

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into by and between James A. Scott & Son, Inc. d/b/a Scott Insurance ("Scott Insurance") and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section ("IER") (collectively, "the Parties").

### I. BACKGROUND

WHEREAS, on January 17, 2020, IER accepted as complete a charge (the "IER Charge") filed by [REDACTED] ("Charging Party"), DJ # 197-80-45, alleging violations of the anti-discrimination provision of the Immigration and Nationality Act, 8 U.S.C. § 1324b;

WHEREAS, on January 24, 2020, IER notified Scott Insurance that it had initiated an investigation ("Investigation") based on Charging Party's allegations to determine whether Scott Insurance had engaged in any discriminatory conduct in violation of 8 U.S.C. §§ 1324b(a)(1) and/or (a)(6).

WHEREAS, IER concluded based upon the Investigation that there is reasonable cause to believe that Scott Insurance violated 8 U.S.C. §§ 1324b(a)(1)(B) and (a)(6). Specifically, Scott Insurance engaged in a pattern or practice of hiring discrimination by failing to consider and hire non-U.S. citizens for positions from no later than June 1, 2017, until at least August 1, 2020, in violation of 8 U.S.C. § 1324b(a)(1)(B). Scott Insurance also committed unfair documentary practices against Charging Party when it specifically asked for his Permanent Resident Card, and then rejected the valid document because of his citizenship or immigration status in violation of 8 U.S.C. § 1324b(a)(6);

WHEREAS, Scott Insurance contends that its actions were not unlawful, that it did not engage in a pattern or practice of hiring discrimination, and it disputes and denies the findings of the IER Investigation;

WHEREAS, this Agreement does not constitute and shall not be construed as an admission of liability by Scott Insurance for any act in violation of 8 U.S.C. § 1324b;

WHEREAS, IER and Scott Insurance wish to resolve IER's Investigation 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;

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 AGREEMENT

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. Scott Insurance shall pay a civil penalty to the United States Treasury in the amount of \$9,500.
3. Scott Insurance 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 seven business days from the Effective Date. Scott Insurance shall pay the monies in paragraph 2 via the FedWire electronic fund transfer system within 14 business days of receiving fund transfer instructions from IER. Scott Insurance shall send confirmation of the payment to Lisa Sandoval at Lisa.Sandoval@usdoj.gov (or any other individual IER designates in writing). The email confirming payment shall have Scott Insurance's name and the investigation number, DJ # 197-80-45, in the subject line.
4. Scott Insurance shall set aside seventy thousand dollars (\$70,000) to compensate Qualified Individuals who sought employment, as described below:
  - a. A "Qualified Individual" shall include any non-U.S. citizen protected individual, as defined in 8 U.S.C. § 1324b(a)(3), who: (i) applied for a position with Scott Insurance from June 1, 2017, to August 1, 2020; (ii) met the minimum qualifications for the position and was available to work in the Scott Insurance location where the job existed; and (iii) was not considered for and/or offered employment by Scott Insurance.
  - b. Within 15 calendar days from the Effective Date, Scott Insurance shall provide IER with all contact information (including telephone numbers and e-mail addresses) in its possession for [REDACTED] and [REDACTED] individuals who applied for positions with Scott Insurance between June 1, 2017, to August 1, 2020.
  - c. Within 60 calendar days from the Effective Date, IER will send a written notification of this Agreement ("Notice Letter") and an Applicant Back Pay Claim Form ("Claim Form") to those applicants listed in Paragraph 4(b), and to any other applicants whom IER has reason to believe meet the parameters of Paragraph 4(a), to determine if they are Qualified Individuals entitled to receive compensation for lost wages due to Scott Insurance's alleged unfair employment practices. IER may also attempt to contact those applicants listed in Paragraph 4(b), and any other applicants of whom IER is or becomes aware, by email or telephone.
  - d. The Notice Letter will additionally notify each recipient of the opportunity to be interviewed and considered for an open position with Scott Insurance for which he or she is qualified. Individuals who wish to be considered for a position with Scott Insurance will have 60 calendar days from the date of the Notice Letter to inform IER, which will in turn inform Scott Insurance. Scott Insurance shall have no later than 60 calendar days from notification by IER to consider the individual's request for employment and notify IER of its hiring decision(s) and the justification(s) for it.

