UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES OF AMERICA, COMPLAINANT, v. **WASHINGTON POTATO COMPANY,** and **PASCO PROCESSING, LLC,** RESPONDENTS.	8 U.S.C. § 1324b PROCEEDING OCAHO CASE NO. _____

COMPLAINT

Complainant, the United States of America, alleges as follows:

1. This action is brought on behalf of the United States by the Office of Special Counsel for Immigration-Related Unfair Employment Practices ("Office of Special Counsel") to enforce the provision of the Immigration and Nationality Act ("INA") that prohibits workplace discrimination, 8 U.S.C. § 1324b.

2. Pasco Processing, LLC ("Pasco"), under the direction and control of the Washington Potato Company ("WPC") (hereinafter jointly identified as "Respondents"), engaged in a pattern or practice of discrimination against work-authorized, non-U.S. citizens by requesting that they produce specific documents to establish their employment eligibility because of their citizenship status, in violation of 8 U.S.C. § 1324b(a)(6).

JURISDICTION

3. Pursuant to 8 U.S.C. §§ 1324b(c)(2) and (d)(1), Complainant is authorized to conduct investigations of, and, if warranted, prosecute immigration-related unfair employment practices in violation of 8 U.S.C. § 1324b.

4. WPC, a Washington corporation whose principal place of business and corporate headquarters is located at 1900 West 1st Avenue, Warden, Washington 98857, is a processor of frozen fruit and vegetable products.

5. Pasco, a Washington limited liability corporation whose principal place of business is located at 5815 Industrial Way, Pasco, Washington 99301, is a frozen vegetable and potato processing facility.

6. Since 2008, WPC has managed and operated Pasco under a joint venture agreement with the J.R. Simplot Company ("Simplot"), a corporation based in Boise, Idaho.

7. Under the joint venture agreement between Simplot and WPC, WPC is responsible for overseeing the management, administration and daily operations of Pasco, including but not limited to generating workplace policies for Pasco, and having oversight of Pasco's personnel administration and employment verification policies and practices.

8. WPC is a person or entity under 8 U.S.C. § 1324b(a)(6); 8 U.S.C. § 1101(b)(3); and 8 C.F.R. § 274a.1(b), that employed more than three employees at all times during the period of the immigration-related unfair employment practices described below.

9. Pasco is a person or entity under 8 U.S.C. § 1324b(a)(6); 8 U.S.C. § 1101(b)(3); and 8 C.F.R. § 274a.1(b), that employed more than three employees at all times during the period of the immigration-related unfair employment practices described below.

10. On December 3, 2014, Complainant notified WPC in writing that it had initiated an investigation under 8 U.S.C. §§ 1324b(c)(2) and (d)(1) to determine whether WPC

engages in or had engaged in unfair employment practices based on citizenship status in violation of 8 U.S.C. § 1324b. On December 18, 2014, WPC responded through counsel and indicated that Pasco was "[t]he only unit or hiring location of Washington Potato Company and its affiliates and subsidiaries that is enrolled in the E-Verify program," and, as a result, responded to the Complainant's investigatory inquiries on behalf of Pasco.

11. The Office of the Chief Administrative Hearing Officer's jurisdiction is invoked pursuant to 8 U.S.C. § 1324b(e)(1).

BACKGROUND

12. In 1986, Congress amended the Immigration and Nationality Act to require employers to review documentation from each new employee to ensure that the employee is eligible to work in the United States. 8 U.S.C. § 1324a(b).

13. Having created an employment eligibility verification requirement through 8 U.S.C. § 1324a(b), Congress also amended the INA to protect work-authorized individuals from employment discrimination based on citizenship status and national origin.

14. Consistent with Congress' purpose in 1986 that the employment eligibility verification process should apply equally to all work-authorized individuals, the INA's anti-discrimination provision prohibits a person or entity from subjecting individuals to citizenship and national origin status discrimination in, among other things, employment eligibility verification. 8 U.S.C. § 1324b(a)(1), (a)(6).

15. During the initial employment eligibility verification process, new employees have a choice to present documentation establishing both identity and employment authorization (List A document), or a combination of an identity document (List B document) and an employment authorization document (List C document). *U.S. Citizenship and Immigration Services*, Form I-9, Employment Eligibility Verification (Form I-9, Rev.

03/08/13), p. 1. ("The individual may present either an original document which establishes both employment authorization and identity, or an original document which establishes employment authorization and a separate original document which establishes identity."); 8 C.F.R. § 274a.2(b)(1)(v).

STATEMENT OF FACTS

16. Respondents' employment eligibility verification of new Pasco employees occurs primarily at or through offices located at 5815 Industrial Way, Pasco, Washington 99301.

17. On June 22, 2012, WPC entered into a Memorandum of Understanding (MOU) with the Department of Homeland Security's E-Verify program for the purpose of using E-Verify for hiring at Pasco. The MOU was signed by a Pasco Human Resources Administrator on behalf of WPC. Respondents have consistently used E-Verify for employment eligibility verification of Pasco employees since June 2012.

18. As part of its obligations under the MOU, WPC agreed that it would "become familiar with and comply with the most recent version of the E-Verify User Manual [M-775]."

19. The E-Verify User Manual States that "Employers participating in E-Verify **MUST NOT**: . . . Specify or request which Form I-9 documentation a newly hired employee must use." (emphasis in the original).

