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22 UNITED STATES DISTRICT COURT  
23 NORTHERN DISTRICT OF CALIFORNIA

24 ELLEN LIEBER and GLEN VINTON on behalf of *QASE* NO C96-02955 MHP  
25 themselves and all others similarly situated,

**STIPULATED ORDER**

25 Plaintiffs,

26 v.

27 MACY'S WEST, INC., a corporation,

28 Defendant. \_\_\_\_\_/

1           **WHEREAS**, on August 16, 1996, Plaintiff Ellen Lieber commenced this civil action in  
2 the United States District Court for the Northern District of California, Case No. C96-02955  
3 against Defendant Macy's West, Inc. ("Macy's West"), alleging discrimination against people  
4 with mobility disabilities in violation of the Americans With Disabilities Act, 42 U.S.C. §§  
5 12101 et seq., and California state law, at the retail facility known as Macy's West's Union  
6 Square Stores in San Francisco.

8           **WHEREAS**, on March 9, 1998, the Court certified a class and defined the class as "all  
9 persons in California with mobility disabilities requiring the assistance of wheelchairs, scooters,  
10 or other mechanically or structurally similar devices such as walkers to be ambulatory who have  
11 been denied access to Macy's goods and services at Macy's Main store in Union Square."

13           **WHEREAS**, on March 20, 1998, Glen Vinton was added as a named plaintiff in this  
14 action.

16           **WHEREAS**, the Court held a trial in this action during July of 1998, and on October 28,  
17 1999, the Court issued Findings of Facts and Conclusions of Law.

18           **WHEREAS**, with respect to the Americans With Disabilities Act, 42 U.S.C. §§ 12101 et  
19 seq., California Civil Code §§ 54 et seq., and California Health and Safety Code §§ 19955 et  
20 seq., the Court in its October 28, 1999 Order concluded:

- 22           1. Macy's West had failed to maintain 36" routes to accessible fitting rooms and  
23 accessible cashwraps in areas of alteration, in violation of the American with  
24 Disabilities Act Accessibility Guidelines (ADAAG). Conclusion of Law ¶ 16.
- 25           2. Cashwraps located in areas of alteration either must meet the 36" height  
26 requirement or else must have a clipboard or other mechanism available.  
27 Conclusion of Law ¶ 16.
- 28           3. Certain fitting rooms at the Union Square Stores identified by Plaintiffs' expert  
failed to meet the ADAAG and Title 24 standards governing accessible fitting  
rooms. Conclusion of Law ¶ 17.
4. There were certain other architectural barriers such as noncompliant entrances,  
floors, ramps, restroom features, pay phones, and self-service computer terminals  
that failed to meet the ADAAG and Title 24 standards. Conclusions of Law ¶¶ 18-  
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5. Neither the ADA nor its implementing regulations contain any specific spacing requirement for moveable merchandise display racks. Conclusion of Law f 31.
6. Placing 36" between each display rack is not mandated by Title 24. Conclusion of Law f 37.
7. Macy's West was obligated, given the conditions within the merchandise pads, to take steps to maximize access within the merchandise pads to the extent readily achievable, and Macy's West did not satisfy its burden of proof as to the readily achievable standard. Conclusion of Law % 41.
8. Macy's West violated the ADA's requirement that places of public accommodation "take such steps as may be necessary" to provide access, and by failing to consider alternative methods to improve access. Conclusions of Law ff 45 & 47.
9. Macy's West had not adequately provided access to merchandise pads through readily achievable "alternative methods" such as customer service. Conclusion of Law t 50.
10. The trial evidence indicated that while Macy's stated an intention to improve customer assistance to people with disabilities, at the time of trial it had taken insufficient steps to ensure that shoppers with disabilities actually get adequate assistance from sales clerks. Conclusions of Law f 51.

**WHEREAS**, on July 26, 2001, this Court entered an injunctive order establishing a standard of access to merchandise on moveable display units at the Union Square Stores.

**WHEREAS**, on September 4, 2001, the parties submitted to the Court a Partial Settlement Agreement and Consent Decree ("Decree"), resolving all issues in this litigation other than the Pad Access Issue and the Perimeter Issue as defined in that Decree as follows:

"Pad Access Issue" refers to the dispute between the Parties regarding Macy's West's obligation to provide an accessible path of travel to and between moveable merchandise display units in the merchandise display areas of the Stores and/or to and between fixed merchandise display units in areas other than areas of new construction or alteration in the Stores. No class or injunctive relief claims concerning the Pad Access Issue are resolved by this Partial Settlement Agreement; however, the Parties do resolve all claims for damages of the Named Plaintiffs concerning this issue.

"Perimeter Issue" refers to the dispute between the Parties regarding whether the ADAAG requires a 36" path of travel to fixed merchandise display units in areas of alteration.

**WHEREAS**, the Court gave final approval to this Decree on February 25, 2002; and

**WHEREAS**, Macy's West continues to contend both that the Court's October 28, 1999

1 Findings of Fact and Conclusions of Law are legally erroneous and unsupported by the  
2 evidentiary record and that the Court's July 26, 2001 Order is also flawed.

3  
4 **WHEREAS**, Macy's West has filed a Rule 59 motion and has announced its intention to  
5 pursue all appeal rights; and

6 **WHEREAS**, both parties wish to avoid further expense and risk from protracted  
7 litigation, the parties have now reached a compromise agreement on the Pad Access and  
8 Perimeter Issues and have reduced their compromise agreement to writing as set forth below.

9  
10 Pursuant to the compromise agreement and with the approval of the Court, it is hereby

11 **ORDERED** that:

12 A. The portions of the Court's Orders of October 28, 1999 and July 26, 2001 relating  
13 to equitable relief on the Pad Access Issue and the Perimeter Issue are superceded  
14 by this stipulated Order, which the parties agree is not itself appealable and which  
15 the parties agree moots the Rule 59 motion filed by Macy's West on August 9,  
16 2001.

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18 B. As noted, this Order represents the compromise of disputed claims which the  
19 parties mutually recognize would require protracted and costly litigation to  
20 determine. The parties thus agree that Macy's West's agreement to the form and  
21 content of this Order is not and may not be used by any person as an admission or  
22 evidence that Macy's West has engaged in any practice that violates the ADA or  
23 California state law.

24  
25 C. To settle this action, it is stipulated by the parties that, for the period of this Order,  
26 in the Union Square Stores, Macy's West will provide access to substantially all  
27 merchandise on merchandise pads from at least one path with a clearance of at  
28

1 least 32". The applicable path in a particular pad shall have clear sight-lines which  
2 would enable wheelchair users and scooter users to determine at each juncture that  
3 the path will remain clear for them. At locations within merchandise pads where a  
4 path makes a sharply-angled turn around hard-edged merchandise display units,  
5 Macy's West shall provide 36" clearance where necessary to make such paths  
6 usable by patrons with mobility disabilities. For purposes of this Order,  
7 "substantially all" shall mean 85% of merchandise within each Merchandising  
8 Grouping Area in the Union Square Stores (as defined below) during the first year  
9 after the effective date of this Order, and 90% of merchandise within each  
10 Merchandise Grouping Area in the Union Square Stores (as defined below) for the  
11 remainder of the period that this Order is in effect.

