

**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-LS
	§	
CITY OF EL PASO, TEXAS; UNITED	§	
ROAD TOWING, INC. d/b/a UR	§	
VEHICLE MANAGEMENT	§	
SOLUTIONS; and ROD ROBERTSON	§	
ENTERPRISES, INC.,	§	
	§	
<i>Defendants.</i>	§	

**ORDER APPROVING SETTLEMENT BETWEEN UNITED STATES AND
THE CITY OF EL PASO, TEXAS**

This Order resolves the allegations contained in the United States’ Complaint that the City of El Paso, Texas (“El Paso” or “the City”) violated the Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. §§ 3901-4043, when El Paso, acting through two contractors, allegedly engaged in a pattern or practice of illegally auctioning, selling, or otherwise disposing of over 170 motor vehicles belonging to SCRA-protected servicemembers during periods of military service, or within 90 days thereafter, without obtaining court orders.

1. El Paso is a municipality organized and existing under the laws of the State of Texas.
2. The United States and El Paso (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.

3. El Paso contracted first with Defendant Rod Robertson Enterprises, Inc. (“RRE”), and then with Defendant United Road Towing, Inc. d/b/a UR Vehicle Management Solutions (“URT”), to research and sell motor vehicles that were impounded and taken to the City of El Paso Police Department Municipal Vehicle Storage Facility (“EPPD Vehicle Storage Facility”). The City’s contracts with such third parties included a defense and indemnification agreement, as well as an agreement that the contractor abide by all state, federal, and local laws applicable to the contract. The contracts between the City and both RRE and URT included such defense and indemnification provisions.

4. RRE held the EPPD Vehicle Storage Facility contract with El Paso from December 27, 2011, to April 15, 2019.

5. URT is the incumbent EPPD Vehicle Storage Facility contractor and has held the contract with El Paso since May 20, 2019.

6. The City anticipates that it will issue a Request for Proposal for the Operation and Maintenance of City of El Paso Police Department Municipal Vehicle Storage Facility (“RFP”) in the near future. Until a new RFP is issued and awarded, URT will continue to provide the services for the operation and maintenance of the EPPD Vehicle Storage Facility.

7. The United States’ Complaint seeks, from all three defendants, monetary damages for each affected servicemember, along with civil penalties and injunctive relief.

8. The City represents that before learning of the claims that made the basis of this lawsuit, it had no notice of any alleged violations of the SCRA. Upon receiving notice of the Justice Department’s investigation, the City halted all auctions of impounded motor vehicles, promptly communicated with its current contractor, URT, to review its practices and policies to

ensure compliance with the SCRA, and launched its own investigation and audit of the vehicles sold at auction for the past several years.

9. The City also made demands upon both RRE and URT to defend and indemnify it pursuant to the terms of their contracts with the City. The City represents that URT agreed to meet its contractual obligations, but RRE has not.

10. RRE agreed to a separate Consent Order with the United States providing \$140,000 in damages for 122 SCRA-protected servicemembers whose vehicles RRE auctioned, sold, or otherwise disposed of between January 1, 2015, and April 15, 2019, and a civil penalty of \$20,000.

11. URT agreed to a separate Consent Order with the United States providing \$57,935 in damages for 50 SCRA-protected servicemembers whose vehicles URT auctioned, sold, or otherwise disposed of between May 20, 2019, and June 11, 2023, and a civil penalty of \$24,980.

12. El Paso filed cross-actions in this case against both RRE and URT, alleging they are contractually obliged to defend and indemnify El Paso against the United States' claims, as well as to reimburse El Paso for reasonable attorneys' fees, costs, and expenses in El Paso's defense of this lawsuit and its prosecution of the cross-actions.

13. The parties agree that, to avoid costly and protracted litigation, the claims against El Paso 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 Order.

14. The effective date of this Order will be the date on which it is approved by the Court.

It is hereby ORDERED, ADJUDGED and DECREED:

I. INJUNCTIVE RELIEF

15. For the duration of this Order, El Paso and its agents, employees and contractors shall not foreclose on or enforce a lien on the vehicles, property or effects of any SCRA-protected servicemember,¹ and shall not auction, sell, or otherwise dispose of vehicles or property owned by any SCRA-protected servicemember without a court order during any period of military service or within ninety (90) days thereafter or a waiver under a written agreement as provided in 50 U.S.C. § 3918.

