

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”), the material terms of which are set forth in Part II below, is made and entered into by and between OSI/Fleming’s, LLC (“Respondent”), which owns and operates Fleming’s Prime Steakhouse & Wine Bar at 600 Grand Boulevard in Sandestin, Florida (“Store 2006”) (collectively, “Fleming’s”) and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (“IER”) (together, “the Parties”).

I. BACKGROUND

WHEREAS, on November 30, 2021, IER received a charge filed pursuant to 8 U.S.C. § 1324b(b)(1) by [REDACTED] (“Charging Party”) against Fleming’s, DJ #197-17-30 (the “IER Charge”), alleging citizenship status discrimination and unfair documentary practices in violation of the unfair immigration-related employment practices provisions of 8 U.S.C. § 1324b (“Act”);

WHEREAS, on February 11, 2022, IER notified Fleming’s that it had initiated an investigation of the IER Charge (“IER Investigation”) to determine whether Fleming’s had violated 8 U.S.C. § 1324b;

WHEREAS, pursuant to 8 U.S.C. § 1324b(d)(1), there is reasonable cause to believe that Fleming’s rejected the Charging Party’s valid documentation establishing his employment eligibility because of his citizenship or immigration status, in violation of 8 U.S.C. § 1324b(a)(6);

WHEREAS, Fleming’s contends that it did not reject Charging Party’s valid documentation with the purpose or intent to discriminate based on his citizenship or immigration status in violation of the law but, instead, made a mistake in reverifying Charging Party’s employment eligibility;

WHEREAS, Respondent provided Charging Party \$7,687.94 in backpay on April 28, 2022;

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 on the dually-signed Agreement, which date is referenced herein as the “Effective Date.” The “term of this Agreement” shall be two years following the Effective Date.
2. Respondent shall pay a civil penalty to the United States Treasury in the amount of \$7,122.

3. No later than three calendar days after the Effective Date, Respondent shall provide IER with the name, title, email address, and telephone number of the individual responsible for effectuating payment of the civil penalty. Respondent shall pay the civil penalty referenced in paragraph 2 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. On the day of payment, Respondent shall send confirmation of the payment to Richard Crespo (richard.crespo@usdoj.gov). The email confirming payment shall have Respondent's name and the investigation number, DJ # 197-17-30 in the subject line.
4. 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.
5. 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, unless required by law.
6. Respondent's Store 2006 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's Store 2006 shall also post an electronic image of the poster, in a readable or expandable size, using the link above, on any website, intranet landing page, or similar portal where applicants or newly hired employees complete steps in Respondent's hiring and onboarding processes for Store 2006. Respondent's Store 2006 shall post the IER Posters no later than 14 calendar days after the Effective Date, and the posters will remain posted for the term of this Agreement.
7. Respondent shall transmit within 14 calendar days of the Effective Date via e-mail to all employees and agents with any role in onboarding new hires or reverifying employment eligibility at Store 2006 (collectively, "Store 2006 EEV Personnel") the IER How to Avoid Discrimination in the Form I-9 and E-Verify Processes August 2023 ([justice.gov](https://www.justice.gov)) and "If You Have the Right to Work" flyers (available at <https://www.justice.gov/crt/case-document/file/1133936/download>). Respondent will require each of the Store 2006 EEV Personnel to acknowledge in writing their review of these IER flyers within five calendar days of receipt, and shall, upon IER's request, provide copies of the written acknowledgements.
8. Within 60 calendar days of the Effective Date, Respondent will ensure that all individuals who are responsible for formulating, providing training on, or implementing hiring, firing, equal employment, or EEV policies for Store 2006, including all managers, employees and agents with any role in the EEV process, such as completing the Form I-9 (collectively,

“Store 2006 Human Resources Personnel”), receive training regarding their obligations to comply with 8 U.S.C. § 1324b, as follows:

