

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

PHILIPPA DIANE FERNANDES,
Plaintiff,

v.

DILLARD'S INC., d/b/a Dillard
Department Stores, Inc.,
Defendant.

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Civil Action No. 4:13cv02395

**APPENDIX IN SUPPORT OF DEFENDANT'S
MOTION TO COMPEL ARBITRATION AND BRIEF IN SUPPORT**

Defendant files the attached Appendix in Support of Defendant's Motion to Compel Arbitration and Brief in Support, as follows:

D-App. #	Description
0001 - 0003	Declaration of Nanette Savage-Coley
0004 – 0005	Philippa Diane Fernandes's Application for Employment, Exhibit A-1
0006 - 0019	Dillard's Rules of Arbitration, Exhibit A-2

Respectfully submitted,

BELL NUNNALLY & MARTIN LLP

By: /s/ Jay M. Wallace
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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2013, I electronically filed the foregoing document with the Clerk of Court for the U.S. District Court, Southern District of Texas using the electronic case filing system of the Court. The electronic case filing system sent a “Notice of Electronic Filing” to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means:

Ayesha G. Mutope-Johnson
Mutope-Johnson & Associates, PLLC
4412 Almeda, Suite 210
Houston, Texas 77004

/s/ Jay M. Wallace
Jay M. Wallace

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DECLARATION OF NANETTE SAVAGE-COLEY

1. My name is Nanette Savage-Coley. I am over eighteen (18) years of age and have never been convicted of a felony. I have personal knowledge of the facts set forth herein, and am otherwise competent to testify to the facts set forth in this Declaration. The facts set forth herein are within my personal knowledge and are true and correct.

2. I am employed as the Administrative Assistant to the Vice President, Secretary, and General Counsel of Dillard’s, Inc. I have been employed in this position since 1985. Among my areas of responsibility are assisting in administration of the arbitration program and coordinating employment litigation. As part of my duties, I have personal knowledge regarding Dillard’s practice of having its applicants agree to arbitrate any disputes arising from the employment application.

3. Philippa Diane Fernandes (“Fernandes”) applied for employment with Dillard’s, Inc. at its Baybrook Mall location in Friendswood, Texas on April 5, 2012. A true and correct copy of Fernandes’s Application is attached hereto as **Exhibit A-1**.

4. Dillard’s Baybrook Mall store 779 is operated by Dillard Texas East, LLC. Dillard Texas East, LLC has its principal place of business in Fort Worth, Texas. Dillard Texas

East, LLC operates 17 stores in Texas, all of which regularly ship and receive merchandise outside the State of Texas. Dillard's, Inc. is headquartered in Little Rock, Arkansas and operates numerous stores across the country that regularly ship and receive merchandise to and from the State of Texas. Dillard's, Inc. and Dillard Texas East, LLC are collectively referred to herein as "Dillard's."

5. Dillard's has implemented the Rules of Arbitration (the "Rules") that provide for alternative dispute resolution of complaints, including complaints by individuals who have applied for employment with Dillard's. A true and correct copy of the Rules is attached hereto as **Exhibit A-2**. The Rules provide for mandatory, binding arbitration of applicant disputes and, by its own terms, cover all disputes that an applicant may have with Dillard's.

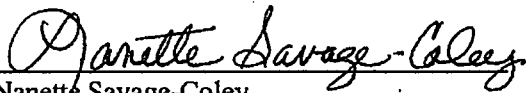
6. When Fernandes applied for employment, she agreed to the terms of the Rules, as evidenced by her signature on the Application. Based on her allegations, Fernandes's dispute with Dillard's falls under the scope of the company's arbitration program to which Fernandes agreed to be bound.

7. As the Administrative Assistant to the Vice President, Secretary, and General Counsel of Dillard's, I am a custodian of records for Dillard's. Attached hereto are **Exhibits A-1** and **A-2**; Fernandes's signed Application and Dillard's Rules of Arbitration, respectively. These records are kept by Dillard's and for Dillard's in the regular course and scope of business; and it was in the regular course of business of Dillard's for an employee or representative of Dillard's with knowledge of the act, event, or condition recorded to make the record or to transmit information thereof to be included in such record; further, the record was made at or near the

time of the event or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original.

8. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on December 12, 2013, by


Nanette Savage-Coley

Dillard's, Inc.

An Equal Opportunity Employer

APPLICATION FOR EMPLOYMENT

THE ACTIVE STATUS OF THIS APPLICATION IS 30 DAYS, AND IT IS VALID FOR THIS LOCATION ONLY. IN THE EVENT YOU ARE NOT EMPLOYED WITHIN 30 DAYS HEREOF, YOU MUST REAPPLY IN PERSON OR YOUR APPLICATION WILL NOT BE CONSIDERED. IF YOU WISH TO BE CONSIDERED AT ANOTHER LOCATION, YOU MUST APPLY AT THAT LOCATION ALSO. INCOMPLETE APPLICATIONS WILL NOT BE CONSIDERED. WE VERIFY THE SOCIAL SECURITY NUMBER AND EMPLOYMENT ELIGIBILITY OF ALL PERSONS HIRED TO WORK IN THE UNITED STATES THROUGH E-VERIFY, A PROGRAM OF THE SOCIAL SECURITY ADMINISTRATION AND THE DEPARTMENT OF HOMELAND SECURITY.

