

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into by and between Sam Williamson Farms, 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 September 15, 2017, IER notified Respondent that it had initiated an investigation, DJ No. 197-17M-304 (the "IER Investigation"), to determine whether Respondent had engaged in unfair immigration-related employment practices prohibited by 8 U.S.C. § 1324b (the "Act");

WHEREAS, IER concluded based upon the IER Investigation that there is reasonable cause to believe that from at least March 31, 2017 until at least April 1, 2018, Respondent engaged in a pattern or practice of citizenship or immigration status discrimination in violation of 8 U.S.C. § 1324b(a)(1). Specifically, IER concluded that Respondent permanently laid off its existing U.S. workers at the end of the 2016-2017 work season, announced that it would not consider them for rehire in the 2017-2018 season, and selected and contracted with a farm labor contractor for the purpose of obtaining only H-2A visa-holders for the 2017-2018 season, because of Respondent's preference for workers with H-2A visas over U.S. workers;

WHEREAS, Respondent denies that it engaged in a pattern or practice of discriminatory hiring based on citizenship in violation of 8 U.S.C. § 1324b;

WHEREAS, the Parties wish to resolve the Investigation without further delay or expense, and hereby acknowledge that each party is voluntarily entering into this Agreement;

NOW, THEREFORE, in consideration of the mutual promises contained below and to fully and finally resolve the IER Investigation, 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."
2. Respondent shall pay a civil penalty to the United States Treasury in the amount of \$60,000.00. 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 days from the Effective Date.
3. The monies discussed in Paragraph 2 shall be paid via the FedWire electronic fund transfer system as follows:
  - a. Respondent shall pay the first installment of \$30,000.00 within ten days of the Effective Date or receipt of fund transfer instructions from IER, whichever is later.

- b. Respondent shall pay the second installment of \$30,000.00 within 180 days of the Effective Date or receipt of the second fund transfer instructions from IER, whichever is later.

On each day of payment, Respondent shall confirm payment via email to Jenna Grambort at [Jenna.Grambort@usdoj.gov](mailto:Jenna.Grambort@usdoj.gov), or any other personnel IER designates in writing, that the payment was made, and include "DJ No. 197-17M-304" in the subject line. Any other emails that Respondent is required to send to IER under this Agreement, including those required by Paragraphs 6, 7 and 15, shall also include that reference number in the subject line.

4. Other than the penalty described in Paragraphs 2 and 3, IER shall not seek from Respondent any additional civil penalty for the citizenship or immigration status discrimination in violation of 8 U.S.C. § 1324b(a)(1) that is the subject of the IER Investigation, through the Effective Date.
5. For a period of three years from the Effective Date, to the extent Respondent needs to hire or obtain farm labor services, Respondent shall use either or both of the following procedures:
  - (a) Recruit and hire or rehire: (1) available U.S. workers it formerly employed to harvest strawberries in the 2016-2017 season, (2) any available U.S. workers Respondent employed in subsequent seasons, and (3) any other available individuals protected under 8 U.S.C. § 1324b(a)(3); or
  - (b) If Respondent uses a farm labor contractor to obtain workers to perform work on its farm, direct any U.S. workers it employed at any point since August 1, 2016, and other individuals protected under 8 U.S.C. § 1324b(a)(3) who express interest, to the farm labor contractor to apply for any employment positions.
6. For a period of three years from the Effective Date, in addition to any recruiting obligations under any other state or federal law, Respondent shall advertise any work opportunities on its farms prior to the beginning of each strawberry planting and/or harvesting season, in both Spanish and English in Plant City and Lakeland, Florida. All advertisements shall include the following language: "Everyone with permission to work in the United States is welcome to apply. Invitamos solicitudes de empleo de todos que tienen autorización para trabajar en los Estados Unidos." Respondent shall post such advertisements no fewer than four weeks in advance of the anticipated start date, and shall continue to post such advertisements in the same publications at least once per week until 50% of the season is complete. Respondent shall also undertake the following obligations:
  - (a) If Respondent recruits or hires U.S. workers for any positions, Respondent shall not advertise or require any different or additional qualifications than those Respondent requires for individuals with H-2A visas performing the same job at Respondent's farm. Respondent also shall ensure it includes in all advertisements a correct, working phone number and physical address where

prospective applicants can apply and/or obtain more information about the positions, and shall update any advertisements with a new phone number or physical address information as needed.

