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10 Attorneys for Plaintiff
 United States of America

11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA
 13 WESTERN DIVISION

14 UNITED STATES OF AMERICA,
 15 Plaintiff,
 16 v.
 17 BLACK AND WHITE GARAGE,
 18 INC. d/b/a BLACK AND WHITE
 19 TOWING, INC.,
 20 Defendant.

Case No. 2:21-cv-05844

CONSENT ORDER

CONSENT ORDER

I. INTRODUCTION

23 1. This Consent Order (“Order”) resolves the allegations in the United States’
 24 Complaint that Defendant Black and White Garage, Inc. d/b/a/ Black and White Towing,
 25 Inc. (hereinafter “Defendant”) violated Section 3958 of the Servicemembers Civil Relief
 26 Act (“SCRA”), 50 U.S.C. § 3958, when it auctioned off a vehicle belonging to an
 27 SCRA-protected member of the United States Marine Corps without a court order on
 28 December 12, 2018.

1 compliance with 50 U.S.C. § 3958. These policies and procedures must include the
2 following:

- 3 a. Prior to enforcing any vehicle storage lien, Defendant, or its agent,
4 shall conduct a search on a commercially available public records
5 database to obtain the owner's/owners' Social Security Number(s),
6 or, if (a) Social Security Number(s) cannot be found, the
7 owner's/owners' date(s) of birth.
- 8 b. Defendant, or its agent, shall then attempt to determine whether the
9 owner or owners of the vehicle are SCRA-protected servicemembers
10 by searching the Department of Defense Manpower Data Center
11 ("DMDC") website by last name and Social Security Number or, in
12 cases where a Social Security Number could not be found, by last
13 name and date of birth. When searching the DMDC by Social
14 Security Number or date of birth, if Defendant is aware of any last
15 name variants or aliases (e.g., maiden names, hyphenated or
16 composite surnames, or variant spellings) used by a vehicle owner,
17 Defendant shall run a separate DMDC search for each name variant
18 or alias.
- 19 c. Defendant, or its agent shall also: 1) request and review any available
20 vehicle ownership information held by a third party where the vehicle
21 tow request to the Defendant came from, or was made on behalf of,
22 that third party (e.g., an apartment complex requesting that a vehicle
23 be towed from its parking area); and 2) inspect the vehicle for
24 evidence of military service (e.g., military related decals, military
25 license plates, a vehicle registration with a military address, and/or
26 other contents evidencing military service).
- 27 d. If Defendant, or its agent, determines, as part of the review required
28 by Paragraph 6(a)-(c), that an owner is a servicemember in military

1 service or has left a period of military service within the past ninety
2 (90) days, it shall not foreclose or enforce the lien against the
3 servicemember's property without first obtaining a court order
4 allowing it to do so.

5 e. If Defendant pursues a storage lien action in court and a SCRA-
6 protected owner fails to answer the action, before seeking a default
7 judgment, Defendant shall file an affidavit of military service with
8 the court prepared in accordance with 50 U.S.C. § 3931(a) and (b).
9 The affidavit must be signed and prepared only after taking the
10 actions necessary to comply with Paragraph 6 and must be executed
11 no more than two (2) business days prior to the date that the request
12 for default judgment is made. Defendant shall attach a copy of a
13 DMDC Status Pursuant to the SCRA ("DMDC Status Report") to the
14 affidavit. The DMDC Status Report must have been run no more
15 than two (2) days prior to the date when the request for default
16 judgment is made in the matter.

17 f. If Defendant seeks or obtains a waiver under a written agreement as
18 provided in 50 U.S.C. § 3918, it shall use a notice and waiver in the
19 form of Exhibit A.

20 7. No later than thirty (30) calendar days after the date of entry of this Consent
21 Order, Defendant shall provide a copy of the proposed SCRA Policies and Procedures
22 required under Paragraph 6 to counsel for the United States.³ The United States shall
23 respond to the proposed SCRA Policies and Procedures within thirty (30) calendar days
24 after receipt. If the United States objects to any part of the SCRA Policies and
25 Procedures, the Parties shall confer to resolve their differences. If the Parties cannot

26 _____
27 ³ All materials required by this Consent Order to be sent to counsel for the United States shall be sent
28 by commercial overnight delivery addressed as follows: Chief, Housing and Civil Enforcement Section,
Civil Rights Division, U.S. Department of Justice, 4 Constitution Square, 150 M Street, NE,
Washington, DC 20002, Attn: DJ 216-12C-9.

1 resolve their differences after good faith efforts to do so, either party may bring the
2 dispute to this Court for resolution. Defendant shall begin the process of implementing
3 the SCRA Policies and Procedures within ten (10) calendar days of approval by the
4 United States or the Court.

