., d/b/a Value Village* (the "Action") based upon EEOC Charges 330A00051, 330972349, and 330A11402, alleging that Mercantile discriminated against African-Americans in hiring and promotions, unlawfully retaliated against Yolanda Foster, and failed to comply with the applicable record-keeping

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regulations set forth in Section 709(c) of Title VII, 42 U.S.C. § 2000-8(c) and in retaliation, all in violation of Title VII of the Civil Rights Act of 1964;

WHEREAS, Defendant has denied Plaintiff's allegations in the Action; and;

WHEREAS, Plaintiff, through its counsel, has conducted extensive investigation into the facts of this case through investigations in Charges 330A00051, 330972349, and 330A11402 and has conducted substantial discovery in the Action;

WHEREAS, the parties, solely for purposes of settlement, have agreed to stipulate to the membership of a Settlement Class (referred to herein as either "Class Members" or the "Settlement Class") consisting of those names identified by the EEOC, as identified on Attachment A. Prior to the Court's approval of the Agreed Order, the EEOC may identify and add additional class members by providing notice and a revised Attachment A to Defendant.

WHEREAS, Plaintiff has concluded, after carefully considering the facts and applicable law, that it would be in the best interest of the Settlement Class to enter into this Agreed Order to avoid the uncertainties of continued litigation and ensure a benefit to the members of the Settlement Class;

WHEREAS, this Agreed Order embodies the settlement of the parties as the result of arm's length negotiations between Plaintiff's counsel and counsel for Defendant, and Plaintiff's Counsel has concluded that this Settlement is fair, reasonable and adequate and in the best interests of the Class Members Plaintiff represents;

WHEREAS, Defendant has concluded that it is in its best interests to enter into this Settlement to eliminate the expense, inconvenience, burden and uncertainties of continued litigation and to avoid any further distractions and controversies related to the Action and the allegations therein;

WHEREAS, this Agreed Order shall not be deemed or construed as an admission or evidence of any violation of law or any liability or wrongdoing by the Defendant, who expressly denies any alleged wrongdoing; and

WHEREAS, this Agreed Order serves to settle and resolve all claims and potential claims by the Plaintiff on behalf of the Class Members relating to any alleged race discrimination against African-American applicants or employees with respect to promotions, hiring, termination, retaliation and any other personnel practices or decisions up to the date of this Agreed Order. The Agreed Order fully and finally resolves any and all claims and potential claims by Plaintiff, and by the Class Members against the Defendants for any and all relief, including back pay, front pay, compensatory damages, punitive damages, injunctive, equitable and/or declaratory relief, and attorneys' fees and costs.

NOW, THEREFORE, IT IS AGREED by and among the undersigned that, subject to the terms herein, all claims against Defendant in the Action shall be settled and compromised on the following terms and conditions:

1. Effective Date of Settlement. This Agreed Order shall become final on the date it is entered by the Court (the "Effective Date").

2. Settlement Class. Solely for purposes of this Agreed Order and its subsequent implementation, Plaintiffs and Defendants agree that the settlement class consists of those Class Members listed by the EEOC on the document which shall be presented to the Court for Approval on the Effective Date.

3. Notice. Plaintiff will provide notice of the Settlement to the Settlement Class by mailing a letter by first class mail, postage pre-paid, to the last known address of each Class Member. Plaintiff will make reasonable efforts to locate Class Members and to obtain current

addresses for Class Members whose Notices are returned undeliverable and to re-send such Notices, and will notify Mercantile of the most reliable address for all Class Members.

4. Programmatic Relief.

(a) Mercantile agrees that it will not discourage anyone, including African-American applicants, from applying for employment at its Value Village stores, will not discard applications submitted by African-Americans until at least one year after the applications have been submitted, or otherwise discriminate against African-American applicants for positions at Mercantile's Value Village stores.

(b) Mercantile agrees that it will not discriminate in any manner against any individual because he or she has made a charge, testified, assisted, sought and/or received compensation, or participated in any manner in the Commission's investigations or in the proceedings in this lawsuit.

