

*United States v. City and County of Honolulu and P M Autoworks, Inc.,
d/b/a All Island Automotive Towing (D. Hawaii, No. 1:18-cv-00061-DKW-KJM)*

**SETTLEMENT AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA AND
THE CITY AND COUNTY OF HONOLULU AND P M AUTOWORKS, INC.,
d/b/a ALL ISLAND AUTOMOTIVE TOWING**

I. INTRODUCTION

1. This Settlement Agreement (“Agreement”) is made and entered into by and between the United States of America, through the Department of Justice (“the United States”), and the City and County of Honolulu, through its Department of the Corporation Counsel (“Honolulu”), and P M Autoworks, Inc., d/b/a All Island Automotive Towing, through its authorized representative (“All Island Towing”) (Honolulu and All Island Towing being collectively called “the Defendants”). The United States and the Defendants are collectively referred to herein as “the Parties.”

2. This Agreement resolves the claims and causes of action asserted in the United States’ lawsuit, *United States v. City and County of Honolulu and P M Autoworks, Inc., d/b/a All Island Automotive Towing*, No. 1:18-cv-00061, filed in the United States District Court for the District of Hawaii against the Defendants on February 15, 2018, alleging violations of the Servicemember Civil Relief Act (“SCRA”), 50 U.S.C. §§ 3901-4043 (hereinafter “the Civil Action”).

3. In the Civil Action, the United States alleges that the Defendants’ practice of recovering towing, storage, and administrative fees through the auction, sale, or other post-auction disposal of motor vehicles, and the personal effects therein, owned by active-duty servicemembers without first obtaining court orders violates Section 3958 of the SCRA. The Defendants neither admit nor deny the allegations in the Civil Action.

II. RECITALS

4. Honolulu is a municipal corporation organized and existing under the laws of the State of Hawaii, and its agencies and departments are governed by the provisions of the Revised Charter of the City and County of Honolulu 1973 (2017 ed.). Hawaii Revised Statutes (“HRS”) Chapter 290 and Sections 15-13.8 through 15-13.10 of the Revised Ordinances of Honolulu, as amended, authorize Honolulu to publicly auction, sell, or otherwise dispose of abandoned or unclaimed motor vehicles post auction.

5. All Island Towing is a Hawaii corporation that, at all times relevant to this action, owned and operated a motor vehicle towing and storage business at 91-222 Olai Street, Kapolei, Hawaii. Since January 1, 2014, All Island Towing has served as the sole general contractor providing law enforcement towing services for Honolulu. Pursuant to its contract with Honolulu, All Island Towing oversees several subcontractor towing companies that have exclusive towing rights in designated zones. All Island Towing is authorized by its contract with Honolulu to dispose of certain abandoned or unclaimed motor vehicles that do not sell at public auction.

6. In March 2016, the Legal Branch of the Marine Corps Judge Advocate General Division informed the United States that Honolulu had auctioned the motor vehicle of an active-duty Marine stationed at Kaneohe Bay Hawaii Marine Corps Base. The Marine’s motor vehicle was towed by All Island Towing and later auctioned by Honolulu while the Marine was deployed aboard a U.S. Navy ship that was en route to his temporary duty station in Okinawa, Japan.

7. In May 2016, the United States notified the Defendants that it had initiated an investigation to determine whether they had violated the SCRA by auctioning the motor vehicle of a servicemember while he was in military service. The United States requested that the Defendants provide, *inter alia*, copies of all documents, policies, procedures, and complaints

either entity maintained or received related to the towing, storage, and subsequent lien sales of motor vehicles owned by servicemembers since January 1, 2011.

8. The United States conducted an investigation and determined that:
 - a. On May 17, 2010, Cheri Tarbet, a Petty Officer Second Class (“PO2”) in the United States Navy, was deployed aboard a U.S. naval ship being transported to her temporary duty station in Japan. On July 23, 2010, Honolulu deemed PO2 Tarbet’s motor vehicle abandoned and subsequently auctioned the motor vehicle and its contents, without a court order, on September 10, 2010;
 - b. On October 17, 2014, Timothy Hartzog, a Chief Petty Officer (“CPO”) in the United States Navy, was aboard a U.S. naval ship being transported to his temporary duty station in Japan. On November 6, 2014, CPO Hartzog’s vehicle was deemed abandoned, and on December 3, 2014, Honolulu attempted to auction the motor vehicle. The motor vehicle did not sell at auction, and Honolulu released it to All Island Towing, which subsequently scrapped the motor vehicle and its contents without a court order;
 - c. On May 13, 2015, Orrin Sanford, a Staff Sergeant (“SSgt.”) in the United States Marine Corps, was deployed aboard a U.S. naval ship being transported to his temporary duty station in Japan. On May 21, 2015, Honolulu deemed SSgt. Sanford’s motor vehicle abandoned and subsequently auctioned the vehicle and its contents, without a court order, on July 8, 2015;
 - d. Between 2011 and 2016, at least 17,000 motor vehicles were auctioned, sold, or otherwise disposed of post-auction by Honolulu or All Island Towing. Of those motor vehicles, 1,440 were registered to individuals who had identified themselves

