

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DERRICK STRONG,	)	
	)	
Plaintiff,	)	Case No.: 1:19-cv-08244
	)	
v.	)	Hon. Elaine E. Bucklo
	)	District Judge
CITY OF CHICAGO, an Illinois Municipal	)	
Corporation,	)	Hon. Heather K. McShain
	)	Magistrate Judge
Defendant.	)	

SETTLEMENT AGREEMENT AND RELEASE

Plaintiff DERRICK STRONG ("Plaintiff") and Defendant City of Chicago ("City"), by their respective attorneys, (collectively "the Parties") enter into this Settlement Agreement and Release ("Settlement Agreement"), and hereby stipulate and agree as follows:

1. On December 17, 2019, Plaintiff filed a lawsuit in the U.S. District Court for the Northern District of Illinois, Eastern Division, case no. 1:19-cv-08244, against the City. On June 19, 2020, Plaintiff filed an Amended Complaint, wherein he alleged a single cause of action against the City for alleged violations of the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301, *et seq.* ("USERRA") (Count I) (the "Lawsuit"). The City offered Plaintiff the opportunity to take a makeup promotional examination, and subsequently appointed Plaintiff to the position of FIRE ENGINEER-EMT (Job Code 059-8807) ("Engineer") in 2022. Plaintiff accepted the appointment and his title has been Engineer since April 16, 2022.

2. The City denies it or any of its agents or employees, violated USERRA, any state or Federal law, denies it, its employees or agents are liable for any and all claims, including the claims in the Lawsuit, and further denies any liability for any alleged unlawful conduct against Plaintiff on the part of the City, or its employees, representatives, attorneys, officers, and agents.

3. The Parties and their respective attorneys acknowledge that settlement of these claims is not an admission of liability, or of unconstitutional or illegal conduct by or on the part of any of the City's future, current, or former officers, agents, and employees, and shall not serve as evidence of any wrongdoing by or on the part of the City's future, current, or former officers, agents, and employees. The Parties and their respective attorneys further acknowledge this settlement is made to avoid the uncertainty of the outcome of litigation and the expense in time and money of further litigation and for the purpose of judicial economy.

4. In exchange for and in consideration of the release and settlement provided for herein, Plaintiff does, upon advice of counsel, hereby release and forever discharge on behalf of him and his heirs, executors, administrators and assignees, all claims he had or has against the City and its future, current, or former officers, employees and agents, arising out of his employment with the City, which are based on USERRA and the Illinois Service Member Employment and Reemployment Rights Act ("ISERRA") that pertain to the events pled in the Lawsuit that were known to Plaintiff at the time of the dismissal of the Lawsuit *with prejudice*. This release and discharge is also applicable to any and all unnamed and/or unserved defendants in the Lawsuit.

5. Plaintiff acknowledges he has read and understands the provisions in this Settlement Agreement and is satisfied with its terms and substance. Further, Plaintiff understands and agrees that this Settlement Agreement is a final and total settlement of all USERRA and ISERRA claims, arising either directly or indirectly out of the Lawsuit, that he has or may have against the City through the effective date of this Settlement Agreement or the date of dismissal of the Lawsuit, whichever is later. This includes but is not limited to claims for attorneys' fees against past or present counsel of record and expenses and costs which Plaintiff and/or his attorneys may have incurred. Plaintiff acknowledges that such finality is applicable to the City, its officers, agents, representatives, and employees, in their individual and official capacities. DS (Plaintiff to initial acknowledgement)

6. In entering into this Settlement Agreement, Plaintiff represents that he has relied upon the advice of his attorneys, who are the attorneys of his own choice, and that the terms of this Settlement Agreement have been interpreted, completely read and explained to him by his attorneys, and that those terms are fully understood and voluntarily accepted by Plaintiff. Plaintiff further agrees that he voluntarily enters into this Settlement Agreement and that none of the City's agents, attorneys, employees, or representatives made any representations concerning the terms or effects of this Settlement Agreement, other than those terms contained herein. Plaintiff further represents and warrants that no other person or entity has or has had any interest in the claims or causes of action referred to herein, that he and his attorneys have the sole right and exclusive authority to execute this Settlement Agreement and receive the sums specified herein, and that they have not sold, assigned, transferred, conveyed or otherwise disposed of any claims or causes of action referred to herein.

DS (Plaintiff to initial acknowledgement)

7. In consideration of the promises contained herein, Plaintiff agrees to accept, and the City agrees to retroactively adjust Plaintiff's date of appointment to the title of FIRE ENGINEER-EMT (Job Code 059-8807) ("Engineer") with the Chicago Fire Department to June 16, 2018, and that Plaintiff shall receive all seniority and pension benefits as though he had been appointed to Engineer on June 16, 2018. In consideration of the promises contained herein, Plaintiff agrees to accept, and the City agrees to pay the total sum of FIFTY-TWO THOUSAND AND NO/100 DOLLARS (\$52,000.00) to resolve this matter (the "Settlement Payment"). The total sum of \$52,000.00 will be divided into three amounts:

- a. TWENTY-EIGHT THOUSAND SEVEN HUNDRED FIFTEEN AND 60/100 DOLLARS (\$28,715.60) will be allocated as W-2 wage damages payable from the Chicago Fire Department. Applicable state and federal taxes and pension contributions will be withheld from this amount.

b. The remaining TWENTY THOUSAND FIVE HUNDRED TWENTY AND 88/100 DOLLARS (\$20,520.88) will be allocated as W-2 overtime wage damages, payable from the Chicago Fire Department. Applicable state and federal taxes will be withheld from this amount.

c. The remaining TWO THOUSAND SEVEN HUNDRED SIXTY-THREE AND 52/100 DOLLARS (\$2,763.52) will be allocated as 1099 pre-judgment interest.