I. SCRA POLICIES AND PROCEDURES

16. On June 21, 2024, the City amended its Abandoned Auto Unit Operations Manual² to include the policies and procedures in paragraphs 17(a) and 20 regarding training of the Abandoned Auto Unit employees on the SCRA, and requiring contractor compliance with the SCRA. Those updated policies are online and available to review at https://el Paso.municipalcodeonline.com/book?type=publicpolice#name=Chapter_3:_Training,

¹ 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).

² Under Texas law, a motor vehicle is considered “abandoned” if it has been parked illegally on public property or left unattended on a public road for more than 48 hours; is inoperable, more than five years old, and left unattended on public property for more than 48 hours; or has remained on private property without the owner’s consent for more than 48 hours. Tex. Transp. Code § 683.002.

and

https://elpaso.municipalcodeonline.com/book?type=publicpolice#name=Chapter_8:_Auctions.

17. The City will maintain and implement the following SCRA policies and procedures throughout the term of this Order:

- (a) **Abandoned Auto Unit Operations Manual Updates:** El Paso’s Abandoned Auto Unit Operations Manual includes, and shall continue to include for the duration of this Order, a requirement that training for the Unit’s employees will include compliance with the SCRA. Third parties that conduct vehicle storage and auction operations on El Paso’s behalf (“Contractor”) must at all times comply with the requirements of the SCRA. The Manual also includes, and shall continue to include for the duration of this Order, a section with a heading, “COMPLIANCE WITH SERVICEMEMBERS CIVIL RELIEF ACT (SCRA),” which states: “Before approval of any vehicle to be released for auction, the Contractor is required to fully comply with all research, contact, and other requirements of the SCRA, as it may be amended, to ensure that no vehicle is sold without meeting all current requirements of the SCRA. The Contractor shall notify El Paso in writing for each auto that the Contractor followed all requirements of the SCRA regarding such vehicle. No vehicle that does not have the Contractor’s confirmation of compliance with the SCRA shall be allowed to go to auction. El Paso’s Property and Evidence Supervisor will perform monthly audits on all vehicles before they are allowed to

be sold at auction. The audit will also identify vehicles that may be auctioned once all compliance criteria are met.”

(b) **Contracts to require Contractor compliance with the SCRA:** The City’s contractual language with Contractors concerning SCRA compliance will be included in its next RFP. Although there is no pending or scheduled RFP for such services, the City plans to issue one in the near future. The City anticipates that the RFP will be issued sometime after September 1, 2024, and that the City’s Purchasing Office will initially prepare and later issue the RFP, but that it will be submitted to the City Attorney’s office for review. When the RFP is drafted, but before issuance, the City will forward it to counsel for the United States for prompt review and comments. The United States shall have fourteen (14) calendar days from receipt of the RFP to raise any objections.

(c) **City’s RFPs and Contracts:** When such RFP is issued, the City’s relevant RFPs and contracts for the disposition of abandoned autos will include a provision in substantially the following language: “COMPLIANCE WITH SERVICEMEMBERS CIVIL RELIEF ACT (SCRA): The Contractor shall at all times comply with the requirements of the SCRA, as may be amended, applicable to the towing, impoundment, and sale of automobiles. The Contractor shall have in place or adopt policies and procedures for compliance with the SCRA that include at least the following requirements:

(1) To determine whether the borrower or lessee is an SCRA-protected servicemember, the Contractor shall: (i) review any information they have 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); (ii) examine the vehicle and its contents for evidence of military service (e.g., military paperwork, uniforms or equipment, military registration stickers or insignia); and (iii) 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, the Contractor 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 the Contractor is aware of any last name variants or aliases (e.g., maiden names, hyphenated or composite surnames, or variant spellings) used by the owner, the Contractor shall run a separate DMDC search for each name variant or alias.

