

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into by and between Abercrombie & Fitch Stores, 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 May 16, 2014, the Office of Special Counsel received a charge filed by a Charging Party against Respondent, DJ# 197-58-54, (the "OSC Charge") alleging unfair documentary practices 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 engaged in unfair documentary practices against the Charging Party in violation of the Act by rejecting her valid I-551 passport stamp based on a pending I-751 petition as evidence of employment eligibility and requiring her to present specific documents for employment eligibility verification, because of her citizenship or immigration status.

WHEREAS, Respondent has cooperated fully and constructively with the investigation.

WHEREAS, Respondent denies that it committed immigration-related discrimination or engaged in unfair documentary practices in violation of 8 U.S.C. § 1324b(a)(6) during the employment eligibility verification process.

WHEREAS, the Office of Special Counsel and Respondent wish to resolve the OSC Charge and any related concerns of the Office of Special Counsel arising from the investigation of 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 the OSC Charge and any related concerns of the Office of Special Counsel arising from the investigation of the OSC Charge, it is agreed as follows:

1. Respondent shall pay a civil penalty to the United States Treasury in the amount of One Thousand One Hundred Dollars and Zero Cents (\$1,100.00).
2. The monies discussed in paragraph 1 shall be paid via the FedWire electronic fund transfer system. The payment shall be made within thirty (30) business days after the Respondent receives instructions from the Office of Special Counsel on the process for transferring funds through the FedWire system.

Notice of the payment shall be emailed to Luz V. Lopez-Ortiz at Luz.V.Lopez-Ortiz@usdoj.gov with a copy emailed to Lorren Love at Lorren.love@usdoj.gov, on the day the payment is made.

3. Respondent shall pay the Charging Party Three Thousand Six Hundred and Sixty-One Dollars and Fourteen Cents (\$3,661.14), which includes back pay and accumulated interest on back pay. Respondent may withhold applicable taxes based on the tax rates of the current calendar year.
4. The monies discussed in paragraph 3 shall be paid by company check payable to the Charging Party and be available for pickup at Respondent's Counsel's New York Office or another location agreed to by Respondent and Charging Party, within thirty (30) days from the date Respondent receives a fully signed copy of this Agreement. A copy of such check shall be sent to Ryan Thompson via email at Ryan.Thompson3@usdoj.gov as soon as the check is available for pickup.
5. Respondent shall set aside a fund of One Hundred and Fifty-Three Thousand Nine Hundred and Thirty-Two Dollars and Zero Cents (\$153,932.00) to compensate work-authorized individuals who suffered economic damages as a result of Respondent's alleged unfair documentary practices.
  - (a) Within fifteen (15) calendar days of the effective date of this Agreement, Respondent will identify all individuals who applied for managerial positions at Abercrombie & Fitch stores in New Jersey from November 2013 to November 2014, who were interviewed by a hiring manager, and who were subsequently not offered employment. Within thirty (30) calendar days of the effective date of this Agreement, Respondent will send a written notification containing the language in Attachment A by U.S. mail or electronic mail to all such individuals; no other information shall be included in such written notification. Within thirty-five (35) calendar days of the effective date of this Agreement, Respondent shall provide the Office of Special Counsel with a list containing the names of all of the individuals to whom a notice was sent;
  - (b) Individuals will be given sixty (60) calendar days from the date the notice is sent to contact the Respondent if the individual believes s/he lost wages as a result of Respondent's alleged discriminatory documentary practices;
  - (c) Within one-hundred and twenty (120) calendar days of the effective date of this Agreement, Respondent shall provide the Office of Special Counsel with a list of individuals who contacted Respondent to file a claim for relief under this Agreement. For each individual, said list shall include the contact information, relevant application and/or employment dates, title of the position applied for, average starting hourly rate and average number of hours worked by individuals employed in the same position, and a brief explanation why Respondent believes the claimant should or should not be awarded back pay. Respondent shall also provide electronic copies of their Form I-9, any interview notes, application documents, and any other information Respondent deems relevant regarding such claimants;

