

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into by and between Facebook, Inc. (“Facebook”) 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 December 7, 2018, IER notified Facebook that it had initiated an independent investigation (“IER Investigation”), to determine whether Facebook engages in unfair recruitment and hiring practices based on citizenship or immigration status in violation of the Immigration and Nationality Act’s anti-discrimination provision, 8 U.S.C. § 1324b (the “Anti-Discrimination Provision”), through a pattern or practice of discrimination against U.S. workers in the Program Electronic Review Management labor certification (“PERM”) process.

WHEREAS, on December 3, 2020, IER filed a lawsuit before the Office of the Chief Administrative Hearing Officer (“OCAHO”) captioned *United States of America v. Facebook, Inc.*, OCAHO 2021B00007 (the “OCAHO Litigation”), alleging that Facebook violated the Anti-Discrimination Provision by engaging in discriminatory recruitment and failing to consider or hire U.S. workers for positions it advertised in connection with PERM applications (for the purposes of this Agreement, such positions are referred to as “PERM-related” positions).

WHEREAS, as alleged in the OCAHO Litigation, IER concluded based on the IER Investigation, DJ # 197-11-965, that there is reasonable cause to believe that from at least January 1, 2018, to at least September 18, 2019, Facebook engaged in a pattern or practice of discriminatory recruitment and hiring based on citizenship status by preferring visa workers for certain jobs over qualified, available U.S. workers, in violation of the Anti-Discrimination Provision. Specifically, IER determined that when a Facebook employee holding a temporary immigration status requested to become a permanent employee through the PERM process, Facebook departed from its standard recruiting and hiring processes and instead followed different procedures designed to favor the temporary visa holder and deter U.S. workers.

WHEREAS, on March 22, 2021, Facebook filed an answer and affirmative defenses in the OCAHO Litigation. Facebook vigorously disputes and denies the findings of the IER Investigation and the allegations of the OCAHO Litigation. Facebook maintains that it followed the applicable regulations promulgated by the U.S. Department of Labor at 20 C.F.R. § 656.17 and disputes and denies the allegations in the OCAHO Litigation, including but not limited to any allegations of discrimination or disparate treatment.

WHEREAS, this Agreement does not constitute and shall not be construed as an admission by Facebook 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, this Agreement resolves all currently pending matters before IER and OCAHO regarding Facebook’s alleged violations of 8 U.S.C. § 1324b that were the subject of the IER Investigation and the OCAHO Litigation as of the date of this Agreement, subject to the Court’s order following the Parties’ compliance with Paragraph 20 below.

WHEREAS, the Parties wish to resolve the OCAHO Litigation without further delay or expense and hereby acknowledge that they are voluntarily entering into this Agreement and that this Agreement shall apply to Facebook's U.S.-based recruiting activities for PERM-related positions.

NOW, THEREFORE, to avoid the delay, uncertainty, inconvenience, and expense related to the OCAHO Litigation, in consideration of the below mutual promises, and to fully and finally resolve the OCAHO Litigation as of the date of this Agreement, the Parties 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 three years following the Effective Date.
2. Facebook shall pay \$4,750,000.00 to the United States Treasury, as civil penalties pursuant to 8 U.S.C. § 1324b. Facebook shall pay the monies discussed in this Paragraph via the FedWire electronic fund transfer system within 30 days of either the Effective Date or receipt of fund transfer instructions from IER, whichever is later. On the day of payment, Facebook shall confirm through counsel via email to Erik Lang (or any other individual IER designates) that payment was made.
3. Counsel for Facebook shall provide IER with the name, email address, and telephone number of the individual generating the wire transfer of the funds described in Paragraph 2, no later than 20 days after the Effective Date.
4. As described in Attachment A, Facebook shall pay \$9,500,000.00 to a Settlement Fund for U.S. workers who meet the definition of "Qualified Individuals" as defined in Attachment A. Such funds shall be allocated according to the methodology specified in Attachment A.
5. Other than the provisions included in this Agreement, IER shall not seek on behalf of the United States or any individuals any additional funds, injunctive, or other relief from Facebook based on the underlying allegations in the complaint filed in the OCAHO Litigation or for any violation of 8 U.S.C. § 1324b that is or was the subject of the IER Investigation or the OCAHO Litigation through the Effective Date.
6. In accordance with 8 U.S.C. § 1324b(a)(1), Facebook shall not discriminate "with respect to [] hiring, or recruitment" on the basis of citizenship or immigration status. Further, beginning no later than 150 days after the Effective Date, when recruiting in connection with a PERM application, Facebook 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 Facebook's Careers website in the same manner and format as other roles are posted and without indicating that the positions are related to a PERM filing;

