

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Agreement”) is made and entered into by and between Paragon Building Maintenance, Inc. (“Paragon”) and Pegasus Building Services Company, Inc. (“Pegasus”) (collectively “Respondents”), and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (“IER”), formerly known as the Office of Special Counsel for Immigration-Related Unfair Employment Practices.

I. BACKGROUND

WHEREAS, on March 30, 2016, and August 18, 2016, IER notified Paragon and Pegasus that it was opening an independent investigation of each company, DJ# 197-12C-1541 and DJ#197-12C-1569, respectively, (the “IER Investigations”), with respect to possible discriminatory documentary practices based on citizenship status in violation of the anti-discrimination provision of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1324b (the “Act”);

WHEREAS, IER has concluded based upon its investigations that there is reasonable cause to believe that Respondents engaged in a pattern or practice of unfair documentary practices against employees and applicants of Respondent Paragon, in violation of the Act, by (1) requesting specific employment eligibility documents from lawful permanent residents because of their citizenship or immigration status; and (2) unnecessarily re-verifying the work authorization of lawful permanent residents because of their citizenship or immigration status;

WHEREAS, this Agreement does not constitute an admission by Respondents of any violation of 8 U.S.C. § 1324b, or an admission by the United States of the merits of any of Respondents’ positions or potential defenses to a claim under that statute.

WHEREAS, IER and Respondents wish to resolve the IER Investigations 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 resolve the IER Investigations as of the date of this Agreement, it is agreed as follows:

II. TERMS OF SETTLEMENT

1. The “Effective Date” of this Agreement will be the date that the last party signs this Agreement, and the “term of this Agreement” shall be three years from the Effective Date. The word “days” in this Agreement refers to calendar days.
2. Respondents shall cease and desist any employment-related policies or practices that violate the anti-discrimination requirements of 8 U.S.C. § 1324b. Respondents shall comply with all of the requirements of 8 U.S.C. § 1324b, and shall not intimidate, threaten, coerce, or retaliate against any individual who asserted a right or privilege under 8 U.S.C. § 1324b with respect to these investigations, or who filed a charge, assisted, or participated in any way in these investigations.

3. Respondents shall retain a copy of each completed Form I-9 and related documentation (e.g., E-Verify printouts, and photocopied identity and work authorization documents) in accordance with Department of Homeland Security (DHS) retention regulations. For a period of three years from the Effective Date of this Agreement, IER reserves the right to make reasonable inquiries to Respondents as necessary to determine Respondents' compliance with this Agreement. As a part of such review, IER may examine witnesses and request copies of Respondents' application materials and Form I-9/E-Verify-related materials.
4. For the term of this Agreement, Respondents shall post the following notice about workers' rights under 8 U.S.C. § 1324b in all office locations of either Respondent where notices to human resources staff, employees, and applicants are normally posted or are easily visible:
 - a. IER's "If You Have the Right to Work" poster in English and Spanish and in color and measuring no smaller than 8.5" by 11." Respondents may obtain a copy of this poster at <http://www.justice.gov/crt/worker-information#poster>.
 - b. Respondents shall also include the IER "Know Your Rights" flier in English and Spanish in all of its application materials that it gives to prospective employees. Respondents may obtain a copy of this flier at https://www.justice.gov/sites/default/files/crt/legacy/2012/02/23/rights_flyer2.pdf.
5. Respondents shall train all of its personnel involved in hiring, recruiting, and employment eligibility verification ("Human Resources Personnel") about the requirements of 8 U.S.C. § 1324b. Within ninety (90) days of the Effective Date of this Agreement, Respondents' Human Resources Personnel shall participate in an internet-based IER-customized webinar, subject to the following additional requirements:
 - a. All employees will be paid their normal rate of pay for participating in such training, and the training will occur during regular business hours. Respondents shall bear all costs associated with these training sessions, if any.
 - b. For three years from the Effective Date, Respondents will notify IER by emailing Joann Sazama at joann.sazama@usdoj.gov and ier@usdoj.gov when it has hired new personnel who are involved in hiring, recruiting, or employment eligibility verification. IER and Respondents will confer to schedule a webinar training for the newly-hired personnel and the training shall occur within ninety (90) days of each person's hire.
 - c. For each training session, Respondents will keep a list of the attendees and send the list by email to Joann Sazama at joann.sazama@usdoj.gov and ier@usdoj.gov within ten (10) days of the training. The list shall include the attendees' full name, job title, signature, and the date of the training.