(2) If the Contractor determines that an owner is a servicemember in military service or has left a period of military service within the past ninety (90) days, the Contractor (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 them to do so.

(3) If the Contractor pursues a storage lien action in court and the SCRA-protected owner fails to answer the action, before seeking a default judgment, the Contractor 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, the Contractor will search the DMDC database and review information in their 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 the Contractor learns that a registered owner is SCRA-protected, the Contractor will 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.

(4) If the Contractor initiates and pursues a waiver under a written agreement as provided in 50 U.S.C. § 3918, the Contractor 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 the Contractor exercises this right, the Contractor shall use a notice in the form attached as Exhibit A.

(5) The Contractor shall notify El Paso in writing for each motor vehicle that the Contractor followed all requirements of the SCRA regarding such motor vehicle, including provisions (1)-(4). No vehicle that does not have the Contractor confirmation of compliance with the SCRA shall be allowed to go to auction.”

(d) **Contractor contracts to include requirements for continuing education on SCRA compliance.** El Paso’s relevant contracts will require a provision mandating that all contractor employees, agents, and subcontractors providing services to the EPPD Vehicle Storage Facility will conduct annual training on El

Paso's SCRA policies and procedures. Any contractor employees, agents, or subcontractors newly assigned to the EPPD Vehicle Storage Facility shall receive such training within thirty (30) calendar days of such assignment. The Contractor will provide El Paso with an annual certification of compliance with this provision.

18. If, at any time during the term of this Order, El Paso proposes to substantively change its SCRA policies and procedures, it shall first provide a copy of the proposed changes to counsel for the United States. A "substantive change" is one that alters the City's or its contractor's procedures for SCRA compliance. If the United States does not deliver written objections to El Paso within thirty (30) 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 thirty (30) day period, the specific changes to which the United States objects shall not be implemented until the objections are resolved.

III. SCRA COMPLIANCE TRAINING FOR CITY EMPLOYEES

19. During the term of this Order, El Paso shall provide annual SCRA compliance training to the employees in its Abandoned Auto Unit, including the Property and Evidence Supervisor ("covered employees"), as part of its regular training program, as outlined in the Abandoned Auto Unit Manual. The City conducts its training program through a comprehensive online platform, which allows the City to track and monitor employees' compliance with training requirements. The City's Performance Office will prepare the training materials and collect employee data and acknowledgment on completion of training. SCRA compliance training shall include: (a) training on El Paso's SCRA policies and procedures; and (b) when to elevate SCRA issues to supervisors and the City's legal department. El Paso shall also provide SCRA compliance

training to any new covered employee at the same time as any other training required of such employee. Any expenses associated with the trainings required by this paragraph shall be borne by El Paso.

20. The City will work with the United States to develop the curriculum and materials for such training, consistent with the existing training format and best practices utilized by the training professionals within the Performance Office. At least thirty (30) days before the training date, the City shall submit its training curriculum and materials to the United States. The United States shall have thirty (30) calendar days from receipt of these documents to raise any objections to the training materials. If the United States does not deliver written objections to El Paso within thirty (30) calendar days of receiving the proposed changes, the changes may be implemented.

21. Training for existing employees in the Abandoned Auto Unit will be completed as soon as possible, but in no event later than the end of December 2024. The City represents that the three employees in the Abandoned Auto Unit who would first be subject to such formal training have already received preliminary training and updates on compliance with the SCRA.

22. In the course of its training, El Paso shall obtain an acknowledgment through its training system from all applicable employees that they received the SCRA compliance training required under the Manual.

IV. CIVIL PENALTY

23. Within ninety (90) calendar days after the effective date of this Order, El Paso shall cause to be paid \$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. Defendant RRE

has agreed to pay this amount pursuant to the indemnification provisions in its contract with the City.

V. ADDITIONAL REPORTING AND RECORD-KEEPING REQUIREMENTS

24. For the duration of this Order and in compliance with Texas law establishing recordkeeping requirements applicable to Texas municipal corporations, El Paso 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, in the manner and for the duration required under state law, and in accordance with existing City of El Paso recordkeeping and retention practices, but shall, in no circumstances be less than the term of this Order. The United States shall have the right to review and copy any such records, including electronic data, upon reasonable request.

