

Engelmaier, P.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WILLIAM J. PFUNK,

Plaintiff,

v.

COHERE COMMUNICATIONS, LLC and
STEVEN T. FRANCESCO,

Defendants.

-----X

12 Civ. 8971 (PAE)

**STIPULATION AND ORDER OF
SETTLEMENT AND DISMISSAL
PURSUANT TO FEDERAL RULE
OF CIVIL PROCEDURE 41(a)**

WHEREAS, Plaintiff William J. Pfunk ("Pfunk") commenced this action in the United States District Court for the Southern District of New York, by complaint filed on December 10, 2012 (the "Complaint"), alleging that defendants Cohere Communications, LLC ("Cohere") and Steven T. Francesco ("Francesco," and together with Cohere, "Defendants") violated the Uniform Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301-4335 ("USERRA"), by terminating Pfunk because of his military obligation and failing to reemploy Pfunk upon return from his military obligation;

WHEREAS, on February 7, 2013, Defendants filed an answer denying the allegations in the Complaint;

WHEREAS, by Order, dated May 28, 2014, the Court held that Pfunk was an employee of Cohere from November 8, 2011 until April 9, 2012; and

WHEREAS, as a result of settlement discussions, Pfunk and Defendants have agreed that this action should be settled by entry of this Stipulation and Order of Settlement and Dismissal ("Stipulation") and it is the intent of the parties that this Stipulation be a final and binding

settlement in full disposition of any and all claims alleged in the Complaint filed in this case, and as otherwise set forth herein;

NOW, THEREFORE, upon agreement of the parties to this Stipulation, IT IS HEREBY

ORDERED that:

STIPULATED FACTS

1. The parties acknowledge jurisdiction of the United States District Court for the Southern District of New York over the subject matter of this action and the parties to this case.
2. All statutory conditions precedent to the institution of this lawsuit have been fulfilled.
3. Pfunk was a member of the United States Army Reserves at all times relevant to the allegations in the Complaint.
4. Defendants admit and acknowledge the following conduct alleged in Pfunk's Complaint: Within one day of Francesco receiving an e-mail from Pfunk notifying him that Pfunk was going to be absent from work due to a military obligation, Francesco terminated Pfunk's employment with Cohere.

TERMS AND CONDITIONS

5. Defendants shall, within two (2) weeks from the date of entry of this Stipulation, pay Pfunk a total monetary award of \$35,000.00, representing all compensation, remuneration and/or benefits of any kind from Cohere to which Pfunk is entitled in connection with the allegations in the Complaint, including, but not limited to, past or future wages, salary, front pay, back pay, earnings, overtime, bonuses, incentive payments, severance pay, vacation pay, insurance, pension, 401(k) contributions, other contributions, restricted stock or any other forms of compensation, whether voluntary or required by law, and other damages, allocated as follows:

a. Of the \$35,000.00, \$17,500.00 shall be attributable to past or future wages, salary, front pay, back pay, earnings, overtime, bonuses, incentive payments, severance pay, vacation pay, insurance, pension, 401(k) contributions, other contributions, restricted stock or any other forms of compensation, whether voluntary or required by law (less the required employee withholdings on such award as required by law), with the balance being attributable to other damages. Cohere shall separately pay to the appropriate governmental agencies the appropriate employer's contribution due on the \$17,500.00 in past or future wages, salary, front pay, back pay, earnings, overtime, bonuses, incentive payments, severance pay, vacation pay, insurance, pension, 401(k) contributions, other contributions, restricted stock or any other forms of compensation, whether voluntary or required by law, and shall not deduct the amount of its contribution from any part of the monetary award to Pfunk.

6. Defendants shall pay the required amount to Pfunk by mailing a check payable to "William J. Pfunk" to the following address:

William J. Pfunk
c/o Christine S. Poscablo
United States Attorney's Office
Southern District of New York
86 Chambers Street
New York, New York 10007

7. Cohere's records shall show that Pfunk voluntarily resigned from Cohere effective his last day of employment. Any references in Cohere's personnel records to Pfunk's employment having been involuntarily terminated shall be removed within two (2) weeks from the date of entry of this Stipulation.

8. No later than thirty (30) days from the entry of this Stipulation, Defendants shall implement a policy for Military Leaves of Absence that explicitly states that Defendants "will take no adverse action against any employee or applicant for employment because he/she has

taken, or expects to take, USERRA protected leave during the course of his/her employment”

and shall send a copy of the policy to:

Christine S. Poscablo
United States Attorney's Office
Southern District of New York
86 Chambers Street
New York, New York 10007

9. Within sixty (60) calendar days of the implementation of the policy, Defendants shall review the policy, in person, with all Cohere employees. All Cohere employees shall sign a form acknowledging their receipt of the policy and Cohere shall send copies of these signed forms to Christine S. Poscablo at the address set forth in paragraph 8.

10. In consideration of the relief being provided to him as described in paragraphs 5, 6, and 7 of this Stipulation, Pfunk releases and discharges Defendants from any and all claims related to or arising out of the following:

a. The conduct identified in the Complaint filed in this case and the complaint Pfunk filed with the Department of Labor, complaint number NY-2012-00037-10-R (“DOL Complaint”); and

b. All compensation, remuneration and/or benefits of any kind from Cohere to which Pfunk was entitled while an employee of Cohere from November 8, 2011 through April 9, 2012, or to which he would have been entitled had he remained employed by Cohere for any period of time after April 9, 2012, including, but not limited to, past or future wages, salary, front pay, back pay, earnings, overtime, bonuses, incentive payments, severance pay, vacation pay, insurance, pension, 401(k) contributions, other contributions, restricted stock or any other forms of compensation, whether voluntary or as required by law.

11. The release and discharge of claims set forth in paragraph 10 is subject only to Defendants' compliance with the terms of this Stipulation.

MISCELLANEOUS

12. All parties shall bear their own costs and expenses of litigation, including attorneys' fees.

13. If any provision of this Stipulation is found to be unenforceable, only the specific provision in question shall be affected and the other provisions will remain in full force and effect.

14. The terms of this Stipulation are and shall be binding upon the present and future directors, employees, agents, administrators, heirs, successors, representatives, and assigns of Defendants and the heirs, successors, and assigns of Pfunk.

15. This Stipulation constitutes the entire agreement and commitments of the parties. Any modifications to this Stipulation must be mutually agreed upon and memorialized in writing signed by Pfunk and Defendants.


16. The effective date of this Stipulation shall be the date upon which it is entered by the Court.


17. In consideration of the obligations of Defendants as set forth in this Stipulation, and conditioned upon Defendants' full compliance with the terms of this Stipulation, the above-captioned action is dismissed with prejudice. This Stipulation may be filed without further notice with the Clerk of the Court.

Respectfully submitted this 10th day of June, 2014.

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for Plaintiff


By:


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APPROVED and ORDERED this 10th day of June, 2014.


HONORABLE PAUL A. ENGELMAYER
UNITED STATES DISTRICT JUDGE

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Respectfully submitted this 10th day of June, 2014.

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for Plaintiff


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APPROVED and ORDERED this 10th day of June, 2014.

Paul A. Engelmayer
HONORABLE PAUL A. ENGELMAYER
UNITED STATES DISTRICT JUDGE