

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into by and between Hartz Mountain Industries, 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 February 22, 2016, the Office of Special Counsel notified Respondent that it had initiated an investigation, DJ # 197-48-555, to determine whether Respondent had engaged in unfair immigration-related employment practices prohibited under 8 U.S.C. § 1324b (the "Act").

WHEREAS, the Office of Special Counsel concluded based upon its investigation that there is reasonable cause to believe that Respondent committed citizenship status discrimination in violation of the Act by publishing a job posting that required U.S. citizenship, without any legal justification, from approximately January 11, 2016 to February 5, 2016.

WHEREAS, Respondent denies that it committed citizenship status discrimination or knowingly and intentionally committed or engaged in an unfair immigration-related employment practice prohibited under 8 U.S.C. § 1324b or otherwise.

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

NOW, THEREFORE, in consideration of the mutual promises contained below, and to fully and finally resolve this Investigation as of the date of this Agreement, and without any admission of liability on the part of Respondent, it is agreed as follows:

1. This Agreement becomes effective as of the date of the latest signature on the Agreement, which date is referenced herein as the "Effective Date." The "term of this Agreement" shall be three years following the Effective Date.
2. Respondent shall pay a civil penalty to the United States Treasury in the amount of one thousand five hundred dollars (\$1,400.00).
3. The monies discussed in paragraph 2 shall be paid via the FedWire electronic fund transfer system within ten (10) business days from the effective date of this Agreement or receipt of fund transfer instructions from the Office of Special Counsel, whichever is later. On the day of payment, Respondent shall confirm via email to Hillary K. Valderrama at [hillary.valderrama@usdoj.gov](mailto:hillary.valderrama@usdoj.gov) that payment was made.
4. Respondent shall not discriminate on the basis of citizenship, immigration 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 not include restrictions or requirements on applicants' or employees' citizenship status unless required by law, regulation, executive order, or government contract.
6. 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.
7. Respondent shall ensure that none of its communications with current or prospective employees includes language that suggests specific documents should be presented for, or limits or abridges employees' ability to select the documents of their choice, to establish their employment authorization during the employment eligibility verification process. At the time of hire, Respondent shall provide individuals with page 9 of the United States Citizenship and Immigration Services form "Instructions for Employment Eligibility Verification (Form I-9)," the "List of Acceptable Documents," to inform them of acceptable documents for employment eligibility verification purposes.
8. Within ten (10) days of the Effective Date, Respondent shall remove all references to particular immigration statuses on its Employment Application (including the question whether the applicant is "either a U.S. citizen or an alien lawfully permitted to work in the U.S.>").
9. 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.
10. 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.
11. Beginning not more than fourteen (14) days from the Effective Date, Respondent shall:
  - a. 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, and continue to do so during the term of this Agreement; and

- b. eliminate any questions in its application materials about applicants' immigration status, including whether the applicant is a United States citizen or alien, and shall only ask whether applicants are work-authorized.
12. During the term 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 ("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). Copies of these documents and future revisions of the Form I-9 and Handbook can be obtained from the United States Citizenship and Immigration Services at [www.uscis.gov](http://www.uscis.gov).
13. Respondent shall ensure that all postings or advertisements for any employment positions, including those advertised electronically through a third party, have been reviewed by an employee who has been trained in equal employment opportunity laws, including § 1324b's prohibition on citizenship status and national origin discrimination, or by legal counsel, before making such pages, postings or advertisements available to applicants.
14. Within thirty (30) days of the Effective Date, 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) requesting employment eligibility verification documents from any individual prior to making an offer of employment; (2) discriminating on the basis of citizenship, immigration status or national origin in the hiring and firing process; and (3) discriminating on the basis of citizenship, immigration 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 term of this Agreement, Respondent shall provide any changes in employment policies as they relate to nondiscrimination on the basis of citizenship, immigration 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.

15. Within ninety (90) days of the Effective Date, the Office of Special Counsel shall provide all Human Resources Personnel with training on their duty to comply with 8 U.S.C. § 1324b and the employment eligibility verification and re-verification process as it relates to discrimination on the basis of citizenship, immigration status and national origin.

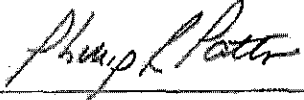
- (a) The training will consist of viewing a remote webinar presentation. Participants will register for the webinar presentation at Participants will register for the webinar presentation at <http://www.justice.gov/crt/about/osc/webinars.php>.
- (b) All employees will be paid their normal rate of pay, and the training will occur during their normally scheduled workdays and work hours. Respondent shall bear all costs associated with these training sessions.
- (c) For a period of three years from the Effective Date, 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 within sixty (60) days of hire or promotion.
- (d) Respondent shall compile attendance records listing the individuals who comply with the training described in this paragraph in the form of Attachment A, including their full name, title, signature, and the date of the training, and send them via email to [hillary.valderrama@usdoj.gov](mailto:hillary.valderrama@usdoj.gov) within ten (10) days of each training session.

16. During the term of this Agreement, the Office of Special Counsel reserves the right to make reasonable inquiries to Respondent necessary to determine Respondent's compliance with this Agreement. Respondent shall timely respond to such inquiries. 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.

17. 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 in which to cure the violation to the satisfaction of the Office of Special Counsel before Respondent is deemed by the Office of Special Counsel to be in violation of this Agreement.

18. Notwithstanding any other provision in this Agreement, 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.
19. This Agreement resolves any and all differences between the parties relating to the OSC Investigation through the date this Agreement is signed by both parties.
20. Venue: this Agreement may be enforced in the United States District Court for the District of New Jersey.
21. The Office of Special Counsel and Respondent agree that, as of the Effective Date, 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.
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 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.
23. The Office of Special Counsel and Respondent agree to bear their own costs, attorneys' fees and other expenses incurred in this action.
24. 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.


**Hartz Mountain Industries, Inc.**

By: 

Dated: 8/8/16

Phillip R. Patton  
Executive Vice President  
General Counsel

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

By:   
Alberto Ruisanchez  
Deputy Special Counsel

Dated: 8/9/16

Jodi Danis  
Special Litigation Counsel

Hillary K. Valderrama  
Trial Attorney