

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into by and between Spike, Inc., d/b/a/Olympia Moving and Storage (“Spike”), 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 May 28, 2019, IER notified Spike in writing that it had initiated an independent investigation, DJ# 197-36-296 (“IER Investigation”), to determine whether Spike had a preference for hiring temporary, nonimmigrant, visa holders over U.S. workers based upon their citizenship status in violation of the Immigration and Nationality Act’s anti-discrimination provision, 8 U.S.C. § 1324b (“Act”).

WHEREAS, IER concluded based on the IER Investigation that reasonable cause exists to believe that from at least February 1, 2019, to March 11, 2019, Spike engaged in discriminatory recruitment and hiring based on citizenship status by preferring to hire H-2B visa workers for mover positions instead of four (4) qualified, available U.S. applicants who had applied to Spike through the Maryland or Pennsylvania State Workforce Agency Online Job Bank, in violation of 8 U.S.C. § 1324b(a)(1)(B).

WHEREAS, Spike disputes IER’s conclusions and asserts that at no time did it intentionally engage in any discriminatory conduct prohibited by 8 U.S.C. § 1324b;

WHEREAS, IER and Spike wish to resolve IER’s reasonable cause findings without further delay or expense and hereby acknowledge that they are voluntarily entering into this Agreement.

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, IER and Spike agree as follows:

II. TERMS OF AGREEMENT

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 two years following the Effective Date.
2. Spike shall pay civil penalties to the United States Treasury in the amount of twelve thousand dollars (\$12,000.00). Spike shall pay the monies discussed in this Paragraph via the FedWire electronic fund transfer system within 15 days of either the Effective Date or receipt of fund transfer instructions from IER, whichever is later. On the day of payment, Spike shall confirm via email to Erik Lang at Erik.Lang@usdoj.gov and Lisa Sandoval at Lisa.Sandoval@usdoj.gov (or any other individual IER designates) that payment was made.

3. The provisions of Paragraph 2 notwithstanding, IER shall not seek from Spike any additional civil penalty for the pattern or practice of discriminatory hiring and recruiting 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. Respondent shall not discriminate in hiring on the basis of citizenship or immigration status in violation of 8 U.S.C. § 1324b.
5. Spike shall set aside seventy thousand dollars (\$70,000) to compensate Qualified Individuals who sought employment, as described below:
 - a. A “Qualified Individual,” as described in this Sub-Paragraph, shall include any protected individual, as defined in 8 U.S.C. § 1324b(a)(3), who: (i) applied for a position as a mover with Spike from February 1, 2019, to March 11, 2019, through the Maryland or Pennsylvania State Workforce Agency online Job Banks, or by contacting Spike directly (seeking work as a temporary mover in Pennsylvania or Maryland); (ii) met the actual minimum qualifications for the position and was available to work in Maryland or Pennsylvania beginning on April 1, 2019; and (iii) was not considered and/or offered employment by Spike with a firm start date.
 - b. Within 15 calendar days from the Effective Date, Spike shall provide IER with all contact information (including telephone numbers and e-mail addresses) in its possession about [REDACTED] and [REDACTED], individuals who applied for mover positions with Spike through the Maryland or Pennsylvania State Workforce Agency online Job Banks between February 1, 2019, and March 11, 2019.
 - c. Within 60 calendar days from the Effective Date, IER will send a written notification of this Agreement (“Notice Letter”) and an Applicant Back Pay Claim Form (“Claim Form”) to those applicants listed in Paragraph 5(b), and to any other applicants meeting the parameters of Paragraph 5(a) whom IER is or becomes aware of within 60 calendar days from the Effective Date, to determine if they are Qualified Individuals entitled to receive compensation for lost wages due to Spike’s alleged unfair employment practices. IER may also attempt to contact those applicants listed in Paragraph 5(b), and any other applicants of whom IER is or becomes aware, by email or telephone.
 - d. The Notice Letter will additionally notify each individual of the opportunity to be interviewed and considered for a mover position with Spike.
 - e. Individuals who wish to be considered for back pay relief will have forty-five (45) calendar days from the date of the Notice Letter to return the Claim Form to IER, unless an individual can demonstrate good cause (as determined by IER) for the failure to return or postmark a Claim Form by

the specified deadline.