as servicemembers during the motor vehicle registration process; and

- e. Neither Honolulu nor All Island Towing determined whether the motor vehicles auctioned, sold, or otherwise disposed of post auction were owned by active-duty servicemembers; nor did either entity obtain a court order prior to the auction, sale, or post-auction disposal of an active-duty servicemember's motor vehicle or personal effects.

9. The Parties agree that it is in the public's best interest that the Civil Action should be resolved without further litigation.

10. To avoid the delay, uncertainty, and expense of protracted litigation of the Civil Action, and in consideration of the mutual promises and obligations set forth below, the Parties agree and covenant to the following material terms and conditions:

III. STATEMENT OF CONSIDERATION

11. In consideration of, and consistent with, the terms of this Agreement, the Parties will move jointly for dismissal of the lawsuit entitled *United States v. City and County of Honolulu and P M Autoworks, Inc., d/b/a All Island Automotive Towing*, No. 1:18-cv-00061, filed in the United States District Court for the District of Hawaii, as set forth in Paragraph 32. The Parties agree and acknowledge that this consideration is adequate and sufficient.

IV. TERMS AND CONDITIONS

The Parties agree and covenant as follows:

12. **Prohibited Conduct and Affirmative Obligation:** In accordance with Section 3958(a)(1) of the SCRA, 50 U.S.C. § 3958, except under the circumstances described below, the Defendants, their employees, agents, contractors, successors in interest, and all other persons in

active concert or participation with them will not enforce liens on the motor vehicles of servicemembers in military service without either a SCRA waiver of rights form, as set out in **Attachment C** (“SCRA waiver”), or a court order.

13. **Development of SCRA-Compliant Policies and Procedures:** Within ninety (90) calendar days of the effective date of this Agreement, Honolulu shall develop SCRA Policies and Procedures for the Auction, Sale, or Other Post-Auction Disposal of Motor Vehicles (“SCRA Policies and Procedures”), relating to Honolulu’s abandoned and unclaimed motor vehicle practice as defined by HRS Sections 290-1 and 290-10, that are in compliance with Section 3958 of the SCRA, 50 U.S.C. § 3958. These policies and procedures must include provisions that prospectively ensure that:

- a. Honolulu takes steps to prevent the auction, sale, or other post-auction disposal of motor vehicles registered to servicemembers in military service without a court order or an executed SCRA waiver. This shall include:
 - i. amending the U.S. Military Non-Resident Certificate and the U.S. Military Hawaii Resident Certificate as set out in **Attachments A-1 and A-2**¹ to require a servicemember, as part of the City’s motor vehicle registration procedures, to provide his or her (1) social security number; (2) date of birth; (3) local and permanent mailing addresses; (4) personal and military electronic mail addresses and telephone numbers; and (5) emergency contact information;
 - ii. amending the Notification of Abandoned Motor Vehicle in Custody letter as set out in **Attachment B** to inform servicemembers that they have sixty (60)

¹ Honolulu’s use of the forms in **Attachment A-1, Attachment A-2, Attachment B, and Attachment C** prior to the effective date of this Agreement does not invalidate their use.

calendar days from the date of the mailing of the Notification of Abandoned Motor Vehicle in Custody letter to reclaim their motor vehicle, complete a power of attorney and designate a representative to reclaim the motor vehicle on their behalf, or complete an SCRA waiver, to relinquish their rights to the motor vehicle and authorize Honolulu to dispose of it at no additional charge. The SCRA waiver may be executed by a representative under a power of attorney, so long as the power of attorney is submitted along with the SCRA waiver. Honolulu shall accept a photocopy, facsimile copy or electronic copy of the SCRA waiver from the servicemember or his or her personal representative. The SCRA waiver form shall be made available on Honolulu's website during the term of this Agreement; and

- iii. developing an SCRA Informational Brochure for servicemembers regarding (1) Honolulu's abandoned vehicle laws, (2) long-term storage options at the servicemember's expense, and (3) voluntarily relinquishing a vehicle and waiving rights through the SCRA waiver. This informational brochure shall be prominently displayed and made available at all of Honolulu's permanent and satellite offices providing motor vehicle registration services on Oahu and delivered to the legal assistance office, welcome center, and command office at each military installation in Honolulu at the addresses set out at **Attachment D**.