SSN: 436-39-8609 STORE: 0779 ORIGINAL APPLY DATE: 04/05/2012 ORIGINAL STORE: 0779

FIRST NAME: PHILIPPA MIDDLE INITIAL: D LAST NAME: FERNANDES

ADDRESS: 2800 TRANQUILITY LAKE BLVD.APT 6109

CITY: PEARLAND STATE: TX ZIP: 77584

HOME PHONE: (504)220-4622 MESSAGE PHONE: (504)220-4622 HOW DID YOU HEAR ABOUT US? OTHER

POSITION(S) APPLYING FOR: SALES ASSOCIATE AREAS OF INTEREST: COSMETICS

DO YOU WANT TO BE CONSIDERED FOR EMPLOYMENT AT OTHER DILLARD'S STORE LOCATIONS? YES

ARE YOU AT LEAST 18 YEARS OLD? YES DO YOU HAVE A DILLARD'S CHARGE ACCOUNT? YES

ARE YOU LEGALLY ELIGIBLE TO WORK IN THE U.S.? YES YOU WILL BE REQUIRED TO PROVIDE VERIFICATION DOCUMENTS BEFORE HIRING, PURSUANT TO THE IMMIGRATION REFORM AND CONTROL ACT OF 1986.

HAVE YOU EVER BEEN CONVICTED OF VIOLATION OF CRIMINAL LAW (OTHER THAN DRIVING OFFENSES OR CONVICTIONS WHICH HAVE BEEN 'SEALED' OR 'EXPUNGED')? IF YOU ARE APPLYING FOR A DRIVING POSITION, PLEASE ALSO INCLUDE DRIVING RELATED CONVICTIONS (OTHER THAN MOVING VIOLATIONS) IN YOUR RESPONSE (CRIMINAL CONVICTIONS WILL ONLY BE CONSIDERED IN RELATION TO SPECIFIC JOB REQUIREMENTS). NO

IF SO, PLEASE DESCRIBE:

DESCRIBE BACKGROUND EXPERIENCE, MILITARY SERVICE, EDUCATION OR TRAINING WHICH YOU CONSIDER APPLICABLE TO THE POSITION FOR WHICH YOU ARE APPLYING. WORKED FOR DILLARDS FOR 14 YEARS, WORKED IN FRAGRANCES, THE FOR ESTEE LAUDER FOR 5 -6 YRS.

WHAT DATE ARE YOU AVAILABLE TO START WORK? 04/05/2012 AVAILABILITY FOR WORK: P HOURS OF DAY: ANYTIME

IF 'OTHER', PLEASE SPECIFY:

LIST ANY RELATIVES EMPLOYED BY DILLARDS AND COMPANY LOCATION: NONE

HAVE YOU EVER BEEN OFFERED A JOB OR EMPLOYED BY DILLARDS? YES IF YES, WHEN & WHERE? DILLARDS, SLIDELL, LA FROM 2001-2011 SEPTEMBER

EDUCATION:

PLEASE LIST THE NAMES AND LOCATIONS OF SCHOOLS ATTENDED:

HIGH SCHOOL: ST. JOSEPHS HIGH SCHOOL,GUYANA

DID YOU GRADUATE? YES

COLLEGE(S): JOHN JAY BEAUTY COLLEGE IN

DID YOU GRADUATE? YES

NEW ORLEANS LOUISIANA

DID YOU GRADUATE? YES

OTHER:

DID YOU GRADUATE?

**Exhibit
A-1**

EMPLOYMENT HISTORY

Please list **CURRENT** employment first, and work backwards. Do not omit any employers. Explain any breaks in employment.

COMPANY NAME: **DILLARDS DEPARTMENT STORE.** SUPERVISOR: **LEJEUNE GREEN** PH: **9856460130**
 ADDRESS: **NORTH-SHORE BLVD** CITY: **SLIDELL** STATE: **LA**
 EMPLOYED FROM: **05/2001** TO: **09/2011** ENDING SALARY: **\$380.00/WEEK** JOB TITLE: **BEAUTY ADVISOR /ESTEE LAUDER**
 JOB DESCRIPTION/SKILLS: **BEAUTY ADVISOR WITH ESTEE LAUDER**

