

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF SAN ANTONIO,
Defendant.

CIVIL ACTION NO.

CONSENT ORDER

I. INTRODUCTION

1. This Consent Order resolves the allegations contained in the United States' Complaint that the City of San Antonio ("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 periods of military service, or within 90 days thereafter.
2. Defendant is a municipality organized and existing under the laws of the State of Texas.
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 on or enforcing a lien on the property or effects of any SCRA-protected servicemember¹, or from auctioning, selling, or otherwise disposing of vehicles or property owned by SCRA-protected servicemembers, without a court order during any period of military service or within 90 days thereafter.

III. COMPLIANCE WITH THE SCRA AND SCRA POLICIES AND PROCEDURES

7. Within sixty (60) calendar days of the effective date of this Consent Order, Defendant shall develop SCRA Policies and Procedures for Vehicle Sales and Disposal in compliance with Section 3958 of the SCRA. These policies and procedures must 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

¹ The term "SCRA-protected servicemember" includes a member of a reserve component who is ordered to report for military service. In accordance with 50 U.S.C. § 3917(a), a member of a reserve component who is ordered to report for military service is entitled to SCRA protections during the period beginning on the date of the member's receipt of the order and ending on the date on which the member reports for military service (or, if the order is revoked before the member so reports, or the date on which the order is revoked).

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) 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 or a comparable third-party database for evidence of SCRA eligibility by last name and social security number or date of birth (if a social security number is not available even after searching a commercially available public records database). In cases where a social security number of an owner is not 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 website or a comparable third-party database 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 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 on 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") or status report generated by a search of a comparable third-party database to the affidavit. The DMDC Status Report or status report generated by a search of a comparable third-party database 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 initiates and pursues a waiver under a written agreement as provided in 50 U.S.C. § 3918, Defendant must initiate the waiver process with the servicemember at least 30 calendar days in advance of enforcing any storage lien by sending a notice and a copy of the proposed waiver to the servicemember. To the extent Defendant exercises this right, Defendant shall use a notice in the form attached as Exhibit A.
8. No later than sixty (60) calendar days after the effective date of this Consent Order, Defendant shall provide a copy of the proposed SCRA Policies and Procedures required

under Paragraph 7 to counsel for the United States.² The United States shall respond to Defendant's proposed 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 differences. If the parties cannot resolve their differences after good faith efforts to do so, the United States may bring the dispute to this Court for resolution. Defendant shall begin the process of implementing the SCRA Policies and Procedures within ten (10) calendar days of approval by the United States or the Court.

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

IV. TRAINING

10. During the term of this Consent Order, Defendant shall provide annual SCRA compliance training to all its employees assigned duties related to the Growdon Road Impound Facility. Defendant shall also provide SCRA compliance training to any new employee within thirty (30) calendar days of his or her hiring.

² All materials required by this Consent Order to be sent to counsel for the United States shall be sent by email to Audrey Yap at audrey.yap@usdoj.gov.

11. Within thirty (30) calendar days of the United States' approval of the SCRA Policies and Procedures pursuant to Paragraph 8, Defendant shall provide to the United States the curriculum, instructions, and any written material included in the training required by Paragraph 10. The United States shall have thirty (30) calendar days from receipt of these documents to raise any objections to Defendant's training materials, and, if it raises any, the parties shall confer to resolve their differences. In the event that the parties are unable to do so, the United States may bring the dispute to this Court for resolution.
12. Defendant shall secure a signed statement in the form attached as Exhibit B from all employees at the trainings required by Paragraph 10 acknowledging that they have received, read, and understood the Consent Order and the SCRA Policies and Procedures, have had the opportunity to have their questions about these documents answered, and agree 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 10. Any expenses associated with the trainings required by Paragraph 10 shall be paid by Defendant.

V. COMPENSATION FOR IDENTIFIED SERVICEMEMBERS

13. Within thirty (30) calendar days after the entry of this Consent Order, Defendant shall pay a total sum of TWENTY-NINE THOUSAND DOLLARS (\$29,000.00) to Staff Sergeant Paula Rangel by delivering to counsel for the United States a check payable to Paula Rangel. The United States shall not deliver payment pursuant to this section before Staff Sergeant Rangel has executed and provided to counsel for the United States a written release of all claims, legal or equitable, that she 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.

