

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into by and between Houston Community College ("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 March 12, 2012 the Office of Special Counsel received a charge filed by [REDACTED] (Charging Party) against Respondent DJ# [197-74-449] (the "OSC Charge") alleging national origin discrimination, citizenship status discrimination, unfair documentary practices and retaliation in violation of the unfair immigration-related employment practices provisions of 8 U.S.C. § 1324b (the "Act").

WHEREAS, the Office of Special Counsel concluded based upon its investigation of the OSC Charge that there is reasonable cause to believe that Respondent committed a pattern or practice of unfair documentary practices in violation of the Act against non-U.S. citizens from at least September 1, 2010 to the present.

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

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained and to fully and finally resolve all disputes among the parties hereto as of the date of this Agreement, it is agreed as follows:

1. Respondent agrees to pay a civil penalty to the United States Treasury in the amount of \$83,600 (eighty-three thousand, six hundred dollars).
2. Respondent shall set aside a sum of \$20,000 (twenty thousand dollars) to indemnify individuals affected by Respondent's employment eligibility verification practices. Within 90 (ninety) days of the signing of this agreement, Respondent agrees to make a good faith effort to identify and locate all individuals since March 10, 2010 whose employment with Respondent was delayed, suspended or terminated due to Respondent's request for certain employment eligibility verification documents. Within the 90 (ninety) days referenced above, Respondent will notify OSC with the names and contact information of the individuals that it was able to identify, the amount Respondent believes is owed to each individual, and specify which of the individuals Respondent already successfully contacted. After the receipt of the information, OSC will contact the individuals Respondent identifies to confirm or alter the appropriate back pay, and within 60 (sixty) days of OSC's determination, Respondent shall give these individuals back pay plus interest for any wages lost, offset by mitigating earnings as allowed by law, as determined by OSC. If the fund is insufficient to cover the claims of all individuals identified, OSC will determine what prorated sum each individual is to receive based on that individual's total claim allocated under the fund.
3. The monies discussed in paragraph 1 shall be paid via the FedWire electronic fund transfer system within twenty (20) business days of Respondent's receipt of a fully signed copy of this Agreement and fund transfer instructions; \$73,600 (seventy thousand, six hundred dollars) is to be paid immediately, and \$10,000 (ten thousand dollars) is to be paid at the conclusion of the

period for available back pay claims described in Paragraph 2 if the \$10,000 (ten thousand dollars) was not disbursed for back pay claims.

4. The monies discussed in paragraph 2 shall be paid by cashier's check payable to each respective individual and mailed, via certified mail, to the individual's preferred address as settlement of all 8 U.S.C. § 1324b claims by the respective individual in exchange for payment from the fund. The payment shall occur within 60 (sixty) days of OSC's determination of what sum each individual is due. Respondent will send OSC the tracking number of the certified mail receipt within 5 (five) days of mailing the cashier's check(s).

5. Respondent agrees that it shall not discriminate on the basis of citizenship status or national origin in violation of 8 U.S.C. § 1324b.

6. Respondent agrees that it will 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 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 agrees that it will not intimidate, threaten, coerce, or retaliate against the Charging Party or any other person for his or her participation in this matter or the exercise of any right or privilege secured by 8 U.S.C. § 1324b.

8. Respondent agrees to 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.

9. Beginning not more than fourteen (14) days from the date that Respondent receives a fully signed copy of this Agreement, Respondent will provide a letter-size copy of the OSC Poster in English and the applicant's preferred language, if the preferred language is known and if 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 Respondent will continue to do so for three (3) years thereafter.

10. For three (3) years from the effective date of this Agreement, Respondent agrees to 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. Copies of these documents and future revisions of the Form I-9, Handbook, can be obtained from the United States Citizenship and Immigration Services at www.uscis.gov.

11. Within ninety (90) days of receipt of a fully signed copy of this Agreement, 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) the requesting of employment eligibility verification documents from any individual prior to making an offer of employment; (2) discrimination on the basis of citizenship status or national origin in the hiring and firing process; and (3) any difference in treatment of individuals, on the basis of citizenship 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) Centralize Respondent's employment eligibility verification practices so that the process is no longer delegated to department supervisors or their administrative staff.

(d) 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 two (2) years following the effective date of this Agreement (the "Reporting Period"), Respondent shall provide any changes in employment policies as they relate to nondiscrimination on the basis of citizenship status and national origin to the Office of Special Counsel for review and approval at least thirty (30) days prior to the effective date of such revised policies.

12. Within ninety (90) days of receipt of a fully signed copy of this Agreement, the Office of Special Counsel shall provide all Human Resources Personnel and all individuals responsible for any part of employment eligibility verification with training on their responsibilities 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 status or national origin.

(a) The training will consist of viewing a remote webinar 2.5 (two and a half) hour webinar presentation. A recording of the webinar shall be provided by the Office of Special Counsel.

(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 of this Agreement, all new Human Resources Personnel hired by Respondent after the training described in this paragraph has been conducted shall within sixty (60) days of hire, view an Office of Special Counsel Employer/HR webinar, or view an approved taped webinar

(d) Respondent shall compile attendance records listing the individuals who comply with the training as 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 Liza Zamd at Liza.Zamd@usdoj.gov or the OSC designee responsible for monitoring compliance within ten (10) days of each webinar session.

13. During the Reporting Period, the Office of Special Counsel reserves the right to make reasonable inquiries to Respondent necessary to determine Respondent's compliance with this Agreement. 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.

14. Every six (6) months during the Reporting Period, Respondent shall provide the Office of Special Counsel with a spreadsheet of Respondent's new hires. The spreadsheet will contain the name of the individual, date of hire, email address, cell phone number, home address, citizenship status, documents produced and the expiration date of the documents produced (if applicable). Respondent shall provide the documents in electronic form unless requested otherwise.

15. 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's counsel of the purported violation. Respondent will then be given a forty five (45) day period from the date it is notified by the Office of Special Counsel in which to cure the violation before Respondent is deemed by the Office of Special Counsel to be in violation of this Agreement.

16. 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.

17. This Agreement resolves any and all differences between Respondent and OSC relating to the current OSC investigation through the date this Agreement.

18. This Agreement may be enforced in the United States District Court for the Southern District of Texas.

19. The Office of Special Counsel and Respondent agree that, as of the effective date of this Agreement, 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.

20. 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, 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.

21. 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.

Houston Community College

By: 

Renee Byas

Acting Chancellor

Dated: 1/29/2013


APPROVED AS TO FORM
BY HCC GENERAL COUNSEL

Office of Special Counsel for Immigration-Related Unfair Employment Practices

By: 

Seema Nanda
Deputy Special Counsel

Dated: 1/31/2013

C. Sebastian Aloit
Special Litigation Counsel

Liza Zamd
Trial Attorney