

SETTLEMENT AGREEMENT

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

I. BACKGROUND

WHEREAS, on July 24, 2018, IER received a charge against Respondent, DJ# 197-8-577 (the “IER Charge”), alleging that Respondent rejected the Charging Party [REDACTED] valid Form I-9 documents and requested more or different documents than necessary to complete Form I-9 based on citizenship status or national origin, in violation of the Immigration and Nationality Act, 8 U.S.C. § 1324b(a)(6) (“Act”).

WHEREAS, IER concluded, based upon investigating the IER Charge, that there is reasonable cause to believe that Respondent committed unfair documentary practices against the charging party in violation of 8 U.S.C. § 1324b(a)(6) by: (1) requesting specific additional documents to prove her work authorization after it rejected her valid I-551 notation printed on a machine-readable immigrant visa; (2) rejecting her valid Permanent Resident Card; and (3) requesting that she produce more or different documents than necessary to complete Form I-9, based on the Charging Party’s citizenship status or national origin.

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

WHEREAS, Respondent disputes the allegations and IER’s conclusion.

NOW, THEREFORE, in consideration of the mutual promises contained below, and to fully and finally resolve the IER Charge, the Parties agree as follows:

II. TERMS OF SETTLEMENT

1. This Agreement becomes effective as of the date of the latest signature below, which date is referenced hereafter as the “Effective Date.” The term of the Agreement shall be 18 months following the Effective Date, and applies to Respondent’s facility located at 7810 E. Escalante Road, Tucson, Arizona 85730 (“Escalante Facility”).
2. Subject to continued compliance with this Agreement, the IER agrees that it has not and will not pursue litigation against Respondent for alleged violations of 8 U.S.C. § 1324b relating to the IER Charge.

3. Respondent shall pay a civil penalty to the United States Treasury in the amount of \$1,848. No later than five days after the Effective Date, Respondent shall give IER the name and contact information for the person(s) who will make the payment on its behalf. After IER receives this information, it will send Respondent the FedWire instructions. Respondent shall pay the monies discussed in this paragraph, via the FedWire electronic fund transfer system, within ten days of receiving IER's FedWire instructions. On the day of payment, Respondent shall confirm via email to Joann Sazama at joann.sazama@usdoj.gov, with a subject line that includes DJ# 197-8-577, that payment was made. IER shall not seek from Respondent any additional civil penalty for any pattern or practice of unfair documentary practices or discrimination in violation of 8 U.S.C. § 1324b that was the subject of the IER investigation through the date this agreement is signed by all parties.
4. Within five days of the Effective Date, Respondent shall send the Charging Party its settlement and release form. Within 14 days of receiving the signed settlement and release form between the Charging Party and Respondent, Respondent shall pay back pay to the Charging Party in the amount of \$2,880, less any deductions and withholdings required by law. On the date of payment, Respondent shall confirm via email to Joann Sazama at joann.sazama@usdoj.gov, with DJ# 197-8-577 included in the subject line, that it paid the Charging Party.
5. Neither this Agreement nor any actions to be taken by Respondent under this Agreement shall be deemed or construed at any time for any purpose as an admission by Respondent of any violation of the Act.
6. Pursuant to 8 U.S.C. § 1324b, Respondent shall not discriminate against individuals based on citizenship, immigration status, or national origin, during the recruitment, hiring, firing, and employment eligibility verification and re-verification processes.
7. Respondent shall avoid discrimination in the employment eligibility 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.
8. Respondent shall not intimidate, threaten, coerce, or retaliate against any person for participation in the Investigation or exercise of any right or privilege secured by 8 U.S.C. § 1324b.
9. If not already posted, Respondent shall ensure that it has posted IER's "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 at the Escalante Facility are normally posted. The IER Poster will be posted within 14 days of the Effective Date and will remain posted for at least the term of the Agreement. Respondent shall post the IER Poster in English, Spanish, and any other available language that is the preferred language of Respondent's employees, if that language is known and if the poster is available through the IER website in that language.

