

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

UNITED STATES OF AMERICA,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	CIVIL ACTION NO. 3:23-cv-00044
	§	
CITY OF EL PASO, TEXAS; UNITED	§	
ROAD TOWING, INC. d/b/a UR	§	
VEHICLE MANAGEMENT	§	
SOLUTIONS; and ROD ROBERTSON	§	
ENTERPRISES, INC.,	§	
	§	
<i>Defendants.</i>	§	

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**CONSENT ORDER BETWEEN UNITED STATES AND  
ROD ROBERTSON ENTERPRISES, INC.**

**INTRODUCTION**

1. This Consent Order resolves the allegations contained in the United States’ Complaint that Rod Robertson Enterprises, Inc. (“RRE”) violated the Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. §§ 3901-4043, when it allegedly engaged in a pattern or practice of illegally auctioning, selling, or otherwise disposing of motor vehicles belonging to SCRA-protected servicemembers during periods of military service, or within 90 days thereafter.
2. RRE is a Texas corporation with its principal place of business in San Antonio, Texas.
3. The United States and RRE (collectively, “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.

4. The parties agree that, to avoid costly and protracted litigation, the claims against RRE should be resolved without further proceedings or an evidentiary hearing. Therefore, as indicated by the signatures appearing below, the parties agree to the entry of this Consent Order.

5. The effective date of this Consent Order will be the date on which it is entered by the Court.

It is hereby ORDERED, ADJUDGED and DECREED:

**I. SETTLEMENT FUND FOR AGGRIEVED SERVICEMEMBERS**

6. Within ten (10) business days after the effective date of this Consent Order, RRE shall deposit \$100,000 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”). Within sixty (60) business days after the effective date of this Consent Order, RRE shall deposit an additional \$40,000 into the Settlement Fund, for a total of \$140,000 in the Settlement Fund. RRE shall be solely responsible for any costs, taxes or fees related to the Settlement Fund. Any interest that accrues will become part of the Settlement Fund and shall be used and disposed of as set forth herein.

7. Within ten (10) business days after the effective date of this Consent Order, RRE shall submit proof to the United States that the Settlement Fund has been established and that the initial funds have been deposited. Within seventy (70) business days after the effective date of this Consent Order, RRE shall submit proof to the United States that the remaining funds have been deposited.

8. The United States has provided records to RRE identifying 122 SCRA-protected servicemembers whose vehicles RRE auctioned, sold, or otherwise disposed of between January 1, 2015, and April 15, 2019, pursuant to its contract with the City of El Paso to operate the City of El Paso Police Department Municipal Vehicle Storage Facility.

9. Within two hundred and forty (240) calendar days after the effective date of this Consent Order, 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.

10. Within ten (10) business days after receiving the final list of aggrieved servicemembers, RRE shall deliver to counsel for the United States a compensation check to each aggrieved servicemember in the amount specified on the final list referenced in paragraph 9. 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 Exhibit A. Counsel for the United States shall deliver the original signed Release of Claims Forms to counsel for RRE.

11. 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 before the expiration of this Consent Order, counsel for the United States shall return the undelivered check to RRE.

12. 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.

13. In no event shall the aggregate of all such checks paid under paragraph 9 exceed the sum of the Settlement Fund plus any interest accrued.

14. After the expiration of the Consent Order, 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.

15. RRE shall 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. 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.

16. No individual may obtain review by the Court or the parties of the identifications made and payments disbursed (including the amounts thereof) pursuant to this Consent Order.

## **II. CIVIL PENALTY**

17. Within ninety (90) calendar days after the effective date of this Consent Order, RRE shall pay \$20,000 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.

## **III. CONDITIONAL REQUIREMENTS**

18. 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 El Paso Police Department (“EPPD”) Vehicle Storage Facility, 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. Should Defendant RRE, its officers, employees, agents, subsidiaries, successors, representatives, contractors, subcontractors, or vendors enter into a contract with El Paso or any other entity or locality to conduct vehicle storage and auction operations during the term of this Consent Order, Defendant RRE must 1) notify counsel for the United States within fifteen (15) days of the effective date of the contract, and 2) comply with the full extent of the provisions in Parts A-D (paragraphs 19-28) of this Section. The time period set forth for compliance with these provisions shall run from the effective date of the contract.

