

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

UNITED TOWS, LLC,
Defendant.

CIVIL ACTION NO. 3:20-CV-02992-L

CONSENT ORDER

I. INTRODUCTION

1. This Consent Order resolves the allegations contained in the United States' Complaint that United Tows, LLC ("Defendant") violated the Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C. §§ 3901-4043, when it engaged in a pattern or practice of illegally auctioning, selling, or otherwise disposing of the motor vehicles and personal effects of SCRA-protected servicemembers during a period of military service, or within 90 days thereafter.
2. Defendant is a Texas limited liability company located within the Northern District of Texas with a principal place of business at 7054 South Central Expressway, Dallas, Texas 75216.
3. The parties agree that the Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1345 and 50 U.S.C. § 4041(a).

4. The parties agree that, to avoid costly and protracted litigation, the claims against Defendant should be resolved without further proceedings or an evidentiary hearing. Therefore, as indicated by the signatures appearing below, the United States and Defendant agree to the entry of this Consent Order.
5. The effective date of this Consent Order will be the date on which it is approved and entered by the Court.

It is hereby ORDERED, ADJUDGED and DECREED:

II. INJUNCTIVE RELIEF

6. Defendant, its officers, employees, agents and representatives (including attorneys, contractors or vendors) are hereby enjoined from foreclosing or enforcing a lien on the property or effects of any SCRA-protected servicemember, or from auctioning, selling, or otherwise disposing of vehicles or property owned by SCRA-protected servicemembers without a court order or a valid SCRA waiver obtained pursuant to Paragraph 7(d), during any period of military service, or within 90 days thereafter.

III. COMPLIANCE WITH THE SCRA AND SCRA POLICIES AND PROCEDURES

7. As part of negotiating this Consent Order, Defendant has developed SCRA Policies and Procedures for Vehicle Sales and Disposal in compliance with Section 3958 of the SCRA. These policies and procedures include the following:
 - a. In addition to any other reviews Defendant may perform to assess eligibility under the SCRA, before enforcing a lien by auctioning or disposing of a vehicle or its contents, Defendant shall determine whether the registered owner(s) is/are SCRA-protected servicemember(s) by: (1) reviewing any information it has received from the owner(s) or from a third party for evidence of military service (e.g.,

statements about military service, APO/FPO addresses or addresses located on a military installation); (2) visually examining the vehicle and its contents for evidence of military service (e.g., military paperwork, uniforms or equipment, military registration stickers or insignia); and (3) searching the Department of Defense Manpower and Data Center (“DMDC”) website for evidence of SCRA eligibility by last name and social security number. If Defendant does not have a social security number for an owner, Defendant will attempt to determine whether the owner is an SCRA-protected servicemember by searching the DMDC website by last name and date of birth. In cases where neither a social security number nor a date of birth of an owner is readily available, Defendant shall use the owner’s name and address to conduct a search on a commercially available public records database to obtain the owner’s social security number, or if a social security number cannot be found, the owner’s date of birth. When searching the DMDC by social security number or date of birth, if Defendant is aware of any last name variants or aliases (e.g., maiden names, hyphenated or composite surnames, or variant spellings) used by the owner, Defendant shall run a separate DMDC search for each name variant or alias;

- b. If Defendant determines, as part of the review required before enforcing a lien, that an owner is a servicemember in military service or has left a period of military service within the past 90 days, Defendant (or its agents, including its attorneys, contractors and vendors) shall not foreclose or enforce the lien against the servicemember’s vehicle or property without first obtaining a court order allowing it to do so.

- c. If Defendant pursues a storage lien action in court and the SCRA-protected owner fails to answer the action, before seeking default judgment, Defendant shall file an affidavit of military service with the court prepared in accordance with 50 U.S.C. § 3931 (a) and (b). The affidavit must be signed and prepared only after taking the actions necessary to comply with Paragraph 7a and must be executed no more than two business days prior to the date that the request for default judgment is made in the matter. Defendant shall attach a copy of a DMDC Status Report Pursuant to the SCRA (“DMDC Status Report”) to the affidavit. The DMDC Status Report must have been run no more than two days prior to the date when the request for default judgment is made in the matter.
 - d. If Defendant seeks or obtains a waiver under a written agreement as provided in 50 U.S.C. § 3918, it shall use a notice and waiver in the form attached as Exhibit A.
8. If, at any time during the term of this Consent Order, Defendant proposes to materially change its SCRA Policies and Procedures described herein, it shall first provide a copy of the proposed changes to counsel for the United States.¹ The United States shall respond to Defendant’s proposed changes to its SCRA Policies and Procedures within thirty (30) calendar days of its receipt. If the United States objects to any part of Defendant’s SCRA Policies and Procedures described in Paragraph 7, the parties shall confer to resolve their

¹ All materials required by this Consent Order to be sent to counsel for the United States shall be sent by commercial overnight delivery addressed as follows: Chief, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice, 4 Constitution Square, 150 M Street NE, Washington, DC 20002, Attn: DJ 216-73-8.

differences. If the parties cannot resolve their differences after good faith efforts to do so, any party may bring the dispute to this Court for resolution.

