

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Agreement”) is made and entered into by and between ChemArt (“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 17, 2018, IER accepted as complete a charge filed pursuant to 8 U.S.C. § 1324b(b)(1) by [REDACTED] (“Charging Party”) against Respondent, DJ# 197-66-47 (the “IER Charge”), alleging unfair documentary practices and retaliation in violation of the unfair immigration-related employment practices provisions of 8 U.S.C. § 1324b (“Act”).

WHEREAS, on July 27, 2018, IER notified Respondent that it had initiated an investigation of the IER Charge (“IER Investigation”) to determine whether Respondent had violated 8 U.S.C. § 1324b.

WHEREAS, pursuant to 8 U.S.C. § 1324b(d)(1), IER concluded based on the IER Investigation that there is reasonable cause to believe that Respondent (1) unlawfully requested immigration documentation from the Charging Party for purposes of employment eligibility verification, in violation of 8 U.S.C. § 1324b(a)(6), and (2) refused to hire the Charging Party in retaliation for her objection to this request, in violation of 8 U.S.C. § 1324b(a)(5).

WHEREAS, the Parties wish to resolve the IER 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 the IER Investigation as of the date of the latest signature below, 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 considered to be and referenced hereafter as the “Effective Date.” The “term of this Agreement” is defined as and shall be three years following the Effective Date.
2. Respondent shall pay a civil penalty to the United States Treasury in the amount of \$3,000. The monies discussed in this paragraph shall be paid via the FedWire electronic fund transfer system within 10 business days of the Effective Date or receipt of fund transfer instructions from IER, whichever is later.

3. Respondent shall provide IER with the name, title, email address, and telephone number of the individual responsible for effectuating payment of the civil penalty no later than three business days after the Effective Date. On the day of payment, Respondent shall send confirmation of the payment to Gloria Yi at Gloria.Yi@usdoj.gov. The email confirming payment shall have Respondent's name and the investigation number, DJ # 197-66-47 in the subject line.
4. Within fifteen (15) days from the Effective Date, Respondent shall send a check to Charging Party for \$288, representing lost wages, at an address that IER will provide Respondent no later than five (5) days from the Effective Date. On the day of payment, Respondent shall notify Gloria Yi at Gloria.Yi@usdoj.gov that payment was made and attach an image of the check.
5. Except as set forth in paragraph 2, IER shall not seek from Respondent any additional civil penalty for unfair documentary practices in violation of 8 U.S.C. § 1324b(a)(6) against the Charging Party, or for any other discrimination or retaliation against the Charging Party in violation of 8 U.S.C. § 1324b, that were subjects of the IER Investigation, through the Effective Date.
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 reverification processes (together, the "EEV" process), or intimidate, threaten, coerce, or retaliate against any person for participating in the IER Investigation or exercising any right or privilege secured by 8 U.S.C. § 1324b.
7. Respondent shall remove, and shall not make in the future, any reference to the IER Charge, IER Investigation, or this Agreement in any employment-related records it created or retains regarding the Charging Party, and shall not disclose to any employer or prospective employer of the Charging Party any information or documentation concerning the IER Charge, the IER Investigation, or this Agreement.
8. Respondent shall post an English and Spanish version of the IER "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 shall post the IER Poster within fourteen (14) days from the Effective Date of this Agreement and it will remain posted for at least three (3) years thereafter.
9. Within sixty (60) days of the Effective Date, Respondent will review any existing employment policies that relate to nondiscrimination based on legally protected traits or characteristics. Respondent will, as needed, revise or create policies to ensure that they:

- (a) Prohibit requesting more or different documents, specifying documents, or rejecting valid documents, because of an individual's citizenship, immigration status or national origin in the hiring, onboarding, and EEV processes;
 - (b) Include citizenship, immigration status, and national origin as prohibited bases of discrimination, and ensure inclusion of these bases in any similar Equal Employment Opportunity statements that Respondent includes in printed or electronic materials available to the public or employees;
 - (c) Refer individuals who complain, formally or informally, of discrimination in the hiring, firing or EEV processes 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) Prohibit any reprisal action against any individual for having opposed any employment practice made unlawful by 8 U.S.C. § 1324b, for filing any charge alleging violation(s) of 8 U.S.C. § 1324b, or participating in any lawful manner in any IER investigation or matter.
10. Within 45 days of the Effective Date, Respondent will review all job application and onboarding materials it provides to applicants and employees to ensure that they comply with 8 U.S.C. § 1324b. To that end, Respondent shall remove from its job application and onboarding materials, including the "Personal Information" page, any questions seeking information related to an applicant's specific citizenship or immigration status unless a specific citizenship status is required, by law, regulation, executive order, or government contract, for the position in question, and ensure that it complies with all E-Verify program requirements, including creating an E-Verify case for new employees after each employee has been hired and the Form I-9 completed.
11. During the term of this Agreement, Respondent shall ensure that all individuals who are responsible for formulating, providing training on, or implementing Respondent's hiring, firing, equal employment, and EEV policies, including all managers and employees who have any role in the EEV process, such as completing the Form I-9 and/or using the E-Verify program (collectively, "Human Resources Personnel"), can readily access:
- (a) the most current version of the USCIS Handbook for Employers (M-274) ("Handbook"), available at www.uscis.gov/I-9Central, and
 - (b) the most current version of the 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 Handbook, Manual and guidance can be obtained from the United States Citizenship and Immigration Services at www.uscis.gov.

12. Within ninety (90) days of the Effective Date, Respondent will ensure that all Human Resources Personnel receive training regarding their obligations to comply with 8 U.S.C. § 1324b. The Parties agree that:
 - (a) The training required under this paragraph shall consist of Human Resources Personnel: i) viewing an IER Employer/HR Representative webinar, which is publicly available at <https://www.justice.gov/crt/webinars>; ii) viewing an E-Verify training for E-Verify Existing Users which is publicly available at <https://www.e-verify.gov/about-e-verify/e-verify-webinars>; and iii) reviewing the IER educational materials regarding 8 U.S.C. § 1324b that IER will identify for Respondent within thirty (30) days of the Effective Date.
 - (b) Respondent will pay its employees their normal rate of pay during the training, and the training will occur during the employee's normally scheduled workdays and work hours. Respondent shall bear all of employee costs, if any, associated with these training sessions.
 - (c) Respondent shall compile attendance records listing the individuals who receive the training described in this paragraph, including their full name, job title, and the date(s) of the training sessions, and send the records via email to Gloria Yi at Gloria.Yi@usdoj.gov (or any other individual IER designates) within ten (10) days of each training session.
 - (d) For the term of the Agreement, all new Human Resources Personnel who assumed their duties after the initial training described in this paragraph shall view an IER approved webinar and review the IER educational materials IER identified pursuant to subparagraph (a) within 60 days of assumption of such duties. Respondent shall compile and send attendance records for these individuals pursuant to Paragraph 12(c).
13. During the term of this Agreement, IER reserves the right to make reasonable inquires 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. Respondent shall comply with IER's requests within 30 days unless IER grants Respondent additional time to comply.
14. Nothing in this Agreement limits IER's right to inspect Respondent's Forms I-9 and attachments within three business days' prior notice pursuant to 8 C.F.R. § 274a.2(b)(2)(ii) and 28 C.F.R. § 44.302(b).

15. 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.
16. This Agreement does not affect the right of any individual to file a charge with IER 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.
17. This agreement resolves any and all differences under 8 U.S.C. § 1324b between the Parties relating to the IER Investigation through the Effective Date.

III. ADDITIONAL TERMS OF SETTLEMENT

18. 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.
19. The United States District Court for the District of Rhode Island 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.
20. 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 a 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 invalid.
21. The Parties agree that, as of the Effective Date, litigation concerning the violations of 8 U.S.C. § 1324b that are the subject of the Investigation 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.

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

ChemArt


By:


David Marquis
President

Dated: 6/1/2020

Immigrant and Employee Rights Section

By:


Alberto Ruisanchez
Deputy Special Counsel

Dated: 6/3/20

Jodi Danis
Special Litigation Counsel

Gloria Yi
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