

---

<p>██████████,</p> <p>Complainant,</p> <p>v.</p> <p>Bergen Logistics,</p> <p>Respondent.</p>	<p><b>CONCILIATION AGREEMENT</b></p>
--	--------------------------------------

---

WHEREAS Complainant ██████████ (“Complainant”), filed a Verified Complaint (the “Verified Complaint”) with the New Jersey Division on Civil Rights (“DCR” or the “Division”), on or about April 23, 2015, alleging that Bergen Logistics (“BL” or “Respondent”), violated the New Jersey Pregnant Workers Fairness Act (“PWFA”) codified in the New Jersey Law Action Discrimination (“LAD”) at N.J.S.A. 10:5-12(s); and

WHEREAS, Respondent operates a business as an order fulfillment provider focused in fashion and lifestyle sectors, and is an employer subject to the provisions of the LAD and NJ Family Leave Act (“FLA”); and

WHEREAS, Complainant was employed by the Respondent as a packager at its North Bergen facility; and

WHEREAS, the Verified Complaint alleges that in or about April, 2015, Complainant requested pregnancy-related reasonable accommodations; and

WHEREAS, Complainant alleged that Respondent failed to provide a reasonable accommodation in accordance with the LAD and made no demonstration of any undue burden or hardship on its business operations; instead, Respondent tried to require Complainant to take an unpaid leave under the Family and Medical Leave Act (“FMLA”) even though she was still

capable of working; and

WHEREAS, Complainant's last day of employment was on or about April 13, 2015; and

WHEREAS, the Division conducted an investigation of the allegations in the Verified Complaint and issued, on April 27, 2020, a written determination finding probable cause to believe that a violation of the LAD had occurred; and

WHEREAS, Respondent denies that any violation of the LAD occurred; and

WHEREAS, the parties participated in conciliation and desire to settle the matter without further litigation.

IT IS, THEREFORE, ON THIS 18<sup>th</sup> DAY OF February 2021, AGREED AS FOLLOWS:

1. *Revised Practice.* Respondent agrees that all policies and decisions affecting persons employed or working in New Jersey with Respondent or seeking employment with Respondent shall comply in full with the LAD. Respondent agrees not to implement any policy or carry out any act that has the purpose or effect of discriminating against any person because of race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding, sex, gender identity or expression, disability, atypical hereditary cellular or blood trait, liability for service in the Armed Forces of the United States, or nationality. Respondent further agrees not to take any action or put any practices in place that have the purpose or effect of discouraging or otherwise impeding a pregnant employee's ability to request a reasonable accommodation in accordance with the LAD and will grant a reasonable accommodation when doing so would not cause an undue burden or hardship on its business.

2. *Retaliation.* Respondent shall not engage in any act prohibited by the LAD, including any retaliatory conduct against Complainant, members of Complainants' immediate

family, or any person who assisted in any action or proceeding under the LAD, or authorize any of its employees or agents to engage in any such conduct. Respondent also shall not attempt to prevent any person from exercising their rights under the LAD or participating in or assisting with any investigation or proceeding under the LAD.

3. *Posting and Notice Requirements.* Respondent agrees to comply with all posting and notice requirements for employers pursuant to N.J.A.C. 13:8-1.2; and the FLA pursuant to N.J.A.C. 13:8-2.2. The notices to be displayed pursuant to this paragraph may be obtained on the Division's website, [www.njcivilrights.gov](http://www.njcivilrights.gov). Respondent shall display the Division's employment poster in a place visible to employees and applicants, and FLA poster in a place easily visible to all current and applicants. By no later than fifteen (15) days of the date this Consent Order is fully executed, Respondent shall provide proof of compliance with this provision to the Division via NJBIAS.

4. *Written Policy.* Within 45 days of the date this Consent Order is fully executed, Respondent agrees to provide written verification to DCR of a written policy it has adopted prohibiting employment discrimination and reflecting its agreement herein to comply with all provisions of the LAD ("LAD Policy"). At minimum, the LAD Policy shall:

- a. State that the LAD prohibits discrimination, harassment, and retaliation in the workplace and that such conduct will not be tolerated;
- b. Specify Respondent's procedures for receiving, investigating, and responding to a discrimination or harassment complaint;

Identify the person by title and contact information who will receive complaints, and identify an alternate person if the initial contact person is unavailable or may have a conflict;