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14 D. Compliance with the applicable access standard in paragraphs C-M shall be  
15 determined solely by the mechanism set out in Paragraph N below and shall be  
16 measured by first counting the number of Fixture Elements (as defined below) in  
17 each Merchandise Grouping Area (as defined below) being audited at the time of  
18 the audits provided for in paragraph N. This number shall serve as the  
19 "denominator" for that area. The numerator shall be the number of Fixture  
20 Elements on which merchandise is accessible (as defined in paragraphs H-M  
21 below) from the applicable 32" or 36" path.

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24 E. For purposes of this Order, Merchandising Grouping Area shall be defined as the  
25 following 21 areas of the Union Square Stores:

- 26 1. Cellar, Main Building;
- 27 2. First floor, Main Building and Union Square Building;
- 28 3. Second Floor, Main Building;

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4. Second Floor, Union Square Building;
5. Third Floor, Main Building;
6. Third Floor, Union Square Building;
7. Fourth Floor, Main Building;
8. Fourth Floor, Union Square Building;
9. Fourth Floor, North Building;
10. Fifth Floor, Main Building;
11. Fifth Floor, Union Square Building;
12. Fifth Floor, North Building;
13. Sixth Floor, Main Building;
14. Sixth Floor, Union Square Building;
15. Sixth Floor, North Building;
16. Seventh Floor;
17. LL, Men's Store;
18. First Floor Men' s Store;
19. Second Floor Men's Store;
20. Third Floor Men's Store; and
21. Fourth Floor Men's Store.

F. For purposes of this Order, Fixture Elements shall be defined as follows:

1. each arm of a two-way fixture will count as a Fixture Element;
2. each arm of a standard four-way fixture will count as a Fixture Element;
3. every arm of a high capacity Lingerie four-way fixture will count as half a Fixture Element;
4. for rectangular tables where each of the two long sides adjoins a path, each of the long sides will be considered a Fixture Element;

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5. for rectangular tables where only one long side adjoins a path, the table will count as a Fixture Element;
6. square tables, and round tables up to 48" in diameter, where merchandise is displayed on all four sides, will be divided into two segments, each of which will count as a Fixture Element;
7. round tables greater than 48" in diameter will be divided into six segments, each of which will count as a Fixture Element;
8. each arm or shelf (or combination of arms or shelves) on a wall having merchandise carrying capacity comparable to an arm of a standard four-way fixture will count as a Fixture Element;
9. each rounder shall be divided into six segments, each one of which will count as a Fixture Element;
10. each shelf on a metro will count as a Fixture Element;
11. in the Furniture Department, each Vignette (as defined below) will count as a Fixture Element;
12. in the Furniture Department, every recliner/easy chair will count as half a Fixture Element;
13. in the Rug Department, each palate on which rugs are laid vertically on top of each other will be considered a Fixture Element;
14. in the Rug Department, each collection of swinging rods on which rugs are hanging will be considered a Fixture Element;
15. in the Luggage Department, each display unit or unit cluster that displays a particular type of luggage laid out so as to face in the same direction will be considered a Fixture Element;
16. in the Mattress Department, each bed display will be considered a Fixture Element; and
17. the portion of any other type fixture that has capacity comparable to the arm of a standard four-way or a standard metro shelf will count as a Fixture Element.

G. For purposes of this Order, a Vignette in the Furniture Department is defined as a collection of related merchandise displayed in a group setting so as to depict a particular layout, such as a dining room layout, bedroom layout, kitchen layout,

1 living room layout, etc.

2 H. For purposes of this Order, merchandise will be considered to be accessible where  
3 wheelchair and scooter users can travel alongside of or in front of the Fixture  
4 Elements on which merchandise is displayed, provided that nothing herein shall  
5 be construed to require Macy' West to provide, as specified by this Order, more  
6 than one 32" or 36" path to the merchandise with clear sight lines.  
7

8 1. Certain fixtures, such as many of those currently used in the Lingerie  
9 Department of the Union Square Stores, are high-density four-ways that  
10 have three columns of merchandise on each of the four sides of the fixture,  
11 and each column consists of four "arms" from which the merchandise  
12 hangs. In this situation, if there is a 32" or 36" path (whichever applies) on  
13 only two sides of the of the four-way fixture, the following arms would be  
14 considered accessible:

- 15 a. The arms that directly face the 32" or 36" pathway;
- 16 b. The arms on the outside columns of arms on the sides that do not  
17 directly face the 32" or 36" path; and
- 18 c. The middle two arms (height-wise) on the middle column of arms  
19 on the sides that do not directly face the 32" or 36" path.

20 2. Merchandise that is placed on rounders which are next to each other in a  
21 line will be considered accessible even if there is less than 32" at the point  
22 at which they are next to each other as long as there is otherwise a 32" or  
23 36" path (whichever applies) running the circumference of such line of  
24 rounders. Macy's West shall not place more than three rounders in a row  
25 without a 32" path between the next additional rounder, except that  
26 Macy's West may place up to five rounders in a row if there is no more  
27 than 12" of space between each rounder.

28 3. Merchandise that is placed on round tables which are next to each other in  
a line will be considered accessible even if there is less than 32" at the  
point at which they are next to each other as long as there is otherwise a  
32" or 36" path (whichever applies) running the circumference of such line  
of round tables. Macy's West shall not place more than three round tables  
in a row without a 32" path between the next additional table, except that  
Macy's West may place up to five round tables in a row if there is no more  
than 12" of space between each round table.

4. Round tables that are clustered in a group of three to create a triangle  
shape layout will be considered accessible even if there is less than 32" at  
the points at which they are next to each other as long as there is otherwise

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a 32" or 36" path (whichever applies) running the circumference of the table cluster. It is the expectation of the parties that there will be no paths of travel between these clustered tables.

- I. For purposes of this Order, in the Furniture Department, each Vignette will be considered accessible where wheelchair and scooter users can get directly up to at least one point along the edge of the Vignette from a 32" or 36" path, as applies, so as to be able to observe the merchandise on display within the Vignette.
- J. For purposes of this Order, in the Furniture Department, a recliner/easy chair will be considered accessible where wheelchair and scooter users can get up to or alongside at least one edge of the recliner/easy chair from a 32" or 36" path, as applies.
- K. For purposes of this Order, in the Rug Department, all of the rugs on each palate on which rugs are stacked will be considered accessible where wheelchair and scooter users can get directly up to at least one point along the edge of the palate from a 32" or 36" path, as applies. Each collection of swinging rods on which rugs are hung will be considered accessible where users of standard size wheelchairs and scooters can get up to and travel alongside the edges of the hanging rugs on a 32" or 36" path, as applies.
- L. For purposes of this Order, in the Luggage Department, merchandise will be considered accessible where wheelchair and scooter users can get up to and travel alongside the primary forward facing side of the luggage display unit along a 32" or 36" path, as applies.
- M. For purposes of this Order, in the Mattress Department, each bed display unit will be considered accessible where wheelchair and scooter users can get up to at least one point along the edge of the bed display on a 32" or 36" pathway, as applies.