- b. Honolulu provides servicemembers in military service adequate notice that their motor vehicle has been taken into custody, by:
 - i. determining whether a servicemember has completed and submitted to

Honolulu a U.S. Military Non-Resident Certificate or a U.S. Military Hawaii Resident Certificate, as set out in **Attachments A-1** and **A-2**, and using the contact information therein to provide notice to the servicemember, or if the servicemember is unreachable, to the servicemember's emergency contact; and

- ii. providing at least sixty (60) calendar days for servicemembers in military service, including servicemembers en route to or stationed at an overseas post, to receive and respond to the Notification of Abandoned Motor Vehicle in Custody letter at **Attachment B** prior to initiating court proceedings to auction, sell, or otherwise dispose of the motor vehicle post auction.
- c. Honolulu provides servicemembers in military service, including servicemembers en route to or stationed at an overseas post, an opportunity to recover or relinquish a motor vehicle taken into custody, by:
 - i. contractually requiring and instructing all towing companies providing services to Honolulu to accept a servicemember's copied, scanned, or faxed power of attorney and, upon the payment of outstanding towing and storage fees, release the motor vehicle to the servicemember's designated representative upon request; and
 - ii. accepting a signed SCRA waiver by a representative under a power of attorney, so long as a copy of the power of attorney is submitted along with the SCRA waiver.

14. **Approval of SCRA-Compliant Policies and Procedures:** No later than ninety (90) calendar days after the effective date of this Agreement, Honolulu shall provide a copy of its proposed SCRA Policies and Procedures and SCRA Informational Brochure required by

Paragraph 13 to counsel for the United States.² The United States shall respond to the proposed SCRA Policies and Procedures and SCRA Informational Brochure within forty-five (45) calendar days of receipt. If the United States objects to any part of the proposed SCRA Policies and Procedures or SCRA Informational Brochure, the Parties shall confer to resolve their differences. Within twenty-one (21) calendar days of the United States' approval of the materials, Honolulu shall:

- a. Implement the SCRA Policies and Procedures, and
- b. Post a link to the finalized SCRA Policies and Procedures and SCRA Informational Brochure on its official website during the term of this Agreement.

15. **Education and Training**: Within ninety (90) calendar days of the effective date of this Agreement, Honolulu shall provide its SCRA compliance training (i) to all its employees who are assigned to or tasked with duties that involve Honolulu's abandoned vehicle program under HRS Chapter 290, and (ii) to the following employees who are involved in the creation, review, implementation, or revision of policies concerning the towing, storage, auction, sale, or other post-auction disposal of motor vehicles under HRS Chapter 290: the director and deputy director of budget and fiscal services, the director and deputy director of customer services, the chief of police and the deputies chief of police, and the division and branch chiefs of the MVC (defined below) (collectively, all employees described in (i) and (ii) in this paragraph are called the "Employees Requiring Training"). Each such employee who receives the training shall execute the employee training acknowledgment as set forth in **Attachment E-1**.

² All documents or other communications required by this Agreement to be sent to the United States shall reference "DJ # 216-21-1" and shall be sent by private carrier to: Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 1800 G Street NW, Suite 7032, Washington, D.C. 20006.

Within the same period, Honolulu shall distribute its SCRA compliance training and SCRA Training Acknowledgment at **Attachment E-2** to tow companies which perform towing and/or storage services to Honolulu at the request of the Motor Vehicle Control Section of Honolulu's Division of Motor Vehicle, Licensing and Permits (collectively "MVC") or the Honolulu Police Department. Honolulu will instruct its tow companies to provide Honolulu with the training acknowledgments executed by tow company employees following completion of SCRA compliance training. In addition, during the term of this Agreement:

- a. Within thirty (30) calendar days of starting work, each new Employee Requiring Training shall be required to complete the training outlined in this Paragraph and complete the employee training acknowledgment at **Attachment E-1**, except that each new Employee Requiring Training described in (ii) above shall complete said training and employee training acknowledgment within ninety (90) calendar days of starting work; and
- b. Honolulu will instruct its tow companies that within thirty (30) calendar days after each new tow company employee or contractor is assigned to provide services to Honolulu, he or she is required to complete the training outlined above and complete the employee training acknowledgment at **Attachment E-2**. Honolulu will follow up with its tow companies every ninety (90) calendar days during the term of this agreement to ensure that the training outlined above has been provided to new tow employees or contractors and that the training acknowledgments are being returned to Honolulu.

16. **Settlement Compensation for Aggrieved Servicemembers:** Within thirty (30) calendar days of the effective date of this Agreement, Honolulu shall:

- a. pay a total sum of \$27,889.95 in monetary damages to CPO Hartzog by delivering to counsel for the United States a check payable to Timothy Hartzog;

- b. pay a total sum of \$17,253 in monetary damages to SSgt. Sanford by delivering to counsel for the United States a check payable to Orrin Sanford; and
- c. pay a total sum of \$10,715 in monetary damages to PO2 Tarbet by delivering to counsel for the United States a check payable to Cheri Tarbet.

