

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into by and between SD Staffing, LLC, a.k.a Atwork Personnel Services, Inc., ("Respondent"), and the United States Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices ("Office of Special Counsel").

WHEREAS, on March 20, 2013, the Office of Special Counsel notified Respondent that it was commencing an investigation, DJ# 197-36-157 (the "OSC Charge"), to determine whether Respondent was engaging in unfair documentary practices in violation of the unfair immigration-related employment practices provisions of 8 U.S.C. § 1324b (the "Act").

WHEREAS, the Office of Special Counsel has concluded that there is reasonable cause to believe that Respondent engaged in a pattern and practice of discriminatory documentary practices based on citizenship status in violation of the Act during the period from September 2011, to July 2013, by unlawfully requiring work-authorized noncitizens, but not similarly-situated citizens, to present specific employment eligibility documents as part of its employment eligibility verification process.

WHEREAS, the Office of Special Counsel and Respondent wish to resolve this matter without further delay, expense, or filing an administrative complaint with the Office of the Chief Administrative Hearing Officer (OCAHO), and hereby acknowledge that they are voluntarily entering into this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual promises herein contained and to fully and finally resolve all disputes among the parties hereto as of the date of this Agreement, it is agreed as follows:

1. Respondent shall pay a civil penalty to the United States Treasury in the amount of Ten Thousand Five Hundred Dollars (\$10,500.00).
2. The monies discussed in paragraph 1 shall be paid in two (2) equal installments of Five Thousand Two Hundred and Fifty Dollars (\$5,250.00), via the FedWire electronic fund transfer system. The first installment payment shall be made within ten (10) business days after the Respondent receives instructions from OSC on the process of fund transfers through the FedWire system.

Notice of the first installment payment shall be emailed to Luz V. Lopez-Ortiz at [Luz.V.Lopez-Ortiz@usdoj.gov](mailto:Luz.V.Lopez-Ortiz@usdoj.gov). The remaining payment shall be made exactly two (2) months from the date of the previous payment, using the same, above-described payment and notice process.

3. Within one hundred and twenty (120) days from the effective date of this Agreement, Respondent shall use its best efforts to identify and place into its staffing pool all non-U.S. citizen applicants from September 2011, to the present, who are authorized to work but who were not considered for job assignment because the application did not contain

specific Form I-9 documentation required by Respondent. In using its best efforts, Respondent shall at a minimum:

- (a) Review all relevant application materials and Forms I-9 in its possession, and identify any applicants who were not offered a job, or whose start date was delayed, due to their failure to present a List A document;
  - (b) Search to the maximum extent practical all relevant documents using or containing the search terms set forth in Attachment A;
  - (c) Using last known mailing address, email address, and phone numbers, invite all individuals identified based on the review required under (a) and (b), and who were not considered for job assignment, to resubmit an application, and, where warranted, offer up to three-days back pay, less required withholdings, for any lost employment resulting solely from the failure to present a List A document; and
  - (d) Within one hundred and fifty days (150) of the date of this Agreement, submit a written report to the Office of Special Counsel documenting the steps taken and the results of such efforts, and provide OSC with a list of, and contact information for, all people identified under (a) and (b).
4. Respondent shall not discriminate on the basis of citizenship status or national origin in violation of 8 U.S.C. § 1324b.
5. Respondent shall treat all individuals equally, without regard to citizenship or immigration status, or national origin, during the hiring, firing, and employment eligibility verification and re-verification process. Respondent shall avoid discrimination in the employment eligibility verification and re-verification process by (a) honoring documentation that on its face reasonably appears to be genuine, relates to the person, and satisfies the requirements of 8 U.S.C. § 1324a(b), (b) not requesting more or different documents than are required by law, and (c) permitting all employees to present any document or combination of documents acceptable by law.
6. Respondent shall not intimidate, threaten, coerce, or retaliate against any person for his or her participation in this matter or the exercise of any right or privilege secured by 8 U.S.C. § 1324b.
7. Unless already done so in connection with its participation in the E-Verify Program, Respondent shall post an English and Spanish version of the Office of Special Counsel "If You Have The Right to Work" poster ("OSC Poster"), in color and measuring no smaller than 18" x 24", an image of which is available at <http://www.justice.gov/crt/about/osc/htm/worker.php#>, in all places where notices to employees and job applicants are normally posted. The Notice will be posted within fourteen (14) days from the effective date of this Agreement and will remain posted for three (3) years thereafter.

