

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF SOMERVILLE, MASSACHUSETTS
and COMMONWEALTH OF
MASSACHUSETTS, HUMAN RESOURCES
DIVISION,

Defendants.

Civil Action No. 16-10223

STIPULATION AND [PROPOSED] ORDER

WHEREAS, on February 10, 2016, Plaintiff United States and Defendants City of Somerville, Massachusetts and Commonwealth of Massachusetts Human Resources Division (“Defendants”) (collectively, the “Settling Parties”) resolved the above-captioned action by a Settlement Agreement (attached hereto as Exhibit 1), which requires, among other items, that Sean Keane be promoted to lieutenant as of July 11, 2013 and be permitted to take a make-up promotional examination for the rank of captain and fairly contend for any subsequent promotion to captain, as well as receive payment related to said promotion to lieutenant in exchange for a release of claims relating to this action:

THEREFORE, in accordance with the provisions of the Settlement Agreement, the Settling Parties hereby stipulate and request that this Court order as follows:

1. The Settling Parties shall promptly file a notice with the Court upon the Defendants’ satisfaction of the obligations in paragraphs 6 through 14 of the Settlement Agreement. The Court shall, upon the filing of such notice and upon a finding that there is no just reason for delay of disposition as to the Defendants pursuant to Rule 54(b) of the Federal

Rules of Civil Procedure, enter an order dismissing Defendants and all claims against them with prejudice and directing the entry of final judgment as to the Defendants.

2. This Court will retain jurisdiction of this action to enforce the provisions of this Settlement Agreement. Such jurisdiction shall terminate upon the entry of final judgment in accordance with this Order.

CARMEN M. ORTIZ⁴
United States Attorney
District of Massachusetts

/s/ Jessica P. Driscoll
JESSICA P. DRISCOLL, BBO No. 655394
Assistant United States Attorney
United States Attorney's Office
John Joseph Moakley U.S. Courthouse
One Courthouse Way, Suite 9200
Boston, MA 02210
Telephone: 617-748-3100
E-mail: Jessica.driscoll@usdoj.gov

VANITA GUPTA
Principal Deputy Assistant Attorney General
Civil Rights Division

/s/ Jeremy P. Monteiro
DELORA KENNEBREW
Employment Litigation Section
ANDREW BRANIFF
Special Litigation Counsel
Jeremy P. Monteiro
Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
601 D Street, N.W., Suite 4500
Washington, DC 20004
Telephone: 202-307-6230
E-mail: Jeremy.monteiro@@usdoj.gov

Respectfully submitted,

COMMONWEALTH OF
MASSACHUSETTS HUMAN
RESOURCES DIVISION

By its attorney,
MAURA HEALEY, Attorney General

/s/ Robert L. Quinan
ROBERT L. QUINAN, JR.
Assistant Attorney General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
Tel: (617) 963-2554
Facsimile: (617) 727-5785
Email: Robert.Quinan@state.ma.us
BBO # 553010

CITY OF SOMERVILLE
By its attorney,

/s/ Francis X. Wright
FRANCIS X. WRIGHT, JR.
City Solicitor
City of Somerville
93 Highland Avenue
Somerville, MA 02143
Tel: (617) 625-6600, ext. 4400
Email: fwright@somervillema.gov

Dated: February 10, 2016

SO ORDERED:

Dated this 22nd day of February, 2016.

THE HONORABLE [Signature]
UNITED STATES DISTRICT COURT JUDGE
MAGISTRATE



EXHIBIT 1

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

respectively deny that they violated USERRA or any other provision of law with respect to Keane, or that they are liable on any of the claims that were or could have been asserted in this action. The United States alleges that all conditions precedent to the institution of this lawsuit have been fulfilled.

2. The Settling Parties have agreed that this action should be resolved, in accordance with the Stipulation and Order, by dismissal of this action upon the satisfaction of the obligations set forth in paragraphs 6 through 14 of this Settlement Agreement ("Agreement"). It is the intent of the Settling Parties that this Agreement be a final and binding settlement of any and all claims that were or could have been asserted in the Complaint filed in this case as well as any claims arising from the same facts brought by the United States Department of Labor against the City and/or the Commonwealth in Case No. MA-2015-00003-20-V.

3. Defendants' entry into this Agreement does not constitute an adjudication or finding on the merits of the case, and should not be construed as an admission by the Defendants of any violation of USERRA, or any other provision of law. The United States agrees that the relief provided in this Agreement is a satisfactory resolution of all of its claims in the Complaint and of the issues raised in United States Department of Labor Case No. MA-2015-00003-20-V. By his signature to the accompanying release, attached hereto as Appendix A, Keane agrees that the relief provided in this Agreement is a satisfactory resolution of any and all claims described in such release.