The United States shall not deliver payment pursuant to this section before the individual has executed and provided to counsel for the United States a written release of all claims, legal or equitable, that he or she may have against the Defendants relating to the claims asserted in this lawsuit. Such release shall take the form of **Attachment F**. Counsel for the United States shall deliver a duplicate of the original signed release form to the respective counsel for each Defendant.

17. **Compensation for Other Aggrieved Servicemembers:** Within thirty (30) calendar days of the effective date of this Agreement, Honolulu shall:

- a. Encumber a sum of one hundred and fifty thousand dollars (\$150,000), which shall be in addition to the amounts set forth in Paragraph 16, in a separate settlement fund account held by Honolulu (hereinafter “Settlement Fund”) to compensate other servicemembers whom the United States determines were harmed by the Defendants’ practice of auctioning, selling, or other post-auction disposal of vehicles and personal effects of active-duty servicemembers without court orders or SCRA waivers (hereinafter “aggrieved persons”);
- b. Within ten (10) calendar days of the funds being encumbered to the Settlement Fund, Honolulu shall submit proof to the United States that the Settlement Fund has been established and that all funds have been deposited; and
- c. Honolulu shall be solely responsible for any costs or other fees related to the Settlement

Fund.

18. **Notification for Other Aggrieved Servicemembers:** Within thirty (30) calendar days of the effective date of this Agreement, Honolulu shall arrange for and publish a Notice to Servicemembers Regarding Vehicles Auctioned or Sold in Violation of the SCRA (hereafter “Notice”) as follows:

- a. The Notice shall include the information set forth in **Attachment G**, including a statement that the United States seeks information from servicemembers who claim to have had their vehicle improperly auctioned, sold, or otherwise disposed of post-auction by Honolulu, All Island Towing, or one of their contracted towing companies. Each Notice shall invite such persons to contact counsel for the United States within one hundred eighty (180) calendar days from the effective date of this Agreement;
- b. The Notice shall be published at least three times in each of the following publications, for a total of at least twelve (12) ads: the Honolulu Star-Advertiser, the Hawaii Army Weekly, the Marine Star, and the Ho’okele News. The Notice shall be published in a space measuring at least one-fourth (1/4) of a page;
- c. Honolulu shall provide a copy of each newspaper publication containing each Notice to counsel for the United States within ten (10) calendar days of the date of the newspaper publication of the Notice;
- d. The Notice shall also be mailed to the last known address in Honolulu’s records of each individual who identified himself or herself as a servicemember during the motor vehicle registration process and had his or her motor vehicle auctioned, sold, or otherwise disposed of post-auction by Honolulu, All Island Towing, or one of their contracted towing companies between April 1, 2009 and the effective date of this

Agreement.³ Honolulu will investigate and research the current address of servicemembers through reasonably available resources, which shall include: (1) running mailing addresses against the United States Postal Service's National Change of Address database; (2) consulting with the military; and (3) skip tracing. Following these efforts, Honolulu, shall, where necessary, redeliver any Notice that is returned to Honolulu as undeliverable.

- e. Within thirty (30) calendar days of the effective date of this Agreement, Honolulu shall provide to counsel for the United States a list that includes the name, last known address, and any other identifiable contact information for each servicemember who had his or her motor vehicle auctioned, sold, or otherwise disposed of post-auction by Honolulu, All Island Towing, or one of their contracted towing companies between April 1, 2009, and the present. If the list provided by Honolulu is not sufficient to locate possible aggrieved servicemembers, the United States shall be permitted to inspect and copy motor vehicle registration, towing, auction, sale, or other post-auction disposal records; and
- f. Nothing in this Agreement shall prevent the United States from making any additional efforts it deems appropriate to locate and provide notice to potential aggrieved persons, including servicemembers whose vehicles were auctioned before April 1, 2009.

³ Honolulu began its computerized auction process on April 1, 2009, and it does not have electronic records of auctions prior to this date. Honolulu has paper towing, storage, and auction documents dating back to February 1, 2008, but due to Honolulu's document retention and destruction procedures, towing, storage, and auction documents are not available prior to that date. These dates are not meant to be a limitation on whether a servicemember whose vehicle was auctioned, sold, or otherwise disposed of post auction prior to February 1, 2008, can collect under this Agreement, so long as the servicemember is able to provide documentation sufficient to show that he or she was in military service when his or her vehicle was auctioned, sold, or otherwise disposed of post auction without a court order.