- c. Accept electronic applications for all PERM-related positions via Facebook's Careers website, in the same manner as electronic applications are accepted for other roles posted on Facebook's Careers website;
 - d. Enter into Facebook's recruiting system ("FBR") all applicants to all PERM-related positions who apply via Facebook's Careers website, enabling such applicants to be searchable and remain searchable in the same manner as applicants to non-PERM related positions at Facebook, and allowing Facebook's recruiting team to identify, consider, and/or hire such applicants for Facebook job opportunities, including but not limited to ones in the same job profile group as the PERM-related position to which they previously applied;
 - e. Not require or encourage applicants to apply via mail for PERM-related positions; and
 - f. Ensure that online functionality is enabled to allow applicants to PERM-related positions to apply electronically through state workforce agency websites, where there is such an option.
7. Facebook recognizes its obligations under the PERM regulations as promulgated and updated by the Department of Labor at 20 C.F.R. Part 656 when recruiting in connection with a PERM application, including ensuring that every PERM job opportunity is clearly open to any U.S. worker, as required by 20 C.F.R. § 656.10(c)(8), that U.S. workers are only rejected for lawful job-related reasons in accordance with 20 C.F.R. § 656.10(c)(9), and that if a U.S. worker meets the stated minimum requirements for the PERM-related position, Facebook will not proceed with that PERM application.
8. Pursuant to 8 U.S.C. § 1324b, nothing contained in this Agreement shall prevent Facebook from implementing an employment restriction because of citizenship status which is required to comply with a law, regulation, or executive order, or required by Federal, State or local government contract, or which the Attorney General determines to be essential for Facebook to do business with an agency or department of the Federal, State or local government.
9. Facebook's Equal Employment Opportunity ("EEO") policy shall continue to prohibit discrimination based on citizenship, immigration status, and national origin in all of its personnel practices.
10. Within 10 days of the Effective Date, Facebook shall issue a written statement to U.S.-based recruiters and sourcers ("Required Employees") about their obligations under 8 U.S.C. § 1324b and make this statement accessible to employees via its internal website. During the term of the Agreement, prior to beginning recruitment in connection with a PERM application, Facebook will provide the hiring manager(s) for the PERM-related position with a copy of this written statement, unless the hiring manager(s) has already received the statement. A copy of this statement is attached hereto as Attachment B.
11. During the term of this Agreement, Facebook shall provide all subsequent draft revisions to the statement attached as Attachment B, or revisions to its EEO policy's prohibition on

citizenship or immigration status discrimination, for IER review and approval at least 15 days prior to the proposed implementation date of such revisions. IER shall respond within 15 days. Facebook shall not implement any such revisions until it receives IER approval, unless required by law or other legal obligation.

12. Beginning 180 days after the Effective Date and continuing every six months thereafter during the term of the Agreement, Facebook shall provide IER with the recruitment reports, as described by 20 C.F.R. § 656.17(g), prepared during the prior six-month review period for each of Facebook's PERM-related positions during the period.
13. Facebook shall provide Required Employees with EEO training on their obligation to comply with 8 U.S.C. § 1324b, as follows:
 - a. No later than 10 days after the Effective Date of this Agreement, IER shall provide a sample presentation to counsel for Facebook that outlines the required content to be covered during the training. Facebook will provide IER with the contents and format of its proposed training no later than 100 days after the Effective Date of this Agreement. IER shall have at least 45 days to review the proposed training and will provide Facebook with feedback during the review process, and the Parties shall engage in a dialogue regarding the training. Once IER approves the final training, Facebook shall make the approved training available to the Required Employees within 60 days and require Required Employees to complete the training within 90 days of it being made available.
 - b. The training shall consist of a web-based interactive presentation provided by Facebook or a third-party vendor, and Facebook shall provide Required Employees with an opportunity to submit or send questions related to the training content. In the event that Facebook receives questions based on the training, Facebook will prepare a Frequently Asked Questions and Responses document based on the five most common questions asked about the topics covered during the training (to the extent asked) and then draft answers to those questions, and provide it to IER within 120 days of the release of the training. IER will have five business days to provide any revisions to the draft answers; Facebook shall make such revised version available to Required Employees who have taken the training within five business days of receipt of revisions.
 - c. Required 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. Facebook shall bear all costs associated with the training session(s).
 - d. During the term of this Agreement, all new Required Employees who are hired or transferred into Facebook's U.S.-based recruiting organization shall take the interactive training within 60 days of hire or transfer.
 - e. Facebook shall identify the number of Required Employees in its U.S.-based recruiting organization who attended the interactive training along with each Required Employee's job title and department name via email to Erik Lang semi-