25. During the term of this Order, El Paso shall notify counsel for the United States in writing promptly upon receipt of any SCRA or military-related complaint. El Paso shall provide a copy of any written complaints with the notifications. Whether regarding a written or oral SCRA 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 El Paso took to resolve the complaint. El Paso shall also promptly provide the United States all information that it may reasonably request concerning any such complaint and shall inform the United States in writing within sixty (60) calendar days of the terms of any resolution of such complaint. If the United States raises any objections to El Paso's actions, the parties shall meet and confer to consider appropriate steps to address the concerns raised by the United States' review.

VI. SCOPE OF ORDER

26. The provisions of this Order shall apply to the City of El Paso and its agents and employees.

27. This Order releases and discharges the City of El Paso, its agents, and employees from liability for the violations of Section 3958 of the SCRA for auctions of motor vehicles conducted at the EPPD Vehicle Storage Facility through the date of approval of this Order.

28. Nothing in this Order excuses or avoids El Paso's compliance with any currently or subsequently effective provision of law or order of a regulator that imposes additional obligations on El Paso under the SCRA.

29. The parties agree that this Order is the compromise of disputed claims and is not to be construed as an admission of liability by El Paso, and that El Paso denies liability.

30. Nothing in this Order affects, settles, or compromises the claims of the City against Defendants RRE or URT for their contractual defense and indemnification obligations.

31. Unless otherwise provided herein, where written notice to the United States is required by this Order, notice shall be provided via email to counsel for the United States. Similarly, unless otherwise provided herein, where written notice to El Paso is required by this Order, notice shall be provided via email to El Paso's City Attorney and counsel of record.

32. The parties agree that, as of the effective date of this 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 Order.

VII. ATTORNEY'S FEES AND COSTS, AND REMEDIES FOR NON-COMPLIANCE

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

34. The parties understand and agree that, except as expressly provided herein, and the cross-actions of the City against Defendants RRE and URT, they will be solely responsible for all expenses incurred by them and on their own behalf, including but not limited to any attorney's fees and costs, except as provided in paragraph 35.

35. The parties shall endeavor in good faith to resolve informally any differences regarding the interpretation of and compliance with this Order prior to bringing such matters to the Court for resolution. If the parties are unable to resolve their differences informally, they will participate in a mediation before a mutually agreeable mediator. In the event that the mediation is unsuccessful, any party may seek relief in this court to obtain such relief, including, but not limited to, the award of reasonable attorney's fees, costs, and expenses, that the Court may award.

VIII. RETENTION OF JURISDICTION

36. This Order shall be in effect for a period of two years from its date of approval by this Court, after which time this case shall be dismissed with prejudice. For the duration of this Order, the Court shall retain jurisdiction over all disputes between the parties arising out of the Order, including but not limited to interpretation and enforcement of the terms of the Order. The United States may move the Court to extend the duration of this Order in the interests of justice.

SO ORDERED

This ____ day of _____, 2024.

HONORABLE LEON SCHYDLOWER
UNITED STATES DISTRICT JUDGE

By their signatures below, the parties consent to the entry of this Order approving the settlement between the United States and the City of El Paso.

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
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For City of El Paso, Texas:

Dated: July 24, 2024

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EXHIBIT A

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.* (“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 towing companies 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 a towing company 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 a towing company 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, the City of El Paso may auction or dispose of your vehicle and property without having a court review and approve their actions. If you do not sign this waiver, the City of El Paso will not be able to sell or dispose of your vehicle or property without having a court review and approve of their 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 the City of El Paso.

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 THE 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 towing company 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 the City of El Paso in accordance with 50 U.S.C. § 3958.
- In exchange for waiving these SCRA rights, the City of El Paso and its contractors have agreed to waive their 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 the City of El Paso and its contractors to auction or dispose of my Vehicle and its contents in accordance with applicable state law.

Dated: _____

By: _____
Signature

Print Name