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10 *Counsel for Plaintiff*
11

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 _____)
15 Brett T. Guinan,)

16 Plaintiff,)

17 v.)

18 Bullhead City Fire District,)

19 Defendant.)
20 _____)

Civil Action No. 3:15-cv-08075-DJH

**COURT-APPROVED
SETTLEMENT AGREEMENT**

21 **COURT-APPROVED SETTLEMENT AGREEMENT**
22

23 This matter came before this Court for entry of this Court-Approved Settlement
24 Agreement ("Settlement Agreement") by consent of the Plaintiff, Brett T. Guinan
25 ("Guinan" or "Employee", as the context requires), and the Defendant, Bullhead City
26 Fire District ("BCFD" or "Employer", as the context requires) (collectively, the
27
28

1 “Parties”), to effectuate a compromise and settlement of all claims in the above-captioned
2 case.

3 Guinan commenced this action in the United States District Court for the District
4 of Arizona, alleging that BCFD violated the Uniformed Services Employment and
5 Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.* (“USERRA”), by
6 discriminating against him based on his military service and/or military service
7 obligations, and by failing to promptly reemploy him when he returned from active duty
8 in the Army Reserves.
9

11 BCFD denies that it has violated USERRA, and its agreement to the terms of this
12 Settlement Agreement is not an admission of liability or any violations of that statute.
13 Nevertheless, as a result of settlement discussions, the Parties have resolved their dispute
14 and have agreed that this action should be resolved by entry of this Settlement
15 Agreement. It is the intent of the Parties that this Settlement Agreement be a final and
16 binding disposition of all claims alleged in the Complaint filed in this case.
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19 STIPULATIONS

20 1. The Parties acknowledge the jurisdiction of the United States District Court
21 for the District of Arizona over the subject matter of this action and of the Parties to this
22 action for the purpose of entering this Settlement Agreement and, if necessary, enforcing
23 this Settlement Agreement.
24

25 2. Venue is proper in this judicial district for purposes of entering this
26 Settlement Agreement and any proceedings related to this Settlement Agreement. The
27
28

1 Parties agree that all conditions precedent to the institution of this action and its
2 settlement have been fulfilled.

3
4 **FINDINGS**

5 3. Having reviewed and considered the provisions of this Settlement
6 Agreement, the Court finds the following:

- 7 a. The Court has jurisdiction over the subject matter of this action and the
8 Parties to this action.
9
10 b. The terms and provisions of this Settlement Agreement are lawful, fair,
11 reasonable, and just. The rights of the Parties are adequately protected by
12 this Settlement Agreement.
13
14 c. This Settlement Agreement conforms to the Federal Rules of Civil
15 Procedure and USERRA, and is not in derogation of the rights and
16 privileges of any person. The entry of this Settlement Agreement will
17 further the objectives of USERRA and will be in the best interest of the
18 Parties.
19

20 NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:
21

22 **NON-ADMISSION**

23 4. This Settlement Agreement is being entered into with the consent of the
24 Parties and shall not constitute an admission by BCFD of any violations of USERRA.
25

26 **NON-RETALIATION**

27 5. BCFD shall not take any action against any person, including but not
28 limited to Guinan, which constitutes retaliation or interference with the exercise of such

1 person's rights under USERRA because such person gave testimony, provided assistance,
2 or participated in any manner in an investigation or proceeding in connection with this
3 action.
4

5 **REMEDIAL REQUIREMENTS**

6 6. Prior to or within ten (10) calendar days from the date of the Court's entry
7 of this Settlement Agreement, and the expiration of the seven (7) day revocation period
8 described in Section 16(c) below, BCFD shall pay (or cause to be paid) to Guinan a total
9 sum of SEVENTY-FIVE THOUSAND DOLLARS AND NO/100 (\$75,000.00), less
10 applicable withholdings and deductions, (the "Settlement Amount") in the form of a
11 certified bank check pursuant to the following requirements:
12
13

