

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (Agreement) is entered into between WesPak, Inc. (Respondent), and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) (collectively "the Parties").

### I. BACKGROUND

WHEREAS, following the receipt of a charge with DJ Number 197-11E-366, on January 3, 2018, IER notified Respondent that IER had initiated an independent investigation, DJ Number 197-11E-375 ("Investigation"), to determine whether Respondent had engaged in any discriminatory conduct in violation of 8 U.S.C. § 1324b, including any pattern or practice of unfair documentary practices based on citizenship status in violation of 8 U.S.C. § 1324b(a)(6).

WHEREAS, IER concluded based on the Investigation that there is reasonable cause to believe that, from at least September 11, 2014, to at least July 13, 2017, Respondent engaged in a pattern or practice of unfair documentary practices based on citizenship status, in violation of 8 U.S.C. § 1324b(a)(6). Specifically, IER concluded that Respondent maintained a system for recording employee information that triggered reverification of the work authorization of lawful permanent residents ("LPRs"), but not U.S. citizens, even though the LPRs had provided documents for Form I-9 completion that were sufficient to establish their permanent work authorization at initial hire. IER therefore concluded that Respondent improperly and unlawfully requested more or different documents than were required to establish ongoing work authorization because of citizenship status, including but not limited to demanding new Permanent Resident Cards from three LPRs who had already produced documents that had evinced permanent work authorization.

WHEREAS, Respondent disputes and denies any wrongdoing whatsoever of any kind, and states that avoiding the uncertainties and expenses associated with litigation is the sole reason why Respondent is choosing to enter into this Agreement.

WHEREAS, the Parties enter into this Agreement voluntarily and to avoid litigation.

NOW, THEREFORE, in consideration of the below mutual promises, and to fully and finally resolve the Investigation as of the date of this Agreement, the Parties agree as follows:

### II. TERMS OF SETTLEMENT

1. This Agreement shall become effective as of the date the last party signs the Agreement ("Effective Date"). The term of this Agreement is two years following the Effective Date.
2. Respondent shall pay a civil penalty to the United States Treasury in the amount of \$4,000.00. Respondent shall pay the monies discussed in this paragraph via the FedWire electronic fund transfer system within 15 business days of either the Effective Date or receipt of fund transfer instructions from IER, whichever is later. No later than five days

after the Effective Date, Respondent shall give IER the name and contact information for the person(s) who will make the payment on its behalf. On the day of payment, Respondent shall confirm via email to Craig Fansler at [Craig.Fansler@usdoj.gov](mailto:Craig.Fansler@usdoj.gov) and [Lorren.Love@usdoj.gov](mailto:Lorren.Love@usdoj.gov) that payment was made.

3. This Agreement resolves any and all disputes between the Parties within the scope of the Investigation through the Effective Date.
4. IER shall not seek from Respondent any additional civil penalty beyond that referenced in paragraph 2, for any claims, charges, causes of action, or allegations through the Effective Date arising in or under DJ Number 197-11E-366 (which was previously dismissed) or DJ Number 197-11E-375.
5. Pursuant to 8 U.S.C. § 1324b, Respondent will apply and follow the law with respect to discrimination against applicants or employees based on citizenship, immigration status, or national origin during the recruitment, hiring, firing, or employment eligibility verification or reverification (collectively “EEV”) process.
6. Respondent will follow the law with respect to (a) honoring documentation that on its face that reasonably appears to be genuine, relates to the person, and satisfies the requirements of 8 U.S.C. § 1324a(b); (b) not requesting more or different documents than are required by law; (c) not rejecting valid documents due to an individual’s citizenship status, immigration status, or national origin; (d) not requesting documents for reverification when reverification is not required by law; and (e) permitting all employees to present any document or combination of documents acceptable by law at both initial hire and when reverification is required.
7. Respondent will not intimidate, threaten, coerce, or retaliate against any person for his or her participation in IER’s investigation or exercise of any right or privilege secured by 8 U.S.C. § 1324b.
8. Respondent will post English and Spanish versions of the IER “If You Have The Right to Work” poster (“IER Poster”), images of which is available at <https://www.justice.gov/crt/worker-information#poster>, in color and measuring no smaller than 8.5” x 11” in all places where notices to employees and job applicants are normally posted. Respondent shall post the IER Poster within fourteen (14) calendar days from the Effective Date and it shall remain posted during the term of this Agreement.
9. Respondent shall cease tracking the expiration dates of Permanent Resident Cards as a flag for reverification and shall cease tracking the expiration date of any document as a flag for reverification for workers who have presented any document or combination of documents proving permanent work authorization, including but not limited to a temporary I-551 document in combination with or followed by an unrestricted Social Security card.
10. Within 90 days of the Effective Date, Respondent shall email Craig Fansler at

