

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement"), the material terms of which are set forth in Part II below, is made between Challenger Sports Corporation ("Respondent"), and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section ("IER") (together, "the Parties").

I. BACKGROUND

WHEREAS, IER notified Respondent by letter dated July 3, 2019, that it had initiated an investigation of Respondent under 8 U.S.C. § 1324b(d)(1), identified as DJ # 197-29-89, to determine whether Respondent engaged in any employment practices prohibited under the anti-discrimination provision of the Immigration and Nationality Act, 8 U.S.C. § 1324b ("Act");

WHEREAS, IER concluded, based upon its investigation, that there is reasonable cause to believe that Respondent engaged in hiring discrimination based on citizenship status, in violation of 8 U.S.C. § 1324b(a)(1). Specifically, the investigation found that in February and March 2019, Respondent, through its Baltimore office, failed to consider qualified and available protected U.S. workers for full-time soccer instructor positions based on its discriminatory preference for hiring soccer instructors who hold temporary visas under the H-2B visa program, in violation of 8 U.S.C. § 1324b(a)(1);

WHEREAS, by entering this agreement Respondent is not admitting that it violated any law including, but not limited to 8 U.S.C. § 1324b(a)(1), or that it failed to consider qualified and available protected U.S. workers for full-time soccer instruction positions based on an alleged discriminatory preference for hiring soccer instructors who hold temporary visas under the H-2B visa program;

WHEREAS, the parties wish to resolve IER's investigation and avoid contested litigation without further delay or expense and hereby acknowledge that they are voluntarily entering into 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 the latest signature below, the Parties agree as follows:

II. TERMS OF SETTLEMENT

1. This Agreement shall become effective as of the date the last party signs the Agreement, referred to as the "Effective Date." The term of this Agreement is two years following the Effective Date.
2. This Agreement resolves any and all differences between the parties with respect to IER's investigation designated as DJ 197-29-89 through the Effective Date. IER shall not seek from Respondent any additional relief beyond that referenced in this Agreement for the violations of 8 U.S.C. § 1324b(a)(1) that are the subject of the investigation through the Effective Date.

3. Respondent shall pay a civil penalty to the United States Treasury in the amount of \$6,000.00 (Six thousand and no/100 dollars).
4. Within two days of the Effective Date, Respondent shall provide IER with the name, title, email address, and telephone number of the individual responsible for effectuating payment of the civil penalty. Respondent shall pay the civil penalty discussed in Paragraph 3 via the FedWire electronic fund transfer system within ten business days of receiving fund transfer instructions from IER. On the day of payment, Respondent shall send confirmation of the payment to Angela.Miller5@usdoj.gov and Lorren.Love@usdoj.gov. The email confirming payment shall have "Challenger Sports Corporation, DJ # 197-29-89" in the subject line.
5. Respondent shall set aside a back pay fund of \$36,820 to compensate up to three Qualified Individuals who may have lost work because Respondent did not consider them for full-time soccer instructor positions in 2019. The amount of back pay compensation— if any — and interest due to each Qualified Individual shall be determined pursuant to the procedure described in paragraphs 5(a) through 5(m) below.
 - (a) A "Qualified Individual," as described in this Paragraph, shall be any or all of the three individual applicants [REDACTED] who were willing and able to accept such employment as described in Maryland State Workforce Agency Job Order Number 924414 had s/he been offered the position, including being willing and able to commute or relocate to York or Hanover, PA and/or to the Washington-Arlington-Alexandria, DC-VA-MD-WV metropolitan area.
 - (b) Within 30 days from the Effective Date, IER will send: (1) a written notification of this Agreement ("Notice Letter") (Attachment A); a copy of Maryland State Workforce Agency Job Order Number 924414 ("Job Order") (Attachment B); and an Applicant Back Pay Claim Form ("Claim Form") (Attachment C) by U.S. mail and electronic mail (if an email address is available) to the three U.S. workers IER has identified within Paragraph 5(a), to determine if they are Qualified Individuals.
 - (c) Those individual applicants from the group of the three listed in 5(a) above who wish to be considered for back pay relief will have 45 days from the date of the Notice Letter to return the Claim Form to IER, unless the individual can demonstrate good cause (as determined by IER) for the failure to return a Claim Form by the specified deadline.
 - (d) In calculating the amount of back pay owed to each Qualified Individual:
 - i. IER will calculate back pay at \$14.58/hour, 35 hours/week, for 31 weeks, and subtract the pay, if any, that the Qualified Individual earned from alternate employment during the contract period (*i.e.*, mitigation earnings), and calculate interest using OPM's back pay

and interest calculator, available at <https://www.opm.gov/policy-data-oversight/pay-leave/back-pay-calculator/>. No Qualified Individual may receive more than \$16,902 total backpay plus interest.

