

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Agreement”) is made and entered into by and between United Parcel Service, Inc. (“Respondent”), and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (“IER”) (collectively, “the Parties”).

I. BACKGROUND

WHEREAS, on November 10, 2020, IER accepted as complete a charge filed by [REDACTED] (“Charging Party”) against Respondent, DJ# 197-17M-360 (the “IER Charge”), alleging unfair documentary practices in violation of the anti-discrimination provision of the Immigration and Nationality Act, 8 U.S.C. § 1324b (“Act”);

WHEREAS, on November 19, 2020, IER notified Respondent that it had initiated an investigation (“IER Investigation”) based on the Charging Party’s allegations to determine whether Respondent had engaged in any discriminatory conduct in violation of 8 U.S.C. § 1324b;

WHEREAS, the IER Investigation determined that there is reasonable cause to believe that Respondent discriminated against the Charging Party in violation of 8 U.S.C. 1324b § (a)(6). Specifically, the IER Investigation found that during the employment eligibility verification process (“EEV”) on or about November 2 and 3, 2020, Respondent requested that the Charging Party present more or different employment authorization documents than required by law -- a Permanent Resident Card and “work visa” -- based on his citizenship status after he had already presented sufficient valid documentation. The IER Investigation also found that Respondent made these requests after E-Verify returned a status of “Unconfirmed Data” for the Charging Party due to Respondent’s error in entering his driver’s license expiration date, but Respondent did not request additional or specific documents from U.S. citizens for whom it received the “Unconfirmed Data” status;

WHEREAS, Respondent categorically denies that it engaged in any unlawful discrimination or treated Charging Party or any employee disparately on account of immigration/citizenship status, or violated 8 U.S.C. § 1324b in any manner;

WHEREAS, the Parties wish to resolve the IER Investigation without further delay or expense, and hereby acknowledge that each party is voluntarily entering into this Agreement;

NOW, THEREFORE, in consideration of the mutual promises contained below and to fully and finally resolve the claims raised in the IER Investigation, the Parties agree as follows:

II. TERMS OF SETTLEMENT

1. This Agreement becomes effective as of the date the latest signature below, which date is referenced hereafter as the “Effective Date.” The term of the Agreement shall be 18 months following the Effective Date.

2. Respondent shall pay a civil penalty to the United States Treasury in the amount of \$1,900.00.
3. Respondent shall provide IER with the name, title, email address, and telephone number of the individual responsible for effectuating payment of the civil penalties described in paragraph 2 above no later than 7 calendar days from the Effective Date. Respondent shall pay the monies discussed in paragraph 2 above via the FedWire electronic fund transfer system within 14 calendar days of the Effective Date of this Agreement or receipt of fund transfer instructions from IER, whichever is later. On the day of payment, Respondent shall confirm via email that payment was made to Sam Shirazi at Sam.Shirazi2@usdoj.gov and IER@usdoj.gov. The email confirming payment shall have Respondent's name and the investigation number, DJ # 197-17M-360, in the subject line.
4. Respondent shall, within 15 calendar days from the Effective Date, send the Charging Party, by e-mail and certified mail, a request for the Charging Party to elect a method of payment for the payment referenced in paragraph 5.
5. Respondent shall pay the Charging Party, within 15 calendar days from its receipt of the Charging Party's payment election in writing, the amount of \$552.12 in net wages earned to the Charging Party, which represents \$646.80 earned minus taxes and other required withholdings. Respondent shall pay the Charging Party using the method of payment selected in the Charging Party's payment election form. On the day of payment, Respondent shall confirm via email to Sam Shirazi at Sam.Shirazi2@usdoj.gov and IER@usdoj.gov that payment was made and attach an image of the check.
6. In accordance with 8 U.S.C. § 1324b, Respondent shall not:
 - a. discriminate on the basis of citizenship, immigration status or national origin with respect to hiring, firing, or recruiting or referral for a fee.
 - b. discriminate in the employment eligibility verification and reverification processes; Respondent shall (i) honor 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); (ii) not request more or different documents than are required by law for employment eligibility verification; and (iii) permit all employees to present any document or combination of documents acceptable by law both at initial hire and during any lawful reverification of continued employment authorization.
 - c. intimidate, threaten, coerce, or retaliate against any person for his or her participation in this matter or the exercise of any right or privilege secured by 8 U.S.C. § 1324b.
7. Respondent shall not disclose to any employer or prospective employer of the Charging Party any information or documentation related to the Charging Party's charge filed with

IER or related litigation filed in OCAHO, unless required by law. Nothing in this paragraph prevents UPS from denying allegations or accusations that the Charging Party made against Respondent or its counsel in the Charging Party's litigation filed in OCAHO if Respondent is contacted by an employer or prospective employer and that entity mentions or asks about the litigation, accusations or allegations.

