

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between Service Minds Inc. d/b/a Mister Sparky (“Respondent”), and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (“IER”) (collectively “Parties”).

I. BACKGROUND

WHEREAS, on September 11, 2019, IER accepted as complete a charge filed by [REDACTED] (“Charging Party”) on behalf of [REDACTED] (“Injured Party”) against Respondent, DJ no. 197-17M-348 (“Charge”), alleging violations of the anti-discrimination provision of the Immigration and Nationality Act, 8 U.S.C. § 1324b.

WHEREAS, after investigation of the Charge (“Investigation”), IER determined that there is reasonable cause to believe that Respondent retaliated against the Injured Party in violation of 8 U.S.C. § 1324b(a)(5). Specifically, IER determined that Respondent stopped considering the Injured Party’s employment application because the Charging Party and Injured Party objected when a Respondent employee stated, incorrectly, that Respondent only hired U.S. citizens.

WHEREAS, Respondent specifically denies any wrongdoing or liability associated with the allegations by the Charging Party and/or Injured Party.

WHEREAS, the Parties wish to resolve the Investigation 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 Investigation, as of the date of this Agreement, the Parties agree as follows:

II. TERMS OF AGREEMENT

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 of \$3,695 via the FedWire electronic fund transfer system within 21 days of the Effective Date or Respondent’s receipt of fund transfer instructions from IER, whichever is later. Within 10 days of the Effective Date, Respondent shall give IER the name, email address, and phone number, of the individual responsible for making the Fedwire Payment. On the day of payment, Respondent shall confirm this payment via email to Liza Zamd at Liza.Zamd@usdoj.gov (or any other individual IER designates).
3. The provisions of paragraph 2 notwithstanding, IER shall not seek from Respondent any additional civil penalty for the refusal to hire the Injured Party in violation of 8 U.S.C. § 1324b that is the subject of the IER Investigation, through the Effective Date.

4. Within 21 days of the Respondent receiving the Injured Party's signed release of claims, that is limited to his potential claims under 8 U.S.C. § 1324b through the Effective Date (Attachment A), Respondent shall pay the Injured Party the amount of **\$24,581**, less any deductions and withholdings required by law. The sum, which comprises back pay and six months of front pay, includes a calculation of base wages, bonuses, benefits, and other forms of compensation that the Injured Party would have received if he worked for Respondent during the relevant period, plus interest, minus the amount the Injured Party earned with reasonable diligence. In addition:
 - a. Respondent shall follow the applicable instructions contained in IRS Publication 957 with respect to the payment;
 - b. Respondent shall make the payment in accordance with the Injured Party's preferred method, which IER will communicate to the Respondent;
 - c. Within three days of making the payment, Respondent shall confirm the disbursement of funds via email to Liza Zamd at Liza.Zamd@usdoj.gov (or any other individual IER designates); and
 - d. Within 45 days after remitting the Injured Party's W-2 form for calendar year 2021 to the Social Security Administration (but not before doing so), Respondent shall file a special report to the Social Security Administration allocating the payment made to the Injured Party pursuant to this paragraph to the appropriate periods. On the day Respondent submits the documentation, Respondent shall confirm via email to Liza Zamd at Liza.Zamd@usdoj.gov (or any other individual IER designates) that Respondent submitted such documentation to the Social Security Administration and the date it was submitted.
5. Pursuant to 8 U.S.C. § 1324b, Respondent shall not discriminate based on citizenship, immigration status, or national origin against individuals 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 an IER Investigation or exercising of any right or privilege secured by 8 U.S.C. § 1324b.
6. Within 120 days of the Effective Date, Respondent shall review and revise any existing employment application questions, policies, training materials, or guidelines that relate to hiring and/or nondiscrimination on the basis of citizenship status and national origin and submit them to IER for review and approval. To the extent necessary, Respondent shall revise them to:
 - a. Ensure that they do not constitute or facilitate discrimination on the basis of citizenship, immigration status, or national origin in the recruiting, applicant screening, hiring, employment eligibility verification, and firing processes.
 - b. Refer applicants and employees who complain, formally or informally, of discrimination in the hiring, firing, or Form I-9 employment eligibility verification and reverification process immediately to the Immigrant and Employee Rights Section by providing the individuals with the following written notice "If you have any questions about discrimination in hiring, firing, or recruitment, including issues relating to the Form I-9

or E-Verify processes, you can get more information about your rights at www.justice.gov/ier or by calling 800-255-7688 Monday-Friday, 9am-5pm ET."