- 14 a. The Settlement Amount check shall be made payable to Brett T. Guinan.
- 15 b. The Settlement Amount funds shall be attributable to lost wages, including
16 back pay and front pay.
- 17 c. BCFD shall deduct from the Settlement Amount all applicable withholding
18 taxes and other payroll deductions that BCFD is required to make from
19 wage payments to employees.
20
- 21 d. BCFD shall be responsible for separately paying the employer's
22 contribution to Social Security and Medicare due on the back pay and front
23 pay award, and the employer's contribution shall not be deducted from the
24 overall Settlement Amount. BCFD further agrees that it will pay all monies
25 withheld from the back pay and front pay award to the appropriate
26 governmental agencies.
27
28

1 e. Upon being paid this Settlement Amount (\$75,000.00 less withholdings),
2 Employee acknowledges that he is not owed any further monies by
3 Employer.
4

5 f. BCFD shall mail the Settlement Amount check described in paragraphs
6 6(a) through 6(e), together with proof of withholding on the back pay and
7 front pay award, to Guinan by overnight delivery service to the following
8 address:
9

10 Brett T. Guinan
11 2228 E. Roberts Way
12 Fort Mohave, AZ 86426

13 g. BCFD also shall mail proof of such payment and withholding to the United
14 States Department of Justice ("United States") by overnight delivery
15 service to the following address:
16

17 Catherine Sellers
18 U.S. Department of Justice
19 Civil Rights Division
20 Employment Litigation Section
21 601 D Street, N.W.
22 Patrick Henry Building, Room 4924
23 Washington, DC 20579

24 7. Prior to or within ten (10) calendar days from the date of the Court's entry
25 of this Settlement Agreement, BCFD shall draft a personnel policy, to be included in its
26 employee handbook, that notifies employees of their rights and obligations under
27 USERRA, including their right to reemployment under 38 U.S.C. § 4312 and 38 U.S.C. §
28 4313, and their right be free from discrimination and retaliation under 38 U.S.C. § 4311.

1 The personnel policy shall also include a statement that BCFD is committed to
2 complying fully with the provisions of USERRA.

3 8. BCFD shall integrate the policy described in paragraph 7 into its employee
4 handbook within sixty (60) calendar days from the date of the Court's entry of this
5 Settlement Agreement.
6

7 9. At least thirty (30) calendar days before the date that BCFD intends to
8 integrate the policy into its employee handbook, BCFD shall send the United States, for
9 review and approval, a copy of the policy. All documents provided to the United States
10 shall be sent via overnight delivery service to the address set forth in paragraph 6(g).
11

12 10. The United States shall provide BCFD with comments and/or approval of
13 the policy within twenty-one (21) calendar days of receipt. If the Parties cannot agree on
14 the content of the policy, the dispute resolution provisions in paragraphs 19 through 20
15 shall apply.
16

17 11. Within sixty (60) calendar days from the date of the Court's entry of this
18 Settlement Agreement, BCFD shall provide at least one hour of training on the
19 requirements of USERRA and on employers' and service members' rights and
20 obligations under the statute, to all of BCFD's supervisors, managers, and administrative
21 staff in each of its five fire stations. Such training shall be held at BCFD's own expense.
22

23 12. At least thirty (30) calendar days before the date of the training described in
24 paragraph 11, BCFD shall send the United States, for review and approval, a description
25 of the training and the proposed training materials. All documents provided to the United
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1 States shall be sent via overnight delivery service to the address set forth in paragraph
2 6(g).

3 13. The United States shall provide BCFD with comments and/or approval of
4 the training materials within twenty-one (21) calendar days of receipt. If the Parties
5 cannot agree on the content of the training and/or the training materials, the dispute
6 resolution provisions in paragraphs 19 through 20 shall apply.
7

8 14. Within ten (10) calendar days from the date that BCFD conducts the
9 training described in paragraph 11, BCFD shall provide the United States with
10 documentary evidence that the training occurred, including a copy of the final training
11 materials, a disclosure of when the training was provided, and a list of all persons trained.
12 All documents provided to the United States shall be sent via overnight delivery service
13 to the address set forth in paragraph 6(g).
14
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16 **RELEASE OF CLAIMS**

