

United States v. City of El Paso, Texas; United Road Towing, Inc. d/b/a UR Vehicle Management Solutions; and Rod Robertson Enterprises, Inc.
(W.D. Tex., No. 3:23-cv-00044-LS)

SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND ROD ROBERTSON ENTERPRISES, INC.

I. INTRODUCTION

1. This Settlement Agreement (“Agreement”) is made and entered into by and between the United States of America, through the Department of Justice (“United States”), and Defendant Rod Robertson Enterprises, Inc. (“RRE”). The United States and RRE are referred to herein as the “Parties.”

II. RECITALS

2. This Agreement resolves the claims and causes of action against RRE asserted in *United States v. City of El Paso, Texas; United Road Towing, Inc. d/b/a UR Vehicle Management Solutions; and Rod Robertson Enterprises, Inc.*, No. 3:23-cv-00044-LS, filed in the United States District Court for the Western District of Texas on February 20, 2023, alleging violations of the Servicemember Civil Relief Act, 50 U.S.C. §§ 3901-4043 (hereinafter “the Civil Action”).

3. The Civil Action alleges that RRE engaged in a pattern or practice of violating the Servicemembers Civil Relief Act (“SCRA”) by enforcing storage liens on the property of servicemembers during periods of military service, or within ninety (90) days thereafter, without first obtaining court orders. Specifically, the United States alleges that Defendant City of El Paso, Texas contracted with RRE as its agent to conduct vehicle storage and auction operations at the El Paso Police Department Municipal Vehicle Storage Facility (“VSF”), where motor vehicles impounded by the El Paso Police Department are stored. The United States further

alleges that pursuant to that contract, RRE auctioned, sold, or otherwise disposed of motor vehicles of servicemembers without first obtaining court orders, in violation of Section 3958 of the SCRA.

4. RRE is a Texas corporation with its principal place of business in San Antonio, Texas. RRE denied and continues to deny the allegations in the Civil Action.

5. The Parties agree that it is in the public's best interest that the allegations in the Civil Action against RRE should be resolved without further litigation.

6. To avoid the delay, uncertainty, and expense of protracted litigation, and in consideration of the mutual promises and obligations set forth below, the Parties agree and covenant to the following material terms and conditions:

III. STATEMENT OF CONSIDERATION

7. In consideration of, and consistent with, the terms of this Agreement, the Parties will file a Joint Stipulation of Dismissal with Prejudice of the United States' claims against RRE in the Civil Action, as set forth below. The Parties agree and acknowledge that this consideration is adequate and sufficient.

IV. TERMS AND CONDITIONS

The Parties agree and covenant as follows:

A. Settlement Fund for Aggrieved Servicemembers

8. Within fourteen (14) business days after the effective date of this Agreement, RRE shall deposit \$140,000 into an interest-bearing escrow account ("Settlement Fund") to compensate servicemembers whom the United States has determined may have been harmed by RRE's violations of the SCRA ("Potentially Aggrieved Servicemembers"). RRE shall be solely

responsible for any costs or fees related to opening the Settlement Fund account. Any interest that accrues will become part of the Settlement Fund and shall be used and disposed of as set forth herein.

9. Within fourteen (14) business days after the effective date of this Agreement, RRE shall submit proof to the United States that the Settlement Fund has been established and that the funds have been deposited.

10. Within two hundred and forty (240) calendar days after the effective date of this Agreement, the United States shall provide RRE with a final list of aggrieved servicemembers and the amounts to be paid to them from the Settlement Fund (the "Final List").

11. Within fourteen (14) business days of receiving the Final List, RRE shall deliver to counsel for the United States a compensation check to each aggrieved servicemember in the amount specified on the Final List. The United States shall not deliver payment pursuant to this section before the aggrieved servicemember has executed and provided to counsel for the United States a written Release of Claims in the form of Appendix A. Counsel for the United States shall deliver the original signed Release of Claims Form to counsel for RRE.

12. If any aggrieved servicemember to whom a check has been made payable declines to execute a Release of Claims Form or fails to execute the Release of Claims before the expiration of this Agreement, counsel for the United States shall return the undelivered check to RRE.

13. If the aggrieved servicemember 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 RRE and request a reissuance of the check addressed to the aggrieved servicemember.

RRE will have fourteen (14) calendar days to issue a replacement check to counsel for the United States.

