

## SETTLEMENT AGREEMENT

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

### I. BACKGROUND

WHEREAS, on March 28, 2018, IER accepted as complete a charge filed pursuant to 8 U.S.C. § 1324b(b)(1) by [REDACTED] ("Charging Party") against Respondent, DJ # 197-12C-1643 (the "IER Charge"), alleging unfair documentary practices in violation of 8 U.S.C. § 1324b(a)(6) ("Act");

WHEREAS, on April 5, 2018, IER notified Respondent that it had initiated an investigation of the IER Charge to determine whether Respondent had violated 8 U.S.C. § 1324b, and notified Respondent on May 25, 2018, that it had initiated an independent investigation to determine whether Respondent had a pattern or practice of violating 8 U.S.C. § 1324b(a)(6) (together, the "IER Investigations");

WHEREAS, pursuant to 8 U.S.C. § 1324b(d)(1), IER concluded based on the IER Investigations that there is reasonable cause to believe that Respondent had a pattern or practice of discrimination relating to employment eligibility reverification, in violation of U.S.C. § 1324b(a)(6). Specifically, IER determined that Respondent had: 1) requested that certain non-U.S. citizens produce immigration documents for reverification, instead of permitting them to choose other valid documentation, and 2) sought to unnecessarily reverify certain lawful permanent residents and naturalized U.S. citizens. IER also determined that Respondent's actions were due, in part, to its reliance on an electronic program it used for employment eligibility verification;

WHEREAS, IER determined that Respondent terminated an asylee, [REDACTED] ("Individual 1") in violation of 8 U.S.C. § 1324b(a)(1), and did not allow a lawful permanent resident, [REDACTED] ("Individual 2"), to work past the expiration date on her PRC, in violation of 8 U.S.C. § 1324b(a)(6). With respect to Individual 1, IER determined that Respondent incorrectly required the individual to produce a new Employment Authorization Document ("EAD") when the prior EAD expired even though other documentation, such as an unrestricted Social Security card, could prove employment authorization. With respect to Individual 2, IER determined that Respondent required the individual to produce a new PRC shortly before it was to expire, even though the Act does not permit employers to reverify PRCs;

WHEREAS, during the course of the investigation, Respondent voluntarily paid the Charging Party full back pay and the individual resumed working for Respondent following the filing of the charge;

WHEREAS, Respondent contends that its actions were not unlawful and it did not engage in a pattern or practice of discrimination against any of its employees or candidates or applicants for employment or in any other violation of 8 U.S.C. § 1324b, or other applicable law, rule, or regulation, and makes no admission of wrongdoing; there have been no adjudicated



findings of any unlawful actions, wrongdoing, or non-compliance and Respondent disputes and denies any such allegations;

WHEREAS, the Parties wish to resolve the IER Investigations without further delay or expense and hereby acknowledge that they are voluntarily entering into this Agreement;

NOW, THEREFORE, in consideration of the mutual promises contained below and to fully and finally resolve the IER Investigations as of the date of the latest signature below, the Parties agree as follows:

## **II. TERMS OF SETTLEMENT**

1. This Agreement becomes effective as of the date of the latest signature on the dually-signed Agreement, which date is referenced herein as the "Effective Date." The "Term of this Agreement" shall be three years following the Effective Date.
2. Respondent shall pay a civil penalty to the United States Treasury in the amount of \$73,263.
3. Respondent shall pay the civil penalty discussed in Paragraph 2 via the FedWire electronic fund transfer system within 14 days of the Effective Date, or receipt of fund transfer instructions from IER, whichever is later. IER shall send fund transfer instructions to Shannon D'Jamoos, Senior Employment Counsel, Gap Inc. via email to shannon\_djamoos@gap.com, and to Eric Bord, Partner, Morgan, Lewis & Bockius, via email to eric.bord@morganlewis.com. On the day of payment, Respondent shall send confirmation of the payment to Liza Zamd (Liza.Zamd@usdoj.gov). The email confirming payment shall have Respondent's name and the investigation numbers, DJ # 197-12C-1643 and 197-11-936, in the subject line.
4. Except as set forth in Paragraph 2, IER shall not seek from Respondent any additional civil penalty for violations of 8 U.S.C. § 1324b that were the subject of the IER Investigations, through the Effective Date.
5. Pursuant to 8 U.S.C. § 1324b, Respondent shall not discriminate against individuals based on citizenship, immigration status, or national origin, during the recruitment, hiring, firing, and employment eligibility verification and reverification processes (together, the "EEV process"), or intimidate, threaten, coerce, or retaliate against any person for participating in the IER Investigation or exercising any right or privilege secured by 8 U.S.C. § 1324b.
6. Respondent shall remove, and shall not make in the future, any reference to the IER Charge, IER Investigations, or this Agreement in any applicant or other personnel records Respondent maintains regarding the Charging Party, Individual 1, or Individual 2, and shall not disclose to any employer or prospective employer of these individuals any information or documentation concerning the IER Investigations, or this Agreement, unless required by law.
7. Within 30 days of IER notifying Respondent, which will occur within 180 days of the Effective Date, Respondent shall pay Individual 1 and Individual 2 back pay, with interest, less any required withholdings, in an amount IER reasonably determines based on a review



of the available information, including wage records Respondent shall provide, and any other employment or payment records IER obtains. In addition:

