

Settlement Agreement

IT IS HEREBY AGREED between the undersigned parties that the action styled *Marcus Bowen v. Janet Napolitano, Secretary of the Department of Homeland Security*, case no. 2:08-cv-00589-LDG-GWF, pending in the United States District Court, District of Nevada (the "Action") be settled, compromised and dismissed in accordance with the following terms:

1. Plaintiff Marcus Bowen (hereinafter "plaintiff"), filed the Action on May 9, 2008 against the Secretary of the Department of Homeland Security. Plaintiff alleges that he has been discriminated against because of his race and because of retaliation due to the filing of prior EEO complaints.
2. Defendant Janet Napolitano in her official capacity as Secretary of the Department of Homeland Security (hereinafter "defendant" or "United States"), hereby agrees to settle with plaintiff for the following terms: the defendant agrees to pay to plaintiff the total lump sum of one hundred eighty-two thousand five hundred and no/100 dollars (\$182,500.00), without set-off, withholding or deduction.
3. Defendant also agrees that within thirty (30) days of the effective date of this Agreement, the agency shall take all necessary steps to expunge the following documents from plaintiff's official and local personnel files and shall notify counsel for plaintiff in writing when such steps have been taken and when such documents have been expunged: the April 3, 2004 letter of counseling issued to plaintiff regarding his conduct on United Airlines flight 583 and Southwest Airlines flight 1201 ("UA / Southwest Incidents"); documents pertaining to those incidents or the investigations thereof, including but not limited to those that appear at Tab 38 in the administrative Report of Investigation

("ROI"); ASAC Korniloff's "summary of prior allegations made by airline personnel," which was submitted with plaintiff's application to TSA-04-3316 and appears in the ROI at Tab 22; documents concerning plaintiff's absence from firearms training on May 26, 2005 ("Training Incident"); documents pertaining to that incident or the investigation thereof; and documents reflecting any discipline or counseling that resulted from that incident.

4. Defendant and plaintiff will refer any prospective employer to defendant's Office of Human Capital, which will provide a neutral reference regarding plaintiff's employment, confirming only the information set forth in 5 C.F.R. § 293.311, unless otherwise authorized by plaintiff.
5. *No Admission of Liability*: This Settlement Agreement is not and shall not be construed as an admission by the defendant of the truth of any allegation or the validity of any claim asserted in the Action, or of the defendant's liability therein. Furthermore, none of the terms of the Settlement Agreement may be offered or received in evidence or in any way referred to in any civil, criminal or administrative action or proceeding other than proceedings that may be necessary to consummate or enforce this Settlement Agreement.
6. *Release*: Plaintiff for himself, his heirs and personal representatives, fully and forever releases, acquits and discharges defendant, and its components, agents, employees and former employees, either in their official or individual capacities, from any and all causes of action and claims for relief of every kind, nature or description, whether known or unknown, including without limitation for damages, equitable relief, attorneys' fees and costs which plaintiff may have had, may now have, or may hereafter discover arising out of or in connection with the UA / Southwest Incidents, the Training Incident, and the

events that are the subject of the Action. In connection with such release, plaintiff acknowledges that he is aware that he may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which he now knows, with respect to the matters released herein. Nevertheless, it is the intention of plaintiff through this release, and with the advice of counsel, to settle and release all such matters, and all claims relative thereto, which heretofore have existed, now exist, or hereafter may exist between plaintiff and defendant, or its components, agents, employees and former employees, individually, and/or in their official capacities, arising out of the circumstances encompassed by this release.

7. *No Assignment:* Plaintiff represents and warrants that he is the sole and lawful owner of all rights, title and interests in and to every claim and other matter which he purports to release herein, and that he has not heretofore assigned or transferred, or purported or attempted to assign or transfer to any person or entity any claims or other matters herein released. The plaintiff shall indemnify the defendant, and any of its departments, components and current or former employees, whether in their official or individual capacities, against, and defend and hold harmless from, any claims arising out of or relating to any such assignment or transfer of any claims or other matters released herein.

