

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Agreement”) is made and entered into by and between Autobuses Ejecutivos, LLC, d/b/a Omnibus Express (“Respondent”), and the United States Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices (“Office of Special Counsel” or “OSC”).

WHEREAS, on December 27, 2012, the Office of Special Counsel opened an independent investigation of Respondent, DJ# 197-74-457 (the “OSC Investigation”), to investigate whether the Respondent engaged in a pattern or practice of citizenship status discrimination in violation of the immigration-related unfair employment practices provisions of 8 U.S.C. § 1324b (the “Act”).

WHEREAS, the Office of Special Counsel concluded based upon the OSC Investigation that there is reasonable cause to believe that Respondent engaged in a pattern or practice of citizenship status discrimination in recruitment and hiring against U.S. citizens and other protected individuals in violation of the Act.

WHEREAS, on August 5, 2013, the Office of Special Counsel filed a Complaint with the Office of the Chief Administrative Hearing Officer (“OCAHO”), Case No. 13B00094 (the “Litigation”), alleging unfair immigration-related employment practices by Respondent that dated back to “at least September 2012.”

WHEREAS, Respondent disputed the findings of the OSC Investigation and has denied, and continues to deny, all such allegations of violations of the Act, including, but not limited, to the allegations in the Litigation.

WHEREAS, the Office of Special Counsel and Respondent wish to resolve the OSC Investigation and the Litigation without further delay or expense and hereby acknowledge that they are voluntarily entering into this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained and to fully and finally resolve all disputes between OSC and Respondent hereto as of the date of this Agreement, it is agreed as follows:

1. Respondent agrees to pay a civil penalty to the United States Treasury in the amount of thirty seven thousand, eight hundred dollars (\$37,800.00).
2. The monies discussed in paragraph 1 shall be paid in two (2) equal installments of eighteen thousand, nine hundred dollars (\$18,900.00) each, via the FedWire electronic fund transfer system. The first installment payment shall be made within ten (10) business days after the Respondent receives instructions from OSC on the process of fund transfers through the FedWire system and a fully signed copy of this Agreement. The second payment shall be made within 60 calendar days from the date of the first payment, using the same, above-described payment process. Notice of each installment payment

shall be emailed to Erik Lang at Erik.Lang@usdoj.gov on the day the funds are transferred.

3. Respondent shall set aside a fund of two hundred and eight thousand dollars (\$208,000.00) to compensate Qualified Individuals for alleged economic damages as outlined below:
 - (a) Within thirty (30) calendar days of the effective date of this Agreement, the Office of Special Counsel will send a written notification (“Attachment A”) by U.S. mail or electronic mail to all individuals identified by Respondent during the Litigation and/or discovered by OSC as having applied for a bus driver position with Respondent from August 2012 to February 2013 to determine if any such individuals are entitled to compensation for lost wages. Any individual who claims to have applied for a bus driver position with Respondent from August 2012 to February 2013, but whose application was not provided by Respondent to the Office of Special Counsel during the Litigation, will have an opportunity to provide information and/or documentation to the Office of Special Counsel demonstrating that he or she applied during the relevant time period, and, if deemed appropriate by the Office of Special Counsel, be included in the notification process described below;
 - (b) All individuals will be given sixty (60) calendar days from the date the notice (“Attachment A”) is mailed to submit a completed Applicant Statement Back Pay Form to the Office of Special Counsel;
 - (c) The Office of Special Counsel will determine the amount of back pay it believes each Qualified Individual is owed. It will then notify Respondent of the amount it believes each Qualified Individual is owed and provide a written explanation for the amount and/or copies of any supporting documents to Respondent;
 - (d) The formula to be used by the Office of Special Counsel for the calculation of back pay described in Paragraph 3(c) for any Qualified Individual will be the amount of time the Qualified Individual was out of work after applying for, but not having received, a bus driver position with Respondent, or was in a job that paid less than the wages the individual would have earned had she or he been hired by Respondent, multiplied by a wage rate of \$693.20 per week to be pro-rated to the day. The potential period of compensation for each Qualified Individual shall begin one week after the job application/resume was submitted or was attempted to be submitted to Respondent and shall end on September 14, 2013;
 - (e) Within thirty (30) calendar days from the date on which the Office of Special Counsel provides Respondent with the back pay determination, written explanation, and any supporting documents for each individual pursuant to paragraph 3(c), Respondent will notify the Office of Special

