

## SETTLEMENT AGREEMENT

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

### I. BACKGROUND

WHEREAS, on May 18, 2017, IER received a charge filed by [REDACTED] (“Charging Party”) against Respondent, DJ No. 197-73-535 (the “IER Charge”), alleging that Respondent rejected his valid employment eligibility documents and subsequently refused to consider him for employment based on his citizenship/immigration status in violation of the unfair immigration-related employment practices provisions of 8 U.S.C. §§ 1324b(a)(1) and (a)(6) (“Act”);

WHEREAS, on May 28, 2017, IER notified Respondent that it had initiated an investigation of the IER Charge to determine whether Respondent had discriminated against the Charging Party in violation of 8 U.S.C. § 1324b;

WHEREAS, IER concluded, based upon its investigation of the IER Charge, (the “Investigation”) that there is reasonable cause to believe that Respondent committed citizenship status discrimination and unfair documentary practices against Charging Party by requesting and rejecting the Charging Party’s valid employment verification documents based on his status as a non-citizen and asylee, and subsequently refusing to consider the Charging Party for employment based on that citizenship and immigration status, in violation of 8 U.S.C. §§ 1324b(a)(1) and (a)(6).

WHEREAS, on January 30, 2018, Respondent and Charging Party entered into a bilateral agreement (“Bilateral Agreement”) limited to resolving the specific IER Charge between them, under which Respondent agreed to pay the Charging Party twelve thousand dollars (\$12,000) for lost wages.

WHEREAS, the Parties wish to resolve the Investigation without further delay or expense, and hereby acknowledge that each party is voluntarily entering into this Agreement.

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

### II. TERMS OF SETTLEMENT

1. This Agreement becomes effective as of the date the latest signature below, which date is referenced hereafter as the “Effective Date.”
2. Respondent shall pay a civil penalty to the United States Treasury in the amount of four thousand five hundred and forty-three dollars and twenty-five cents (\$4,543.25). Respondent shall pay the monies discussed in this paragraph via the FedWire electronic fund transfer system within ten (10) business days of the Effective Date or receipt of fund transfer instructions from IER, whichever is later. On the day of payment, Respondent

shall confirm via email to Silvia Dominguez-Reese at [Silvia.Dominguez-Reese@usdoj.gov](mailto:Silvia.Dominguez-Reese@usdoj.gov) and Hillary Valderrama at [Hillary.Valderrama@usdoj.gov](mailto:Hillary.Valderrama@usdoj.gov) that the payment was made.

3. As of the Effective Date, Respondent has paid \$2000 in lost wages to the Charging Party, and by April 20, 2018, Respondent shall pay the Charging Party an additional one thousand dollars (\$1,000) for lost wages that Respondent is required to pay the Charging Party pursuant to the Bilateral Agreement.
4. After making the payment referenced in paragraph three, Respondent shall timely comply with the remaining monetary terms of the Bilateral Agreement. When Respondent makes a payment to the Charging Party under the Bilateral Agreement, Respondent shall send evidence of such payment to Silvia Dominguez-Reese at [Silvia.Dominguez-Reese@usdoj.gov](mailto:Silvia.Dominguez-Reese@usdoj.gov) and Hillary Valderrama at [Hillary.Valderrama@usdoj.gov](mailto:Hillary.Valderrama@usdoj.gov) on the same date.
5. Respondent shall follow the applicable instructions contained in IRS Publication 957 and credit the Charging Party's back pay award referenced in paragraphs three (3) and four (4) of this Agreement to calendar quarters of the years when the back wages would have been earned. Respondent is separately responsible for paying any employer-side taxes or contributions due to the government and shall provide Charging Party with any applicable income tax reporting forms.
6. The provisions of paragraph two (2), three (3), and four (4) notwithstanding, IER shall not seek from Respondent any additional civil penalty, or any additional back pay on Charging Party's behalf, for the citizenship/immigration status and unfair documentary practices in violation of 8 U.S.C. §§ 1324b(a)(1) or (a)(6) that are the subject of the IER Investigation, through the Effective Date.
7. Respondent shall consider the Charging Party and other applicants protected under 8 U.S.C. § 1324b(a)(3) for any employment positions if they meet the minimum qualifications for the positions. Further, Respondent shall refer their candidacy to other entities and employers with whom Respondent contracts, irrespective of the applicants' citizenship status, unless the contract or work falls within the exception specified in 8 U.S.C. § 1324b(a)(2)(c).
8. Pursuant to 8 U.S.C. § 1324b, Respondent shall not discriminate against applicants or employees based on citizenship, immigration status, or national origin, during the recruitment, hiring, firing, and employment eligibility verification and re-verification process.
9. Respondent shall avoid discrimination in the employment eligibility verification process by: (a) conforming with Form I-9 instructions and not soliciting Form I-9 documentation from any individual until after that individual accepts Respondent's offer of employment; (b) not requesting more or different Form I-9 documents than are required by law; and (c) permitting all employees to present any employment authorization verification documentation acceptable by law.

