

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made and entered into by and between Panda Restaurant Group, Inc. ("Respondent"), and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section ("IER").

### **I. Background**

WHEREAS, on May 31, 2016, IER issued notice to Respondent that it had initiated an independent investigation of Respondent (DJ#197-12c-1561, "Investigation"), pursuant to 8 U.S.C. § 1324b(d)(1) with respect to possible unfair documentary practices in violation of 8 U.S.C. § 1324b ("Act"). Subsequently, on August 31, 2016, IER notified Respondent that it was expanding its investigation of Respondent pursuant to 8 U.S.C. § 1324b(d)(1) to include Respondent's reverification practices.

WHEREAS, IER concluded based upon the Investigation that there is reasonable cause to believe that Respondent engaged in a pattern or practice of unfair documentary practices against non-U.S. citizens based on their citizenship status in violation of 8 U.S.C. § 1324b(a)(6). Specifically, IER has reasonable cause to believe that from April 1, 2013, through at least August 1, 2016, Respondent requested non-U.S. citizens to produce DHS-issued documents for reverification instead of permitting the workers the choice between any valid Form I-9 List A or List C documentation. Further, IER has reasonable cause to believe that Respondent also requested List A documents from individuals it incorrectly reverified, such as lawful permanent residents who had produced Permanent Resident Cards for Section 2 of the Form I-9, and aliens authorized to work who had List B and C documents reflected in Section 2 of the Form I-9 and who did not indicate an employment authorization expiration date in Section 1.

WHEREAS, IER and Respondent wish to resolve the Investigation without further delay or expense and hereby acknowledge that they are voluntarily entering into this Agreement.

WHEREAS, this Agreement is intended to facilitate the resolution of IER's investigation, and does not constitute an admission by Respondent of any liability or act in violation of 8 U.S.C. § 1324b.

NOW, THEREFORE, in consideration of the mutual promises below, and to fully and finally resolve IER's Investigation as of the date of this Agreement, it is agreed as follows:

### **II. Terms of Settlement**

1. This Agreement becomes effective as of the date the last party signs the Agreement, which date is referenced herein as the "Effective Date." The "term of this Agreement" shall be three (3) years following the Effective Date.
2. Pursuant to 8 U.S.C. § 1324b(g)(B)(iv), Respondent shall pay to the United States Treasury four hundred thousand dollars (\$400,000) ("Payment").
3. The monies discussed in paragraph 2 shall be paid via the FedWire electronic fund transfer system within thirty (30) calendar days of Respondent's receipt of a fully signed

copy of this Agreement or fund transfer instructions, whichever is later. IER will provide Respondent instructions for the FedWire electronic transfer. Respondent shall send a confirmation notice of the payment to Gloria Yi at Gloria.Yi@usdoj.gov and Liza Zamd at Liza.Zamd@usdoj.gov on the day the funds are transferred.

4. Respondent shall not discriminate on the basis of citizenship, immigration status or national origin in violation of 8 U.S.C. § 1324b.
5. Within 30 days from the Effective Date, Respondent shall set aside a fund of two hundred thousand dollars (\$200,000.00) from which to compensate individuals who allegedly suffered economic damages, including suspension, termination, or other periods of lost work, as a result of Respondent's allegedly improper employment eligibility reverification practices occurring between May 31, 2014, to the Effective Date ("Back Pay Fund Period"). The administration of the back pay process is outlined in the Parties' June 19, 2017 agreement. After the individual(s) entitled to back pay ("Back Pay Recipients") have been identified pursuant to the process outlined in the Parties' June 19, 2017 agreement, Respondent will calculate the back pay amount owed to each individual and IER, in its sole discretion, shall approve or modify the amount as explained below:
  - a. The back pay calculation for Back Pay Recipients who suffered an unpaid employment suspension or other lost work during the Back Pay Fund Period will be based on the length of the suspension or lost work, the hourly wage rate and the average hours the Back Pay Recipient worked in the two (2) weeks preceding the suspension or lost work, unless IER determines that the two-week period preceding the suspension or lost work does not accurately reflect the Back Pay Recipient's average earnings. If IER makes this determination, the back pay calculation will be determined based on the Back Pay Recipient's hourly wage rate and the average hours the Back Pay Recipient worked in the eight (8) weeks preceding the suspension or lost work.
  - b. The back pay calculation for Back Pay Recipients who suffered an employment termination during the Back Pay Fund Period will be based on the hourly wage rate and average hours the Back Pay Recipient worked in the two (2) weeks preceding the employment termination, unless IER determines that the two-week period preceding the employment termination does not accurately reflect the Back Pay Recipient's average earnings. If IER makes this determination, the back pay calculation will be determined based on the Back Pay Recipient's hourly wage rate and the average hours the Back Pay Recipient worked in the eight (8) weeks preceding the employment termination. Back Pay Recipients who suffered an employment termination during the Back Pay Fund Period will receive six (6) weeks of back pay.
  - c. If Respondent's total back pay liability exceeds \$200,000, IER will determine the pro-rata share of the \$200,000 for each Back Pay Recipient. Back pay claims asserted by individuals covered by paragraph 12 in the Parties' June 19, 2017 agreement will also be subject to this \$200,000 back pay fund cap. All undistributed back pay funds will revert to Respondent after the conclusion of the back pay process outlined in June 19, 2017 agreement.

