

SETTLEMENT AGREEMENT

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

I. Background

WHEREAS, on August 19, 2016, IER received charges filed by Charging Parties ██████████ against Respondent, DJ Nos. 197-74-565 and -566, and on August 22, 2016, received a charge filed by Charging Party ██████████, DJ No. 197-74-570 (collectively, the “IER Charges”), all alleging discriminatory hiring by Respondent based on citizenship status in violation of the unfair immigration-related employment practices provisions of 8 U.S.C. § 1324b (the “Act”).

WHEREAS IER notified Respondent that it had initiated investigations based on the charges filed by Charging Parties ██████████ on August 25, 2016, and separately notified Respondent that it had initiated an investigation based on the charge filed by Charging Party ██████████ on August 31, 2016 (collectively, “Investigation” or “IER Investigation”).

WHEREAS, IER concluded based upon the Investigation that reasonable cause exists to believe that, beginning no later than February 16, 2016 and continuing until at least July 15, 2016, Respondent engaged in a pattern or practice of discriminatory hiring based on citizenship status in violation of 8 U.S.C. § 1324b(a)(1)(B).

WHEREAS, on September 29, 2017, IER filed a complaint (the “Litigation”) against Respondent with the Office of the Chief Administrative Hearing Officer (OCAHO).

WHEREAS, on February 9, 2016, Respondent received a labor certification from the U.S. Department of Labor (DOL) authorizing it to hire H-2A workers to fill the positions in question, because Respondent had recruited but could not find qualified U.S. workers, and that the wages and working conditions it was offering would not adversely affect similarly employed U.S. workers.

WHEREAS, in accordance with 20 C.F.R. §§ 655.135(a), 655.135(c), and 655.135(d), Respondent was obligated after February 9, 2016, to accept referrals of all qualified, eligible U.S. workers who applied for these positions, to reject any such workers only for lawful, job-related reasons, and to provide employment to any such workers from the time the foreign workers departed for the employer’s place of employment until July 16, 2017, the date when 50 percent of the period of the work contract elapsed.

WHEREAS, Respondent denies categorically that it has discriminated against U.S. workers or that it preferred to hire foreign workers through the H-2A or any visa program, as alleged in the Litigation, or that it has discriminated against any employee or applicant for employment on the basis of citizenship status or any other protected characteristic.

WHEREAS, Respondent and the Charging Parties, who are represented by counsel, have reached a settlement agreement and have submitted a joint motion to dismiss with prejudice to the Office of the Chief Administrative Hearing Officer (OCAHO) in OCAHO Case Nos. 17B00062, 17B00063, and 17B00064, which the parties signed on December 1, 2017.

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

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

II. Terms of Agreement

1. This Agreement shall become effective as of the date the last party signs the Agreement, which is referred to herein as the “Effective Date,” and shall remain in effect for two (2) years (the “term of the Agreement”); provided, however, that the Agreement will expire eighteen months after the Effective Date if Respondent submits evidence to IER that it has not used or has not sought authority to use the H-2A program during such 18-month period.
2. Respondent shall pay to the United States Treasury the amount of ten thousand five hundred dollars (\$10,500) pursuant to 8 U.S.C. § 1324b(g)(2)(B)(iv).

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 of this Agreement or receipt of fund transfer instructions from IER, whichever is later. On the day of payment, Respondent shall confirm via email to Hillary K. Valderrama at hillary.valderrama@usdoj.gov and Jenna Grambort at jenna.grambort@usdoj.gov that payment was made.

3. Upon verification of compliance with paragraph 2, the Parties shall file in the Litigation (OCAHO Case No. 17B00102) a Joint Motion to Dismiss with Prejudice.
4. Respondent shall comply with all the terms and conditions of the settlement agreement between the Respondent and the Charging Parties that finally resolved the claims asserted in OCAHO Case Nos. 17B00062, 17B00063, and 17B00064, including but not limited to the terms in that settlement agreement requiring the payment of back pay in the amount of \$18,738.75 to the Charging Parties.
5. Respondent shall not engage in discrimination on the basis of citizenship in hiring, firing, recruitment, or referral for a fee unless explicitly required to do so by a law; federal, state, or local government contract; executive order; or regulation, as set forth in 8 U.S.C. § 1324b.
6. Respondent shall 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.

7. Respondent shall post IER's "If You Have The Right to Work" poster ("IER Poster"), in color and measuring no smaller than 18" x 24," an image of which is available at <http://www.justice.gov/crt/about/osc/htm/worker.php#>, in all places where notices to employees and job applicants are normally posted. The IER Poster will be posted within fourteen (14) days of the Effective Date and will remain posted for two (2) years thereafter. The IER Poster shall be posted in English and Spanish.
8. Within thirty (30) days of the Effective Date of this Agreement, Respondent shall revise its employment policies to:
 - (a) Prohibit discrimination on the basis of citizenship in hiring, firing, recruitment or referral for a fee unless required to comply with applicable law, executive order, provision of government contract, rule, or regulation, as set forth in 8 U.S.C. § 1324b;
 - (b) Clarify that H-2A visa holders may only be hired in the absence of any qualified and available U.S. workers (as defined by 20 C.F.R. § 656.3) and that protected individuals may not be denied employment in order to allow the employment of H-2A workers;
 - (c) Clearly identify a member of Respondent's staff who is primarily responsible for communicating with the Texas Work Force Commission (or any other state workforce agency Respondent works with to meet its recruitment obligations under any guest worker program), and a back-up staff member who has secondary responsibility, along with the contact information for the Texas Work Force Commission or other state workforce agency, and maintain this information in a location and manner accessible to all of Respondent's staff member with any responsibility for hiring or onboarding new employees;
 - (d) Refer applicants and employees who complain of citizenship status discrimination or unfair documentary practices in the hiring, firing, recruitment or referral for a fee process to IER by directing them to the IER Poster, the IER worker hotline (1-800-255-7688), and website (<https://www.justice.gov/crt/immigrant-and-employee-rights-section>); and
 - (e) 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.
9. For the term of the Agreement, Respondent shall provide any further changes in employment policies revised under Paragraph 8, and any changes to policies regarding Respondent's use or treatment of temporary foreign visa holders or citizenship status information of workers, to IER for review for compliance with 8 U.S.C. §1324b at least

