

## **SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into by and between Apple Inc. ("Apple") and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section ("IER") (collectively, "the Parties").

### **I. BACKGROUND**

WHEREAS, by letter dated February 13, 2019, IER notified Apple that it had initiated an independent investigation, DJ# 197-11-963 ("IER Investigation"), to determine whether Apple engaged in discriminatory recruitment and hiring practices related to permanent labor certification ("PERM") based on citizenship status in violation of the Immigration and Nationality Act's anti-discrimination provision, 8 U.S.C. § 1324b ("Act").

WHEREAS, the IER Investigation found reasonable cause exists to believe that beginning no later than January 1, 2018, and continuing until at least December 31, 2019, the investigatory period, Apple engaged in a pattern or practice of discriminatory PERM recruitment, which is part of the hiring process, based on citizenship status. Specifically, Apple preferred workers holding temporary employment visas for PERM related positions based on their citizenship status instead of qualified and available U.S. applicants, in violation of 8 U.S.C. § 1324b(a)(1)(B).

WHEREAS, IER determined when an Apple employee holding a temporary visa status requested to become a permanent employee, Apple departed from its standard recruiting process during required PERM-related recruitment. Instead, Apple followed different procedures designed to favor the temporary visa holder and deter U.S. applicants (which include U.S. citizens, U.S. nationals, lawful permanent residents, and those granted asylum or refugee status). Specifically, Apple did not advertise positions on its external job website and required all applicants to mail paper applications, as opposed to allowing electronic applications. These less effective recruitment procedures deterred U.S. applicants from applying and nearly always resulted in zero or very few mailed applications that Apple considered for PERM-related job positions, which allowed Apple to fill the positions with temporary visa holders. Apple also failed to consider certain internal applicants to PERM-related positions if they only submitted their application electronically as opposed to mailing an application.

WHEREAS, the Parties wish to resolve the IER Investigation without further delay or expense and hereby acknowledge that they are voluntarily entering into this Agreement.

WHEREAS, this Agreement does not constitute and shall not be construed as an admission by Apple of any act in violation of 8 U.S.C. § 1324b or guilt or liability for any violations of 8 U.S.C. § 1324b, 20 C.F.R. Part 656, or other applicable law, rule, or regulation.

WHEREAS, Apple vigorously disputes the findings and conclusions of IER that reasonable cause exists to believe that Apple engaged in a pattern or practice of discriminatory PERM practices based on citizenship status in violation of 8 U.S.C. § 1324b and denies that it engaged in a pattern or practice of discriminatory PERM practices based on citizenship in violation of 8 U.S.C. § 1324b. Apple maintains that it adhered to the recruitment steps required

of the PERM program by the U.S. Department of Labor regulations. Apple also maintains that any alleged failures were the result of inadvertent error and not intentional discrimination. No term in this Agreement constitutes, nor shall it be construed as, Apple admitting to any guilt or liability for any purpose relating to violations of any statute or regulation, or any other applicable law, rule, or regulation, including but not limited to 8 U.S.C. § 1324b or 20 C.F.R. Part 656.

WHEREAS, this Agreement resolves all currently pending matters before IER and any claims that could have been asserted regarding Apple's alleged violations of 8 U.S.C. § 1324b, that were the subject of the IER Investigation as of the date of this Agreement. Apple has already taken certain actions to address the alleged deficiencies in its PERM process, and the Parties believe that those actions and this Agreement address alleged citizenship status discrimination, including past violations against U.S. workers under 8 U.S.C. § 1324b(a)(1).

NOW, THEREFORE, in consideration of the below mutual promises, and to fully and finally resolve the IER Investigation as of the date of this Agreement, the Parties agree as follows:

## **II. TERMS OF SETTLEMENT**

1. This Agreement shall become effective as of the date the last Party signs the Agreement, referred to as the "Effective Date." The term of this Agreement is three years following the Effective Date.
2. Apple shall pay civil penalties to the United States Treasury in the amount of \$6,750,000. Apple shall pay the monies discussed in this Paragraph via the FedWire electronic fund transfer system within 30 calendar days of either the Effective Date or receipt of fund transfer instructions from IER, whichever is later. Apple shall also provide IER with its corporate address by the time it makes the payments. On the day of payment, Apple shall confirm via email to Erik Lang, Sam Shirazi, and William Hanrahan (or any other individual(s) IER designates) that payment was made.
3. Other than the civil penalties provided for under Paragraph 2 and back pay provided for under Paragraph 5, IER shall not seek from Apple any additional funds, injunctive, or other relief for the pattern or practice of discriminatory PERM practices based on citizenship status in violation of 8 U.S.C. § 1324b(a)(1)(B) that is the subject of the IER Investigation through the Effective Date.
4. In accordance with 8 U.S.C. § 1324b, Apple shall not discriminate in hiring or recruiting on the basis of citizenship or immigration status in violation of 8 U.S.C. § 1324b.
5. Pursuant to Attachment A, which is incorporated into and made a part of this Agreement, Apple shall provide back pay due to the alleged discriminatory PERM practices. The process for applying to and being eligible for back pay is further outlined in Attachment A.

