

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into by and between Washington Potato Company (“Respondent”) and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (“Immigrant and Employee Rights Section” or “IER”) to address Respondent’s employment eligibility verification practices at the Freeze Pack facility located at 302 N. Venture Road, Pasco, Washington, 99301 (“Freeze Pack Facility”).

I. BACKGROUND

WHEREAS, on March 30, 2017, the Immigrant and Employee Rights Section opened an independent investigation against “Freeze Pack” identified as DJ Number 197-81-75 (the “Investigation”), to determine whether Freeze Pack’s employment eligibility verification practices violate the anti-discrimination provision of the Immigration and Nationality Act, 8 U.S.C. § 1324b(a)(6) (the “Act”).

WHEREAS, on or about November 12, 2012, Freeze Pack, LLC ceased to exist as a separate, independent corporate entity and Respondent became the employer of the workers at the Freeze Pack Facility, thereby assuming responsibility for managing the Freeze Pack Facility and providing all payroll, accounting, and human resources-related services at the Freeze Pack Facility from that date forward.

WHEREAS, based on information obtained in connection with the Investigation, IER determined that there is reasonable cause to believe that Respondent engaged in a pattern or practice of unfair documentary practices at the Freeze Pack Facility in violation of 8 U.S.C. § 1324b(a)(6). Specifically, the Investigation found that from at least January 1, 2014, to at least September 1, 2017, Respondent requested noncitizens, but not similarly-situated citizens, hired at the Freeze Pack Facility to present specific documents during the employment eligibility verification process based on their citizenship or immigration status.

WHEREAS, IER, without prejudice to any potential legal positions wishes to resolve this investigation without further delay and the expense of litigation.

WHEREAS, Respondent, on behalf of itself and its subsidiaries, affiliates, assignees, and successors in interest, wishes to resolve this Investigation without further delay or expense, and without admitting liability.

WHEREAS, IER and Respondent hereby acknowledge that they are freely and voluntarily entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained below, and to fully and finally resolve IER’s claim against Respondent as of the date of the latest signature below, the parties agree as follows:

II. TERMS OF SETTLEMENT

1. This Settlement Agreement (hereinafter "Agreement") becomes effective as of the date of the last signature on the Agreement, which date is referenced herein as the "Effective Date." The "term of this Agreement" shall be two (2) years and six (6) months following the Effective Date.
2. Respondent shall pay a civil penalty to the United States Treasury in the amount of one hundred thousand dollars (\$100,000).
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 the Effective Date. Respondent shall pay the monies discussed in paragraph 2 via the FedWire electronic fund transfer system within ten (10) business days of Respondent's receipt of a fully signed copy of this Agreement and fund transfer instructions. IER will provide to Respondent instructions for the FedWire electronic transfer. On the day of payment, Respondent shall send confirmation of the payment to Silvia Dominguez-Reese at via.Dominguez-Reese@usdoj.gov, Jenna Grambort at Jenna.Grambort@usdoj.gov, and IER@usdoj.gov. The email confirming payment shall have Respondent's name and the Investigation number, DJ #197-81-75 in the subject line.
4. Respondent shall not discriminate on the basis of citizenship, immigration status or national origin in violation of 8 U.S.C. § 1324b.
5. Respondent shall avoid discrimination in the employment eligibility verification and re-verification process by (a) honoring documentation that on its face reasonably appears to be genuine, relates to the person, and satisfies the requirements of 8 U.S.C. § 1324a(b); (b) not requesting more or different documents than are required by law; and (c) permitting all employees to present any document or combination of documents acceptable by law.
6. Respondent shall not intimidate, threaten, coerce, or retaliate against any person for his or her participation in the Investigation of this matter, or the exercise of any right or privilege secured by 8 U.S.C. § 1324b.
7. 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/or job applicants are normally posted. The IER Poster will be posted within fourteen (14) days from the Effective Date and will remain posted for a minimum of two (2) years and six (6) months.
8. Beginning not more than fourteen (14) days from the Effective Date, Respondent shall provide a letter-sized copy of the IER Poster in English and the applicant's preferred language, if the preferred language is known and the IER Poster is available in that language, with all paper employment applications.
9. During the term of this Agreement, Respondent shall ensure that all individuals who are responsible for formulating, carrying out, and/or conducting training on Respondent's

