

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

THIS SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS ("Agreement") is made and entered into by and between Lloyd M. Lapp and Sons d/b/a Huber Nurseries ("Respondent"), [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] ("Charging Parties"), and the United States Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices ("Office of Special Counsel").

WHEREAS, on August 15, 2012, the Office of Special Counsel received separate charges ("OSC Charges") filed by the Charging Party on behalf of Charging Parties against Respondent, each alleging discriminatory hiring based on citizenship status and national origin discrimination in violation of the unfair immigration-related employment practices provisions of 8 U.S.C. § 1324b ("Act");

WHEREAS, the Office of Special Counsel concluded based upon its investigation of the OSC Charges that there is reasonable cause to believe that Respondent engaged in discriminatory hiring based on citizenship status discrimination in violation of the Act against each of the Charging Parties during the period from March 1, 2012 to December 15, 2012;

WHEREAS, Charging Parties filed separate Complaints before the United States Department of Justice Executive Office for Immigration Review, Office of the Chief Administrative Hearing Officer, which were separately docketed as follows: [REDACTED] v. Huber Nurseries- OCAHO case No. 13B00048, [REDACTED] v. Huber Nurseries- OCAHO case No. 13B00049, [REDACTED] v. Huber Nurseries- OCAHO case No. 13B00050, [REDACTED] v. Huber Nurseries- OCAHO case No. 13B00051, [REDACTED] v. Huber Nurseries- OCAHO case No. 13B00052, and [REDACTED] v. Huber Nurseries- OCAHO case No. 13B00053 ("DOJ Complaints");

WHEREAS, Respondent filed separate Answers disputing all claims on April 18, 2013;

WHEREAS, on April 24, 2013, an Order of Consolidation was issued by Administrative Law Judge Thomas consolidating all claims under the lead case number 13B00048;

WHEREAS, Notices of Charge of Discrimination by the U.S. Equal Employment Opportunity Commission were issued to Respondent dated April 30, 2013 for the following charges which all allege national origin discrimination for failure to hire: [REDACTED] - EEOC Charge No. 530-2013-02024, [REDACTED] - EEOC Charge No. 530-2013-02025, [REDACTED] - EEOC Charge No. 530-2013-02026, [REDACTED] - EEOC Charge No. 530-2013-02027, [REDACTED] - EEOC Charge No. 530-2013-02028, [REDACTED] - EEOC Charge No. 530-2013-02029 ("EEOC Charges");

WHEREAS, the Office of Special Counsel, Respondent and the Charging Parties wish to resolve all claims without further delay or expense and hereby acknowledge that they are voluntarily entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises herein contained 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. Civil Penalty. Respondent agrees to pay a civil penalty to the United States Treasury in the amount of Two Thousand Two Hundred Fifty Dollars (\$2,250.00). These monies shall be paid by cashier's check payable to the "United States Treasury" and mailed by express delivery service, along with a copy of the fully signed Agreement, to the following address, within twenty (20) business days of Respondent's receipt of a fully signed copy of this Agreement:

Richard Crespo
U.S. Department of Justice
Office of Special Counsel for Immigration-Related Unfair
Employment Practices
1425 New York Ave, NW, Room 9000
Washington, DC 20005

On the same day such check is mailed, Respondent shall email to Richard Crespo at richard.crespo@usdoj.gov the express delivery service tracking number for this mailing.

2. Consideration. In consideration of the promises of Charging Parties contained in this Agreement, Respondent agrees to pay the Charging Parties the gross total sum of Fifty-Nine Thousand Six Hundred Seventeen Dollars and Forty Seven Cents (\$59,617.47) which includes back pay, accumulated interest on back pay, and any other damages that have been or could be alleged against Respondent in any action. The payments shall be allocated as follows:

[REDACTED]	\$11,354.72
[REDACTED]	\$6,471.20
[REDACTED]	\$7,727.39
[REDACTED]	\$11,354.72
[REDACTED]	\$11,354.72
[REDACTED]	\$11,354.72

Respondent shall withhold applicable federal, state and local taxes based on the tax rates of the current calendar year. Respondent agrees to report back wages to the Social Security Administration as required under IRS Publication 957. The payments shall be made in three (3) equal installments as follows: upon execution of this Agreement, within thirty (30) days of the execution of this Agreement, and within sixty (60) days of the execution of this Agreement. The payments will be made by cashier's check payable to each of the Charging Parties and mailed, via express delivery service, to the following address:

Iris E. Coloma-Gaines
Philadelphia Legal Assistance
42 S.15th Street, Ste. 500
Philadelphia, PA 19102

On the same day a copy of such check and the express delivery service tracking number for this mailing shall be sent to Iris E. Coloma-Gaines at iris@philalegal.org.

