

SETTLEMENT AGREEMENT

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

I. BACKGROUND

WHEREAS, on February 14, 2017, IER opened an independent investigation of Respondent MUY Brands, LLC, and subsequently included Respondent MUY Consulting, Inc., DJ# 197-76-1144, (“Investigation”) to determine whether Respondents’ employment eligibility verification practices violate the anti-discrimination provision of the Immigration and Nationality Act, 8 U.S.C. § 1324b(a)(6) (“Act”).

WHEREAS, IER concluded, based upon the Investigation, that there is reasonable cause to believe that Respondents engaged in a pattern or practice of unfair documentary practices against employees based on their citizenship status in violation of the Act, in connection with the stores operated by Respondent MUY Brands. Specifically, IER concluded that Respondents requested that lawful permanent residents provide Permanent Resident Cards or other DHS-issued employment eligibility documents because of their citizenship or immigration status, and rejected lawful permanent residents’ other valid Form I-9 documents (such as identification documents and unrestricted Social Security cards) based on citizenship or immigration status. In contrast, Respondents permitted U.S. citizens to produce identification documents and unrestricted Social Security cards for employment eligibility verification without requiring them to produce specific or additional documents.

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

NOW, THEREFORE, in consideration of the mutual promises contained below, and to fully and finally resolve the 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.” The term of the Agreement shall be two years following the Effective Date.
2. Respondent MUY Brands shall be responsible for a civil penalty payment to the United States Treasury in the amount of \$175,000.00. No later than 7 business days after the Effective Date, Respondent MUY Brands 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 MUY Brands

the FedWire instructions. Respondent MUY Brands shall pay the monies discussed in this paragraph, via the FedWire electronic fund transfer system, within 15 days of receiving IER's FedWire instructions. On the day of payment, Respondent MUY Brands shall confirm via email to Sejal Jhaveri at sejal.jhaveri@usdoj.gov and Craig Fansler at craig.fansler@usdoj.gov (or any other staff member IER designates) that payment was made.

3. IER shall not seek from Respondents any additional civil penalty, beyond that referenced in Paragraph 2, 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.
4. Respondent MUY Brands shall set aside monies sufficient to pay a total maximum of up to \$50,000.00 in back pay to individuals determined to be eligible to receive such relief. Such individuals shall be referenced as "Claimants" in this Agreement, and Claimants are defined as all lawful permanent residents who lost work at stores operated by MUY Brands because of Respondents' requests for more or different documents, or Respondents' rejection of valid Form I-9 documents, between July 7, 2015, and March 4, 2017. Back pay for eligible Claimants will be calculated by multiplying the number of hours a Claimant would have worked absent such request or rejection, by his/her wage, and deducting any mitigation earnings. The process for identifying Claimants and determining any back pay they may be eligible to receive is described below:
 - A. No later than 30 days from the Effective Date, Respondents will give IER an Excel spreadsheet ("Spreadsheet 1") with the most recent information for each LPR who sought employment with Respondents between July 7, 2015, and March 4, 2017, that includes the: a) full name; b) home address(es); c) personal phone number(s); d) personal email address; e) date of birth; f) Social Security number; g) planned start date(s) (if any); h) actual start date(s) (if different); i) wage rate(s); and j) job title(s).
 - B. No later than 30 days from when Respondents comply with paragraph 4A, IER will send Respondents an Excel spreadsheet ("Spreadsheet 2") with the name, address(es), date of birth, and Social Security number of each person to whom Respondents shall mail the Back Pay Letter (Attachment A), Back Pay Claim Form (Attachment B), and Back Pay Frequently Asked Questions (Attachment C). These individuals, and any other subsequently identified recipients of these documents, are referred to in this Agreement as "Potential Claimants"