- A. Respondent shall follow the applicable instructions contained in IRS publication 957 with respect to the payment;
  - B. Within three days of making the payment, Respondent shall confirm the disbursement of funds via email to Liza Zamd at [Liza.Zamd@usdoj.gov](mailto:Liza.Zamd@usdoj.gov) or any other individual IER designates);
  - C. Within 45 days after remitting Individual 1 and Individual 2's W-2 forms for calendar year 2021 or 2022, depending upon when payment occurs, to the Social Security Administration (but not before doing so), Respondent shall confirm via email to Liza Zamd at [Liza.Zamd@usdoj.gov](mailto:Liza.Zamd@usdoj.gov) (or any other individual IER designates) that Respondent submitted such documentation to the Social Security Administration and the date it was submitted.
  - D. Respondent shall submit all communications to Individual 1 or Individual 2 relating to this Agreement, or the back pay and interest described above, to IER for prior review and approval.
8. Where not already doing so, Respondent shall post an English and Spanish version of 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 at its headquarters and all field offices. Respondent shall post the required IER Posters no later than 14 days after the Effective Date, and the posters will remain posted for the Term of this Agreement or as long as Respondent is enrolled in E-Verify, whichever is longer.
9. Respondent shall provide EEV Training to Covered Personnel as follows:
- A. "Covered Personnel" is defined to include all individuals who fall within one or more of the following categories: 1) individuals who are responsible for developing and/or implementing employment eligibility verification-related training, policies or procedures, 2) individuals who are authorized by Respondent to provide internal advice related to EEV, and 3) individuals responsible for implementing Respondent's EEV process, such as completing Sections 2 or reverification of the Form I-9, or using the E-Verify program.
  - B. "EEV Training" is defined as training about the antidiscrimination provisions in 8 U.S.C. 1324b including citizenship/immigration status discrimination, retaliation and unfair documentary practices.
  - C. IER has already provided Respondent with a sample presentation that outlines the minimum required content to be covered during the training. Respondent will provide IER with its proposed training no later than 75 days after the Effective Date. IER shall have up to 30 days to review the proposed training, will provide Respondent with feedback during IER's review process, and the Parties shall engage in a good-faith dialogue regarding the training. As appropriate, Respondent



shall provide IER with proposed revisions to the training during IER's review process. Respondent shall finalize the training within 120 days of the Effective Date, and shall incorporate IER's required edits if the Parties have not yet come to an agreement on the training by such date. Once IER approves the final training, Respondent shall ensure that Covered Personnel complete the training within 190 days of the Effective Date.

- D. Any subsequent material modifications to the EEV Training that Respondent may seek to implement during the period of this Agreement shall be submitted to IER for review and approval prior to implementation. IER shall respond to said request for review within 30 days of receiving the request. Modifications to the EEV Training solely for the purpose of enhancing the learning experience (e.g., added voice-over, visual effects, etc.) that do not modify the substance or organization of the course shall not be deemed material.
  - E. Any of the aforementioned deadlines may be modified by the Parties based on their written mutual agreement.
10. Within 190 days of the Effective Date Respondent shall administer to all Covered Personnel an assessment consisting of 21 multiple choice questions and answers that IER shall provide to Respondent.
- A. All Covered Personnel will review the two-page IER educational material available at <https://www.justice.gov/crt/page/file/1132606/download> ("Two-Page Flyer") prior to taking the assessment.
  - B. If any individual answers an assessment question incorrectly, Respondent shall, as part of the assessment, require the individual who answered incorrectly to review additional tutorial information IER has approved and/or the Two-Page Flyer and answer the question(s) again until the individual answers the question(s) correctly.
  - C. No later than 45 days after the conclusion of the Initial EEV Training period, Respondent shall compile a report listing the individuals who completed the EEV Training and took the training assessment tool as described in this paragraph, including their full name, job title, store number (if applicable), the date(s) of completion, and the answers each individual provided on the training assessment tool. The report shall be sent via email to [Liza.Zamd@usdoj.gov](mailto:Liza.Zamd@usdoj.gov) (or any other individual IER designates).
  - D. During the Term of the Agreement, all Covered Personnel who assume their duties after the Initial EEV Training period described in this paragraph shall complete the EEV Training, take the training assessment tool, and review the Two-Page Flyer within 60 days of assuming such duties. Respondent shall compile and send attendance records and the assessment tool responses as described in paragraph 10(C) for these individuals every 90 days for the Term of the Agreement.