(c) Within thirty (30) days after execution of this Agreed Order, a non-discrimination notice will be posted at each of Mercantile's seven Value Village stores in the Houston area for a period of two (2) years after the entry of this Agreed Order. A copy of this notice is attached hereto as Exhibit "B." The notice will be posted in a location that is conspicuous and accessible to all employees.

(d) Within one hundred twenty (120) days after dismissal of this Action, all Value Village store managers, assistant managers, as well as William Rivera, Esperanza Vilano and Kenneth Smith will receive training on federal anti-discrimination laws, including Title VII. The training shall include specific instruction on avoiding unlawful discrimination based on race. The Houston District Office of the EEOC may provide a training presentation outline for such training, at its option. Within one hundred fifty (150) days after the completion of the training, the EEOC shall be provided with a statement listing the date on which the training was

completed; the names of the attendees; their job titles; and all topics in the training presentation outline that were covered. From time to time, all management employees will receive training concerning federal anti-discrimination laws and upon appointment to a manager position, each new manager shall receive training concerning federal anti-discrimination laws by Mercantile.

(e) A copy of this Agreed Order, excluding paragraph 6(b), shall be given to all current Managers of Value Village stores in the Houston area. These Store Managers shall sign a form acknowledging receipt of a copy of this Agreed Order. A copy of each acknowledgment of receipt form shall be sent to the Commission, within twenty (20) days of execution of the Agreed Order, at the following address: Equal Employment Opportunity Commission, Attn: Timothy M. Bowne, 1919 Smith Street, 7th floor, Houston, Texas 77002.

(f) Mercantile shall comply with the applicable record-keeping regulations set forth in Section 709(c) of Title VII, 42 U.S.C. § 2000e-8(c), to make and preserve records relevant to the determination of whether unlawful employment practices have been or are being committed. During the term of this Agreed Order, Mercantile shall retain all employment application and “pre-applications” for positions at its Value Village stores.

(g) Mercantile shall require all potential applicants to mail completed pre-applications to its corporate office on Milwee Drive, and will provide self-addressed, stamped envelopes with the pre-applications, to any person seeking employment at any store. Each application shall specify, by store number, which store the applicant seeks employment. The corporate office shall maintain a log of applicants for each store. All initial contact shall be made by the corporate office, and all hiring decisions shall be supervised and approved by the City Manager or the Assistant City Manager.

(h) Mercantile shall prepare, file and maintain copies of EEO-1 reports, pursuant to applicable regulations. See 29 C.F.R. § 1602.7 et seq.

(i) Mercantile agrees to use a variety of mechanisms to recruit African-American applicants who are qualified for its entry-level workforce at its Value Village stores. These efforts could include advertising job openings for entry level positions in Houston area Greensheet newspapers or in newspapers that specialize in service Houston's African American population, such as the Houston Defender, the Forward Times, African-American News and Issues or the Houston Sun. The EEOC may, at its option, make suggestions to Mercantile concerning recruitment of African Americans.

5. Preferential Hiring. Beginning on the Effective Date, as entry level positions become available in Mercantile Thrift's stores, Mercantile shall make one written offer of employment to each of the Class Members on Attachment A, with a copy mailed to the EEOC. The offer of employment shall be for an opening at the Value Village store to which the Class Member originally applied. The Class Member shall have fourteen (14) days from the date of the written offer is mailed to accept the offer. If any individual chooses not to accept the offer, or fails to respond, Mercantile will have no preferential hiring obligation toward that Class member, but the individual is eligible to reapply at any time.

6. Monetary Relief. In full and complete settlement and satisfaction of all hiring discrimination claims that are being released, including without limitation any and all such claims or potential obligations under 42 U.S.C. §§ 1981, 1988 and 2000e-(5)(k), and any other obligations Defendant had or might have had to pay for such released claims including, but not limited to, the cost of the Notice, administering the payment of claims, and in consideration for the Release and the other benefits of this Agreed Order, Mercantile agrees to pay in settlement a total of \$100,000.00 in cash ("Amount"), to an escrow fund at Metro Bank (the "Settlement Fund"). Within seven (7) days after the Effective Date, Mercantile shall pay the Amount to the Settlement Fund, to be used as described herein. The Amount is the sole payment Mercantile

shall be required to make to pay. The Settlement Fund shall be used to satisfy: (i) monetary claims of Class Members; (ii) monetary claims of Yolanda Foster, Irene Johnson and Derrick Major; and (iii) any and all other obligations Defendant might otherwise have in connection with payments or distributions from the Settlement Fund. The parties agree to the following stipulations regarding the Settlement Fund:

(a) Mercantile shall act as Administrator of the Fund, and shall withhold and/or pay, as the case may be, all applicable federal, state and local income and employment taxes (including the employer's share of employment taxes) from any payment or distribution to the appropriate tax authorities and shall file the appropriate returns in connection with such payments (including the return for the employer's share of employment taxes). Any Class Member receiving a distribution from the Settlement Fund will be responsible for any and all personal taxes based upon his or her distribution. The Administrator (Mercantile) may retain tax counsel on behalf of the Settlement Fund to assist in preparation of tax documents, including reporting forms and tax returns. Tax counsel's fees and expenses shall be paid by Mercantile. A portion of the Settlement Fund may be reserved pending resolution of tax issues. The parties agree that all of the amounts paid pursuant to this Agreed Order to the Class Members are taxable under the Internal Revenue Code and the regulations promulgated thereunder, as well as the applicable tax laws of the various states and territories of the United States. The Administrator, on behalf of the Settlement Fund, will issue all appropriate tax reports (e.g., IRS Forms 1099) to each individual receiving money from the Settlement Fund for all or a portion of the amount received and will withhold taxes for lump sum distributions, if required by applicable tax laws and regulations. No representations are made by or to any party to this Agreed Order, or any Class Member as to the tax treatment or tax consequences of the monetary payments pursuant to this Agreed Order. Each person receiving payment of money pursuant to this Agreed

Order shall be responsible for his or her own tax liability for payments made herein and the allocations specified herein, including any related penalties, interest or taxes. If, however, the Defendant shall be required to pay any income taxes, interest or penalties (other than the employer's share of payroll taxes) assessed against a Class Member as a result of a failure by the Class Member to pay applicable taxes on proceeds which he or she receives as a result of this Agreed Order, then the Defendant shall be entitled to prompt reimbursement from the nonpaying Class Member for the full amount of the taxes, interest, or penalties.

(b) The Parties agree that the Settlement Fund will pay \$27,500.00, less applicable withholding, to Yolanda Foster, individually, in settlement of her claims against Mercantile and for assistance provided to Plaintiff in the course of the litigation. The Parties agree that the Settlement Fund will pay \$2,500.00 to Irene Johnson, individually, in settlement of her claims against Mercantile and for assistance provided to Plaintiff in the course of the litigation. The Parties agree that the Settlement Fund will pay \$2,500.00 to Derrick Major, individually, in settlement of his claims against Mercantile and for assistance provided to Plaintiff in the course of the litigation. Mercantile shall make these payments to Foster, Johnson and Major within ten (10) calendar days of the Effective Date. Foster, Johnson and Major will sign Confidential Releases, in the form provided in Attachment C.

(c) Each Class Member shall receive a share of the fund, in share amounts which the EEOC will specify in Attachment A.

(d) Any member of the Settlement Class who accepts any payment made in accordance with this Agreed Order will have, by acceptance of such payment, released Defendant from any claims of employment discrimination, and waived any liabilities or damages relating to a claim of employment discrimination arising before the date of the Agreed Order. Endorsing, cashing or depositing a check representing a payment made in accordance with this



Agreed Order shall constitute full accord and satisfaction, and release of all claims as provided in paragraph 8.

(e) Following all distributions to Class Members who have been located, on December 30, 2003, the Administrator will distribute any and all remaining funds equally among all Class Members listed on Attachment A who have cashed or deposited a distribution pursuant to this Agreed Order.

7. Reporting. At six-month intervals from the Effective Date until June 30, 2005, reports shall be prepared by Mercantile and sent to the Commission. Each report will provide required information concerning certain activities that occurred during the previous six month period. The starting date for reporting purposes shall be the last day of the month following the Effective Date. At six month intervals thereafter, the Company shall send the Commission a report which provides the following information:

- (a) Copies of the applicant logs which include dates of hire, if applicable;
- (b) Mercantile's efforts to recruit African-American employees and any plans for future recruitment and hiring initiatives;
- (c) The names and races of all store managers and assistant managers;
- (d) The report will list all disbursements made to Class Members during the reporting period and indicate with particulars any instance where the check was not cashed or deposited by any particular Class Member.

