

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into by and between Hallaton, Inc. (“Hallaton”), and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (“IER”) (collectively “the Parties”).

I. BACKGROUND

WHEREAS, by letter dated September 27, 2018, IER notified Hallaton in writing that it had initiated an independent investigation, DJ# 197-35-490 (“IER Investigation”), to determine whether Hallaton had a preference for hiring temporary, nonimmigrant, visa holders over U.S. workers based upon their citizenship status in violation of the Immigration and Nationality Act’s anti-discrimination provision, 8 U.S.C. § 1324b (“Act”).

WHEREAS, IER concluded based on the IER Investigation that reasonable cause exists to believe that from at least December 1, 2017, until at least June 1, 2018, Hallaton engaged in a pattern or practice of discriminatory recruitment and hiring based on citizenship status by preferring to hire H-2B visa workers for construction laborer positions instead of qualified, available U.S. applicants, in violation of 8 U.S.C. § 1324b(a)(1).

WHEREAS, Hallaton does not agree with IER’s conclusions and by entering into this Agreement, does not admit guilt or liability.

WHEREAS, IER and Hallaton wish to resolve IER’s reasonable cause findings without further delay or expense and hereby acknowledge that they are voluntarily entering into this Agreement.

NOW, THEREFORE, in consideration of the below mutual promises, and to fully and finally resolve the IER Investigation as of the date of this Agreement, IER and Hallaton agree as follows:

II. TERMS OF AGREEMENT

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. Hallaton shall pay civil penalties to the United States Treasury in the amount of forty-three thousand one hundred and forty-three dollars (\$43,143). Hallaton shall pay the monies discussed in this Paragraph via the FedWire electronic fund transfer system within 15 days of either the Effective Date or receipt of fund transfer instructions from IER, whichever is later. On the day of payment, Hallaton shall confirm via email to Erik Lang at Erik.Lang@usdoj.gov and Pablo A. Godoy at Pablo.Godoy@usdoj.gov (or any other individual IER designates) that payment was made.
3. The provisions of Paragraph 2 notwithstanding, IER shall not seek from Hallaton any additional civil penalty for the pattern or practice of discriminatory hiring and recruiting

based on citizenship status in violation of 8 U.S.C. § 1324b(a)(1) that is the subject of the IER Investigation through the Effective Date.

4. Hallaton shall set aside a back pay fund of eighty thousand dollars (\$80,000) to compensate Qualified Individuals who sought employment, as described below:
 - a. A “Qualified Individual,” as described in this Paragraph, shall include any protected individual, as defined in 8 U.S.C. § 1324b(a)(3), who: (i) applied for a position as a construction laborer with Hallaton from December 1, 2017, until at least March 11, 2018, either through the Maryland Workforce Exchange’s on-line Job Bank or by contacting Hallaton directly; (ii) met the minimal qualifications; and (iii) was not considered and/or offered employment by Hallaton with a firm start date.
 - b. Within 15 calendar days from the Effective Date, Hallaton shall provide IER with the name and contact information (including e-mail addresses), for all individuals who applied for construction laborer positions with Hallaton between December 1, 2017 and March 11, 2018, and whom Hallaton did not consider and/or offer employment. In providing this information, Hallaton shall also inform IER whether the individual(s) declined and/or withdrew from consideration for employment and provide any documentary evidence of such refusal or withdrawal in its possession or control.
 - c. Within 60 calendar days from the Effective Date, IER will send a written notification of this Agreement (“Notice Letter”) and an Applicant Back Pay Claim Form (“Claim Form”) to all U.S. applicants Hallaton has identified pursuant to Paragraph 4(b), and to any other applicants of whom IER is or becomes aware of, to determine if they are Qualified Individuals entitled to receive compensation for lost wages due to Hallaton’s alleged unfair employment practices. IER may also attempt to contact all U.S. applicants Hallaton has identified pursuant to Paragraph 4(b), and any other applicants of whom IER is or becomes aware, by telephone.
 - d. Applicants who wish to be considered for back pay relief will have forty-five (45) calendar days from the date of the Notice Letter to return the Claim Form to IER, unless an Applicant can demonstrate good cause (as determined by IER) for the failure to return or postmark a Claim Form by the specified deadline.
 - e. No later than 90 calendar days from the date of the Notice Letter, IER will calculate and notify Hallaton of the amount of back pay owed to each claimant IER determines to be a Qualified Individual. IER will perform this initial calculation using a formula that multiplies the hourly rate specified in the relevant labor certification application by the number of work hours specified in the contract period, and subtracts the pay that the

Qualified Individual earned from an alternate employer during the contract period (i.e., mitigation earnings), plus accumulated interest. Interest is calculated at the IRS underpayment rate, through the Effective Date. If the total amount of back pay that would be owed to Qualified Individuals exceeds eighty thousand dollars (\$80,000), IER shall 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. The parties agree that Hallaton's total liability to Qualified Individuals under this Paragraph shall not exceed eighty thousand dollars (\$80,000).