- c. Explain that retaliation against any person based on filing a complaint or based on providing information in connection with a complaint is prohibited;
- d. Explain that Respondent's policies regarding pregnancy accommodations are consistent with the express Legislative purpose of the PWFA, to combat pregnancy discrimination by requiring employers to provide reasonable accommodations to pregnant people and those who suffer medical conditions related to pregnancy and childbirth, such as bathroom breaks; breaks for increased water intake; periodic rest; assistance with manual labor; job restructuring or modified work schedules; and temporary transfers to less strenuous or hazardous work, unless doing so would be an undue burden or hardship on their operations. It will also specify that pregnant employees who can be reasonably accommodated such that they can continue working while maintaining a healthy pregnancy will be reasonably accommodated and will not be required to take an unpaid leave or be terminated, unless accommodation would be an undue burden or hardship on Respondent's operations. The Policy shall include specific references to N.J.S.A. 10:5-3.1(a)-(c) and N.J.S.A. 10:5-12(s).
- e. Explain that employees with a disability who can be reasonably accommodated will be reasonably accommodated unless doing so would be an undue burden on Respondent's operations.
- f. Include a statement that any person who believes a violation of the LAD has occurred may contact the New Jersey Division on Civil Rights at [www.NJCivilRights.gov](http://www.NJCivilRights.gov) or (833) NJDCR4U and may file a complaint with DCR within 180 days of the incident.

Respondent will deliver a copy of the LAD Policy to counsel for the Division, Nadya Comas, via NJBIAS, ten business days in advance of its adoption. If no objection is received from the Division within ten business days, Respondent shall distribute a copy to all of its employees.

5. Within sixty (60) days of the date this agreement is fully executed or thirty days after the date of employee hire, whichever is later, Respondent shall distribute (either electronically or via hard copy) a copy of the LAD Policy to all employees who work in New Jersey. A copy of the LAD Policy shall be redistributed to all employees if subsequently updated by Respondent. The LAD Policy shall be available in Spanish, English and any other language commonly spoken by employees.

6. *Reporting.* For a period of two (2) years from the date this Consent Order is fully executed, Respondent shall notify the Division of any Complaints made under the LAD Policy (“Reportable Incident”). This report shall be made once every 6 months until the completion of the (2) two-year period and shall be forwarded to counsel for the Division through NJBIAS. Respondent agrees to register as an employer via NJBIAS. Compliance mandates that all materials submitted via NJBIAS will be considered part of the investigative file in accordance with N.J.A.C. 13:4-13.1. With regard to any complaints regarding pregnancy discrimination or harassment, the report shall also include: i) date of the Reportable Incident; ii) name and contact information of the individual who filed the Reportable Incident; iii) a summary of the allegations and any actions taken in response to the Reportable Incident; and iv) Respondent shall further advise whether a complaint was substantiated and whether any employee who filed a complaint was disciplined, terminated or voluntarily resigned. If there are no Reportable Incidents during a specific reporting period, Respondent shall submit a report/letter to the Division indicating that no Reportable Incidents have been filed during the preceding period. If a Reportable Incident occurs or an

investigation of a Reportable Incident is commenced, but not completed during any reporting period, Respondent shall provide the above available information in its report and advise the Division of any outstanding information upon completion of its investigation or during the next applicable reporting period. Outstanding information regarding a Reportable Incident which occurs or investigation that was initiated within the two-year period but concluded after the two-year period shall be provided upon completion of the investigation. All reports shall be submitted through the NJBIAS.

7. Respondent shall create and maintain records of all pregnancy and disability related complaints made for a period of at least three years, unless a longer period is required by any Federal or State statute or regulation. Respondent shall make such records available to the Division upon request.

8. *Training.* Within 90 days of the date this Consent Order is fully executed, Respondent shall arrange for live training on the LAD and the LAD policy to all employees working in New Jersey. "Live" shall mean in-person, remote, virtual, or some combination of remote and virtual. Such training shall be conducted by a person with knowledge of state and federal antidiscrimination laws and shall explicitly include information about Respondent's policies regarding pregnancy and disability accommodations described above. Individuals receiving this training shall have the opportunity to ask questions during the training. Respondent will provide to Deputy Attorney General Nadya Comas any materials to be used in this training, including but not limited to handouts and any PowerPoint slides, and the name of the person who will provide the training, at least ten days in advance of the scheduled training. Upon completion of this training, Respondent shall certify that such training was provided to all of its employees in accordance with its obligations under this Agreement, identify by name and title the individuals

trained, and provide the date(s) on which the training occurred. Respondent shall provide proof of compliance with this provision via NJBIAS.

9. *Monetary Payment.* In settlement of all claims that were pleaded or that could have been pleaded in the Verified Complaint herein, Respondent shall pay the total sum of Twenty-Five Thousand dollars (\$25,000.00) to Complainant, in full settlement of his claims and damages arising from the allegations asserted in the verified complaint filed in this Matter. This gross amount shall be allocated in two separate checks: (a) one check in the amount of Ten Thousand Dollars (\$10,000.00) which shall be delivered by February 28, 2021, and (b) a second check in the amount of Fifteen Thousand Dollars (\$15,000.00), which shall be delivered by March 31, 2021. Respondent will issue an Internal Revenue Service 1099 tax form for payments. The settlement checks made payable to [REDACTED] shall be sent to Deputy Attorney Nadya Comas, New Jersey Department of Law & Public Safety, 124 Halsey Street, P.O. Box 45029, Newark, New Jersey 07101, for forwarding to Complainant. Respondent will include a cover letter with the full case name, “[REDACTED] v. Bergen Logistics,” and “Division on Civil Rights Docket Number EJ08GB-65389.” In exchange for the consideration described herein, Complainant will and hereby does release all claims pleaded or that could have been pleaded in the Verified Complaint based on the facts alleged in the Verified Complaint.