REASON FOR LEAVING: **RELOCATED TO TEXAS, AND PARTIALLY RETIRED**

COMPANY NAME: **DILLARDS DEPARTMENT STORE** SUPERVISOR: **STORE IS CLOSED.** PH:
 ADDRESS: **NEW ORLEANS EAST** CITY: **NEW ORLEANS** STATE: **LA**
 EMPLOYED FROM: **06/1997** TO: **10/2000** ENDING SALARY: **\$280.00/WEEK** JOB TITLE: **FRAGRANCES**
 JOB DESCRIPTION/SKILLS: **SALES, STOCK,MAKE FRAGRANCE BASKETS.**

REASON FOR LEAVING: **WAS SICK,AND MOVED TO LIVE OUTSIDE OF NEW ORLEANS.**

COMPANY NAME: **MAISON BLANCHE** SUPERVISOR: **DO NOT REMEMBER.** PH:
 ADDRESS: **NEW ORLEANS EAST** CITY: **NEW ORLEANS** STATE: **LA**
 EMPLOYED FROM: **07/1995** TO: **06/1997** ENDING SALARY: **\$280.00/WEEK** JOB TITLE: **BEAUTY ADVISOR ESTEE LAUDER**
 JOB DESCRIPTION/SKILLS: **SALES,REGISTER, STOCK**

REASON FOR LEAVING: **DILLARDS BOUGHT OUT MAISON BLANCHE.**

I state that the information contained in the foregoing statements is complete, true and correct. I understand that if I am employed, any misrepresentation or omission of material facts on this application is sufficient cause for dismissal. I agree that my employment is for no definite period of time and can be terminated with or without cause, and with or without notice, at any time, at the option of either Dillard's or myself. I understand that neither the Associate Work Rules, General Policies and Benefits nor any other written or oral statements by Dillard's or its representatives are contracts of employment. No employee of Dillard's other than the Chairman of the Board or the President has any authority to enter into any agreement for employment for any specified period of time, or to make any agreement contrary to the foregoing, and no such agreement has been made.

If, at the time of termination, I am for any reason indebted to Dillard's, whether for merchandise, cash advances, withdrawals, or otherwise, I agree that Dillard's shall have the right to make the necessary deductions and withhold from any remuneration or from any reimbursement to which I may be entitled, an amount sufficient to fully cover and completely pay for all of my indebtedness to Dillard's.

I also hereby agree that in no event shall Dillard's be liable for any loss or damage to my clothing or my personal property. In consideration of Dillard's agreeing to consider my Application, I agree that effective on my submission of this Application, Dillard's and I shall be entitled to the benefits of and mutually agree to become subject to Dillard's RULES OF ARBITRATION (the "RULES"). The Rules will apply to any Legal Claim which may arise out of the application process or over Dillard's failure or refusal to offer me employment. A free copy of the Rules is available A) by emailing a request for a copy to legal@dillards.com or B) by requesting a written copy of the Rules by dialing toll free 866-353-6787.

APPLICANT'S SIGNATURE: 

DATE: **04/05/2012**

FOR OFFICE USE ONLY

Date Employed	Expense Center	Work Center	Job Title/Job Code	Starting Rate	Classification

RULES OF ARBITRATION

SCOPE.

1. These Rules of Arbitration govern procedures in the arbitration of all disputes over Legal Claims. In consideration for the Company's agreement to consider the Associate's application for employment, to employ or continue to employ the Associate, as the case may be, the Company and the Associate agree that the procedures provided in these Rules will be the sole method used to resolve any dispute over Legal Claims arising between them.
2. The arbitrator must interpret these rules to secure a speedy and cost-effective resolution of every arbitration.
3. Unless these Rules provide otherwise, any arbitration will be conducted according to the most current Employment Dispute Resolution Procedures of the American Arbitration Association (AAA).
4. If there is a difference between these Rules and the AAA Employment Dispute Resolution Procedures, these rules will apply. The parties recognize that the Company operates in many states in interstate commerce. Therefore, it is agreed that the Federal Arbitration Act, 9 U.S.C. §1 *et seq*, shall apply to these Rules and govern the arbitration.
5. Procedures not addressed by these rules or the AAA Employment Dispute Resolution Procedures will be resolved by agreement of the parties. If the parties are unable to agree, the procedural issue will be determined by the arbitrator.
6. These Rules, from time to time, may be amended or even rescinded. However, any amendment or rescission will have no effect on any individual substantive Legal Claim which accrued prior to the amendment or rescission. Such changes are prospective, not retroactive. However, any amendments to these Rules will affect the procedures to be used in arbitrations under those Rules. Any amendment to or rescission of the Rules of Arbitration will not become effective until ten (10) days after notice of said amendment(s) or rescission.
7. If any court of competent jurisdiction declares that any part of these Rules of Arbitration is illegal, invalid or unenforceable, such a declaration will not affect the legality, validity or enforceability of the remaining parts of these Rules of Arbitration and the illegal, invalid or unenforceable part will no longer be part of these Rules of Arbitration.
8. **THE ASSOCIATE AND THE COMPANY MAY BRING LEGAL CLAIMS AGAINST THE OTHER ONLY IN THE ASSOCIATE'S OR COMPANY'S INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, COLLECTIVE, REPRESENTATIVE OR AGGREGATE PROCEEDING. FURTHER, THE ARBITRATOR MAY NOT CONSOLIDATE PROCEEDINGS ON MORE THAN ONE PERSON'S CLAIMS, AND MAY NOT**

