

## **SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT (the “Agreement”) is made and entered into between United Continental Holdings, Inc./United Airlines, Inc. (formerly Continental Airlines) and any of their parents (and parents’ subsidiaries), subsidiaries, agents, directors, officers, employees, and representatives (collectively, “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”).

WHEREAS, on July 19, 2013, the Office of Special Counsel notified Respondent that it was initiating an independent investigation of Respondent United Continental Holdings, Inc. and Respondent’s company formerly-known as Continental Airlines, DJ# 197-74-471, (the “OSC Investigation”) alleging a violation of the unfair immigration-related employment practices provision of 8 U.S.C. § 1324b(a)(6) (the “Act”). The OSC Investigation and the findings that resulted were limited only to the practices of Continental Airlines.

WHEREAS, the Office of Special Counsel concluded, based upon the OSC Investigation, that there is reasonable cause to believe that Respondent’s company formerly-known as Continental Airlines committed unfair documentary practices in violation of the Act by unnecessarily subjecting lawful permanent residents to reverification because of their citizenship status.

WHEREAS, Respondent disagrees with the Office of Special Counsel’s reasonable cause determination and does not admit (by this Agreement or otherwise) to violating any provision of the Act.

WHEREAS, the Office of Special Counsel and Respondent wish to resolve the OSC Investigation 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 the OSC Investigation among the parties hereto as of the date of this Agreement, it is agreed as follows:

1. Respondent shall make a payment to the United States Treasury in the amount of two hundred and fifteen thousand dollars (\$215,000.00) to resolve the OSC Investigation.
2. The monies discussed in paragraph 1 shall be paid via the FedWire electronic fund transfer system within twenty-one (21) days from the effective date of this Agreement. The Office of Special Counsel shall provide Respondent with fund transfer instructions. On the day of payment, Respondent shall confirm via email to Joann Sazama at joann.sazama@usdoj.gov that the payment was made.
3. Respondent shall set aside a fund of fifty-five thousand dollars (\$55,000.00) (hereinafter, the “Fund”) to compensate any individuals who suffered economic damages, including suspension, termination, or other periods of lost work, or loss of seniority as a

result of Respondent's employment eligibility reverification practices alleged by OSC to be improper. To effectuate the purposes of this paragraph, Respondent and OSC shall complete the following steps:

- (a) Within sixty (60) days following the effective date of this Agreement, Respondent will modify Attachment A, which was provided to Respondent by the Office of Special Counsel on September 4, 2014, to insert the "address," "city," "state," and "zip code" fields with the last known address, if available, for all individuals identified in Attachment A, and will send such Attachment via email to joann.sazama@usdoj.gov. Respondent will exercise due diligence in its search for the last known addresses. Within thirty (30) days of receiving the last known address for all individuals, OSC will send a Back Pay Notice Letter (Attachment B) by U.S. mail to those individuals listed in Attachment A, with a copy to the Respondent.
- (b) All individuals to whom the Back Pay Notice Letter is sent will be given sixty (60) days from the date of the postmark of the letter to contact the Office of Special Counsel if they believe they are entitled to compensation.
- (c) Every thirty (30) days during the period described in paragraph 3(e), the Office of Special Counsel shall notify Respondent of any claim of back pay (including the name of each claimant and a time frame of the alleged adverse action for each claimant) that the Office of Special Counsel received in the prior thirty (30) days from recipients of the Back Pay Notice letter, so that Respondent may retrieve and begin reviewing relevant records to facilitate the assessment of the claim.
- (d) Within thirty (30) days of Respondent's receipt of the Office of Special Counsel's notice under paragraph 3(c), Respondent shall provide the Office of Special Counsel with copies of relevant employment records (e.g. payroll records, scheduling records) for each identified claimant during the date range provided. The Office of Special Counsel will review these records before making a determination pursuant to subparagraph 3(e);
- (e) Within two hundred and ten (210) days from the effective date of this Agreement, the Office of Special Counsel will determine the amount of lost wages and/or seniority it believes each individual who has contacted the Office of Special Counsel pursuant to paragraph 3(b) is owed. The Office of Special Counsel will notify Respondent in writing of the compensation it believes each individual is owed;
- (f) Within forty-five (45) days of Respondent's receipt of the Office of Special Counsel's determinations pursuant to subparagraph 3(e), above, Respondent will notify the Office of Special Counsel in writing if it disagrees with any lost wages or seniority award as determined by the