hiring, firing, equal employment, and employment eligibility verification policies, as well as all managers and employees who have any role in the employment eligibility verification process, such as completing the Form I-9 and/or using the E-Verify system (“Human Resources Personnel”), are in possession of the most current version of the Form I-9, USCIS Employment Eligibility Verification Handbook for Employers (M-274) (“Handbook”), available at www.uscis.gov/I-9 Central, and the most current USCIS E-Verify Manual (M-775) (“Manual”), available at www.uscis.gov/USCIS/Verification/E-Verify/E-Verify_Native_Documents/manual-employer_comp.pdf, and are aware of the guidance on the I-9 Central and E-Verify websites. Within 30 days of any changes to the documents referenced in this paragraph, Respondent agrees to replace all prior versions with updated versions. Copies of these documents and future revisions of the Form I-9, Handbook, Manual and guidance can be obtained from the United States Citizenship and Immigration Services at www.uscis.gov.

10. Within sixty-days (60) days from the Effective Date, Respondent will review any existing employment policies that relate to the employment eligibility verification process and nondiscrimination on the basis of citizenship, immigration status or national origin, and shall create or revise such policies to:
 - (a) Prohibit discrimination on the basis of citizenship, immigration status, or national origin (1) in the hiring and firing process; (2) during the Form I-9 employment eligibility verification and re-verification process; and (3) in any part of the E-Verify process, regardless of whether that process is handled directly through an agent;
 - (b) Include citizenship, immigration status, and national origin as prohibited bases of discrimination into its policy and any similar Equal Employment Opportunity (EEO) statements Respondent provides in printed or electronic materials available to the public or employees;
 - (c) Refer applicants and employees who complain, formally or informally, of discrimination in the hiring, firing, or Form I-9 employment eligibility verification and re-verification process immediately to IER by directing the affected individual to IER 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
 - (d) Provide that Respondent shall not take 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.

Respondent shall provide to IER by email or overnight mail a copy of the new or changed policies required by this subparagraph within the (60) sixty-day period after the Effective Date. IER shall notify Respondent in writing about concerns or suggested amendments, if any, to the policies that implicate matters within IER’s enforcement authority within

thirty (30) days of receiving the new or changed policies from Respondent. Respondent shall consider the concerns and suggestions, if any, that IER provides, and implement its new and/or revised policies either within forty-five (45) days of receiving IER's written comments (if any) or no later than 120 days from the Effective Date, whichever is later. For the remaining term of the Agreement, Respondent subsequently shall provide for IER's review, by email or overnight mail, a copy of any other new or changed employment policies or practices that relate to nondiscrimination on the basis of citizenship, immigration status, or national origin including but not limited to recruitment, hiring, firing and the Form I-9 and E-Verify employment eligibility verification processes. IER shall provide any concerns about the proposed policy changes to Respondent in writing within thirty (30) days of receiving them, and Respondent shall consider any such concerns before implementing its proposed changes.

11. Within sixty (60) days of the Effective Date, Respondent shall review all procedures Respondent's E-Verify designated agent(s) use(s) to initiate E-Verify cases on Respondent's behalf, and all written documentation that Respondent's designated agent/and or Respondent disseminates to Respondent's employees regarding the E-Verify process (e.g. Tentative Nonconfirmation, Final Nonconfirmation, etc.), to ensure compliance with 8 U.S.C. § 1324b(a)(6), the provisions of this Agreement, and E-Verify rules. The obligations created by this Agreement with regard to E-Verify shall not apply during any period which Respondent is not enrolled in the E-Verify program.
12. Within ninety (90) days of the Effective Date, Respondent shall train all Human Resources Personnel, who were not already trained on September 25, 2017 through IER's in-person training at Pasco, Washington, on their obligation to comply with 8 U.S.C. § 1324b, the appropriate use of E-Verify, and the employment eligibility verification and re-verification process as it relates to discrimination on the basis of citizenship, immigration status, and national origin.
 - (a) At IER's discretion, the training will consist of either: (i) viewing a free IER webinar presentation and viewing a free E-Verify for Existing Users webinar presentation by U.S. Citizenship and Immigration Services (USCIS); or (ii) viewing a free live IER presentation at a time and location mutually agreed upon by the parties.
 - (b) All employees will be paid their normal rate of pay, and the training will occur during their normally scheduled workdays and work hours. Respondent shall be responsible for all payroll costs and employee wages associated with these training sessions.
 - (c) Respondent shall compile attendance records listing individuals who attend the training described in this paragraph, including the individual's full name, job title, signature, and the date of the training, and send the records via email to Silvia.Dominguez-Reese@usdoj.gov, Jenna.Grambort@usdoj.gov, and IER@usdoj.gov within ten (10) days of each training session. The emails transmitting attendance records shall have Respondent's name(s) and the words "Freeze Pack Training" in the subject line.