- E. Respondent will pay its employees their normal rate of pay during the training, and the training will occur during the employee's normally scheduled workdays and work hours. Respondent shall bear all other employee-related costs, if any, associated with these training sessions.
  - F. Any of the aforementioned deadlines may be modified by the Parties based on their written mutual agreement.
11. No later than 90 days after the Effective Date, Respondent will review any existing employment policies, training materials, and guidance that relate to employment eligibility verification and reverification (EEV), and/or non-discrimination in hiring based on citizenship status and national origin. Respondent will, as needed, revise or create policies to ensure that they:
- A. Comply with all applicable Form I-9 and E-Verify rules;
  - B. Prohibit requesting more or different documents, specifying documents, or rejecting valid documents, because of an individual's citizenship, immigration status or national origin in the hiring, onboarding, and EEV processes;
  - C. 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 includes in printed or electronic materials available to the public or employees;
  - D. Provide applicants and employees who complain, formally or informally, of discrimination on the basis of citizenship status, immigration status or national origin in the hiring, firing, or the EEV process with the following written statement: "The Immigrant and Employee Rights Section (IER) can help you with concerns about citizenship status or national origin discrimination in hiring, firing, or recruitment. IER can also help with possible discrimination relating to the Form I-9 or E-Verify process. You can find more information about IER by going to its website at [www.justice.gov/ier](http://www.justice.gov/ier). You can also speak to someone anonymously by calling IER's toll-free number at 800-255-7688. If you think you have been the victim of employment discrimination or retaliation relating to citizenship status or national origin (including with the Form I-9 or E-Verify process), you must file a charge with IER within 180 days of the discriminatory act.";
  - E. 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; and
  - F. During the Term of this Agreement, Respondent shall provide any such policies, training materials, and guidance to IER for review and approval at least 30 days prior to their proposed effective date.



12. No later than 90 days after the Effective Date, Respondent will review all job application and onboarding materials related to the hiring and/or EEV process that it provides to applicants and employees to ensure that they comply with 8 U.S.C. § 1324b and submit them to IER for review and approval.
13. During the Term of this Agreement, Respondent shall ensure that all Covered Personnel can readily access the following documents, current and future revisions of which are available online at [www.uscis.gov](http://www.uscis.gov):
  - A. IER educational material available at <https://www.justice.gov/crt/page/file/1132606/download>
  - B. [www.uscis.gov/I-9Central](http://www.uscis.gov/I-9Central)
  - C. the most current version of the USCIS Handbook for Employers (M-274) (“Handbook”), available at [www.uscis.gov/I-9Central](http://www.uscis.gov/I-9Central), and
  - D. for Covered Personnel whose job duties relate in any way to E-Verify, the most current version of the USCIS E-Verify Manual (M-775) (“Manual”), available at [www.uscis.gov/e-verify/publications/manuals-and-guides/e-verify-user-manual](http://www.uscis.gov/e-verify/publications/manuals-and-guides/e-verify-user-manual).
14. For the Term of this Agreement, Respondent will review and, as necessary, modify, or ensure its agent(s) modifies, its electronic Form I-9 and E-Verify programs to ensure their compliance with 8 U.S.C. § 1324b.
15. During the Term of this Agreement, IER reserves the right to make reasonable inquiries to Respondent to determine Respondent’s compliance with this Agreement. As part of such compliance review, IER may request written reports concerning compliance, request to inspect Respondent’s premises, request to interview Respondent’s employees, and request to examine and receive copies of Respondent’s documents. Respondent shall comply with IER’s requests within 30 days unless IER grants Respondent additional time.
16. If IER has reason to believe that Respondent has violated any provision of this Agreement, IER may, in its sole discretion, notify Respondent of the purported violation without opening an investigation or seeking judicial enforcement of this Agreement. Respondent will have 30 days from the date of IER’s notification to cure the violation to IER’s satisfaction before IER deems Respondent to have violated this Agreement.
17. This Agreement does not affect the right of any individual to file a charge with IER alleging an unfair immigration-related employment practice, IER’s authority to investigate or file a complaint on behalf of any such individual, or IER’s authority to conduct an independent investigation of Respondent’s employment practices.
18. This agreement resolves any and all differences under 8 U.S.C. § 1324b between the Parties relating to the IER Investigations through the Effective Date.

### III. ADDITIONAL TERMS OF SETTLEMENT

19. 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.
20. The United States District Court for the Northern District of California 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 this 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.
21. 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 said illegal or invalid part(s), term(s), or provision(s) 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 invalid.
22. 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 Investigation 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.
23. 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 the Parties retain the right to use this Agreement in any legal proceeding or action to enforce the terms of this Agreement.
24. The Parties shall each bear their own costs, attorneys' fees and other expenses incurred in the IER Investigation through the Effective Date.
25. 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 IER Investigation.
26. 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.

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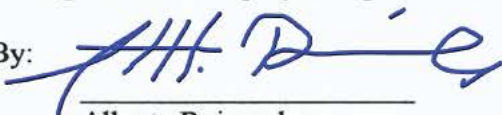


**Gap, Inc.**

By:   
Karla Franklin  
Associate General Counsel

Dated: November 23, 2021

**Immigrant and Employee Rights Section**

By:   
Alberto Ruisanchez  
Deputy Special Counsel

Dated: 11-29-21

Liza Zamd  
Senior Trial Attorney