14. Within thirty (30) calendar days after the entry of this Consent Order, Defendant shall pay a total sum of EIGHTEEN THOUSAND DOLLARS (\$18,000.00) to Specialist Joshua White by delivering to counsel for the United States a check payable to Joshua White. The United States shall not deliver payment pursuant to this section before Specialist White 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.

VI. SETTLEMENT FUND FOR ADDITIONAL AGGRIEVED SERVICEMEMBERS

15. Within thirty (30) calendar days after the entry of this Consent Order, Defendant shall encumber the sum of ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000) by reserving that amount in the Defendant's self-insurance fund (hereinafter "Settlement Fund") for the purpose of compensating additional persons whom the United States has determined may have been harmed by Defendant's violations of the SCRA (hereinafter "Potentially Aggrieved Servicemembers"). A list of the Potentially Aggrieved Servicemembers has been provided to the Defendant.
16. Within thirty (30) calendar days after the entry of this Consent Order, Defendant shall submit proof to the United States that the Settlement Fund has been established and that

all funds have been deposited. The Defendant shall be solely responsible for any costs or fees related to the Settlement Fund.

17. Within thirty (30) calendar days after the entry of this Consent Order, the Defendant shall mail a "Notice to Servicemembers Regarding Vehicles Auctioned or Sold in Violation of the SCRA" (hereafter "Notice") to all Potentially Aggrieved Servicemembers at their last known address. Such Notice shall take the form of Exhibit D. The Defendant shall be required to search the National Change of Address (NCOA) database to obtain the most recent mailing address of all Potentially Aggrieved Servicemembers prior to the initial mailing. Nothing in this Agreement shall prevent the United States from making any additional efforts it deems appropriate to locate and provide notice to potential aggrieved persons.
18. Within one hundred and eighty (180) calendar days of the entry of this Consent Order, the United States shall make a preliminary determination of which persons, if any, are aggrieved and an appropriate amount of damages that should be paid to each such person. The United States will inform the Defendants in writing of its determination.
19. Defendant shall have thirty (30) calendar days from the receipt of the determination to provide to the United States any documents or information it believes may refute the claims that led to the preliminary determination of a person as aggrieved. Nothing in this paragraph requires Defendant to review the determination or make objections. If Defendant does not object to any preliminary determination within thirty (30) calendar days, then the United States' preliminary determination of aggrieved persons and amounts to be paid shall become the United States' final determination.

20. If Defendant objects to the United States' preliminary determination of any person designated as aggrieved, the Parties will endeavor in good faith to resolve any differences regarding the determination of the aggrieved person. Within thirty (30) calendar days of receiving Defendant's objections, the United States will make a final decision regarding the determination of aggrieved persons and shall provide Defendant with a final list of aggrieved persons and the amounts to be paid to them from the Settlement Fund.
21. Within thirty (30) calendar days of receiving the final list of aggrieved persons, Defendant shall pay the amounts specified by the United States by check payable to the name of the aggrieved person. The checks shall be mailed to counsel for the United States. The United States shall not deliver payment pursuant to this section before the aggrieved person has executed and provided to counsel for the United States a written release of all claims, legal or equitable, that he or she 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.
22. If any aggrieved person to whom a check has been made payable declines to execute a release in the form of Exhibit C, or fails to execute said release before the expiration of this Consent Order, counsel for the United States shall return the undelivered check to Defendant.
23. If the aggrieved person is unable to cash the settlement check because the check becomes void or stale by operation of time, counsel for the United States shall return the check to Defendant and request a reissuance of the check addressed to the aggrieved person.

Defendant will have thirty (30) calendar days to issue a replacement check to counsel for the United States.

24. In no event shall the aggregate of all such checks paid under Paragraph 21 exceed the sum of the Settlement Fund.
25. After the expiration of the Consent Order, any money remaining in the Settlement Fund shall escheat to Defendant and the Settlement Fund shall be closed.
26. Defendant will not be entitled to a set-off, or any other reduction, of the amount of compensation payments required by this Consent Order 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.
27. No individual may obtain review by the Court or the parties of the identifications made and payments disbursed pursuant to Paragraphs 15-25.

VII. CIVIL PENALTY

28. Within thirty (30) calendar days of the effective date of this Consent Order, Defendant shall pay a total of SIXTY-TWO THOUSAND AND TWENTY-NINE DOLLARS (\$62,029) 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

29. 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 personal property 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.

