

SETTLEMENT AGREEMENT AND RELEASE

RECITALS

THIS SETTLEMENT AGREEMENT AND RELEASE (the “Agreement”) is made and entered into by and among Maricopa County Community College District (“Respondent”), [REDACTED] (“Charging Party”), 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 January 29, 2009, the Office of Special Counsel received a charge filed by the Charging Party against Respondent (the “OSC Charge”) alleging national origin discrimination, citizenship status discrimination, unfair documentary practices and retaliation in violation of the unfair immigration-related employment practices provisions of 8 U.S.C. § 1324b (the “Act”).

WHEREAS, the Office of Special Counsel concluded based upon its investigation of the OSC Charge that there is reasonable cause to believe that Respondent committed unfair documentary practices in violation of the Act against the Charging Party and other non-U.S. citizens during the period July 15, 2008, to January 4, 2010.

WHEREAS, on August 30, 2010, the Office of Special Counsel commenced OCAHO Case No. 10B00099 (the “Litigation”) by filing an administrative complaint with the Office of Chief Administrative Hearing Officer, alleging immigration-related unfair employment practices by Respondent. In the Litigation, the Office of Special Counsel has sought to discover and impose civil penalties for alleged immigration-related unfair employment practices purportedly occurring from January 29, 2004 through January 4, 2010.

WHEREAS, on October 14, 2010, Respondent filed an answer to the complaint, denying all liability and asserting defenses.

WHEREAS, the Office of Special Counsel, Respondent and the Charging Party wish to resolve the Litigation and the OSC Charge without further delay or expense and hereby acknowledge that they are voluntarily entering into this Settlement Agreement and Release.

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained, it is agreed as follows:

AGREEMENT

1. The foregoing Recitals are hereby incorporated as material terms of this Agreement.
2. Nothing in this Agreement is to be construed as either an admission by Respondent of any act in violation of 8 U.S.C. § 1324b or an admission by the United States of the merits of any of Respondent’s defenses.

3. Respondent agrees to pay the Charging Party a total of \$20,618, consisting of \$19,296 in back pay plus \$1,322 in interest, less all applicable taxes and withholding, in full satisfaction of any right or entitlement to back pay arising from or relating to the events alleged in the OSC Charge and/or the Litigation.
4. Respondent agrees to pay [REDACTED] (“Additional Party”), who sought employment with Respondent, a total of \$1,505, consisting of \$1,392 in back pay plus \$113 in interest, less all applicable taxes and withholding.
5. The payments to the Charging Party and the Additional Party discussed in the paragraphs 3 and 4 shall be made by checks, via express delivery service, within ten (10) days from the date Respondent receives a fully signed copy of this Settlement Agreement and Release (“Agreement”). Copies of the checks shall be e-mailed to Ronald Lee at ronald.lee@usdoj.gov on the day they are mailed, along with the express delivery service tracking number for this mailing.
6. Respondent agrees to pay a civil penalty to the United States Treasury in the amount of \$45,760. The Office of Special Counsel found that Respondent had a practice of requiring non-U.S. citizen employees, including the Charging Party and Additional Party, to submit specific documentation establishing their employment authorization from July 15, 2008, until January 4, 2010.
7. The civil penalty discussed in the preceding paragraph shall be made by check payable to the “United States Treasury c/o Mac McConkey” and mailed by express delivery service, along with a copy of the fully signed Agreement, to the following address within thirty (30) days of Respondent’s receipt of a fully signed copy of this Agreement:

Mac McConkey
U.S. Department of Justice
Civil Rights Division
1425 New York Avenue, N.W., Room 5050
Washington, D.C. 20005

On the same day the check is mailed, an e-mail will be sent to Ronald Lee at ronald.lee@usdoj.gov providing the express delivery service tracking number for this mailing.

8. Respondent agrees that it shall not discriminate on the basis of citizenship status or national origin in violation of 8 U.S.C. § 1324b.
9. Respondent agrees that it will treat all individuals equally, without regard to citizenship or immigration status, or national origin, during the employment eligibility verification and reverification 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 employees to present any document or combination of documents acceptable by law.