Counsel in writing if it disagrees with any back pay determination together with an explanation for its position and copies of any supporting documents. If Respondent bases its disagreement on any facts pertaining to the applicant that existed at the time of application, Respondent will provide copies of the documents reflecting the facts Respondent relies upon;

- (f) In the event the Office of Special Counsel and Respondent disagree over a back pay determination, the Office of Special Counsel will make the final determination regarding the amount to be paid and will, within thirty (30) calendar days of receiving information under paragraph 3(e), notify Respondent in writing of its final determination;
- (g) Within ten (10) business days from Respondent's receipt of the final back pay determination pursuant to paragraph 3(c) or 3(f), Respondent will send each Qualified Individual a notice in the form of Attachment B indicating the amount of back pay, a release of liability, and a Form W-4;
- (h) Within thirty (30) calendar days from Respondent's receipt of the signed release of liability and completed Form W-4, Respondent will send the individual the back pay amount in the form of a check sent by certified mail accompanied by a payment transmittal notice, with a copy of the check and payment transmittal notice sent to the Office of Special Counsel. Respondent may withhold applicable taxes and withholdings;
- (i) If the \$208,000 fund is insufficient to cover the claims of all Qualified Individuals, Respondent shall compensate these individuals with a pro rata share of the fund. The parties agree that Respondent's total liability to Qualified Individuals shall not exceed \$208,000; and
- (j) Any language in communications to Qualified Individuals relating to any release of claims against Respondent other than Attachment A and Attachment B shall be submitted to the Office of Special Counsel for review, and any release must be limited to the claims referenced in this Agreement.

4. A "Qualified Individual," as described in Paragraph 3 above, shall be any citizen of the United States, lawful permanent resident, alien authorized to work, asylee, or refugee who applied for and did not receive an offer of employment with the Respondent for a bus driver position during the period August 2012 to February 2013 who met the criteria established for the position at the time of application. The criteria are:

- a. Minimum of 5 months of bus driving experience;
- b. A Class A or Class B CDL with a passenger endorsement or an ability to have obtained one;

- c. Able to pass DOT medical exam and pre-employment drug and alcohol tests; and
 - d. Able to meet Respondent's standards with regard to driving record, criminal record, and Pre-Employment Screening Program (PSP) report.
5. Respondent shall not discriminate on the basis of citizenship status or national origin in violation of 8 U.S.C. § 1324b and will treat all individuals equally, without regard to citizenship or immigration status, or national origin, during the hiring, firing, and employment eligibility verification and re-verification process.
6. Respondent will not intimidate, threaten, coerce, or retaliate against any individual for his or her participation in the OSC Investigation or the Litigation or the exercise of any right or privilege secured by 8 U.S.C. § 1324b.
7. Unless it has already done so as a condition for its access to the Department of Homeland Security's E-Verify program, Respondent shall post an English and Spanish version of the Office of Special Counsel "If You Have The Right to Work" poster ("OSC Poster"), in color and measuring no smaller than 8.5" x 11", an image of which is available at <http://www.justice.gov/crt/about/osc/htm/worker.php#>, in all places where notices to employees and job applicants are normally posted at Respondent's Texas offices in Houston, Brownsville, McAllen, Roma, San Antonio, Dallas, Garland, and Laredo and in Respondent's Atlanta, GA; Charlotte, NC; Plant City, FL; Nashville, TN; and Indianapolis, IN offices. The OSC Poster will be posted within fourteen (14) business days from the effective date of this Agreement and will remain posted for two (2) years thereafter.
8. Beginning not more than fourteen (14) business days from the date that Respondent receives a fully signed copy of this Agreement, Respondent will provide a letter-size copy of the OSC Poster in English and Spanish with all paper employment applications, and an electronic link to the English and Spanish versions of the OSC Poster with all electronic applications, and Respondent will continue to do so for two (2) years thereafter.
9. Within thirty (30) calendar days of receipt of a fully signed copy of this Agreement, Respondent will review its employment policies and revise such policies to prohibit discrimination on the basis of citizenship status or national origin in the recruiting, hiring, and firing processes.
10. During the two (2) years following the effective date of this Agreement (the "Reporting Period"), Respondent shall provide any changes in employment policies as they relate to nondiscrimination on the basis of citizenship status and national origin to the Office of Special Counsel at least thirty (30) calendar days prior to the effective date of such revised policies.