17 15. For and in consideration of the remedial relief being provided to him as
18 described in paragraphs 6 through 14 of this Settlement Agreement, Guinan releases and
19 discharges BCFD, Glatfelter Claims Management, Inc., and American Alternative
20 Insurance Corporation (including any and all of its officers, directors, Board members,
21 employees, agents, attorneys, and all of their predecessors and successors in interest)
22 from all USERRA and all other claims of any kind arising out of or relating to his prior
23 employment with BCFD. **This release specifically includes any and all such claims**
24 **Employee may have, whether currently known or unknown, as of the time of signing**
25 **this Settlement Agreement.** This full waiver and complete release includes, but is not
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1 limited to, all wrongful discharge or constructive discharge claims; all claims relating to
2 any contracts of employment, expressed or implied; any covenant of good faith and fair
3 dealing, expressed or implied; any tort of any nature; any claims arising out of federal,
4 state or local law, statute or ordinance, including but not limited to any and all rights and
5 claims arising under Title VII of the Civil Rights Act of 1964, as amended; the
6 Americans with Disabilities Act; the Family and Medical Leave Act; the Employment
7 Retirement Income Security Act of 1974; the Fair Labor Standards Act; the Age
8 Discrimination in Employment Act; the Workers Adjustment & Retraining Notification
9 Act (WARN); the Genetic Information Nondiscrimination Act; the Arizona Civil Rights
10 Act and the Arizona Employment Protection Act; and/or any other federal, state, or local
11 law, statute or ordinance, as well as any contract or tort causes of action arising out of, or
12 relating in any way to, his employment with Employer. **Employee recognizes and**
13 **acknowledges that this FULL WAIVER AND COMPLETE RELEASE includes**
14 **claims which Employee currently may not know about which are based on facts**
15 **which occurred before the effective date of this Settlement Agreement, but it does**
16 **not include any claims, if they should arise in the future, which are based on facts**
17 **which occur after the effective date of this Settlement Agreement. This release and**
18 **discharge of claims is subject to BCFD's compliance with the terms of this Settlement**
19 **Agreement.**

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26 16. Age Discrimination in Employment Act Requirements. This Settlement
27 Agreement includes a release of any and all claims that may exist under the Age
28 Discrimination in Employment Act, and subject to the following:

- 1 a. Attorney Consultation Advised. Employee is advised to consult with a
2 private attorney prior to executing this Settlement Agreement.
3
4 b. Twenty-One (21) Day Consideration Period. By his signature below,
5 Employee affirms that he has been given at least twenty-one (21) days in
6 which to consider this Settlement Agreement.
7
8 c. Seven (7) Day Revocation Period. Employee may revoke this Settlement
9 Agreement at any time within seven (7) days following his execution of the
10 Settlement Agreement. Such revocation must be provided in writing and
11 received during the seven (7) day revocation period. To be effective, the
12 revocation must be delivered to the following individual within that seven
13 (7) day revocation period:
14

15 David Cummings, Board Chairman
16 Bullhead City Fire District
17 1260 Hancock Rd.
Bullhead City, AZ 86442

- 18 d. Effective Date. This Settlement Agreement shall not become effective or
19 enforceable until the foregoing revocation period has expired and the Court
20 has entered the Settlement Agreement as set forth in paragraph 25.
21

22 17. Guinan understands that the United States cannot represent him in any of
23 the non-USERRA claims specified in paragraphs 15 and 16 above, including any and all
24 claims arising under other federal, state or local laws, statutes, or ordinances. Guinan
25 acknowledges that he has consulted, or that he has been advised of his right to consult
26 with, a private attorney prior to releasing any of these claims.
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**RETENTION OF JURISDICTION,
DISPUTE RESOLUTION, AND COMPLIANCE**

18. This Court shall retain jurisdiction over this action and shall have all available equitable powers, including injunctive relief, to enforce the terms of this Settlement Agreement.

19. The Parties shall engage in good faith efforts to resolve any dispute concerning compliance with this Settlement Agreement prior to seeking a resolution from the Court.