- f. Within 30 calendar days from the date on which IER notifies Hallaton of its initial determinations regarding the amounts owed to each Qualified Individual pursuant to Paragraph 4(e), Hallaton will notify IER in writing if Hallaton disagrees with any back pay determination, and provide an explanation for its position along with copies of any supporting documentation.
- g. If Hallaton disagrees under Paragraph 4(f) with IER's back pay determination under Paragraph 4(e), IER will make, in its sole discretion, the final determination regarding the amount to be paid, if any, and will, within 30 calendar days of receiving Hallaton's notice of disagreement under Paragraph 4(f), notify Hallaton in writing of its final determinations. If necessary, IER's final determination will re-calculate any *pro rata* back pay determinations, taking into account the final number of Qualified Individuals and amounts to be paid.
- h. If Hallaton does not notify IER of any disagreements under Paragraph 4(f), IER's back pay determinations will become final thirty (30) calendar days from its initial back pay determinations under Paragraph 4(e). If Hallaton notifies IER of any disagreements under Paragraph 4(f), IER's back pay determinations will become final thirty (30) calendar days from IER's final back pay determination under Paragraph 4(g). Hallaton shall, within 14 calendar days of the date that IER's back pay determination becomes final, send each Qualified Individual by first class mail and email a blank IRS Form W-4, applicable state tax forms, and a Back Pay Determination Letter indicating the amount of back pay to be received. The Back Pay Determination Letter shall include a pre-paid self-addressed return envelope with sufficient postage and request that the Qualified Individuals return the completed IRS Form W-4 and applicable state tax forms to Hallaton within 30 calendar days. On the same day Hallaton mails the Back Pay Determination Letters, Hallaton shall email Erik Lang at Erik.Lang@usdoj.gov and Pablo A. Godoy at Pablo.Godoy@usdoj.gov (or any other individual IER designates), copies of the letters and pre-paid self-addressed envelope it sends to each Qualified Individual.

- i. Within 14 days of Hallaton's receipt of the signed IRS Form W-4 and any applicable state tax forms, Hallaton shall send each individual, by certified mail or similarly reliable courier service, the back pay amount previously determined by IER, less any withholding required by law, accompanied by a payment transmittal notice. On the same day, Hallaton shall send a copy of the check and payment transmittal notice to Erik.Lang@usdoj.gov and Pablo.Godoy@usdoj.gov. Hallaton shall withhold applicable taxes based on the rates of the current year and shall provide each Qualified Individual with all applicable income tax reporting forms. Hallaton is responsible for paying any employer-side taxes or contributions due to the federal or state government based on the payments made to each Qualified Individuals pursuant to this Settlement Agreement. Hallaton shall follow the applicable instructions contained in IRS Publication 957 and credit each Qualified Individuals' back pay award to calendar quarters of the year when the back wages would have been earned for Social Security purposes.
 - j. Hallaton shall copy IER on all written communications with Qualified Individuals related to the Agreement.
 - k. Any remaining amount of the eighty thousand dollars (\$80,000) back pay fund that has not been distributed to Qualified Individuals pursuant to the process set forth in this Paragraph shall revert to Hallaton.
- 5. For the term of this Agreement, Hallaton shall engage in required and supplemental recruitment of U.S. workers for all available positions before employing H-2B visa workers for those positions, including, at a minimum, the following:
 - a. With respect to job orders, and electronic, on-line platforms, including state workforce agency job banks, Hallaton shall:
 - i. Ensure that each job order is accessible and visible to job seekers in each area of intended employment;
 - ii. Contact all applicants who express interest on-line and give each full consideration for employment;
 - iii. Enable any functionality of the electronic, on-line platform that allows a job seeker to apply on-line;
 - iv. Enable any notifications available as part of the electronic, on-line platform that indicate that there is a new applicant; and
 - v. Not close any of its H-2B related job orders until fourteen (14) business days before the work start date.
 - b. Hallaton shall respond within 72 hours to all U.S. applicants who express interest in an advertised position directly, through a state workforce agency job bank, or in any other manner, and give each job seeker full consideration for employment.