8. *Payment Mechanism:* Payment of the settlement amount in paragraph 2 will be made as follows:

By electronic funds transfer to:

Access National Bank (Short Name: Access NB VA), 14006 Lee-Jackson Memorial Highway, Chantilly, Virginia 20151

American Banking Association Routing Number (9 digits): 0560-0903-9

Checking Account Number: 2605426

Name on Payee Account: Robert C. Seldon & Associates, P.C., Trust Account
EIN: 05-0544973

Plaintiff's attorneys agree to distribute the settlement proceeds to the plaintiff.

9. *Dismissal with Prejudice:* In connection with the execution of this Settlement Agreement, plaintiff shall, through his attorneys, execute and deliver to defendant a stipulation to dismiss with prejudice the Action, which Defendant may file with the court.
10. *Further Assurances:* The parties agree to cooperate fully to execute any and all supplementary documents and take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Settlement Agreement.
11. *Tax Consequences:* Compliance with all applicable federal, state, and local tax requirements shall be the sole responsibility of plaintiff. This Settlement Agreement is executed without reliance upon any representation by defendant as to tax consequences, and plaintiff is responsible for the payment of all taxes that may be associated with the settlement payments.
12. *Merger Clause:* This Settlement Agreement contains the entire agreement between the parties hereto, and plaintiff acknowledges and agrees that no promise or representation not contained in this agreement has been made to him, and he acknowledges and represents that this Settlement Agreement contains the entire understanding between the parties, and contains all terms and conditions pertaining to the compromise and settlement of the disputes referenced herein. No statement, remark, agreement, or understanding, oral or written, that is not contained herein shall be recognized or enforced, nor does this Settlement Agreement reflect any agreed-upon purpose other than

the desire of the parties to reach a full and final conclusion of the litigation and to resolve that suit without the time and expense of further litigation.

13. *Amendments:* This Settlement Agreement cannot be modified or amended except by an instrument in writing, agreed to and signed by the parties, nor shall any provision hereof be waived other than by a written waiver, signed by the parties.

14. *Binding Successors:* This Settlement Agreement shall be binding upon and inure to the benefit of the plaintiff and the defendant and their respective heirs, executors, successors, assigns, and personal representatives, including any person, entity, department, or agency succeeding to the interests or obligations of any party hereto, or having an interest herein.


15. *Severability:* The provisions of this Settlement Agreement shall be deemed severable, and any invalidity or unenforceability of any one or more of its provisions shall not affect the validity or enforceability of the other provisions herein.

16. *Consultation with Counsel:* Plaintiff acknowledges that he has discussed this Settlement Agreement with his attorney, who has explained these documents to him and that he understands all of the terms and conditions of this Settlement Agreement. Plaintiff further acknowledges that he has read this Settlement Agreement, understands the contents thereof, and executes this Settlement Agreement of his own free act and deed. The undersigned represent that they are fully authorized to enter into this Settlement Agreement.

17. *Drafting and Construction:* Plaintiff and defendant acknowledge that each has had significant input into the drafting of this Settlement Agreement and that this Settlement Agreement represents the settling parties' joint efforts. Should any dispute arise

concerning this Settlement Agreement, no term or provision herein shall be construed as though one party were the drafting party.

18. *Counterparts*: This Settlement Agreement may be executed in any number of counterparts, each of which when duly executed and delivered shall be an original, but all such counterparts shall constitute one and the same agreement. Any signature page of this Settlement Agreement may be detached from any counterpart without impairing the legal effect of any signatures, and may be attached to the other counterpart, identical in form, but having attached to it one or more additional signature pages. This Settlement Agreement shall be binding and effective as of the date of the signature of the last of the settling parties to sign.



MARCUS BOWEN
Plaintiff

Date:

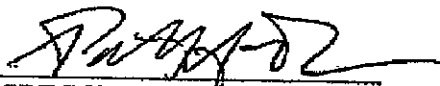
9/10/09



ROBERT C. SELDON & ASSOCIATES, P.C.
MOLLY E. BUJE, ESQ.

Date:

9/14/09
Attorneys for Plaintiff



GREGORY A. BROWER, ESQ.
United States Attorney for the District of Nevada
PATRICK A. ROSE, ESQ.
Assistant United States Attorney
On behalf of the United States/Defendant

Date:

9/10/09