- (d) Within ninety (90) calendar days of receiving all of the information in Paragraph 5(c) from Respondent, the Office of Special Counsel shall determine in its sole and ultimate discretion the award that Respondent shall pay to each individual claimant, provided however that any award shall not exceed an amount equal to the claimant's actual lost wages for a period of no longer than sixty (60) days;
- (e) Within thirty (30) calendar days of receiving the Office of Special Counsel's determination under Paragraph 5(d), Respondent shall send a notice to all individuals who the Office of Special Counsel has determined are entitled to an award, indicating the amount of the award, as determined by the Office of Special Counsel, a release of claims form, and instructions to return the executed release of claims form to Respondent no later than thirty (30) days from the mailing date of the notice referenced in this subparagraph;
- (f) Respondent shall pay the amount owed to each individual, as determined by the Office of Special Counsel, within thirty (30) days of receiving the individual's properly executed and timely release of claims form. Individuals shall be paid by check or direct deposit payable to each respective individual. All checks shall be mailed via certified mail. Respondent may withhold applicable taxes and withholdings;
- (g) The release of claims form identified in Paragraph 5(f) shall be submitted to the Office of Special Counsel for approval prior to transmittal to any individual, and must be limited to the claims referenced in this Agreement;
- (h) Respondent shall provide to the Office of Special Counsel a certified record signed by Respondent's counsel with the name of and relief provided to each individual compensated within ten (10) days of providing relief to the individual;
- (i) Respondent's total liability under this paragraph shall not exceed \$153,932.00; and
- (j) To receive any compensation, an individual must have (i) been work-authorized at the time that the individual applied for a managerial role at an Abercrombie & Fitch store in New Jersey between November 1, 2013 and November 1, 2014; (ii) been interviewed by a hiring manager; (iii) been asked to provide a Permanent Resident card or other specific document issued by the Department of Homeland Security as evidence of eligibility to work; (iv) not been hired or missed work for any period of time because the individual did not have a Permanent Resident card or other requested document; (v) and had other documents that the individual

could have presented that would have served as lawful evidence of eligibility to work in the United States.

6. Respondent shall not discriminate on the basis of citizenship status or national origin in violation of 8 U.S.C. § 1324b.
7. Respondent shall 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 shall post in all of its Abercrombie & Fitch stores in New Jersey 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#>, on the employee Human Resources corkboard. The Notice will be posted within fourteen (14) days from the effective date of this Agreement and will remain posted for two (2) 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, for all Abercrombie & Fitch stores located in New Jersey, 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 an electronic link to the English and Spanish versions of the OSC Poster with all electronic applications, and Respondent will continue to do so for one (1) year thereafter.
10. For two (2) years from the effective date 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 HR managers, district managers, store managers, and employees who have any role making employment eligibility decisions, such as completing the Form I-9, 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), and the most current USCIS E-Verify Manual (M-775) ("Manual"), available at [www.uscis.gov/USCIS/Verification/E-Verify/E-Verify Native Documents/manual-employer\\_comp.pdf](http://www.uscis.gov/USCIS/Verification/E-Verify/E-Verify%20Native%20Documents/manual-employer_comp.pdf). Copies of these documents and future revisions of the Form I-9, Handbook, and E-Verify Manual can be obtained from the United States Citizenship and Immigration Services at [www.uscis.gov](http://www.uscis.gov). Respondent may satisfy this requirement by providing a link to the M-274 and the M-775 in an appropriate location on Respondent's employee-accessible Intranet.
11. Within thirty (30) 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 ensure that such policies:

- (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 status or national origin in the hiring and firing process; and (3) discriminating on the basis of citizenship status or national origin, during the Form I-9 employment eligibility verification and re-verification process;
- (b) Provide that applicants and employees who believe that they have been subject to discrimination in the hiring, firing, or Form I-9 employment eligibility verification and re-verification process should report their concerns to the Abercrombie & Fitch "One Number" hotline; and
- (c) Provide that Respondent shall not take any reprisal action against an employee for having opposed any employment practice made unlawful by any federal anti-discrimination law.