3. Withdrawal of All Actions. Upon the execution of this Agreement, Charging Parties shall take all steps necessary to see that all actions, including the OSC Charges, OCAHO Complaints, and the EEOC Charges, are immediately dismissed with prejudice against Respondents. Charging Parties' signatures on this Agreement will constitute a request for such withdrawal. The Office of Special Counsel agrees to accept the withdrawal of these charges upon the satisfaction of paragraphs 1 and 2 of this Agreement, and will dismiss the charges once payments are made.

4. Release and Ongoing Obligations.

(a) In consideration of the payment and promises of Charging Parties and intending to be legally bound, Charging Parties hereby irrevocably remise, release and forever discharge Respondent for any and all claims, promises, contracts, wages, commissions, and obligations arising from Charging Parties' application for employment with Respondent.

(b) The Claims against or pertaining to the Respondent remised, released and discharged by Charging Parties under Paragraph 4(a) of this Agreement include, but are not limited to: (i) any and all employment Claims based on or arising under any law, statute, or constitution, or based on contract, or in tort, or based on common law, and (ii) any and all employment Claims based on or arising under the Employee Retirement Income Security Act except for Employee's vested pension/401(K) benefits, the Reconstruction Era Civil Rights Act, the Americans With Disabilities Act of 1990 and its amendments, the Federal Age Discrimination in Employment Act of 1967 (ADEA), the Family and Medical Leave Act (FMLA), the National Labor Relations Act and (iii) any and all employment Claims based on or arising out of any handbook, policy manual, or complaint procedure of any kind, and (iv) any and all employment Claims based on, arising out of, or related to Charging Parties' recruitment by, employment with, termination of employment with, performance of any services in any capacity for, or any transaction with Respondent. Charging Parties understand that, by signing this Agreement, Charging Parties waive all employment Claims against the Respondent and all Released Parties.

(c) Charging Parties acknowledges that the "Released Parties" in this Agreement are **Lloyd M. Lapp and Sons d/b/a Huber Nurseries, Lloyd M. Lapp, Anna Mae Lapp, Douglas L. Lapp, Gary L. Lapp, Gregory L. Lapp**, all related companies, partnerships, or joint ventures, parents and subsidiaries, affiliates and with respect to each of them, all related entities predecessors and successors, and with respect to each such entity, all of its past and present partners, employees, officers, directors, stockholders, owners, representatives, assigns, attorneys, agents, insurers, and any other person acting by, through, under or in concert with any of the persons or entities in this subsection.

5. Non-Admission of Liability. This Agreement reflects a compromise of dispute without any admission of fault or liability of any party. Neither the contents of this Agreement, nor the fact of its execution, is intended to constitute an admission of fault, liability or obligation owed by any of the parties to this Agreement to any other party to this Agreement.

6. Breach. Charging Parties represent that he/she will not in the future file any lawsuits or civil complaint against Respondent based on the claims released in this Agreement. Charging Parties agree that in the event he/she files any civil complaint or commences any litigation of any kind that is covered by the Release in this Agreement, Charging Parties shall pay all of the attorney's fees, expenses and costs incurred by Respondent in responding to such action, including, but not limited to, any consequential damages that Respondent may suffer or incur. Respondent shall also have the right to set-off against any obligation to Charging Parties under this Agreement. In the event that Charging Parties breach any of the obligations under this Agreement and/or files any civil complaint or commences any litigation of any kind that is covered by the Release in this Agreement, Charging Parties will reimburse Respondent all of the consideration paid to Charging Parties pursuant to Paragraph 2 of this Agreement. In addition to the remedies noted above, Respondent may also pursue all other remedies under law or equity to address Charging Parties' breach of this Agreement. This paragraph shall not apply to lawsuits or civil complaints commenced by the Charging Parties to enforce this Agreement.

7. Non-Discrimination. Respondent agrees that it shall not discriminate on the basis of citizenship status or national origin in violation of 8 U.S.C. § 1324b. Respondent agrees that it will treat all individuals equally, without regard to citizenship or immigration status, or national origin, during the hiring, firing, and employment eligibility verification and re-verification process. Respondent shall avoid discrimination in the employment eligibility verification and re-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. Non-Retaliation. Respondent agrees that it will not intimidate, threaten, coerce, or retaliate against the Charging Parties or any other person for his or her participation in this matter or the exercise of any right or privilege secured by 8 U.S.C. § 1324b.