19. **Identification of Other Aggrieved Servicemembers:** Within two hundred and forty (240) calendar days of the effective date of this Agreement, the United States shall make a preliminary determination of which persons, if any, are aggrieved and an appropriate amount of damages that should be paid to each such person. Within thirty (30) calendar days of making a preliminary determination of aggrieved persons, the United States will inform the Defendants in writing of its determinations, together with a sworn declaration from each aggrieved person setting forth the detailed factual basis for the claim.

- a. Each Defendant shall have thirty (30) calendar days from the receipt of each declaration to review the declaration and provide to the United States any documents or information it believes may refute the claims that led to the preliminary determination of a person as aggrieved under this Agreement. Nothing in this paragraph requires the Defendants to review declarations or make objections;
- b. If neither Defendant objects to any preliminary determination within thirty (30) calendar days, then the United States' preliminary determination of aggrieved persons and amounts to be paid shall become the United States' final determination. Honolulu will have twenty-one (21) calendar days to pay the amounts specified by the United States by check payable to the name of the aggrieved person and by delivering to counsel for the United States each such check;
- c. Should either Defendant object to the United States' preliminary determination of any person designated as aggrieved under Paragraph 19, the Parties will have thirty (30) calendar days to endeavor in good faith to resolve any differences regarding the determination of the aggrieved person;
- d. After considering the objecting Defendant's position, the United States will make the

final decision regarding the determination of aggrieved persons within twenty-one (21) calendar days after the period of the time in Paragraph 19(c), and the United States shall give a final list of aggrieved persons and the amounts to be paid to them from the Settlement Fund to the Defendants;

- e. Honolulu shall have twenty-one (21) calendar days to pay the amounts specified by the United States in its final list by check payable to the name of the aggrieved person and by mailing to counsel for the United States each such check;
- f. The United States shall not deliver payment pursuant to Paragraph 19 before the aggrieved person has executed and provided to counsel for the United States a written release of all claims, legal or equitable, that he or she may have against the Defendants relating to the claims asserted in the Civil Action. Such release shall take the form of **Attachment F**. Counsel for the United States shall deliver duplicates of the original signed release forms to the respective counsel for each Defendant within twenty-one (21) days after receipt of the same from the aggrieved person;
- g. In no event shall the aggregate of all such checks paid under Paragraph 19 exceed the sum of the Settlement Fund;
- h. After the satisfaction of Paragraphs 17-19 above, and the expiration of the corresponding time periods, any money remaining in the Settlement Fund shall escheat to Honolulu and the Settlement Fund shall be closed;
- i. If any aggrieved person to whom a check has been made payable declines to execute a release in the form of **Attachment F**, or fails to execute said release by the expiration date set forth in Paragraph 35 below, counsel for the United States shall return the undelivered check to Honolulu; and

- j. If the aggrieved person 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 Honolulu and request a reissuance of the check addressed to the aggrieved person. Honolulu will have fourteen (14) calendar days to issue a replacement check to counsel for the United States.

20. **Civil Penalty:** Within twenty (20) calendar days of the effective date of this Agreement, Honolulu shall pay sixty thousand, seven hundred eighty-eight dollars (\$60,788) payable to the “United States Treasury” as a civil penalty pursuant to 50 U.S.C. § 4041(b)(3)(A) and 28 C.F.R. § 85.3 and 85.5. The payment shall be in the form of an electronic fund transfer pursuant to written instructions to be provided by counsel for the United States to counsel for Honolulu.

21. **Reporting and Recordkeeping:** Honolulu shall, no later than one hundred and twenty (120) calendar days after the execution of this Settlement Agreement, submit to counsel for the United States a compliance report (“the Compliance Report”). The Compliance Report shall include the following:

- a. A signed statement attesting to the implementation of the SCRA Policies and Procedures for the Auction, Sale, or Other Post-Auction Disposal of Motor Vehicles by Honolulu, as required in Paragraph 13;
- b. A signed statement from Honolulu certifying that the SCRA Informational Brochure is being prominently displayed at Honolulu’s permanent and satellite offices providing motor vehicle registration services in Honolulu, as required in Paragraph 13;
- c. A signed statement providing the date of delivery, contact name, and telephone number

of the individual who received the informational brochure at the legal assistance office, welcome center, and command office at each military installation in Honolulu as listed in **Attachment D**, and as required in Paragraph 13;

- d. A link to the SCRA Policies and Procedures on Honolulu's website as required in Paragraph 14; and
- e. Executed copies of **Attachment E-1 or E-2**, as required by Paragraph 15.

22. Each Defendant shall notify and provide documentation to the United States within thirty (30) calendar days of the receipt of any written or oral complaint against the Defendant or the Defendant's employees, agents, contractors, or assigns, regarding possible violations of the SCRA. If the complaint is written, the Defendant shall provide a copy of it with the notification. The notification shall include the full details of the complaint, including the complainant's name, address, and telephone number. The Defendant shall also provide the United States all information it may request concerning such complaint and shall inform the United States in writing within fifteen (15) calendar days of the terms of any resolution of such complaint.