5 8. If, at any time during the term of this Consent Order, Defendant proposes to
6 materially change its SCRA Policies and Procedures, it shall first provide a copy of the
7 proposed changes to counsel for the United States. The United States shall respond to
8 the proposed changes within thirty (30) calendar days after receipt. If the United States
9 objects to any part of the proposed changes, the Parties shall confer to resolve their
10 differences. If the Parties cannot resolve their differences after good faith efforts to do
11 so, either party may bring the dispute to this Court for resolution.

12 IV. TRAINING

13 9. During the term of this Consent Order, Defendant shall provide annual
14 SCRA compliance training to all of its employees. Defendant shall also provide SCRA
15 compliance training to any new employee within thirty (30) calendar days of his or her
16 hiring.

17 10. Within thirty (30) calendar days of the United States' approval of the SCRA
18 Policies and Procedures pursuant to Paragraph 7, Defendant shall provide the United
19 States the curriculum, instructions, and any written material included in the training
20 required by Paragraph 9. The United States shall have thirty (30) calendar days from
21 receipt of these documents to raise any objections to the training materials, and, if it
22 raises any, the Parties shall confer to resolve their differences. In the event that the
23 Parties are unable to do so, either party may bring the dispute to this Court for resolution.

24 11. Defendant shall secure a signed statement in the form attached as Exhibit B
25 from each employee at the trainings required by Paragraph 9 acknowledging that he or
26 she has received, read, and understands the Consent Order and the SCRA Policies and
27 Procedures, has had the opportunity to have his or her questions about these documents
28 answered, and agrees to abide by them. For the duration of this Consent Order, copies of

1 those signed statements shall be provided to the United States upon request. Defendant
2 shall also certify in writing to counsel for the United States that all employees
3 successfully completed the trainings required by Paragraph 9. Any expenses associated
4 with the trainings required by Paragraph 9 shall be paid by Defendant.

5 **V. COMPENSATION**

6 12. Defendant shall pay twenty-two thousand dollars (\$22,000.00) in damages
7 to Staff Sergeant Alexandria Thurman.

8 13. In order to receive compensation under Paragraph 12, Staff Sergeant
9 Thurman must execute a copy of the Release attached as Exhibit C and provide a copy of
10 the signed release to counsel for the United States.

11 14. Within seven (7) calendar days of receiving notice that the Release has been
12 signed, Defendant shall mail a check in the amount provide under Paragraph 12 made
13 payable to “Alexandria Thurman” by certified mail, return receipt requested. Once the
14 check has been received by Staff Sergeant Thurman, the United States shall deliver a
15 copy of the signed Release to Defendant.

16 **VI. CIVIL PENALTY**

17 15. Within ten (10) calendar days of the date of entry of this Consent Order,
18 Defendant shall pay a total of five thousand dollars (\$5,000) to the United States
19 Treasury as a civil penalty pursuant to 50 U.S.C. § 4041(b)(3) and 28 C.F.R. § 85.5 to
20 vindicate the public interest. The payment shall be made in the form of an electronic
21 funds transfer pursuant to written instructions to be provided by the United States.

22 **VII. ADDITIONAL RECORDKEEPING AND REPORTING REQUIREMENTS**

23 16. For the duration of this Consent Order, Defendant shall retain all records
24 relating to its obligations hereunder, including its records with respect to all storage lien
25 auctions and all records relating to compliance activities as set forth herein. The United
26 States shall have the right to review and copy any such records, including electronic
27 data, upon reasonable request during the term of this Consent Order.

28

X. RETENTION OF JURISDICTION

26. 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.

27. This Consent Order shall be in effect for a period of three (3) years from its date of entry, 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 _____, 2021.

UNITED STATES DISTRICT JUDGE

1 FOR PLAINTIFF UNITED STATES OF AMERICA

2 KRISTEN CLARKE
3 Assistant Attorney General
4 Civil Rights Division

5 SAMEENA SHINA MAJEED
6 Chief, Housing and Civil Enforcement Division

7 ELIZABETH A. SINGER
8 Director, U.S. Attorneys' Fair Housing Program

9 Dated: July 20, 2021

10 /s/ Audrey M. Yap
11 AUDREY M. YAP
12 Trial Attorney
13 United States Department of Justice
14 Civil Rights Division
15 Housing and Civil Enforcement Section

16 FOR DEFENDANT BLACK AND WHITE GARAGE, INC. d/b/a/ BLACK AND
17 WHITE TOWING, INC.

18 Dated: July 20, 2021

19 /s/ Steven M. Garber
20 STEVEN M. GARBER
21 Steven M. Garber & Associates, A P.C.
22 Attorneys At Law
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EXHIBIT A

IMPORTANT NOTICE TO MILITARY SERVICEMEMBERS ABOUT YOUR RIGHTS UNDER THE SERVICEMEMBERS CIVIL RELIEF ACT

Black and White Towing, Inc. has presented you with the attached 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 towing companies from selling or disposing of a servicemember’s vehicle or personal 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 towing company to enforce a lien on the vehicle or property 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 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 waiver, Black and White Towing, Inc. 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, Black and White Towing, Inc. will not be able to sell or dispose of your vehicle and 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 Black and White Towing, Inc.