STIPULATIONS

4. Pursuant to USERRA, the Settling Parties acknowledge the jurisdiction of the United States District Court for the District of Massachusetts over the subject matter of this action and of the Settling Parties to this action for the purpose of enforcing this Agreement, if

necessary. Orders will be entered with respect to the Settling Parties respectively only to the extent it is a necessary party for complete relief pursuant to the provisions of this Agreement under Federal Rule of Civil Procedure 19.

5. Venue is proper in this judicial district for the purpose of conducting any proceedings related to this Agreement, and entering any related orders.

REMEDIAL REQUIREMENTS

6. For and in consideration of the settlement and dismissal with prejudice of all claims of the United States as described in paragraph 1 above, and the release of claims by Keane as reflected by Appendix A, the Settling Parties shall provide the relief set forth in paragraphs 7 through 14 herein. In the case of the Commonwealth, it shall discharge the obligations set forth in paragraphs 10-11 and 13 herein.

7. The City shall pay Keane \$15,805.17 in full satisfaction of any and all claims described in paragraph 1 above and in the accompanying release by Keane within fourteen (14) days of the Effective Date of this agreement. This amount constitutes the Settling Parties' determination of the difference in compensation and benefits paid to Keane as a firefighter versus what he would have been paid as a lieutenant between July 11, 2013 and October 23, 2014. The City shall assume all responsibility for all tax liabilities applicable to payors (including issuing appropriate tax forms) incurred as a result of the payments made pursuant to this Agreement, and Keane shall assume all responsibility for all tax liabilities applicable to payees incurred as a result of acceptance of payments pursuant to this Agreement. At the conclusion of tax year 2016, the City shall issue Keane a W-2 reflecting this payment.

8. The City shall direct the payment of the settlement amount by First Class Mail

(signature required) to Sean Keane at his home mailing address as reflected in the City's personnel records. The City shall also provide proof of payment to counsel for the United States at or about the same time it sends payment to Keane.

9. The City shall issue a notice to the United States, the Commonwealth, and Keane, stating that Keane will be assigned a date of promotion to lieutenant-1 as of July 11, 2013 and lieutenant-2 as of July 11, 2014 and the City and Commonwealth shall cause all necessary employment records shall be adjusted to reflect these changes.

10. The Commonwealth shall administer Keane a make-up of the November 2014 captain's exam as soon as practicable but no later than April 30, 2016.

11. The Commonwealth shall interfile Keane's score on the makeup captain's promotional exam on the eligibility list that resulted from the November 2014 captain's promotional exam.

12. If pursuant to applicable state law his score merits it, the City agrees to promote Keane to captain with all of the rights, benefits (including, but not limited to, backpay pursuant to a retroactive pay increase), and seniority that Keane would have enjoyed if he had been permitted to take the exam in November 2014 and had achieved the same score.

13. Should the City promote Keane pursuant to Paragraph 12, the Commonwealth shall record Keane's promotion to the position of captain effective as of the seniority date reflected in the written notice submitted by the City.

14. All notices and documents required to be provided to counsel for United States shall be delivered through First Class Mail to:

JESSICA DRISCOLL
Assistant United States Attorney
United States Attorney's Office
John Joseph Moakley U.S. Courthouse
One Courthouse Way, Suite 9200
Boston, MA 02210
Telephone: 617-748-3100
Facsimile: 617-748-3969
E-mail: Jessica.driscoll@usdoj.gov

JEREMY P. MONTEIRO
Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
601 D Street, N.W., Suite 4500
Washington, DC 20004
Telephone: 202-307-6230
Facsimile: 202-514-1005
E-mail: Jeremy.monteiro@usdoj.gov

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

15. Upon the Defendants' satisfaction of the obligations set forth in paragraphs 6 through 14 above, the Settling Parties shall promptly file notice of such satisfaction with the Court, and upon the filing of such notice, all claims against the City and Commonwealth shall be dismissed with prejudice and final judgment entered as set forth in the Stipulation and Order.

16. Until the Defendants satisfy the obligations in paragraphs 6 through 14 above, the Court retains jurisdiction over this action for the purpose of interpreting or enforcing this Agreement. The Court's jurisdiction shall terminate upon the dismissal of the Defendants and all claims against them from this action and entry of final judgment in accordance with the Stipulation and Order.

