

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into by and between Mar-Jac Poultry, Inc. (“Respondent” or “Mar-Jac”), 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 December 23, 2010, IER notified Respondent that it had initiated an investigation, DJ# 197-19-148 (“Investigation”), based on a charge alleging that Respondent had violated the anti-discrimination provision of the Immigration and Nationality Act, 8 U.S.C. § 1324b (“Act”).

WHEREAS, by letter dated February 16, 2011, IER notified Respondent that it had expanded its investigation to investigate whether the company had engaged or was engaging in a pattern or practice of unfair documentary practices in violation of 8 U.S.C. § 1324b(a)(6).

WHEREAS, IER determined based on information obtained in its Investigation that there was reasonable cause to believe that Respondent engaged in a pattern and practice of unfair documentary practices against non-U.S. citizens in violation of 8 U.S.C. § 1324b(a)(6). Specifically, the Investigation concluded that beginning in at least 2008, Respondent requested non-U.S. citizens, but not similarly situated U.S. citizens, present specific documents during the employment eligibility verification process based on their citizenship status.

WHEREAS, after the Parties failed to resolve the Investigation through negotiation, on July 14, 2011, IER filed a Complaint against Respondent with the Office of Chief Administrative Hearing Officer (“OCAHO”), Case No. 11B00111 (“the Litigation”). The parties subsequently filed cross-motions for summary decision.

WHEREAS, on March 3, 2017, OCAHO issued a summary decision dismissing the United States’ claim on behalf of the charging party and similarly situated individuals but finding Respondent engaged in a pattern or practice of document abuse between June 16, 2010 and February 9, 2011 against non-U.S. citizens who were protected individuals.

WHEREAS on August 14, 2018, OCAHO issued an order clarifying that although the March 3, 2017, summary decision resolved certain matters, there are still genuine issues of material fact remaining for hearing.

WHEREAS, notwithstanding OCAHO’s March 3, 2017 findings, Respondent denies any engagement in a pattern or practice of unfair documentary practices in violation of 8 U.S.C. § 1324b, and by entering into this Agreement, does not admit and expressly denies that it violated § 1324b or any other federal, state, or local statute, regulation or ordinance.

WHEREAS, the Parties wish to resolve this 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 below, and to fully and finally resolve the Litigation as of the date of this Agreement, the Parties agree as follows:

## II. TERMS OF AGREEMENT

1. This Agreement becomes 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 one hundred ninety thousand dollars (\$190,000.00). 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 seven (7) days from the Effective Date.
3. The monies discussed in Paragraph 2 shall be paid via the FedWire electronic fund transfer system within fourteen (14) 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](mailto:craig.fansler@usdoj.gov) and Jenna Grambort at [jenna.grambort@usdoj.gov](mailto:jenna.grambort@usdoj.gov).
4. 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 based on citizenship status in violation of 8 U.S.C. § 1324b that is the subject of the Litigation through the Effective Date.
5. Respondent shall pay former employee [REDACTED] one thousand twenty dollars (\$1,020.00) to compensate him for missed work, which amount includes back pay and accumulated interest on back pay. Respondent may withhold applicable taxes based on the tax rates of the current calendar year. Respondent shall follow the applicable instructions contained in IRS Publication 957.
6. Respondent shall set aside a back pay fund of twenty-three thousand nine hundred eighty dollars (\$23,980.00) to compensate any other Qualified Individuals who suffered economic injury in the form of loss of pay, including injury from failure to hire, delayed hire, suspension, termination, or other periods of lost work as a result of Respondent’s alleged employment eligibility verification practices from June 16, 2010 through June 30, 2011, as described below:
  - a. A “Qualified Individual,” as described in this Paragraph, shall be any individual who, between June 16, 2010 and June 30, 2011: (i) at the time of the period of lost work, was a refugee, an asylee, had been a lawful permanent resident for no longer than five years and six months or applied to naturalize within that term; (ii) did not present an Employment Authorization Card or Permanent Resident Card for employment eligibility verification; (iii) at the time of the period of lost work,

possessed valid Form I-9 document(s); (iv) if applicable, appeared in Respondent's Applicant Flow Log with a notation relating to employment authorization documentation, or "does not meet employment criteria"; and (v) experienced an employment loss because of a violation of § 1324b(a)(6), as determined by IER.

