

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

TIMOTHY STONER,	:	
	:	
Plaintiff,	:	
	:	CIVIL NO.: 4:14-cv-02456-RM
v.	:	
	:	
PIMA COMMUNITY COLLEGE,	:	
	:	
Defendant.	:	

SETTLEMENT AGREEMENT AND RELEASE

1. Plaintiff Timothy Stoner (“Plaintiff”), a U.S. Army National Guardsman, commenced this action in the United States District Court for the District of Arizona, alleging Defendant Pima Community College (“Defendant”) discriminated against him based on his military status, in violation of the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.* (“USERRA”), when it failed to place him in the position of Police Corporal in its Department of Public Safety in 2010 and in 2013.

2. Pima Community College denies that it discriminated against Plaintiff on the basis of his military status when he was not placed in the position of Police Corporal in its Department of Public Safety in 2010 and 2013, and this Agreement shall not constitute an adjudication or finding on the merits of the action or be construed as an admission by Defendant of any violations of USERRA.

3. As a result of their settlement discussions, Plaintiff and Defendant (together, the “Parties”) have resolved their dispute and have agreed that this action should be resolved by entry of this Settlement Agreement (“Agreement”) in the record. It is the intent of the Parties

that this Agreement be a final and binding settlement in full disposition of any and all claims which have been or could have been asserted in the Complaint filed in this action.

STIPULATIONS

4. Venue is proper in this district for purposes of entering this Agreement and any proceedings related to this Agreement. While denying any and all wrongdoing alleged in the Complaint, and without constituting an admission of liability, Defendant agrees that all conditions precedent to the institution of this action have been fulfilled.

5. The Parties stipulate and agree to the following:

- a. The Court has jurisdiction over the subject matter of this action and the Parties to this action.
- b. The terms and provisions of this Agreement are lawful, fair, reasonable and just. The rights of the Parties are adequately protected by this Agreement.
- c. This Agreement conforms with the Federal Rules of Civil Procedure and USERRA, and is not in derogation of the rights and privileges of any person.
- d. The entry of this Agreement will further the objectives of USERRA and other applicable law, and will be in the best interests of the Parties.

NON-DISCRIMINATION

6. Defendant, by and through its officials, agents, and employees, will comply with USERRA and specifically shall not fail or refuse to hire any individual, fail or refuse to promote any employee, discharge any employee, or take any other adverse action against Plaintiff or any employee, based on his or her past or present military service obligations.

NON-RETALIATION

7. Defendant, by and through its officials, agents, and employees, shall not take any action against any person, including but not limited to Plaintiff, that constitutes retaliation or interference with the exercise of such person's rights under USERRA because such person gave testimony or assistance or participated in any manner in any investigation or proceeding in connection with this case.

REMEDIAL RELIEF

8. Without admitting the allegations set forth in the Complaint, and in settlement of the claims of Plaintiff, who, by his signature to the release attached as Appendix A, accepts the relief given him under this Agreement, Defendant agrees to provide the relief specified below.

9. Defendant shall place Plaintiff in a newly created Police Corporal position in its Department of Public Safety (the "Department"), responsible for supervision of the Department's Community Service Officers ("CSOs"), with Plaintiff retaining all of his authority as a sworn police officer. In this position, Plaintiff will, among other duties assigned, oversee the Department's non-sworn CSOs and ensure all of Defendant's campuses are staffed with CSOs during critical time periods. The duties of this position may include conducting training of CSOs; ensuring CSOs understand their role in the community policing model; monitoring calls for service; analyzing calls for service and taking appropriate action if it is determined additional or other resources are needed to address a problem on campus; communicating with students and the general public; mentoring subordinates; and resolving employee conflicts. Plaintiff's placement in the Police Corporal position shall be effective on the first day of the first pay period following the date this Agreement is entered into the Court record, without requiring any

probationary period of service since Plaintiff has already served as Acting Corporal for a period exceeding any probationary period.