- e. Individuals who wish to be considered for back pay relief will have 60 calendar days from the date of the Notice Letter to return the Claim Form to IER or have it postmarked, unless an individual can demonstrate good cause (as determined by IER) for the failure to return or postmark a Claim Form by the specified deadline.
- f. No later than 140 calendar days from the date of the Notice Letter, IER will calculate and notify Scott Insurance of its initial determinations regarding the amount of back pay, if any, owed to each claimant IER determines to be a Qualified Individual who is entitled to lost wages due to the alleged discrimination. Interest is calculated at the IRS underpayment rate, through the Effective Date. If the total amount of backpay that is owed to Qualified Individuals exceeds seventy thousand dollars (\$70,000), IER shall calculate a pro rata amount of back pay for each Qualified Individual using the fraction that represents the amount of back pay owed to the Qualified Individual compared to the total back pay fund amount. The Parties agree that Scott Insurance's total liability to Qualified Individuals under this Paragraph shall not exceed seventy thousand dollars (\$70,000).
- g. Within 30 calendar days from the date on which IER notifies Scott Insurance of its initial determinations regarding the amounts owed to each Qualified Individual pursuant to Paragraph 4(f), Scott Insurance will notify IER in writing if Scott Insurance disagrees with any back pay determination, and provide an explanation for its position along with copies of any supporting documentation.
- h. If Scott Insurance disagrees under Paragraph 4(g) with IER's back pay determination under Paragraph 4(f), IER will review the information provided by Scott Insurance under Paragraph 4(g) and make, in its sole discretion, the final determination regarding who is a Qualified Individual and the amount to be paid, if any, and will, within 30 calendar days of receiving Scott Insurance's notice of disagreement under Paragraph 4(g), notify Scott Insurance in writing of its final determinations. If necessary, IER's final determination will re-calculate any pro rata back pay determinations, taking into account the final number of Qualified Individuals and amounts to be paid.
- i. If Scott Insurance does not notify IER of any objections under Paragraph 4(g), IER's back pay determinations will become final 30 calendar days from the date on which IER notifies Scott Insurance of its initial backpay determinations under Paragraph 4(f). If Scott Insurance notifies IER of any objections under Paragraph 4(g), IER's back pay determinations will become final 30 calendar days from IER's final back pay determination under Paragraph 4(h). Scott Insurance shall, within 14 calendar days of the date that IER's back pay determination becomes final, send, via email and first class mail, each Qualified Individual entitled to receive compensation a blank IRS Form W-4, applicable state tax forms, and a Back Pay Determination Letter. Scott Insurance shall provide the Back Pay Determination Letter to IER for review and approval, in accordance with paragraph 4(k), no later than two calendar days before the deadline to send it to Qualified Individuals. The Back Pay Determination Letter will indicate the amount of back pay to be received and contain a release of claims (Release), which upon signature by the Qualified Individual releases Scott Insurance from all legally waivable claims of discrimination that Qualified Individuals might have asserted against Scott Insurance under 8 U.S.C. § 1324b through the Effective Date. The Back Pay Determination Letter shall include a pre-paid self-

addressed return envelope with sufficient postage and shall request that Qualified Individuals return the completed IRS Form W-4, applicable state tax forms, and Release to Scott Insurance within 30 calendar days. On the same day Scott Insurance emails and mails the Back Pay Determination Letter(s), Scott Insurance shall email Lisa Sandoval at Lisa.Sandoval@usdoj.gov (or any other individual IER designates) copies of the letters, pre-paid self-addressed envelope, and emails it sends to each Qualified Individual.

- j. Within 30 calendar days of Scott Insurance's receipt of the signed IRS Form W-4, any applicable state tax forms, and the Release, Scott Insurance shall send each individual, by certified mail or similarly reliable courier service, the back pay amount previously determined by IER, less any withholding required by law, accompanied by a payment transmittal notice. On the same day, Scott Insurance shall send a copy of the check and payment transmittal notice to Lisa.Sandoval@usdoj.gov (or any other individual IER designates). Scott Insurance shall withhold applicable taxes based on the rates of the current year and shall provide each Qualified Individual with all applicable income tax reporting forms. Scott Insurance is responsible for paying any employer-side taxes or contributions due to the federal or state government based on the payments made to each Qualified Individual pursuant to this Settlement Agreement. Scott Insurance shall follow the applicable instructions contained in IRS Publication 957 and credit each Qualified Individual's back pay award to calendar quarters of the year when the back wages would have been earned.
  - k. All written communications from Scott Insurance to Qualified Individuals relating to this Agreement shall be submitted to Lisa Sandoval at Lisa.Sandoval@usdoj.gov (or any other individual IER designates in writing) for prior review and approval.
  - l. Any remaining amount of the \$70,000 back pay fund that has not been allocated to Qualified Individuals pursuant to the process set forth in this Paragraph shall be returned to Scott Insurance's unrestricted control on the day IER's back pay determination becomes final. Any amounts allocated but not distributed to Qualified Individuals shall be returned to Scott Insurance's unrestricted control 90 calendar days after IER's final determination, provided that IER finds that whatever remaining impediment exists to distributing the funds cannot be resolved.
- 5. Scott Insurance shall not retaliate against Charging Party or any other individuals who participated in the IER Investigation. For instance, Scott Insurance shall not retaliate against such individuals by disclosing any information or documentation related to the IER Charge or IER Investigation to any employer or prospective employer.
  - 6. Within 60 calendar days of the Effective Date, Scott Insurance 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 pursuant to 8 U.S.C. § 1324b(a)—as well as national origin. Such prohibitions shall also be included in any Equal Employment Opportunity statements Scott Insurance provides in printed or electronic materials available to the public or employees; and