9. Posting Requirement. Respondent agrees to post within fourteen (14) days from the effective date of this Agreement an English and Spanish version of the Office of Special Counsel "If You Have The Right to Work" poster ("OSC Poster"), in color and measuring no smaller than 18" x 24" in all places where notices to employees and job applicants are normally posted. This OSC Posters are attached to this Agreement as **Exhibit A** and are available at <http://www.justice.gov/crt/about/osc/htmn/worker.php#>. The Notice will remain posted for one (1) year thereafter so long as the posting is required by federal law.

10. Notice to Applicants. Beginning not more than fourteen (14) days from the date that Respondent receives a fully signed copy of this Agreement and for one (1) year thereafter, Respondent will provide to all applicants with all paper employment applications, a letter-size copy of the OSC Poster attached at **Exhibit A** in English and the applicant's preferred language, if the preferred language is known and the OSC Poster is available in that language on the above website identified in Paragraph 9. An electronic link to the English and Spanish versions of the OSC Poster attached at **Exhibit A** on the above website will be provided with all electronic applications.

11. I-9 Handbook. For one (1) year from the effective date of this Agreement, Respondent agrees to 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, including all managers and employees who have any role making employment eligibility decisions, such as completing Form 1-9 ("Human Resources Personnel"), are in possession of the most current version of the Form 1-9, USCIS Employment Eligibility Verification Handbook for Employers (M-274) ("Handbook"), available at www.uscis.gov/I-9Central. Copies of these documents and future revisions of the Form 1-9, and Handbook can be obtained from the United States Citizenship and Immigration Services at www.uscis.gov.

12. Internal Policies. Within thirty (30) days of receipt of a fully signed copy of this Agreement, Respondent will review its employment policies as they relate to nondiscrimination on the basis of citizenship status and national origin and shall, as necessary, revise such policies to:

- (a) Prohibit (1) the requesting of employment eligibility verification documents from any individual prior to making an offer of employment; (2) discrimination on the basis of citizenship status or national origin in the hiring and firing process; and (3) any illegal difference in treatment of individuals, on the basis of citizenship status or national origin, during the Form 1-9 employment eligibility

verification and re-verification process.

(b) Provide that Respondent shall not take any reprisal action against an employee 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. Training. Within ninety (90) days of receipt of a fully signed copy of this Agreement, the Office of Special Counsel shall provide all Human Resources Personnel with training on their responsibilities to comply with 8 U.S.C. § 1324b and the employment eligibility verification and re-verification process as it relates to discrimination on the basis of citizenship status or national origin.

(a) The training will consist of viewing a remote webinar presentation. A recording of the webinar shall be provided by the Office of Special Counsel.

(b) All employees will be paid their normal rate of pay, and the training will occur during their normally scheduled workdays and work hours. Respondent shall bear all costs associated with these training sessions.

(c) For a period of one (1) year from the effective date of this Agreement, all new Human Resources Personnel hired by Respondent after the training described in this paragraph has been conducted shall attend an Office of Special Counsel Employer/HR webinar this training within sixty (60) days of hire.

(d) Respondent shall compile attendance records listing the individuals who comply with the training as described in this paragraph in the form of **Exhibit B**, including their full name, title, signature, and the date of the training, and send them via email to richard.crespo@usdoj.gov within ten (10) days of the training session.

14. Compliance. During one (1) year following the effective date of this Agreement (the "Reporting Period"), the Office of Special Counsel reserves the right to make reasonable inquiries to Respondent necessary to determine Respondent's compliance with this Agreement. As a part of such review, the Office of Special Counsel may request the following: written reports concerning compliance, inspection of Respondent's premises, examination of witnesses, and examination and copying of Respondent's documents at the expense of the Office of Special Counsel.

15. I-9Copies. Every six (6) months during the Reporting Period, Respondent shall provide the Office of Special Counsel upon request with copies of applications and completed Forms I-9, including attachments, for all employees hired by Respondent in that six-month period. Respondent shall provide the documents in electronic form unless requested otherwise.

16. Notice of Alleged Violation. If the Office of Special Counsel has reason to believe that Respondent is in violation of any provision of this Agreement, the Office of Special Counsel shall promptly notify Respondent of the purported violation. Respondent will be given a thirty (30) day period from the date it is notified by the Office of Special Counsel in which to cure the violation before Respondent is deemed by the Office of Special Counsel to be in violation of this Agreement.

