

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

<p>MARK L. GUNN, Plaintiff, v. PRINCE GEORGE COUNTY, VIRGINIA, Defendant, and UNITED STATES OF AMERICA, Plaintiff, v. VIRGINIA RETIREMENT SYSTEM, Relief-Defendant.</p>	<p>CIVIL ACTION NO. 3:21-cv-00631</p>
---	---------------------------------------

SETTLEMENT AGREEMENT

1. The Parties (“Parties”) to this Settlement Agreement (“Agreement”) are Plaintiff Mark L. Gunn (“Gunn”); Plaintiff the United States of America; Defendant Prince George County, Virginia; and Relief-Defendant the Virginia Retirement System (“VRS”).
2. The United States Department of Justice (“DOJ”) represents Plaintiffs Gunn and the United States in this matter pursuant to 38 U.S.C. § 4323.
3. This Agreement effectuates a compromise and settlement of all claims raised in the Complaint filed in the United States District Court for the Eastern District of Virginia, *Gunn v. Prince George County and the United States of America v. the Virginia Retirement System*, 3:21-cv-00631 (the “Action”) and the claim filed by Mark L. Gunn

with the Department of Labor's Veteran Employment Training Service, VA-2018-00018-20-G-R ("the DOL Claim").

4. The Parties agree that, to avoid costly and protracted litigation, the Action against Defendant Prince George County and Relief-Defendant VRS should be resolved without further proceedings. This Agreement is neither an admission of liability by Defendant Prince George County and Relief-Defendant VRS nor a concession by Plaintiffs Gunn and the United States that their claims are not well founded. The Parties intend that this Agreement be a final and binding disposition of all claims alleged in this Action and the DOL Claim.

TERMS AND CONDITIONS

5. This Agreement will become effective and binding on the Parties on the date by which all Parties have executed the Agreement (the "Effective Date"). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.
6. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the claims in this Action, and in consideration of the mutual promises and obligations of this Agreement set forth below, the Parties agree and covenant as follows:
 - a. Defendant Prince George County shall:
 - i. Within fifteen (15) business days of the Effective Date of this Agreement, pay or cause to be paid to Plaintiff Gunn a total gross sum of THREE THOUSAND DOLLARS AND NO CENTS (\$3,000) (the "Settlement Amount"). Half of the Settlement Amount, ONE THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$1,500), will be paid to

Plaintiff Gunn by Defendant Prince George County as damages pursuant to 38 U.S.C. § 4323(d)(1)(B), less only the applicable withholdings and deductions Defendant Prince George County is required to make from wage payments made to its employees. The remaining half of the Settlement Amount, ONE THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$1,500), will be paid to Plaintiff Gunn by Defendant Prince George County as liquidated damages pursuant to 38 U.S.C. § 4323(d)(1)(C), with no withholdings;

- ii. Issue the appropriate tax forms to Plaintiff Gunn in accordance with the characterization of the Settlement Amount set forth in this Paragraph and in accordance with the County's normal process and schedule for issuing such tax forms;
- iii. Within fifteen (15) business days of the Effective Date of this Agreement, issue to Plaintiff Gunn:
 1. A retired law enforcement officer photo identification card pursuant to the Law Enforcement Officers Safety Act ("LEOSA"), 18 U.S.C. § 926C. Defendant Prince George will permit Plaintiff Gunn to qualify on his service weapon at its police department's range;
 2. A "photo identification card indicating that such individual is a retired law-enforcement officer of" the Prince George County Police Department pursuant to Va. Code Ann. § 9.1-1000; and

3. A metal retired Prince George County Police Department detective's badge that is ordinarily given to officers who retire from the police department.
- iv. Within fifteen (15) business days of the Effective Date of this Agreement, facilitate Plaintiff Gunn's purchase of his service weapon for ONE DOLLAR AND NO CENTS (\$1), pursuant to Va. Code Ann. § 59.1-148.3;
- v. Within fifteen (15) business days of the Effective Date of this Agreement, amend Plaintiff Gunn's employment records to reflect that he was on military leave from March 1, 2018, through April 30, 2020, and that he retired effective May 1, 2020;
- vi. Within fifteen (15) business days of the Effective Date of this Agreement, report the revised employment dates and military leave status, along with information on the changes in Plaintiff Gunn's salary for that time period to Relief-Defendant VRS for purposes of recalculating Plaintiff Gunn's retirement benefits. Defendant Prince George County shall also make any contributions required by Relief-Defendant VRS in connection with Plaintiff Gunn's retirement account promptly upon receipt of notice from Relief-Defendant VRS; and
- vii. Give, at a minimum, a neutral reference, to include dates of employment and positions held, for Plaintiff Gunn for any future potential employer inquiries, provided that Plaintiff Gunn directs any future employment reference requests or verifications to Prince George County's Director of

Human Resources. Defendant Prince George County will instruct its Chief of Police, the heads of its Police Department's Support Operations and Field Operations Divisions, and the Police Chief's administrative support staff to refer any inquiries about Plaintiff Gunn to Defendant Prince George County's Human Resources Director and to refrain from providing any information or comments about Plaintiff Gunn.

b. In signing this Agreement, Plaintiff Gunn fully releases Defendant Prince George County and its current and former supervisors, managers, employees, and agents from any and all liability arising from the claims raised in the Action and the DOL Claim, with appropriate exceptions for obligations created by this Agreement, and:

- i. Shall enter into a joint stipulation of dismissal with prejudice with the Parties to this Action;
- ii. Will direct the United States Department of Justice to close the matter and return the investigative file to DOL; and
- iii. Agrees not to defame Defendant Prince George County, except for truthful statements if compelled to make a statement by valid legal process issued by a court or tribunal of competent jurisdiction. It is explicitly understood that this Paragraph does not apply to the United States Department of Justice.