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- N. The following procedures shall exclusively govern determinations of compliance and enforcement of this Order:
1. • There will be three Audit Periods annually. These Audit Periods shall run from 10/1-1/31; 2/1-5/31 and 6/1-9/30.
  2. A Monitor to be selected by the parties shall conduct 10 audits during each twelve-month period that this Order is in effect. Four of the audits will be conducted at regular intervals dispersed throughout the Audit Period 10/1-1/30, and three audits will be conducted at regular intervals dispersed in each of the remaining two Audit Periods.
  3. At the beginning of the first Audit Period following the entry of this Order, the Monitor will randomly select seven of the twenty-one Merchandise Grouping Areas to be audited during that period. In the second Audit Period, the Monitor will randomly select to be audited seven of the remaining fourteen Merchandising Grouping Areas. Additionally, any Merchandise Grouping Areas that do not meet the applicable access standard from paragraphs C-M during the prior Audit Period shall also be included as additional grouping(s) in the second Audit Period. The seven remaining Merchandise Grouping Areas that were not audited in the first or second Audit Periods shall be audited during the third Audit Period of the year. Additionally, any Merchandise Grouping Areas that do not meet the applicable access standard from paragraphs C-M during the second Audit Period shall also be included as additional groupings in the third Audit Period. This same process will be repeated in each year that this Order is in effect.
  4. In each Audit Period, the results of the inspections for each Merchandise Grouping Area will be averaged so that, for each audit period, there will be a separate average for each Merchandise Grouping Area being audited. If the average for a Merchandise Grouping Area in an Audit Period is below the applicable access standard from paragraphs C-M, the parties will meet and confer to try to reach agreement on steps to ensure that the Merchandise Grouping Area or Areas will not fall below the applicable access standard from paragraphs C-M, on average, in future periods for which this Order is in effect. If the parties are not able to reach agreement on appropriate next steps, Plaintiffs may then present the matter to the Court to seek specific relief aimed only at ensuring that the average for such Merchandise Grouping Area or Areas that did not comply will not fall below the access standard set forth in paragraphs C-M in future periods for which this Order is in effect; a contempt sanction will not be available.
  5. If one or more of the Merchandising Grouping Areas that failed to meet the applicable access standard set forth in paragraphs C-M during an audit

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again falls below the applicable access standard set forth in paragraphs C-M in any subsequent Audit Periods during the time that this Order is in effect, Plaintiffs may then invoke the following dispute resolution process:

- a. The parties shall meet and confer to try to reach agreement upon appropriate steps to ensure that such non-compliant Merchandise Grouping Area or Areas do not again fall below the applicable access standard set forth in paragraphs C-M. The parties shall negotiate in good faith for up to 45 days in an attempt to resolve their differences.
- b. If the parties are unable to resolve their differences after 45 days, Plaintiffs may file an appropriate motion for enforcement with the Court.
- c. While contempt sanctions may be considered by the Court upon such motion following exhaustion of this dispute resolution process, a contempt sanction will not be imposed unless applicable and controlling legal standards are met, and the Court finds that there has been a material breach of this Order or any subsequently issued Court order providing additional specific relief issued pursuant to subpart 4 above.
- d. hi considering an enforcement motion under subparagraphs N(5)(b) and (c), the Court will be bound by the terms of this Order and will only have jurisdiction to enforce it.
- e. The parties stipulate that the prevailing party in any enforcement motion filed pursuant to this Paragraph N may recover reasonable fees and costs for time spent and costs incurred in pursuing such motions subject to the standards set forth in *Christianberg Garment Company v. EEOC*, 434 U.S. 412 (1978).

O. Macy's West shall pay the reasonable fees and costs of the Monitor. The parties agree to retain Margen & Associates as the Monitor, and the proposal that Margen & Associates has submitted to the parties shall control Macy's West's payment obligations. In the event that Margen & Associates becomes unavailable, the parties shall agree upon a mutually agreeable individual to assume the responsibilities of the Monitor and, if they are unable to agree, may ask the Court to appoint a suitable and appropriate replacement.

1 P. This Order shall remain in effect for three years from the beginning of the first  
2 audit period following the date of entry of this Order. If the Union Square store  
3 (Main Store and Men's store) is not fully compliant with the applicable access  
4 standards in paragraphs C-M in the final two Audit Periods of the three year term,  
5 this Order shall remain in effect until the Union Square Store has been fully  
6 compliant for at least two consecutive Audit Periods. The Order may also be  
7 extended for good cause shown. Good cause would include any ongoing dispute  
8 resolution procedure.  
9

10 Q. The parties may seek modification of this Order by mutual agreement.  
11

12 R. In return for Macy's West's agreement to the form and content of this order, the  
13 class representatives, on behalf of themselves and the Settlement Class Members  
14 (as defined in the Partial Settlement and Consent Decree) are deemed by the Court  
15 to have released Macy's West and its officers, directors, parents, subsidiaries,  
16 affiliates, successors, insurers, employees, attorneys, and agents ("Released  
17 Parties") from any and all past, present and future claims, liabilities, obligations,  
18 demands, and actions, whether known or unknown, that were brought, could have  
19 been brought, or that could be brought against the Released Parties for injunctive  
20 or declaratory relief regarding the Pad Access Issue and the Perimeter Issue for the  
21 period that this Order remains in effect. It is the expectation of the parties that this  
22 Order provides the exclusive rights and obligations with respect to issues relating  
23 to injunctive and/or declaratory relief on the Pad Access Issue and the Perimeter  
24 Issue.  
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28 S. For purpose of interpreting this Order, individual class members shall have no  
right to individually enforce its terms. Only class representatives through class

1 counsel may seek to enforce the terms of this Order through the dispute resolution  
2 processes provided for herein or before the Court. To the extent individual class  
3 members have complaints regarding Macy's West's implementation of the terms  
4 of this Order, they shall bring these complaints to the attention of named plaintiffs  
5 and/or class counsel, who will decide whether to pursue them through the dispute  
6 resolution process provided for herein.  
7

8 T. This Order shall not be admissible as evidence against Macy's West in *CDR v.*  
9 *Macy's West, Inc.*, Case Number CTV-S-96-1605 LKK/GGH, *Camalo v. Macy's*  
10 *West, Inc.*, Case No. C98-2350 MHP, or any other action against Macy's West  
11 involving issues of access for customers with mobility disabilities to establish  
12 what access Macy's West can provide to merchandise in stores other than the  
13 Union Square Stores.  
14

15 U. The terms of this Order are and shall be binding upon the Parties, upon all of their  
16 present and future representatives, heirs, counsel, agents, directors, officers,  
17 assigns, and successors, and upon all class members.  
18

19 V. The parties have resolved all claims for attorneys' fees and costs.

20 W. Following entry of this Order, the parties shall issue a press release in the form  
21 attached hereto as Exhibit A.  
22

23 **APPROVED AS TO FORM AND CONTENT:**

24 IT IS SO ORDERED

25 Dated: August \_\_, 2002 \_\_\_\_\_

26 MARILYN HALL PATEL  
27 Chief Judge  
28 United States District Court  
Northern District of California

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**THERESA CAMALO, et al.**

**Plaintiff,**

**v.**

**MACY'S WEST INC., a corporation,**

**Defendant.**

Case No. **C98-02350 MHP/BZ**

**CDR, a non-profit corporation, et al.**

**Plaintiff,**

**v.**

**MACY'S WEST, Inc., a corporation,**

**Defendant.**

Case No. **C99-5184 MHP**

**SETTLEMENT AGREEMENT AND CONSENT DECREE**

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## I. INTRODUCTION

Defendant Macy's West, Inc. ("Macy's West" or "Defendant") currently owns and operates 75 retail facilities in various locations throughout the state of California, excluding the retail facility known as Macy's West Union Square in San Francisco. A list of these retail facilities is attached hereto as Exhibit A.