17. Rights of Third Parties. This Agreement does not affect the right of any individual other than the Charging Parties to file a charge alleging an unfair immigration-related employment practice against Respondent with the Office of Special Counsel, the authority of the Office of Special Counsel to investigate or file a complaint on behalf of any such individual, or the authority of the Office of Special Counsel to conduct an independent investigation of Respondent's employment practices.

18. Closure of Investigation. The Office of Special Counsel and Respondent agree, in the event the Charging Parties do not sign this Agreement, to be bound by the terms of this Agreement and that the failure to obtain the Charging Parties' signatures does not affect the validity of this Agreement. If the Charging Parties fail to sign this Agreement, the Office of Special Counsel agrees that it will nonetheless close the investigation of the Charging Parties' charges in accordance with the terms of this Agreement, after Respondent complies with paragraphs 1 and 2.

19. Enforcement. This Agreement may be enforced in the United States District Court for Eastern District of Pennsylvania.

20. Litigation Hold. The Office of Special Counsel and Respondent agree that, as of the effective date of this Agreement, litigation concerning the alleged violations of 8 U.S.C. § 1324b that the Office of Special Counsel 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.

21. Representation. The parties acknowledge that this Agreement has been entered into freely and voluntarily with full knowledge of the circumstances and full information as to the legal rights and liabilities of each and has been advised accordingly by its own attorney. The parties acknowledge that the terms of this Agreement have been completely read, and that those terms are fully understood and voluntarily accepted by each party. Each party hereby acknowledges that this Agreement is reasonable under the circumstances.

22. Invalidity. 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, the Office of Special Counsel and the Charging Parties 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.

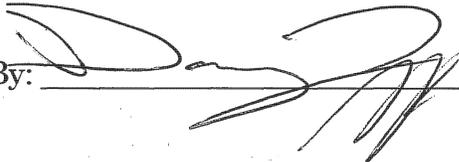
23. Supplemental Agreement(s). The parties agree and acknowledge that this Agreement does not represent the entire Agreement between the Charging Parties and Respondent and that there may be other Supplemental Agreement(s) with regard to the settlement of this dispute between Charging Parties and Respondent. Any Supplemental Agreement(s) shall be in writing and executed with the same level of formality as this Agreement and shall be supported by the consideration identified in this Agreement.

24. Attorney Fees. The Office of Special Counsel, Respondent, and the Charging Parties agree to bear their own costs, attorneys' fees and other expenses incurred in this action.

25. Counterparts. 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.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by its duly authorized agent, all as of the date first below written.

Lloyd M. Lapp & Sons d/b/a Huber Nurseries

By: 

Dated: 9-25-13

Charging Party





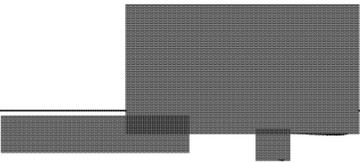
Dated: 9/18/13

I swear and attest that I read the Nepali translated version of this Agreement, translation provided by the U.S. Department of Justice, accurately and completely to the Charging Party listed above.



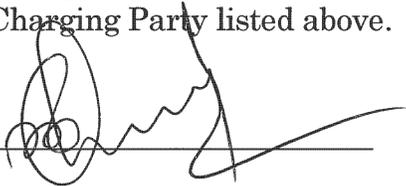
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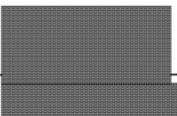
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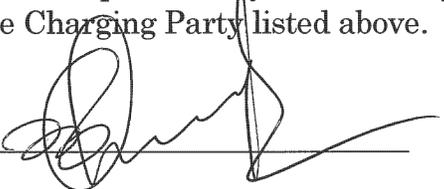
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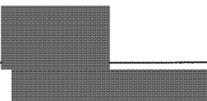
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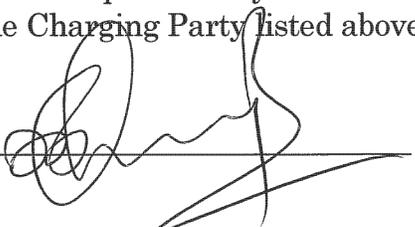
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Dated: 9/18/13

Office of Special Counsel for Immigration-Related Unfair Employment Practices

By: Seema Nanda
Seema Nanda
Deputy Special Counsel

Dated: 9/26/2013

C. Sebastian Aloit
Special Litigation Counsel

Richard Crespo
Trial Attorney