6. To avoid discrimination based on citizenship, immigration status and national origin in the employment eligibility verification and reverification process, Respondent shall (a) 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); (b) not request more or different documents than are required by law; (c) permit all employees to present any document or combination of documents acceptable by law; and (d) provide a copy of the Lists of Acceptable Documents to individuals before or at the time the individuals complete the Form I-9 and inform those individuals of their right to choose to present any documentation from the Lists or any other documentation that is acceptable for purposes of employment eligibility verification. Prior to conducting any Form I-9 reverification and subject to the applicable requirements of paragraph 10 below, Respondent shall provide written information to the worker subject to the reverification regarding the acceptability of any Form I-9 List A or List C document.
7. Respondent shall not 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.
8. Unless already required to do so as a condition of its participation in the E-Verify program, Respondent shall post an English and Spanish version of IER's "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/or job applicants are normally posted. The IER Poster will be posted within fourteen (14) days from the Effective Date of this Agreement and will at a minimum remain posted during the term of this Agreement.
9. During the term of this Agreement, Respondent shall ensure that all individuals who are responsible for formulating, carrying out, and/or conducting training on Respondent's hiring, firing, equal employment, and employment eligibility verification policies, as well as all managers and employees who have any role in the employment eligibility verification or reverification process, such as completing the Form I-9 and/or using the E-Verify system ("Human Resources Personnel"), can readily access 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-9-central](http://www.uscis.gov/i-9-central), and the most current USCIS E-Verify Manual (M-775) ("Manual"), available at [www.uscis.gov/sites/default/files/files/form/m-274.pdf](http://www.uscis.gov/sites/default/files/files/form/m-274.pdf), and are aware of the availability of guidance on the I-9 Central and E-verify websites. Copies of these documents and future revisions of the Form I-9, Handbook, Manual and guidance can be obtained from the United States Citizenship and Immigration Services at [www.uscis.gov](http://www.uscis.gov).
10. Within ninety (90) days from the Effective Date, Respondent shall revise its existing employment policies, written guidance and training materials that relate to nondiscrimination on the basis of citizenship, immigration status and national origin to:

- (a) Prohibit unlawful discrimination on the basis of citizenship, immigration status, or national origin (1) in the hiring and firing process; (2) during the Form I-9 employment eligibility verification and re-verification process; and (3) in any part of the E-Verify process, regardless of whether it is handled directly, through an electronic program, or through an agent;
- (b) Include citizenship, immigration status (as appropriate), and national origin as prohibited bases of unlawful discrimination; Respondent shall also include such language in any similar Equal Employment Opportunity (EEO) statements Respondent provides in printed or electronic materials available to the public or employees by sending the revised policy to all restaurant locations and instructing Human Resource Personnel or other authorized employees to replace the prior version;
- (c) Refer applicants and employees who complain, formally or informally, of citizenship status discrimination in the hiring or firing processes, or of national origin or citizenship status discrimination in the Form I-9 employment eligibility verification and re-verification processes, immediately to IER by directing the affected individual to the IER Poster and IER's worker hotline and website; and
- (d) Provide that Respondent shall not take 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.

These revisions, and any additional revisions to such provisions, are subject to IER's review and approval for compliance with 8 U.S.C. § 1324b and must be sent to IER via email to Gloria Yi (Gloria.Yi@usdoj.gov) and Liza Zamd (Liza.Zamd@usdoj.gov) at least thirty (30) days in advance of their proposed implementation.