**A. INJUNCTIVE RELIEF**

19. RRE and its officers, employees, agents, subsidiaries, successors, and representatives (including attorneys, contractors, subcontractors, or vendors), are hereby enjoined from foreclosing on or enforcing a lien on the property or effects of any SCRA-protected servicemember,<sup>1</sup> and 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 ninety (90) days thereafter.

**B. COMPLIANCE WITH THE SCRA AND SCRA POLICIES AND PROCEDURES**

20. Within thirty (30) calendar days after the effective date of the contract described in paragraph 18, RRE shall send to the United States proposed SCRA policies and procedures for

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<sup>1</sup> 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).

vehicle sales and disposal in compliance with Section 3958 of the SCRA. These policies and procedures must include the following:

a. To determine whether the borrower or lessee is an SCRA-protected servicemember, RRE shall: (1) review 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) examine the vehicle and its contents for evidence of military service (e.g., military paperwork, uniforms or equipment, military registration stickers or insignia); and (3) search the Defense Department's Defense Manpower Data Center ("DMDC") database, located at <https://scra.dmdc.osd.mil/>, for evidence of SCRA eligibility by either last name and social security number or last name and date of birth. In cases where a social security number of an owner is not readily available, RRE 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 by social security number or date of birth, if RRE is aware of any last name variants or aliases (e.g., maiden names, hyphenated or composite surnames, or variant spellings) used by the owner, RRE shall run a separate DMDC search for each name variant or alias.

b. If RRE determines that an owner is a servicemember in military service or has left a period of military service within the past ninety (90) days, RRE (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 RRE pursues a storage lien action in court and the SCRA-protected owner fails to answer the action, before seeking a default judgment, RRE shall file an affidavit of military service with the court prepared in accordance with 50 U.S.C. § 3931(a) and (b) of the SCRA. Before seeking entry of default, RRE shall search the DMDC database and review information in its possession, custody, or control to determine if the borrower is SCRA-protected. The DMDC Status Report must have been run no more than two (2) days prior to the date when the request for default judgment is made in the matter. If RRE learns that a registered owner is SCRA-protected, RRE shall file an affidavit stating that “the defendant is in military service,” attaching the most recent military status report from the DMDC or a copy of the military orders or other documentation to the affidavit.

d. If RRE initiates and pursues a waiver under a written agreement as provided in 50 U.S.C. § 3918, RRE must initiate the waiver process with the servicemember at least thirty (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 RRE exercises this right, RRE shall use a notice in the form attached as Exhibit B.

21. The United States shall respond to the proposed SCRA policies and procedures described in paragraph 20 within thirty (30) calendar days of receipt. If the United States objects to any part of the proposed SCRA policies and procedures, RRE and the United States 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. RRE shall begin the process of implementing the SCRA policies and procedures within ten (10) calendar days of non-objection by the United States.

22. If, at any time during the term of this Consent Order, RRE proposes to materially change its SCRA policies and procedures, it shall first provide a copy of the proposed changes to counsel for the United States. If the United States does not deliver written objections to RRE within forty-five (45) calendar days of receiving the proposed changes, the changes may be implemented. If the United States makes any objections to the proposed changes within the forty-five (45) day period, the specific changes to which the United States objects shall not be implemented until the objections are resolved pursuant to the process described in paragraph 21.

**C. TRAINING**

23. During the term of this Consent Order, RRE shall provide annual SCRA compliance training to all employees involved with the storage, sale, auction, or disposal of motor vehicles (“covered employees”). SCRA compliance training shall include: (a) training on RRE’s SCRA policies and procedures; and (b) training on the terms of this Consent Order. All covered employees shall be provided with a copy of this Consent Order and RRE’s SCRA Policies and Procedures applicable to their duties. RRE shall also provide SCRA compliance training to any new covered employee within thirty (30) calendar days of their hiring. Any expenses associated with the trainings required by this paragraph shall be paid by RRE.

