

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into between R.E.E. Inc. d/b/a McDonald’s (“Respondent”), and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (“IER”) (together, “the Parties”).

I. BACKGROUND

WHEREAS, on October 28, 2017, IER received a charge filed by [REDACTED] (“Charging Party”), DJ#197-74-608 (“IER Charge”), alleging that Respondent rejected her valid temporary driver’s license and unrestricted Social Security card, and requested that she provide more and different documents—specifically, a Permanent Resident Card—to complete the employment eligibility verification process, based on her status as a non-U.S. citizen, in violation of the anti-discrimination provision of the Immigration and Nationality Act, 8 U.S.C. §§ 1324b(a)(1)(B) and (a)(6);

WHEREAS, on November 7, 2017, IER notified Respondent that it had initiated an investigation of the IER Charge;

WHEREAS, on March 29, 2018, IER notified Respondent that IER had initiated an independent investigation, DJ#197-74-618 (collectively with IER Charge, “IER Investigations”), to determine whether Respondent had engaged in a pattern or practice of unfair immigration-related employment practices at its restaurants in the Rio Grande Valley, in violation of 8 U.S.C. §§ 1324b(a)(1)(B) and (a)(6);

WHEREAS, IER concluded based on the IER Investigations that Respondent had improperly terminated the Charging Party on October 14, 2017, because of her citizenship status, due to its practice of rejecting valid List B and List C documents and/or requiring more and different documents issued by the Department of Homeland Security from non-U.S. citizens for employment eligibility verification, in violation of 8 U.S.C. §§ 1324b(a)(1)(B) and (a)(6);

WHEREAS, IER concluded based on the IER Investigations that there is reasonable cause to believe that from at least October 14, 2015, to at least December 31, 2017, Respondent engaged in a pattern or practice of unfair documentary practices based on citizenship status in its 30 restaurants located in the Rio Grande Valley of Texas, in violation of 8 U.S.C. § 1324b(a)(6). Specifically, Respondent required non-U.S. citizens, but not U.S. citizens, to present specific documents issued by the Department of Homeland Security to begin orientation; and

WHEREAS, the Parties 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 below mutual promises, and to fully and finally resolve the IER Investigations 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, referred to as the “Effective Date.” The term of this Agreement is three years following the Effective Date.
2. Respondent shall pay a civil penalty to the United States Treasury in the amount of \$82,800.00. Respondent shall pay the monies discussed in this paragraph via the FedWire electronic fund transfer system within 15 days of either the Effective Date or receipt of fund transfer instructions from IER, whichever is later. On the day of payment, Respondent shall confirm via email to Craig Fansler and Sejal Jhaveri at Craig.Fansler@usdoj.gov and Sejal.Jhaveri@usdoj.gov that payment was made.
3. This Agreement resolves any and all differences between the Parties with respect to the IER Investigations through the Effective Date. IER shall not seek from Respondent any additional civil penalty, beyond that referenced in paragraph 2, for the violations of 8 U.S.C. §§ 1324b(a)(1) and (a)(6) that are the subject of the IER Investigations through the Effective Date.
4. Respondent shall pay the Charging Party \$8,746.43 for lost wages plus accumulated interest, calculated at the IRS underpayment rate, through the Effective Date. Respondent may withhold applicable taxes based on the tax rate of the current calendar year. Respondent shall follow the applicable instructions contained in IRS Publication 957.
5. Respondent shall compensate individuals who suffered economic injury in the form of loss of pay due to Respondent’s practices (“Qualified Individuals”). Qualified Individuals shall include any individuals as defined under § 1324b(a)(3) who lost pay, including from failure to hire, delayed hire, or other periods of lost work, as a result of Respondent’s employment eligibility verification practices from October 14, 2015 to December 31, 2017, including any individuals identified through notices posted in McDonald’s restaurants in the Rio Grande Valley. IER shall determine which potential claimants are Qualified Individuals using the procedures in Attachment A.
6. Pursuant to 8 U.S.C. § 1324b, Respondent shall not discriminate against applicants or employees based on citizenship, immigration status, or national origin, during the recruitment, hiring, firing, and employment eligibility verification or reverification (together, “EEV”) process.
7. Respondent shall avoid discrimination in the EEV process 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. § 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, and (d) permitting all employees to present any document or combination of documents acceptable by law.

