

EXHIBIT 1: Respondent’s 2008 Valley Stream Implementation of Crowd Management Measures

Figure 1: Abatement Measures in Citation and Complaint

| | Abatement Provision | Respondent’s Actions in Compliance |
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| 1. | Provide “effective” crowd management training. | Crowd management was subsumed in the Store’s “safety” training and was something that employees “were trained and had resources available for.” Tr. 261-62. Before 2008, there were no recordable crowd-related injuries to employees at the Store. <i>See</i> Tr. 167, 996-97. Prior events were largely “without incident” Tr. 271-73. |
| 2. | Use “appropriate” crowd management techniques. | Store Manager Steve Sooknanan and Market Asset Protection Manager Sal D’Amico chose techniques based on a combined twenty years of retail experience, <i>see</i> Tr. 179, 976, eschewing techniques that seemed “inappropriate” based on past experience, <i>see</i> Tr. 922-24. |
| 3. | Pre-plan special events using a person “qualified” in crowd management. | Respondent could not have pre-planned the Blitz Day events for its thousands of stores using people specifically “qualified” in crowd management because training was “almost non-existent” and there were only five known experts in the world. Tr. 471-73, 573. However, Mr. Sooknanan and Mr. D’Amico were qualified by experience, as noted above. Mr. Wertheimer concedes that “people working in retail” have the best information about the desirability of their products and how customers will react to them. Tr. 476-77 |
| 4. | Maintain queue lines. | Interlocking barricades formed a clear, L-shaped queue area. Tr. 1054, 1062-63. Employees asked customers to stay behind the barricades and on the sidewalk in a queue formation. Tr. 87, 1111-13. When customers refused to stand in line, employees asked the police for help. Tr. 1015. |
| 5. | Use metering. | — |
| 6. | Use comprehensive barricade systems. | Respondent used “construction style” barricades that extended for forty feet along the Store and were difficult to jump over. Tr. 87, 550. |
| 7. | Employ adequate number of crowd managers. | The Secretary’s witnesses indicated that eight to eighteen crowd managers were necessary. Tr. 588-90. Respondent had fifteen trained employees monitoring the line. Tr. 103. It could not have obtained a sufficient number of “experts” because there were only five in the world, as mentioned above. |
| 8. | Employ adequate number of supervisors. | The following supervisors (and perhaps others) were present on Blitz Day 2008: Steve Sooknanan, Sal D’Amico, Roydell Shaw, Mike Sicuranza, and Julius Blair. |

| | Abatement Provision | Respondent's Actions in Compliance |
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| 9. | Use stanchions and rope lines. | — |
| 10. | Use effective signage and provide information to waiting customers. | The Store used a “line starts here” sign, and customers lined up in the location indicated. Govt. Rebuttal Ex. 1, at 14; Govt. Ex. 34(a). Employees provided information to customers, answered questions, and told jokes. Tr. 103, 1111-13. |
| 11. | Use radios to facilitate employee communication and to provide customers with timely information. | Employees used five or more walkie-talkies to communicate about the condition of the crowd, Tr. 173, 223, 895, 924, 1077, 1106-07, and they expected that police would use their loudspeakers as they had in previous years, Tr. 271-73, 1014-15. |

Figure 2: Additional Measures Suggested in “Examples” Section of Paul Wertheimer’s Expert Report

| | Additional/Different Measure | Respondent’s Actions in Compliance |
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| 1. | Retain crowd safety experts to prepare and implement a crowd management plan. | It was technologically infeasible to use an “expert” for this purpose, as noted above. However, Respondent planned for the event “several weeks” in advance by distributing documents like the Market 45 Action Plan, obtaining barricades, hiring security guards, securing a police presence, and planning for a 12-13% increase based on yearly trends. Tr. 997-99, 1111-13. |
| 2. | Include risk assessment and emergency plan in crowd management plan. | Respondent assessed its risks based upon prior years’ sales and expected a crowd that was “generally reasonable,” just as Mr. Wertheimer would have done. Tr. 503. Its detailed Emergency Procedures Manual was available at multiple locations throughout the Store, Tr. 983-87, and Mr. Wertheimer concedes that it “may have been” an adequate emergency plan, Tr. 538. |
| 3. | Train employees delegated to perform crowd management and control duties. | Respondent provided slip, trip, and fall training and instructed employees to converse with the crowd and encourage calm, orderly behavior. It also instructed them to keep carts out of the line and stay out of the oncoming crowd’s way, among other things. Tr. 87, 1111-13. |
| 4. | Equip employees delegated to perform crowd management and control duties. | Employees wore uniforms and name tags, Tr. 1006, and several had walkie-talkies, as noted above. |
| 5. | Put crowd management plan in writing. | Respondent had a written Market 45 Action Plan, <i>see</i> Govt. Ex. 2, as well as a written Emergency Procedures Manual, <i>see</i> Resp. Ex. 30, and many other safety-planning documents available on its company intranet, <i>see</i> Resp. Ex. 136-38. |
| 6. | Use metering. | — |
| 7. | Use queuing. | Respondent encouraged queuing by instructing customers to remain calm and orderly, using barricades, and posting a “line starts here” sign, among other things. Govt. Rebuttal Ex. 1, at 14; Tr. 1111-13. |
| 8. | Use ticketing. | — |
| 9. | Use crowd segmentation. | — |
| 10. | Use wrist banding. | — |
| 11. | Obtain written confirmation from police. | — |