6. Within 45 calendar days of the Effective Date, Apple will propose in writing to IER an independent claims administrator to administer the back pay process set out in Attachment A. If IER approves of the independent claims administrator, IER shall notify Apple in writing and, within 15 days thereof, Apple shall hire at its own expense the IER-approved independent claims administrator who shall then be responsible for administering the back pay process per Attachment A. If IER does not approve of the proposed independent claims administrator, Apple shall propose a different one within 15 calendar days of IER's rejection. If necessary, the process set forth in this paragraph shall repeat until Apple retains an IER-approved independent claims administrator.
7. Apple shall draft a policy outlining the steps governing its PERM recruitment process. This policy shall prohibit discrimination on the basis of citizenship status in Apple's PERM recruitment process. Within 90 calendar days of the Effective Date, Apple shall submit the draft policy to IER for review. IER shall review the policy to ensure conformity with the Agreement and 8 U.S.C. § 1324b, and, if necessary, the Parties shall engage in a dialogue regarding any material revisions to the policy that IER thinks are necessary. Apple shall implement such policy within 30 calendar days of receiving IER's approval. In the revised policy, Apple shall:
  - a. Assign all PERM-related position postings a requisition number, which is associated with a job profile group;
  - b. Post all PERM-related positions on the external and internal job websites;
  - c. Accept electronic applications for PERM-related positions through its external and internal job websites;
  - d. Not require applicants to apply via mail for PERM-related positions instead of applying electronically;
  - e. Ensure that the online application functionality is enabled to allow applicants to PERM-related positions to apply electronically through state workforce agency websites, where there is such an option;
  - f. Enter into Apple's applicant tracking system all applicants to all PERM-related positions who apply via Apple's internal and external websites, enabling such applicants to be searchable and remain searchable in the same manner as applicants to non-PERM related positions at Apple, and allowing Apple's recruiting team to identify, consider, and/or hire such applicants for Apple job opportunities, including but not limited to ones in the same job profile group as the PERM-related position to which they previously applied; and
  - g. Conduct a good faith review of the qualifications of applicants to PERM-related positions in the same manner that qualifications are assessed outside of the PERM context, and ensure that it does not

discriminate against any applicant based on citizenship status when complying with 20 C.F.R. § 656.10(c).

8. During the term of this Agreement, Apple shall provide all subsequent draft revisions to any PERM recruitment policies described in Paragraph 7 to IER for review. IER shall have 30 calendar days to review the policy to ensure conformity with the Agreement and 8 U.S.C. § 1324b and approve such policy or, if necessary, initiate a dialogue between the Parties regarding the policy. Apple shall not implement any such revisions, other than changes following guidance from the U.S. Department of Labor, until it receives IER approval.
9. During the term of this Agreement, Apple shall prepare a semi-annual (twice yearly) report of its recruiting procedures for PERM-related positions, with the first report to be prepared six months following the Effective Date of the Agreement and subsequent reports to be prepared every six months thereafter. This report shall list the PERM-related positions for which a PERM application was filed, the number of applicants to each, the number of applicants interviewed for each, and the number of applicants Apple deemed qualified for each position.
10. Apple shall provide all recruiters and sourcers with any involvement in recruiting or hiring workers for U.S.-based positions or in establishing the PERM recruitment process ("Required Employees") with training on their obligation to comply with 8 U.S.C. § 1324b, as follows:
  - a. No later than 30 calendar days after the Effective Date of this Agreement, IER shall provide a sample presentation to counsel for Apple that outlines the required content to be covered during the training. Apple will provide IER with the contents and format of its proposed training no later than 60 calendar days after the Effective Date of this Agreement. IER shall have at least 45 days to review the proposed training and will provide Apple with feedback during the review process, and the Parties shall engage in a dialogue regarding the training. Once IER approves the final training, Apple shall make the approved training available to all Required Employees within 60 days and require such employees to complete the training within 90 days of it being made available.
  - b. The training shall consist of a web-based presentation provided by Apple or a third-party vendor, and Apple shall provide Required Employees with an opportunity to submit or send questions related to the training content. Apple shall respond to those questions and create a list of Frequently Asked Questions ("FAQ") that contains questions that are commonly asked. Apple shall provide the FAQ to IER within 120 calendar days of the release of the training. IER will have 30 calendar days to provide any proposed revisions to the draft answers, and the Parties shall engage in a dialogue regarding the draft answers. The final version of the FAQ shall be readily accessible to the Required Employees.

