

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into by and between Rose Acre Farms, Inc. ("Respondent"), and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section ("IER"), formerly the Office of Special Counsel for Immigration-Related Unfair Employment Practices, collectively, "the Parties."

### I. BACKGROUND

WHEREAS, on December 14, 2011, IER opened an independent investigation, DJ # 197-28-17, to investigate whether Respondent had engaged or was engaging in discriminatory conduct in violation of 8 U.S.C. § 1324b, including a pattern or practice of unfair immigration-related employment practices.

WHEREAS, IER determined based upon its independent investigation that there was reasonable cause to believe that Respondent engaged in a pattern or practice of unfair documentary practices in violation of 8 U.S.C. § 1324b(a)(6). Specifically, IER filed an amended complaint ("Amended Complaint") with the Office of the Chief Administrative Hearing Officer ("OCAHO"), OCAHO Case No. 12B00088, alleging that Respondent routinely required non-U.S. citizen employees, but not similarly-situated U.S. citizen employees, to present a List A document during the employment eligibility verification and E-Verify processes because of their citizenship status.

WHEREAS, Respondent denies any engagement in a pattern and practice of unfair documentary practices in violation of 8 U.S.C. § 1324b, and by entering into this Agreement, does not admit and expressly denies that it violated § 1324b or any other federal, state, or local statute, regulation or law.

WHEREAS, the Parties wish to resolve the Amended Complaint and underlying independent investigation without further delay or expense, and hereby acknowledge that each party is voluntarily entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained below and to fully and finally resolve the Amended Complaint and underlying independent investigation, the Parties agree as follows:

### II. TERMS OF SETTLEMENT

1. This Agreement becomes effective as of the date of the latest signature on the Agreement, which date is referenced herein as the "Effective Date." The term of this Agreement shall be two (2) years following the Effective Date.
2. Respondent shall pay a civil penalty to the United States Treasury in the amount of seventy thousand dollars and zero cents (\$70,000.00). The monies discussed in this paragraph shall be paid via the FedWire electronic fund transfer system within (10)

business days of the Effective Date of this Agreement or receipt of fund transfer instructions from IER, whichever is later.

3. This Agreement resolves any and all differences between the Parties relating to the allegations in the Amended Complaint and the underlying independent investigation through the Effective Date of this Agreement. The provisions of paragraph two (2) notwithstanding, IER shall not seek from Respondent any additional civil penalty for the alleged pattern or practice of unfair documentary practices in violation of 8 U.S.C. § 1324b(a)(6) that is the subject of OCAHO Case No. 12B00088 through the Effective Date of this Agreement. IER further agrees that the allegations that are the subject of the Amended Complaint and underlying independent investigation shall be fully resolved upon execution of this Agreement.
4. Upon verification of compliance with paragraph 2, the Parties shall file a Joint Motion to Dismiss with Prejudice OCAHO Case No. 12B00088.
5. 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 (3) business days after the Effective Date of this Agreement. On the day of payment, Respondent shall send confirmation of the payment to [Pablo.Godoy@usdoj.gov](mailto:Pablo.Godoy@usdoj.gov) and [Lorren.Love@usdoj.gov](mailto:Lorren.Love@usdoj.gov) on the day the funds are transferred. The email confirming payment shall have Respondent's name and the OCAHO Case No. 12B00088, in the subject line.
6. Respondent shall treat all individuals equally, without regard to citizenship status or national origin, during the hiring, firing and employment eligibility verification and re-verification process. Respondent shall avoid committing unfair documentary practices in the employment eligibility verification and re-verification process, even if through a third party or electronic system, 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. § 1324(a)(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.
7. Respondent shall not intimidate, threaten, coerce, or retaliate against any person for his or her participation in this matter or the exercise of any right or privilege secured by 8 U.S.C. § 1324b.
8. Prior to the effective date of this Agreement, Respondent had started, and throughout the term of this Agreement shall continue, to provide a copy of or access to the Lists of Acceptable Documents to individuals at the same time as Respondent provides them with the Form I-9 to complete, and shall inform those individuals of their right to choose to present any document(s) that are on the Lists or are otherwise acceptable for purposes of employment eligibility verification.
9. Within one hundred and twenty (120) days of the Effective Date, Respondent shall ensure that all employees with any role in recruiting, hiring, and/or verifying the

employment eligibility of Respondent's employees, including but not limited to Human Resources personnel and complex managers, receive training on their obligations to comply with 8 U.S.C. § 1324b.