**Exhibit
A-2**

OTHERWISE PRESIDE OVER ANY FORM OF A CLASS, COLLECTIVE, REPRESENTATIVE OR AGGREGATE PROCEEDING.

9. The parties hereto agree that all Legal Claims that arise or accrue either before or after an Associate's employment has terminated, relating to or in connection with the Associate's current or prior employment at Dillard's including, but not limited to, Legal Claims relating to breach of fiduciary duty shall be subject to this Agreement.

WHAT IS COVERED.

The Rules of Arbitration apply to any Legal Claim , including, but not limited to, the following Legal Claims:

- Discrimination or harassment on the basis of race, sex, religion, national origin, age, disability or other unlawful basis (for example, in some jurisdictions, protected categories include political affiliation, familial status or sexual orientation).
- Violations of any common law or constitutional provision, federal, state, county, municipal or other governmental statute, ordinance, regulation or public policy relating to workplace health and safety, voting, state service letters, minimum wage and overtime, pay days, holiday pay, vacation pay, severance/separation pay, payment at termination.
- Violations of any common law or other constitutional provision, federal, state, county, municipal or other governmental statute, ordinance, regulation or public policy **(except for violations of the National Labor Relations Act which claims associates are now and always have been free to bring directly to the NLRB)**. The following list reflects examples of some, but not all such laws. This list is not intended to be all inclusive but simply representative: Consolidated Omnibus Budget Reconciliation Act (COBRA), Davis-Bacon Act, Drug Free Workplace Act of 1988, Electronic Communications Privacy Act of 1986, Employee Polygraph Protection Act of 1988, Fair Credit Reporting Act, Family and Medical Leave Act of 1993, Federal Omnibus Crime Control and Safe Streets Act of 1968, The Hate Crimes Prevention Act of 1999, The Occupational Safety and Health Act, Omnibus Transportation Employee Testing Act of 1991, Privacy Act of 1993, Portal to Portal Act, The Sarbanes-Oxley Act, Veterans Reemployment Rights Act, Worker Adjustment and Retraining Notification Act (WARN).
- Personal injuries
- Claims for breach of fiduciary duty against a fiduciary for any employee benefit plan, including any employee welfare benefit plan, employee pension benefit plan, employee stock ownership plan, 401(k) plan, profit sharing plan or pension plan.
- Retaliation for filing a protected claim for benefits (such as workers' compensation) or exercising your protected rights under any statute.

- Breach of any express or implied contract, breach of a covenant of good faith and fair dealing, and claims of wrongful termination or constructive discharge. (For example, a former Associate claims he or she was forced to resign.)
- Breach of any common law duty of loyalty, or its equivalent.
- Exceptions to the employment-at-will doctrine under applicable law.
- Any common law claim, including but not limited to defamation, tortious interference, intentional infliction of emotional distress or “whistleblowing”.

PROCEDURES.

Any dispute over a Legal Claim between the Company and the Associate will be resolved through the Internal Review or Arbitration procedures described in the following steps.

STEP 1: Internal Review

If you have a dispute over a Legal Claim with the Company you may, but do not have to, begin the dispute resolution process by requesting Internal Review. To request Internal Review:

- Complete an Internal Review Request form.
- Return the completed form to your District Manager or Division Vice-President

The Internal Review Request Form must be received within the time period allowed by law covering the type of claim. Where federal or state law permits a longer time period, the longer period will apply. The Legal Department at the Corporate Office in Little Rock, Arkansas, can provide you with information on the applicable time periods. Any period stated in writing by the Legal Department will bind the Company. You should receive a response regarding the outcome of the Internal Review within 30 days of the date the Internal Review Request form was received. If no response is received within 30 days, or if you are not satisfied with all or any part of the Internal Review, you will have the right to proceed to the next step: arbitration.

STEP 2: Arbitration.

If you are dissatisfied with the results of the Internal Review, or if you choose to go directly to arbitration, you may initiate arbitration by following the process below:

1. Complete the Notice of Intent to Arbitrate form or if you use your own letter, please include a statement describing:
 - The nature of the dispute over a Legal Claim, the date the disputed act(s) occurred and a summary of the factual and general legal basis for the claim.

- The dollar amount thought to be involved (the best estimate possible).
- The remedy sought, or what you desire to resolve the dispute over a Legal Claim.
- The hearing location you request.