14. In no event shall the aggregate of all such checks paid under Paragraph 11 exceed the sum of the Settlement Fund plus any interest accrued. To avoid any uncertainty, RRE's responsibility and financial obligation to compensate aggrieved servicemembers under this Agreement shall not exceed the \$140,000 contained in the Settlement Fund, plus accrued interest.

15. After the expiration of this Agreement, any money remaining in the Settlement Fund that has not been distributed to aggrieved servicemembers shall be paid to the United States Treasury in the form of an electronic funds transfer pursuant to written instructions to be provided by the United States.

16. RRE shall not be entitled to a set-off, or any other reduction, of the amount of compensation payments required by this Agreement because of any amounts owed by the recipient. RRE shall 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 or other third party may obtain or compel review by the Parties of the identifications made, and payments disbursed, (including the amounts thereof) pursuant to this Agreement.

B. Civil Penalty

18. Within ninety (90) calendar days after the effective date of this Agreement, to resolve the United States' claims for civil penalties, RRE shall pay \$20,000 to the United States Treasury 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.

C. Conditional Requirements and Affirmative Obligations

19. Through counsel, RRE represents that it has not been under contract with El Paso since 2019 to conduct vehicle storage and auction operations at the VSF, is not under contract to conduct vehicle storage and auction operations with any other entity or locality, and does not intend to and will not contract with El Paso or any other entity or locality to do so in the future. RRE further represents that it has ceased conducting vehicle storage and auction operations altogether.

20. In the event that RRE reenters the business of conducting vehicle storage and auction operations, it shall notify the United States sixty (60) days before it intends to reenter this line of business. Prior to implementing such reentry, RRE shall implement policies, procedures, and training designed to prevent and detect potential SCRA violations in the conduct of vehicle storage and auction operations. RRE shall provide counsel for the United States the details of the policies, procedures, and training forty-five (45) days prior to implementation of such reentry. The United States shall have thirty (30) days to review and agree or object to the proposed policies, procedures, and training. RRE shall not enforce any storage liens until the United States has provided its non-objection to RRE's policies, procedures, and training. In the event that RRE reenters the business of conducting vehicle storage and auction operations, RRE shall retain records with respect to the auction and disposal of vehicles and personal property. 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 Agreement.

D. Additional Reporting and Recording Requirements

21. For the duration of this Agreement, RRE shall retain all records relating to its obligations as set forth in Paragraphs 8-15 of this Agreement.. 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 Agreement.

V. SCOPE OF SETTLEMENT AGREEMENT

22. The provisions of this Agreement shall apply to RRE and any of its officers, employees, agents, representatives, subsidiaries, subsidiaries, assigns, acquired companies, or successors-in-interest, and all persons and entities in active concert or participation with any of those entities.

23. In the event that RRE is acquired by or merges with another entity, RRE 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 Agreement for the remaining term of this Agreement.

24. This Agreement releases only the claims for violations of Section 3958 of the SCRA addressed in the Civil Action or identified in this Agreement. This Agreement does not release any unrelated claims that may be held or are currently under investigation by any federal agency against RRE or any of its affiliated entities.

25. Nothing in this Agreement will excuse RRE's compliance with any currently or subsequently effective provision of law that imposes additional obligations on it.

VI. IMPLEMENTATION AND ENFORCEMENT

26. The United States may review compliance with this Agreement at any time. RRE agrees to cooperate with the United States in any review of compliance with this Agreement.

Upon reasonable notice, RRE shall permit counsel for the United States to inspect and copy all non-privileged records pertinent to this Agreement.

27. The Parties shall endeavor in good faith to resolve informally any differences regarding interpretation of or compliance with this Agreement prior to initiating any court action. If the United States believes that there has been a failure by RRE to perform in a timely manner any act required by this Agreement, or otherwise to act in conformance with any provision thereof, whether intentionally or not, the United States will notify RRE in writing of its concerns and the Parties will attempt to resolve those concerns in good faith. RRE shall have fifteen (15) calendar days from the date the United States provides notification of any breach of this Agreement to cure the breach.

28. If the Parties are unable to reach a resolution within fifteen (15) calendar days, the United States may bring a civil action for breach of this Agreement, or any provision thereof, in the United States District Court for the Western District of Texas. This Court shall serve as the exclusive jurisdiction and venue for any dispute concerning this Agreement. The Parties consent to and agree not to contest the jurisdiction of this Court. The Parties further acknowledge that venue in this Court is appropriate and agree not to raise any challenge on this basis.

