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13

14 **UNITED STATES DISTRICT COURT**

15 **CENTRAL DISTRICT OF CALIFORNIA**

16
17 CARLOS QUEVEDO, individually } Case No. CV09-1522 GAF
18 and on behalf of other persons } (MANx)
19 similarly situated, }
20 Plaintiffs, } Judge: Honorable Gary A. Feess
21 vs. }
22 MACY'S, INC.; MACY'S } **DECLARATION OF ROBERT**
23 DEPARTMENT STORES, INC. and } **NOETH IN SUPPORT OF**
24 DOES 1 through 10 inclusive, } **DEFENDANT'S MOTION TO**
25 Defendants. } **COMPEL ARBITRATION AND**
26 } **STAY CIVIL PROCEEDINGS**
27
28

DECLARATION OF ROBERT NOETH

I, Robert Noeth, do hereby declare:

1. I submit this declaration in support of Macy's, Inc.'s ("Macy's") Motion to Compel Arbitration and Stay Civil Proceedings. I have personal knowledge of the facts set forth herein, which are known by me to be true and correct, and, if called as a witness, I could and would competently testify thereto.

2. I am employed as Vice President of Employee Relations, Solutions InSTORE, for Macy's, Inc., which was formerly known as Federated Department Stores, Inc. Macy's, Inc. is the parent company of Macy's Retail Holdings, Inc. ("MRHI"). MRHI is a wholly-owned subsidiary of Macy's and operates department stores in the United States that are known as "Macy's."

3. I became Vice President of Employee Relations, Solutions InSTORE in March 2009. In my capacity as Vice President, I am responsible for the management and administration of Macy's Solutions InSTORE Early Dispute Resolution Program. I supervise the Solutions InSTORE Program and the employees whose sole job is to administer the Solutions InSTORE Program. I also am familiar with the history of the Solutions InSTORE Program before I became responsible for it.

The Solutions InSTORE Program

4. In 2003, at great effort and expense, Macy's, then known as Federated Department Stores, Inc., developed and implemented Solutions InSTORE, which is a comprehensive early dispute resolution program. The purpose of the Solutions InSTORE Program is to surface and resolve disputes as early and fairly as possible.

5. To support the Solutions InSTORE Program, Macy's established an Office of Solutions InSTORE within our Employee Relations

1 Department in Cincinnati, Ohio.

2 6. Currently, the Office of Solutions InSTORE is staffed with
 3 employees who have no responsibilities other than to administer the
 4 Solutions InSTORE Program. This staff reports to me.

5 7. The Solutions InSTORE Program was first rolled out in fall
 6 2003, with an effective date of January 1, 2004 to all then-current, non-
 7 unionized employees of all Macy's-related companies, including those
 8 employees at Macy's stores. The Solutions InSTORE Program was
 9 subsequently revised and the current version of the Solutions InSTORE
 10 Program was implemented effective January 1, 2007. This declaration will
 11 discuss the current version of the Solutions InSTORE Program, as effective
 12 January 1, 2007, since that is the relevant Solutions InSTORE Program for
 13 this case.

14 8. The Solutions InSTORE Program contains four separate steps
 15 for resolution of work-related problems. By accepting and continuing
 16 employment with Macy's, all employees agree to be covered by Steps 1
 17 through 4 of the Solutions InSTORE Program. The final step is binding
 18 arbitration – unless the employee chooses not to participate in the arbitration
 19 portion of the Solutions InSTORE Program. The four steps are explained in
 20 depth in the Solutions InSTORE Plan Document. A true and correct copy of
 21 the Plan Document for the current version of the Solutions InSTORE
 22 Program is attached as **Exhibit A**.

23 9. A summary of the Solutions InSTORE Program's four steps are
 24 as follows:

25 **Step 1:** The Solutions InSTORE Program begins with "Open Door."
 26 Employees are encouraged to bring their concerns to a supervisor or
 27 local management team member (e.g., Store or Facility Manager,
 28 Human Resources Representative) for discussion and resolution.