8. Beginning not more than fourteen (14) days from the date that Respondent receives a fully signed copy of this Agreement, Respondent will provide a letter-size copy of the OSC Poster in English and the applicant's preferred language, if the preferred language is known and the OSC Poster is available in that language, with all paper employment applications, and a mandatory electronic link to the English and Spanish versions of the OSC Poster with all electronic applications.
9. For two (2) years from the effective date of this Agreement, Respondent shall ensure that all individuals who are responsible for formulating, carrying out, and/or conducting training on Respondent's hiring, firing, equal employment, and employment eligibility verification policies, including all managers and employees who have any role making employment eligibility decisions, such as completing the Form I-9, and/or using the E-Verify system ("Human Resources Personnel"), are in possession of the most current version of the Form I-9, USCIS Employment Eligibility Verification Handbook for Employers (M-274) ("Handbook"), available at [www.uscis.gov/I-9Central](http://www.uscis.gov/I-9Central), and the most current USCIS E-Verify Manual (M-775) ("Manual"), available at [www.uscis.gov/USCIS/Verification/E-Verify/E-Verify\\_Native\\_Documents/manual-employer\\_comp.pdf](http://www.uscis.gov/USCIS/Verification/E-Verify/E-Verify_Native_Documents/manual-employer_comp.pdf). Copies of these documents and future revisions of the Form I-9, Handbook, and Manual, can be obtained from the United States Citizenship and Immigration Services at [www.uscis.gov](http://www.uscis.gov).
10. Within thirty (30) days of receipt of a fully signed copy of this Agreement, Respondent will review its employment policies as they relate to nondiscrimination on the basis of citizenship status and national origin and shall, as necessary, revise such policies to:
  - (a) Prohibit (1) the requesting of employment eligibility verification documents from any individual prior to making an offer of employment; (2) discrimination on the basis of citizenship status or national origin in the hiring and firing process; and (3) any difference in treatment of individuals, on the basis of citizenship status or national origin, during the Form I-9 employment eligibility verification and re-verification process.
  - (b) Refer applicants and employees who complain, formally or informally, of discrimination in the hiring, firing, or Form I-9 employment eligibility verification and re-verification process immediately to the Office of Special Counsel by directing the affected individual to the OSC Poster and the Office of Special Counsel's worker hotline and website, and advise the affected individual of his or her right to file a charge of discrimination with the Office of Special Counsel.
  - (c) Provide that Respondent shall not take any reprisal action against an employee for having opposed any employment practice made unlawful by 8 U.S.C. § 1324b, or for filing any charge, or participating in any lawful manner in any investigation or action under 8 U.S.C. § 1324b.

During the two (2) years following the effective date of this Agreement (the "Reporting Period"), Respondent shall provide any subsequent changes in employment policies as they relate to nondiscrimination on the basis of citizenship status and national origin to the Office of Special Counsel for review at least thirty (30) days prior to the effective date of such revised policies.