Office of Special Counsel pursuant to paragraph 3(e). The Office of Special Counsel will review Respondent's written objection, and, if necessary, revise its award determination. If Respondent has no objections to the Office of Special Counsel's award determination under 3(e) for a particular individual, Respondent will then comply with subparagraphs 3(g) and 3(h). The parties will negotiate in good faith to resolve any disagreement with respect to lost wages or seniority. If the Office of Special Counsel still believes, after receiving and reviewing Respondent's objections and considering the compensation factors set forth in this paragraph, that an individual is qualified for award relief, the Office of Special Counsel will notify Respondent in writing and direct Respondent to make payment of the Office of Special Counsel's proposed award pursuant to subparagraph 3(g)-(h).

- (g) Within sixty (60) days from the final determination that a claimant is entitled to payment from the Fund, Respondent will send the claimant a notice, in the form of Attachment C, indicating the award of back pay and/or restoration of seniority to be received, in addition to a release of liability from any and all claims the individual may have against Respondent arising out of or relating to the alleged violation(s) that have been the subject of the Office of the Special Counsel investigation;
- (h) Within seventy (70) days following the sending of the notice in Attachment C, Respondent shall pay the amount of lost wages owed and/or restore the loss of seniority to all individuals entitled thereto;
- (i) Respondent will make such payment subject to receipt of: (i) the necessary documents needed to process and effectuate payment and to comply with IRS Publication 957, such as banking, tax, or payment related information and/or documentation (e.g. bank account number, bank routing number, name on the account, transfer instructions) and (ii) an executed release of liability, as referenced in subparagraph 3(g) above;
- (j) The text of the release of liability to be executed by individuals claiming entitlement to payment from the Fund shall be submitted to the Office of Special Counsel for review and comment prior to the execution of such release; the release of claims must be limited to violations of the Act for which the payment of lost wages and/or restoration of seniority relate;
- (k) Any monies used to compensate individuals pursuant to this paragraph shall be paid by check payable to each individual and sent via express mail or another method by which Respondent routinely compensates its active employees. Respondent shall follow the applicable instructions contained in IRS Publication 957;

- (l) Within twenty (20) days of payment of lost wages and/or restoration of seniority, Respondent shall provide to the Office of Special Counsel a certified record of the name of and compensation received by each individual;
  - (m) If the \$55,000 Fund is insufficient to cover the claims of individuals determined to be entitled to payment from the Fund, Respondent shall compensate these individuals a pro rata share of the sum of \$55,000; The Parties agree that Respondent's total liability to individuals claiming payment pursuant to this paragraph shall not exceed \$55,000; and
  - (n) Any portion of the Fund that is not used to cover the claims of individuals pursuant to the terms of this Agreement shall be retained by Respondent, as fully unencumbered property of the Respondent.
- 4. Respondent shall not discriminate on the basis of citizenship status or national origin in violation of 8 U.S.C. § 1324b.
- 5. Respondent shall comply with the terms of 8 U.S.C. § 1324b(a)(6), which prohibits refusing to honor documents that on their face reasonably appear to be genuine, or requesting more or different documents than are required under 8 U.S.C. § 1324a(b) if made for the purpose or with the intent of discriminating against an individual in violation of 8 USC § 1324b(a)(1).
- 6. Respondent shall comply with the terms of 8 U.S.C. § 1324b(5), which makes it an unfair immigration-related employment practice to intimidate, threaten, coerce, or retaliate against any person for the purpose of interfering with any right or privilege secured under 8 U.S.C. § 1324b or because the individual intends to file or has filed a charge or complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under 8 U.S.C. § 1324b.
- 7. Respondent shall post the Office of Special Counsel's "If You Have The Right to Work" poster ("OSC Poster"), in color and measuring no smaller than 11" x 14", 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. The OSC Poster will be posted within thirty (30) days from the effective date of this Agreement and will remain posted for three (3) years thereafter. The OSC Poster shall be posted in at least English and Spanish.
- 8. For two (2) years from the effective date of this Agreement, Respondent shall ensure that all individuals who are responsible for formulating, carrying out, and/or conducting training on Respondent's employment eligibility verification policies during the two-year period, including all managers and employees who have any role making or carrying out employment eligibility verification policies and practices, such as completing the Form I-9 and/or using the E-Verify system ("Verifying Personnel"), are in possession of the most current version of the Form I-9, USCIS Employment Eligibility Verification Handbook for Employers (M-274) ("Handbook"), available