The nature of the claim must be specified so that all parties, including the arbitrator, have a clear understanding of the dispute.

Submit one copy of the form along with a check made payable to the AAA for your share of the cost for arbitration to the appropriate Case Management Center of the AAA. Contact information for the appropriate Case Management Center can be determined on the AAA website at www.adr.org/Offices or can be obtained from the Dillard's Legal Department by mail at 1600 Cantrell Road, Little Rock, AR 72201, by phone at 866-353-6787, or by email at Legal@dillards.com.

- *If you are a non-management Associate, your share of the Arbitration fee is \$100; management Associates pay \$125.* Any Associate who brings a Legal Claim alleging breach of fiduciary duty against a fiduciary for any employee benefit plan, including any employee welfare benefit plan, employee pension benefit plan, employee stock ownership plan, 401(k) plan, profit sharing plan or pension plan shall not pay any portion of the Arbitration fee. It will be fully paid by the Company. Your Notice of Intent to Arbitrate form and check should be sent to the AAA (NOT Dillard's Legal Department) via certified or registered mail, return receipt requested. The company will pay to AAA the balance of the Arbitration fee, including the AAA's cost and all arbitrator's fees
2. Send one copy of the Notice of Intent to Arbitrate form to the Legal Department, 1600 Cantrell Road, Little Rock, Arkansas 72201. Notice sent to any other location will not be effective until the date it is received by the Legal Department.

You should keep a copy of the Notice of Intent to Arbitrate form for your records.

This filing initiates the arbitration process. You have the responsibility to initiate the process if you are bringing any claim for relief against the Company. If you do not request arbitration on a timely basis, as defined herein, you forfeit your right to have your claim heard.

Deadline for Filing

The deadline for filing for arbitration depends on two separate factors: (1) the type of claim being made and (2) whether the Associate FIRST files a charge of unlawful discrimination with a state, local or federal administrative agency ("Agency") such as the Equal Employment Opportunity Commission (EEOC).

Deadlines for filing claims that do not involve unlawful discrimination claims handled by Agencies are covered by Paragraph C, below.

Associates claiming the types of unlawful discrimination that are handled by Agencies have two choices: either file FIRST with the Agency (see Paragraph A, below), or go directly to arbitration (see Paragraph B, below). The law sets special deadlines for filing claims with the Agency. The Associate should consult with the Agency to learn its deadlines and to learn which types of unlawful discrimination are (and are not) handled by Agencies.

These rules do not preclude any associate from filing a charge of unlawful discrimination with an Agency. Moreover, as described below, arbitration may still be available to the associate even after the Associate has filed a charge with an Agency.

Here is how it works:

A. **If the Associate chooses to file a charge with an Agency** and have the Agency handle the claim:

- In most cases the Agency will investigate and make a determination.
- If the Agency determines that there is reasonable cause to believe the claim is meritorious, the associate and the Company will be invited by the Agency to try to settle the claim.
- If no settlement can be reached, the Agency may either sue the Company on the associate's behalf (in a court of law or in an administrative hearing depending on which Agency the associate went to) or it may issue the associate a "Notice of Right to Sue" letter (see below).
- Sometimes the Agency may not be able to complete investigating the claim or, after investigating, the Agency may not find reasonable cause to believe the claim is meritorious. In those cases, the Associate will also receive a "Notice of Right to Sue" letter (see below).
- After receiving a "Notice of Right to Sue" letter, because the Associate and the Company have signed an Agreement to Arbitrate, instead of going to a court of law to sue, the Associate can sue the Company in arbitration **PROVIDED, once the associate receives this "Notice of Right-to-Sue" letter, the Associate initiates the arbitration process under these Rules within 95 days of the Agency's mailing date of such letter.**

B. **If the Associate chooses to proceed directly to arbitrate a claim of unlawful discrimination,** in order to avoid the possibility that the Associate may later file a charge of unlawful discrimination with an Agency after arbitrating the claim, the Associate will be asked to sign a voluntary waiver of the right to file charges with an Agency.

In arbitration, the Associate must sign this voluntary waiver and file the Notice of Intent to Arbitrate form with the AAA within the same time period permitted by law to file a claim with the appropriate Agency after the date the associate claims a discriminatory event occurred.

C. **If the Associate wants to arbitrate a claim which does not involve alleged unlawful discrimination,** then the Associate must initiate the arbitration process within the time allowed for filing claims under state or federal law applicable to such claims. Of course,

this is the same time period that applies if the Company seeks to file an arbitration claim hereunder.

SELECTION AND APPOINTMENT OF THE ARBITRATOR.

The AAA will provide you and the Company with a list of seven neutral arbitrators who MUST have expertise in employment law and are licensed to practice law. The AAA, to the extent possible, will provide lists which include a diverse group of arbitrators. The AAA may not limit its list to arbitrators in one city, state or region but, instead, must include arbitrators from all regions of the United States on the same list. You and the Company can agree on an arbitrator from that list or in any other mutually agreeable manner.