10. During the term of this Agreement, Respondent shall ensure that all individuals who are responsible for formulating, carrying out, and/or conducting training at the Escalante Facility on Respondent's hiring, firing, and employment eligibility verification policies, including those who have any role in the employment eligibility verification process, such as completing the Form I-9 and/or using the E-Verify system (collectively, "Human Resources Personnel"), can readily access:
 - (a) 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-9Central, and, if Respondent use E-Verify in the jurisdiction the employee is located, the most current USCIS E-Verify Manual (M-775) ("Manual"), available at www.uscis.gov/e-verify/publications/manuals-and-guides/e-verify-user-manual. 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.
 - (b) The name and contact information for Respondent's Form I-9/E-Verify electronic provider (currently ADP), which shall be posted in an area at the Escalante Facility visible to the Human Resources Personnel, including on any landing page or intranet/internet page that Respondent uses to access the Form I-9/E-Verify electronic program.
11. On August 27, 2018, Respondent's Human Resources Personnel viewed a free IER webinar presentation regarding their obligations to comply with 8 U.S.C. § 1324b and the employment eligibility verification process as it relates to discrimination on the basis of citizenship, immigration status, and national origin.

For the term of the Agreement, all of Respondent's new Human Resources Personnel at the Escalante Facility who assumed their duties with respect to employment authorization verification after the initial training described in this paragraph shall attend an IER Employer/HR webinar within 60 days of hire or otherwise assuming such duties. Respondent shall compile and send attendance records for these individuals, along with their dates of hire, to IER by emailing Joann.Sazama@usdoj.gov and Lorren.Love@usdoj.gov with with DJ# 197-8-577 included in the subject line, within ten days of their participation in such training session.

12. IER reserves the right to make reasonable inquiries to Respondent to determine for the duration of this Agreement, Respondent's compliance with this Agreement. As a part of such review, IER may require written reports concerning compliance, inspect Respondent's Escalante Facility premises, examine witnesses, and examine and copy Respondent's documents. Subject to any appropriate objections including scope, burden, and/or privilege, Respondent shall comply with IER's requests within 30 days unless IER grants Respondent additional time to comply.
13. 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 have 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.
14. This Agreement does not affect the right of any individual to file an IER charge alleging an unfair immigration-related employment practice, 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.

III. ADDITIONAL TERMS

15. 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 IER Investigation. This Agreement is governed by the laws of the United States. This Agreement shall be deemed to have been drafted by the Parties and shall not be construed against any one party in the event of a subsequent dispute concerning the terms of the Agreement. The Parties agree that the paragraphs set forth in Part II of this Agreement and attachments (entitled "Terms of Settlement") are material terms, without waiver of any Party's right to argue that other terms in the Agreement are material.
16. This Agreement may be enforced in the United States District Court for the District of Arizona or any other court of competent jurisdiction. This provision does not constitute a waiver of sovereign immunity or any other defense the United States might have against a claim for enforcement or counterclaims asserted against it.
17. Should any court declare or determine that any provision(s) of this Agreement is/are illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected and said illegal or invalid part(s), term(s) or provision(s) shall be deemed not to be part of this Agreement. The Parties 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 agree that, as of the Effective Date, with respect to litigation

concerning the violations of 8 U.S.C. § 1324b relating to the IER Charge prohibited by this Agreement, that 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.

19. The Parties shall each bear their own costs, attorneys' fees and other expenses incurred in this action.
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 agree to be bound by facsimile signatures.

Afni, Inc.


By:


Kathy Groetken
EEO and Compliance Manager

Dated: 12-07-18

Immigrant and Employee Rights Section

By:


Jodi Danis
Special Litigation Counsel

Dated: 12/12/18

C. Sebastian Aloit
Special Litigation Counsel

Joann Sazama
Equal Opportunity Specialist