at [www.uscis.gov/I-9Central](http://www.uscis.gov/I-9Central), and the most current USCIS E-Verify Manual (M-775) (“Manual”), available at: [www.uscis.gov/USCIS/Verification/E-Verify/E-Verify\\_Native\\_Documents/manual-employer\\_comp.pdf](http://www.uscis.gov/USCIS/Verification/E-Verify/E-Verify_Native_Documents/manual-employer_comp.pdf). Copies of these documents and future revisions of the Form I-9, Handbook, and Manual can be obtained from the United States Citizenship and Immigration Services at [www.uscis.gov](http://www.uscis.gov).

9. Within sixty (60) days from the effective date of this Agreement, Respondent shall review its employment policies as they relate to nondiscrimination under 8 U.S.C. § 1324b and shall revise them, as necessary, and provide them for review and comment by the Office of Special Counsel. The employment policies shall incorporate the following provisions:
  - (a) Prohibiting (1) requesting employment eligibility verification documents from any individual prior to making an offer of employment; (2) discrimination on the basis of citizenship status or national origin in the recruiting, hiring, and firing process; and (3) discrimination on the basis of citizenship status or national origin during the employment eligibility verification and reverification process;
  - (b) Posting the Office of Special Counsel poster in a visible location in each HR office Respondent maintains; and
  - (c) Prohibiting 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.
10. During the two (2) years following the effective date of this Agreement (the “Reporting Period”), Respondent shall provide for comment 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 for review at least thirty (30) days prior to the effective date of such revised policies.
11. Within sixty (60) days of the effective date of this Agreement, Respondent will modify the fields in all of its Compas “Expiring Document” reports to exclude Permanent Resident Cards.
12. Within seventy-five (75) days of the effective date of this Agreement, Respondent will provide the Office of Special Counsel with a written description of all steps taken to ensure that all of its Compas “Expiring Document” reports exclude Permanent Resident Cards. Respondent will also provide the Office of Special Counsel with a copy of the most current Compas “Expiring Document” reports.
13. Within ninety (90) days of the effective date of this Agreement, all Employee Information Services (EIS) personnel (or the personnel of any subsequent or successor office performing the same function) involved in I-9 compliance (“EIS Personnel”)

shall join the Office of Special Counsel's email distribution list at <http://www.justice.gov/govdelivery/subscribe.html>.