- ii. A maximum of \$16,902 of the backpay fund will be available to compensate Qualified Individuals who were only able to work in the York and Hanover, PA area, which amount represents the salary plus interest for the one position available there. If there is more than one Qualified Individual in this category, they may share in that total maximum on a *pro rata* basis, in accordance with the method set forth in subparagraph (iv).
 - iii. A maximum of \$36,820 in total will be available to compensate Qualified Individuals who were willing to commute or relocate to both York and Hanover, PA area and the Washington-Arlington-Alexandria, DC-VA-MD-WV metropolitan area.
 - iv. If the total amount of back pay plus interest that would be owed to all Qualified Individuals exceeds \$36,820, IER shall initially calculate a *pro rata* amount of back pay for each Qualified Individual using the fraction that represents the amount of back pay owed to the Qualified Individual compared to the total back pay fund amount available for the various locations. The Parties agree that Respondent's total liability to Qualified Individuals under this Paragraph shall not exceed \$36,820.
 - v. In order for a claimant to receive any money from the pool available for each geographic area, the claimant must indicate they were available during the times and dates stated on the claim form in the geographic location for that pool. However, if Respondent permitted any H-2B visa worker filling a position in those geographic locations to start work later than the date indicated on the claim form, or end work earlier than the date indicated on the claim form, the claimant will not be disqualified for indicating a lack of availability on those dates outside the date range when an H-2B visa worker in that geographic location provided services as described in the job order (Attachment B).
- (e) No later than 90 calendar days from the date of the Notice Letter, IER will initially calculate and notify Respondent of the amount of back pay owed to each claimant IER determines to be a Qualified Individual.
 - (f) Within 30 days from the date on which IER notifies Respondent of its determinations regarding the amounts owed to each Qualified Individual pursuant to Paragraph 5(e), Respondent will notify IER by email to Angela Miller at Angela.Miller5@usdoj.gov, or any other personnel IER designates in writing, if Respondent disagrees with IER's back pay determination, and

provide an explanation for its position along with copies of any supporting documents.

- (g) If Respondent disagrees under Paragraph 5(f) with IER's back pay determination, IER will give consideration to information provided by Respondent and then make, in its sole discretion, the final determination regarding the amount to be paid, if any, and will, within 30 days of receiving Respondent's objection under Paragraph 5(f), notify Respondent in writing of IER's final determination. If necessary, IER's final determination will recalculate any *pro rata* back pay determinations, taking into account the final number of Qualified Individuals and amounts to be paid.
- (h) If Respondent does not disagree under Paragraph 5(f) with any of IER's back pay determinations under Paragraph 5(d), IER's back pay determinations will become final, and Respondent shall, within 30 days of receiving IER's back pay determination pursuant to Paragraph 5(e), send each Qualified Individual by first class mail and email a Back Pay Determination Letter (Attachment D) indicating the amount of back pay to be received. The Back Pay Determination Letter mailing shall contain any necessary tax forms and an envelope with sufficient postage, addressed to Respondent's mailing address. On the same day Respondent mails the Back Pay Determination Letters, Respondent shall send IER an e-mail to Angela Miller at Angela.Miller5@usdoj.gov, or any other personnel IER designates in writing, in .PDF format, copies of the letters and self-addressed stamped envelopes, and envelopes addressed to Qualified Individuals.
- (i) If Respondent has disagreed with any of IER's back pay determinations under Paragraph 5(f), Respondent shall, within ten days of receiving IER's final back pay determination under Paragraph 5(g), send each Qualified Individual the Back Pay Determination Letter and enclosures in accordance with the procedures in Paragraph 5(h).
- (j) Within 15 days from Respondent's receipt of applicable tax forms from a Qualified Individual, Respondent shall send to the address of the Qualified Individual's choice, the back pay amount (as determined by IER) in the form of a check via certified mail or reliable courier service, accompanied by a payment transmittal notice. On the same day, Respondent shall send a copy of the check and payment transmittal notice to Angela Miller at Angela.Miller5@usdoj.gov, or any other personnel IER designates in writing.
- (k) Respondent shall withhold applicable taxes based on the tax rate of the current calendar year, and shall provide the Qualified Individuals with any applicable income tax reporting forms. Respondent is separately responsible for paying any employer-side taxes or Social Security contributions or other payments due under applicable federal or state law based on the back pay award. Respondent shall follow the applicable instructions contained in IRS Publication 957, including timely filing a

Special Wage Report Form with the Social Security Administration, to ensure that the back pay is credited to the quarter in which it would have been earned.