- c. Provide that Respondent shall not take any reprisal action against any individual for having opposed any employment practice made unlawful by 8 U.S.C. § 1324b, or for filing any charge, or participating in a lawful manner in any investigation or action arising under 8 U.S.C. § 1324b.
7. Respondent shall not, directly or indirectly, disclose to any individual, employer, or prospective employer of the Injured Party, any information or documentation related to the Investigation, this Agreement, or the Charge, unless required by law, and excepting Respondent employees who are necessary to effectuate the terms of this Agreement.
8. Respondent shall, within 14 days of the Effective Date, post an English version and Spanish version of the IER "If You Have The Right to Work" poster ("IER Poster") in color measuring no smaller than 8.5" x 11" (available at <https://www.justice.gov/crt/worker-information#poster>) in all places where Respondent normally posts notices to employees and shall keep them posted for at least the term of this Agreement.
9. Within 120 days of the Effective Date, every Respondent employee who has any role in recruitment, hiring, or employment eligibility verification ("Hiring Personnel"), shall participate in a training on 8 U.S.C. § 1324b as follows:
 - a. In light of COVID-19 concerns, IER will conduct the training remotely at a time mutually agreed upon by the Parties, and without charge.
 - b. Respondent shall pay its employees their normal rate of pay for the training, and Respondent will bear all employee costs, if any, associated with the training.
 - c. During the term of this Agreement, all Hiring Personnel hired or promoted after the training described in this paragraph has been conducted, shall attend a free IER Employer/HR webinar within 60 days of hire or promotion.
 - d. When any Hiring Personnel attends any training pursuant to this paragraph, Respondent shall send Liza Zamd at Liza.Zamd@usdoj.gov (or any other individual IER designates) attendance records within 14 days of each training listing the full name, job title, date of training, and signature of all individuals who attended the training.
10. During the term of this Agreement, IER reserves the right to make such reasonable inquiries as IER believes necessary or appropriate to assess Respondent's compliance with this Agreement, including, but not limited to, requiring written reports from Respondent concerning its compliance; inspecting Respondent's premises; interviewing Respondent's employees, officials, or other persons; and reviewing copies of Respondent's records. All such inquiries shall be in writing. Respondent shall comply with IER's requests for documents, interviews or inspection of the premises within 30 days unless Respondent and IER mutually agree to a different period of time to comply.


11. 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 before initiating a new discrimination investigation or seeking to judicially enforce this Agreement. Respondent shall have 30 days from the date IER notifies it of a purported violation to cure the violation to IER's satisfaction.
12. This Agreement does not affect the right of any individual to file a charge alleging an unfair immigration-related employment practice against Respondent, IER's authority to investigate such a charge, or IER's authority to conduct an independent investigation of Respondent's employment practices.

III. ADDITIONAL TERMS OF SETTLEMENT

13. 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. 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.
14. This Agreement resolves any and all differences under 8 U.S.C. § 1324b between the Parties relating to the Charge through the Effective Date.
15. The United States District Court for the Middle 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 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.
16. If a court declares any provision of this Agreement to be illegal or invalid, the validity of the remaining provisions shall not be affected. The Parties agree that they will not, individually or with or through another, seek to have any court declare or determine that any provision of this Agreement is invalid. For purposes of interpreting this Agreement, both parties shall be deemed to have drafted it.
17. The Parties agree that, as of the Effective Date, litigation concerning the violations of 8 U.S.C. § 1324b 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.
18. The Parties shall bear their own costs, attorneys' fees, and other expenses incurred in this investigation.

19. The Parties may execute this Agreement 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 electronic or facsimile signatures.

Service Minds, Inc. D/B/A Mister Sparky

By: 
David Connolly
President

Date: 2/3/2021

Immigrant and Employee Rights Section

By: 
Jennifer Deines

Date: 2/4/2021

Jennifer Deines
Acting Deputy Special Counsel

Jodi Danis
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Liza Zamd
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