- b. Respondent has already provided IER with: (i) the complete application information (including any interview questionnaires) for all of the individuals who applied for positions with Respondent between June 16, 2010 and June 30, 2011, and to whom Respondent did not make an offer of employment based on any application submitted during that period, and (ii) the hourly rate(s) of pay or salary for the position(s) for which the individuals applied.
- c. Within one hundred twenty (120) days from the Effective Date, IER will send a written notification ("Notice Letter") (Attachment A) and an Applicant Back Pay Claim Form ("Claim Form") (Attachment B) to all individuals from the June 16, 2010, through June 30, 2011, period whom IER has identified as potential claimants using information IER obtained during the Investigation and Litigation (including the additional information from Respondent described in Paragraph 6(b)), to determine if they are Qualified Individuals entitled to receive compensation for lost work.
- d. Individuals who wish to be considered for compensation for lost work will have ninety (90) days from the date of the Notice Letter to return the Claim Form (Attachment B) to IER, unless an individual 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 one hundred fifty (150) days from the date of the Notice Letter, IER will initially calculate and notify Respondent of the amount of lost pay owed to each claimant IER determines to be a Qualified Individual, accompanied by the claimant's Attachment B and any related information IER obtains from the claimant. IER will perform this initial calculation using a formula that multiplies the rate of pay for the relevant position by the amount of lost work the individual suffered, plus interest, and subtracts any pay that the Qualified Individual earned from an alternate employer during the period (i.e., mitigation earnings). If Mar-Jac never employed the claimant, the rate of pay will be assessed at \$9.00 per hour. If the total amount of lost pay that would be owed to Qualified Individuals exceeds twenty-three thousand nine hundred eighty dollars (\$23,980.00), IER shall initially calculate a *pro rata* amount of lost 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. Respondent's total liability to Qualified Individuals under

this Paragraph shall not exceed twenty-three thousand nine hundred eighty dollars (\$23,980.00).

- f. Within thirty (30) days from the date on which IER notifies Respondent of its initial determinations regarding the amounts owed to each Qualified Individual pursuant to Paragraph 6(e), Respondent will notify IER in writing if Respondent disagrees with any back pay determination, and provide an explanation for its position along with copies of any supporting documents.
- g. If Respondent has disagreed under Paragraph 6(f) with IER's back pay determination under Paragraph 6(e), IER will consider in good faith any explanations and additional documents Respondent provided before making, in its sole discretion, the final determination regarding the amount to be paid, if any. If necessary, IER will re-calculate any *pro rata* back pay determinations, taking into account the final number of Qualified Individuals and amounts to be paid. Within thirty (30) days of receiving Respondent's notice of disagreement under Paragraph 6(f), IER will notify Respondent in writing of its determinations.
- h. If Respondent does not notify IER of any disagreements under Paragraph 6(f), IER's back pay determinations will become final thirty (30) days from its initial back pay determinations under Paragraph 6(e). If Respondent notifies IER of any disagreements under Paragraph 6(f), IER's back pay determinations will become final thirty (30) days from IER's final back pay determination under Paragraph 6(g).
- i. Respondent shall, within thirty (30) days of the date that IER's back pay determination becomes final, send each Qualified Individual by first class mail and email (if applicable): i) a Back Pay Determination Letter indicating the amount of back pay to be received; ii) an IRS Form W-4, as necessary; and iii) and a form permitting the Qualified Individual to elect a method of payment consisting of either check, or, if a current Respondent employee, check, direct deposit or pay card (all at Attachment C). Respondent shall withhold applicable taxes based on the rates of the current year. The Back Pay Determination Letter mailing shall contain a self-addressed return envelope with sufficient postage. On the same day Respondent mails out the Back Pay Determination Letters, Respondent shall email to [craig.fansler@usdoj.gov](mailto:craig.fansler@usdoj.gov) and [jenna.grambort@usdoj.gov](mailto:jenna.grambort@usdoj.gov) or any alternate e-mail IER designates in writing (with attachments in .PDF format), copies of the letters and addressed envelopes it sends to Qualified Individuals. Nothing in this Agreement prevents IER from determining at any point that a claimant is not a Qualified Individual, and thus not entitled to back pay under this Agreement.