8. Respondent shall 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.
9. For the term of this Agreement, Respondent shall post at all its restaurants and orientation locations in the Rio Grande Valley 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 will post the IER Poster in English and Spanish.
10. For 180 days from the Effective Date, Respondent shall post notices about the availability of monetary relief to Qualified Individuals at its restaurants and orientation locations in the Rio Grande Valley. The notices will be customized based on the city in which the restaurant is located. Attachment B contains the notices that will be posted in the restaurants.

The notices in the orientation locations, Attachment C, identify each of Respondent's stores in the Rio Grande Valley by address.

- a. The notices shall include a title no smaller than 42-point font, other text no smaller than 16-point font, and Respondent shall post them in a place readily visible to the patrons (for Attachment B) and orientation participants (for Attachment C) for 180 days from the Effective Date.
 - b. If IER notifies Respondent that the notices in Paragraph 10 should include a different recipient or phone number, Respondent shall update, reprint, and repost each notice accordingly within 15 days of IER's notification.
 - c. By August 16, 2019, or within 10 days of the information change pursuant to Paragraph 10(b), Respondent shall email Craig Fansler and Sejal Jhaveri at Craig.Fansler@usdoj.gov and Sejal.Jhaveri@usdoj.gov (or any other person IER designates) photos of each restaurant's and orientation location's posting taken in a manner that IER can evaluate each notice's placement and language.
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, specifying Form I-9 documents, or rejecting valid Form I-9 documents, because of an individual's citizenship, immigration status, or national origin; and
 - b. 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.

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 employment eligibility verification process (including reviewing documentation that individuals may use to complete the Form I-9) (collectively, “HR personnel”), shall:
 - a. Attend a free IER training on their obligation to comply with 8 U.S.C. § 1324b, as follows:
 - i. The training shall consist of viewing the IER Employer/HR Representative webinar presentation, and participants shall register at <https://www.justice.gov/crt/webinars>.
 - ii. 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 all costs associated with any training sessions.
 - iii. Respondent shall confirm HR personnel attendance at each training session via email to Craig.Fansler@usdoj.gov and Sejal.Jhaveri@usdoj.gov (or any other person who IER designates) within 10 days of completion.
 - iv. During the term of this Agreement, all new HR personnel hired or promoted after the training described in this paragraph has been conducted, shall attend an IER Employer/HR webinar within 60 days of hire or promotion.
 - b. Complete the training assessment tool (Attachment D) to confirm their understanding of proper Form I-9 procedures, as described herein:
 - i. Respondent shall require HR personnel to answer the 15 multiple-choice assessment questions in Attachment D. In advance of the assessment, Respondent shall provide employees with the United States Citizenship and Immigration Services Handbook for Employers (M-274), Form I-9 Instructions, and Respondent’s training materials.
 - ii. Respondent shall review and score each HR personnel’s responses to the assessment questions. If any HR personnel selects an incorrect response, Respondent shall, within five days, inform the individual that the answer is incorrect, administer the question(s) again, and require the individual to indicate where in the M-274, Form I-9 Instructions, or Respondent’s training material the individual found the correct answer. Respondent will

re-administer the assessment tool questions until each HR personnel submits correct responses to each question.

- iii. Within 120 days of the Effective Date, Respondent shall provide via email to Craig.Fansler@usdoj.gov and Sejal.Jhaveri@usdoj.gov (or any other person who IER designates) the following: a list identifying by name, title, and store number the HR personnel who completed the assessment tool; the number of individuals who answered each question incorrectly in their first attempt; and confirmation that ultimately all HR personnel correctly answered each question in the assessment.
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 are not encompassed within the IER Investigations or that arise after the Effective Date.

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 IER Investigations. 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 Southern District of Texas 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 concerning the violations of 8 U.S.C. § 1324b that IER has reasonable cause to believe that Respondent 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 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 parts, terms or provisions shall not be affected and the 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.
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.

R.E.E. Inc.

By: 
Russell Ellis
President

Dated: 

Immigrant and Employee Rights Section

By: 
Alberto Ruisanchez
Deputy Special Counsel

Dated: 8-5-2019

Liza Zamd
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