On September 9, 1996, Named Plaintiffs HolLynn DeLil and organizational plaintiff Californians for Disability Rights ("CDR") commenced a civil action in the United States District Court for the Eastern District of California, Case Number CIV-S-96-1605 LKK/GGH (the "CDR Action") against Defendant Macy's West, alleging discrimination against people with Mobility Disabilities in violation of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* ("ADA"), and California state law, at the facility known as Macy's West Downtown Plaza Mall in Sacramento. On or about April 10, 1998, Brenda Pickern, Howard Ripley (who has since passed away), Patricia McPartland, Susan Barnhill, and Catherine Campisi were added as Named Plaintiffs and class representatives. This action was subsequently transferred to the Northern District of California as a case related to Lieber v. Macy's West Inc., Case No. C96-02955 MHP (the "Lieber Action"), an action brought against Macy's West alleging discrimination against people with Mobility Disabilities at the retail facility known as Macy's West Union Square in San Francisco. The CDR Action was assigned Case No. C99-5184 MHP. On May 5, 1999, HolLynn DeLil was dismissed as a Named Plaintiff and a class representative; however, any claims she might have as a class member were not affected. Howard Ripley has died, and his claims have been dismissed with prejudice.

Before the CDR Action was transferred to the Northern District of California, the Court certified a class for the liability phase, defined as "All persons who have been denied full and equal access to ... the retail facilities known as Macy's located at Downtown Plaza ... from three

1 years prior to the September 9, 1996 date of filing the complaint in this action to the conclusion of  
2 this action because they were or are persons with mobility disabilities and entered and utilized ...  
3 the Macy's facilities ... at Downtown Plaza, Sacramento, California." Claims regarding  
4 customer service were included in the class certification. At the same time, the Court bifurcated  
5 the case for trial into a liability phase and a damages phase.  
6

7 On June 10, 1998, Named Plaintiffs Theresa Camalo (who has since passed away) and  
8 Renee Pollard, together with organizational plaintiffs CDR and Marin Center for Independent  
9 Living ("MCIL"), commenced a civil action in the United States District Court for the Northern  
10 District of California, Case No. C98-2350 MHP (the "Camalo Action"), against Defendant  
11 Macy's West, alleging discrimination against people with Mobility Disabilities in violation of the  
12 ADA and California state law at all Macy's West retail stores in the State of California other than  
13 the Union Square Stores in San Francisco and the Downtown Plaza Stores in Sacramento. The  
14 Camalo Action was determined to be related to the Lieber Action.  
15

16 In September 2001, the Parties reached agreement as to all issues and claims raised in the  
17 CDR and Camalo Actions, including all claims for damages, except the proper injunctive relief to  
18 resolve the Pad Access Issue and the Perimeter Issue and entered into a Partial Settlement  
19 Agreement and Consent Decree, which was approved by the Court on February 25, 2002.  
20

21 In August 2002, the parties to the Lieber Action reached a compromise agreement on the  
22 terms of a Stipulated Order on the Pad Access and Perimeter Issues as they relate to the Union  
23 Square Stores. The Court approved and entered the Stipulated Order on August 21, 2002.

24 This Settlement Agreement and Consent Decree ("Decree") resolves all remaining issues  
25 in the CDR and Camalo Actions, including specifically the Pad Access and Perimeter Issues.

26 Plaintiffs maintain that these litigations were necessary to bring Macy's West into  
27 compliance with the ADA and California law for the issues covered by this Decree.  
28

1 Defendant denies any and all liability to the Named Plaintiffs and the class in the Lieber,  
2 CDR and/or Camalo Actions and denies that it has violated any laws — federal, state or local —  
3 pertaining to access for persons with Mobility Disabilities at the Macy's West retail facilities in  
4 California. No finding of liability has been made in the CDR or Camalo Actions.

5  
6 The CDR and Camalo Actions have been vigorously prosecuted and defended. While  
7 discovery has not been completed, the Parties have taken sufficient discovery in these actions and  
8 in the related Lieber Action to determine the merits of Named Plaintiffs' and potential class  
9 members' claims and Macy's West's defenses.

10 Following the entry of the stipulated injunctive order in the Lieber Action in August 2002,  
11 the Parties renewed settlement discussions in the CDR and Camalo Actions and have been  
12 working diligently since that date to resolve the parties' differences on the issues addressed by  
13 this Decree. During settlement negotiations, the Parties have negotiated a class settlement, and  
14 will seek certification of a settlement class defined below as part of the process for seeking  
15 approval of this Decree.  
16

17 This Settlement Agreement and Consent Decree is entered into by and among surviving  
18 Named Plaintiffs, Renee Pollard, Brenda Pickern, Patricia McPartland, Susan Barnhill, Catherine  
19 Campisi, and organizational plaintiffs Californians for Disability Rights ("CDR") and Marin  
20 Center for Independent Living ("MCIL"), on behalf of themselves and all others similarly  
21 situated, and Defendant Macy's West.  
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- 1 3. every arm of a high capacity Lingerie four-way fixture will count as half a  
2 Fixture Element;
- 3 4. for rectangular tables where each of the two long sides adjoins a path, each  
4 of the long sides will be considered a Fixture Element;
- 5 5. for rectangular tables where only one long side adjoins a path, the table  
6 will count as a Fixture Element;
- 7 6. square tables, and round tables up to 48" in diameter, where merchandise is  
8 displayed on all four sides, will be divided into two segments, each of  
9 which will count as a Fixture Element;
- 10 7. round tables greater than 48" in diameter will be divided into six segments,  
11 each of which will count as a Fixture Element;
- 12 8. each arm or shelf (or combination of arms or shelves) on a wall having  
13 merchandise carrying capacity comparable to an arm of a standard four-  
14 way fixture will count as a Fixture Element;
- 15 9. each rounder shall be divided into six segments, each one of which will  
16 count as a Fixture Element;
- 17 10. each shelf on a metro will count as a Fixture Element;
- 18 11. in the Furniture Department, if there is one, each Vignette (as defined  
19 below) will count as a Fixture Element;
- 20 12. in the Furniture Department, if there is one, every recliner/easy chair will  
21 count as half a Fixture Element;
- 22 13. in the Rug Department, if there is one, each palate on which rugs are laid  
23 horizontally on top of each other will be considered a Fixture Element;
- 24 14. in the Rug Department, if there is one, each collection of swinging rods on  
25 which rugs are hanging will be considered a Fixture Element;
- 26 15. in the Luggage Department, if there is one, each display unit or unit cluster  
27 that displays a particular type of luggage laid out so as to face in the same  
28 direction will be considered a Fixture Element;
- 29 16. in the Mattress Department, if there is one, each bed display will be  
30 considered a Fixture Element; and
- 31 17. the portion of any other type fixture that has capacity comparable  
32 to the arm of a standard four-way or a standard metro shelf will count as a  
33 Fixture Element.

34 G. "Merchandise Pad" or "Pad" means and refers to a demarcated area of display  
35 space in a Macy's West retail store in California, bounded by primary or secondary  
36 aisles and/or walls.

