

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into by and among International Business Machines Corporation (“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”). The effective date of this Agreement shall be the date as of which all parties have executed it.

WHEREAS, on December 17, 2012, the Office of Special Counsel opened an independent investigation of Respondent based on potential citizenship status discrimination in the hiring process in favor of non-immigrant temporary visa holders 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 that there is reasonable cause to believe that Respondent committed citizenship status discrimination in violation of the Act during the period from April 2009 to February 2013.

WHEREAS, Respondent denies any and all allegations of citizenship status discrimination in its hiring process, and denies any and all allegations of intentional disparate treatment of any job applicants or employees. Without admitting to any of the allegations as set forth in this Agreement or any specific violations of the Act, Respondent is voluntarily entering into this Agreement with the Office of Special Counsel to facilitate an expeditious and mutually beneficial resolution to avoid unnecessary litigation costs.

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained, it is agreed as follows:

1. To fully and finally resolve all disputes among the parties hereto as of the date of this Agreement, Respondent agrees to pay a civil penalty to the United States Treasury in the amount of forty-four thousand and four hundred dollars (\$44,400.00).
2. 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 executed copy of this Agreement and fund transfer instructions.
3. Respondent agrees that it shall not discriminate on the basis of citizenship status or national origin in violation of 8 U.S.C. § 1324b.
4. Respondent agrees that it will 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.
5. Within one hundred and twenty (120) days of receipt of a fully signed copy of this Agreement, Respondent shall provide training approved by the Office of Special Counsel

to all human resources personnel responsible for reviewing or approving job advertisements subject to the laws of the United States on the requirements of 8 U.S.C. § 1324b relating to nondiscrimination on the basis of citizenship status or national origin.

- (a) All employees will be paid their normal rate of pay during such training, and the training will occur during their normally scheduled workdays and work hours;
 - (b) For a period of two years from the effective date of this Agreement (the "Reporting Period"), all new personnel hired by Respondent tasked with such responsibilities must receive such training within thirty (30) days of hire.
 - (c) During the Reporting Period, counsel for Respondent shall certify annually to the Office of Special Counsel in the form of Attachment A that Respondent has complied with the provisions of this paragraph.
6. Within sixty (60) days of the effective date of this Agreement, Respondent will review its policies and procedures regarding recruitment, selection, and hiring processes that are subject to the Act and shall, as necessary, revise such policies to:
- (a) Prohibit employment practices that are not in compliance with the Act.
 - (b) Set forth a protocol for the identification and review of informal and formal complaints regarding discrimination on the basis of citizenship status.
 - (c) Provide for the use of a revised U.S. equal employment opportunity statement to reflect Respondent's commitment to nondiscrimination on the basis of citizenship status as prohibited by the Act.
 - (d) Inquire into a candidate's specific citizenship status only when necessary to determine the candidate's suitability to fill the desired position.

Within sixty (60) days of the effective date of this Agreement, Respondent shall provide any such revised policies and procedures to the Office of Special Counsel for its review. During the Reporting Period, Respondent shall further provide any changes to such policies as they relate to nondiscrimination on the basis of citizenship status to the Office of Special Counsel for review thirty (30) days prior to the effective date of such revised policies.

7. During the Reporting Period, Respondent shall submit a written report to the Office of Special Counsel every six (6) months setting forth any informal or formal complaints

regarding discrimination on the basis of citizenship status and any action taken by Respondent in response to the complaint.

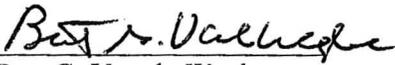
8. During the Reporting Period, if the Office of Special Counsel has reason to believe that Respondent may be in violation of any provision of this Agreement, it shall promptly notify Respondent's counsel of the purported violation. Respondent will then be given thirty (30) days to provide a response to the Office of Special Counsel's notice and to cure the violation, if any, unless extended by agreement of the parties, before Respondent may be deemed by the Office of Special Counsel to be in violation of this Agreement. The Office of Special Counsel reserves the right to make reasonable inquiries to Respondent regarding any such alleged violation, including examining Respondent's witnesses and documents.
9. 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, except that OSC shall not initiate an independent investigation related to job advertisements allegedly expressing preference for non-immigrant temporary visa holders posted prior to the effective date of this Agreement.
10. This Agreement resolves any and all disputes between the parties relating to the instant independent investigation through the effective date of this Agreement.
11. The provisions of paragraph 1 notwithstanding, the Office of Special Counsel shall not seek from Respondent any additional civil penalty for alleged violations of 8 U.S.C. § 1324b related to job advertisements allegedly expressing a preference for non-immigrant temporary visa holders posted prior to the effective date of this Agreement.
12. This Agreement shall be enforced in the United States District Court for the Southern District of New York or any other court or tribunal of competent jurisdiction.
13. 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.
14. Should any part, term, or 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 part, term, or provision of this Agreement invalid.

15. The Office of Special Counsel and Respondent agree to bear their own costs, attorneys' fees and other expenses incurred in this action.
16. This Agreement sets forth the entire agreement between the parties hereto, and fully supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter herein.
17. 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.

International Business Machines Corporation

By:


Bart G. Van de Weghe
Senior Counsel

Dated: 9/26/13

Office of Special Counsel for Immigration-Related Unfair Employment Practices

By:


Seema Nanda
Deputy Special Counsel

Dated: 9/26/13

C. Sebastian Aloit
Special Litigation Counsel

Ronald Lee
Trial Attorney