- (b) If Respondent uses a farm labor contractor or recruiter to recruit workers for any positions, Respondent shall ensure that all the advertisements required by this Paragraph direct interested applicants to apply through the farm labor contractor or recruiter, and provide the correct contact information for the contractor or recruiter.
- (c) Beginning on August 1 before the start of each season and continuing until the season is 50% complete, Respondent shall send IER by email to [Jenna.Grambort@usdoj.gov](mailto:Jenna.Grambort@usdoj.gov), or any other personnel IER designates in writing, a monthly report that demonstrates its compliance with this Paragraph. The Report shall include copies of the advertisements, the names of publications where they were posted, dates of advertisement posting, any applicant name and contact information, and the outcomes of applicant applications.
- (d) If Respondent uses a farm labor contractor or recruiter to fill its available positions and wishes to delegate its responsibilities under this Paragraph to such an individual or entity, Respondent shall include as a term in its contract for such services the requirement that the contractor or recruiter comply with all provisions of this Paragraph. The requirements under this Paragraph do not supplant or preclude any other advertising required by law, including but not limited to Department of Labor regulations. If, after best efforts to do so, Respondent is unable to modify a contract already in effect as of the Effective Date of this Agreement, Respondent can satisfy its responsibilities under this Paragraph for the current 2019-2020 season as follows:
  - i. Respondent shall place advertisements using the language specified in Attachment A and shall include a current, working phone number and physical address information for the contractor with whom prospective applicants can apply for the advertised work. If Respondent wishes to modify the language in Attachment A, it shall submit its proposed revisions to IER for review and approval at least 14 days prior to the proposed implementation of the changes.
  - ii. Starting on August 1, 2019, Respondent shall place the advertisements in the Lakeland Ledger and the Tampa Bay Times at least once per week until 50% of the harvesting season is complete.
  - iii. Respondent shall report its compliance under this Paragraph as specified above in subparagraph (c).

7. Respondent shall set aside a total of \$85,000 to compensate qualified individuals who lost work because Respondent did not consider them for rehire in 2017-2018, as described below:
- (a) A “Qualified Individual,” as described in this Paragraph, shall be any protected individual under 8 U.S.C. § 1324b(a)(3) who was physically capable of performing strawberry harvesting work when the individual would have applied for the 2017-2018 season, and who (i) worked for Respondent at any time since September 1, 2015 and would have sought employment with Respondent for the 2017-2018 season absent Respondent’s decision to obtain visa holders; or (ii) provides evidence demonstrating that he or she sought or would have sought and accepted employment with Respondent for the 2017-2018 season absent Respondent’s decision to obtain visa holders.
  - (b) Within 30 days from the Effective Date, IER will send a written notification of this Agreement (“Notice Letter”) (Attachment B) and an Applicant Back Pay Claim Form (“Claim Form”) (Attachment C) by U.S. mail and electronic mail (if an email address is available) to all U.S. workers IER has identified who may fall within Paragraph 7(a), to determine if they are Qualified Individuals. Thereafter, IER will send a Notice Letter and Claim Form to any other individuals about whom IER has received information indicating that they may be Qualified Individuals.
  - (c) Individuals who wish to be considered for back pay relief will have 100 days from the date of the Notice Letter to return the Claim Form to IER, unless the individual can demonstrate good cause (as determined by IER) for the failure to return a Claim Form by the specified deadline.
  - (d) No later than 90 days from the date IER receives the completed Claim Form, IER will calculate the amount of back pay IER believes Respondent owes each Qualified Individual, and notify Respondent of the amount(s). IER will perform this calculation using a formula that multiplies the pay rate specified in the relevant labor certification application by the number of hours of work the Qualified Individual lost, and subtracts the pay, if any, that the Qualified Individual earned from an alternate employer during the contract period (*i.e.*, mitigation earnings). If the total amount of back pay to Qualified Individuals exceeds \$85,000 dollars, IER shall initially calculate a *pro rata* amount of back pay for each Qualified Individual using the fraction that represents the amount of back pay owed to the Qualified Individual compared to the total fund amount of \$85,000 dollars.
  - (e) Within 30 days from the date on which IER notifies Respondent of its determinations regarding the amounts owed to each Qualified Individual pursuant to Paragraph 7(d), Respondent will notify IER by email to Jenna Grambort at [Jenna.Grambort@usdoj.gov](mailto:Jenna.Grambort@usdoj.gov), or any other personnel IER designates in writing, if Respondent disagrees with IER’s back pay determination, and provide an explanation for its position along with copies of any supporting documents.