- 1 H. "Merchandise Grouping Area" means and refers to each full floor in each of the  
2 Stores.
- 3 I. "Mobility Disability" means and refers, with respect to an individual, to any  
4 physical or mental impairment or condition that substantially limits an individual's  
5 ability to move his or her body or a portion of his or her body such that the  
6 individual requires the assistance of a wheelchair, scooter or other mechanically or  
7 structurally similar device, such as a walker, to be ambulatory.
- 8 J. "Named Plaintiffs" means and refers to the surviving named plaintiffs Brenda  
9 Pickern, Patricia McPartland, Susan Barnhill, Catherine Campisi, and Renee  
10 Pollard and organizational plaintiffs CDR and MCIL.
- 11 K. "Newly Built Store" means and refers to any newly built retail store owned and  
12 operated as a Macy's West store in the State of California after the Effective Date,  
13 during the term of this Decree.
- 14 L. "Pad Access Issue" refers to the dispute between the Parties regarding Macy's  
15 West's obligation to provide an accessible path of travel to and between moveable  
16 merchandise display units in the merchandise display areas of the Stores and/or to  
17 and between fixed merchandise display units in areas other than areas of new  
18 construction or alteration in the Stores.
- 19 M. "Parties" means and refers to Macy's West, Inc., the Named Plaintiffs (including  
20 the organizational plaintiffs) and all Class Members.
- 21 N. "Perimeter Issue" refers to the dispute between the Parties regarding whether  
22 applicable law requires a 36" path of travel to fixed merchandise display units in  
23 areas of alteration.
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- 1 O. "Primary Aisles" means and refers to paths of travel between retail store  
entrances/exits, restrooms, elevators and the exterior of Merchandise Pads, but  
3 excluding any passageway into or through a Merchandise Pad used by patrons to  
4 get to or between merchandise display units.
- 5 P. "Released Parties" means and refers to those parties described in Section XI.A of  
6 this Decree.
- 8 Q. "Sacramento Stores" means and refers to the Macy's West Main Store and Macy's  
9 West Men's Store located at the Downtown Plaza Mall in Sacramento, California  
10 and owned and/or operated by Macy's West.
- 11 R. "Settlement Class Members" means and refers to all individuals who meet the  
12 definition in Section V below.
- 13 S. "Store Category" or "Store Categories" means and refers to any one or more of the  
14 four categories of stores into which the Stores will be divided for purposes of the  
15 Decree, as set forth in Section VH.C below.
- 16 T. "Stores" means and refers to the retail stores presently owned and operated by  
17 Macy's West in the State of California, other than the Union Square Store in San  
18 Francisco, as listed in Exhibit A.
- 19 U. "Vignette in the Furniture Department" means and refers to a collection of related  
20 merchandise displayed in a group setting so as to depict a particular layout, such as  
21 a dining room layout, bedroom layout, kitchen layout, living room layout, etc.

#### 24 IV. JURISDICTION

25 This Court has jurisdiction over the Parties and the subject matter of this action. The  
26 Complaints in the CDR and Camalo Actions assert claims and prayers for relief that, if proven,  
27 would authorize the Court to grant the equitable relief set forth in this Decree. Venue is proper in  
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1 this district. This Court shall retain jurisdiction of the CDR and Camalo Actions during the  
2 duration of the Decree for the purpose of entering all orders that may be necessary to implement  
3 the relief provided for herein; the Court shall, however, be limited in its actions by the terms and  
4 conditions of this Settlement Agreement and Decree.

5 All claims remaining in the CDR and Camalo Actions shall be dismissed with prejudice  
6 upon the Effective Date of this Decree, provided that the Court retains jurisdiction to enforce the  
7 terms of this Decree as described in the preceding paragraph. No actions other than those set  
8 forth in Section VIII.E herein shall be permitted to enforce or address any issues resolved by this  
9 Decree.  
10

11 **V. SETTLEMENT CLASS**

12 The Settlement Class is certified pursuant to Federal Rule of Civil Procedure 23(b)(2) and  
13 consists of all individuals with Mobility Disabilities who have been to one or more of the stores  
14 during the relevant class period and/or who would have gone to one or more of the Stores but  
15 were deterred from doing so because of the Pad Access and Perimeter Issues. The relevant class  
16 period begins on December 8, 1994, for the Sacramento Stores and on June 10, 1995, for all other  
17 stores, and ends upon completion of the Decree.  
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19 **VI. MISCELLANEOUS PROVISIONS**

20 A. ~~Calculation of Time~~

21 In computing any period of time prescribed or allowed by this Decree, unless otherwise  
22 stated, such computation or calculation shall be made consistent with Federal Rules of Civil  
23 Procedure 6(a) and (e).  
24

25 B. No Admission of Liability/Rights to Enforce

26 1. This Decree represents the compromise of disputed claims which the  
27 Parties recognize would require protracted and costly litigation to determine. Macy's West's entry  
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1 into this Decree is not and may not be used by any person as an admission or evidence that  
2 Macy's West has engaged in any practice that violates the ADA or California state law.

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4 2. For purposes of interpreting this Decree, individual class members shall not  
5 be deemed to be third party beneficiaries of this Decree, and shall have no right to enforce its  
6 terms. Only Named Plaintiffs through Class Counsel may seek to enforce the terms of this  
7 Decree through the Dispute Resolution process provided for herein or before the Court. To the  
8 extent that individual class members have complaints regarding Macy's West's implementation of  
9 the terms of this Decree, they may bring them to the attention of Named Plaintiffs and/or Class  
10 Counsel, who will decide whether to pursue them through the dispute resolution process provided  
11 for herein.

12 C. ~~Deadlines~~

13  
14 The Parties and the Court recognize that from time to time unforeseen events, such as  
15 exigent business circumstances, personnel issues, and negotiations with third parties, cause delays  
16 in the accomplishment of objectives no matter how well intentioned and diligent the Parties may  
17 be. Accordingly, with regard to the provisions of this Decree that require that certain acts be  
18 taken within specified periods, the Parties understand and agree that Court approval shall not be  
19 required for reasonable extensions of deadlines. In the event that any party determines that an  
20 action required by this Decree cannot be taken within the specified time period, that party shall  
21 promptly notify the other Parties that it anticipates a delay, the reasons for the delay, and a  
22 proposed alternative deadline. The Parties shall endeavor to cooperate in reasonably rescheduling  
23 such deadlines; however, if the other party does not agree to the proposed delay, the Parties shall  
24 follow the dispute resolution procedure set forth in Section VIII.E of this Decree.

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D. Entire Agreement

This Decree contains the entire agreement between the Parties regarding all remaining claims for Pad Access and the Perimeter Issue asserted in the CDR and Camalo Actions, and it supersedes all negotiations, representations, discussions, understandings, contracts, or agreements, prior to the date of this Decree in regard to those issues.

E. ~~C~~ounterparts

This Decree may be executed in one or more counterparts, each of which will be considered an original, but all of which, when taken together, will constitute one and the same instrument.

F. ~~C~~onstruction

The terms of this Decree are the product of joint negotiations and shall not be construed as having been authored by one party rather than another. The headings in this Decree are solely for convenience and will not be considered in its interpretation. Where required by context, the plural includes the singular and the singular includes the plural.

