

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into by and between J.E.T. Holding Co., Inc. ("Respondent") and the United States Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices ("OSC") (which shall be known as the Immigrant and Employee Rights Section as of January 18, 2017).

WHEREAS, on May 4, 2016, OSC received a charge filed against Respondent, DJ# 197-103-16 (the "OSC Charge"), alleging discriminatory hiring based on citizenship status in violation of the anti-discrimination provision of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1324b (the "Act"). On May 16, 2016, OSC notified Respondent in writing that it was opening an investigation of the OSC Charge and that the investigation may also explore whether the Company engages in any pattern or practice of discrimination;

WHEREAS, OSC has concluded based upon its investigation that there is reasonable cause to believe that Respondent engaged in a pattern or practice of citizenship status discrimination against U.S. citizens and other protected individuals in hiring for dishwasher positions between approximately January 2016 and June 2016, in violation of the Act, by failing to consider their applications or offer qualified applicants positions based on their citizenship status; and

WHEREAS, this Agreement does not constitute and shall not be construed as an admission by Respondent of any act in violation of 8 U.S.C. § 1324b, or as an admission by the United States of the merits of any of Respondent's positions or potential defenses.

WHEREAS, OSC and Respondent wish to resolve the OSC Charge and investigation without further delay or expense and hereby acknowledge that they are voluntarily entering into this Agreement;

NOW, THEREFORE, in consideration of the mutual promises contained below and to fully and finally resolve all disputes among the parties hereto as of the date of this Agreement, it is agreed as follows:

1. The "Effective Date" of this Agreement will be the date that the last party signs this Agreement. The word "days" in this Agreement refers to calendar days.
2. Respondent shall cease and desist any employment-related policies or practices that violate the anti-discrimination requirements of 8 U.S.C. § 1324b, including utilizing the processes and procedures for obtaining CW-1 or other foreign visa workers to discriminate against U.S. citizens and other protected individuals. Respondent shall comply with all of the requirements of 8 U.S.C. § 1324b, and shall not intimidate, threaten, coerce, or retaliate against any individual who asserted a right or privilege under 8 U.S.C. § 1324b with respect to this investigation, or who filed a charge, assisted, or participated in any way in this investigation.



3. Respondent shall retain for a period of three years from the Effective Date of this Agreement the names, addresses, and application materials (e.g., résumés, application forms, application-related emails) of each individual who applies for a job with Respondent in person or in writing through any source (including, by way of example, by email, fax, in-person, or through [www.marianaslabor.net](http://www.marianaslabor.net), etc). During this period, OSC 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, OSC may examine witnesses and request copies of Respondent's application materials.
4. For three years from the Effective Date of this Agreement, Respondent shall post the following notices about workers' rights under 8 U.S.C. § 1324b:
  - a. OSC's "If You Have the Right to Work" poster, in color and measuring no smaller than 8.5" by 11" in an area that is visible to current and prospective employees at J's Restaurant and the Saipan Bowling Center. Respondent may obtain a copy of this poster at <http://www.justice.gov/crt/about/osc/htm/worker.php#>.
  - b. A statement in the "comments" section of all of Respondent's Job Vacancy Announcements (JVAs) posted on [www.marianaslabor.net](http://www.marianaslabor.net) that "Individuals who believe they have been discriminated against in hiring, recruiting, or firing based on citizenship status may contact the Office of Special Counsel for Immigration-Related Unfair Employment Practices (or, after January 18, 2017, the Immigrant and Employee Rights Section) at [oscrcrt@usdoj.gov](mailto:oscrcrt@usdoj.gov) (or, after January 18, 2017, [iercrt@usdoj.gov](mailto:iercrt@usdoj.gov)).
5. Respondent shall train all of its personnel involved in hiring and recruiting about the requirements of 8 U.S.C. § 1324b. Within 90 days of the Effective Date of this Agreement, Respondent's hiring and recruiting personnel shall participate in an internet-based OSC-customized webinar. Respondent shall also undertake the following:
  - a. All employees will be paid their normal rate of pay for participating in such training. Respondent shall bear all costs associated with these training sessions, if any.
  - b. For three years from the Effective Date of this Agreement, Respondent will notify OSC at [joann.sazama@usdoj.gov](mailto:joann.sazama@usdoj.gov) when it has hired new personnel who are involved in hiring or recruiting. OSC and Respondent will confer to schedule webinar training for the newly-hired personnel and the training shall occur within 90 days of each person's hire.
  - c. For each training session, Respondent will keep a list of the attendees and send the list by email to [joann.sazama@usdoj.gov](mailto:joann.sazama@usdoj.gov) within 10 days of the training. The list shall include the attendees' full name, job title, signature, and the date of the training.