- (f) If Respondent disagrees under Paragraph 7(e) with IER's back pay determination, IER will make, in its sole discretion, the final determination regarding the amount to be paid, if any, and will, within 30 days of receiving Respondent's objection under Paragraph 7(e), notify Respondent in writing of IER's final determination.
- (g) If Respondent does not disagree under Paragraph 7(e) with any of IER's back pay determinations under Paragraph 7(d), IER's back pay determinations will become final, and Respondent shall, within 30 days of receiving IER's back pay determination pursuant to Paragraph 7(d), send each Qualified Individual by first class mail and email a Back Pay Determination Letter (Attachment C) indicating the amount of back pay to be received. The Back Pay Determination Letter mailing shall contain any necessary tax forms and an envelope with sufficient postage, addressed to Respondent's mailing address. On the same day Respondent mails the Back Pay Determination Letters, Respondent shall send IER an e-mail to Jenna Grambort at [Jenna.Grambort@usdoj.gov](mailto:Jenna.Grambort@usdoj.gov), or any other personnel IER designates in writing, in .PDF format, copies of the letters and self-addressed stamped envelopes, and envelopes addressed to Qualified Individuals.
- (h) If Respondent has disagreed with any of IER's back pay determinations under Paragraph 7(d), Respondent shall, within 10 days of receiving IER's final back pay determination under Paragraph 7(f), send each Qualified Individual the Back Pay Determination Letter and enclosures in accordance with the procedures in Paragraph 7(g).
- (i) Within 15 days from Respondent's receipt of applicable tax forms from a Qualified Individual, Respondent shall either: (i) send to the address of the Qualified Individual's choice, the back pay amount (as determined by IER) in the form of a check via certified mail or reliable courier service, accompanied by a payment transmittal notice, or (ii) at the Qualified Individual's discretion, agree on a date and time for the Qualified Individual to pick up the check from Respondent and sign a receipt for the check. On the same day that Respondent mails the check and/or the Qualified Individual signs the receipt, Respondent shall send a copy of the check and payment transmittal notice to Jenna Grambort at [Jenna.Grambort@usdoj.gov](mailto:Jenna.Grambort@usdoj.gov), or any other personnel IER designates in writing. Respondent is responsible for paying any employer-side taxes or contributions due to the federal, state or local 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.
- (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.