30. 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, either party may bring the dispute to this Court for resolution.

IX. SCOPE OF CONSENT ORDER

31. The provisions of this Consent Order shall apply to Defendant and any of its departments or agencies. 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.
32. 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.

33. 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.
34. 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 either 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 either party of any other obligations imposed by this Consent Order.

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

35. Any time limits for performance imposed by this Consent Order may be extended by the mutual written agreement of the Parties.
36. The Parties shall be responsible for their own attorney's fees and court costs, except as provided for in Paragraph 37.
37. 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 the United States contends that there has been a failure by Defendant, 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 United States may move the Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring the

performance of such act or deeming such act to have been performed, and an award of any damages, costs, and attorney's fees which may have been occasioned by Defendant's violation or failure to perform.

XI. RETENTION OF JURISDICTION

38. The Court shall retain jurisdiction over all disputes between the Parties arising out of the Consent Order, including but not limited to interpretation and enforcement of the terms of the Consent Order.
39. This Consent Order shall be in effect for a period of eighteen (18) months 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 _____, 2020.

UNITED STATES DISTRICT JUDGE

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

For the United States:

Dated: September 3, 2020

JOHN F. BASH
United States Attorney

/s/ James E. Dingivan

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For City of San Antonio

Dated: September 3, 2020


DEBORAH LYNNE KLEIN
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City of San Antonio
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Telephone: (210) 207-8919
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EXHIBIT A

IMPORTANT NOTICE TO MILITARY PERSONNEL 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 cities and 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 city or towing company to foreclose or enforce a lien on the property or effects of any protected servicemember;
- Allows the court to postpone the proceeding for a period of time as justice and equity require, or to adjust the obligation to the city or 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, the City of San Antonio 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, the City of San Antonio 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 the CITY OF SAN ANTONIO

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). These include, but are not limited to, the right not to have a city or 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 PERSONNEL**.
- 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 the City of San Antonio in accordance with 50 U.S.C. § 3958.
- In exchange for waiving these SCRA rights, the City of San Antonio 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 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 the City of San Antonio to auction or dispose of my Vehicle and its contents in accordance with Texas state law.

Dated: _____

By: _____
Signature

Print Name

For: City of San Antonio

Dated: _____

By: _____
Signature

Print Name

EXHIBIT B

EMPLOYEE ACKNOWLEDGMENT

I acknowledge that on _____, 20__, I was provided training regarding compliance with the Servicemembers Civil Relief Act (SCRA) and copies of the City of San Antonio's SCRA Policies and Procedures 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. City of San Antonio*, Civil No. _____ (W.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 the City of San Antonio and its departments and agencies. I do not release any other claims that I may have against the City of San Antonio under any other section of the Servicemembers Civil Relief Act or under any other law.

Executed this _____ day of _____, 20__.

SIGNATURE: _____

PRINT NAME: _____

MAILING ADDRESS: _____

PHONE: _____

EMAIL: _____

EXHIBIT D

**NOTICE TO SERVICEMEMBERS REGARDING VEHICLES AUCTIONED OR SOLD
THROUGH THE SAN ANTONIO POLICE DEPARTMENT**

On _____, 2020, a Consent Order was entered by the U.S. District Court for the Western District of Texas in a lawsuit brought by the United States against the City of San Antonio. The lawsuit alleged that the City of San Antonio auctioned, sold, or otherwise disposed of motor vehicles owned by active-duty servicemembers without first obtaining a court order or valid waiver, in violation of Section 3958 of the Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C. § 3958. As a part of that Order, a Settlement Fund was established to compensate servicemembers aggrieved by the City's conduct.

You may be entitled to a monetary award from the Settlement Fund IF:

You were an active-duty servicemember whose vehicle was auctioned, sold, or otherwise disposed of by the City of San Antonio or its contractors:

- a. while you were in military service; or**
- b. within ninety (90) days after you left military service.**

If you believe you may qualify for compensation, or if you have information about someone else whom you believe may qualify, please contact the United States Department of Justice, no later than [DATE], at [NUMBER] and select menu option [NUMBER]. You may also send an email to servicemembers@usdoj.gov.

Your telephone message or email must include your name, address, and, if possible, your email address and at least TWO telephone numbers where you may be reached.