6. Respondents shall pay a civil penalty to the United States Treasury in the amount of one hundred and fifteen thousand dollars (\$115,000). Respondent will make payments of \$28,750 on March 31, 2017, October 2, 2017, April 2, 2018, and October 1, 2018, via the FedWire electronic fund transfer system. Respondents shall provide IER with the name and email address of the individual responsible for effectuating the payment on behalf of Respondents no later than three business days after the Effective Date, and IER will provide Respondents with the FedWire transfer instructions. On the dates of payment, Respondents shall send an email to Joann Sazama at joann.sazama@usdoj.gov and ier@usdoj.gov confirming that payments were made.
7. Respondents shall compensate eligible qualified Claimants for losses of pay (“back pay”), in amounts totaling no more than thirty thousand dollars (\$30,000) for all Claimants, as described below:
 - a. A “Claimant” is an individual who satisfied the following conditions during the period from August 27, 2014, to August 27, 2016:
 - i. Was a lawful permanent resident who:
 - a) worked for either Respondent;
 - b) received from either Respondent a request for proof of continued work authorization when his or her Permanent Resident Card (I-551) expired or was expiring; and
 - c) lost wages because of the request;

OR

- ii. Was a lawful permanent resident at the time s/he initiated an employment application for a janitorial position at Pegasus or Paragon, who:
 - a) was informed by either Respondent that s/he would need to present a Permanent Resident Card to proceed in the hiring process, or to establish employment authorization upon hire; and
 - b) had acceptable documentation for establishing identity and work authorization at the time of the request but did not return to complete the application or hiring process due to the inability or unwillingness to comply with the request for a Permanent Resident Card;

OR

- iii. Was a lawful permanent resident at the time s/he was completing the onboarding process to begin working in a janitorial position for Pegasus or Paragon, who:
 - a) was asked to present a Permanent Resident Card for purposes of Form I-9 or E-Verify;

- b) had acceptable documentation for establishing identity and work authorization at the time of the request; and
 - c) was delayed in starting work for pay due to the request for a Permanent Resident Card, resulting in lost wages.
- b. Within thirty (30) days of the Effective Date, Respondents shall provide IER with:
- i. A list in Excel spreadsheet format of: (A) all employees whom Respondent employed at any time during the period between August 27, 2014, and August 27, 2016, that includes each employee's full name, date of birth, Social Security Number, address, and telephone number; and (B) a list of all individuals in Respondents' LESTER system with all available fields.
 - ii. Photocopies of the Forms I-9 (if not already provided), and of identity/work authorization documents (if not already provided) of each employee whom Respondent employed between August 27, 2014, and August 27, 2016;
 - iii. Upon IER's request, Respondent shall also provide within twenty-one (21) days of the request, the work schedule and payroll records of any lawful permanent resident whom Respondent employed between August 27, 2014, and August 27, 2016. IER will identify the individuals for whom it requests information by name and, if possible, by Social Security number, date of birth, or other information to aid Respondent in identifying the individual.;
 - iv. All available E-Verify User Audit Reports in Excel spreadsheet format for the period August 27, 2014, to August 27, 2016;
 - v. Photocopies of all available logbooks showing the individuals who applied at Respondents' offices in 2014, 2015, and 2016;
 - vi. Photocopies of all reasonably available completed application forms for individuals whom Respondents did not hire in 2014, 2015, and 2016. If the individual also submitted a Form I-9, either partially or fully completed, with the application form or materials, Respondents shall provide photocopies of those reasonably available documents, as well.
- c. If an individual believes, after learning about this Agreement from any source, that s/he is a Claimant but his or her name is not in the records Respondents give to IER pursuant to paragraph 7(b), s/he may provide information and/or documentation to IER demonstrating that s/he is a Claimant within one hundred and twenty (120) days from the Effective Date.
- d. If IER has reason to believe that an individual is a Claimant but his or her name is not in the records Respondents give to IER pursuant to paragraph 7(b), IER reserves the right to include that person in the back pay claims evaluation process.