twenty (20) business days prior to the intended effective date of such revised policies.

10. Within ninety (90) days of the Effective Date, all employees with any responsibility for providing any guidance regarding or completing any portion of the hiring, firing, recruitment or referral for a fee of employees at Respondent's El Campo, TX, location, and all employees of the human resources department at Respondent's headquarters in Loveland, CO, shall join IER's email distribution list and receive training provided by IER on their obligation to comply with 8 U.S.C. § 1324b.
 - (a) The trainings shall consist of participation in an internet-based webinar presentation. Participants shall register for the webinar presentation at 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 responsibility for providing any guidance regarding or completing any portion of the hiring, firing, recruitment or referral for a fee of employees at any of Respondent's locations after the training described in this paragraph has been conducted shall participate in an IER Employer/HR webinar within sixty (60) days of hire or promotion; and
 - (d) Respondent shall compile attendance records listing the individuals who participate in training as described in this paragraph and shall provide using Attachment A all participants' full name, title, signature, and the date of the training. A fully completed Attachment A shall be transmitted as an attachment to an email addressed to hillary.valderrama@usdoj.gov and jenna.grambort@usdoj.gov within ten (10) days of each training session.

11. During the term of this Agreement, for each occasion on which Respondent seeks H-2A workers for any of its locations, Respondent shall immediately submit the following documentation to IER:
 - (a) All documentation submitted to any federal or state agency in furtherance of Respondent's attempts to secure H-2A workers (including but not limited to all documents and/or forms that are routinely generated and filed with any federal or state agency to obtain a labor certification or guest visa, such as the Form I-129, Petition for a Nonimmigrant Worker; ETA Form 9142A, H-2A Application for Temporary Employment Certification; recruitment ads; and other supporting documentation);
 - (b) A complete list of all U.S. workers who expressed interest in the position,

identified by name, last known contact information, date and method the applicant expressed interest, the name and position title of the employee responsible for processing the worker's application for Respondent, the outcome of the worker's application, and the reason for the outcome; and

- (c) Copies of all correspondence (including email) exchanged between Respondent and any state or local workforce agency reflecting or referring to any efforts to recruit and/or hire U.S. workers for the vacancy for which Respondent seeks certification.
12. During the term of this Agreement, IER may make reasonable requests for documents and information to determine Respondent's compliance with the Agreement, and will act in good faith to avoid any such requests imposing an undue burden on Respondent. Respondent will comply with IER's requests within a reasonable period of time not to exceed 30 (thirty) days unless Respondent provides specific written reasons prior to the 30th (thirtieth) day as to why it cannot respond within that timeframe and provide another specific timeframe, not to exceed an additional 30 (thirty) days, within which it will respond, or state a good faith basis for why the request imposes an undue burden on Respondent. Notwithstanding this paragraph, IER retains all of the statutory rights to obtain information and conduct on-site inspections of Respondent's locations that it would have absent this Agreement.
 13. Subject to Paragraph 14, 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 or the authority of IER to investigate or file a complaint on behalf of any such individual, or the authority of IER to conduct an independent investigation of Respondent's employment practices.
 14. IER shall not seek from Respondent any civil penalty or other remedy in addition to those described in Paragraphs 3 and 4 based on allegations of any pattern or practice of citizenship status discrimination in violation of 8 U.S.C. § 1324b that is the subject of the IER Investigation through the date this Agreement is signed by all parties.
 15. IER and Respondent agree that, as of the effective date of this Agreement, 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.
 16. This Agreement may be enforced in the United States District Court for the District of Colorado or another court of competent jurisdiction. Nothing in this paragraph or Agreement shall be construed or interpreted as a waiver of sovereign immunity, or any other jurisdictional defense the United States might have to a claim for enforcement or a counterclaim by Respondent.

17. 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 shall not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is invalid.
18. The Parties shall bear their own costs, attorneys' fees and other expenses incurred in this action.
19. 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.
20. 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.

Crop Production Services, Inc.

By:


Sherri Kuhlmann
Chief Counsel

Dated: 12-15-17

Immigrant and Employee Rights Section

By:


Jodi Danis
Special Litigation Counsel

Dated: 12/18/17

C. Aloat Sebastian
Special Litigation Counsel

Hillary K. Valderrama
Jenna Grambort
Trial Attorneys