

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into between West Liberty Foods, L.L.C. ("Respondent"), and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section ("IER").

I. BACKGROUND

WHEREAS, on May 9, 2017, IER notified Respondent that it had initiated an investigation, DJ# 197-28-34 ("IER Investigation"), to determine whether Respondent had engaged in unfair immigration-related employment practices prohibited by 8 U.S.C. § 1324b ("Act").

WHEREAS, IER concluded based upon the IER Investigation that reasonable cause exists to believe that from at least November 6, 2014, to at least January 19, 2017, Respondent engaged in a pattern or practice of discriminatory document practices based on citizenship status in the employment eligibility verification process in violation of 8 U.S.C. § 1324b(a)(6). Specifically, Respondent requested noncitizen employees, but not similarly situated U.S. citizen employees, at Respondent's Bolingbrook, Illinois location to produce a List A document issued by the U.S. Department of Homeland Security to prove their employment eligibility under 8 U.S.C. § 1324a(b).

WHEREAS, IER and Respondent wish to resolve the IER Investigation 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 Respondent 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 (2) years following the Effective Date.
2. Respondent shall pay a civil penalty to the United States Treasury in the amount of fifty-two thousand one hundred dollars (\$52,100.00).
3. Respondent shall provide IER with the name, title, email address, and telephone number of the individual responsible for effectuating payment of the civil penalties no later than five (5) business days from the Effective Date. The monies discussed in this paragraph shall be paid via the FedWire electronic fund transfer system within ten (10) business days of the Effective Date or receipt of fund transfer instructions from IER, whichever is later. On the day of payment, Respondent shall confirm payment via email to Craig Fansler at craig.fansler@usdoj.gov.

4. In accordance with 8 U.S.C. § 1324b, Respondent shall:
 - a. Not discriminate on the basis of citizenship or immigration status or national origin in violation of 8 U.S.C. § 1324b.
 - b. Not request more or different documents for purposes of verifying employment eligibility than are required by law.
 - c. Accept documentation that on its face reasonably appears to be genuine, relates to the person, and otherwise satisfies the requirements of 8 U.S.C. § 1324a(b).
 - d. Permit all employees to present any document or combination of documents acceptable by law both at initial hire and during any lawful reverification of continued employment authorization.
 - e. Not intimidate, threaten, coerce, or retaliate against any person for his or her participation in the IER Investigation or exercise of any right or privilege secured by 8 U.S.C. § 1324b.
5. For the term of this Agreement, Respondent, in its Bolingbrook facilities, shall:
 - a. Post 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. The IER Poster shall be posted in English and Spanish.
 - b. Provide individual copies of the most current Form I-9 Lists of Acceptable Documents ("Lists"), in English and in Spanish as needed, at the same time as Respondent provides the Form I-9, and Respondent shall inform those individuals of their right to choose to present any document(s) that are on the Lists or are otherwise acceptable for purposes of employment eligibility verification or reverification.
6. Within sixty (60) business days of the Effective Date, Respondent shall revise its employment policies to:
 - a. Prohibit requesting more or different documents, specifying documents, or rejecting valid documents, because of an individual's citizenship, immigration status or national origin;
 - b. Refer applicants and employees who complain, formally or informally, of discrimination in the hiring, firing, or employment eligibility verification and reverification process immediately to IER by directing the affected individual to the IER Poster and IER's worker hotline and website, 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 an employee for having opposed any employment practice made unlawful by 8 U.S.C. § 1324b, or for filing any charge, or participating in any lawful manner in any investigation or action under 8 U.S.C. § 1324b.
7. Within ninety (90) business days of the Effective Date, all individuals at Respondent's Bolingbrook facilities with any responsibility for supervising, guiding, participating in, or completing any portion of the employment eligibility verification process (including the Form I-9 and E-Verify), including those individuals who train staff members, collect or copy documents received from new hires, 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 webinar presentation. Participants shall register for the IER Employer/HR Representative webinar presentation at <https://www.justice.gov/crt/webinars>;
 - 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 for providing guidance related to the Form I-9 or E-Verify, after the training described in this paragraph has been conducted, shall attend an IER Employer/HR webinar within sixty (60) business days of hire or promotion; and
 - d. Respondent shall confirm attendance via email to craig.fansler@usdoj.gov within ten (10) business days of completion of each training session.
8. During the term of this Agreement, IER reserves the right to make reasonable inquiries to Respondent as necessary to determine Respondent's compliance with this Agreement. As a part of such review, IER may require written reports concerning compliance, inspect Respondent's premises, examine witnesses, and examine and copy Respondent's documents.
9. 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.
10. If IER has reason to believe that Respondent is in violation of any provision of this Agreement, IER may, in its sole discretion, notify Respondent of the purported violation without opening an investigation. Respondent will then have thirty (30) business days from the date of IER's notification to cure the violation to IER's satisfaction before IER

deems Respondent to be in violation of this Agreement.

11. This Agreement does not affect the right of any individual to file a charge alleging an unfair immigration-related employment practice against Respondent, 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.
12. This Agreement resolves any and all differences between the parties with respect to all Respondent plants and locations (not just Respondent's Bolingbrook, Illinois, location) relating to the IER Investigation, DJ # 197-28-34 through the Effective Date. The provisions of paragraph 2 notwithstanding, IER shall not seek from Respondent any additional civil penalty for the pattern or practice of unfair documentary practices in violation of 8 U.S.C. § 1324b(a)(6) that is the subject of the IER Investigation through the Effective Date.
13. This Agreement may be enforced in the United States District Court for the Southern District of Iowa. 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 each and every provision in Part II of this Agreement is material.
14. IER and Respondent agree that, as of the Effective Date, litigation concerning the violations of 8 U.S.C. § 1324b that IER has reasonable cause to believe that Respondent committed 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.
15. 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. Respondent 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.
16. IER and Respondent shall bear their own costs, attorneys' fees and other expenses incurred in this action.
17. This Agreement sets forth the entire agreement between the Respondent and IER and fully supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter herein.

18. 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.

West Liberty Foods, L.L.C.

By:



Dan Waters
Dan Waters
V.P. & General Counsel

Dated: 2/27/18

Immigrant and Employee Rights Section

By:



Jodi Danis
Jodi Danis
Special Litigation Counsel

Dated: 3/5/18

C. Sebastian Aloit
Special Litigation Counsel

Richard Crespo
Craig G. Fansler
Trial Attorneys