- (l) All communications from Respondent to Qualified Individuals relating to this Agreement, or the back pay claims process thereunder, shall be submitted to IER for prior review and approval. Respondent shall not require Qualified Individuals to accept or otherwise agree to any additional terms as a condition of receiving the back wages outlined in this Paragraph.
 - (m) Any remaining amount of the \$36,820 back pay fund that has not been distributed to Qualified Individuals pursuant to the process set forth in this paragraph shall revert to Respondent.
6. In the event Respondent engages in use of H-2B program, Respondent shall supplement recruitment of U.S. workers for all available work opportunities before employing H-2B visa workers to do that work. These required and supplemental recruitment activities shall include, at a minimum, the following:
- (a) Respondent shall post or cause to be posted a job advertisement (or comparable notice of employment opportunity) on CareerPlug. It shall be posted no later than three months before the projected start date of work, and shall not be removed until 21 calendar days before the start date of work.
 - (b) Respondent shall consider for employment and hire all available and qualified U.S. worker applicants who apply more than 21 days before the date of need for all anticipated work regardless of whether Respondent had anticipated assigning the work to H-2B visa workers for whom it petitioned.
 - (c) Respondent must also continue to update each recruitment report after submitting it to DOL (as required by 20 C.F.R. §655.48(b)), and then send a copy of each one to IER 14 calendar days after the actual start date of the work described in each job order.
7. In the event Respondent decides to resume efforts to hire full-time soccer coaches under the H-2B visa program, it shall, within thirty (30) calendar days from such resumption, train all individuals with any responsibility for recruiting, hiring, or scheduling soccer instructors on their obligation to comply with 8 U.S.C. § 1324b using IER provided training.
- (a) The trainings shall consist of viewing a remote IER webinar presentation, which IER shall provide on a date mutually agreeable to the parties.
 - (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 costs associated with these training sessions.

- (c) During the term of this Agreement, all new staff hired or promoted by Respondent into positions with any responsibility listed Paragraph 7, after the training described in Paragraph 7(a) has been conducted, shall review a recorded version of the webinar within 60 calendar days of hire or promotion.
 - (d) Respondent shall confirm the initial webinar participation required in Paragraph 7(a), and subsequent viewings of the webinar training required by Paragraph 7(c), via email to angela.miller5@usdoj.gov, or any other individual IER designates during the term of this Agreement, within ten calendar days of completion of each training session.
8. Within 120 calendar days of the Effective Date, Respondent shall revise and/or create employment policies that prohibit discrimination because of citizenship, immigration status, and national origin in recruiting, hiring, or firing, in violation of 8 U.S.C. § 1324b. Respondent will revise or create policies to ensure that such policies:
- (a) Include citizenship, immigration status, and national origin as prohibited bases of discrimination, and ensure inclusion of these bases in any similar Equal Employment Opportunity statements that Respondent makes available to the public or employees;
 - (b) Provide that after attempting to resolve concerns internally, refer individuals who complain, formally or informally, of discrimination in the hiring, firing or Form I-9/E-Verify employment eligibility verification or reverification processes 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
 - (c) Prohibit any reprisal action against any individual for having opposed any employment practice made unlawful by 8 U.S.C. § 1324b, for filing any charge alleging violation(s) of 8 U.S.C. § 1324b, or participating in any lawful manner in any IER investigation or matter.
9. During the term of this Agreement, IER reserves the right to make such reasonable inquiries as it, in its discretion, believes necessary or appropriate to assess Respondent's compliance with this Agreement, including but not limited to, requiring written reports from Respondent concerning its compliance; inspecting Respondent's premises; interviewing Respondent's employees, officials or other persons; and requesting copies of Respondent's documents.
10. Nothing in this Agreement limits IER's right to inspect Respondent's Forms I-9 within three business days pursuant to 8 C.F.R. § 274a.2(b)(2)(ii). Respondent shall, at IER's discretion, provide the documents in Excel spreadsheet format unless requested otherwise.

11. If IER has reason to believe that Respondent is in violation of any provision of this Agreement, IER may notify Respondent of the purported violation rather than initiate a new discrimination investigation or seek to judicially enforce the Agreement. If IER has exercised its discretion to notify Respondent of the purported violation, Respondent shall have 30 days from the date IER notifies it of the purported violation(s) to cure the violation(s) to IER's satisfaction. IER's belief of a violation shall not be conclusive or binding on the parties.
12. This Agreement does not affect the right of any individual to file a charge with IER alleging an unfair immigration-related employment practice against Respondent with IER, 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 IER Investigation.

III. ADDITIONAL TERMS OF SETTLEMENT

13. This Agreement fully resolves any and all differences under 8 U.S.C. § 1324b between the parties relating to the IER Investigation, DJ # 197-29-89 through the Effective Date.
14. 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. 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.
15. The United States District Court for the District of Maryland shall be the preferred venue for enforcement of any claims over which that court has subject matter jurisdiction. Otherwise, a party must bring any claim or counterclaim to enforce the Agreement in a 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.
16. Should any court declare or determine that any provision of this Agreement is illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected and the term or provision shall be deemed not to be a 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.
17. The Parties agree that, as of the Effective Date, litigation concerning the violations of 8 U.S.C. § 1324b that are the subject of the IER Investigation 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.

18. The Parties agree to bear their own costs, attorneys' fees and other expenses incurred in the IER Investigation.
19. 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 shall be bound by facsimile signatures.

Challenger Sports Corp.

By: 
Challenger Sports Corp.
8263 Flint Street
Lenexa, KS 66214

Dated: Sept 2nd 2021

Immigrant and Employee Rights Section

By: 
Alberto Ruisanchez
Deputy Special Counsel

Dated: 9/14/21

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