If the parties cannot agree on an arbitrator from the list, the parties will select the arbitrator by exercising alternating strikes with the party requesting arbitration striking first until only one arbitrator remains on the list. If either party fails or refuses to exercise its strikes, the other party selects the arbitrator. Once an arbitrator is selected, the Company will notify the AAA.

If either party does not find the first list acceptable, either party can request a different list. If either party wishes to reject the first or second list, that party must notify the Company or AAA within 15 days of the date the list was mailed or waives its right of rejection. Any request for a new list must be made prior to beginning the alternate strike process. The alternate strike process may not begin (unless mutually agreed otherwise) until the 15-day rejection period has expired. If the first two lists are rejected, an arbitrator must be selected from the third and final list.

The arbitrator cannot have any personal or financial interest in the dispute. Occasionally, a name appears on the list whose current law firm represents the Company. In that case, when so notified, the AAA must send a replacement list to the parties and may not substitute just one new name to the original list. Before accepting the appointment, the arbitrator will be required to disclose to the AAA any information which may prevent a prompt hearing or create an appearance of bias. If any such information is presented to the AAA, the AAA will communicate that information to you and the Company. Depending on your and the Company's response, the AAA may disqualify that person.

If the selected individual elects not to serve, is disqualified or is unable to serve promptly, another list of seven arbitrators will be provided. You and the Company will then select an arbitrator as described above.

REPRESENTATION.

You may be represented by anyone, including an attorney, or you may represent yourself. The Company will almost always be represented by an attorney.

DATE, TIME AND PLACE OF HEARING.

The arbitrator sets the date, time and place of the hearing. He or she will make every reasonable effort, without incurring extraordinary expense, to accommodate your preference for the hearing location.

For any arbitration or preliminary hearing on the merits of the dispute, the arbitrator will give you and the Company at least 30 days advance notice, unless you, the Company and the arbitrator agree to less notice. The arbitrator decides the amount of notice to be given for preliminary hearings on matters not related to the merits of the dispute.

CONFERENCES.

At the arbitrator's discretion or at your or the Company's request, the arbitrator or AAA may provide notice and hold telephone or in-person conferences before the official hearing to discuss and decide any matter that will expedite the hearing, including:

- Clarification of issues.
- Determination of preliminary issues, including dispositive legal issues.
- Discovery.
- The time and location of hearings or conferences.
- Pre- or post-hearing memoranda.
- Stipulations.
- Encouraging settlements (offers to settle are not admissible and will be given no weight by the arbitrator).

MODE OF HEARING AND CONFERENCES.

At the arbitrator's discretion or if you and the Company agree, conferences and hearings may be conducted by telephone, in person or by written submission.

PRE-HEARING DISCOVERY.

You and the Company can require each other to:

- Provide relevant documents.
- Answer questions.

- Ensure the attendance of and ask questions of witnesses (including any expert witnesses) under oath at depositions.

You and the Company are each entitled to know who the other's witnesses will be and to see all relevant documents before the arbitration hearing. Before the hearing, the arbitrator will require you and the Company to submit to each other in writing (by the dates selected by the arbitrator) the names and addresses of any witnesses to be called, documents to be presented and a list of all exhibits to be used at the hearing.

The arbitrator may decide the form, amount and frequency of discovery permitted before the hearing, giving due consideration to:

- The proof requirements imposed by the law on the party making the claim or defense.
- Both your and the Company's desire for a quick and cost-effective alternative to courtroom litigation.
- Any other factors the arbitrator believes appropriate. For example, only in the most complicated cases should either party be required to submit more than 3 of its witnesses to oral deposition by the other party. This does not include expert witnesses.

Pre-hearing discovery may take any form allowed by the Federal Rules of Civil Procedure, subject to any restrictions the arbitrator imposes to meet the objectives of the arbitration process.

MOTIONS.

The arbitrator may grant a motion to compel discovery, a motion to dismiss and/or a motion for summary judgment. In ruling on any motion, the arbitrator will apply the standard governing such motions under the Federal Rules of Civil Procedure and applicable case law. When the arbitrator finds that one or more of a party's claims fail to state a Legal Claim upon which relief could be granted in a court of law the arbitrator shall grant the other party's Motion To Dismiss For Failure To State a Claim Upon Which Relief May Be Granted. In the arbitrator's discretion, the dismissal of said claim(s) may be either with or without prejudice.

ATTENDANCE AT HEARINGS.

The arbitrator will maintain the privacy of the arbitration hearings unless applicable law provides otherwise. Any person with a direct interest in the arbitration may attend the hearings; the arbitrator determines whether any other person may attend. The arbitrator may exclude any witness, other than you or the Company representative, during the testimony of any other witness.