8. Pursuant to 8 U.S.C. § 1324b, Respondent shall not discriminate against applicants or employees based on citizenship, immigration status, or national origin, during the recruitment, hiring, firing, and employment eligibility verification process.
9. Respondent shall avoid discrimination in the employment eligibility verification process by: (a) following Form I-9 instructions and not soliciting Form I-9 documentation from any individual until after that individual accepts Respondent's offer of employment; (b) not requesting more or different Form I-9 documents than are required by law; and (c) permitting all employees to present any employment authorization verification documentation acceptable by law.
10. Respondent shall not intimidate, threaten, coerce, or retaliate against any person for his or her participation in IER's investigation or exercise of any right or privilege secured by 8 U.S.C. § 1324b.
11. Within 14 days of the Effective Date, Respondent shall post 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 are normally posted. Respondent will post the IER poster for three years thereafter. 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.
12. Within 60 days of the Effective Date, Respondent will review any existing employment policies that relate to nondiscrimination based on traits or characteristics protected by law. To the extent that it has employment policies that do not already include such provisions, Respondent will revise them to:
  - a) Prohibit Respondent, including employees, agents, and contractors, from committing discrimination on the basis of citizenship, immigration status, or national origin: (1) in the hiring and firing processes, and (2) during the Form I-9/E-Verify employment eligibility verification processes. Respondent will also ensure inclusion of this prohibition in any similar Equal Employment Opportunity (EEO) statements Respondent includes in printed or electronic materials available to the public or to employees;
  - b) Prohibit Respondent, including, employees, agents, or contractors, from soliciting employment eligibility verification documentation before an individual accepts an offer of employment;
  - c) Refer applicants and employees who complain, formally or informally, of discrimination in the hiring, firing, or Form I-9/E-Verify employment eligibility verification process immediately to IER by directing the affected individual to the IER Poster 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) State that Respondent shall not take any reprisal action against any individual 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.
13. For a period of three years from the Effective Date, Respondent shall provide a copy of the most current version of the Form I-9 Lists of Acceptable Documents (“Lists”) to individuals at the same time and in the same manner as Respondent provides them with the Form I-9 to complete, and shall inform these individuals of their right to present any documentation that is on the Lists, or is otherwise acceptable for purposes of employment eligibility verification.
  14. For a period of three years from the Effective Date, 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 requesting employment eligibility documentation for hire, completing the Form I-9 and/or using the E-Verify program (“Human Resources Personnel”), can readily access the most current versions of: (a) the Form I-9, (b) USCIS Employment Eligibility Verification Handbook for Employers (M-274) (“Handbook”), available at [www.uscis.gov/I-9](http://www.uscis.gov/I-9), and, if Respondent uses E-Verify, (iii) the most current USCIS E-Verify Manual (M-775) (“Manual”), available at [www.uscis.gov/e-verify](http://www.uscis.gov/e-verify). Copies of these documents and future revisions can be obtained from the United States Citizenship and Immigration Services at [www.uscis.gov](http://www.uscis.gov).
  15. Within 90 days of the Effective Date, Respondent shall train all Human Resources Personnel on 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.
    - a) The training shall consist of viewing a free online IER Employer/HR Representative webinar presentation;
    - b) All individuals 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 employee costs associated with these training sessions;
    - c) Respondent shall compile attendance records listing the individuals who attend the training described in this Paragraph, including their full name, title, signature, and the date of the training, and send them via email to Jenna Grambort at [Jenna.Grambort@usdoj.gov](mailto:Jenna.Grambort@usdoj.gov), or any other personnel IER designates in writing, within 10 days of each training session; and
    - d) For a period of three years from the Effective Date, all new Human Resources Personnel who assume their duties after the initial training described in this

Paragraph shall attend an IER Employer/HR webinar within sixty days of hire or promotion. Respondent shall compile and send attendance records for these individuals pursuant to Paragraph 15(c).

16. During the term of this Agreement, IER reserves the right to make reasonable inquiries to Respondent to determine Respondent's compliance with this Agreement. As part of such review, IER may require written reports concerning compliance, inspect Respondent's premises, examine witnesses, and examine and copy Respondent's documents.
17. 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 a new investigation. IER will then give Respondent 30 days from the date IER notifies it to cure the violation to IER's satisfaction before IER deems Respondent to be in violation of this Agreement.
18. 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 OF SETTLEMENT**

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 IER Investigation. This Agreement is governed by the laws of the United States. This Agreement shall be deemed to have been drafted by both 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 (entitled "Terms of Settlement") are material terms.
20. The United States District Court for the Middle District of Florida shall be the preferred venue for enforcement of any claims over which that court has subject matter jurisdiction. Otherwise, a party must bring any claim or counterclaim to enforce this Agreement in a 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.
21. Should any court declare or determine that any provision(s) of this Agreement is/are illegal or invalid, the validity of the remaining part(s), term(s) or provision(s) 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 party, seek to have any court declare or determine that any provision of this Agreement is invalid.
22. The Parties agree that, as of the Effective Date, litigation concerning the violation of 8 U.S.C. § 1324b(a)(1) 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.

23. The Parties shall each bear their own costs, attorneys' fees and other expenses incurred in this action.
24. 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.

**Sam Williamson Farms, Inc.**

By:

 Dated: 6/7/19  
Samuel Williamson  
President

**Immigrant and Employee Rights Section**

By:

 Dated: 6-11-19  
Alberto Ruisanchez  
Deputy Special Counsel

Jodi Danis  
Special Litigation Counsel

Liza Zamd  
Senior Trial Attorney

Jenna Grambort  
Trial Attorney

Angela J. Miller  
Trial Attorney