10. Defendant agrees that Plaintiff's placement in this Police Corporal position is a regular placement as opposed to a temporary or acting placement, and such placement shall not have an adverse effect on his eligibility for other higher ranked positions at Pima Community College, and, if Defendant later decides to abolish the new Police Corporal position for whatever reason, Plaintiff shall still retain the rank of Police Corporal, with full Corporal pay and benefits. To support and facilitate Plaintiff's placement in the Police Corporal position, Defendant shall enroll Plaintiff, at no expense to him, in the first session of its Supervision in the 21st Century Program (the "Program") that follows the date of entry of this Agreement. Plaintiff's completion of this Program shall not be deemed a condition of his initial placement and continued employment in the Police Corporal position, and while enrolled, he shall receive Police Corporal pay and benefits, and, to the extent practicable, shall continue to perform his Police Corporal duties. Plaintiff shall attend all sessions of the Program, and complete the Program's requirements, except as excused by his supervisor for illness, unavoidable demands, or similar circumstances.

11. Defendant shall pay Plaintiff a total of \$9,000, representing back pay for lost wages. Defendant shall make all appropriate withholdings and other statutory deductions, such as for taxes, social security, and retirement, from the back pay amount at the time of payment. Defendant shall separately pay all applicable employer portions of federal, state and local taxes and shall not deduct its portion of such taxes from the overall settlement amount paid to Plaintiff,

and Defendant shall make its appropriate employer contribution to the applicable law enforcement retirement system.

12. In entering into this Agreement, Plaintiff represents that he has not relied on the advice or representations of Defendant or its attorneys regarding the legal and income tax consequences of this Agreement; that the terms of this Agreement have been completely read; and that the terms of this Agreement are fully understood and voluntarily accepted by Plaintiff.

13. On the next regular payday that is at least three (3) business days after this Agreement is entered into the Court record, Defendant shall make the payment to Plaintiff described in Paragraph 11 through direct deposit as part of the regular payroll deposit for Plaintiff Timothy Stoner accompanied by a pay stub and withholding information and, within fourteen (14) days of such payment, shall provide a copy of the pay stub and withholding information to the United States Department of Justice, as Plaintiff's attorneys in this matter, by regular or electronic mail, to the attention of:

Louis Whitsett
Senior Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, NW, PHB-4038
Washington, DC 20530
Louis.Whitsett@usdoj.gov

**RETENTION OF JURISDICTION,
DISPUTE RESOLUTION AND COMPLIANCE**

14. The Parties agree that the Court shall retain jurisdiction over this action and shall have all available equitable powers, including injunctive relief, to enforce this Agreement. The Parties further agree that either party may request the Court's assistance to resolve any disputes

related to the Agreement or compliance with it. The Parties shall engage in good faith efforts to resolve any dispute regarding this Agreement prior to seeking such involvement by the Court. The Parties shall give notice to each other fourteen (14) days before moving for review by the Court.

ADOPTION OF PERSONNEL POLICY ON USERRA COMPLIANCE

15. Within thirty (30) days from the date of entry of this Agreement, Defendant shall amend its personnel policies as set forth in its Standard Practice Guide 1501/AA on Complaints of Discrimination, Harassment and Retaliation and the corresponding references in its Personnel Policy Statement for College Employees so that the policies notify Defendant's employees of their rights and obligations under USERRA, including their right be free from discrimination based on their military service or obligations and from retaliation, in all hiring, promotions, assignments, and other employment decisions. Specifically, those policies shall be amended to include the following language:

The College is committed to fully complying with the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994, which prohibits an employer from denying employment, re-employment, retention in employment, promotion or any benefit of employment based on a person's membership in or obligation to perform service in a uniformed service, or retaliating against a person by taking adverse employment action against that person for asserting their rights or testifying in connection with or participating in an investigation pursuant to the Act.

Defendant shall provide notice of this amendment to DOJ upon the completion of the requirements of this paragraph.

16. Defendant agrees that it will continue to display the USERRA notification poster required under the Department of Labor's USERRA regulations (Appendix A to 20 CFR Part

1002 (“Notice of Your Rights under USERRA”)) and set forth therein, at its facilities where other legally required notices are displayed.

MISCELLANEOUS

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

18. If any provision of this 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.

19. The terms of this Agreement are and shall be binding upon the heirs, successors, and assigns of Plaintiff and upon the present and future elected and appointed officials, officers, directors, employees, agents, representatives, successors and assigns of Defendant.