23. Honolulu shall submit annually on the anniversary of the effective date of this Agreement a written report that includes the following information:

- a. The information in Paragraphs 13-14 if not previously reported;
- b. A signed statement from Honolulu certifying that, pursuant to Paragraph 15(b), it followed up with its tow companies every ninety (90) calendar days during the reporting year to ensure that the training outlined in Paragraph 15 had been provided to new tow employees or contractors and that the training acknowledgments were returned to Honolulu; and
- c. Executed copies of **Attachment E-1 and E-2**, as required by Paragraph 15, which were

signed after submission of the Compliance Report, regardless of whether or not the employee is currently employed by the Defendant.

24. Honolulu will provide annually on the anniversary of the effective date of this Agreement a chart or spreadsheet that details the auction, sale, or other post-auction disposal of each motor vehicle owned by a servicemember the preceding year, including the following information:

- a. The name, current address, telephone number, and email address of the servicemember;
- b. The date of the auction, sale or other post-auction disposal; and
- c. An SCRA waiver signed by the servicemember or the servicemember's representative under a power of attorney, a copy of which is attached to the SCRA waiver form, or the case number and a copy of any corresponding court order approving auction, sale, or other post-auction disposal.

25. The final report with the information required under Paragraphs 23-24 shall be submitted sixty (60) calendar days prior to the expiration date of this Agreement.

26. During the term of this Agreement, each Defendant shall preserve all records relating to its respective obligations under this Agreement. During the term of this Agreement, and upon reasonable notice to the Defendants, the United States shall be permitted to inspect and copy any records related to the Defendants' respective obligations under this Agreement.

V. IMPLEMENTATION, ENFORCEMENT AND DISMISSAL OF UNDERLYING ACTION

27. The United States may review compliance with this Agreement at any time. The Defendants agree to cooperate with the United States in any review of compliance with this Agreement. Upon reasonable notice and during Defendants' normal business hours, the Defendants shall permit counsel for the United States to inspect and copy all non-privileged

records pertinent to this Agreement.

28. The Parties shall endeavor in good faith to resolve informally any differences regarding the interpretation of or compliance with this Agreement prior to initiating court action. If the United States believes that a Defendant has failed to perform in a timely manner any act required by this Agreement, or has otherwise not acted in conformance with any provision thereof, whether intentionally or not, the United States shall notify the Defendant in writing of its concerns.⁴ The defaulting Defendant shall have fifteen (15) calendar days from the date of the United States' notification to cure the breach.

29. If the Parties are unable to reach a resolution within fifteen (15) calendar days, the United States may move to restore the Civil Action to the active docket of this Court for purposes of resolving any such claim of breach. If such a claim of breach is made by the United States, the Defendants consent to and agree not to contest the United States' motion to restore the Civil Action to the Court's active docket. Alternatively, the United States may file a lawsuit against the defaulting Defendant for breach of this Agreement, or any provision thereof, in the United States District Court for the District of Hawaii. This Court shall serve as the exclusive jurisdiction and venue for any dispute concerning this Agreement. The Defendants consent to and agree not to contest the exercise of personal jurisdiction over the Defendants by this Court. The Parties further acknowledge that venue in this Court is appropriate and agree

⁴ All documents or other communications required by this Agreement to be sent to Honolulu shall reference *United States v. City & County of Honolulu, et al.* and be sent via private carrier to: Director of the Department of Customer Services, Mission Memorial Building, 550 S. King Street, Ste. 102, Honolulu, HI 96813, with a copy to the Department of the Corporation Counsel, Attn. Corporation Counsel, 530 S. King Street, Room 110, Honolulu, HI 96813.

All documents or other communications required by this Agreement to be sent to All Island Towing shall reference *United States v. City & County of Honolulu, et al.* and be sent via private carrier to: All Island Automotive Towing, c/o Stan Manuia, Esq., 701 Bishop Street, Honolulu, HI 96813.

not to raise any challenge on this basis.

30. In the event the United States reinstates the Civil Action or files a new civil action as contemplated by Paragraph 29 to remedy breach of this Agreement, the United States may seek, in addition to any remedy available under law or equity, an injunction mandating specific performance of any term or provision in this Agreement, without regard to whether monetary relief would be adequate. The United States may also seek an award of reasonable attorneys' fees and costs incurred in bringing an action to remedy breach of this Agreement. If the Civil Action is reinstated or any other such civil action is filed, the Defendants expressly agree not to count the time during which this Agreement is in place, or use the terms or existence of this Agreement, to plead, argue or otherwise raise any defenses under theories of claim preclusion, issue preclusion, statute of limitations, estoppel, laches, or similar defenses.