1           G.     Notices

2           Except as is otherwise provided in this Decree, all notifications, reports and  
3           communications to the Parties required under this Decree shall be made in writing and shall be  
4           sufficient as hand-delivered or sent by first class mail to the following persons:

5                     For Plaintiffs:

6                     Melissa Kasnitz, Esq.  
7                     Disability Rights Advocates  
8                     449 15th Street, Suite 303  
9                     Oakland, CA 94612

10                    Linda M. Dardarian, Esq.  
11                    Goldstein, Demchak, Bailer,  
12                    Borgen & Dardarian  
13                    300 Lakeside Drive, 10<sup>th</sup> Floor  
14                    Oakland, CA 94612

5                     For Macy's West:

6                     Lisa Crawford  
7                     Director of Customer Accessibility  
8                     Macy's West  
9                     170 O'Farrell Street  
10                    San Francisco, CA 94120

11                    Carl Goldberg, Esq.  
12                    Federated Department Stores, Inc.  
13                    Law Department - Western Region  
14                    170 O'Farrell Street  
15                    Internal Box 47  
16                    San Francisco, CA 94102

17                    Alison B. Marshall, Esq.  
18                    Jones Day  
19                    51 Louisiana Avenue, N.W.  
20                    Washington, D.C. 20001

21           Any party may change such persons and/or addresses by written notice to the other  
22           Parties, setting forth a new person and/or address for this purpose. Notwithstanding the  
23           provisions for notification contained in this paragraph, the Parties may send each other such  
24           notification, reports, and communication by facsimile transmission.

25           H.     Persons Bound

26           The terms of this Decree are and shall be binding upon the Parties, and upon all of their  
27           present and future representatives, counsel, agents, directors, officers, assigns, and successors and  
28           Named Plaintiffs' heirs and assigns.

1 **VII. INJUNCTIVE PROVISIONS**

2 A. During the term of this Decree, Macy's West shall provide access to substantially  
3 all merchandise on Merchandise Pads in each of the Stores from at least one path with a clearance  
4 of at least 32." The applicable path in a particular pad shall have clear sight-lines which would  
5 enable wheelchair users and scooter users to determine at each juncture that the path will remain  
6 clear for them. At locations within merchandise pads where a path makes a sharply-angled turn  
7 around hard-edged merchandise display units, Macy's West shall provide 36" clearance where  
8 necessary to make such paths usable by patrons with Mobility Disabilities.  
9

10 B. For purposes of this Decree, "substantially all" for a particular Store shall be  
11 defined by the Store Category to which the Store is assigned.

12 1. For Stores in Store Category A, "substantially all" shall mean 75% of the  
13 merchandise within each Merchandise Grouping Area in the Store during the first  
14 year after the Effective Date of this Decree, 82.5% of the merchandise within each  
15 Merchandise Grouping Area in the Store during the second year after the Effective  
16 Date of this Decree, and 90% of the merchandise within each Merchandise  
17 Grouping Area in the Store during the third year after the Effective Date of this  
18 Decree.  
19

20 2. For Stores in Store Category B, "substantially all" shall mean 70% of the  
21 merchandise within each Merchandise Grouping Area in the Store during the first  
22 year after the Effective Date of this Decree, 78% of the merchandise within each  
23 Merchandise Grouping Area in the Store during the second year after the Effective  
24 Date of this Decree, and 85% of the merchandise within each Merchandise  
25 Grouping Area in the Store during the third year after the Effective Date of this  
26 Decree.  
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1 3. For Stores in Store Category C, "substantially all" shall mean 65% of the  
2 merchandise within each Merchandise Grouping Area in the Store during the first  
3 year after the Effective Date of this Decree, 75% of the merchandise within each  
4 Merchandise Grouping Area in the Store during the second year after the Effective  
5 Date of this Decree, and 82.5% of the merchandise within each Merchandise  
6 Grouping Area in the Store during the third year after the Effective Date of this  
7 Decree.  
8

9 4. For Stores in Store Category D, "substantially all" shall mean 60% of the  
10 merchandise within each Merchandise Grouping Area in the Store during the first  
11 year after the Effective Date of this Decree, 70% of the merchandise within each  
12 Merchandise Grouping Area in the Store during the second year after the Effective  
13 Date of this Decree, and 80% of the merchandise within each Merchandise  
14 Grouping Area in the Store during the third year after the Effective Date of this  
15 Decree.  
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18 C. Macy's West shall divide the Stores into four categories, with each category to  
19 have the number of Stores equal to the following percentage of all of the Stores:

20 Category A 20% of the Stores

21 Category B 25% of the Stores

22 Category C 30% of the Stores

23 Category D 25% of the Stores

24 Macy's West shall have the right to move Stores from one category to another during the term of  
25 the Decree, but it shall ensure that the percentage of the Stores in each category in proportion to  
26 all Stores remains constant. The Sacramento Stores shall be assigned to Category A throughout  
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28

1 the term of this Decree. Nothing in this Decree precludes Macy's West from closing the  
2 Sacramento Stores or any other Stores any time during the Decree.

3 D. Macy's West shall assign a Newly Built Store to Category A during the first year  
4 that it is open. A Newly Built Store shall not be included in the count of Stores for purposes of  
5 calculating the percentages referenced in the preceding paragraph. Macy's West shall have the  
6 right to move a Newly Built Store to Category B in subsequent years of the Decree if, because of  
7 unexpected changes in the Store's performance due to sales and market conditions, Macy's West  
8 cannot maintain the Category A level of access at the Store without much difficulty or expense.

9 E. Compliance with the access standards set forth in paragraphs A, B, and F to K of  
10 Section VII of the Decree shall be determined solely by the mechanism set out in Section VIII  
11 below and shall be measured as follows:

12 1. For the first audit in a season, a percentage of fixtures that are accessible  
13 under the terms of the Decree (as defined in paragraphs F-K, below) will  
14 be calculated by first counting the number of Fixture Elements in each  
15 Merchandise Grouping Area being audited. This number shall serve as the  
16 "denominator" for that area for audit purposes. The "numerator" for that  
17 area for audit purposes shall be the number of Fixture Elements on which  
18 merchandise is accessible (as defined in paragraphs F-K) from the  
19 applicable 32" and 36" path. The numerator divided by the denominator  
shall yield the percentage of merchandise found to be accessible (as  
defined in paragraph F-K below) from the applicable 32" or 36" path for  
that area for the first audit.

20 2. For the second audit in the same season, if the percentage of fixtures that  
21 are accessible (as defined in paragraph F-K) under the terms of the Decree  
22 as determined from the calculation set forth above is within three (3)  
23 percentage points above or below the required access percentage for the  
24 store at issue (as set forth in paragraph B, above), the same method will be  
25 used. If the percentage calculated during the first audit deviates from the  
26 required access percentage by three (3) percentage points or more, whether  
27 above or below the required access percentage, the same number as was  
28 calculated as the "denominator" during the first audit shall be used again  
during the second audit. A new count shall be made for the numerator by  
again counting the number of Fixture Elements on which merchandise is  
accessible from the applicable 32" or 36" path. A new percentage shall be  
calculated by using the new numerator divided by either the original  
denominator or the new denominator, as appropriate.