10. Respondent shall not intimidate, threaten, coerce, or retaliate against any person for his or her participation in IER's investigation or exercise of any right or privilege secured by 8 U.S.C. § 1324b.
11. Respondent shall not: (a) make any reference to the IER Charge or this Agreement in the Charging Party's personnel file and/or his other current or future employment records; or (b) disclose to any employer, contractor, or other non-governmental entity information or documentation concerning the Charging Party's charge or the Investigation, unless required by law.
12. Within fourteen (14) calendar days of the Effective Date, Respondent shall post IER's "If You Have The Right to Work" poster ("IER Poster"), in color and measuring no smaller than 8.5" x 11", an image of which is available at <https://www.justice.gov/crt/worker-information#poster>, in all places where notices to employees and job applicants are normally posted. Respondent will post the IER poster for three (3) years thereafter. Respondent shall post the IER Poster in English, Spanish, and any other available language that is the preferred language of Respondent's employees, if that language is known.
13. Within sixty (60) days of the Effective Date, Respondent will review any existing employment policies that relate to nondiscrimination based on traits or characteristics protected by law. To the extent that it has such policies that do not already include such provisions, Respondent will revise them to:
  - a) Prohibit discrimination on the basis of citizenship, immigration status, or national origin: (1) in the hiring and firing processes; and (2) during the Form I-9/E-Verify employment eligibility verification processes;
  - b) Prohibit Respondent agents, employees, or contractors from soliciting employment eligibility verification documentation before an individual accepts an offer of employment;
  - c) Include citizenship, immigration status, and national origin as prohibited bases of discrimination, and ensure inclusion of these bases in any similar Equal Employment Opportunity (EEO) statements Respondent includes in printed or electronic materials available to the public or to employees;
  - d) Refer applicants and employees who complain, formally or informally, of discrimination in the hiring, firing, or Form I-9/E-Verify employment eligibility verification process immediately to IER by directing the affected individual to the IER Poster and IER's worker hotline (800-255-7688) and website, <https://www.justice.gov/ier>, and advise the affected individual of his or her right to file a charge of discrimination with IER; and
  - e) 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.

14. For a period of three (3) years from the Effective Date, Respondent shall provide a copy of the most current version of the Form I-9 Lists of Acceptable Documents (“Lists”) to individuals at the same time and in the same manner as Respondent provides them with the Form I-9 to complete, and shall inform these individuals of their right to present any documentation that is on the Lists, or is otherwise acceptable for purposes of employment eligibility verification.
15. For a period of three (3) years from the Effective Date, 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, as well as all managers and employees who have any role in the employment eligibility verification process, such as completing the Form I-9 and/or using the E-Verify program (“Human Resources Personnel”), can readily access 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-9](http://www.uscis.gov/I-9), and, if Respondent uses E-Verify in the jurisdiction the Human Resource Personnel is located, the most current USCIS E-Verify Manual (M-775) (“Manual”), available at [www.uscis.gov/e-verify](http://www.uscis.gov/e-verify). Copies of these documents and future revisions of the Form I-9, Handbook, and Manual can be obtained from the United States Citizenship and Immigration Services at [www.uscis.gov](http://www.uscis.gov).
16. Within ninety (90) calendar days of the Effective Date, Respondent train all Human Resources Personnel on their obligations to comply with 8 U.S.C. § 1324b and the employment eligibility verification process as it relates to discrimination on the basis of citizenship, immigration status, and national origin.
  - a) The training shall consist of viewing a free online IER Employer/HR Representative webinar presentation;
  - 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. Respondent shall bear all employee costs associated with these training sessions;
  - c) Respondent shall compile attendance records listing the individuals who attend the training described in this paragraph, including their full name, title, signature, and the date of the training, and send them via email to Silvia Dominguez-Reese and Hillary Valderrama at [Silvia.Dominguez-Reese@usdoj.gov](mailto:Silvia.Dominguez-Reese@usdoj.gov) and [Hillary.Valderrama@usdoj.gov](mailto:Hillary.Valderrama@usdoj.gov) within ten (10) days of each training session; and
  - d) For a period of three (3) years from the Effective Date, all new Human Resources Personnel who assume their duties after the initial training described in this paragraph shall attend an IER Employer/HR webinar within sixty (60) days of hire or promotion. Respondent shall compile and send attendance records for these individuals pursuant to paragraph 15(c).
17. During the term of this Agreement, IER reserves the right to make reasonable inquiries to Respondent to determine Respondent’s compliance with this Agreement. As part of such

review, IER may require written reports concerning compliance, inspect Respondent's premises, examine witnesses, and examine and copy Respondent's documents.

18. If IER has reason to believe that Respondent is in violation of any provision of this Agreement, including but not limited to paying the Charging Party amounts due pursuant to the Bilateral Agreement, IER may, in its sole discretion, notify Respondent of the purported violation without opening a new investigation. IER will then give Respondent thirty (30) days from the date IER notifies it to cure the violation to IER's satisfaction before IER deems Respondent to be in violation of this Agreement.
19. This Agreement does not affect the right of any individual to file an IER charge alleging an unfair immigration-related employment practice, 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 Respondent's employment practices.

### **III. ADDITIONAL TERMS OF SETTLEMENT**

20. 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 IER Investigation. 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 Parties' right to argue that other terms in the Agreement are material.
21. This Agreement may be enforced in the United States District Court for the Northern District of Texas or any 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.
22. Should any court declare or determine that any provision(s) of this Agreement is/are illegal or invalid, the validity of the remaining part(s), term(s) or provision(s) shall not be affected and said illegal or invalid part(s), term(s), or provision(s) shall be deemed not to be 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.
23. The Parties agree that, as of the Effective Date, litigation concerning the violations of 8 U.S.C. §§ 1324b(a)(1) and (a)(6) that IER has reasonable cause to believe that Respondent committed 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.
24. The Parties shall each bear their own costs, attorneys' fees and other expenses incurred in this action.

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 agree to be bound by facsimile signatures.

**Themesoft, Inc.**

By:



Thyagu Manickam  
Chief Operating Officer

Dated: 04/17/2018

**Immigrant and Employee Rights Section**

By:



Jodi Danis  
Special Litigation Counsel

Dated: 4/20/18

Liza Zamd  
Acting Special Litigation Counsel

Silvia J. Dominguez-Reese  
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