- f. No later than 90 calendar days from the date of the Notice Letter, IER will calculate and notify Spike of the amount of back pay owed to each claimant IER determines to be a Qualified Individual and who demonstrates lost wages due to the alleged discrimination. IER will apply the following requirements to determine which applicants met the bona fide occupational qualifications: 1) availability for an April 1, 2019 start date; 2) availability for the entire work period; 3) ability to stand, stoop & crawl; 4) ability to routinely lift heavy objects weighing 50 pounds and occasionally lift heavier objects, with assistance, weighing 75-100 pounds. IER will perform this initial calculation using a formula that multiplies the hourly rate specified in the relevant labor certification application by the number of work hours specified in the contract period or actually worked by the visa workers, and subtracts the pay, if any, that the Qualified Individual earned from an alternate employer during the contract period (i.e., mitigation earnings), plus accumulated interest. Interest is calculated at the IRS underpayment rate, through the Effective Date. If the total amount of back pay that is owed to Qualified Individuals exceeds seventy thousand dollars (\$70,000), IER shall calculate a *pro rata* amount of back pay for each Qualified Individual using the fraction that represents the amount of back pay owed to the Qualified Individual compared to the total back pay fund amount. The Parties agree that Spike's total liability to Qualified Individuals under this Paragraph shall not exceed seventy thousand dollars (\$70,000).
- g. Within 30 calendar days from the date on which IER notifies Spike of its initial determinations regarding the amounts owed to each Qualified Individual pursuant to Paragraph 5(f), Spike will notify IER in writing if Spike disagrees with any back pay determination, and provide an explanation for its position along with copies of any supporting documentation.
- h. If Spike disagrees under Paragraph 5(g) with IER's back pay determination under Paragraph 5(f), IER will review the information provided by Spike under Paragraph 5(g) and make, in its sole discretion, the final determination regarding the amount to be paid, if any, and will, within 30 calendar days of receiving Spike's notice of disagreement under Paragraph 5(g), notify Spike in writing of its final determinations. If necessary, IER's final determination will re-calculate any *pro rata* back pay determinations, taking into account the final number of Qualified Individuals and amounts to be paid.
- i. If Spike does not notify IER of any objections under Paragraph 5(g), IER's back pay determinations will become final thirty (30) calendar days from the date on which IER notifies Spike of its initial backpay determinations under Paragraph 5(f). If Spike notifies IER of any

objections under Paragraph 5(g), IER's back pay determinations will become final thirty (30) calendar days from IER's final back pay determination under Paragraph 5(h). Spike shall, within 14 calendar days of the date that IER's back pay determination becomes final, send each Qualified Individual by first class mail and email a blank IRS Form W-4, applicable state tax forms, a Back Pay Determination Letter indicating the amount of backpay to be received, and a Release releasing Spike from claims arising under 8 U.S.C. § 1324b before the date of signature on the Release. The Back Pay Determination Letter shall include a pre-paid self-addressed return envelope with sufficient postage and shall request that the Qualified Individuals return the completed IRS Form W-4, applicable state tax forms, and Release to Spike within 30 calendar days. On the same day Spike mails the Back Pay Determination Letters, Spike shall email Erik Lang at Erik.Lang@usdoj.gov and Lisa Sandoval at Lisa.Sandoval@usdoj.gov (or any other individual IER designates), copies of the letters and pre-paid self-addressed envelope it sends to each Qualified Individual.