IV. TRAINING

9. During the term of this Consent Order, Defendant shall provide annual SCRA compliance training to all drivers, office staff, auction coordination staff and managers. Defendant shall also provide SCRA compliance training to any new employee within thirty (30) calendar days of his or her hiring.
10. As part of negotiating this Consent Order, Defendant has provided to the United States the curriculum, instructions, and any written material included in the training required by Paragraph 9. The United States has no objection to the use of these materials.
11. Defendant shall secure a signed statement in the form attached as Exhibit B from each employee at the trainings required by Paragraph 9 acknowledging that he or she has received, read, and understands the SCRA Policies and Procedures, has had the opportunity to have his or her questions about them answered, and agrees to abide by them. For the duration of this Consent Order, copies of those signed statements shall be provided to the United States upon request. Defendant shall also certify in writing to counsel for the United States that the covered employees successfully completed the trainings required by Paragraph 9. Any expenses associated with the trainings required by Paragraph 9 shall be paid by Defendant.

V. COMPENSATION

12. Within ten (10) business days after the entry of this Consent Order, Defendant shall pay a total sum of TWENTY THOUSAND DOLLARS (\$20,000) to Senior Airman Fassil Mekete by delivering to counsel for the United States a check payable to Fassil Mekete.

The United States shall not deliver payment pursuant to this section before Senior Airman Mekete has executed and provided to counsel for the United States a written release of all claims, legal or equitable, that he may have against Defendant relating to the claims asserted in this lawsuit. Such release shall take the form of Exhibit C. Counsel for the United States shall deliver a duplicate of the original signed release form to counsel for Defendant.

13. Defendant shall pay up to a total of TWENTY THOUSAND DOLLARS (\$20,000) to compensate the four (4) additional persons whom the United States has determined were harmed by Defendant's violations of the SCRA (hereinafter "aggrieved persons"). Each aggrieved person shall be entitled to receive a pro rata share of the total sum based on the auction sale price of his or her vehicle. The United States has provided the list of aggrieved persons to Defendant and specified the total amount of compensation due to each person.
14. Aggrieved persons shall have one (1) year from the entry of this Consent Order to provide counsel for the United States a written release of all claims, legal or equitable, that they may have against Defendant relating to the claims asserted in the Complaint. Such release shall take the form of Exhibit C. Counsel for the United States shall deliver duplicates of the original signed release forms to counsel for Defendant.
15. Within ten (10) business days of notification by the United States that a signed release has been received, Defendant shall issue a check payable to the aggrieved person named in the release in the amount specified by the United States. The check shall be mailed to counsel for the United States. During the term of this Order, Defendant shall, upon

request of counsel for the United States, reissue any checks that are not cashed or deposited prior to their expiration.

16. Defendant will not be entitled to a set-off, or any other reduction, of the amount of compensation payments required by Paragraphs 13 through 15 because of any amounts owed by the recipient. Defendant also will not refuse to make a payment based on a release of legal claims, waiver or settlement agreement previously signed by any such recipient.
17. No individual may obtain review by the Court or the parties, of the identifications made, and payments disbursed, pursuant to Paragraphs 13-16.

VI. OTHER RELIEF

18. Within thirty (30) calendar days of the entry of this Consent Order, Defendant must request that all three (3) major credit bureaus remove any negative entries resulting from Defendant's reports of or attempts to collect any outstanding balance or deficiency from Senior Airman Mekete or any of the other aggrieved persons.
19. Defendant shall not pursue, and must indemnify Senior Airman Mekete or the other aggrieved persons against any third-party's pursuing, any outstanding balance or deficiency that is related to the towing, storage or disposition of the vehicle that the United States alleges was auctioned, sold or otherwise disposed of in violation of the SCRA.

VII. CIVIL PENALTY

20. Within thirty (30) calendar days of the effective date of this Consent Order, Defendant shall pay a total of TEN THOUSAND DOLLARS (\$10,000) to the United States Treasury as a civil penalty pursuant to 50 U.S.C. § 4041(b)(3) to vindicate the public

interest. The payment shall be in the form of an electronic funds transfer pursuant to written instructions to be provided by the United States.