POSTPONEMENT.

The arbitrator may postpone any hearing or conference if you or the Company provide a good reason, or if you and the Company agree to postpone the hearing.

OATHS AND AFFIRMATIONS.

Before the first hearing, the arbitrator may take an oath of office and must do so if required by law. All witnesses testify under oath or by affirmation administered by a legally qualified person.

AT THE HEARING.

The arbitrator determines whether evidence is relevant, material and admissible. The Federal Rules of Evidence govern the arbitration (although strict conformity to legal rules is not necessary) and will be used to determine the admissibility of specific evidence. The arbitrator must apply the burden of proof the same way it would be assigned and applied by a court in litigation of a similar dispute.

The arbitrator will conduct the hearing in the manner that will most quickly allow full presentation of the evidence and arguments, using the AAA's Employment Dispute Resolution Procedures. If you request arbitration, you will ordinarily present your side first because you bear the overall burden of proof. However, the arbitrator can allow, or you and the Company can agree, to have witnesses or evidence presented out of sequence.

You and the Company may agree to have any hearing recorded stenographically (or by other alternative and reliable method). The cost of the original transcript (which will be sent to the arbitrator) will be divided equally between you and the Company; and each party pays the cost of its own copy. If you and the Company do not agree to have a hearing recorded, the party desiring to have the hearing recorded must pay the entire cost of the original transcript (to be sent to the arbitrator) and its copy. In this case, the transcript must be made available for inspection to the opposing party (or its representative) at the offices or residence of the party (or its representative) who arranged for the transcript and at a time that is mutually convenient. The party who arranged and paid for the transcript is not required to provide a copy to the other party. The original stenographic record or a stenographic record of a tape-recorded proceeding, no matter how arranged, is the official record of the proceeding.

All arguments, statements and testimony made at any phase of the arbitration are absolutely privileged and will not become the basis for any defamation or other common law claim.

The arbitrator may proceed with the hearing if you, the Company or your representatives fail to be present or to obtain a postponement after due notice. The arbitrator may require any party who is present to submit evidence for the making of the award. If warranted, the arbitrator may enter a default judgment against any party who fails to attend.

CLOSING OF HEARING.

When the arbitrator is satisfied that the record is complete, he or she declares the hearing closed and records that declaration. The hearing may be reopened only by motion of a party on grounds that would support the granting of a new trial.

POST-ARBITRATION BRIEFS.

Upon request at the close of the arbitration hearing, you or the Company may file a post-hearing brief. The arbitrator will set the time for filing such a brief.

WAIVER OF PROCEDURES.

If you or the Company believe any of these procedures have not been followed, an objection must be promptly made or the objection will be waived.

SERVICE OF PAPERS.

After requesting arbitration, papers, notices, briefs or other pleadings needed for the arbitration and the award will be provided by email, mail or by personal service to the party's designated representative, or upon agreement of the parties, by fax.

COMMUNICATION WITH THE ARBITRATOR.

Personal communication between the arbitrator and only you or only the Company is not allowed. Any motions, pleadings or oral or written communications from either party to the arbitrator must be in the presence of or copied to the other party, unless the parties agree otherwise. The arbitrator will notify you and the Company of his or her mailing address.

TIME OF AWARD.

The arbitrator will make the award within 30 days from the later of: the closing of the hearing, the date of the last post-hearing brief, or the closing of a reopened hearing, unless you and the Company agree otherwise.

FORM OF AWARD.

The award will be in writing and signed by the arbitrator in the form typically used in employment arbitrations. The written decision will include the reasons for the decision (including findings of fact and conclusions of law) and the precise award or remedy granted. The results of the arbitration are confidential.

ACCESS TO PRIOR AWARDS.

You will be given an opportunity to inspect prior arbitration awards involving the same or substantially similar claims against the Company. The Company will make prior awards available for inspection, upon reasonable notice, at its offices in Little Rock or some other mutually agreeable location. However, this provision does not grant the general public access to any arbitration awards between the Company and other parties. Information on prior awards will be retained according to the Company's normal record retention practices.

INTERPRETATION AND APPLICATION OF THESE RULES.

The arbitrator interprets and applies these Rules as they relate to the arbitrator's powers and duties.

APPLICABLE LAW AND ARBITRATOR'S AUTHORITY.

The arbitrator will apply the state or federal substantive law which would be applied by a United States District Court sitting where events giving rise to the claim took place. The arbitrator has the authority to interpret and apply federal, state and/or local statutes and common law which govern your and the Company's respective claims and defenses. The arbitrator does not have the authority to enlarge upon or add to, subtract from or disregard, or otherwise alter your or the Company's rights under such laws. Consistent with applicable law the arbitrator shall have the authority to award any remedy or relief after a violation is found that the United States District Court referenced above could provide.