29 3. The percentages calculated during the two audits for each Merchandise  
30 Grouping Area shall be averaged to determine compliance for that  
31 Merchandise Grouping Area. If the average of the percentage of fixtures

1 that are accessible (as defined in paragraphs F-K below) is within three (3)  
2 percentage points below the required access percentage for the store at  
3 issue and, during the second audit in the season, the same number as was  
4 calculated as the "denominator" during the first audit was used, the number  
5 of Fixture Elements in the Merchandise Grouping Area will be counted  
6 again and the new number shall serve as the "denominator" for that area for  
7 purposes of the second audit in the same period. The access percentage for  
8 the second audit shall be recalculated using the new denominator, and the  
9 average shall be recalculated to determine compliance.

6 F. For purposes of this Decree, merchandise will be considered to be accessible  
7 where wheelchair and scooter users can travel alongside of or in front of the Fixture Elements on  
8 which merchandise is displayed, provided that nothing herein shall be construed to require  
9 Macy's West to provide more than one 32" or 36" path to the merchandise with clear sight lines.

- 11 1. Certain fixtures, such as many of those currently used in the Lingerie  
12 Department of some Stores, are high-density four-ways that have three  
13 columns of merchandise on each of the four sides of the fixture, and each  
14 column consists of four "arms" from which the merchandise hangs. In this  
15 situation, if there is a 32" or 36" path (whichever applies) on only two sides  
16 of the four-way fixture, the following arms would be considered accessible:
  - 14 a. The arms that directly face the 32" or 36" pathway;
  - 15 b. The arms on the outside columns of arms on the sides that do not  
16 directly face the 32" or 36" path; and
  - 17 c. The middle two arms (height-wise) on the middle column of arms  
18 on the sides that do not directly face the 32" or 36" path.
- 18 2. Merchandise that is placed on rounders which are next to each other in a  
19 line will be considered accessible even if there is less than 32" at the point  
20 at which they are next to each other as long as there is otherwise a 32" or  
21 36" path (whichever applies) running the circumference of such line of  
22 rounders. Macy's West shall not place more than three rounders in a row  
23 without a 32" path between the next additional rounder, except that Macy's  
24 West may place up to five rounders in a row if there is no more than 12" of  
25 space between each rounder.
- 23 3. Merchandise that is placed on round tables which are next to each other in  
24 a line will be considered accessible even if there is less than 32" at the  
25 point at which they are next to each other as long as there is otherwise a  
26 32" or 36" path (whichever applies) running the circumference of such line  
27 of round tables. Macy's West shall not place more than three round tables  
28 in a row without a 32" path between the next additional table, except that  
Macy's West may place up to five round tables in a row if there is no more  
than 12" of space between each round table.
- 27 4. Round tables that are clustered in a group of three to create a triangle shape  
28 layout will be considered accessible even if there is less than 32" at the  
points at which they are next to each other as long as there is otherwise a

1 32" or 36" path (whichever applies) running the circumference of the table  
2 cluster. It is the expectation of the Parties that there will be no paths of  
travel between these clustered tables.

3 G. For purposes of the Decree, in any Furniture Department, if there is one, each  
4 Vignette will be considered accessible where wheelchair and scooter users can get directly up to  
5 at least one point along the edge of the Vignette from a 32" or 36" path, as applies, so as to be  
6 able to observe the merchandise on display within the Vignette.

7  
8 H. For purposes of this Decree, in the Furniture Department, if there is one, a  
9 recliner/easy chair will be considered accessible where wheelchair and scooter users can get up to  
10 or alongside at least one edge of the recliner/easy chair from a 32" or 36" path, as applies.

11 I. For purposes of this Decree, in the Rug Department, if there is one, all of the rugs  
12 on each palate on which rugs are stacked will be considered accessible where wheelchair and  
13 scooter users can get directly up to at least one point along the edge of the palate from a 32" or  
14  
15 36" path, as applies. Each collection of swinging rods on which rugs are hung will be considered  
16 accessible where users of standard size wheelchairs and scooters can get up to and travel

U alongside the edges of the hanging rugs on a 32" or 36" path, as applies.

18 J. For purposes of this Decree, in the Luggage Department, if there is one,  
19 merchandise will be considered accessible where wheelchair and scooter users can get up to and  
20 travel alongside the primary forward facing side of the luggage display unit along a 32" or 36"  
21 path, as applies.

22  
23 K. For purposes of this Decree, in the Mattress Department, if there is one, each bed  
24 display unit will be considered accessible where wheelchair and scooter users can get up to at  
25 least one point along the edge of the bed display on a 32" or 36" pathway, as applies.

## 26 VIII. COMPLIANCE AND MONITORING

27 The following procedures shall exclusively govern determinations of compliance and  
28 enforcement of this Decree:

1 A. There will be two Audit Periods annually. These Audit Periods shall run from  
2 September 1 to January 31 and February 1 to August 31.

3 B. A Monitor to be selected by the Parties shall conduct two audits of two  
4 Merchandise Grouping Areas from each of the four Store Categories during each Audit Period  
5 that this Decree is in effect. The two audits will be spaced evenly during the Audit Periods with,  
6  
7 to the extent practicable, no less than 60 days between audits.

8 C. In each Audit Period, the results of the inspections for each Merchandise Grouping  
9 Area will be averaged so that, for each audit period, there will be a separate average for each  
10 Merchandise Grouping Area being audited.

11 D. At the beginning of the first Audit Period following the Effective Date of this  
12 Decree, the Monitor will randomly select two Merchandise Grouping Areas from each of the four  
13 Store Categories to be audited during that period. In the second and subsequent Audit Periods,  
14 the Monitor will randomly select a different two Merchandise Grouping Areas from each of the  
15 four Store Categories to be audited during that period. In addition, if the average of the  
16 inspection results during any audit period for any of the individual Merchandise Grouping Areas  
17  
18 falls below the applicable access standard for that Store category, the Monitor shall conduct an  
19 expanded audit in the next period. Specifically, the Monitor shall (i) re-audit the Merchandise  
20 Grouping Area of the same Store that fell below the applicable access standard and (ii) select at  
21  
22 random and audit three additional Merchandise Grouping Areas from the same Store Category as  
23 the Merchandise Grouping Area of the Store that fell below the applicable standard. This  
24 expanded audit is in addition to the ongoing audit requirement set forth above.

25 E. If one or more of the Merchandise Grouping Areas that failed to meet the  
26 applicable access standard during an audit again falls below the applicable access standard in any  
27 subsequent Audit Periods during the time that this Decree is in effect, or if a Merchandise  
28

1 Grouping Area subject to the expanded audit is found to be non-compliant, Plaintiffs may then  
2 •  
3 invoke the following dispute resolution process:

4 1. The Parties shall meet and confer to try to reach agreement upon appropriate steps  
5 to ensure that such specified Merchandise Grouping Area or Areas do not again  
6 fall below the applicable access standard set forth in Sections VILA and B. The  
7 Parties shall negotiate in good faith for up to 45 days in an attempt to resolve their  
8 differences.

9 2. If the Parties are unable to resolve their differences after 45 days, Plaintiffs may  
10 file an appropriate motion for enforcement with the Court.

11 3. While contempt sanctions may be considered by the Court upon such motion  
12 following exhaustion of this dispute resolution process, a contempt sanction will  
13 not be imposed unless applicable and controlling legal standards are met, and the  
14

15 Court finds that there has been a material breach of this Decree.

16 4. In considering an enforcement motion under this Decree, the Court will be bound  
17  
18 by the terms of this Decree and will only have jurisdiction to enforce it.