17. The Settling Parties shall engage in good faith efforts to resolve any dispute concerning compliance with this Agreement prior to seeking review by the Court. If such dispute cannot be resolved by the Settling Parties, the Settling Parties shall give written notice to each other no less than ten (10) business days before moving for review by the Court.

MISCELLANEOUS

18. The Settling Parties shall bear their own costs and expenses, including attorneys' fees.

19. 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.

20. The terms of this Agreement are and shall be binding upon present and future officers, directors, employees, agents, representatives, successors, and/or assigns of the Settling Parties.

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

22. This agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

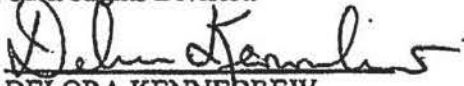
EFFECTIVE DATE

23. The effective date of this Agreement shall be the date upon which the Stipulation and Order is entered by the Court.

CARMEN M. ORTIZ
United States Attorney
District of Massachusetts


JESSICA P. DRISCOLL, BBO No. 655394
Assistant United States Attorney
United States Attorney's Office
John Joseph Moakley U.S. Courthouse
One Courthouse Way, Suite 9200
Boston, MA 02210
Telephone: 617-748-3100
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By its attorney,
MAURA HEALEY, Attorney General

ROBERT L. QUINAN, JR.
Assistant Attorney General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
Tel: (617) 963-2554
Facsimile: (617) 727-5785
Email: Robert.Quinan@state.ma.us
BBO No. 553010

CITY OF SOMERVILLE
By its attorney,

FRANCIS X. WRIGHT, JR.
City Solicitor
City of Somerville
93 Highland Avenue
Somerville, MA 02143
Tel: (617) 625-6600, ext. 4400
fwright@somervillema.gov

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By its attorney,
MAURA HEALEY, Attorney General


ROBERT L. QUINAN, JR.
Assistant Attorney General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
Tel: (617) 963-2554
Facsimile: (617) 727-5785
Email: Robert.Quinan@state.ma.us
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By its attorney,

MAURA HEALEY, Attorney General

ROBERT L. QUINAN, JR.
Assistant Attorney General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
Tel: (617) 963-2554
Facsimile: (617) 727-5785
Email: Robert.Quinan@state.ma.us
BBO No. 553010

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FRANCIS X. WRIGHT, JR.
City Solicitor
City of Somerville
93 Highland Avenue
Somerville, MA 02143
Tel: (617) 625-6600, ext. 4400
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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,)
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v.)
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CITY OF SOMERVILLE, MASSACHUSETTS)
and COMMONWEALTH OF)
MASSACHUSETTS,)
)
Defendants.)

**APPENDIX A
RELEASE OF CLAIMS AS TO THE
CITY OF SOMERVILLE AND COMMONWEALTH OF MASSACHUSETTS**

I, Sean Keane, for and in consideration of accepting the relief to be provided to me pursuant to the provisions of the Settlement Agreement filed in the above-captioned action, hereby forever release and discharge the Commonwealth of Massachusetts (the "Commonwealth"), including but not limited to its Human Resources Division of the Executive Office of Administration and Finance ("HRD"), and the City of Somerville ("City"), and their current, former and future officials, employees, agents, representatives, successors, and/or assigns of any and all claims, liabilities, demands, damages, and/or causes of action, whether asserted or unasserted, arising from or related to the allegations raised in this action or in United States Department of Labor Veterans' Employment and Training Service ("VETS") Case No. MA-2015-00003-20-V.

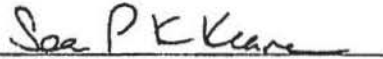
I hereby withdraw my complaint in VETS Case No. MA-2015-00003-20-V and any and all appeals or claims filed with HRD and/or Somerville prior to the date of this release, and agree not to seek any further monetary or non-monetary relief related to the allegations raised in this

action or in VETS Case No. MA-2015-00003-20-V from the Commonwealth or the City through such claims or actions.

I understand that the relief to be given to me under the Settlement Agreement does not constitute an admission by the Commonwealth or the City of the validity of any claim raised by me or on my behalf. I further understand that the terms and conditions of the Settlement Agreement, any related orders of the Court, or this release do not constitute a finding of wrongdoing or liability by the Commonwealth under any provision of law.

I acknowledge that a copy of the Settlement Agreement and the Stipulation and Order 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.


Sean Keane

Executed on February 4, 2016