| | Additional/Different Measure | Respondent's Actions in Compliance |
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| 12. | Provide multiple entrances. | — |
| 13. | Provide safe movement through the vestibule “by reducing crowd density and [providing] an adequate number of staff trained in crowd management.” | Employees aimed to reduce density by asking customers to move away from the door and to stop pushing. Tr. 249. They planned for safe movement through the vestibule by removing slip and fall hazards, encouraging customers to walk, and keeping customers informed. Tr. 1111-13. At least fifteen employees monitored the line, which is within the Secretary’s recommended range. Tr. 103, 588-90. |
| 14. | Abate slip, trip, and fall hazards. | Respondent trained all employees to abate slip, trip, and fall hazards, and the Secretary conceded this at the hearing. Tr. 1027, 1111-13. |
| 15. | Adhere to local regulations. | Respondent adhered to local regulations. |
| 16. | Address customers’ anxiety by keeping them informed and addressing their concerns. | Respondent provided information, answered questions, and addressed specific concerns, as explained above. |
| 17. | Protect people with disabilities by offering them separate entrances and exits. | Mr. Sooknanan personally escorted a pregnant woman into the Store after observing that she needed special assistance. Tr. 1020. |
| 18. | Provide a safe environment for managers and staff monitoring the crowd, e.g. elevated perches. | Respondent told employees to come inside when the crowd became unruly, Tr. 86-87, 242, 925, and to stay out of the crowd’s way as it entered the store, Tr. 1112. |
| 19. | Inform employees and customers of escalating crowd dangers. | Respondent instructed employees to stay out of the crowd’s way. It also instructed customers to walk, not run, and requested that individuals form a line and stop pushing. Tr. 87, 249, 1111-13. |
| 20. | Prevent employees from locking one or more store exits. | The Store’s Safety Committee ensured that emergency exits remained unlocked and unblocked on Blitz Day. Tr. 1002. |
| 21. | Discourage employees from cheering shoppers. | — |
| 22. | Provide public amenities to waiting customers. | — |
| 23. | Establish chain-of-command. | Respondent had a chain of command with Store Manager Steve Sooknanan directing Blitz preparations and Market Asset Protection Manager Sal D’Amico and Asset Protection Coordinator Julius Blair providing support. Employees understood that Mr. Sooknanan was “overall” manager. Tr. 12, 68, 235, 915. |

Figure 3: Additional Measures Suggested in OSHA’s November 11, 2009 Fact Sheet

| | Additional/Different Measure | Respondent’s Actions in Compliance |
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| 1. | Have trained security or crowd management personnel or police officers on site. | Respondent hired two security guards, Tr. 1074, and it secured the presence of police by calling the local precinct before the event. Govt. Ex. 145(a), at 188-89, 193-94; Tr. 1014-15. |
| 2. | Create a detailed staffing plan that designates a location for each employee. Determine the number of employees needed in various locations. | Respondent stationed fifteen employees outside to monitor and assist the crowd, as mentioned above. Employees generally worked in designated store sections, such as Lawn & Garden or Electronics. Respondent hired 100 temporary workers for the event, Tr. 234, which was more than it had used in previous years and was designed to accommodate a 12-13% increase in traffic. <i>Id.</i> ; Tr. 997-99. |
| 3. | Ensure that employees are properly trained to manage the event. | Respondent provided slip, trip, and fall training and instructed employees to converse with the crowd and encourage calm, orderly behavior. It also instructed them to keep carts out of the line and stay out of the oncoming crowd’s way, among other things. Tr. 87, 249, 1111-13. |
| 4. | Contact local fire and police agencies to make sure the event meets public safety requirements and ensure that local emergency services are aware of the event. | Respondent had an established relationship with the local precinct, which was aware of the general nature of Blitz Day, as well as the details of the 2008 event. Tr. 235-38, 271-73. |
| 5. | Designate an employee to contact local emergency responders. | Steve Sooknanan and Sal D’Amico both designated Julius Blair as the Store’s liaison with the police. Tr. 239, 999. He understood and exercised this role. Govt. Ex. 148(a), at 188-89, 193-94. |
| 6. | Provide legible and visible signs. | The Store used a “line starts here” sign, and customers lined up in the location indicated. Govt. Rebuttal Ex. 1, at 14; Govt. Ex. 34(a). |
| 7. | Discourage customers from running. | Respondent repeatedly discouraged customers from running. Tr. 1111. |
| 8. | Prepare an emergency plan that addresses potential dangers facing employees. Share plan with local public safety agencies. | Respondent maintained an Emergency Procedures Manual that provided instructions on addressing disaster scenarios such as in-store violence and severe weather. Tr. 985-85; Resp. Ex. 30, at 11-12. Copies of this plan were accessible to employees at several locations in the Store, including the Service Desk, the Phone Operator’s Desk, and the Store Manager’s Office. Tr. 983-87. |