31. Failure by the United States to enforce any provision of this Agreement shall not operate as a waiver of the United States' right or ability to enforce any other provision of this Agreement.

32. Within fifteen (15) calendar days after Honolulu provides the checks referenced in Paragraph 16 and written verification to the United States of the deposit of funds into the Settlement Fund, as set forth in Paragraph 17, the Parties shall jointly move the Court for dismissal of the underlying Civil Action with prejudice, subject to its reinstatement as set forth in Paragraphs 29-30. This Agreement shall be attached to the joint motion to dismiss.

VI. TERMINATION OF LITIGATION HOLD

33. The Parties agree that, as of the effective date of this Agreement, litigation is not "reasonably foreseeable" concerning the matters described in this Agreement. To the extent that any party has previously implemented a litigation hold to preserve documents, electronically

stored information (ESI), or things related to the matters described above, that party is no longer required to maintain such litigation hold. Nothing in this paragraph relieves any party of any other obligations under this Agreement.

VII. DURATION, EXECUTION AND OTHER TERMS

34. This Agreement is effective on the date of the signature of the last signatory to the Agreement. This Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one Agreement. Any signature delivered by a party by facsimile or electronic transmission (including email transmission of a PDF image) shall be deemed to be an original signature hereto.

35. The duration of this Agreement shall be for a period of three (3) years from the effective date of this Agreement.

36. Each party shall bear its own legal or other costs incurred in connection with this matter, including the preparation, negotiation and performance of this Agreement, except as set forth in Paragraph 30.

37. Each party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

38. This Agreement does not release claims other than claims for violations of Section 3958 of the SCRA addressed in the Civil Action or identified in this Agreement. This Agreement does not release any other claims that may be held or are currently under investigation by any federal agency against Honolulu or All Island Towing.

39. Nothing in this Agreement will excuse the Defendants' compliance with any currently or subsequently effective provision of law that imposes additional obligations on them.

40. Except where this Agreement expressly conditions or predicates performance of a duty

or obligation upon the performance of a duty or obligation by another party, the performance of one party's duties or obligations under this Agreement shall not be discharged or excused by the actual or alleged breach of the duties and obligations by another party.

41. The actual or alleged breach of the duties and obligations by Honolulu, which duties and obligations are imposed solely upon Honolulu under this Agreement, shall not be deemed an actual or alleged breach of the duties and obligations by All Island Towing under this Agreement.

42. As between the Defendants, the parties agree that as consideration for Honolulu's agreement to pay the compensatory damage and penalties herein, All Island Towing (including, without limitation, its officers, employees, agents, contractors, and subcontractors) agrees to fully release Honolulu (including, without limitation, its officers, employees, agents, contractors, and subcontractors) of any and all claims it has or may have relating to the events giving rise to the Civil Action and this Agreement.

43. This Agreement is governed by and shall be interpreted under the laws of the United States. For purposes of construing or interpreting this Agreement, it shall be deemed to have been drafted by all Parties and shall not be construed or interpreted against any party for that reason in any subsequent dispute.

44. This Agreement and the attachments hereto constitute the complete agreement among the Parties on the matters raised herein. No prior or contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provision herein or in any other proceeding.

45. This Agreement may be modified only with the written consent of all of the Parties. Any modification must be in writing and signed by the Parties through their authorized

representatives.

46. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

47. This Agreement is a public document. The Parties agree and consent to the disclosure of this Agreement by any party and information concerning this Agreement to the public.

48. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.

49. The Parties agree that they will not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is illegal or invalid.

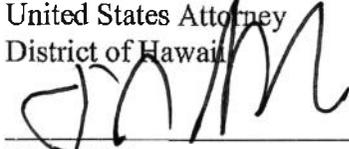
50. This Agreement is binding on the Parties, including their respective principals, officers, employees, agents, contractors, representatives, assignees, successors and successors in interest, and all those in active concert or participation with any of them. Each party has a duty to inform any such successor in interest of this Agreement.

[signature pages and attachments follow]

FOR THE UNITED STATES:

Dated: February 15, 2018

KENJI M. PRICE
United States Attorney
District of Hawaii



THOMAS A. HELPER
Assistant United States Attorney
United States Attorney's Office
District of Hawaii
Room 6-100, PJKK Federal Bldg. 300
300 Ala Moana Boulevard
Honolulu, Hawaii 96850
Tel.: (808) 541-2850
Fax: (808) 541-3752
tom.helper@usdoj.gov

JEFFERSON B. SESSIONS III
Attorney General

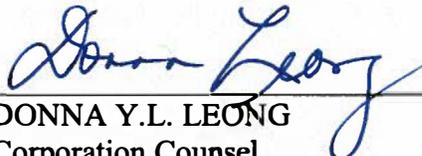
JOHN M. GORE
Acting Assistant Attorney General
Civil Rights Division