11. Within one-hundred twenty (120) days of the Effective Date, Respondent shall modify its electronic Form I-9 system, as necessary, to comply with all current Form I-9 and E-Verify rules and regulations, including the ability for individuals selecting the Alien Authorized to Work citizenship attestation to write "N/A" in the Section 1 expiration date field.
12. Within ninety (90) days of the Effective Date, Respondent shall train all Human Resources Personnel on their obligation to comply with 8 U.S.C. § 1324b, the appropriate use of E-Verify, and the employment eligibility verification and re-verification process as it relates to discrimination on the basis of citizenship, immigration status, and national origin.
  - (a) The training will consist of viewing a remote webinar presentation by IER.
  - (b) All employees 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 their employees attending these training sessions.

- (c) Respondent shall compile attendance records listing the individuals who attend the training described in this paragraph, including their full name, title, signature, and the date of the training, and send them via email to Gloria Yi at Gloria.Yi@usdoj.gov and Liza Zamd at Liza.Zamd@usdoj.gov within ten (10) days of each training session.
  - (d) For a period of three (3) years from the Effective Date, all new Human Resources Personnel Respondent hires after the initial training described in this paragraph has been conducted shall attend an IER Employer/HR webinar within sixty (60) days of hire.
13. During the term of this Agreement, IER reserves the right to make reasonable inquiries to Respondent necessary to determine Respondent's compliance with this Agreement. As part of such review, IER may require written reports concerning compliance, inspect Respondent's premises, examine witnesses, and examine and copy Respondent's documents at the expense of IER.
  14. Every five (5) months during the term of this Agreement, Respondent shall provide IER with all available fields of its Form I-9 and E-Verify data, for all employees hired or reverified in the prior five-month period. Respondent shall provide the documents in Excel spreadsheet format unless IER requests otherwise. Nothing in this Agreement limits IER's right to inspect Respondent's Forms I-9 within three business days pursuant to 8 C.F.R. § 274a.2(b)(2)(ii).
  15. 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 rather than initiate a new discrimination investigation or take immediate action to judicially enforce the Agreement. Respondent will then be given thirty (30) days from the date it is notified by IER in which to cure the violation to IER's satisfaction before IER deems Respondent to be in violation of this Agreement and may proceed to seek judicial enforcement.
  16. 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, the authority of IER to investigate such charge or file a complaint on behalf of any such individual, or the authority of IER to conduct an independent investigation of Respondent's employment practices occurring after the Effective Date or outside the scope of this Investigation.
  17. This Agreement resolves any and all differences between the parties relating to this independent investigation, DJ # 197-12c-1561, through the Effective Date. The provisions of paragraph 2 notwithstanding, IER shall not seek from Respondent any additional civil penalty for the pattern or practice of unfair documentary practices in violation of 8 U.S.C. § 1324b(a)(6) that is the subject of this Investigation, through the Effective Date of this Agreement.

18. IER agrees to dismiss its Investigation of Respondent, DJ# 197-12C-1561, described herein within fifteen (15) days after Respondent notifies IER by email to Gloria Yi at Gloria.Yi@usdoj.gov and Liza Zamd at Liza.Zamd@usdoj.gov of the Respondent's satisfaction of paragraphs 2, 8, 10, 11, and 12 of this Agreement.
19. This Agreement may be enforced in the United States District Court for the Central District of California or another court of competent jurisdiction. Nothing in this paragraph or Agreement shall be construed or interpreted as a waiver of sovereign immunity, or any other jurisdictional defense the United States might have to a claim for enforcement or a counterclaim by Respondent.
20. IER and Respondent 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 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 IER 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 invalid.
22. IER and Respondent agree to bear their own costs, attorneys' fees and other expenses incurred in this action.
23. This Agreement sets forth the entire agreement between the Respondent and IER and fully supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter herein.
24. This Agreement may be executed in multiple counterparts, each of which together will be

considered an original but all of which shall constitute one agreement. The parties agree to be bound by facsimile signatures.

**Panda Restaurant Group, Inc.,**


By:

  
Peggy Cherng  
Co-Chair & Co-CEO  
Panda Restaurant Group, Inc.

Dated: 6/26/17

**Immigrant and Employee Rights Section**

By:

  
Jodi Danis  
Acting Deputy Special Counsel

Dated: 6/28/17

Sebastian Aloom  
Special Litigation Counsel

Liza Zamd  
Acting Special Litigation Counsel

Gloria Yi  
Trial Attorney