24. Within thirty (30) calendar days of the United States’ approval of RRE’s SCRA policies and procedures pursuant to paragraphs 20-21, RRE shall provide to the United States the curriculum, instructions, and any written material included in the training required by paragraph 23. The United States shall have thirty (30) calendar days from receipt of these documents to raise any objections to the training materials, and, if it raises any, 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.



25. The covered employees may undergo the trainings required by paragraph 23 via live training, computer-based training, web-based training, or interactive digital media. If the training is conducted in any format other than live training, RRE shall ensure that covered employees have the opportunity to have their questions answered.

26. RRE shall secure a signed statement in the form attached as Exhibit C from all employees at the trainings required by paragraph 23 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. RRE shall certify in writing to counsel for the United States that the covered employees successfully completed the trainings required by paragraph 23. Copies of the signed statements shall be provided to the United States upon request.

**D. ADDITIONAL REPORTING AND RECORD-KEEPING REQUIREMENTS**

27. For the duration of this Consent Order, RRE shall retain all records relating to its obligations hereunder, including 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.

28. During the term of this Consent Order, RRE shall notify counsel for the United States in writing every six (6) months of receipt of any SCRA or military-related complaint. RRE shall provide a copy of any written complaints with the notifications. Whether regarding a written or oral SCRA or military-related 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, and the full details of all actions RRE took to resolve the complaint.

RRE 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 RRE'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.

#### **IV. SCOPE OF CONSENT ORDER**

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

30. 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 Consent Order for the remaining term of this Consent Order.

31. 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 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 federal agency against RRE or any of its affiliated entities.

32. Nothing in this Consent Order will excuse RRE's compliance with any currently or subsequently effective provision of law or order of a regulator with authority over RRE that imposes additional obligations on it.

33. 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 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 Consent Order.

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

34. Any time limits for performance imposed by this Consent Order may be extended by the mutual written agreement of the parties.

35. The parties shall be responsible for their own attorney's fees and court costs, except as provided for in paragraph 36.

36. 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 RRE, 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 after written notice to RRE 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 the violation or failure to perform.

**VI. RETENTION OF JURISDICTION**

37. 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.

38. This Consent Order shall be in effect for a period of five years from its date of entry. The Court shall retain jurisdiction for the duration of this Consent Order to enforce its terms, 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 \_\_\_\_\_, 2024.

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UNITED STATES DISTRICT JUDGE

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

*For the United States:*

Dated: August 1, 2024

JAIME ESPARZA  
United States Attorney  
Western District of Texas

KRISTEN CLARKE  
Assistant Attorney General  
Civil Rights Division

CARRIE PAGNUCCO  
Chief, Housing and Civil Enforcement Section  
Civil Rights Division


/s/ Samuel M. Shapiro  
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*For Rod Robertson Enterprises, Inc.:*

Rod Robertson Enterprises, Inc.

By:   
Name: Rodney C. Robertson  
Title: Owner of Rod Robertson



RICHARD ESPER

Counsel for Rod Robertson Enterprises, Inc.

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EXHIBIT A

**RELEASE OF CLAIMS**

In consideration for the parties' agreement to the terms of the Consent Order 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 (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 RRE in this case. I do not release any other 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: \_\_\_\_\_

EXHIBIT B

**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, their agents and contractors 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, its agent or its contractor 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, its agent or its contractor 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, Rod Robertson Enterprises, Inc. (“RRE”) 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, RRE 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 RRE.**

**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 any contractor acting on behalf of a city 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 Rod Robertson Enterprises, Inc. (“RRE”) in accordance with 50 U.S.C. § 3958.
- In exchange for waiving these SCRA rights, RRE 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 RRE to auction or dispose of my Vehicle and its contents in accordance with applicable state law.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

EXHIBIT C

**EMPLOYEE ACKNOWLEDGMENT**

I acknowledge that on \_\_\_\_\_, 20\_\_, I was provided training regarding compliance with the Servicemembers Civil Relief Act (SCRA), a copy of the Consent Order in *United States v. City of El Paso*, and a copy of RRE'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.

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[PRINT NAME]

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[SIGNATURE]

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[JOB TITLE]