1 **Step 2:** If the employee is not satisfied with the Step 1 decision, he
2 or she may proceed to Step 2. Here, the employee submits a written
3 request for review to the Office of the Senior Human Resources
4 executive of the Macy's or Macy's region/division where he or she
5 works. A human resources executive not involved in the underlying
6 decision conducts an investigation.

7 **Step 3:** If the employee is not satisfied with the Step 2 decision, and
8 the claim involves legally protected rights, the employee may proceed
9 to Step 3 and the request is directed to the Office of Solutions
10 InSTORE in Cincinnati, Ohio. If the dispute involves a claim(s)
11 related to layoffs, harassment, discrimination, reduction in force, or
12 other alleged statutory violations, a trained professional investigates it
13 thoroughly and objectively. Other disputes, including disputes over
14 termination and final warnings, may be submitted to a Peer Review
15 Panel at the employee's option. In either case, the dispute is decided
16 by the Peer Review Panel or the Office of Solutions InSTORE and
17 not by local/divisional management.

18 **Step 4:** The fourth and final step of the Solutions InSTORE Program
19 is binding arbitration. While all employees are covered by Step 4
20 when hired, employees are given the opportunity to decline Step 4 -
21 Arbitration by completing and mailing a form to the Office of
22 Solutions InSTORE in Ohio. While Steps 1 through 3 are available to
23 all employees, including those who opt out of Step 4 - Arbitration of
24 the Solutions InSTORE Program, arbitration is a voluntary choice for
25 the employee.

26 10. Employees hired after the implementation of the Solutions
27 InSTORE Program are given 30 days from their date of hire to opt out of
28

1 Step 4 - Arbitration.

2 11. Under the terms of the Solutions InSTORE Program, Macy's is
3 bound by the decisions made at each step of the Solutions InSTORE
4 Program – even those not in Macy's favor. In contrast, the employee is free
5 to appeal each decision to the next step of the Solutions InSTORE Program,
6 up through Step 4 - Arbitration if elected. The employee drives the process.

7 12. An employee's decision to accept or opt out of binding
8 arbitration has no effect on his or her employment. Macy's and each of its
9 affiliated companies strictly prohibit retaliation against employees who use,
10 or opt out of, the Solutions InSTORE Program. Such retaliation would
11 seriously undermine the Solutions InSTORE Program's core purpose, which
12 is to surface and resolve disputes quickly and fairly. The company
13 communicates its no retaliation policy to its employees through the
14 Solutions InSTORE Program information given to employees.

15 13. The employee's choice whether to opt out of Step 4 -
16 Arbitration is confidential. Macy's intentionally designed the opt-out
17 procedure so that local management is unaware of an employee's election.
18 All employees across the country are asked to mail the opt-out election
19 forms to an address in Mason, Ohio so that no one at the Macy's or
20 Bloomingdale's stores or other work locations has access to individual
21 election information, including returned forms. Only a select few company
22 employees have access to the database of employee elections. Individual
23 elections are accessed only when that information becomes relevant to
24 handling an employee's claim.

25 14. If an employee elects Step 4 - Arbitration, the agreement
26 covers most employment-related claims asserted either by the employee or
27 by Macy's, whether the claims arise under federal, state, or local law.
28 Certain claims are not subject to arbitration, such as those brought under an

1 employee pension or benefit plan or those under the National Labor
2 Relations Act. Additionally, the agreement prevents an employee from
3 acting as a representative member of a group and seeking relief on a
4 representative basis. If the employee elects to be covered by arbitration,
5 Macy's in turn has to resolve any employment-related disputes with the
6 employee by arbitration as well.