VIII. ADDITIONAL REPORTING AND RECORD-KEEPING REQUIREMENTS

21. For the duration of this Consent Order, Defendant shall retain all records relating to its obligations hereunder, including its records with respect to the auction and disposal of vehicles and all records relating to compliance activities as set forth herein. The United States shall have the right to review and copy any such records, including electronic data, upon reasonable request during the term of this Consent Order.
22. During the term of this Consent Order, Defendant shall notify counsel for the United States in writing every three months of receipt of any SCRA or military-related complaint. Defendant shall provide a copy of any written complaints with the notifications. Whether regarding a written or oral SCRA complaint, the notification to the United States shall include the full details of the complaint, including the complainant's name, address, telephone number, and email address. Defendant shall also promptly provide the United States all information it may request concerning any such complaint and shall inform the United States in writing within thirty (30) calendar days of the terms of any resolution of such complaint. If the United States raises any objections to Defendant's actions, the Parties shall meet and confer to consider appropriate steps to address the concerns raised by the United States' review. If the Parties are unable to come to an agreement regarding such objections or concerns, any party may bring the dispute to this Court for resolution.

IX. SCOPE OF CONSENT ORDER

23. The provisions of this Consent Order shall apply to Defendant and any of its subsidiaries, predecessors, acquired companies, or successors. It shall also apply to the officers, employees, agents, representatives, assigns, successors-in-interest, and all persons and entities in active concert or participation with all of those entities.
24. In the event that Defendant is acquired by or merges with another entity, Defendant shall, as a condition of such acquisition or merger, obtain the written agreement of the acquiring or surviving entity to be bound by any obligations remaining under this Consent Order for the remaining term of this Consent Order.
25. This Consent Order does not release claims for practices not addressed in the Complaint's allegations, and it does not resolve and release claims other than claims against Defendant for violations of 50 U.S.C. § 3958 addressed in this Consent Order. This Consent Order does not release any claims that may be held or are currently under investigation by any other federal agency.
26. Nothing in this Consent Order will excuse Defendant's compliance with any currently or subsequently effective provision of law or order of a regulator with authority over Defendant that imposes additional obligations on it.
27. The Parties agree that, as of the effective date of this Consent Order, litigation is not "reasonably foreseeable" concerning the matters described above. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described above, the party is no longer required to maintain such litigation hold. Nothing in this Paragraph relieves any party of any other obligations imposed by this Consent Order.

**X. MODIFICATIONS, ATTORNEY'S FEES AND COSTS, AND REMEDIES
FOR NON-COMPLIANCE**

28. Any time limits for performance imposed by this Consent Order may be extended by the mutual written agreement of the Parties.
29. The Parties shall be responsible for their own attorney's fees and court costs, except as provided for in Paragraph 30.
30. The Parties shall endeavor in good faith to resolve informally any differences regarding the interpretation of and compliance with this Consent Order prior to bringing such matters to the Court for resolution. However, in the event that a Party contends that there has been a failure by the other Party, whether willful or otherwise, to perform in a timely manner any act required by this Consent Order or otherwise comply with any provision thereof, the Party may move the Court to impose any remedy authorized by law or equity.

XI. RETENTION OF JURISDICTION

31. The Court shall retain jurisdiction over all disputes between and among the Parties arising out of the Consent Order, including but not limited to interpretation and enforcement of the terms of the Consent Order.
32. This Consent Order shall be in effect for a period of four (4) years from its date of entry, after which time this case shall be dismissed with prejudice. The United States may move the Court to extend the duration of this Consent Order in the interests of justice.

SO ORDERED

This ____ day of _____, 2021.

UNITED STATES DISTRICT JUDGE

By their signatures below, the Parties consent to the entry of this Consent Order.

For the United States:

Dated: July 23, 2021

PRERAK SHAH
Acting United States Attorney

KRISTEN CLARKE
Assistant Attorney General
Civil Rights Division


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/s/ Audrey M. Yap
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For United Tows, LLC:

Dated: 6/25/2021

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_____ as attorney for United Tows

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EXHIBIT A

IMPORTANT NOTICE TO MILITARY SERVICEMEMBERS ABOUT YOUR RIGHTS UNDER THE SERVICEMEMBERS CIVIL RELIEF ACT

Attached to this notice you will find a waiver of rights and protections that may be applicable to you under the Servicemembers Civil Relief Act, 50 U.S.C. § 3901, *et seq.* (the “SCRA”). The SCRA provides military personnel and their dependents with a wide range of legal and financial protections. Among other benefits and protections, the SCRA:

- Prevents towing companies from selling or disposing of a servicemember’s vehicle or property without a court order during any period of active duty or for 90 days thereafter;
- Requires that a court review and approve any action by a towing company to foreclose or enforce a lien on the property or effects of any protected servicemember;
- Allows the court to stay the proceeding for a period of time as justice and equity require, or to adjust the obligation to the towing company in light of the servicemember’s military service; and
- Requires that the court appoint an attorney to represent any servicemember who does not make an appearance in the case.