10. Respondent agrees that it will not retaliate against the Charging Party, the Additional Party, or any other person for his or her participation in this matter.
11. The Office of Special Counsel and Respondent acknowledge that Respondent has revised the “Non-U.S. Citizen Employee Tax Data Form” (“Tax Data Form”) to comply with 8 U.S.C. § 1324b by removing any requirement that documents acceptable for the completion of the Department of Homeland Security Employment Eligibility Verification Form I-9 (“Form I-9”) be presented as a condition of employment. Respondent agrees that the Tax Data Form shall not be used in any way to verify an individual’s employment eligibility and that it will continue to use versions of the Tax Data Form that do not require production of Form I-9 documents as a condition of employment.
12. Respondent agrees to post a copy of the attached Notice provided by the United States Department of Justice (Attachment A) in all places where notices to employees and job applicants are normally posted. The Notice will be posted within thirty (30) days from the date that Respondent receives a fully signed copy of this Agreement and will remain posted for one year thereafter.
13. Beginning not more than thirty (30) days from the date that Respondent receives a fully signed copy of this Agreement, Respondent will provide a copy of the attached Notice (Attachment A) to each applicant for employment, and Respondent will continue to do so for one year thereafter.
14. Respondent agrees to distribute a copy of the attached Handbook for Employers M-274, Rev. 01/05/11 (Attachment B) to all managers and employees who have any responsibility for completion of the Form I-9, or who instruct employees or prospective employees on the proper completion of the form.
15. 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 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; (3) disparate treatment of individuals, on the basis of citizenship status or national origin, during the Form I-9 employment eligibility verification and reverification process;
 - (b) Provide for investigation by Respondent of complaints of document abuse, citizenship status discrimination, national origin discrimination and retaliation within thirty (30) days of the date the complaint is made by any individual;

- (c) Provide that when complaints are made, written findings of the results of the investigation and remedial actions proposed and/or taken will be made and maintained by the Respondent, and the results of the investigation and any remedial actions taken will be promptly communicated to the complainant; and
- (d) 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 three (3) years following the effective date of this Agreement (the “Reporting Period”), Respondent shall provide any changes in employment policies as they relate to nondiscrimination on the basis of citizenship status to the Office of Special Counsel for review within thirty (30) days of the effective date of such revised policies.

- 16. Every six (6) months during the Reporting Period, Respondent shall provide the Office of Special Counsel copies of any complaints of document abuse, citizenship status discrimination, national origin discrimination, and retaliation, written findings of the results of the investigation and remedial actions proposed and/or taken, as provided in Respondent’s nondiscrimination policies.
- 17. Within thirty (30) days of receipt of a fully signed copy of this Agreement, Respondent will educate personnel identified in this paragraph concerning their responsibilities under 8 U.S.C. § 1324b by having them view an educational video regarding 8 U.S.C. § 1324b, to be provided by the Office of Special Counsel. Human Resources and Payroll Management and Staff who (1) are responsible for formulating and/or carrying out Respondent's employment eligibility verification policy, including all those involved in completing the Form I-9, and/or who instruct employees or prospective employees on the proper completion of the form; and (2) are responsible for formulating and/or carrying out Respondent’s policies regarding setting up new employees’ files in Respondent’s Human Resource Management System (HRMS); and (3) are responsible for completing new hire paperwork with new employees, including any form designed to determine a new employee’s tax withholding, will be required to view the video. Respondent represents that Human Resources and Payroll Management and Staff identified in this paragraph include all individuals who are responsible for completing Section 2 and Section 3 of the Forms I-9 on behalf of Respondent or have principal responsibility for formulating and/or carrying out Respondent's employment eligibility verification policy.
- 18. Within ninety (90) days of receipt of a fully signed copy of this Agreement, unless extended by mutual agreement, OSC shall provide Respondent’s employees identified in paragraph 17 with employment eligibility verification training explaining the employment eligibility verification and reverification process as it relates to discrimination on the basis of citizenship status or national origin.