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

21. All references to “days” in this Agreement are calendar days, unless otherwise specified.

EFFECTIVE DATE

22. The effective date of this Agreement shall be the date upon which the Order regarding this Agreement is entered by the Court. The Parties agree that this Agreement shall expire and this action shall be dismissed with prejudice, without further order of this Court, one year from the date of entry of this Agreement by the Court.

Dated: July 2, 2015

AGREED TO:


PLAINTIFF TIMOTHY STONER

Attorneys for Plaintiff Timothy Stoner

VANITA GUPTA
Principal Deputy Assistant Attorney General
Civil Rights Division

By:

/s/ Delora L. Kennebrew
DELORA L. KENNEBREW (GA Bar No. 414320)
Chief
Employment Litigation Section
Civil Rights Division

/s/ Karen Woodard
KAREN WOODARD (MD Bar/ No number issued)
Deputy Chief

/s/ Louis Whitsett
LOUIS WHITSETT (DC Bar No. 257626)
Senior Trial Attorney
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PIMA COMMUNITY COLLEGE

By: William R. Ward, II

Its: Vice Chancellor, Facilities & College Police

Attorney for Defendant Pima Community College

/s/ Georgia Staton
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APPENDIX A

INDIVIDUAL RELIEF AND RELEASE OF CLAIMS

I, Timothy Stoner, for and in consideration of acceptance of the relief offered to me by Pima Community College, pursuant to the provisions of the Settlement Agreement between me and Pima Community College (“Agreement”) entered by the United States District Judge in Timothy Stoner v. Pima Community College, Civil Action No. 4:14-cv-02456-RM, forever release and discharge Pima Community College and all current, former and future agents, employees, officials, designees, predecessors and successors in interest of Pima Community College from all legal statutory and equitable claims that were or could have been asserted in the complaint filed in the above-captioned civil action and the complaint filed with the U.S. Department of Labor in USERRA Case No. AZ-2014-00001-20G.

I understand that the relief to be given to me does not constitute an admission by the Pima Community College of the validity of any claim raised by me or on my behalf, nor does it constitute a finding of any wrongdoing or liability under applicable federal law or regulation.

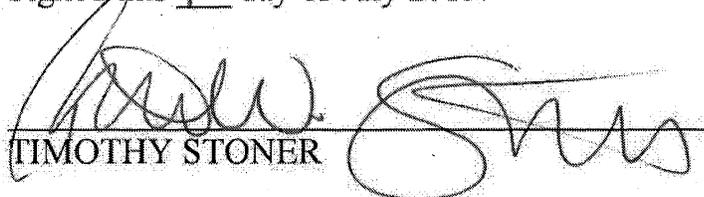
This release and the Agreement entered in this action constitute the entire agreement between Pima Community College and me, without exception or exclusion.

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I acknowledge that a copy of the Agreement entered in this action has been made available to me.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF, AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Signed this 1st day of July 2015.


TIMOTHY STONER

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FOR THE DISTRICT OF ARIZONA**

Timothy Stoner,

Plaintiff,

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Pima Community College,

Defendant.

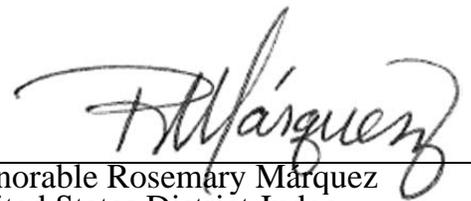
No. CV-14-02456-TUC-RM

ORDER

The Parties' Settlement Agreement in this action (attached to their Joint Notice of Settlement filed on July 2, 2015; *see* Doc. 20-1) is hereby entered in the Court record. Based on the Settlement Agreement, this case is **dismissed without prejudice**. The Court retains jurisdiction over the Settlement Agreement for purposes of enforcing its provisions and resolving any disputes that may arise thereunder as appropriate. At the end of one (1) year from the date this Order is entered, the Court's jurisdiction over this matter shall expire and this action shall be dismissed with prejudice without further order of the Court.

IT IS SO ORDERED.

Dated this 7th day of July, 2015.



Honorable Rosemary Marquez
United States District Judge