8. The City agrees to pay Plaintiff the total settlement amount as specified in paragraph 7 herein and to retroactively appoint Plaintiff to Engineer with an effective date of June 16, 2018, within sixty (60) calendar days of: (1) receipt by the Corporation Counsel's Office of a fully executed Settlement Agreement; and (2) receipt by the Corporation Counsel's Office of electronic notice of a Court Order dismissing the Lawsuit *with prejudice*. The City shall use Plaintiff's retroactive promotion date for all purposes for which seniority is used, including, but not limited to, pay, benefits, pension, assignments, and other job prerequisites.

9. Within the same time period outlined in paragraph 8 herein, the City shall (a) cause all necessary employment records and accounts to be adjusted to reflect the retroactive promotion date of June 16, 2018; and (b) issue a written notice to the United States (via email to Alicia D. Johnson) and Plaintiff stating that Plaintiff's City employment records have been altered to reflect the updated salary and the amount and date of the credit..

10. Plaintiff understands that to the extent the Settlement Payment set forth in paragraph 7 may be deemed income to him by the taxing authorities, he is responsible for paying any taxes which may become due and payable to the taxing authorities. Plaintiff further understands that the City is not responsible for paying any taxes which may become due and payable by Plaintiff as a result of the settlement amount set forth in paragraph 7. To the extent any such interest, claims or liens from any taxing authority arises for taxes payable by Plaintiff, Plaintiff agrees to incur any and all attorneys' fees,

costs, and expenses and to indemnify and hold harmless the City, or any of its elected or appointed officials, officers, agents, representatives, attorneys, or employees, from any such claims made against it based on Plaintiff's tax liability.

11. For all payments made pursuant to this Settlement Agreement, the City shall assume 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. The City shall be responsible for separately paying the employer's contribution to Social Security and Medicare due on the award of wage and overtime damages, and the employer's contribution shall not be deducted from the overall Settlement Payment. At the conclusion of the tax year in which the payments are made, the City shall issue to Plaintiff a W-2 reflecting the payments.

12. Plaintiff represents that no other persons or entities have any interest, claim or lien relating to this Settlement Agreement. To the extent that any such interest, claims or liens exist or arise, Plaintiff agrees to incur any and all attorneys' fees, costs and expenses and to indemnify and to hold the City harmless for any such claims made against the City.

13. Plaintiff and his counsel, Alicia D. Johnson and the U.S. Department of Justice, represent that they are not aware of any other attorneys having any claim for fees, costs or expenses with regard to the events giving rise to any of the matters referenced herein. To the extent that any such claims exist, including but not limited to any attorney's liens, Plaintiff agrees to incur any and all attorney's fees, costs, and expenses and to indemnify and hold harmless the City, or any of its elected or appointed officials, officers, agents, representatives, attorneys, or employees, from any such claims made against them.

14. If the City fails to make the payments in this Settlement Agreement within the timeframe set out herein, any payments will be increased by interest due on the payments. The interest

rates will be the underpayment interest rate of the United States Internal Revenue Service in effect at the time.

15. In exchange for and in consideration of the release and settlement provided for herein, Plaintiff hereby also releases and forever discharges on behalf of him and his heirs, executors, administrators and assignees, all claims he had or has against the City and its future, current, or former officers, employees and agents, arising out of his employment with the City, which are based on the Age Discrimination in Employment Act (the "ADEA") that were known to Plaintiff at the time of the dismissal of the Lawsuit with prejudice. This release and discharge is also applicable to any and all unnamed and/or unserved defendants in the Lawsuit. Pursuant to the ADEA, Plaintiff acknowledges that the U.S. Department of Justice cannot provide him with legal advice on his release of any non-USERRA claims, and he has been counseled that he should consult with counsel and has been given the opportunity to take a period of at least 21 days to review and consider this Settlement Agreement with counsel of his choice.

16. Plaintiff and his counsel agree that this settlement shall have no precedential value of any type whatsoever, shall only apply to matters referred to herein, and that neither this settlement nor any terms of this Settlement Agreement shall be offered or received as evidence in any court or administrative action or other proceeding to suggest wrongdoing by the City or any of the City's past or present elected or appointed officials, officers, agents, representatives, attorneys, or employees, or as proof of the legal position of the City.

17. This Settlement Agreement contains the entire agreement between the Parties regarding the settlement of this action and shall be binding upon and inure to the benefit of all Parties hereto, jointly and severally, and the heirs, executors, administrators, personal representatives, successors and assigns of each.

18. The Settlement Agreement is entered into in the State of Illinois and shall be construed and interpreted in accordance with its laws. Terms contained herein shall not be construed against a party merely because that party is or was the principal drafter.

19. All Parties agree to cooperate fully and to take all additional actions which are consistent with and which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

20. Following the execution of this Settlement Agreement by the Parties, the U.S. Department of Labor and U.S. Department of Justice will close Plaintiff's USERRA claim, VETS Case No. IL-2017-00018-20-R-R.

21. The effective date of this Settlement Agreement shall be the date of the latest signature below.

[Signatures contained on the following page.]

Date: August 25, 2023

By: *Derrick Strong*
Derrick Strong, Plaintiff

Office of the Corporation Counsel

Date: September 1, 2023 By:

Kenneth Robling
Kenneth Robling
Deputy Corporation Counsel
2 N. LaSalle St., Suite 640
Chicago, Illinois 60602

Scott Crouch
Assistant Corporation Counsel

ONLY AS TO PARAGRAPHS 13 & 16:

Date: August 25, 2023

By: *Alicia D. Johnson*
Alicia D. Johnson
US Department of Justice, Civil Rights Division,
Employment Litigation Section
150 M Street, NE, 9th Floor
Washington, DC 20530