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 a training for Respondent's Human Resources personnel who have responsibility for employment eligibility verification on their duty to comply with 8 U.S.C. § 1324b, the appropriate use of E-Verify, and the employment eligibility verification and re-verification process as it relates to discrimination on the basis of citizenship status or national origin ("Training").

- (a) Respondent may choose to have an in-person training at their Corporate Headquarters in New Albany, Ohio, or to have trainees view a remote webinar presentation.
- (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 the attendance of trainees at said training. In the event that Respondent chooses to have Office of Special Counsel personnel conduct an in-person training, the Office of Special Counsel will bear all travel-related costs associated with its participation in this training.
- (c) For a period of two (2) years from the effective date of this Agreement, all new Human Resources personnel with responsibility for employment eligibility verification hired by Respondent after the training described in this paragraph has been conducted shall, within sixty (60) days of hire, either receive training provided internally by Respondent or alternatively

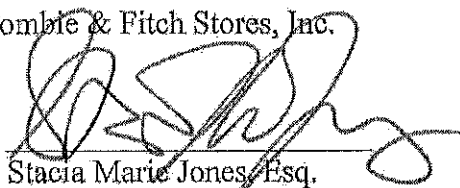
attend an Office of Special Counsel Employer/HR webinar. Should a newly hired Human Resources employee with employment eligibility verification responsibilities fail to comply with this training requirement, Respondent must ensure that this individual is not assigned to perform functions involving the employment eligibility verification process.

- (d) 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 [Ryan.Thompson@usdoj.gov](mailto:Ryan.Thompson@usdoj.gov) on a quarterly basis commencing the end of the third full month following the effective date of this Agreement and ending two (2) years from the effective date of this Agreement.
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. During each of the years within the Reporting Period, the Office of Special Counsel may conduct a random audit of Respondent's Forms I-9 for Abercrombie & Fitch stores in New Jersey, including attachments, and require the production of its E-Verify transaction history. Respondent will provide the documents within seven (7) business days of its receipt of the Office of Special Counsel's request, and shall produce such 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 of the purported violation. The Respondent and Office of Special Counsel shall meet and confer within fifteen (15) days of such notice. Respondent will then be given a thirty (30) day period from the date of the meeting in which to cure the violation to the Office of Special Counsel's satisfaction before Respondent is deemed by the Office of Special Counsel to be in violation of this Agreement. In the event that Office of Special Counsel deems Respondent to be in violation of this Agreement, nothing in this Agreement shall operate to preclude Respondent from challenging such a determination or from asserting appropriate defenses.
16. Notwithstanding any other provision of 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 the charge 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 the parties relating to the OSC Charge and any related concerns of the Office of Special Counsel arising from the investigation of the OSC Charge, through the date this Agreement is signed by all parties.
18. This Agreement may be enforced in the United States District Court for the Southern District of Ohio.
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 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 any provision of this Agreement invalid.
21. This Agreement is neither an admission by Respondent of any act in violation of 8 U.S.C. § 1324b nor an acknowledgement by the United States of the merits of any of Respondent's defenses.
22. The Office of Special Counsel and Respondent agree to bear their own costs, attorneys' fees and other expenses incurred in this action.
23. 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.
24. The latest date of signature by either of the parties shall be the Effective Date of this Agreement.

Abercrombie & Fitch Stores, Inc.

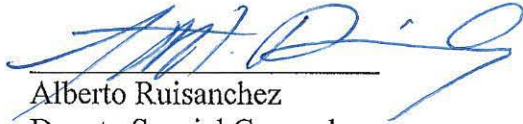
By:

  
Stacia Marie Jones, Esq.  
Sr. Director, Legal

Dated: 6/16/15

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

By:

  
Alberto Ruisanchez  
Deputy Special Counsel

Dated: 6-25-15

C. Sebastian Aloit  
Special Litigation Counsel

Luz V. Lopez-Ortiz  
Trial Attorney

Ryan L. Thompson  
Paralegal Specialist