- (a) All employees attending the training will be paid their normal rate of pay, and the training will occur during their normally scheduled workdays and work hours.
 - (b) Within ninety (90) days of the training, Respondent will review the HRMS and shall, as necessary, revise the system and policies related to the HRMS to ensure compliance with the employment eligibility verification and reverification process as it relates to discrimination on the basis of citizenship status or national origin.
 - (c) For a period of three years from the effective date of this Agreement, all Human Resources and Payroll Management and Staff described in paragraph 17 hired by Respondent after the training described in paragraphs 17 and/or 18 has been conducted shall receive the training described in paragraphs 17 and/or 18 within fourteen (14) days of hire.
 - (d) Within thirty (30) days of the anniversary date of the OSC training described herein, for a period of three years from the effective date of this Agreement, all Human Resources and Payroll Management and Staff identified in paragraph 17 shall review an abbreviated version of the training to be determined by OSC and Respondent, with the exception of any individuals who have viewed the training within the previous six (6) months.
 - (e) Individuals who comply with the training as described in paragraphs 17 and 18 shall complete Attachment C, including signatures, as evidence of such compliance. The original of Attachment C, including signatures, will be mailed to the Office of Special Counsel by registered or certified mail, return receipt requested, within ten (10) days of the training session.
19. Respondent agrees that, should the Office of Special Counsel have reason to believe that Respondent is not in compliance with any provision of this Agreement during the Reporting Period, Respondent will reasonably cooperate with the Office of Special Counsel in the investigation of such noncompliance following receipt by Respondent from the Office of Special Counsel of written notice indicating the basis for the Office of Special Counsel's reason to believe that the Respondent is not in compliance with this Agreement. Respondent further agrees to provide for review by the Office of Special Counsel any revisions to its employment eligibility verification policies or its policies concerning the use of the Tax Data Form within thirty (30) days of the effective date of such revisions during the Reporting Period.
20. Six (6) months after final receipt of a fully signed copy of this Agreement, Respondent shall provide the Office of Special Counsel its completed Forms I-9 for all non-U.S. citizen employees hired in this six-month period. Thereafter, every six (6) months, Respondent shall provide the Office of Special Counsel its completed Forms I-9 for all

non-U.S. citizen employees during the previous six-month period for a total period of three (3) years.

21. The Charging Party agrees to withdraw with prejudice the OSC Charge. The Charging Party's signature on this Agreement will constitute a request for such withdrawal. The Office of Special Counsel agrees to accept the withdrawal of this charge upon the satisfaction of paragraphs 3-7 of this Agreement, and will dismiss the charge in accordance therewith.
22. The Charging Party hereby covenants not to sue or commence any proceeding against Respondent and/or its officers, directors, employees and agents with the Office of the Chief Administrative Hearing Officer, Executive Office for Immigration Review or the Office of Special Counsel, with respect to the OSC Charge and the events alleged therein.
23. This Agreement may be enforced in the United States District Court for the District of Arizona.
24. This Agreement, subject to paragraph 25 below, resolves any and all differences between the parties relating to the charge filed by the Charging Party and/or the Litigation through the date this Agreement is signed by all parties.
25. This Agreement does not affect the right of any individual (other than the Charging Party as set forth above in paragraphs 21 and 22) to file a charge alleging an unfair immigration related employment practice against Respondent with the Office of Special Counsel or the right of the Office of Special Counsel to investigate or file a complaint on behalf of any such individual.
26. The provisions of paragraphs 6 and 25 notwithstanding, the Office of Special Counsel shall not seek from Respondent any additional civil penalty for any alleged violation of 8 U.S.C. § 1324b for the period of January 29, 2004 through and including January 4, 2010.
27. Within ten (10) days of their receipt of a fully signed copy of this Agreement, Respondent and the Office of Special Counsel shall file a stipulation in the form attached hereto as Attachment D, requesting that the Litigation be dismissed with prejudice.
28. 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, the Office of Special Counsel and the Charging Party 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 is invalid.
29. The Office of Special Counsel, Respondent, and the Charging Party agree to bear their own costs, attorneys' fees and other expenses incurred in this action.

30. This Agreement sets forth the entire agreement between the parties hereto, and fully supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter herein.
31. 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.

Maricopa County Community College District

By: Margaret McConnell Dated: 5-16-11
Margaret McConnell
Assistant General Counsel

Charging Party

By:  Dated: 5/9/2011

Office of Special Counsel for Immigration-Related Unfair Employment Practices

By: Seema Nanda Dated: 5/16/11
Seema Nanda
Acting Deputy Special Counsel

By: Liz I. Hack Dated: 5/16/11
Elizabeth I. Hack
Special Litigation Counsel

By: Jennifer Deines Dated: 5/16/11
Ronald Lee
Trial Attorneys