- j. All communications from Respondent to Qualified Individuals relating to this Agreement, or the back pay claims process thereunder, shall be submitted to IER for prior review and approval. Respondent shall not require Qualified Individuals to accept or otherwise agree to any additional terms as a condition of receiving the back wages outlined in this Paragraph.
  - k. Within fifteen (15) days from Respondent's receipt of Attachment C from a Qualified Individual, Respondent shall send the individual the back pay amount IER determined in the form consistent with the Qualified Individual's elected preference, and a payment transmittal notice. On the same day, Respondent shall send a copy of the individual's completed Attachment C, check and payment transmittal notice to [craig.fansler@usdoj.gov](mailto:craig.fansler@usdoj.gov). Respondent is responsible for paying any employer-side taxes or contributions due to the federal or state government based on the payments made to Qualified Individuals pursuant to this Settlement Agreement. Respondent shall follow the applicable instructions contained in IRS Publication 957 and credit the Qualified Individuals' back pay award to calendar quarters of the year when the back wages would have been earned.
  - l. Any remaining amount of the twenty-three thousand nine hundred eighty dollars (\$23,980.00) back pay fund that has not been distributed to Qualified Individuals pursuant to the process set forth in this Paragraph shall revert to Respondent.
7. Within thirty (30) days of the Effective Date, Respondent shall review its employment policies and revise such policies, as necessary, to prohibit discrimination on the basis of citizenship status and national origin in the recruitment, hiring and firing processes, including in the employment eligibility verification process.
8. During the term of this Agreement, Respondent shall provide, for review and approval, any changes in employment policies as they relate to nondiscrimination on the basis of citizenship status and national origin to IER at least thirty (30) days prior to the proposed effective date of such revised policies.
9. Within ninety (90) days from the Effective Date, all of Respondent's employees, contractors, and agents with any responsibility for employment eligibility verification and reverification ("HR Personnel"), shall receive free IER training on their obligation to comply with 8 U.S.C. § 1324b.
- a. The trainings shall consist of remote IER Employer/HR webinar(s) that HR Personnel can register for on IER's website.
  - b. All HR Personnel 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 relating to its employees and IER shall bear all costs relating to the webinar content and the hosting of the webinar.

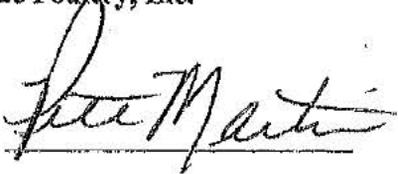
- c. During the term of this Agreement, all new HR Personnel Respondent hires or promotes shall participate in an IER Employer/HR webinar within sixty (60) days of hire or promotion.
  - d. Respondent shall confirm the initial webinar participation required in Paragraph 9(a), and subsequent viewings of the webinar training required by Paragraph 9(c), via email to [craig.fansler@usdoj.gov](mailto:craig.fansler@usdoj.gov) and [jenna.grambort@usdoj.gov](mailto:jenna.grambort@usdoj.gov) or an alternate email address IER designates in writing, within fourteen (14) days of completion of each training session.
10. 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.
  11. Nothing in this Agreement limits IER's right to inspect Respondent's Forms I-9 pursuant to 8 C.F.R. § 274a.2(b)(2)(ii).
  12. 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 potential violation without opening an investigation. Respondent will then have thirty (30) 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.
  13. 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.
  14. This Agreement resolves any and all differences between the parties with respect to Respondent relating to the Investigation and the Litigation, through the Effective Date.
  15. This Agreement may be enforced in the United States District Court for the Northern District of Georgia. 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. The Parties agree that the paragraphs set forth in Part II of this Agreement contain material terms, without waiver of either party's right to argue that the other terms in the Agreement are material.

### **III. OTHER TERMS**

16. 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. For purposes of interpreting this agreement, both parties shall be deemed to have drafted it.
17. The Parties agree that, as of the Effective Date, continued litigation concerning the violations of 8 U.S.C. § 1324b at issue in the Investigation and Litigation 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.
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 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.
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.

**Mar-Jac Poultry, Inc.**

By:

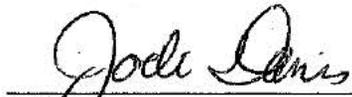
  
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Dated: 10-4-2018

Dated: \_\_\_\_\_

**Immigrant and Employee Rights Section**

By:

  
Jodi Danis  
Special Litigation Counsel

Dated: 10/9/18

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