- A. The training required under this paragraph shall consist of Store 2006 Human Resources Personnel: i) viewing an IER Employer/HR Representative webinar, which is publicly available at <https://www.justice.gov/crt/webinars>; and, ii) reviewing the IER educational materials regarding 8 U.S.C. § 1324b referenced in Paragraph 10, if they have not done so already.
 - B. Respondent will pay its employees their normal rate of pay during the training, and the training will occur during the employees’ normally scheduled workdays and work hours. Respondent shall bear all 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 Richard Crespo (richard.crespo@usdoj.gov) (or any other individual IER designates) within 10 calendar days of each training session.
 - D. During the term of the Agreement, all new Store 2006 Human Resources Personnel who assume their duties after the initial training described in this paragraph shall view an IER Employer/HR Representative webinar and review the IER educational materials IER identified pursuant to subparagraph A within 60 calendar days of assuming such duties. Respondent shall compile and send attendance records for these individuals pursuant to subparagraph C within 10 calendar days of the training.
9. No later than 90 calendar days after the Effective Date, Respondent will review any existing employment, hiring, onboarding, and EEV policies and processes applicable to Store 2006. Respondent will, as needed, revise or create policies stating that Respondent’s Store 2006 will:
- A. Honor documentation that, on its face, reasonably appears to be genuine, relates to the person, and satisfies the requirements of 8 U.S.C. § 1324a;
 - B. Not request more or different documents than are required by law when verifying and reverifying employment eligibility;
 - C. Not reject valid documents with the purpose or intent to discriminate based on an individual’s citizenship, immigration status, or national origin;
 - D. Permit all employees to present any document or combination of documents acceptable by law for employment eligibility verification and reverification;
 - E. Allow individuals to complete paper Form I-9s in instances where its EEV software will not accept valid documentation;

- F. 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's Store 2006 includes in printed or electronic materials available to the public or employees;
 - G. Refer applicants and employees who complain, formally or informally, of discrimination in the hiring, firing, or the EEV process to IER by including the following statement: "The Immigrant and Employee Rights Section (IER) can help you with concerns about citizenship status or national origin discrimination in hiring, firing, or recruitment. IER can also help with possible discrimination relating to the Form I-9 process. You can find more information about IER by going to its website at www.justice.gov/ier. You can also speak to someone anonymously by calling IER's toll-free number at 800-255-7688. If you think you have been the victim of employment discrimination relating to citizenship status or national origin (including with the Form I-9 process) or retaliation, you must file a charge with IER within 180 days of the discriminatory act."; and
 - H. 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. No later than 90 calendar days after the Effective Date, Respondent will review all job application, EEV, and onboarding materials it provides to applicants and employees at Store 2006 to ensure that they comply with 8 U.S.C. § 1324b.
 11. During the term of this Agreement, Respondent shall ensure that all of Store 2006's Human Resources Personnel and EEV Personnel can readily access the most current version of the USCIS Handbook for Employers (M-274) ("Handbook"), available at www.uscis.gov/I-9Central, and current and future revisions of which are available online at www.uscis.gov.
 12. During the term of this Agreement, IER reserves the right to make reasonable inquiries to Respondent to determine Respondent's compliance with this Agreement. As part of such review, IER may with reasonable notice require written reports concerning compliance, inspect Respondent's Store 2006 premises, examine witnesses, and examine and copy Store 2006's documents. Respondent shall comply with IER's requests within 30 calendar days unless IER grants Respondent additional time to comply.
 13. 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 28 C.F.R. § 44.302(b).
 14. 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 re-opening the IER Investigation. Respondent will have 30 calendar 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.

15. 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 Fleming's employment practices occurring after the Effective Date or outside the scope of the IER Investigation.
16. 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. IER shall close the IER Investigation and shall not seek from Respondent any additional civil penalty or relief on behalf of itself or the Charging Party, beyond that referenced in this Agreement, for the alleged unfair documentary practice in violation of 8 U.S.C. § 1324b that is the subject of the IER Investigation through the Effective Date.

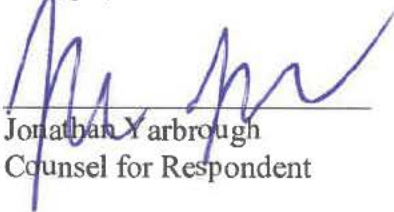
III. ADDITIONAL TERMS OF SETTLEMENT

17. 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.
18. The United States District Court for the Northern District of Florida 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.
19. Should any court declare or determine that any provision of this Agreement is 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 is invalid.
20. 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.
21. The Parties shall each bear their own costs, attorneys' fees and other expenses incurred in this action.
22. 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.

23. 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 electronically transmitted signatures.

OSI/Fleming's, LLC

By:


Jonathan Yarbrough
Counsel for Respondent

Dated:

11/28/23

Immigrant and Employee Rights Section

By:


Jennifer Deines
Acting Deputy Special Counsel

Dated: 12/7/2023

Jodi Danis
Special Litigation Counsel

Richard Crespo
Trial Attorney