Craig.Fansler@usdoj.gov (or any other person IER designates within that time frame) (a) confirmation that it has implemented all changes to its practices described in paragraph 9, (b) a copy of revised or supplemental written instructions or training materials specifying acceptable uses of any data fields contained in its electronic employee recordkeeping system used for reverification, and (c) certification that it trained all current employees who enter or change worker data about the proper use of such data fields and provided them with the written instructions or training materials.

11. Within 60 days of the Effective Date, Respondent shall revise and/or create employment policies to:
  - a. Prohibit requesting more or different Form I-9 documents than required, requesting specific Form I-9 documents at initial hire or reverification, or rejecting valid Form I-9 documents because of an individual's citizenship, immigration status, or national origin;
  - b. Prohibit requiring a worker to provide a Social Security card for purposes of Form I-9 completion if the worker chooses to provide a List A document or a combination of a valid List B and another valid List C document; and
  - c. Prohibit 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.

Respondent shall transmit IER a copy of any such new or revised policies via email to Craig Fansler at Craig.Fansler@usdoj.gov (or any other person IER designates within that time frame) no later than within 75 days of the Effective Date.

12. Within 90 days of the Effective Date, all employees of Respondent who have any responsibility for training, supervising, participating in, or completing any portion of the EEV process (including reviewing documentation that individuals may use to complete the Form I-9) (collectively "HR personnel"), shall attend a free IER training on their obligation to comply with 8 U.S.C. § 1324b, as follows:
  - a. The training shall consist of viewing the IER Employer/HR Representative webinar presentation, and participants shall register at <https://www.justice.gov/crt/webinars>.
  - b. All HR personnel will be paid the normal rate of pay during the training, the training will occur during the normally scheduled workday and work hours, and Respondent shall bear any other costs associated with any training sessions.
  - c. Within 90 days of the Effective Date, Respondent shall confirm that all HR personnel attended a training session via email to Craig.Fansler@usdoj.gov (or any other person who IER designates within that time frame).

- d. During the term of this Agreement, all new HR personnel who started in that role after the training described in this paragraph has been conducted shall attend an IER Employer/HR webinar within 60 days of hire or promotion.
- 13. During the term of this Agreement, IER reserves the right to make reasonable inquiries to Respondent as necessary to determine Respondent's compliance with this Agreement.
- 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 opening an investigation. Respondent will then have 30 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 alleging an unfair immigration-related employment practice against Respondent, 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 Respondent's employment practices that arise after the Effective Date or are not encompassed within the Investigation. This Agreement does not constitute an admission of any wrongdoing by WesPak, Inc. nor does it constitute a concession by IER that there was no wrongdoing.


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

- 16. 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 Investigation. 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, without waiver of either Parties' right to argue that other terms in the Agreement are material.
- 17. The United States District Court for the Eastern District of California 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.
- 18. The Parties agree that, as of the Effective Date, litigation between the Parties regarding the potential claims under 8 U.S.C. § 1324b that were investigated 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.

19. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining provisions shall not be affected and the provision the court declared invalid 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 shall bear their own costs, attorneys' fees, and other expenses incurred in this action.
21. 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 shall be bound by facsimile signatures.

**WesPak, Inc.**

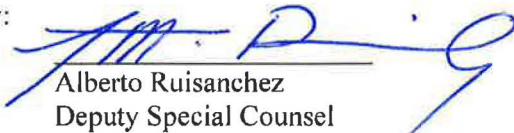
By:

  
Phil Herbig  
Controller

Dated: 5/24/19

**Immigrant and Employee Rights Section**

By:

  
Alberto Ruisanchez  
Deputy Special Counsel

Dated: 5/28/2019

Jodi Danis  
Special Litigation Counsel

Craig Fansler  
William Hanrahan  
Trial Attorneys