

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into by and between Around the Clock Dispatch, Inc. ("ATC") and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section ("IER"), as to parts I through III, and by and between ATC and [REDACTED] ("Charging Party") as to Part IV.

I. BACKGROUND

WHEREAS, on December 12, 2019, IER accepted as complete a charge (the "IER Charge") filed by [REDACTED] ("Charging Party"), DJ # 197-52-1024, alleging violations of the anti-discrimination provision of the Immigration and Nationality Act, 8 U.S.C. § 1324b;

WHEREAS, on December 20, 2019, IER notified ATC that it had initiated an investigation ("IER Investigation") based on the Charging Party's allegations to determine whether ATC had engaged in any discriminatory conduct in violation of 8 U.S.C. § 1324b, and would also investigate an additional allegation of retaliation;

WHEREAS, IER concluded based upon the IER Investigation that there is reasonable cause to believe that ATC retaliated against Charging Party in violation of 8 U.S.C. § 1324b(a)(5). Specifically, the IER investigation found that ATC retaliated against Charging Party in violation of 8 U.S.C. § 1324b(a)(5) when it suspended him for three days in November 2019 because he contacted IER's hotline to seek IER's assistance in addressing ATC's repeated requests that he present documents to complete another Form I-9 despite already having completed a Form I-9;

WHEREAS, IER and ATC wish to resolve IER's reasonable cause finding without further delay or expense, and to avoid the uncertainty and costs of litigation, and hereby acknowledge that they are voluntarily and freely entering into this Agreement;

WHEREAS, by entering into this Agreement, ATC does not admit that it violated 8 U.S.C. § 1324b(a)(5) and may dispute the allegations of discrimination and retaliation in any future proceeding.

NOW, THEREFORE, in consideration of the mutual promises contained below, and to fully and finally resolve all claims based on the IER investigation as of the date of the latest signature below, the Parties agree as follows:

II. TERMS OF SETTLEMENT BETWEEN THE UNITED STATES AND AROUND THE CLOCK

1. This Agreement becomes effective as of the date of the latest signature below, which date is referenced hereafter as the "Effective Date," and shall have a term of two years beginning from the Effective Date.

2. ATC shall pay a civil penalty to the United States Treasury in the amount of \$3,600.
3. ATC 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 from the Effective Date. ATC shall pay the monies in paragraph 2 via the FedWire electronic fund transfer system within 10 business days of receiving fund transfer instructions from IER. ATC shall send confirmation of the payment to Lisa Sandoval at Lisa.Sandoval@usdoj.gov (or any other individual IER designates in writing) on the day the payment is made. The email confirming payment shall have ATC's name and the investigation number, DJ # 197-52-1024, in the subject line.
4. ATC shall not retaliate against the Charging Party or any other individuals who participated in the IER Investigation. ATC shall not disclose any information or documentation related to the IER Charge or IER Investigation to any employer or prospective employer of the Charging Party, or to any employer or prospective employer of any individuals who participated in the IER Investigation.
5. Within 90 days of the Effective Date, ATC shall create (or revise) and implement employment policies, to the extent it has not already done so, that:
 - a. Prohibit discrimination on the basis of citizenship status, immigration status, and national origin in the processes of recruiting or referral for a fee, hiring and firing, in accordance with 8 U.S.C. § 1324b(a)(1);
 - b. Include citizenship status and immigration status as prohibited bases of discrimination, unless required to comply with a law, regulation, executive order, government contract, or Attorney General directive as set forth in 8 U.S.C. § 1324b(a), as well as national origin. Such prohibitions shall also be included in any Equal Employment Opportunity statements ATC provides in printed or electronic materials available to the public or its employees;
 - c. Refer applicants and employees who make a complaint of discrimination based on citizenship or immigration status in connection with recruiting or referring for a fee, hiring, firing, or Form I-9 employment eligibility verification and/or reverification promptly to IER by directing the affected individual to the IER Poster, IER's worker hotline (800-255-7688), and IER's website (www.justice.gov/ier), and advise the affected individual of his or her right to file a charge of discrimination with IER;
 - d. Provide that ATC shall not intimidate or take any retaliatory action against any individual for opposing any employment practice made unlawful by 8 U.S.C. § 1324b or which the individual reasonably believes to be unlawful under 8 U.S.C. § 1324b, for filing a charge, or for participating in any investigation or action under 8 U.S.C. § 1324b; and