For More Information:

- **CONSULT AN ATTORNEY:** To fully understand your rights under the law, and before waiving your rights, you may wish to 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>.

1
2 WAIVER OF RIGHTS UNDER THE SERVICEMEMBERS CIVIL RELIEF ACT

3 Please read the attached IMPORTANT NOTICE TO MILITARY SERVICEMEMBERS
4 ABOUT YOUR RIGHTS UNDER THE SERVICEMEMBERS CIVIL RELIEF ACT
5 before executing this waiver. I, _____, am/was a servicemember,
6 and I am aware that I have protections available to me under the Servicemembers Civil
7 Relief Act (“SCRA”). This includes, but is not limited to, legal rights relating to the
8 foreclosure or enforcement of a lien on the property or effects of a servicemember during
9 any period of military service and 90 days thereafter without court-ordered permission.

10 I am the registered owner of the following described motor vehicle:

11 Make:

12 Year:

13 Model:

14 VIN:

15 By signing this waiver, I acknowledge and agree that:

16 • I have read and understood the attached IMPORTANT NOTICE TO MILITARY
17 SERVICEMEMBERS ABOUT YOUR RIGHTS UNDER THE SERVICEMEMBERS
18 CIVIL RELIEF ACT.

19 • I am waiving the SCRA protections related to the property listed above, including
20 any protections against the sale or disposal of the motor vehicle. I agree to the
21 application of any proceeds from the sale of the property listed above towards any fees
22 and expenses related to the sale, and to storage expenses claimed. However, I
23 understand that Black and White Towing, Inc. will return to me any proceeds from the
24 sale of the property listed above that are above and beyond any sums owed to, or claimed
25 by, them.

26 • This waiver applies to any form of proceeding or transaction through which
27 someone else receives ownership and/or possession of the motor vehicle, or any part
28 thereof, or its disposal. By signing this waiver, I am voluntarily surrendering ownership,
title, interest and rights to the motor vehicle, and its disposition, whether by public sale,
destruction or otherwise.

• This waiver does not affect any loan or debt that I may owe on the motor vehicle
to a third party, or any citation issued by any law enforcement agency, or any fees, costs
or fines associated with said citation.

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• In exchange for waiving my SCRA rights with respect to this property, Black and White Towing, Inc. agrees to waive the recovery of any fees and costs relating to the towing, storage, sale or disposal of my motor vehicle against me.

• This waiver is made voluntarily, without coercion, duress, or compulsion. I understand the terms of this waiver of rights, and acknowledge I was advised to consult with an attorney regarding this waiver of rights and the protections afforded by the SCRA.

Dated: _____, 20__

By: _____ (Registered Owner)
Print Name

Signature: _____ (Registered Owner)

Dated: _____, 20__

By: _____ (Authorized Agent of Black and White Towing, Inc.)
Print Name

Signature: _____ (Authorized Agent of Black and White Towing, Inc.)

EXHIBIT B

EMPLOYEE ACKNOWLEDGMENT

I acknowledge that on _____, 20__, I was provided training regarding Servicemembers Civil Relief Act (SCRA) compliance and copies of the SCRA Policies and Procedures which are 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.

[PRINT NAME]

[SIGNATURE]

[JOB TITLE]

EXHIBIT C

RELEASE

In consideration for the Parties' agreement to the terms of the Consent Order resolving the United States' allegations in *United States v. Black and White Garage d/b/a Black and White Towing, Inc., et al.*, Civil No. _____ (C.D. Cal.) and payment to me of twenty-two thousand dollars (\$22,000.00), I, Alexandria Thurman, 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, 50 U.S.C. § 3858, that I may have against Black and White Towing, Inc., and all related entities, parents, predecessors, successors, subsidiaries, and affiliates and all of their past and present directors, officers, agents, managers, supervisors, shareholders, and employees and their heirs, executors, administrators, successors or assigns.

Executed this _____ day of _____, 20__.

SIGNATURE: _____

PRINT NAME: _____

MAILING ADDRESS: _____

PHONE: _____

EMAIL: _____