7 15. Other aspects of Step 4 - Arbitration of the Solutions InSTORE
8 Program include:

- 9 (a) the employee bears minimal costs equal to one day's wage,
10 not to exceed a maximum of \$125 for a filing fee, and may
11 pay nothing if the arbitrator so orders;
- 12 (b) Macy's will have an attorney present at the arbitration *only*
13 *if* the employee decides to have an attorney present at the
14 arbitration;
- 15 (c) Macy's will reimburse the employee's legal fees up to
16 \$2,500 each year (calculated on a continuously rolling 12-
17 month period), and if the employee elects not to be
18 represented by counsel, Macy's will reimburse the employee
19 for incidental costs up to \$500 (also calculated on a rolling
20 12-month period);
- 21 (d) discovery is permitted and includes voluntary document
22 disclosures by both parties, three depositions per side,
23 twenty interrogatories (each of which may include a
24 document request), and a provision allowing the arbitrator
25 to award more discovery if the relevant standard is met;
- 26 (e) the arbitrator, jointly selected by both Macy's and the
27 employee, has the same power and authority as a judge to
28 grant any ultimate relief under applicable law, including

attorney's fees and costs; and the applicable statutes of limitation are the same as those that would apply in court;

(f) the arbitration is administered under the American Arbitration Association's Employment Arbitration Rules and Mediation Procedures, with any differences being noted in the Plan Document; and

(g) the Solutions InSTORE Program also requires an arbitrator to submit a written decision specifying any remedies found to be appropriate. The arbitrator may also include findings of fact and conclusions of law in any decision.

Information Campaign for New Hires

16. By consulting the PeopleSoft human resources computer system, I learned that Macy's employed Carlos Quevedo ("Mr. Quevedo") from July 16, 2008 until October 9, 2008 at the Macy's store in Mission Viejo, California.

17. Macy's and each of its affiliated companies take multiple measures to ensure their newly hired employees (i.e., those hired after the Solutions InSTORE Program was initially rolled out, hereafter "new hires") are aware of the Solutions InSTORE Program details. For example, each of the following documents serves to educate the employee about the Solutions InSTORE Program:

- the Solutions InSTORE Plan Document (**Exhibit A**);
- the Solutions InSTORE Brochure (**Exhibit B**);
- the Solutions InSTORE opt-out Election Form (**Exhibit C**);
- the Solutions InSTORE Acknowledgement Form (**Exhibit D**);
- the Solutions InSTORE website;
- the Solutions InSTORE poster (**Exhibit E**); and
- the new hire orientation video (**Exhibit F**).

1 18. Macy's created a descriptive and explanatory Brochure
 2 regarding the Solutions InSTORE Program for dissemination to all new
 3 hires of Macy's and its various regions/divisions. This Brochure details the
 4 Solutions InSTORE Program. The Brochure uses both graphics (such as
 5 charts and tables) and multiple pages of text to explain each step of the
 6 Solutions InSTORE Program in detail. A true and correct copy of the
 7 Brochure used for the 2007 Solutions InSTORE Program is attached as
 8 **Exhibit B.**

9 19. The Solutions InSTORE Brochure summarizes certain
 10 provisions from the Plan Document. Included in the back of the Brochure is
 11 a complete copy of the Plan Document. The Brochure emphasizes, among
 12 other things, that the arbitration process is binding, covers any dispute about
 13 the employee's employment, and is a waiver of the right to a civil action and
 14 jury trial. The Brochure explains that while employees are bound by all four
 15 steps of the Solutions InSTORE Program, including Step 4 - Arbitration, the
 16 employee has an opportunity to opt out of Step 4. Thus, the employee has a
 17 choice about whether to be covered by Step 4 - Arbitration. *See Exhibit B.*

18 20. If a new hire wishes to opt out of Step 4 - Arbitration, all he or
 19 she has to do is complete an opt out Election Form and mail it back to the
 20 Office of Solutions InSTORE in Ohio. A true and correct copy of the opt-
 21 out Election Form is attached as **Exhibit C.**

22 21. An Election Form is stapled in the middle of the Solutions
 23 InSTORE Brochure. That Form also notifies the employee of his or her right
 24 to opt out of Step 4 - Arbitration. The Form explains that in order to opt out
 25 the employee must complete the Election Form and mail it back to the
 26 Office of Solutions InSTORE in Ohio. *See Exhibit C.*