- c. Apple shall pay all employees their normal rate of pay during the training and the training will occur during their normally scheduled workdays and work hours. Apple shall bear all costs associated with the training session(s).
  - d. During the term of this Agreement, all new Required Employees Apple hires or promotes shall review the web-based training within 60 calendar days of such hire or promotion.
  - e. Apple shall identify the number of Required Employees who attended the training along with each Required Employee's job title and department name via email to Erik Lang, Sam Shirazi, and William Hanrahan (or any other individual(s) IER designates in writing) on an annual basis for the term of this Agreement. This information shall be provided with the report required under Paragraph 9, beginning with the second such report and then annually thereafter. IER shall maintain such information in accordance with any applicable privacy laws.
11. During the term of this Agreement, prior to beginning recruitment in connection with a PERM application, the hiring manager(s) for the PERM-related position shall take the training described in Paragraph 10, unless the hiring manager has already completed the training.
12. During the term of this Agreement, IER reserves the right to make reasonable inquiries with Apple as necessary to determine Apple's compliance with this Agreement. Apple shall respond in writing to such inquiry within 30 calendar days of the request.
13. Nothing in this Agreement limits IER's right to inspect Apple's Forms I-9, together with any attachments, photocopies or other related documents (if copies are retained), with at least 3 business days' notice pursuant to 8 C.F.R. § 274a.2(b)(2)(ii).
14. If IER has reason to believe that Apple is in violation of any provision of this Agreement, IER may, in its sole discretion, notify Apple in writing of the potential violation without opening an investigation. Apple will then have 45 calendar days from the date of IER's notification to provide IER with a response to the alleged violation. If Apple's response is not satisfactory to IER, IER will provide Apple a cure period of 30 calendar days. If IER is not satisfied with Apple's efforts to cure, IER may then deem Apple to be in violation of this Agreement.
15. This Agreement does not affect:
- a. The right of any individual to file a charge alleging an unfair immigration-related employment practice against Apple, except as may be provided in an applicable release agreement; or
  - b. IER's authority to investigate or file a complaint on behalf of any



individual regarding allegations occurring after the Effective Date or outside the scope of the IER Investigation; IER's authority to conduct an independent investigation of Apple's employment practices occurring after the Effective Date; or IER's obligation to process any charge referenced in Subparagraph a, including through the process described in Attachment A, if applicable.

16. This Agreement resolves any and all differences between the parties relating to the IER Investigation, DJ # 197-11-963, through the Effective Date.

### **III. OTHER TERMS**

17. This Agreement is governed by the laws of the United States. This Agreement shall be deemed to have been drafted by both Parties and shall not be construed against any one Party in the event of a subsequent dispute concerning the terms of the Agreement. The Parties agree that the paragraphs set forth in Part II of this Agreement (entitled "Terms of Settlement") are material terms, without waiver of either Party's right to argue that other terms in the Agreement are material.
18. The United States District Court for the Northern District of California shall be the preferred venue for enforcement of any claims over which that court has subject matter jurisdiction. Otherwise, a Party must bring any claim or counterclaim to enforce the agreement in a court of competent jurisdiction. This provision does not constitute a waiver of sovereign immunity or any other defense the United States might have against a claim for enforcement or counterclaims asserted against it. This provision does not constitute a waiver or limitation of any defense otherwise available to Apple.
19. 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 and the invalidated term or provision shall be deemed not to be a part of this Agreement. The Parties shall not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is invalid.
20. Nothing contained in this Agreement shall require any Party at any time to disclose any information protected by the attorney-client privilege, attorney work product, or any other applicable privileges or confidentiality protections recognized under the laws of the United States.
21. The Parties will comply with any and all privacy laws applicable to documents and information provided pursuant to any term of this Agreement.
22. The Parties agree that, as of the Effective Date, litigation concerning the violations of 8 U.S.C. § 1324b that are the subject of the IER Investigation is not reasonably foreseeable. To the extent that any 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.

23. The Parties shall bear their own costs, attorneys' fees, and other expenses incurred in the IER Investigation.
24. This Agreement sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements or understandings between the Parties pertaining to the subject matter herein. Any modifications to the Agreement must be in writing and signed or affirmed by both Parties.
25. 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 shall be bound by facsimile signatures.

Apple Inc.

By: \_\_\_\_\_

Heather Grenier  
Vice President, Legal

Dated: November 2, 2023

**Immigrant and Employee Rights Section**

By: \_\_\_\_\_

Jennifer Deines  
Acting Deputy Special Counsel

Tamara Hoflejer  
Acting Special Litigation Counsel

Sam Shirazi  
Erik Lang  
William Hanrahan  
Trial Attorneys

Dated: 11/8/2023