If you choose to sign the attached waiver, United Tows may auction or dispose of your vehicle and property without having a court review and approve its actions. If you do not sign this waiver, United Tows will not be able to sell or dispose of your vehicle or property without having a court review and approve of its actions.

Before waiving these important statutory rights, you should consult an attorney regarding how best to exercise your rights and whether it is in your interest to waive these rights under the conditions offered by UNITED TOWS, LLC.

For More Information:

- **CONSULT AN ATTORNEY:** To fully understand your rights under the law, and before waiving your rights, you should consult an attorney.
- **JAG / LEGAL ASSISTANCE:** Servicemembers and their dependents with questions about the SCRA should contact their unit’s Judge Advocate, or their installation’s Legal Assistance Officer. A military legal assistance office locator for all branches of the Armed Forces is available at <http://legalassistance.law.af.mil>.
- **MILITARY ONESOURCE:** “Military OneSource” is the U.S. Department of Defense’s information resource. Go to <http://www.militaryonesource.com>.

**AGREEMENT AND WAIVER OF RIGHTS UNDER
SERVICEMEMBERS CIVIL RELIEF ACT**

I _____ am a Servicemember OR the duly authorized agent or attorney-in-fact of _____, a Servicemember, pursuant to a power of attorney dated _____ and I am aware that I have protections available to me under the Servicemembers Civil Relief Act (SCRA). This includes, but is not limited to, the right to not to have a towing company sell or dispose of my vehicle or personal property without a court order.

By signing this waiver, I acknowledge and agree that:

- I have read and understood the attached **IMPORTANT NOTICE TO MILITARY SERVICEMEMBERS**.
- I am waiving my right to have a court review and approve the sale or disposal of my vehicle, a [YEAR] [MAKE] [MODEL] [VIN] (the "Vehicle") and its contents by United Tows in accordance with 50 U.S.C. § 3958.
- In exchange for waiving these SCRA rights with respect to the Civil Action, United Tows has agreed to waive its right to recover any deficiency balance, towing or storage charges or other fees relating to the towing or impoundment of the Vehicle.
- This Waiver shall have no effect on my right to receive any excess proceeds from the sale of the Vehicle as provided by Texas state law.
- This waiver is made voluntarily, without coercion, duress or compulsion. I understand the terms of this waiver of rights, and acknowledge that I was advised to consult with an attorney regarding this waiver and the protections afforded by the SCRA.

Subject to the above provisions, I hereby waive and give up any right I may have to have a court review and approve the sale or disposal of the Vehicle and its contents. I authorize United Tows to auction or dispose of my Vehicle and its contents in accordance with Texas state law.

Dated: _____

By: _____
Signature

Print Name

For: United Tows, LLC

Dated: _____

By: _____
Signature

Print Name

EXHIBIT B

EMPLOYEE ACKNOWLEDGMENT

I acknowledge that on _____, 20__, I was provided training regarding Servicemembers Civil Relief Act (SCRA) compliance and copies of the SCRA Policies and Procedures which are applicable to my duties. I have read and understand these documents and have had my questions about these documents and the SCRA answered. I understand my legal responsibilities and shall comply with those responsibilities.

[PRINT NAME]

[SIGNATURE]

[JOB TITLE]

EXHIBIT C

RELEASE

In consideration for the parties' agreement to the terms of the Consent Order resolving the United States' allegations in *United States v. United Tows, LLC*, Civil No. 3:20-CV-02992-L (N.D. Tex.) and payment to me of \$ [AMOUNT], I, [NAME], hereby release and forever discharge all claims, arising prior to the date of this Release, related to the facts at issue in the litigation referenced above that pertain to alleged violations of Section 3958 of the Servicemembers Civil Relief Act that I may have against United Tows, LLC and all related entities, parents, predecessors, successors, subsidiaries, and affiliates and all of their past and present directors, officers, agents, managers, supervisors, shareholders, and employees and their heirs, executors, administrators, successors or assigns. I do not release any other claims that I may have against United Tows, LLC under any other section of the Servicemembers Civil Relief Act.

Executed this _____ day of _____, 20__.

SIGNATURE: _____

PRINT NAME: _____

MAILING ADDRESS: _____

PHONE: _____

EMAIL: _____