27 22. Upon receipt of the Solutions InSTORE Brochure, the newly
 28 hired employee is required to physically or electronically sign a "Solutions

1 InSTORE New Hire Acknowledgement" form. By signing, the employee
 2 acknowledges that he or she has received the Brochure, understands that he
 3 or she has 30 days to decide whether to opt out of Step 4 - Arbitration, and
 4 can obtain further information about the program from a variety of sources,
 5 such as the Solutions InSTORE website. In situations such as Mr.
 6 Quevedo's, where an employee signs the acknowledgement electronically,
 7 the employee must enter his or her own social security number, date of
 8 birth, and zip code. A true and correct copy of Mr. Quevedo's New Hire
 9 Acknowledgment and confirmation of his electronic signature showing he
 10 received information about the Solutions InSTORE Program are attached as

11 **Exhibit D.**

12 23. The Office of Solutions InSTORE also created a website at
 13 www.employeeconnection.net/solutionsinstore to provide additional
 14 information to employees about the Solutions InSTORE Program. Similar
 15 to the Brochure, the Solutions InSTORE website uses both graphics and text
 16 to explain each step of the Solutions InSTORE Program in detail. The
 17 website also provides employees with access to the entire Solutions
 18 InSTORE Plan Document.

19 24. The Office of Solutions InSTORE also gave each Macy's
 20 region/division copies of posters that explain the Solutions InSTORE
 21 Program's 4-step process. The posters are for the stores to display in an area
 22 frequented by employees. A true and correct (although not to scale) copy of
 23 the poster provided to the regions/divisions is attached as **Exhibit E.**

24 25. Also, as part of a new employee's introduction to the company,
 25 Macy's requires that the Solutions InSTORE Program be covered as part of
 26 the orientation process. To that end, the Office of Solutions InSTORE
 27 provided each region/division with a Solutions InSTORE new hire
 28 informational video. Each store was directed to show the video to all

1 employees during the new hire orientation. A true and correct copy of the
2 video transcript is attached as **Exhibit F**.

3 **Processing Election Forms**

4 26. The Office of Solutions InSTORE has regular mail collection
5 procedures designed to ensure that all opt out Election Forms mailed to the
6 Ohio address as instructed are recorded and accounted for. Macy's Credit
7 and Customer Service ("MCCS"), a division of Macy's, Inc., receives the
8 Election Forms, opens them and date-stamps them. MCCS loads all the
9 Election Forms into the PeopleSoft database, a database regularly used by
10 the Office of Solutions InSTORE to record the opt-out status. The electronic
11 information on the PeopleSoft database is maintained in the ordinary course
12 of business and is accessed and used regularly by the Office of Solutions
13 InSTORE in implementing and enforcing the Solutions InSTORE Program.

14 27. The PeopleSoft Human Resource System is a software database
15 that includes employment information such as an employee's identification
16 number, address, job code, title, location, and other items. Macy's and its
17 regions/divisions customarily rely on the PeopleSoft Human Resource
18 System. Access to the area of the PeopleSoft Human Resource System in
19 which the employee's election is recorded is limited to viewing only by the
20 staff of the Office of Solutions InSTORE and to a very limited number of
21 individuals responsible for data input and system maintenance.

22 28. I personally reviewed this database to determine whether Mr.
23 Quevedo returned an Election Form. According to the database, he did not
24 return an Election Form after commencing employment in July 2008.

25 29. MCCS sends the Election Forms to the Office of Solutions
26 InSTORE where they are stored in file cabinets, organized by social security
27 number of the opting out employees. After personally reviewing the
28

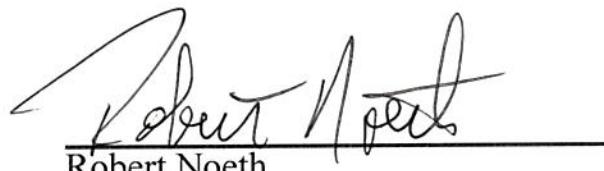
1 appropriate areas of the correct file cabinet (based on Mr. Quevedo's social
2 security number), there was no Election Form returned by Mr. Quevedo.