(e) Each report should be sent to the Commission within two weeks after the end of the reporting period.

8. Release, Dismissal and Final Judgment. Plaintiff knowingly and voluntarily releases, acquits, and forever discharges Mercantile, its affiliate companies, their respective predecessors, successors and assigns, and the respective officers, shareholders, employees, directors, attorneys, agents, representatives, advisors, insurers and partners of each of the

foregoing (collectively, the “Mercantile Parties”) from any and all claims and/or causes of action of whatever kind or character, which have accrued or may accrue, whether known or unknown, and which are based on facts occurring prior to the date this Action was filed, including Section 1981 of the Civil Rights Act of 1866, the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Civil Rights Act of 1991, and the Equal Pay Act, as amended. This release also includes, but is not limited to, those claims which Plaintiff asserted, or could have asserted, against the Mercantile Parties arising out of or relating in any way to Mercantile’s employment practices and/or which Plaintiff asserted, or could have asserted, against the Mercantile Parties arising out of or relating in any way to any claims or causes of action under the Lawsuit, including any claims for compensatory, punitive or other damages.

The Court’s approval of this Agreed Order will dismiss the Action and all claims in the Action with prejudice, and constitute the entry of a final judgment, without cost to any party except as expressly provided herein.

9. No Representations. This Agreed Order is entered into with full knowledge of any and all rights that the parties may have by reason of the litigation. Each party has received independent legal advice, has conducted such investigation as each of them and their counsel thought appropriate, and has consulted with such other independent advisors as each of them and their counsel deemed appropriate regarding the Agreed Order and their rights and asserted rights in connection therewith. The parties are not relying upon any representations or statements made by any other party, or such other party's employees, agents, representatives or attorneys, regarding this Agreed Order or its preparation except to the extent such representations are expressly incorporated herein. None of the parties are relying upon a legal duty, if one exists, on the part of any other party (or such other party's employees, agents, representatives or attorneys) to disclose any information in connection with the execution of this Agreed Order or its preparation, it being expressly understood that no party shall ever assert any failure to disclose information on the part of any other party as a ground for challenging this Agreed Order.

10. Dispute Resolution for Alleged Violations of this Agreed Order. Prior to instituting any proceedings to enforce this Agreed Order, the parties shall engage in dispute resolution as follows:

(a) Counsel for a party shall provide written notice to the other party's counsel that specifically sets forth the way in which the party believes that the other party is in violation of the Agreed Order and the evidence in support thereof. Plaintiff's counsel and Defendant's counsel shall hold a meeting within thirty (30) days of receipt of such written notice in order to discuss and negotiate issues raised by the alleged violation. The parties will in good faith attempt to resolve all enforcement issues through discussions and negotiations.

(b) If the parties are unable to resolve an issue raised in a written notice through discussion and negotiations, the parties will submit any unresolved issues to mediation within thirty (30) days of the date that a discussion is held on the issue. The mediator will be selected jointly by the parties, and the mediator's fees will be paid by Mercantile.

(c) In the event mediation fails, any claim of noncompliance with this Agreed Order may be resolved by petitioning this Court for enforcement of this Order, upon adequate notice of any hearing to each party to such claim and to each party's attorney of record. No party or its counsel shall move for a hearing on noncompliance without having first satisfied the mediation provision set forth above.


11. General Provisions. The terms of this Agreed Order are lawful and remedial in nature. The terms of this Agreed Order are not to be construed to violate state or federal law. The Plaintiff believes this Agreed Order is lawful, fair and reasonable. If any term in this Agreed Order is found to be in violation of the law, the offending portion of the Agreed Order shall be stricken and the remainder of the Agreed Order shall remain in force. This Agreed Order and any proceedings taken hereunder shall not in any event be construed nor be deemed to be a concession or admission by or on the part of Defendant of any liability or wrongdoing or evidence of the truth of any allegation made against Defendant in any court or legal proceeding.