8. To address the meaning and correct handling of an "Unconfirmed Data" message from E-Verify, within 30 calendar days of the Effective Date, Respondent shall send the attached notice (Attachment A) nationwide to all individuals who are responsible for formulating, providing training on, or implementing Respondent's hiring, firing, equal employment, and/or EEV verification policies, including recruiters, corporate human resources, local human resources assistants, supervisors and staff, and employees and contractors who have any role in completing or supervising the employment eligibility verification process, such as completing the Form I-9 and/or using the E-Verify program ("Human Resources Personnel").
9. Respondent shall update all of its EEV and E-Verify policies, procedures, and training materials to explain the proper steps for responding to an "Unconfirmed Data" status that E-Verify may return for a case. The revisions shall be consistent with the information and notification specifications set forth in Paragraph 8. Respondent shall submit them to IER within 60 calendar days of the Effective Date for review and shall implement within 10 calendar days of IER's approval.
10. Within 120 calendar days of the Effective Date, Respondent shall ensure that all Human Resources Personnel at all locations in Jacksonville, FL are trained on their obligations to comply with 8 U.S.C. § 1324b in accordance with the following:
 - a) The training will consist of viewing an "IER Employer/HR Representative" webinar, which is publicly available at <https://www.justice.gov/crt/webinars>.
 - b) All employees or contractors will be paid their normal rate of pay, and the training will occur during their normally scheduled workdays and work hours. Respondent shall bear all costs associated with these training sessions, not including IER's webinar platform or other related expenses.
 - c) During the term of the Agreement, all new Human Resources Personnel in Jacksonville, FL locations who are hired after the training described in this paragraph has been conducted shall attend an IER Employer/HR webinar training within sixty 60 calendar days of hire or promotion.
 - d) Respondent shall compile attendance records listing the individuals who attend the training described in this paragraph. Attendance records shall include each individual's full name, job title, signature, the date of the training, the respective business unit, name and address of the local entity or institution where they work. Records shall be sent via email to Sam Shirazi (or any other individual IER designates) at Sam.Shirazi2@usdoj.gov within

20 calendar days of each training session. The emails transmitting attendance records shall include “UPS” and file number “DJ # 197-17M-360” in the subject line.

11. During the term of this Agreement, IER reserves the right to make such reasonable inquiries as it, in its discretion, 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 requesting copies of Respondent’s documents. IER will make any inquiries through Respondent’s outside counsel, Daniel Brown of Fragomen, Del Rey, Bernsen & Loewy, LLP, at dbrown@fragomen.com or 1101 15th Street, Suite 700, Washington, D.C. 20005 (or any other individual Respondent designates).
12. Starting 60 calendar days from the Effective Date, and every four (4) months thereafter during the term of this Agreement, Respondent shall provide IER with an Excel spreadsheet containing information regarding all available Form I-9 and E-Verify fields for each of Respondent’s employees working at all locations in Jacksonville, FL who are hired or reverified within the previous four (4) month period. Respondent shall also provide Forms I-9, including all attachments, if requested by IER.
13. If IER has reason to believe that Respondent is in violation of any provision of this Agreement during the term of this Agreement, IER may, in its sole discretion, notify Respondent, in writing and through Respondent’s counsel identified in Paragraph 11, of the purported violation. Respondent will have thirty (30) days to provide an explanation regarding the purported violation. If IER is dissatisfied with the explanation, Respondent will then have thirty (30) days from the date of IER’s written explanation of its dissatisfaction to cure the purported violation to IER’s satisfaction before IER deems Respondent to be in violation of this Agreement.
14. This Agreement does not affect the right of any individual to file a charge alleging an unfair immigration-related employment practice against Respondent with IER, IER’s authority to investigate Respondent or file a complaint on behalf of any such individual, or IER’s authority to conduct an independent investigation of Respondent’s employment practices occurring after the Effective Date or outside the scope of the IER Investigation.
15. This Agreement resolves any and all differences between the Parties relating to the IER investigation, DJ # 197-17M-360, through the Effective Date of this Agreement. The provisions of paragraph 2 notwithstanding, IER shall not seek from Respondent any additional civil penalty for the unfair documentary practices in violation of 8 U.S.C. § 1324b(a)(6) that are the subject of the IER Investigation through the Effective Date of this Agreement.

III. ADDITIONAL TERMS OF SETTLEMENT

16. 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.
17. 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 this 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 of this Agreement, 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 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.
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 agree that they will 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 agree to bear their own costs, attorneys’ fees and other expenses incurred in this action.
21. 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 subject matter herein.
22. 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 electronically transmitted signatures.

United Parcel Service, Inc.

By:


Stephanie Driggers
Vice-President, Legal

Dated: 4/15/22

Immigrant and Employee Rights Section

By:


Alberto Ruisanchez
Deputy Special Counsel

Dated: 4-18-2022

Jodi Danis
Special Litigation Counsel

Sam Shirazi
Trial Attorney

ATTACHMENT A TO SETTLEMENT AGREEMENT

Pursuant to Paragraph 8 of the Settlement Agreement, Respondent shall send the following information to all Human Resources Personnel nationwide:

E-Verify may return an “Unconfirmed Data” status for an employee, but that status does not address – or say anything about – whether an employee is authorized to work or the validity of any document presented. Instead, it provides an opportunity to check possible data entry errors. As a result, the proper response to an E-Verify “Unconfirmed Data” status is to:

1. Confirm that all information entered, including document details (such as document numbers and expiration dates), was entered correctly and free of data entry errors; this may include comparing the details from a copy of the I-9 documentation to the data entered (if a copy was made);
2. If you believe that the information entered is correct, you may proceed with the E-Verify query. If proceeding with the query produces a Tentative Nonconfirmation (“TNC”) result, you should follow the regular TNC procedures to allow the employee the opportunity to resolve the TNC (and not take any adverse action against the employee based on the TNC);
3. Do not treat people differently because of their citizenship or immigration status when resolving the “Unconfirmed Data” status; and
4. Follow all current and future instructions USCIS posts on its website or otherwise provides to E-Verify users with respect to this error code.