10. *Costs of Investigation.* Respondent shall pay the total sum of Three Thousand Dollars (\$3,000.00) for administrative costs for the investigation, which will be submitted to DCR by February 28, 2021 (and delivered with the payment described in Paragraph 10) in the form of a check made payable to “Treasurer, State of New Jersey.”

11. Upon full execution of this Agreement, this Agreement may be enforced as a judgment against Respondent for the full amount of the \$28,000.00 referenced in paragraphs 9 and

10 herein, plus interest and the costs of enforcement if payment is not made within the time set forth herein.

12. This Consent Order and Decree shall have the same force and effect as a cease and desist order issued by the Director pursuant to N.J.S.A. 10:5-19 and shall operate as a complete and final disposition of the aforesaid verified complaint as to Respondent, subject only to the fulfillment of all the foregoing provisions.

13. Respondent agrees and understands that its failure to comply with any of the terms or provisions of this Agreement shall constitute a breach of the agreement.

14. In the event that Respondent falls to comply with any provision of this Agreement, Respondent hereby consents to entry of this Consent Order and Decree in the Chancery Division of the Superior Court of New Jersey, thereby making this Consent Order and Decree an order of the Court for enforcement therein. Where a dispute arises regarding Respondent's compliance, the Division and Respondent shall first attempt in good faith to resolve the dispute before seeking the court's intervention. The Division shall provide Respondent with written notice of its noncompliance and provide Respondent fifteen (15) days to cure its noncompliance before seeking relief from the Court. The Division retains discretion to determine whether Respondent has fully complied with the provisions of this Agreement.

15. This Consent Order and Agreement resolves only the allegations against Respondent set forth in the verified complaint filed by Complainant, DCR Docket No. EJ08GB-65389. Nothing herein shall be construed to limit the Office of the New Jersey Attorney General or the New Jersey Division on Civil Rights in the exercise of their authority to act in the public interest in any future or pending matter involving Respondent other than DCR Docket No. EJ08GB-65389, [REDACTED] v. Bergen Logistics.



16. This Consent Order constitutes the entire agreement between Complainant, Respondent and the Division. There are no other agreements, promises, understandings, obligations, covenants or representations among them. Any changes or amendments to this Consent Order must be in writing and signed by all parties.

17. This Consent Order shall be binding upon the parties to this agreement and their successors and assigns. In no event shall assignment of any right, power or authority avoid compliance with the terms of this Consent Order.

18. This Agreement is entered into by the parties for settlement purposes only. Neither the fact of this Agreement nor any provision contained herein shall constitute an approval, sanction, or authorization by any governmental unit of the State of any act or practice of Respondent.

19. This Agreement shall be governed and interpreted in all respects in accordance with the laws of New Jersey, without regard to principles of conflicts of law.

20. The parties to this Consent Order represent that a person authorized to sign a document legally binding each party to its terms has signed this Consent Order with full knowledge, understanding, and acceptance of its terms.

21. Complainant acknowledges that they have been provided the opportunity to review the terms of this Agreement, and the opportunity to retain counsel of their choosing as to its effects, and that she understands and agrees to her rights and obligations under this Agreement.

22. Respondent acknowledges that it has been provided the opportunity to review the terms of this Agreement, and the opportunity to retain counsel of their choosing as to its effects, and that it understands and agrees to its obligations under this Agreement.

23. Any signature for the entry of this Consent Order may be executed in counterparts,

each of which shall be deemed an original, but all of which shall together constitute one and the same Consent Order. The parties agree that this Agreement may be signed electronically signed, and that any electronic signatures appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

24. As used in this Agreement, the plural shall include the singular and the singular shall include the plural. In addition, “or” and “and” shall be interpreted conjunctively.

25. If any portion of this Agreement is held invalid or unenforceable by operation of law, the remaining terms of this Agreement shall not be affected.

THE REMAINDER OF THIS PAGE HAS INTENTIONALLY BEEN LEFT BLANK.


26. Upon execution by all parties, including the Director on Civil Rights, this agreement shall operate as a complete and final disposition of the charges contained in the above noted Verified Complaint filed against the Respondent with the Division on Civil Rights, subject only to the fulfillment of all of the provisions of this agreement.

**NEW JERSEY DIVISION ON CIVIL RIGHTS:**

  
\_\_\_\_\_  
Rachel Wainer Apter  
Director, New Jersey Division on Civil Rights

Dated: 02/22/2021

**Bergen Logistics:**

Signature:   
\_\_\_\_\_  
Print name: Ariel Calmanovici  
Dated: 02/18/2021

**COMPLAINANT** 

Signature:  02/23/2021