19 5. The Parties stipulate that the prevailing party in any enforcement motion filed  
20 pursuant to this provision may recover reasonable fees and costs for time spent and  
21 costs incurred in pursuing such motions subject to the standards set forth in  
22 *Christianberg Garment Company v. EEOC*, 434 U.S. 412 (1978).

23 F. Macy's West shall pay the Monitor up to \$ 1,200 plus reasonable travel costs per  
24 Store per audit period.

25 G. The Parties agree that they will retain a mutually agreeable individual or  
26 organization to serve as the Monitor. In the event that the agreed-upon Monitor becomes  
27 unavailable, the Parties shall agree upon a different mutually agreeable individual to assume the  
28

1 responsibilities of the Monitor and, if they are unable to agree, may ask the Court to appoint a  
2 suitable and appropriate replacement.

3 **IX. EFFECTIVE DATE AND DURATION OF THE DECREE**

4 A. The injunctive provisions and agreements contained herein are effective  
5 immediately upon the Effective Date.

6  
7 B. The provisions of this Decree and the agreements contained herein shall remain in  
8 effect until the Monitor submits its final report for the final audit period in the third year of  
9 auditing. If any of the Merchandise Grouping Areas falls below the applicable access standard  
10 for that category Store in the final audit period of the three year term, the Decree shall be  
11 extended for two additional audit periods. The Decree may also be extended for good cause  
12 shown.

13 **X. NOTICE, OBJECTIONS AND FAIRNESS HEARING**

14 A. Not less than ten (10) days after the Court grants preliminary approval of the  
15 Decree, Macy's West shall cause to be published notice of the settlement in the form attached  
16 hereto as Exhibit B in the form of an advertisement (approximately quarter page size) in the  
17 following California newspapers: San Francisco Chronicle, San Jose Mercury Times, Contra  
18 Costa Times, ANG Newspapers, Santa Rosa Press Democrat, Stockton Record, Bakersfield  
19 Californian, Fresno Bee, Modesto Bee, Sacramento Bee, Fairfield Daily Republic, Monterey  
20 Herald, Redding Record Searchlight, Los Angeles Times, Orange County Register, San Diego  
21 Union Tribune, Los Angeles Daily News, San Gabriel Valley Group, San Bernardino County  
22 Sun, Ventura County Star, Riverside Press Enterprise, and Desert Sun. The costs of such notice  
23 shall be paid by Macy's West.

24  
25  
26 B. The Court shall conduct a hearing on the fairness of the Decree on \_\_\_\_\_ at  
27 \_\_\_\_\_ at \_\_\_\_\_.

28

1 C. Class members who wish to present objections to the proposed settlement must do  
2 so in writing. If a class member wishes to object to the entry of this Decree, the objector must:  
3 (1) file with the Court a written statement of the objection within thirty (30) days of the  
4 publication of notice as provided for in Section X.A; and (2) mail copies of the written objection  
5 to the Parties postmarked within thirty (30) days of the publication of notice as provided for in  
6 Section X.A. An objector also has the right to appear at the Fairness Hearing either in person or  
7 through counsel hired by the objector. An objector who wishes to appear at the Fairness Hearing  
8 must state his or her intention to do so at the time he/she submits his/her written objections.  
9

10 D. If the Court disapproves any provision of this Decree, the Parties shall not be  
11 bound by this Settlement Agreement and Consent Decree in any way. In that event, this Decree  
12 and the underlying negotiations shall not be admissible for any purpose. The Parties shall be free  
13 to renegotiate any other settlement agreement or proceed with litigation.  
14

15 " X I . RELEASE  
16

17 In return for the consideration provided for in this Settlement Agreement and Consent  
18 Decree, upon the Effective Date of this Decree, the Named Plaintiffs and the Settlement Class  
19 Members release Macy's West and its officers, directors, parents, subsidiaries, affiliates,  
20 successors, insurers, employees, attorneys, and agents ("Released Parties") from any and all past,  
21 present and future claims, liabilities, obligations, demands, and actions, whether known or  
22 unknown, that were brought, could have been brought, or that could be brought against the  
23 Released Parties for injunctive or declaratory relief regarding the Pad Access Issue and the  
24 Perimeter Issue for the period that this Decree remains in effect. It is the expectation of the  
25 Parties that this Decree provides the exclusive rights and obligations with respect to issues  
26 relating to injunctive and/or declaratory relief on the Pad Access Issue and the Perimeter Issue.  
27 This release is intended to bind both Named Plaintiffs and all Settlement Class Members and to  
28

1 preclude any and all of them from asserting or initiating future claims for injunctive or  
2 declaratory relief relating to the types of barriers that are the subject of this Decree for the  
3 duration of the Decree, except to the extent such claims arise out of an alleged breach of this  
4 Agreement.

5  
6 Named Plaintiffs understand and agree, on behalf of themselves and the Settlement Class  
7 Members that they represent, that the claims released herein extend to all such claims of any  
8 nature and kind, known or unknown, suspected or unsuspected, concealed or hidden, patent or  
9 latent related to declaratory or injunctive relief for the Pad Access Issue or the Perimeter Issue.

10 Named Plaintiffs acknowledge that they have read, considered and understand the provision of  
11 Section 1542 of the California Civil Code which reads as follows:

12  
13 SECTION 1542. GENERAL RELEASE. A GENERAL RELEASE DOES NOT  
14 EXTEND TO CLAIMS WHICH A CREDITOR DOES NOT KNOW OR SUSPECT TO  
15 EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
16 KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT  
17 WITH THE DEBTOR.

18  
19 Based upon the advice of counsel, Named Plaintiffs hereby expressly, knowingly and voluntarily  
20 waive and relinquish, on behalf of themselves and the Settlement Class that they represent, any  
21 and all rights that they may have under Section 1542 as well as under the provisions of all  
22 comparable, equivalent, or similar statutes and principles of law or equity of any and all states of  
23 the United States or of the United States for declaratory or injunctive relief for the Pad Access  
24 Issue or the Perimeter Issue. Named Plaintiffs understand and acknowledge the significant and  
25 consequences of this waiver and hereby assume the risk of any injuries, losses or damages which  
26 may arise from such waiver. Named Plaintiffs expressly intend that such waiver apply to any and  
27 all of the claims released herein. This release does not extend to claims for damages for the Pad  
28 Access Issue or the Perimeter Issue. It also does not apply to claims for reasonable  
accommodation under Title I of the ADA or state employment discrimination laws.





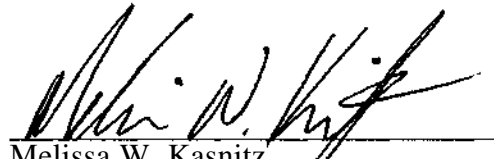
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SO ORDERED, ADJUDGED AND DECREED this \_\_\_\_ day of \_\_\_\_, 2003.


\_\_\_\_\_  
MARILYN HALL PATEL  
Chief Judge  
United States District Court  
Northern District of California

Agreed to in form

Dated: &ff I \$^, 2003

  
\_\_\_\_\_  
Melissa W. Kasnitz  
Attorney for Plaintiffs

Dated: December 10, 2003

  
\_\_\_\_\_  
Linda M. Dardarian  
Attorney for Plaintiffs

Dated: \_\_\_\_\_, 2003

\_\_\_\_\_  
Alison B. Marshall  
Attorney for Defendant