

SETTLEMENT AGREEMENT

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

I. BACKGROUND

WHEREAS, on May 9, 2017, IER accepted as complete a charge filed by [REDACTED] (“Charging Party”), DJ# 197-16-492 (the “IER Charge”), alleging that Respondent terminated the Charging Party because of the Charging Party’s dual citizenship status in violation of the unfair immigration-related employment practices provisions of 8 U.S.C. § 1324b;

WHEREAS, on May 17, 2017, IER notified Respondent that it had initiated an investigation (“IER Investigation”) based on the Charging Party’s allegations to determine whether Respondent had engaged in any discriminatory conduct in violation of 8 U.S.C. § 1324b, including any pattern or practice of unfair immigration-related employment practices;

WHEREAS, Respondent notified IER that Respondent put in place the citizenship-related restriction on a single limited-duration document review project (“Project”) based on Respondent’s efforts to comply on that Project, in good faith, with the data access restrictions contained in the International Traffic in Arms Regulation (“ITAR”), which restricts the disclosure of ITAR-controlled material to anyone who is not a “U.S. person,” as defined in that statute;

WHEREAS, the term “U.S. person” in ITAR means a person who is a lawful permanent resident as defined by 8 U.S.C. § 1101(a)(20) or who is a protected individual as defined by 8 U.S.C. § 1324b(a)(3), which includes *inter alia* citizens or nationals of the United States, refugees and asylees;

WHEREAS, it is IER’s position that 8 U.S.C. § 1324b does not provide, nor does the jurisprudence under the law recognize, a good faith exception to the general prohibition against discrimination on the basis of citizenship status or national origin;

WHEREAS, this Agreement is intended to facilitate the settlement of the IER Charge and Investigation, and does not constitute an admission by Respondent of any violation of 8 U.S.C. § 1324b;

WHEREAS, IER determined, based upon the IER Investigation, that there is reasonable cause to believe that Respondent engaged in citizenship status discrimination in violation of 8 U.S.C. § 1324b(a)(1)(B), resulting in:

- A. Respondent's termination of the Charging Party, and two other individuals, [REDACTED] and [REDACTED] (collectively "Other Injured Parties") from the Project, causing each to suffer economic harm, and
- B. Respondent putting in place two citizenship restrictions on hiring on the basis of U.S. citizenship and dual citizenship that affected 36 placements.

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

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

II. TERMS OF SETTLEMENT

1. This Agreement becomes effective as of the date of the last signature below, which date is referenced hereafter as the "Effective Date," and shall have a term of two years beginning from the Effective Date.
2. Respondent shall pay a civil penalty to the United States Treasury in the amount of one hundred and thirty-two thousand dollars (\$132,000). The monies discussed in this paragraph shall be paid via FedWire electronic fund transfer system within ten (10) business days of the Effective Date or Respondent's receipt of fund transfer instructions from IER, whichever is later.
3. Respondent shall provide IER with the name, title, email address, and telephone number of the individual responsible for effectuating payment of the civil penalty no later than three (3) business days after the Effective Date. On the day of payment, Respondent shall send confirmation of the payment to Silvia Dominguez-Reese at Silvia.Dominguez-Reese@usdoj.gov and Sejal Jhaveri at Sejal.Jhaveri@usdoj.gov. The email confirming payment shall have Respondent's name and the investigation number, #197-16-492.
4. The provisions of paragraph two (2) notwithstanding, IER shall not seek from Respondent any additional civil penalty in connection with the determinations made by IER herein, including the thirty-six (36) violations of 8 U.S.C. § 1324b(a)(1) that are the subject of the IER Investigation through the Effective Date.

5. In accordance with 8 U.S.C. § 1324b and 28 C.F.R. § 68.52, Respondent shall not discriminate, including by directing any staffing agency or e-discovery vendor to discriminate, on the basis of citizenship, immigration status or national origin in violation of 8 U.S.C. § 1324b, or intimidate, threaten, coerce, or retaliate against any person for his or her participation in IER’s investigation or the exercise of any right or privilege secured by 8 U.S.C. § 1324b. Nothing contained in this Agreement shall prevent Respondent from lawfully complying with the data access restrictions within ITAR, including those that relate to “U.S. Persons,” during the term of this Agreement and thereafter.
6. Respondent shall remove, and shall not make in the future, any reference to the IER Investigation or this Agreement in any files or notes it maintains regarding the Charging Party and Other Injured Parties, or in any other records it maintains regarding the individuals a third party staffing agency has or will assign to work for Respondent, and shall not intimidate, threaten, coerce, or retaliate against any person for his or her participation in IER’s investigation or the exercise of any right or privilege secured by 8 U.S.C. § 1324b.
7. Respondent shall not disclose to any employer or prospective employer of the Charging Party or Other Injured Parties any information or documentation related to the IER Investigation.
8. Respondent shall offer to compensate the Charging Party, and the Other Injured Parties for lost wages in the following amounts: (1) to Charging Party, the amount of seven hundred and fifty dollars (\$750); (2) to [REDACTED], an amount to be determined by IER based on information [REDACTED] provides, if any, in reponse to the IER Notice of Settlement letter and accompanying materials which Respondent has reviewed, and in accordance with the terms of that letter; (3) and to [REDACTED], the amount of one thousand seven hundred and ninety-two dollars (\$1,792).
 - a. Any monies due shall be paid via certified or cashier’s check payable to the Charging Party, [REDACTED], and [REDACTED]. Checks to the Charging Party and [REDACTED], and the IER Notice of Settlement letter with accompanying materials to [REDACTED], shall be mailed, via express delivery service or express mail, to their respective following addresses, or such different addresses specified by the Charging Party and Other Injured Parties, within five (5) business days from the effective date of this Agreement:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