- c. Provide that Scott Insurance 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.
7. Respondent shall, within 14 calendar 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. Scott Insurance shall promptly 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 to the IER Poster.
  8. Within 120 calendar days of the Effective Date, Scott Insurance shall ensure that all employees with any role in recruitment, hiring, or employment eligibility verification participate in training on their obligations to comply with 8 U.S.C. § 1324b as follows:
    - a. The training will consist of participating in an IER-provided free webinar presentation on one or more mutually agreed upon dates. IER will provide Scott Insurance with links for the webinar training within 30 days of the Effective Date;
    - b. All employees will be paid their normal rate of pay, and the training will occur during their normally scheduled workdays and work hours. Scott Insurance shall be responsible for all payroll costs and employee wages associated with these training sessions;
    - c. During the term of the Agreement, all employees with any role in recruitment, hiring, or employment eligibility verification who assume or resume their duties after the initial training period described in this paragraph has been conducted, shall participate in an online IER Employer/HR webinar within 60 calendar days of assuming or resuming their duties. IER will provide Scott Insurance with links for the webinar training; and
    - d. Scott Insurance 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](mailto: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 Scott Insurance’s name and the reference number DJ # 197-80-45 in the subject line.
  9. During the term of this Agreement, IER reserves the right to make a reasonable inquiry or inquiries of Scott Insurance to determine compliance with this Agreement. As part of such review, IER may periodically require written reports concerning compliance, and may

inspect Scott Insurance's premises, interview witnesses, and examine and copy Scott Insurance's relevant documents. IER shall provide Scott Insurance 21 calendar days to comply with any reasonable inquiry.

10. Nothing in this Agreement limits IER's right to inspect Scott Insurance'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).
11. This Agreement does not affect the right of any individual to file an IER charge alleging an unfair immigration-related employment practice against Scott Insurance, 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 Scott Insurance's employment practices occurring after the Effective Date or outside the scope of the Investigation.
12. If IER has reason to believe that Scott Insurance has violated or is violating any provision of this Agreement, IER may, in its discretion, notify Scott Insurance in writing of the purported violation rather than initiate a new investigation or seek immediate judicial enforcement of the Agreement. Scott Insurance 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 Scott Insurance to be in violation of this Agreement and proceeds to take appropriate enforcement actions.
13. 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. The provisions of paragraph 2 notwithstanding, IER shall not seek from Respondent any additional civil penalty for the violations of 8 U.S.C. § 1324b, or any other allegations encompassed in the IER Investigation, designated as DJ # 197-80-45, through the Effective Date.


### **III. ADDITIONAL TERMS OF SETTLEMENT**

14. This Agreement sets forth the entire agreement between Scott Insurance and IER and fully supersedes any and all prior agreements or understandings between the Scott Insurance 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 Scott Insurance and IER and shall not be construed against any one party in the event of a subsequent dispute concerning the terms of the Agreement. Scott Insurance 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.
15. 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 Scott Insurance 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 Scott Insurance's obligation to preserve documents or electronically stored information due to litigation.

16. 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.
17. The Parties shall each bear their own costs, attorneys' fees, and other expenses incurred in this action.
18. The United States District Court for the Western District of Virginia, Lynchburg Division, 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.
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 or electronic signatures.

**James A. Scott & Son, Inc. d/b/a Scott Insurance**


By:

  
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R Hutcheson Mauck, Jr.  
President

Dated: 1/20/2022

**Immigrant and Employee Rights Section**

By:

  
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Alberto Ruisanchez  
Deputy Special Counsel

Dated: 1/24/2022

Sebastian Aloit  
Special Litigation Counsel

Lisa Sandoval  
Trial Attorney