- C. After 75 days from the Effective Date, IER may, at its discretion, send one or more Back Pay Post Cards (Attachment D) to Potential Claimants.
- D. No later than 105 days from the Effective Date, Respondents will use the address(es) in Spreadsheet 2 to send by first class mail Attachments A, B, and C to Potential Claimants unless IER has requested in writing that Respondents use a different address based on updated contact information IER has received.
- E. IER will consider and evaluate all Back Pay Claim forms it receives with a postmark or email transmission date no later than 175 days from the Effective Date unless IER determines, in consultation with Respondents, that exigent circumstances outside of the control of the Potential Claimant prevented its timely return.
- F. Within 225 days from the Effective Date, IER will send Respondents a list of the individuals that IER believes are eligible to receive back pay, the completed Back Pay Claim Forms with redaction of personally identifiable information not already in the possession of Respondents, and an initial calculation of the amount to be paid (“Preliminary List of Claimants”).
- G. Within 255 days from the Effective Date, Respondents will send IER a written explanation of any challenges or disputes that Respondents have regarding inclusion of an individual on the Preliminary List of Claimants or IER’s initial back pay calculations.
- H. No later than 45 days from when Respondents comply with paragraph 4G, IER shall send Respondents a Final List of Claimants, who are the individuals to whom Respondent MUY Brands must offer back pay. The Final List of Claimants will include each individual’s name, the amount of lost wages to be paid, and IER’s response to any of Respondents’ challenges. If the total amount of back pay to be awarded based on the Final List of Claimants exceeds \$50,000.00, IER will prorate each Claimant’s back pay award and include the prorated amount for each individual.
- I. Within 30 days of Respondents’ receipt of the Final List of Claimants from IER, Respondents will send by first class mail and email (when possible) a Letter and Release (Attachment E) to each Claimant included on the Final List of Claimants, and

shall include a stamped envelope pre-addressed with IER's mailing address for Claimants to return the executed Release.

- J. Absent exigent circumstances that IER determines, after consultation with Respondents, prevented a timely return, Claimants who have returned a signed Release to IER that is postmarked or transmitted by email no later than 45 days from the date Respondents sent the Letter and Release, shall be considered Claimants entitled to receive the back pay amount IER designated.
- K. IER will email to Respondents copies of the executed Releases that it receives from Claimants and a list of final back pay amounts, recalculated or re-prorated as necessary to take into account Claimants who did not return Releases.
- L. Within 20 days after Respondents' receipt of the Final List of Claimants and back pay amounts from IER, Respondents will transmit the payment due to that Claimant by check to the address provided by the Claimant.
- M. If, during the implementation of the Back Pay Claims process, either Party receives updated or revised contact information for a Potential Claimant or a Claimant, the receiving Party will promptly provide that information to all of the other Parties. Any communication that was undeliverable due to outdated or incorrect contact information will be resent to any available updated address by the Party originally responsible for transmitting that communication.
- N. The Parties shall keep track of any communications that are returned to any Party as undeliverable, and, upon request by either Party, shall share that information within 14 calendar days of such request.
- O. When Respondents are required to give or produce something to IER pursuant to this Agreement, they shall send it by email to sejal.jhaveri@usdoj.gov and craig.fansler@usdoj.gov or any other staff member that IER designates.
- P. IER retains the right to make reasonable requests for additional information from Respondents as needed to help assess claims for back pay under this Agreement, including application forms, new hire packets, emails, or payroll data.
- Q. If Respondents are unable to produce any information or document requested in this paragraph, they shall notify IER in

writing within 10 days of the request and include an explanation as to why Respondents cannot produce the information or document.

- R. When exchanging any personally identifiable information (“PII”) as required under paragraph 4, the Parties will secure such information with encryption or password protection. PII includes but is not limited to: Social Security numbers, alien numbers, dates of birth, home addresses, personal phone numbers, and personal email addresses.
5. Pursuant to 8 U.S.C. § 1324b, Respondents 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 process.
 6. Respondents shall avoid discrimination in the employment eligibility verification process by: (a) honoring documentation that reasonably appears on its face 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.
 7. Respondents 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.
 8. Respondent MUY Brands 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 18” x 24,” 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. 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 MUY Brands shall post the IER Poster in English, Spanish, and any other available language that is the preferred language of Respondent MUY Brands’ employees, if that language is known.
 9. Respondents MUY Brands and MUY Consulting, Inc. have existing employment policies that relate to discrimination based on citizenship status, national origin, and retaliation. To the extent that their policies lack the provisions below, within 60 days of the Effective Date, Respondents MUY Brands and MUY Consulting, Inc. will revise their policies to:
 - A. Prohibit discrimination during the Form I-9/E-Verify employment eligibility verification process; and