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6. Respondent shall pay a civil penalty to the United States Treasury in the amount of twelve thousand dollars (\$12,000) via the FedWire electronic fund transfer system within 30 days of receiving fund transfer instructions from OSC, and shall provide OSC with the name and email address for the individual responsible for effectuating the payment on behalf of Respondent no later than three business days after the Effective Date of this Agreement. On the day of payment, Respondent shall send an email to Joann Sazama at [joann.sazama@usdoj.gov](mailto:joann.sazama@usdoj.gov) confirming that payment was made.
7. Within 30 days of the Effective Date of this Agreement, Respondent shall deposit forty thousand dollars (\$40,000) into an account (Settlement Fund), established for this purpose, at a federally insured financial institution. The purpose of the Settlement Fund is to compensate eligible qualified Claimants for losses of pay, as described below.
  - a. A "Claimant" is a U.S. citizen, U.S. national, refugee, or asylee, or an individual who was a "protected" lawful permanent resident (as defined by 8 U.S.C. § 1324b(a)(3)) at the time of any application described below, and who satisfies each of the following conditions:
    - i. Applied for an entry-level dishwasher position with Respondent during the period December 13, 2015, to May 14, 2016; and
    - ii. Made such application through [www.marianaslabor.net](http://www.marianaslabor.net), via e-mail to [jet.acctg@pticom](mailto:jet.acctg@pticom), or in-person; and
    - iii. Was available, willing and able to work in the dishwasher position for which he or she applied as of the close date of the application period;
    - iv. Did not decline an opportunity to interview or fail to appear for a scheduled interview with Respondent; and
    - v. Did not receive a job offer for a dishwasher position from Respondent.
  - b. The "Back Pay Period" for Claimants will start on a "presumptive hire date," April 18, 2016, which is the median date between when Respondent hired its first and last workers for the dishwasher position described in paragraph 7 above. The presumptive hire date is calculated based on a first hire date of February 15, 2016, and a last hire date of June 21, 2016. The Back Pay Period ends as of the Effective Date of this Agreement.
  - c. Within 30 days of the Effective Date of this Agreement, OSC will send a letter (Attachment A) with a Back Pay Claim Form (Attachment B) by U.S. mail and/or email to the list of potential Claimants (Attachment C). Individuals will have 60 days from the date of the letter to submit a completed Back Pay Claim Form to OSC. If an individual believes, after learning about this Agreement from any source that s/he is a Claimant but is not on the list, s/he may provide

information and/or documentation to OSC demonstrating that s/he is a Claimant within 90 days from the Effective Date of this Agreement.

- d. OSC will evaluate each claim made under Paragraph 7(c) to assess whether the individual meets the conditions to qualify as a Claimant. OSC may request information and/or documents from Respondent to assist in its claim evaluation, and Respondent shall provide such information within 7 days of a request. If OSC determines that the applicant qualifies to be a Claimant, it will determine an amount of back pay it believes each such Claimant is owed using the calculation set forth below. Within 180 days of the Effective Date of this Agreement, OSC will notify Respondent in writing of the amount it believes each Claimant is owed, and provide a written explanation for the amount along with copies of any supporting documentation to Respondent.
  - i. The formula OSC will use to calculate back pay will be as follows:
    1. The number of days the Claimant was unemployed, underemployed, or earning lower wages than s/he would have earned had s/he worked for Respondent during the Back Pay Period minus the number of days during which the Claimant was unavailable to work for Respondent during that period;
    2. Multiplied by a wage rate of \$48.40 per day/\$242 per week (\$6.05/hr X 8 hrs./day X 40 hrs./week) for the dishwasher position; and
    3. Minus any amounts the Claimant earned in mitigation through alternate employment during the Back Pay Period.
  - ii. If OSC's total back pay determination exceeds the amount in the Settlement Fund, OSC will calculate a pro rata share to Claimants in a manner that OSC determines is reasonable and equitable to the Claimants. In calculating pro rata shares, OSC may exhaust the amount of the Settlement Fund, but no single Claimant may receive an amount more than any single dishwasher could have earned during the Back Pay Period at the rate and hours established above. The parties agree that Respondent's total liability to Claimants will not exceed \$40,000.
  - iii. If the Settlement Fund exceeds the amount needed to cover the claims of all Claimants, any funds not distributed revert and are released back to Respondent.
- e. Within 45 days from the date on which OSC provides Respondent with its proposed back pay determination and explanation, Respondent shall notify OSC in writing if it disagrees with any back pay determination and provide an explanation for its position and copies of any supporting documents.