Nothing in these rules changes or in any manner modifies the parties' employment relationship of employment-at-will; that is, the parties can each end the relationship at any time for any reason with or without cause. The Arbitrator has no authority to alter the at-will nature of your employment.

FINAL AND BINDING DECISION.

In all cases, the decision of the arbitrator is final and binding, subject to review only under circumstances described in the Federal Arbitration Act or, if appropriate, your state law.

YOUR PARTICIPATION IN THE COST.

If the arbitrator finds in your favor, the Company will reimburse your \$100 or \$125 fee.

You may also have charges which are your responsibility to pay resulting from:

- Attorney fees, if you choose to have legal representation,
- Any costs for witnesses you call (other than Company management witnesses),
- Any costs to produce evidence you request, or
- A stenographic record of the proceedings as set forth above in the "At The Hearing" section of these Rules.

If the arbitrator rules wholly or partially in your favor on a claim under which fees and costs can be granted under law, then the arbitrator has the same authority as a judge to award to you reasonable attorney fees and other costs. If the arbitrator finds wholly against you, Dillard's may be awarded its reasonable attorney's fees and other costs, if determined by the arbitrator to be appropriate under applicable law.

MISCELLANEOUS PROCEDURAL MATTERS.

Any procedural matters not addressed by these rules (other than those relating to class, collective representation or aggregate proceedings dealt with in paragraph 8 above)`, and on which you and the Company cannot agree, will be determined by the arbitrator. The arbitrator cannot, however, deviate from the requirements of these rules, particularly those stated in the section on Applicable Law.

JUDICIAL PROCEEDINGS AND EXCLUSION OF LIABILITY.

1. Neither the AAA nor any arbitrator is a necessary party in any judicial proceeding relating to the proceedings under these rules.
2. Neither the AAA nor any arbitrator will be liable to any party for any act or omission in connection with any arbitration within the scope of these rules.
3. You and the Company will be deemed to have consented that judgment upon the arbitration award may be entered and enforced in any federal or state court having jurisdiction.
4. Initiation of, participation in, or removal of a legal proceeding does not constitute waiver of the right or obligation to arbitrate under these rules.

ENFORCEMENT

Any dispute over a Legal Claim concerning this Agreement – the way it was formed, its applicability, meaning, enforceability, or any claim that all or part of this Agreement is void or voidable – is subject to arbitration under this Agreement. Either the Company or the Associate may bring an action in court to compel arbitration under this Agreement, to enforce an arbitration award, or to dismiss any lawsuit seeking to resolve disputes that are covered by this Agreement.

DEFINITIONS.

“Dillard’s” or the “Company” means Dillard’s, Inc. and all present and past subsidiaries, Limited Liability Partnerships and affiliated companies, all retirement, pension and benefit committees and all officers, directors, fellow associates, managers, supervisors and all agents in their personal or official capacities.

“Legal Claim” means a claim which would be recognized by a court of competent jurisdiction as stating a claim which would be remediable under existing law in that jurisdiction. By way of example only, and without limiting the foregoing, claims that some or all of the Company’s employee benefits are inadequate or that its work rules or policies are burdensome or unfair to the workforce as a whole may not be “Legal Claims”.

“You” or the “Associate” means any applicant for employment or any Associate of the “Company”.

INTERNAL REVIEW REQUEST FORM

Name: _____

Address: _____

SSN/AIN: _____

Today's Date: _____

Description in detail of facts surrounding this Request For Review:

Use additional paper, if so desired.

Result You Wish To See Occur:

Signature: _____

Please keep one copy of this form for your files; send one copy to your District Manager, or Division Vice-President. (If you have any questions, the name and address of the appropriate person can be obtained from the Legal Department.)

Dillard's, Inc.

NOTICE OF INTENT TO ARBITRATE

Please be advised that the undersigned, _____ (Your Name), intends to proceed to Arbitration under the Rules of the Company's Alternative Dispute Resolution Procedure.

Enclosed is my check, money order or cash payment of: \$ _____. (\$100.00 for non-management associates; \$125.00 for management associates).

I understand that the original of this form and the check must be sent to the American Arbitration Association within the appropriate time period as explained in the Rules of Arbitration in order to be considered a timely notice of intent to arbitrate my dispute over a Legal Claim. A copy must also be sent to Dillard's Legal Department at 1600 Cantrell Road, Little Rock, Arkansas 72201.

IF APPLICABLE, BY PROCEEDING DIRECTLY TO ARBITRATION I AM HEREBY VOLUNTARILY WAIVING MY RIGHT TO SUBMIT A CLAIM TO THE EEOC (OR EQUIVALENT STATE OR LOCAL AGENCY).

My reasons for seeking arbitration are as follows: (Please set forth a short, nonbinding account of your reasons for believing that your rights have been violated).

Date

Signature

SSN/AIN or Printed Name AND Store No.

Address