3 **Mr. Quevedo Never Contacted the Office of Solutions InSTORE**

4 30. The Office of Solutions InSTORE maintains a toll-free phone
5 number for employees to use if they have any questions concerning the
6 Solutions InSTORE Program. In addition, all employee contacts with the
7 Office of Solutions InSTORE, whether by phone, voice mail, e-mail, or
8 letter, are tracked and managed in an online record keeping system. If Mr.
9 Quevedo had contacted the Office of Solutions InSTORE at any time during
10 his employment concerning his inclusion in Step 4 - Arbitration, or for any
11 other reason, that contact would have been logged in our records.

12 31. I directed my staff to investigate and review the database to
13 determine whether Mr. Quevedo ever contacted the Office of Solutions
14 InSTORE. The investigation revealed that Mr. Quevedo never contacted the
15 Office of Solutions InSTORE.

16 I declare under penalty of perjury under the laws of the United States
17 of America that the foregoing is true and correct. Executed this 23
18 day of May, 2011, at Cincinnati, Ohio.

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Robert Noeth



Welcome to Macy's, Inc. This form acknowledges that you have been given information about a unique employee benefit: The Solutions InSTORE early dispute resolution program.

Solutions InSTORE New Hire Acknowledgement

I have received a copy of the Solutions InSTORE brochure and Plan Document and acknowledge that I have been instructed to review this material carefully. I understand that I have 30 days from my date of hire to review this information and postmark my form to the Office of Solutions InSTORE if I wish to exclude myself from coverage under Step 4 of the program, Arbitration. I know I can get more information about Solutions InSTORE, or another copy of the Plan Document, from:

- www.employeeconnection.net, Benefits tab, Solutions InSTORE;
- my Human Resources Representative;
- the Office of Solutions InSTORE, Macy's, Inc., 7 West 7th Street, Cincinnati, OH 45202, Solutions.instore@macys.com, phone (866) 285-6689, fax (513) 562-6720.

I understand that I am covered by and have agreed to use all 4 steps of Solutions InSTORE automatically by my taking or continuing a job in any part of Macy's, Inc.

This means that if at any time I have a dispute or claim relating to my employment, it will be resolved using the Solutions InSTORE process described in the brochure and Plan Document. The process continues to apply to such employment-related disputes even after my employment ends. The Solutions InSTORE process includes Step 4, Arbitration, where disputes are resolved by a professional not affiliated with Macy's, Inc. in an arbitration proceeding, instead of by a judge or jury in a court proceeding. I can read all about Solutions InSTORE, including the benefits and tradeoffs of Step 4, in the brochure and Plan Document. Questions or comments about the program can be directed to my Human Resources Representative or the Office of Solutions InSTORE.

I understand that if I do not wish to be covered by Step 4, Arbitration, the only way to notify the Company about my choice is by postmarking my election form

within 30 days of hire and mailing it to the Office of Solutions InSTORE. My decision is kept confidential and will not affect my job.

Associates covered under a collective bargaining agreement are not automatically eligible to participate in the Solutions InSTORE program. For employees who move in and out of a collective bargaining unit during a period of continuous employment, their original election made under the program will continue to apply during periods of eligibility.

I also understand that if I have previously been employed by any part or division of Macy's, Inc. within the last sixty (60) days, my prior decision about being covered by Step 4 - Arbitration, will continue to apply.

Please note, as of June 1, 2007, "Federated Department Stores, Inc." changed its name to "Macy's, Inc." As a result, all references to "Federated Department Stores", "Federated", or "FDS" in all Solutions InSTORE materials, including but not limited to the Program Brochure, Plan Document, and Election Form, should be replaced with "Macy's, Inc."