- b. On the same day the payments under paragraph 8(a) are transmitted to the Charging Party and [REDACTED], Respondent shall send copies of such checks along with each associated express delivery service tracking number for these mailings to Silvia Dominguez-Reese at Silvia.Dominguez-Reese@usdoj.gov and Sejal Jhaveri at Sejal.Jhaveri@usdoj.gov.
 - c. The release of claims that Respondent requires Charging Party and Other Injured Parties to sign as a condition of the payment of monies discussed in paragraph 8 has been reviewed and approved by IER.
9. Within fourteen (14) calendar days from the Effective Date and thereafter for the term of this Agreement, Respondent shall post the IER “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 in Respondent’s New York City, N.Y. and Washington, D.C. locations.
10. Within sixty (60) calendar days of the Effective Date, Respondent shall review its policies, training materials, and/or internal guidelines relating to hiring, firing, assignment, and/or other nondiscrimination based on citizenship status and national origin. To the extent necessary and appropriate, Respondent shall revise its policies, materials, and guidelines to:
- a. prohibit unlawful discrimination under 8 U.S.C. §1324b on the basis of citizenship, immigration status, or national origin in the recruitment, hiring and firing processes, including in assignment or employment to work on matters that involve ITAR;
 - b. include citizenship, immigration status, and national origin as prohibited bases of discrimination under its policy and any similar Equal Employment Opportunity (EEO) statements Respondent includes in printed or electronic materials available to the public or employees, except to the extent otherwise required or permitted by law;
 - c. ensure that the Firm Ombudspersons, Director of Human Resources and Partner members of the Firm’s Personnel Committee (collectively, “Complaint Recipients”) are instructed to refer applicants and employees who complain, formally or informally, of discrimination in the hiring or firing on the basis of citizenship status, to IER by directing the affected individual to the IER Poster and IER’s worker hotline (800-255-7688) and website (www.justice.gov/ier);

- d. instruct the Complaint Recipients on the prohibition against retaliation, intimidation, or reprisal against an employee or applicant for having opposed any employment practice made unlawful by 8 U.S.C. § 1324b, or for filing any charge, or participating in a lawful manner in any investigation or action under 8 U.S.C. § 1324b; and
 - e. memorialize the procedures governing the creation and maintenance of the client log and the client notification process regarding hiring restrictions referenced in Paragraph 12.
11. Within thirty (30) days of the Effective Date and thereafter during the Term of this Agreement, Respondent shall, in writing, advise current and any future staffing agencies and e-discovery vendors with which it contracts through the D.C. office, that all recruiting, hiring, and firing decisions are subject to, *inter alia*, the anti-discrimination requirements of 8 U.S.C. § 1324b.
12. Within forty-five (45) days of the Effective Date and thereafter during the Term of this Agreement, Respondent shall keep a log of client requests to attorneys, paralegals, and office managers in Respondent's D.C. location/office, whose practice includes or whose work supports Respondent's Litigation and Dispute Resolution practice, to place restrictions on hiring or assignment based on citizenship status. The log shall reflect the following: (1) date of the client's request, (2) identity of Respondent employee or official receiving the request, (3) number of positions restricted, (4) dates of the project or task, (5) basis for the restriction including a citation to the pertinent rule, law, or executive order or quoting the pertinent language of the government contract, (6) that Respondent, per its client notification procedure, provided the client with information about employer non-discrimination obligations under 8 U.S.C. § 1324b, and, if applicable, (7) identity of the staffing agency or e-discovery vendor to whom Respondent made the request to staff any project based on the client's request.
13. Nothing contained in this Agreement, including Paragraph 12 above, shall require Respondent or IER at any time to disclose any information protected by attorney-client privilege including, when privileged, the identity of the client, attorney work product privilege, governmental deliberative process privilege, or any other applicable privileges or confidentiality protections recognized under the laws of the United States. Similarly, nothing in this Agreement requires or permits either party to engage in disclosures or other conduct prohibited by applicable professional responsibility rules, as determined by the choice of law principles applied by the United States District Court for the District of Columbia.
14. Within sixty (60) calendar days of the Effective Date and on an annual basis from the date of the initial webinar throughout the Term of this Agreement, all attorneys, paralegals, and office managers in Respondent's D.C. location/office