- e. Within thirty (30) days of IER's receipt of the records described in paragraph 7(b), IER will send a letter (Attachment A) with a Back Pay Claim Form (Attachment B) by U.S. mail and/or email to the list of potential Claimants as derived from paragraph 7(b), (c), and (d). Individuals will have sixty (60) days from the date of the letter to send a completed Back Pay Claim Form to IER by email, mail, or fax. IER, in its sole discretion, will determine what constitutes a completed Back Pay Claim Form.
- f. IER will evaluate each claim made under paragraph 7 to assess whether the individual meets the conditions to qualify as a Claimant. IER may request additional information and/or documents from Respondents to assist in its claim evaluation, and Respondents shall provide such information within seven (7) days of a request. If IER determines that an individual qualifies to be a Claimant, it will determine an amount of back pay it believes each such Claimant is owed using the calculation set forth below. Within one hundred and eighty (180) days of the Effective Date, IER will notify Respondents in writing of the amount it believes each Claimant is owed, and provide a written explanation for the amount, along with copies of any supporting documentation to Respondents.
- g. Within forty-five (45) days from the date on which IER provides Respondents with its proposed back pay determination and explanation, Respondents shall notify IER in writing if they disagree with any back pay determination and provide an explanation for their position and copies of any supporting documents.
- h. If IER and Respondents disagree over a back pay determination, IER shall make the final determination, in its sole discretion, regarding the amount to be paid and will, within forty-five (45) days of receiving information under paragraph 7(g), notify Respondents in writing of its final determination.
- i. Within ten (10) days from Respondents' receipt of the final back pay determination pursuant to paragraph 7(h), Respondents will send each Claimant an Agreement and Release (Attachment C) indicating the amount of back pay to be received and a Form W-4. Upon completion of these mailings, Respondents shall send IER a declaration under penalty of perjury or notarized affidavit attesting that they have mailed Attachment C and providing the names and addresses to which they were mailed, and the date(s) on which they were mailed.
- j. Within thirty (30) days from Respondents' receipt of a signed and completed Attachment C and Form W-4, Respondents shall send the Claimant the back pay amount in the form of a check sent by first class mail accompanied by a payment transmittal notice, with a copy of the check and payment transmittal notice sent to IER on the same date. Respondents may withhold applicable

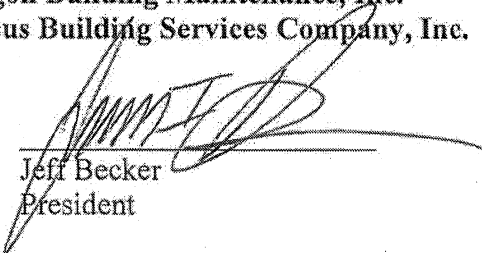
taxes and other withholdings paid by employees, but may not deduct employer-side taxes from the awards.

- k. Respondents shall follow the applicable instructions contained in IRS Publication 957 and credit the Claimants' back pay award to the calendar quarters of the years when the back wages would have been earned.
 - l. Any language in Respondents' communications to Claimants relating to this Agreement, other than those included as attachments to this Agreement, shall be submitted to IER for prior review and approval.
8. This Agreement does not affect the right of any individual to file a charge alleging an unfair immigration related employment practice against Respondents with IER, the authority of IER to investigate or file a complaint on behalf of any such individual, or the authority of IER to conduct an independent investigation of Respondents' employment practices other than those that were the subject of the IER Investigations of alleged unfair documentary practices under 8 U.S.C. § 1324b(a)(6).
 9. IER and Respondents agree that, as of the Effective Date, litigation concerning the violations of 8 U.S.C. § 1324b that IER has reasonable cause to believe that Respondents committed 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 the parties of any other obligations imposed by this Agreement.
 10. 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. Respondents and IER 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.
 11. IER and Respondents agree to bear their own costs, attorneys' fees and other expenses incurred in this action.
 12. This Agreement resolves the IER Investigations through the Effective Date.
 13. Once Respondent has fulfilled the terms of paragraph 6, IER will close the IER Investigations, in accordance with the terms of this Agreement.
 14. The provisions of paragraph 6 notwithstanding, IER shall not seek from Respondents any additional civil penalty for the pattern or practice of unfair documentary practices in violation of 8 U.S.C. § 1324b that are subject of IER Investigations through the date this Agreement is signed by all parties.

15. If, during the term of this Agreement, IER has reason to believe that Respondents are in violation of any provision of this Agreement, IER shall, in its discretion, promptly notify Respondents of the purported violation. Respondents will be given thirty (30) days from the date it is notified by IER in which to cure the violation to the satisfaction of IER, before Respondents are deemed by IER to be in violation of this Agreement.
16. This Agreement may be enforced in the United States District Court for the Central District of California, or any other court of competent jurisdiction. This provision does not constitute and should not be construed as a waiver by the United States of sovereign immunity, or any other jurisdictional or legal defense available to the United States.
17. This Agreement, including the attachments, sets forth the entire Agreement between the parties.
18. 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.

Paragon Building Maintenance, Inc.
Pegasus Building Services Company, Inc.

By:



Jeff Becker
President

Dated:

3/9/17

Immigrant and Employee Rights Section

By:



Jodi Danis
Acting Deputy Special Counsel

Dated:

3/13/17

Liza Zamd
Acting Special Litigation Counsel

Joann Sazama
Equal Opportunity Specialist