Defendant at all times denied and continues to deny the material allegations of the Action. Defendant does not admit to any discriminatory employment practices or violations of state or federal statutes or regulations, but rather expressly denies any such discrimination or violations. Defendant's voluntary agreement to the Agreed Order shall not be deemed as an admission of liability, and none of the parties to this Action shall be deemed a prevailing party. There has been no judicial determination in the Action that Defendant has violated any law, order or regulation of the United States or of any State regarding their employment practices or policies. The parties shall bear their own costs and attorney's fees.

12. Non-Admissibility. Neither the Agreed Order nor anything in the Agreed Order shall be deemed admissible in any forum or proceeding as evidence of an admission by Defendant that it has engaged in any practice, act or omission in violation of Title VII, or any other federal or state law or regulation. This Agreed Order shall not be admissible as evidence in any forum for any reason, other than in an action to enforce its terms. In the event this Agreed Order is not approved by the Court, this entire Agreed Order shall become null and void and of no force and effect.

13. No Modifications. This Agreed Order may not be modified or amended, or any of its terms waived, except by consent of the parties, and upon an agreed written motion. This Agreed Order constitutes the complete and total agreement made between Plaintiff and Defendant and each party represents to the other that it is not relying on any other agreements or oral representations not fully expressed in this Agreed Order. No other agreements between the parties shall bind the parties, and all such prior agreements are superseded by this Agreed Order.

APPROVED this 1<sup>st</sup> day of October, 2003.

  
VANESSA D. GILMORE  
UNITED STATES DISTRICT JUDGE

AGREED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

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FOR AND ON BEHALF OF PLAINTIFF,  
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

AGREED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

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SANDY S. SATULLO, FOR AND ON  
BEHALF OF DEFENDANT,  
MERCANTILE THRIFT STORE, INC.  
d/b/a VALUE VILLAGE

## **Attachment A**

### **Class Members**

Ardison, Jamail  
Anderson, Mable  
Brimzy, Linda  
Coleman, Raymond  
Davis, Frances  
Davis, Linda  
Fields, Margaret T.  
Gaines, Natashay  
Gaston, Jacqueline  
Gordon, Freddie  
Gray, Geraldine  
Hardin, Sandra  
Hill, Ruby  
Jackson, Shawana  
Lewis, Alice  
McKinney, Paul  
Monroe, Verdell  
Perkins, Cindy  
Posey, LaToya  
Willis, Debra

## **Attachment B**

**NOTICE**  
**PURSUANT TO TITLE VII OF THE CIVIL RIGHTS ACT OF 1964,**  
**THE CIVIL RIGHTS ACT OF 1991**  
**AND THE AGE DISCRIMINATION IN EMPLOYMENT ACT**

- (1) With respect to hiring, compensation, discharge or any terms, conditions, or privileges of employment, Federal law requires that employers must not discriminate against employees or applicants for employment because of an individual's sex, religion, race, color, national origin, age or disability.
- (2) Mercantile Thrift Store, Inc./Value Village supports and will comply with such Federal law in all respects, and will not take any adverse action against individuals because of their race, religious practices or beliefs, sex, color, national origin, age or disability with respect to hiring, compensation, discharge or the terms, conditions or privileges of employment.
- (3) Mercantile Thrift Store, Inc./Value Village will not engage in any employment practices that have the effect of creating or tolerating a hostile environment for employees because of their race, religious beliefs, religious practices, sex, color, national origin, age or disability. Mercantile Thrift Store, Inc./Value Village will promptly investigate any claims of unlawful harassment, and will take prompt and appropriate action in response to any well-founded claim.
- (4) Employees who believe they have been subjected to illegal employment discrimination can contact Mercantile Thrift Store, (713) 685-5406, or they can contact the Equal Employment Opportunity Commission ("EEOC") at 1919 Smith Street, Houston, Texas 77002 (713) 209-3372.

SIGNED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2003.

\_\_\_\_\_  
Signature of Representative of Mercantile  
Thrift Store, Inc./Value Village

\_\_\_\_\_  
Printed Name and Title

**THIS NOTICE WILL REMAIN POSTED FOR TWO YEARS FROM  
THE DATE OF SIGNATURE.**