- f. If OSC and Respondent disagree over a back pay determination, OSC shall make the final determination, in its sole discretion, regarding the amount to be paid, on a pro rata basis if necessary, and will, within 45 days of receiving information under paragraph 7(e), notify Respondent in writing of its final determination.
  - g. Within 10 days from Respondent's receipt of the final back pay determination pursuant to Paragraph 7(f), Respondent will send each Claimant an Agreement and Release (Attachment D) indicating the amount of back pay to be received and a Form W-4. Upon completion of these mailings, Respondent shall send OSC a declaration under penalty of perjury or notarized affidavit attesting that it has mailed Attachment D and providing the names and addresses to which they were mailed, and the date(s) on which they were mailed.
  - h. Within 30 days from Respondent's receipt of a signed and completed Attachment D and Form W-4, Respondent will send the Claimant the back pay amount in the form of a check sent by first class mail accompanied by a payment transmittal notice, with a copy of the check and payment transmittal notice sent to OSC on the same date. Respondent may withhold applicable taxes and other withholdings paid by employees, but may not deduct employer-side taxes from the award.
  - i. Any language in intended communications to Claimants relating to this Agreement, other than those included as attachments to this Agreement, shall be submitted to OSC for prior review and approval.
  - j. Respondent shall follow the applicable instructions contained in IRS Publication 957 and credit the Claimants' back pay award to the calendar quarters of the years when the back wages would have been earned.
8. This Agreement does not affect the right of any individual to file a charge alleging an unfair immigration related employment practice against Respondent with OSC, the authority of OSC to investigate or file a complaint on behalf of any such individual, or the authority of OSC to conduct an independent investigation of Respondent's employment practices other than with respect to the dishwasher positions that were the subject of the OSC Charge and investigation.
9. OSC and Respondent agree that, as of the effective date of this Agreement, litigation concerning the violations of 8 U.S.C. § 1324b that OSC has reasonable cause to believe that Respondent committed is not reasonably foreseeable. To the extent that either 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.

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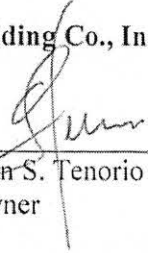
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10. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement. Respondent and OSC agree that they will not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement invalid.
11. OSC and Respondent agree to bear their own costs, attorneys' fees and other expenses incurred in this action.
12. This Agreement resolves any and all differences between the parties relating to the OSC Charge and the related investigation that grew out of it, through the Effective Date of this Agreement.
13. Once Respondent has fulfilled the terms of paragraphs 6 and 7 of this Agreement, OSC will close its investigation of the OSC Charge and the related pattern or practice investigation growing out of the OSC Charge, and shall not file a lawsuit with the Chief Administrative Hearing Officer (CAHO), in accordance with the terms of this Agreement.
14. The provisions of paragraph 6 notwithstanding, OSC shall not seek from Respondent any additional civil penalty for the pattern or practice of citizenship status discrimination in violation of 8 U.S.C. § 1324b that are subject of OSC Charge and investigation through the date this Agreement is signed by all parties.
15. If, during a three-year period from the Effective Date of this Agreement, OSC has reason to believe that Respondent is in violation of any provision of this Agreement, OSC shall promptly notify Respondent of the purported violation. Respondent will then be given 30 days from the date it is notified by OSC in which to cure the violation to the satisfaction of OSC, before Respondent is deemed by OSC to be in violation of this Agreement.
16. As of January 18, 2017, all references to "OSC" in this Agreement shall also mean and pertain to the Immigrant and Employee Rights Section of the Civil Rights Division of the Department of Justice.
17. This Agreement may be enforced in the United States District Court for the Northern Mariana Islands.
18. This Agreement, including the attachments, sets forth the entire Agreement between the parties.

19. 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.

J.E.T. Holding Co., Inc.

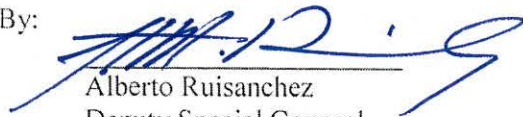
By:

  
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Juan S. Tenorio  
Owner

Dated: Jan-9-2017

OSC for Immigration-Related Unfair Employment Practices

By:

  
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Alberto Ruisanchez  
Deputy Special Counsel

Dated: 1-17-2017

Jodi Danis  
Special Litigation Counsel

Joann Sazama  
Equal Opportunity Specialist