6. Within seven calendar days of the Effective Date, ATC shall pay the Charging Party \$870.40, less any deductions and withholdings required by law. The sum, which comprises back pay, includes a calculation of base wages and overtime that Charging Party would have received if he worked for Respondent during three days in November 2019, plus interest. In addition:
 - a. Respondent shall follow the applicable instructions contained in IRS Publication 957 with respect to the payment;
 - b. Respondent shall make the payment in accordance with the Charging Party's preferred method, which IER will communicate to the Respondent by email to Respondent's counsel no later than the Effective Date of the Agreement;
 - c. Within three days of making the payment, Respondent shall confirm the disbursement of funds via email to Lisa Sandoval at Lisa.Sandoval@usdoj.gov; and
 - d. Within 45 days after remitting the Charging Party's W-2 form for calendar year 2021 to the Social Security Administration (but not before doing so), Respondent shall file a special report to the Social Security Administration allocating the payment made to the Charging Party pursuant to this paragraph to the appropriate quarter. On the day Respondent submits the documentation, Respondent shall confirm via email to Lisa Sandoval at Lisa.Sandoval@usdoj.gov (or any other individual IER designates in writing) that Respondent submitted such documentation to the Social Security Administration and the date it was submitted.
7. Within 60 days of the Effective Date, ATC shall designate an employee or contractor with human resources experience to oversee the employment eligibility verification process and serve as ATC's point of contact for all issues related to that process, and will send IER the name and contact information for the designated employee by email to Lisa Sandoval at Lisa.Sandoval@usdoj.gov (or any other individual IER designates in writing). Within 90 days of the Effective Date, the point of contact shall institute a policy of requiring any dispatcher involved in the employment eligibility verification process to provide new employees: 1) the Form I-9 instructions and 2) a sheet containing the point of contact's phone number and email address with instructions to contact the point of contact with any questions about the Form I-9 process. The point of contact will inform dispatchers of this policy in writing, and will require them to provide a written acknowledgement that they have read and will comply with the policy.
8. Respondent shall, within 14 days of the Effective Date, post an English version and Spanish version of the IER "If You Have The Right to Work" poster ("IER Poster") in color measuring no smaller than 8.5" x 11" (available at <https://www.justice.gov/crt/worker-information#poster>) in all places where Respondent normally posts notices to employees and shall keep them posted for at least the term of this Agreement.
9. Within 90 days of the Effective Date, ATC shall ensure that all employees with any role in recruitment, hiring or employment eligibility verification, including

but not limited to dispatchers who play any role in the employment eligibility verification process (collectively, "Hiring Personnel"), receive training on their obligations to comply with 8 U.S.C. § 1324b. In addition:

- a. The training will consist of participating in a live, IER-provided free webinar presentation on one or more mutually agreed upon dates;
 - b. All employees will be paid their normal rate of pay, and the training will occur during their normally scheduled workdays and work hours. ATC shall be responsible for all payroll costs and employee wages associated with these training sessions;
 - c. During the term of the Agreement, all Hiring Personnel who assume or resume their duties after the initial training period described in this paragraph has been conducted shall participate in a free online IER Employer/HR webinar within 60 days of assuming or resuming their duties; and
 - d. ATC shall compile attendance records listing the individuals who attend the training(s) described in this paragraph, including their full name, job title, signature, and the date(s) of the training, and shall send the records via email to Lisa.Sandoval@usdoj.gov (or any other individual IER designates in writing) within 10 business days of each training session. The emails transmitting attendance records shall have ATC's name and the reference number DJ # 197-52-1024 in the subject line.
10. During the term of this Agreement, IER reserves the right to make reasonable inquiries of ATC to determine compliance with this Agreement. As part of such review, IER may require written reports concerning compliance, inspect ATC's premises, examine witnesses, and examine and copy ATC's documents at reasonable times and all with three days' advance notice.
 11. Nothing in this Agreement limits IER's right to inspect ATC's Forms I-9 and attachments within three business days pursuant to 8 C.F.R. § 274a.2(b)(2)(ii) and 28 C.F.R. § 44.302(b).
 12. This Agreement does not affect the right of any individual to file an IER charge alleging an unfair immigration-related employment practice against ATC, IER's authority to investigate such charge or file a complaint on behalf of any such individual, or IER's authority to conduct an independent investigation of ATC's employment practices occurring after the Effective Date or outside the scope of the Investigation.
 13. If IER has reason to believe that ATC has violated or is violating any provision of this Agreement, IER may exercise its discretion to notify ATC in writing of the purported violation rather than initiate a new investigation or seek immediate judicial enforcement of the Agreement. ATC will then be given 30 calendar days from the date IER notifies it in which to cure the violation(s) to IER's satisfaction before IER deems ATC to be in violation of this Agreement and