20. In the event of a dispute, the Parties shall give notice to each other at least twenty-one (21) calendar days before moving for review by the Court. The Parties may conduct expedited discovery under the Federal Rules of Civil Procedure for the purpose of determining compliance with this Settlement Agreement or defending against a claim of noncompliance.

MISCELLANEOUS

21. The Parties shall bear their own costs and expenses in this action, including attorney fees.

22. If any provision of this Settlement Agreement is found to be unlawful, only the specific provision in question shall be affected and the other provisions shall remain in full force and effect.

23. This Settlement Agreement constitutes the entire agreement and commitments of the Parties. Any modifications to this Settlement Agreement must be mutually agreed upon and memorialized in writing signed by all Parties.

1 24. The Parties agree not to disparage one another, directly or indirectly, in
2 connection with any matters set forth in this Settlement Agreement or Guinan's
3 separation from employment with BCFD. Aside from the disclosures necessary to
4 effectuate the terms of this Settlement Agreement, Guinan agrees not disclose any of the
5 terms or conditions of this Settlement Agreement to any other persons except his counsel,
6 immediate family, financial advisor, as may be required to enforce the terms of this
7 Settlement Agreement, or as may be required by applicable law. Nothing in this
8 paragraph shall be construed as imposing a confidentiality provision on the United States.
9

10
11 **EFFECTIVE DATE AND DURATION**

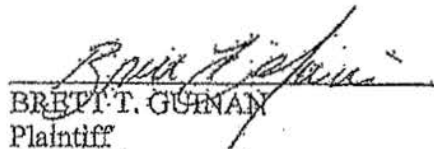
12 25. This Settlement Agreement shall be effective on the date upon which it is
13 entered by the Court following the expiration of the seven (7) day revocation period set
14 forth in paragraph 16(c).
15

16 26. This Settlement Agreement shall expire, and this action shall be dismissed
17 without further order of this Court, one (1) year from the date of entry of this Settlement
18 Agreement, or when all of the remedial provisions of this Settlement Agreement have
19 been effectuated, whichever is later.
20

21 APPROVED and ORDERED this _____ day of _____, 2015.
22
23
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25 _____
26 UNITED STATES DISTRICT JUDGE
27
28

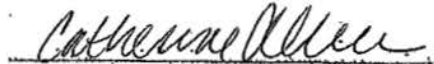
1 Agreed and Consented to by and on behalf of Plaintiff

2
3 
4 BRETT T. GURNAN
Plaintiff

April 3, 2015
Date

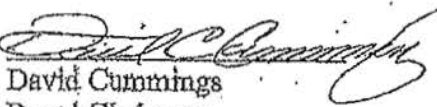
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6 DELORA L. KENNEBREW
7 Chief

8 By:

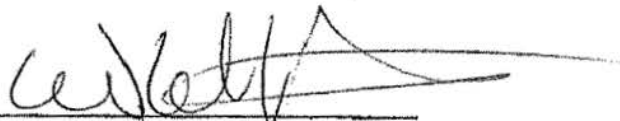
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10 
11 ANDREW G. BRANIFF (IN Bar No. 23430-71)
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12 CATHERINE N. SELLERS (WA Bar No. 44563)
Trial Attorney
13 United States Department of Justice
14 Civil Rights Division
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16 Patrick Henry Building, Room 4924
Washington, DC 20530
17 Telephone: (202) 307-6491
18 Facsimile: (202) 514-1005
Email: catherine.sellers@usdoj.gov
19 Counsel for Plaintiff Brett T. Gurnan

4/23/15
Date

20
21
22 Agreed and Consented to by and on behalf of Defendant:

23
24 
25 David Cummings
26 Board Chairman

4-22-15
Date

1
2
3
4 

4-22-15

5 WILLIAM R. WHITTINGTON (AZ Bar No. 007111)

Date

6 DONALD C. ZAVALA, JR. (AZ Bar No. 016107)

7 Boyle, Pecharich, Cline, Whittington & Stallings PLLC

8 125 North Granite Street

9 Prescott, AZ 86301

10 *Counsel for Defendant Bullhead City Fire District*