11. Within ninety (90) days of receipt of a fully signed copy of this Agreement, the Office of Special Counsel shall provide all Human Resources Personnel with training on their duty to comply with 8 U.S.C. § 1324b, the appropriate use of E-Verify, and the employment eligibility verification and re-verification process as it relates to discrimination on the basis of citizenship status or national origin.
  - (a) The training will consist of viewing a remote webinar presentation. A recording of the webinar shall be provided by the Office of Special Counsel.
  - (b) All employees will be paid their normal rate of pay, and the training will occur during their normally scheduled workdays and work hours. Respondent shall bear all costs associated with these training sessions.
  - (a) For a period of two years from the effective date of this Agreement, all new Human Resources Personnel hired by Respondent after the training described in this paragraph has been conducted shall attend an Office of Special Counsel Employer/HR webinar training within sixty (60) days of hire.
  - (c) Respondent shall compile attendance records listing the individuals who comply with the training as described in this paragraph, including their full name, title, signature, and the date of the training, and send them via email to Luz.V.Lopez-Ortiz@usdoj.gov within ten (10) days of the training session.
12. During the Reporting Period, the Office of Special Counsel reserves the right to make reasonable inquiries to Respondent necessary to determine Respondent's compliance with this Agreement. As a part of such review, the Office of Special Counsel may require written reports concerning compliance, inspect Respondent's premises, examine witnesses, and examine and copy Respondent's documents at the expense of the Office of Special Counsel.
13. During each of the years within the Reporting Period, the Office of Special Counsel may conduct a random audit of Respondent's Forms I-9, including attachments, and require the production of its E-Verify transaction history. Respondent will provide the documents within seven (7) business days of its receipt of the Office of Special Counsel's request, and shall produce such documents in electronic form unless requested otherwise.

14. If the Office of Special Counsel has reason to believe that Respondent is in violation of any provision of this Agreement, the Office of Special Counsel shall promptly notify Respondent of the purported violation. Respondent will then be given a thirty (30) day period from the date it is notified by the Office of Special Counsel, unless extended by mutual agreement, in which to cure the violation to the Office of Special Counsel's satisfaction before Respondent is deemed by the Office of Special Counsel to be in violation of this Agreement.
15. This Agreement resolves any and all differences between the parties relating to OSC's investigation through the date this Agreement is signed by all parties. Neither OSC nor Respondent shall seek any further relief from OCAHO related to the matter.
16. Notwithstanding paragraph 15, this Agreement does not affect the right of any individual to file a charge alleging an unfair immigration related employment practice against Respondent with the Office of Special Counsel, the authority of the Office of Special Counsel to investigate or file a complaint on behalf of any such individual, or the authority of the Office of Special Counsel to conduct an independent investigation of Respondent's employment practices.
17. The provisions of paragraph 1 notwithstanding, the Office of Special Counsel shall not seek from Respondent any additional civil penalty for the pattern or practice of unfair documentary practices in violation of 8 U.S.C. § 1324b that are subject of the OSC investigation through the date this Agreement is signed by all parties.
18. This Agreement may be enforced in the United States District Court for the District of Massachusetts.
19. The Office of Special Counsel and Respondent agree that, as of the effective date of this Agreement, litigation concerning the violations of 8 U.S.C. § 1324b that the Office of Special Counsel has reasonable cause to believe that Respondent committed is not reasonably foreseeable. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to this matter, the party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves either party of any other obligations imposed by this Agreement.
20. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement. Respondent and the Office of Special Counsel agree that they will not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement invalid.
21. This Agreement is neither an admission by Respondent of any act in violation of 8 U.S.C. § 1324b nor a recognition by the United States of the merits of any of Respondent's defenses.

22. The Office of Special Counsel and Respondent agree to bear their own costs, attorneys' fees and other expenses incurred in this action.
23. This Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. The parties agree to be bound by facsimile signatures.

**SD Staffing, LLC, a.k.a. Atwork Personnel Services, Inc.**

By:



Shivon Dysart  
Owner

Dated:

1/16/14

**Office of Special Counsel for Immigration-Related Unfair Employment Practices**

By:



Alberto Ruisanchez  
Acting Deputy Special Counsel

Dated:

1/23/14

C. Sebastian Aloit  
Special Litigation Counsel

Luz V. Lopez-Ortiz  
Trial Attorney