whose practice includes or whose work supports Respondent's Litigation and Dispute Resolution practice shall participate in an IER-provided free webinar or a program that includes comparable coverage of the nondiscrimination requirements of 8 U.S.C. § 1324b (excluding unfair documentary procedures) provided by Respondent and subject to IER's prior approval. Respondent may present a recorded version of IER's webinar for all attorneys, paralegals, and office managers in Respondent's D.C. location/office whose practice includes or whose work supports Respondent's Litigation and Dispute Resolution practice hired in the periods between annual trainings. The training required under this paragraph shall focus on the nondiscrimination requirements of 8 U.S.C. § 1324b, and the impact of those requirements on employment restrictions based on citizenship or immigration status. Moreover, Respondent agrees to include an explicit reference to 8 U.S.C. §1324b on the US Employment Law section of Respondent's website.

15. During the term of this Agreement, IER reserves the right to make reasonable inquiries of Respondent that are, in IER's sole discretion, necessary to ensure Respondent's compliance with the terms of this Agreement. Subject to the limitations described in Paragraph 13 with respect to attorney-client and confidentiality protections, IER's reasonable inquiries may include but not be limited to communications between (1) attorneys, paralegals or staff in Respondent's D.C. location/office whose practice includes or whose work supports Respondent's Litigation and Dispute Resolution practice and (2) staffing agencies and e-discovery vendors in which those in Respondent's Litigation and Dispute Resolution practice provide to a staffing agency or e-discovery vendor selection criteria that imposes restrictions with respect to national origin or citizenship or immigration status, for the purpose of nominating document reviewers for assignment on document review projects. For the avoidance of doubt, the aforementioned restrictions shall not include requirements for foreign language fluency.
16. Nothing in this Agreement limits IER's right to inspect Respondent's Forms I-9 and attachments within three business days pursuant to 8 C.F.R. § 274a.2(b)(2)ii and 8 C.F.R. § 44.302(b).
17. This Agreement does not affect the right of any individual to file an IER charge alleging an unfair immigration-related employment practice against Respondent, IER's authority to investigate Respondent or file a complaint on behalf of any such individual, or IER's authority to conduct an independent investigation of Respondent's employment practices occurring after the Effective Date or outside the scope of the Investigation.

III. ADDITIONAL TERMS OF SETTLEMENT

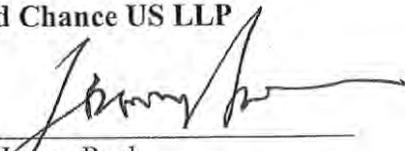
18. If IER has reason to believe that Respondent has violated or is violating any provision of this Agreement, IER may, in its discretion, notify Respondent of the

- purported violation rather than initiate a new investigation or seek immediate judicial enforcement of the Agreement. Respondent will then be given thirty (30) calendar days from the date IER notifies it in which to cure the violation(s) to IER's satisfaction before IER deems Respondent to be in violation of this Agreement and proceeds to take appropriate enforcement actions.
19. This Agreement may be enforced in the United States District Court for the District of Columbia or any other court of competent jurisdiction. 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 jurisdictional or legal defense available to the United States. The Parties agree that the paragraphs set forth in Part II of this Agreement (entitled "Terms of the Settlement") contain material terms, without waiver of either Parties' right to argue that the other terms in the Agreement are material.
 20. IER will not offer this Agreement as evidence of liability in a legal proceeding or action except if required to do so by law, and IER retains the right to use this Agreement in any legal proceeding or action to enforce the terms of this Agreement.
 21. The Parties agree that, as of the Effective Date, litigation concerning the alleged violations of 8 U.S.C. § 1324b that IER has found 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.
 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. The Parties 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 is invalid.
 23. The Parties shall each bear their own costs, attorneys' fees, and other expenses incurred in this action.
 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. 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.

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.

Clifford Chance US LLP

By:

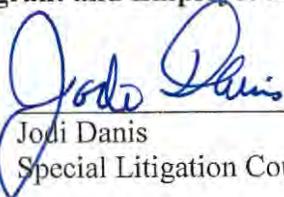


James Paul
General Counsel

Dated: August 28, 2018

Immigrant and Employee Rights Section

By:



Jodi Danis
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Dated: 8/28/18

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