- j. Within 14 days of Spike's receipt of the signed IRS Form W-4, any applicable state tax forms, and the Release Spike shall send each individual, by certified mail or similarly reliable courier service, the back pay amount previously determined by IER, less any withholding required by law, accompanied by a payment transmittal notice. On the same day, Spike shall send a copy of the check and payment transmittal notice to Erik.Lang@usdoj.gov and Lisa.Sandoval@usdoj.gov. Spike shall withhold applicable taxes based on the rates of the current year and shall provide each Qualified Individual with all applicable income tax reporting forms. Spike is responsible for paying any employer-side taxes or contributions due to the federal or state government based on the payments made to each Qualified Individuals pursuant to this Settlement Agreement. Spike shall follow the applicable instructions contained in IRS Publication 957 and credit each Qualified Individuals' back pay award to calendar quarters of the year when the back wages would have been earned.
- k. All written communications from Spike to Qualified Individuals relating to this Agreement shall be submitted to IER for prior review and approval.
- l. Any remaining amount of the \$70,000 back pay fund that has not been allocated to Qualified Individuals pursuant to the process set forth in this Paragraph shall be returned to Spike's unrestricted control on the day IER's back pay determination becomes final. Any amounts allocated but not distributed through no fault of Spike shall be returned to Spike's unrestricted control 90 calendar days after it advises IER of the impediments encountered, assuming those impediments cannot be resolved.

6. For the term of this Agreement, Spike shall comply with all applicable recruiting obligations before employing H-2B visa workers for any positions, as well as engage in supplemental recruiting actions with respect to such positions including, at a minimum, the following:
- a. Ensure that each job order placed with a state workforce agency identifies the local office out of which the employee will work as Spike's address;
 - b. Contact all applicants who express interest online through Spike's website and/or its other online job portals, and give each full consideration for employment;
 - c. Enable any employer-side functionality of the electronic, online platform that allows a job seeker to apply online through the state workforce agency;
 - d. Enable any notifications available to the employer as part of the electronic, online platform that indicate to Spike that there is a new applicant; and
 - e. Not close any of its H-2B related job orders until fourteen (14) calendar days before the work start date.
 - f. Spike shall respond within 72 hours to all U.S. applicants who express interest in an advertised position directly, through a state workforce agency job bank, through an online job portal, or in any other manner, and give each job seeker full consideration for employment.
 - g. Spike shall maintain a list of all places where it posts job advertisements, whether in print or online. Within 14 calendar days of any request, Spike shall provide this list to IER during the term of this Agreement.
 - h. Spike shall post a job advertisement (or comparable notice of employment opportunity) on at least one job posting website, besides the required state workforce agency job bank website, no earlier than 45 calendar days before the projected start date of work, and not remove such postings sooner than 14 calendar days before the start date of work, or until all positions are filled by U.S. workers, whichever is earlier.
 - i. Spike shall continue to update its recruitment report after submitting it to DOL (as required by 20 C.F.R. §655.48(b)), and send a copy of each report to IER 14 business days after the actual start date of the work described in each job order during the term of this Agreement. No U.S. worker who applies or expresses interest at least 14 calendar days prior to the work start date shall be rejected for hire unless there is a lawful

job-related reason.

- j. Spike shall continue to review its recruiting efforts and endeavor to increase applications from qualified U.S. workers. If requested by IER, Spike shall provide IER with information regarding its recruiting efforts within ten (10) calendar days.
- 7. Within 30 calendar days of the Effective Date, Spike shall review its employment policies and revise such policies to prohibit discrimination on the basis of citizenship status and national origin in the recruitment, hiring, and firing processes. Spike shall implement such policies within 45 calendar days of the Effective Date or upon receipt of approval by IER pursuant to paragraph 8, whichever is later.
 - 8. During the term of this Agreement, Spike shall provide all draft revisions to its employment policies made pursuant to Paragraph 7, for IER review and approval under 8 U.S.C. § 1324b, at least 15 calendar days prior to the implementation date of such revisions.
 - 9. During the term of this Agreement, Spike shall retain a copy of every job application and resume submitted to Spike, including but not limited to those accessible through a state workforce agency job bank that relate to a mover job, temporary or permanent, advertised by Spike.
 - 10. During the Term of this Agreement, if Spike applies for H-2B labor certification or visas, Spike shall keep a written record of the action(s) it took with respect to each application and resume identified in the previous Paragraph, including whether or not the individual was successfully contacted, the dates and times of attempted contacts with the individual, as well as whether the individual was interviewed, offered a job, hired, or not selected, and the reason(s) for the non-selection. For positions that Spike seeks H-2B labor certification to hire visa workers, Spike shall consider all U.S. applicants, even if they apply for permanent, not temporary, positions.
 - 11. During the Term of this Agreement, Spike shall keep a copy of all H-2B-related forms, documents, applications, petitions, letters, and responses to requests for more information that it provides to and/or receives from the U.S. Department of Labor and U.S. Department of Homeland Security.
 - 12. Within 90 calendar days from the Effective Date, all of Spike's employees, contractors, and agents with any responsibility for recruiting and/or hiring workers employed by Spike, shall receive IER-provided training on their obligation to comply with 8 U.S.C. § 1324b.
 - a. The trainings shall consist of viewing a free remote IER employer webinar presentation, which IER shall provide on a date mutually agreeable to the Parties.
 - b. All employees will be paid their normal rate of pay during the training, and the training will occur during their normally scheduled workdays and