14. Within one hundred and eighty (180) days of the effective date of this Agreement, all individuals involved in the Form I-9 and E-Verify process ("Verifying Personnel") shall undertake the training specified in subparagraph 14(a) below relating to the obligation to comply with 8 U.S.C. § 1324b, the appropriate use of E-Verify, and the employment eligibility verification and reverification process as it relates to discrimination on the basis of citizenship status or national origin.
  - (a) The training will consist of viewing a remote webinar presentation. Participants shall register for the webinar presentation at [www.justice.gov/crt/about/osc/webinars.php](http://www.justice.gov/crt/about/osc/webinars.php).
  - (b) All employees will be paid their normal rate of pay during the training, and the training will occur during their normally scheduled workdays and work hours. Respondent shall bear all costs associated with these training sessions.
  - (c) During the Reporting Period, all employees who take on "Verifying Personnel" responsibility after the training described in this paragraph has been conducted shall undergo the training specified in subparagraph (a) above within sixty (60) days of taking on such responsibility.
  - (d) Respondent shall compile attendance records listing the individuals who attend the training described in this paragraph, in the form of Attachment D, including their full name, title, and the date of the training, and send them via email to [joann.sazama@usdoj.gov](mailto:joann.sazama@usdoj.gov).
  - (e) Once the Reporting Period has ended, Respondent is free to determine what training Verifying Personnel should undergo and will not be required to continue to have its personnel trained through use of the OSC webinar referred to in subparagraph 14(a) above.
15. Respondent shall provide the Office of Special Counsel with a list of employees whose work authorization document(s) Respondent reverified during the Reporting Period. This list shall be provided every four (4) months during the first year of the Reporting Period and every six (6) months during the second year of the Reporting Period. The list shall include the following: full name of employee, work authorization document that expired, and expiration date. The Office of Special Counsel reserves the right to request copies of the Forms I-9 and attachments pertaining to individuals who were reverified, as well as their contact information. If the Office of Special Counsel invokes its right to obtain copies of the Forms I-9 and attachments, Respondent agrees to provide them within 30 days of the Office of Special Counsel's request.

16. If during the Reporting Period the Office of Special Counsel has reasonable cause to believe that Respondent is in violation of any provision of this Agreement, the Office of Special Counsel may notify Respondent of the purported violation without opening an investigation. Respondent will then be given thirty (30) 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, or 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 other than the alleged practices that are the subject of the OSC Investigation that is being terminated as a result of this Settlement Agreement.
18. Subject to paragraph 17, the Office of Special Counsel waives and releases Respondent or its successors from all claims and causes of action under 8 U.S.C. § 1324b pertaining to the OSC Investigation through the date this Agreement is signed by all parties. The Office of Special Counsel, except as provided in paragraphs 1 – 3, shall not seek from Respondent or its successors any monetary amount or injunctive or other relief for any matters relating to the OSC Investigation through the date this Agreement is signed by all parties. The Office of Special Counsel further agrees that the OSC Investigation shall be closed upon the execution of this Agreement.
19. This Agreement may be enforced in the United States District Court for the Southern District of Texas or any other court of competent jurisdiction.
20. The Office of Special Counsel and Respondent agree that, as of the effective date of this Agreement, litigation concerning the violations of 8 U.S.C. § 1324b that the Office of Special Counsel alleges it has reasonable cause to believe that Respondent committed is not reasonably foreseeable. To the extent that either 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. 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 thereby and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement. Respondent and the Office of Special Counsel shall not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is invalid.
22. The Office of Special Counsel and Respondent shall bear their own costs, attorneys' fees and other expenses incurred in this action.

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 shall be bound by facsimile signatures.
24. The effective date of the Agreement will be the date on which a copy of the fully-signed agreement is received by OSC and Respondent.

**Respondent**

By:

  
\_\_\_\_\_  
Vania Wit  
Associate General Counsel  
Employment and Executive  
Compensation

Dated:

9/22/2014

**Office of Special Counsel for Immigration-Related Unfair Employment Practices**

By:

  
\_\_\_\_\_  
Alberto Ruisanchez  
Deputy Special Counsel

C. Sebastian Aloom  
Special Litigation Counsel

Elise Sandra Shore  
Special Litigation Counsel

Silvia Dominguez-Reese  
Trial Attorney

Joann Sazama  
Equal Opportunity Specialist

Dated:

9/23/2014