annually, with the first submission to be provided six months after the Effective Date of this Agreement, and subsequent submissions to be provided every six months thereafter during the term of this Agreement. IER shall maintain such information in accordance with any applicable privacy laws. Facebook shall maintain a list of the names of the Required Employees who attend this training internally for their records.

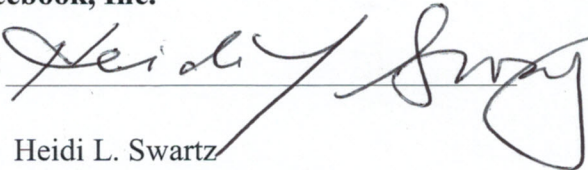
14. During the term of this Agreement, prior to beginning recruitment in connection with a PERM application, the hiring manager(s) for the PERM-related position shall take the interactive training described in Paragraph 13, unless the hiring manager has already completed the training.
15. During the term of this Agreement, IER reserves the right to make reasonable inquiries to Facebook as necessary to determine Facebook's compliance with this Agreement. As a part of such review, IER may request written reports concerning compliance with this Agreement and may make reasonable requests for relevant non-privileged documents related to such compliance. Facebook shall respond in writing to IER's inquiry within 45 days of the request.
16. Nothing in this Agreement limits IER's right to inspect Facebook's Forms I-9, together with any attachments, photocopies or other related documents, within three business days pursuant to 8 C.F.R. § 274a.2(b)(2)(ii).
17. If IER has reason to believe that Facebook is in violation of any provision of this Agreement, IER may, in its sole discretion, notify Facebook of the potential violation without opening an investigation. Facebook will then have 60 days from the date of IER's notification to provide IER with a response to the alleged violation. If Facebook's response is not satisfactory to IER, IER will provide Facebook a cure period of 45 days. If IER is not satisfied with Facebook's efforts to cure, IER may then deem Facebook to be in violation of this Agreement.
18. This Agreement does not affect:
 - a. The right of any individual to file a charge or complaint alleging an unfair immigration-related employment practice against Facebook, 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 or the OCAHO Litigation; IER's authority to conduct an independent investigation of Facebook's employment practices occurring after the Effective Date or outside the scope of the OCAHO Litigation; or IER's obligation to process any charge referenced in Subparagraph a, including through the process described in Attachment A, if applicable.

III. OTHER TERMS

19. This Agreement resolves any and all differences between the Parties relating to the OCAHO Litigation and the IER Investigation through the Effective Date.
20. Within 15 business days after the Agreement is executed, the Parties shall jointly file a Notice of Settlement and Joint Motion to Dismiss the action with prejudice before OCAHO, pursuant to 28 C.F.R. § 68.14(a)(2).
21. This Agreement may be enforced in the United States District Court for the Northern District of California. 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 terms, without waiver of either party's right to argue that other terms in the Agreement are material.
22. 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. 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. For purposes of interpreting this agreement, both Parties shall be deemed to have drafted it. This Agreement is governed by the laws of the United States.
23. 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.
24. The Parties will comply with any and all privacy laws applicable to documents and information obtained during the course of the OCAHO Litigation or to be provided pursuant to any term of this Agreement.
25. As of the date that the OCAHO Litigation is dismissed pursuant to 28 C.F.R. § 68.14, the Parties will no longer be required to maintain litigation holds to preserve documents, electronically stored information, or things related to the IER Investigation and the OCAHO Litigation. Nothing in this Paragraph relieves either party of any other obligations imposed by this Agreement.
26. The Parties shall bear their own costs, attorneys' fees, and other expenses incurred in the IER Investigation and the OCAHO Litigation.
27. 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.

28. 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.

Facebook, Inc.

By:  Dated: 10-18-21

Heidi L. Swartz
Vice President, Deputy General Counsel
Head of Employment Law & Investigations

Immigrant and Employee Rights Section

By:  Dated: 10-19-21

Alberto Ruisanchez
Deputy Special Counsel
C. Sebastian Aloom
Special Litigation Counsel
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Special Policy Counsel
Erik W. Lang
Julia Heming Segal
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