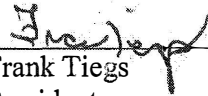
- (d) During the term of this Agreement, all new Human Resources Personnel and personnel involved in the Form I-9 and E-Verify processes Respondent hires after the initial training described in this paragraph has been conducted shall participate in a free IER Employer/HR webinar within sixty (60) days of hire.
13. During the term of this Agreement, IER reserves the right to make reasonable inquiries to Respondent necessary to determine Respondent's compliance with this Agreement. As part of such review, IER may require written reports concerning compliance, inspect Respondent's premises, interview witnesses, and examine and copy Respondent's documents at the expense of IER.
14. 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 or 8 C.F.R. § 44.302(b). If Respondent remains enrolled in E-Verify, every four (4) months during the term of this Agreement Respondent shall provide to IER a copy of its E-Verify transaction history and user audit report for the prior four-month period that includes all available fields. If Respondent ceases its use of E-Verify, then every four (4) months during the term of this Agreement, Respondent shall provide IER with access to Respondent's completed Forms I-9 and attachments for all employees hired by Respondent in the prior four-month period. Respondent shall provide the documents in Excel or PDF format, or another mutually agreed-upon electronic form where appropriate.
15. 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 to allow Respondent an opportunity to cure the violation rather than IER immediately initiating a new discrimination investigation or seeking to judicially enforce the Agreement. If IER has exercised its discretion to notify Respondent of the purported violation, Respondent shall then have thirty (30) days from the date IER notified them to cure the violation to IER's satisfaction before IER deems Respondent to be in violation of this Agreement and proceeds to take appropriate enforcement actions.
16. This Agreement does not affect the right of any individual to file a charge alleging an unfair immigration-related employment practice against Respondent with IER, the authority of IER to investigate or file a complaint on behalf of any such individual, or the authority of the IER to conduct an independent investigation of Respondent's employment practices occurring after the Effective Date or outside the scope of this Investigation.
17. The provisions of paragraph 2 notwithstanding, IER shall not seek from Respondent any additional civil penalty or other monetary amount, including without limitation, back wages or damages, 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 Investigation through the Effective Date.
18. This Agreement may be enforced in the United States District Court for the Eastern District of Washington. 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 jurisdictional or legal defense available to the United States. 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.

19. IER and Respondent agree that, as of the Effective Date, continued investigation or litigation concerning the violations of 8 U.S.C. § 1324b(a)(6) that IER found 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.
20. 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 thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement. Respondent and IER agree that they will not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is invalid.
21. IER and Respondent agree to bear their own costs, attorneys' fees and other expenses in connection with the Investigation.
22. This Agreement sets forth the entire agreement between Respondent and IER and fully supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter herein.
23. This Agreement may be executed in multiple counterparts, each of which together will be considered an original but all of which shall constitute one agreement. The parties agree to be bound by facsimile signatures.

Washington Potato Company

By:

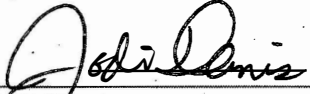


Frank Tiegs
President

Dated: 11/14/2017

Immigrant and Employee Rights Section

By:



Jodi Danis
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Dated:

11/16/17

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