| | Additional/Different Measure | Respondent's Actions in Compliance |
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| 9. | Train employees in crowd management procedures and the emergency plan. Provide opportunities to practice. | Respondent instructed employees in relevant crowd management practices, as noted above. Also, the Emergency Procedures Manual and Market 45 Action Plan were both widely available to employees. Govt. Ex. 11; Tr. 983-87. Respondent began its preparations "several weeks" in advance and held weekly meetings to review roles and responsibilities. Tr. 998-1000. |
| 10. | Set up barricades or rope lines well in advance of customers arriving. | Respondent set up its barricade system on Thanksgiving night, before customers had arrived. Tr. 1050, 1061. |
| 11. | Make sure that barricades are set up so the line does not start right at the store's entrance. | Respondent positioned its barricades forty feet in front of the Store's entrance to create a buffer zone. Tr. 1061 |
| 12. | Ensure that barricade lines have an adequate number of breaks and turns. | — |
| 13. | Designate employees to explain approach and entrance procedures to the arriving public. | Employees instructed customers to remain calm and in line, and asked them not to push or run. Tr. 87, 249, 1111-13. |
| 14. | Make sure outside personnel have radios or some other way to communicate with personnel inside and emergency responders. | Employees used five or more walkie-talkies to communicate about the condition of the crowd and they expected that police would use their loudspeakers, as mentioned above. |
| 15. | Consider using mechanisms like wristbands or tickets. | — |
| 16. | Consider using Internet lottery for "hot" items. | — |
| 17. | Locate shopping carts and other potential obstacles inside the store. | Respondent placed shopping carts inside the Store and prevented customers from carrying carts in the queue. Tr. 103, 251. |
| 18. | If appropriate, provide public amenities. | — |

| | Additional/Different Measure | Respondent's Actions in Compliance |
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| 19. | Communicate updated information to customers waiting in line. Distribute pamphlets showing the location of entrances, exits and special sales items within the store. | Respondent communicated with customers while monitoring the line, answering their questions and providing information, as discussed above. Respondent consciously decided against the use of pamphlets because they had created a potential slip and fall hazard on a prior occasion. Tr. 993-94. |
| 20. | Shortly before the opening, remind waiting crowds of the entrance process. | Respondent repeatedly reminded customers not to push or run, as discussed above. |
| 21. | Make sure all employees and crowd control personnel are aware that the doors are about to open. | Employees asked the crowd to step back from the doors and counted down shortly before the opening. Tr. 249, 890-91. |
| 22. | Staff entrances with uniformed guards, police or other authority. | Respondent hired two security guards and secured the presence of police, as discussed above. |
| 23. | Use a public address system or bullhorns to manage the entering crowd. | Respondent expected that the police would use bullhorns as they had in previous years, as discussed above. |
| 24. | Position security or crowd managers to the sides of entering (or exiting) customers. | Respondent instructed all employees to stand out of the crowd's way as it entered the Store, as discussed above. |
| 25. | Provide crowd- and entry management measures at all entrances, including the ones not being used. If possible, use more than one entrance. | The Store's Safety Committee monitored emergency doors to ensure that they remained unblocked. Tr. 1002. Employees were stationed at the entrance and exit doors to assist customers. Tr. 143, 1002. |
| 26. | When the store reaches maximum occupancy, do not allow additional customers to enter. | The Secretary has not alleged that the Store reached maximum occupancy. <i>See</i> Tr. 526. |
| 27. | Provide a safe entrance for people with disabilities. | Mr. Sooknanan personally escorted a pregnant woman into the Store after observing that she needed special assistance. Tr. 1020. |

| | Additional/Different Measure | Respondent's Actions in Compliance |
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| 28. | Do not restrict egress, and do not block or lock exit doors. | The Safety Committee ensured that emergency doors remained unblocked. Tr. 1002. Respondent instructed employees to stay out of the entering crowd's way and to clear potential slip and fall hazards. Tr. 1111-13. |
| 29. | Know in advance who to call for emergency medical response. | Employees all understood to call 911 in an emergency. Tr. 101, 165, 262, 895, 923, 982. |
| 30. | Keep first aid kits and AEDs available and have trained personnel onsite. | Respondent kept first aid kits in its stores and provided associates with instructions on administering assistance in an emergency. Resp. Ex. 30, at 133-34 |
| 31. | Instruct employees, in the event of an emergency, to follow instructions from authorized first responders, regardless of company rules. | Respondent instructed employees to "cooperate fully with authorities." Resp. Ex. 30, at 68. |