proceeds to take appropriate enforcement actions.

14. This Agreement resolves any and all differences under 8 U.S.C. § 1324b between IER and Respondent relating to the IER Investigation through the Effective Date. The provisions of paragraphs 2 and 6 notwithstanding, IER shall not seek from Respondent any additional civil penalty or back pay on behalf of the Charging Party for the retaliation in violation of 8 U.S.C. § 1324b, or any other allegations encompassed in the IER Investigation, designated as DJ # 197-52-1024, through the Effective Date.

III. ADDITIONAL TERMS OF SETTLEMENT

15. This Agreement sets forth the entire agreement between ATC and IER and fully supersedes any and all prior agreements or understandings between the ATC and IER pertaining to the subject matter herein. This Agreement is governed by the laws of the United States. This Agreement shall be deemed to have been drafted by both ATC and IER and shall not be construed against any one party in the event of a subsequent dispute concerning the terms of the Agreement. ATC and IER agree that the paragraphs set forth in Part II of this Agreement (entitled "Terms of Settlement") are material terms, without waiver of either Party's right to argue that other terms in the Agreement are material.
16. The Parties agree that, as of the Effective Date of this Agreement, litigation concerning the violation of 8 U.S.C. § 1324b that IER has reasonable cause to believe that ATC committed is not reasonably foreseeable. To the extent that either party previously implemented a litigation hold to preserve documents or electronically stored information, 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 or of ATC's obligation to preserve documents or electronically stored information due to litigation.
17. 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, term, or provision 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 is invalid.
18. The Parties shall each bear their own costs, attorneys' fees, and other expenses incurred in this action.

19. The United States District Court for the Eastern District of New York 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 the 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. 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 or electronic signatures.

IV. TERMS OF AGREEMENT BETWEEN CHARGING PARTY AND RESPONDENT

21. Within five business days of ATC's compliance with Paragraph 6, the Charging Party shall file a Motion to Dismiss with Prejudice OCAHO Case No. 2020B00078 ("OCAHO Complaint").
22. **Release of Claims.** In consideration for the Payment to Charging Party as specified in Paragraph 6 of this Agreement, the adequacy of which is hereby expressly acknowledged, Charging Party releases, absolves and discharges the Respondent ATC and its successors, assigns, parent companies, related, subsidiaries, and affiliated entities, insurers and their respective directors, board members, shareholders, trustees, partners, officers, members, employees and agents ("Released Parties"), from all 8 U.S.C. § 1324b claims (including demands, liens, suits, causes of action, expenses, damages, and obligations) through the Effective Date.
23. Charging Party acknowledges that he has read and understands Paragraph 6 and Part IV of this Agreement, which constitutes a RELEASE AND WAIVER OF CLAIMS, and he is executing this Agreement knowingly, voluntarily and without coercion. He has been informed of the BENEFIT OF SEEKING COUNSEL, had the opportunity to seek the advice of counsel, and either has done so or expressly waives that right.

Around the Clock Dispatch, Inc.

By:



Quaiser Choudri
President


Dated: 07-08-2021



Charging Party

Dated: 07/14/21

Immigrant and Employee Rights Section
By:



Jennifer Deines
Acting Deputy Special Counsel

Dated: 7/15/2021

Jodi Danis
Special Litigation Counsel

Lisa Sandoval
Trial Attorney