- B. Refer individuals who complain, formally or informally, of discrimination in the Form I-9/E-Verify employment eligibility verification process immediately to IER by directing the affected individual to the IER Poster.
10. During the term of this Agreement, Respondents shall ensure that all individuals who are responsible for formulating, carrying out, and/or conducting training on Respondent MUY Brands' hiring, firing, and employment eligibility verification policies and using the E-Verify system, including Respondent MUY Brands' Restaurant General Managers and Respondent MUY Consulting, Inc. personnel who support Respondent MUY Brands stores (collectively, "Human Resources Personnel"), can readily access 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 Human Resources Personnel 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.
11. Within 120 days of the Effective Date, Respondents 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 trainings shall consist of viewing a free IER Employer/HR webinar;
 - (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. Respondents shall bear all employee costs associated with these training sessions;
 - (c) Respondents shall provide a certification from the Director of Human Resources for MUY Brands that the Human Resources Personnel have completed the training required in this Paragraph. The certification shall include the name, title, and store location for each individual who attends the training. The certification shall be sent to IER via email to Sejal.Jhaveri@usdoj.gov and craig.fansler@usdoj.gov or any other staff member IER designates within ten business days of each training session; and
 - (d) For the term of the Agreement, all of the new Human Resources Personnel who assumed their duties after the initial training described in this paragraph shall attend an IER Employer/HR webinar within 60 days of hire, and Respondents shall send

certifications of such attendance pursuant to Paragraph 11(c).

12. IER reserves the right to make reasonable written inquiries to Respondents to determine Respondents' compliance with this Agreement. As a part of such review, IER may examine witnesses, and examine and copy Respondents' documents. Respondents shall comply with IER's requests within 30 days unless IER grants Respondents additional time to comply.
13. Every six months after the Effective Date, Respondents shall produce to IER an E-Verify User Audit Report with all available fields for cases created in the preceding twelve months.
14. If IER has reason to believe that either Respondent is in violation of any provision of this Agreement, IER shall notify Respondents in writing of the purported violation without opening an investigation. Respondent(s) will have 30 days from the date of IER's notification to cure the violation to IER's satisfaction before IER deems Respondent(s) to be in violation of this Agreement, after which IER may open a new investigation or seek to enforce this Agreement.
15. 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 Respondents' employment practices.

III. ADDITIONAL TERMS OF SETTLEMENT

16. 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 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.
17. This Agreement may be enforced in the United States District Court for the District of New Jersey 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.
18. 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 the Parties shall in good faith revise the invalid provision(s) to give effect of the Parties' intent and the essential purpose of the 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.

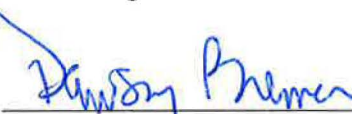
19. The Parties agree that, as of the Effective Date, litigation concerning the violations of 8 U.S.C. § 1324b that IER has reasonable cause to believe that Respondents committed is not reasonably foreseeable. To the extent that any party previously implemented a litigation hold to preserve documents, 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.
20. The Parties shall each bear their own costs, attorneys' fees, and other expenses incurred in this action.
21. 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.

MUY Brands, LLC

By: 
Dawson Bremer
Chief Legal Officer

Dated: 10/10/19

MUY Consulting, Inc.

By: 
Dawson Bremer
Chief Legal Officer

Dated: 10/10/19

Immigrant and Employee Rights Section

By: 
Alberto Ruisanchez
Deputy Special Counsel

Dated: 10-17-19

Jodi Danis
Special Litigation Counsel

Craig Fansler
Sejal Jhaveri
Jasmin Lott
Trial Attorneys