- c. Hallaton shall maintain a list of all print or on-line locations where it places job advertisements. Within 14 calendar days of any request, Hallaton shall provide this list to IER during the term of this Agreement.
 - d. In addition to a state workforce agency website, Hallaton shall post a job advertisement (or comparable notice of employment opportunity) on a third-party job posting website and in at least two physical locations no earlier than 45 business days before the projected start date of the work season, and not remove such postings sooner than 14 business days before the start date of the work season, or until all positions are filled by U.S. workers, whichever is earlier.
 - e. Hallaton must also continue to update its recruitment report after submitting it to DOL (as required by 20 C.F.R. §655.48(b)), and send a copy of each one to IER 14 business days after the actual start date of the work described in each job order.
 - f. Hallaton shall assess the results of its efforts to recruit U.S. workers within 14 business days after the start date of the work associated with each job posting, and, during the next recruiting period, shall document and undertake any additional appropriate recruitment efforts it determines are likely to be effective to increase applications from qualified U.S. workers. If requested by IER, Hallaton shall make its assessment and any additional recruitment efforts available to IER within ten (10) calendar days.
6. Within 30 calendar days of the Effective Date, Hallaton shall review its employment policies and revise such policies to prohibit discrimination on the basis of citizenship status and national origin in the recruitment, hiring and firing processes.
7. During the term of this Agreement, Hallaton shall provide all revisions to its employment policies made pursuant to Paragraph 6, for review at least 30 calendar days prior to the implementation date of such revisions.
8. During the term of this Agreement, Hallaton shall retain a copy of every job application and resume that are submitted to Hallaton, including but not limited to those accessible through a state workforce agency job bank that relate to a job advertised in a Hallaton job order.
9. During the Term of this Agreement, if Hallaton applies for H-2B labor certification or visas, Hallaton shall keep a written record of the action(s) it took with respect to each application and resume identified in the previous Paragraph, including whether or not the individual was successfully contacted, interviewed, offered a job, hired, or not selected, and the reason(s) for the non-selection. Hallaton shall make at least three (3) telephonic attempts and one (1) written attempt (via email, U.S. mail or a combination of both) to contact any applicant who does not respond to Hallaton's initial attempted contact. Hallaton shall make the attempts described in this Paragraph until every vacancy for the position the applicants applied for has been offered and accepted by a qualified applicant,

selected consistent with 8 U.S.C. § 1324b, or 10 calendar days before the position's start date, whichever occurs first.

10. During the Term of this Agreement, Hallaton shall keep a copy of all H-2B-related forms, documents, applications, petitions, letters, and responses to requests for more information that it provides to and/or receives from the U.S. Department of Labor and U.S. Citizenship and Immigration Services.
11. Within 90 calendar days from the Effective Date, all of Hallaton's employees, contractors, and agents with any responsibility for recruiting and/or hiring workers employed by Hallaton, shall receive IER-provided free training on their obligation to comply with 8 U.S.C. § 1324b.
 - a. The trainings shall consist of viewing a remote IER employer 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. Hallaton shall bear all costs associated with these training sessions.
 - c. During the term of this Agreement, all new staff hired or promoted by Hallaton into positions with any responsibility for the activities listed above, after the training described in this Paragraph has been conducted, shall review a recorded version of the webinar within sixty (60) calendar days of hire or promotion.
 - d. Hallaton shall confirm the initial webinar participation required in Paragraph 11(a), and subsequent viewings of the webinar training required by Paragraph 11(c), via email to Erik.Lang@usdoj.gov and Pablo.Godoy@usdoj.gov within ten (10) business days of completion of each training session.
12. During the term of this Agreement, IER reserves the right to make reasonable inquiries to Hallaton as necessary to determine Hallaton's compliance with this Agreement. As a part of such review, IER may require written reports concerning compliance, inspect Hallaton's premises, examine witnesses, and examine and copy Hallaton's documents.
13. Nothing in this Agreement limits IER's right to inspect Hallaton's Forms I-9 within three (3) business days pursuant to 8 C.F.R. § 274a.2(b)(2)(ii).
14. If IER has reason to believe that Hallaton is in violation of any provision of this Agreement, IER may, in its sole discretion, notify Hallaton of the potential violation without opening an investigation. Hallaton will then have thirty (30) calendar days from the date of IER's notification to cure the violation to IER's satisfaction before IER deems

Hallaton to be in violation of this Agreement.

15. This Agreement does not affect the right of any individual to file a charge alleging an unfair immigration-related employment practice against Hallaton, 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 Hallaton's employment practices.
16. This Agreement resolves any and all differences between the parties with respect to Hallaton relating to the IER Investigation, DJ # 197-35-490, through the Effective Date.
17. This Agreement may be enforced in the United States District Court for the District of Maryland. This Paragraph, or the initiation of a lawsuit to enforce the Agreement under this Paragraph, including any counterclaims asserted, does not constitute and should not be construed as a waiver of sovereign immunity or any other defense the United States might have against a claim for enforcement. For the purposes of an action to enforce this Agreement, the parties agree that the obligations set forth in each and every provision of Part II of this Agreement are material.

III. OTHER TERMS

18. 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 and the term or provision shall be deemed not to be a part of this Agreement. Hallaton and IER shall not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is invalid. For purposes of interpreting this agreement, both parties shall be deemed to have drafted it.
19. 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 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.
20. The Parties shall bear their own costs, attorneys' fees and other expenses incurred in this action.
21. 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. Any modifications to the Agreement must be in writing and signed or affirmed by both parties.
22. 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.

Hallaton, Inc. 

By: 

Todd Harman
President

Dated: 3/16/2020

Immigrant and Employee Rights Section

By: 

Alberto Ruisanchez
Deputy Special Counsel

C. Sebastian Aloat
Special Litigation Counsel

Erik W. Lang and Pablo A. Godoy
Trial Attorneys

Dated: 3/19/20