7. In consideration of the mutual promises and obligations set forth below, Plaintiff United States and Relief-Defendant VRS agree to the following material terms and conditions:

- a. Within fifteen (15) calendar days of receiving Defendant Prince George County's revised employment dates and military leave status, salary changes, and any employer-required contributions for Plaintiff Gunn, as required in Paragraph 6(a)(vi) of this Agreement, Relief-Defendant VRS shall:
 - i. Accept the revised employment dates and salary information reported by Defendant Prince George County and update Plaintiff Gunn's revised employment dates and salary information in its system;
 - ii. Recalculate Plaintiff Gunn's retirement benefits using the revised information received from Defendant Prince George County;
 - iii. Issue a payment of \$9,756.48 to Plaintiff Gunn via direct deposit to Plaintiff Gunn's bank account associated with his VRS account, for any differential in retirement benefits owed for the period May 1, 2020, to the present; and
 - iv. Make retirement benefits payments, going forward, to Plaintiff Gunn pursuant to its recalculation of Plaintiff Gunn's retirement benefits.
- b. In signing this Agreement, Plaintiff Gunn:
 - i. Fully releases Relief-Defendant VRS from liability arising from the claims raised in the Complaint filed in this Action; and
 - ii. Agrees not to defame Relief-Defendant VRS, except for truthful statements if compelled to make a statement by valid legal process issued by a court or tribunal of competent jurisdiction. It is explicitly understood that this Paragraph does not apply to the United States Department of Justice.

- c. Upon notice of completion of all terms of this agreement, Plaintiff United States shall notify Plaintiff Mark L. Gunn, Defendant Prince George County, and Relief Defendant VRS, of its closure of the investigation of the DOL Claim, and the return of the investigative file to the Department of Labor.
8. Plaintiff Gunn understands and agrees that in accepting the relief specified in this Agreement, he is waiving his right to recover from Defendant Prince George County and Relief-Defendant VRS any other individual relief, including back pay, front pay, reinstatement, or other legal or equitable relief, in connection with any charge, complaint, lawsuit, or other claim that could have been raised in this complaint under the authority of USERRA.
9. Within five (5) business days of the full execution of this Agreement, the Parties shall file a joint stipulation for dismissal with prejudice of the Action.
10. The Parties warrant, acknowledge, and agree that each of the following statements is true and accurate:
 - a. The Parties have carefully read this entire Agreement and understand all terms of this Agreement, including the Release provisions set forth herein;
 - b. The Parties have had the opportunity to consult with attorneys before signing this Agreement;
 - c. Each Party has freely, voluntarily, and knowingly entered into this Agreement;
 - d. Neither Party has relied on any oral or written statements that are not set forth in this Agreement in determining whether to enter into this Agreement; and

- e. That this Agreement does not waive any rights or claims that may arise after the Effective Date of this Agreement or cannot otherwise be legally waived in a private agreement.
11. This Agreement is governed by the laws of the United States. The parties acknowledge the exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of Virginia, Richmond Division.
 12. 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. This Agreement may only be modified by a writing signed by all of the Parties and no term or provision may be waived except by such writing.
 13. In the event that any part of this Agreement is found to be unenforceable for any reason whatsoever, the unenforceable provision shall be considered to be severable and the remainder of this Agreement shall, to the fullest extent possible, continue in full force and effect.
 14. This Agreement shall be binding on and inure to the benefit of all the Parties and their successors, assigns, personal representatives, and insurers.

Dated: April 28, 2022.

MARK L. GUNN



PRINCE GEORGE COUNTY, VIRGINIA

By: 
_____ Daniel N. Whitten, County Attorney

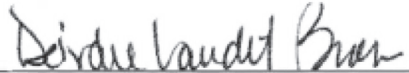
THE UNITED STATES OF AMERICA

JESSICA D. ABER
United States Attorney
Eastern District of Virginia

KRISTEN CLARKE
Assistant Attorney General


ANDREW BRANIFF
Deputy Chief

SHAN SHAH
Trial Attorney
Civil Rights Division

By: 

Deirdre G. Brou
Assistant United States Attorney
UNITED STATES ATTORNEY'S OFFICE
2100 Jamieson Avenue
Alexandria, VA 22314
Telephone: (703) 299-3770/3991
Facsimile: (703) 299-3983
Email: deirdre.g.brou@usdoj.gov

VIRGINIA RETIREMENT SYSTEM

By:  04/29/22

Elizabeth Bushnell Myers (VSB No, 80739)
Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
OF VIRGINIA
202 North Ninth Street
Richmond, VA 23219
Telephone: (804) 786-9516
Facsimile: (804) 692-1647
E-mail: ebmyers@oag.state.va.us

*Counsel for Relief-Defendant the Virginia
Retirement System*