11. During the Reporting Period, Respondent shall retain a copy of every job application and resume that is submitted to Respondent in either hard copy or electronic copy (including through the Texas Workforce Commission) for a bus driver position.
12. During the Reporting Period, Respondent shall keep a written, permanent record of the action(s) it took with respect to each application and resume identified in paragraph 11 above, including whether or not the individual was interviewed, offered a job, hired, or not selected and the reason(s) for the non-selection.
13. During the Reporting Period, Respondent shall keep a copy of all H-2B-related forms, documents, applications, petitions, letters, and responses to requests for more information that it submits to and receives from the U.S. Department of Labor and/or U.S. Citizenship and Immigration Services.
14. Within fourteen (14) business days of receipt of a written request, Respondent will provide the Office of Special Counsel with copies of the documents described in paragraphs 11, 12, and 13 above.
15. The Office of Special Counsel reserves the right to make other reasonable inquiries to Respondent necessary to determine Respondent's compliance with this Agreement such as inspecting Respondent's premises or examining witnesses.
16. If the Office of Special Counsel has reason to believe that Respondent is in violation of any provision of this Agreement, the Office of Special Counsel will notify Respondent of the purported violation. Respondent will then be given thirty (30) calendar days from the date it is notified by the Office of Special Counsel in which to cure the violation before Respondent is deemed by the Office of Special Counsel to be in violation of this Agreement.
17. This Agreement does not affect the right of any individual to file a charge alleging an unfair immigration-related employment practice against Respondent with the Office of Special Counsel, the authority of the Office of Special Counsel to investigate or file a complaint on behalf of any such individual, or the authority of the Office of Special Counsel to conduct an independent investigation of Respondent's employment practices.
18. This Agreement resolves any and all differences between the parties relating to the OSC Investigation and the Litigation through the date this Agreement is signed by the parties.
19. The provisions of paragraph 1 notwithstanding, the Office of Special Counsel shall not seek from Respondent any additional civil penalty for the pattern or practice of citizenship status discrimination in violation of 8 U.S.C. § 1324b that was the subject of the OSC Investigation and the Litigation through the date this Agreement is signed by all parties.

20. This Agreement shall have the same force and effect as a decision and order made by the Office of the Chief Administrative Hearing Officer after full hearing and may be enforced in the United States District Court for the Southern District of Texas.
21. The parties agree to jointly move the Office of the Chief Administrative Hearing Officer under 28 C.F.R. § 68.14(a)(2) to dismiss the Litigation, Case No. 13B00094, with prejudice based on the terms and conditions of this Agreement.
22. Should any part, term or provision of this Agreement be declared or determined by any court to be illegal or invalid, the legality or 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, term or provision of this Agreement. Respondent and the Office of Special Counsel agree that they will not, individually or in combination with another, seek to have any court declare or determine that any part, term or provision of this Agreement is illegal or invalid.
23. The Office of Special Counsel and Respondent agree to bear their own costs, attorneys' fees and other expenses incurred in the OSC Investigation and the Litigation.
24. 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.

25. The effective date of this Agreement shall be the date that the second party signing this Agreement transmits a copy of the signature page to the first party who signed the Agreement.

Autobuses Ejecutivos, LLC, d/b/a Omnibus Express

By:

Eduardo Casillas
President

Dated: _____

Office of Special Counsel for Immigration-Related Unfair Employment Practices

By:

Alberto Ruisanchez
Deputy Special Counsel

Dated: _____

C. Sebastian Aloom
Special Litigation Counsel

Erik W. Lang & Jennifer Deines
Trial Attorneys

Joann Sazama
Equal Opportunity Specialist