work hours. Spike shall bear all costs associated with these training sessions.

- c. During the term of this Agreement, all new staff hired or promoted by Spike into positions with any responsibility for the activities listed above, after the training described in this Paragraph has been conducted, shall review a recorded version of the webinar within sixty (60) calendar days of hire or promotion.
 - d. Spike shall confirm the initial webinar participation required in Paragraph 12(a), and subsequent viewings of the webinar training required by Paragraph 12(c), via email to Erik.Lang@usdoj.gov and Lisa.Sandoval@usdoj.gov within ten (10) business days of completion of each training session.
- 13. During the term of this Agreement, IER reserves the right to make reasonable inquiries to Spike as necessary to determine Spike's compliance with this Agreement. As a part of such review, IER may require written reports concerning compliance, inspect Spike's premises, examine witnesses, and examine and copy Spike's documents. IER agrees to provide Spike with at least fourteen (14) calendar days to respond to any such request, except as may be otherwise provided in this Agreement.
 - 14. Nothing in this Agreement limits IER's right to inspect Spike's Forms I-9 within three (3) business days pursuant to 8 C.F.R. § 274a.2(b)(2)(ii).
 - 15. If IER has reason to believe that Spike is in violation of any provision of this Agreement, IER may, in its sole discretion, notify Spike of the potential violation without opening an investigation. Spike will then have thirty (30) calendar days from the date of IER's notification to cure the violation to IER's satisfaction before IER deems Spike to be in violation of this Agreement.
 - 16. Subject to paragraph 17, this Agreement does not affect the right of any individual to file a charge alleging an unfair immigration-related employment practice against Spike, IER's authority to investigate or file a complaint on behalf of any such individual, or IER's authority to conduct an independent investigation of Spike's employment practices.
 - 17. This Agreement resolves any and all differences between the Parties with respect to Spike relating to the IER Investigation, DJ # 197-36-296 and matters that could have been included therein, through the Effective Date.
 - 18. This Agreement may be enforced in the United States District Court for the District of Maryland. This Paragraph, or the initiation of a lawsuit to enforce the Agreement under this Paragraph, including any counterclaims asserted, does not constitute and should not be construed as a waiver of sovereign immunity or any other defense the United States might have against a claim for enforcement. For the purposes of an action to enforce this Agreement, the Parties agree that the obligations set forth in each and every provision of

Part II of this Agreement are material.

III. OTHER TERMS

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 term or provision shall be deemed not to be a part of this Agreement. Spike and IER shall not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is invalid. For purposes of interpreting this agreement, both Parties shall be deemed to have drafted it.
20. 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.
21. The Parties shall bear their own costs, attorneys' fees and other expenses incurred in this action.
22. 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.

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 shall be bound by electronic and/or scanned signatures.

Spike, Inc.


By:


Michael Gilmartin, CEO

Dated: 3/29/21

Immigrant and Employee Rights Section

By:


Jennifer A. Deines
Acting Deputy Special
Counsel

Dated: March 31, 2021

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