29. In the event the United States files a civil action as contemplated by Paragraph 28 to remedy breach of this Agreement, the United States may seek the following: (1) an injunction mandating specific performance of any term or provision in this Agreement, without regard to whether monetary relief would be adequate; (2) an award of reasonable attorneys' fees and costs incurred in bringing an action to remedy breach of this Agreement; and (3) any additional relief that may be available under law or equity. If such a civil action is filed, RRE expressly agrees not to count the time during which this Agreement is in place, or use the terms or existence of

this Agreement, to plead, argue, or otherwise raise any defenses under theories of claim preclusion, issue preclusion, statute of limitations, estoppel, laches, or similar defenses.

30. Failure by the United States to enforce any provision of this Agreement shall not operate as a waiver of the United States' right or ability to enforce any other provision of this Agreement.

VII. TERMINATION OF LITIGATION HOLD

31. The Parties agree that, as of the effective date of this Agreement, further 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 Agreement.

VIII. DURATION, EXECUTION, AND OTHER TERMS

32. This Agreement is effective on the date of the signature of the last signatory to the Agreement. The Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. Any signature delivered by a party by facsimile or electronic transmission (including email transmission of a PDF image) shall constitute acceptable, binding signatures for purposes of this Agreement.

33. This Agreement shall be in effect for a period of three (3) years from its effective date.

34. Within fifteen (15) calendar days after RRE provides proof to the United States of the deposit of funds as set forth in Paragraph 8 and the payment to the United States of the Civil Penalty as set forth in Paragraph 18, whichever occurs later, the Parties shall file a Joint

Stipulation of Dismissal with Prejudice of the underlying claims in the Civil Action against RRE pursuant to Fed. R. Civ. P. Rule 41. . Upon filing such Stipulation of Dismissal, the United States forever releases and discharges any and all claims, damages, and liability that were asserted or that could have been asserted against RRE (and RRE's owners, officers, employees, attorneys, insureds, affiliates, successors, heirs, administrators, representatives) in the Civil Action arising from or related to the factual allegations asserted therein.

35. Any time limits for performance imposed by this Agreement may be extended by the mutual written agreement of the Parties.

36. Each Party shall be responsible for its own legal and other costs incurred in connection with this matter, including the preparation, negotiation and performance of this Agreement, except as set forth herein.

37. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

38. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

39. This Agreement, including Appendices A-C, constitutes the complete agreement between the Parties. No prior or contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provision herein or in any other proceeding.

40. This Agreement is governed by and shall be interpreted under the laws of the United States.

41. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

42. This Agreement is binding on the Parties and their transferees, heirs, and assigns.

43. Except where this Agreement expressly conditions or predicates performance of a duty or obligation upon the performance of a duty or obligation by another party, the performance of one Party's duties or obligations under this Agreement shall not be discharged or excused by the actual or alleged breach of the duties and obligations by another party.

44. This Agreement is a public document. Both Parties consent to the United States' disclosure of this Agreement and information about this Agreement, to the public, and to RRE's issuance of public statements about this litigation and the subject matter hereof, subject to any applicable privacy laws.

45. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement.

46. The Parties agree that they will not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is illegal or invalid.

47. The Parties agree that they will defend this Agreement against any challenge by any third party. In the event that this Agreement or any of its terms are challenged by a third party in a court other than the United States District Court for the Western District of Texas, the Parties agree that they will seek removal and/or transfer to the United States District Court for the Western District of Texas.

48. This Agreement may be modified only with the written consent of the Parties.

Any modifications must be in writing and signed by the Parties through their authorized representatives.

For the United States:

Dated: _____

JUSTIN R. SIMMONS
United States Attorney
Western District of Texas

HARMEET K. DHILLON
Assistant Attorney General
Civil Rights Division

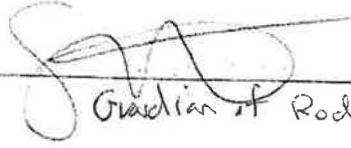
MICHAEL E. GATES
Deputy Assistant Attorney General
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SAMUEL SHAPIRO
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For Rod Robertson Enterprises, Inc.:


S. J. Robertson
Guardian of Rod Robertson

APPENDIX A.

RELEASE OF CLAIMS

In consideration for the Parties' agreement to the terms of the Settlement Agreement resolving the United States' allegations against Rod Robertson Enterprises, Inc. ("RRE") in *United States v. City of El Paso, et al.*, Civil No. 3:23-cv-00044-LS (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, arising from or 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 RRE in this case. I do not release any other unrelated claims that I may have against RRE 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: _____