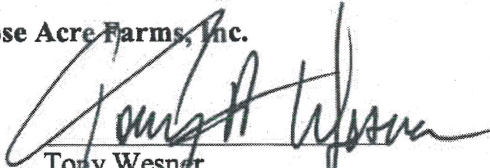
- a. The training will consist of participating in a free online IER webinar presentation.
  - b. All employees will be paid their normal rate of pay, and the training will occur during their normally scheduled workdays and work hours. Respondent shall be responsible for all payroll costs and employee wages associated with these training sessions.
  - c. During the term of the Agreement, all new Human Resources personnel and complex managers that Respondent hires or promotes after the initial training described in this paragraph shall participate in a free online IER Employer/HR webinar within sixty (60) days of hire or promotion.
  - d. Respondent shall compile attendance records listing the individuals who attend the training(s) described in this paragraph, including the individual(s)' full name, job title, signature, and the date(s) of the training. IER may request the attendance records from Respondent and within ten (10) calendar days of IER's request, Respondent shall send the records via email to [Pablo.Godoy@usdoj.gov](mailto:Pablo.Godoy@usdoj.gov) and [Hillary.Valderrama@usdoj.gov](mailto:Hillary.Valderrama@usdoj.gov). The emails transmitting attendance records shall have Respondent's name and OCAHO Case No. 12B00088, in the subject line.
10. To the extent it has not already done so, within sixty (60) days of the Effective Date, Respondent shall ensure that all individuals who are responsible for formulating, conducting training on, or carrying out Respondent's hiring, firing, equal employment, and employment eligibility verification policies, such as completing the Form I-9 and/or using the E-Verify system, are in possession of the most current version of the USCIS Handbook for Employers (M-274) ("Handbook"), available at <https://www.uscis.gov/i-9-central/handbook-employers-m-274>, and the most current USCIS E-Verify Manual (M-775) ("Manual"), available at <https://www.e-verify.gov/e-verify-user-manual>, and are aware of the guidance on the I-9 Central and E-verify websites. Copies of these documents and future revisions of the Form I-9, Handbook and guidance can be obtained from the United States Citizenship and Immigration Services at [www.uscis.gov](http://www.uscis.gov).
11. Respondent shall review any existing employment policies, training materials, and guidelines that relate to hiring, firing, or nondiscrimination on the basis of citizenship or immigration status and national origin. To the extent that it has not already done so, Respondent shall revise them to meet the following requirements:
- (a) Prohibit discrimination on the basis of citizenship, immigration status, or national origin (1) in the hiring and firing process; (2) during the Form I-9 employment eligibility verification and re-verification process; and

- (3) in any part of the E-Verify process, regardless of whether it is handled directly or through an agent;
- (b) Include citizenship, immigration status, and national origin as prohibited bases of discrimination into its policy and any similar Equal Employment Opportunity ("EEO") statements Respondent includes in printed or electronic materials available to the public or employees;
  - (c) Refer applicants and employees who complain, formally or informally, of discrimination in the hiring, firing, or Form I-9 employment eligibility verification and re-verification process immediately to IER by directing the affected individual to the IER Poster and the IER's worker hotline (800-255-7688), and advise the affected individual of his or her right to file a charge of discrimination with IER; and
  - (d) 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.
12. For the purpose of ensuring Respondent's compliance with the terms of the Agreement and facilitating cooperative dialogue between the Parties regarding the same, IER may make reasonable inquiries of Respondent during the term of this Agreement. These reasonable inquiries may include requesting E-Verify user reports and E-Verify third-party vendor audit reports that include the name, hire date, and citizenship status of all individuals hired by Respondent in the preceding months. IER may then select individuals from that list, for which Respondent will submit electronic copies of the individual's completed Forms I-9, including attachments, within fourteen (14) days of IER's request.
13. If IER has reason to believe that Respondent is in violation of any provision of this Agreement, IER shall immediately notify Respondent of the purported violation rather than initiate a new investigation or seek to judicially enforce the Agreement. Respondent will then be given thirty (30) days from the date it is notified by IER in which to address or cure the purported violation before IER may contend that Respondent is in violation of this Agreement.
14. Nothing in this Agreement limits IER's right to inspect Respondent's Forms I-9 and attachments within three business days pursuant to 8 C.F.R. § 274a.2(b)(2)ii and 8 C.F.R. § 44.302(b).
15. This Agreement does not affect the right of any individual to file an IER charge alleging an unfair immigration-related employment practice against Respondent, IER's authority to investigate Respondent or file a complaint on behalf of any such individual, or IER's authority to conduct an independent investigation of Respondent's employment practices occurring after the Effective Date of this Agreement.

16. This Agreement may be enforced in the United States District Court for the Southern District of Indiana or any other court of competent jurisdiction to seek any remedy authorized at law or in equity. This provision does not constitute a waiver of sovereign immunity or any other defense that the United States might have against a claim for enforcement or counterclaims asserted against it.
17. 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. The 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 is invalid.
18. The Parties agree that, as of the Effective Date of this Agreement, litigation concerning the alleged violations of 8 U.S.C. § 1324b 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.
19. The Parties agree to bear their own costs, attorneys' fees, and other expenses incurred in this action.
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 signatures.

Rose Acre Farms, Inc.

By:


  
Tony Wesner  
Chief Operating Officer

Dated:

7-31-18

**Immigrant and Employee Rights Section**

By:

  
Jodi Danis  
Special Litigation Counsel

Dated:

8/1/18

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