20. Between November 1, 2013, and October 16, 2016, Respondents hired approximately 2,002 U.S. citizens ("USCs"), 794 Lawful Permanent Residents ("LPRs") and 281 Aliens Authorized to Work ("AAWs") in the United States for the Pasco plant.

21. Between November 1, 2013, and October 16, 2016, at least 99.5% of the LPRs employees Respondents hired for the Pasco plant produced a List A document to establish their work authority.

22. Between November 1, 2013, and October 16, 2016, at least 98.6% of the AAWs employees Respondents hired for the Pasco plant produced a List A document to establish their work authority.

23. Between November 1, 2013, and October 16, 2016, only 2.15% of the USC employees Respondents hired for the Pasco plant produced a List A document to establish their work authority.

24. On or about August 13, 2013, the Department of Homeland Security alerted Respondents to the high List A production rate of Respondents' noncitizen employees.

25. In response to the Department of Homeland Security, Respondents stated that the high List A production rate of noncitizen employees was attributable to their not possessing List B and C documents.

26. Noncitizen employees hired at the Pasco plant between January 1, 2016, and June 1, 2016, confirm that Respondents asked them to present specific employment eligibility verification documents because of their citizenship or immigration status:

a. Respondents told one LPR during her onboarding process that if she were an LPR, she would need to present her Permanent Resident Card;

b. Respondents provided another LPR who was going through the onboarding process with a document that stated that if a worker is an LPR, he should present a Permanent Resident Card; and

c. Respondents asked another newly-hired employee for the employee's citizenship status and when the employee identified herself as an LPR, Respondents promptly requested to see her Permanent Resident Card.

27. From at least November 1, 2013, until at least October 16, 2016, Respondents' standard operating procedure was to request that non-citizen employees, but not U.S. citizen

employees, produce List A documents, such as Permanent Resident Cards, for employment eligibility verification.

28. At all relevant times, Respondents allowed USC new hires to present their document of choice from the Lists of Acceptable Documents and did not ask them to present a List A document.

29. From at least November 1, 2013, until at least October 16, 2016, Respondents knowingly treated non-citizens differently from USCs by requesting that non-citizens but not USCs present a List A document, sometimes in addition to other documents, during the Form I-9 employment eligibility verification process.

30. Contrary to Respondents' claim that non-citizen employees at Pasco do not possess List B and List C documents, multiple non-citizen employees presented valid List B and List C documents for the employment eligibility verification process, but Respondents subsequently asked them to present a List A document.

PATTERN OR PRACTICE OF DOCUMENT ABUSE IN THE FORM I-9 EMPLOYMENT ELIGIBILITY VERIFICATION PROCESSES

31. Complainant incorporates by reference the allegations set forth in paragraphs 1 through 30 as if fully set forth herein.

32. Respondents' standard operating procedure from November 1, 2013 to June 1, 2016 was to request that non-U.S. citizens present a List A document for employment eligibility verification purposes based on employees' citizenship status.

33. During this same time, USCs were not subjected to the same request for specific documentation during the Form I-9 employment eligibility verification process based on their citizenship status.

34. Respondents' differential treatment of non-citizen employees in the employment eligibility verification processes was intentional, discriminatory, and in violation of 8 U.S.C. § 1324b(a)(6).

35. Respondents' actions were committed with the intent to discriminate against non-citizens on the basis of their citizenship status and constitute a pattern or practice of document abuse in violation of 8 U.S.C. § 1324b(a)(6).

36. WPC is responsible for the actions of Pasco as a joint employer of Pasco's employees as well as pursuant to the doctrine of *respondeat superior*.

REQUEST FOR RELIEF

THEREFORE, Complainant respectfully requests:

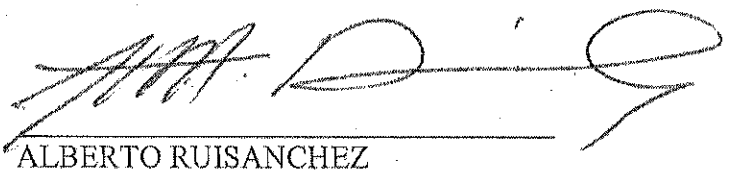
A. That the Office of the Chief Administrative Hearing Officer assign an Administrative Law Judge to preside at a hearing on this matter as soon as practicable; and

B. That the Administrative Law Judge grant the following relief:

1. Order Respondents to cease and desist from the alleged illegal practices described in the complaint and take other appropriate measures to overcome the effects and prevent the recurrence of the discriminatory practices;
2. Order Respondents to pay to the United States the maximum civil penalties authorized by law and shown to be warranted by the facts for each work-authorized individual who is found to have been subjected to the discriminatory practices alleged in this complaint;
3. Order Respondents to pay back pay to, hire, and/or reinstate each work-authorized individual who is found to have been subjected to the discriminatory practices alleged in this complaint; and
4. Order such additional relief as justice may require.

Respectfully Submitted,

VANITA GUPTA
Principal Deputy Assistant Attorney General
Civil Rights Division

By: 

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Dated: November 10, 2016

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STATEMENT PURSUANT TO 28 C.F.R. §§ 68.3, 68.7(b)(5)

Pursuant to 28 C.F.R. §§ 68.3 and 68.7(b)(5), the United States herby provides the Office of the Chief Administrative Hearing Office the following service information in the above-captioned matter:

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Dated: November 14, 2016

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RESPONDENTS.	

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2016, Complainant served to Respondents its Complaint in the above-captioned matter by facsimile and electronic mail at the addresses listed below.

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Dated: November 14, 2016