SAMEENA SHINA MAJEED
Chief
ELIZABETH A. SINGER
Director, U.S. Attorneys' Fair Housing Program
MICHELLE A. MCLEOD
Trial Attorney
United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
950 Pennsylvania Avenue, NW – NWB 7091
Washington, D.C. 20530
Tel: (202) 305-0115
Fax: (202) 514-1116
michelle.mcleod@usdoj.gov

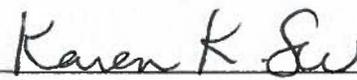
FOR THE CITY AND COUNTY OF HONOLULU:

Dated: February 15, 2018



DONNA Y.L. LEONG
Corporation Counsel
Department of the Corporation Counsel

APPROVED AS TO FORM AND LEGALITY



KAREN K. LEE
Deputy Corporation Counsel

FOR P M AUTOWORKS, INC., d/b/a ALL ISLAND AUTOMOTIVE TOWING:

Dated: February 15, 2018



PAUL P. PERRY, JR.

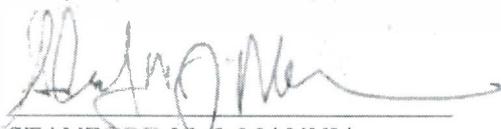
President

P M Autoworks, Inc., d/b/a All Island Automotive Towing

91-222 Olai Street

Kapolei, HI 96707

Tel: (808) 677-6900



STANFORD M. J. MANUIA

Attorney for All Island Automotive Towing

701 Bishop Street

Honolulu, HI 96813

Tel: (808) 295-7123

stanfordmanuia.aal@aol.com

ATTACHMENT A-1

**DEPARTMENT OF CUSTOMER SERVICES
Division of Motor Vehicle, Licensing & Permits
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII**

U.S. MILITARY NON-RESIDENT CERTIFICATE

In accordance with the Servicemembers Civil Relief Act (50 U.S.C. § 3901), I hereby certify that I am a member the spouse who claims the same legal residence of a member of the U.S. Armed Forces on active duty in the State of Hawaii; that I am a legal resident of the State of _____; and that I am the owner of the motor vehicle described below for which application for registration is being made in the City and County of Honolulu, State of Hawaii. I realize that upon discharge or retirement from active duty, or change of duty station, I am no longer exempt from motor vehicle weight taxes, must immediately re-register my car, and pay the appropriate taxes. Failure to re-register my vehicle within 30 days will result in the assessment of penalties. To preserve my SCRA rights, I agree to keep my contact information current with the DMVLP for as long as I am the titled owner of this vehicle.

DESCRIPTION OF VEHICLE:

License Plate No. _____ Vehicle Identification No. _____
Make: _____ Model: _____ Year _____ State That Issued License Plate: _____

SERVICEMEMBER INFORMATION (Required):

Rank and Name: _____ U.S. DoD Id. No. _____
Service Branch and Unit: _____ Date of Birth: _____
Military Base _____ Social Security Number: _____
Hawaii/Local mailing address _____
Permanent Out-of-State address _____
Personal Email: _____ Military (.mil) email: _____
Cell Phone No. (____) _____ Duty Phone No. (____) _____
Emergency Contact: _____ Emergency Phone No. (____) _____

Servicemember Signature _____ Date _____

Print Name of Spouse (IF APPLICABLE) _____ Signature (IF APPLICABLE) _____ Date _____

CERTIFICATION

(This certification is valid for 30 days)

This is to certify that the records of the above-mentioned service personnel corresponds to the information provided above.

Date _____ Printed Name of Commanding/Personnel Officer, Rank, Branch of Service _____ Signature _____

NOTICE: The Division of Motor Vehicle, Licensing & Permits ("DMVLP") collects personal information that is relevant and necessary for driver licensing, and vehicle registration, taxation or disposal, in accordance with the Real ID Act of 2005, (P.L. 109-13, Div. B), Servicemembers Civil Relief Act (50 U.S.C. § 3901, et seq.), Chapter 286 of the Hawaii Revised Statutes ("HRS"), and Chapters 19-122 & 19-122.5 of the Hawaii Administrative Rules. Information is maintained by DMVLP pursuant to the Driver's Privacy Protection Act, 18 U.S.C. § 2721-2725, Section 7 of the federal Privacy Act (P.L. 93-579), HRS Chapters 286 and 487J, and the Personal Information Protection Act. Pursuant to Section 7 of the federal Privacy Act and the Acts listed above, this information may be released to government agencies for government purposes.

CS-L(MVR)50 (Rev. 1/2018)

ATTACHMENT B

DEPARTMENT OF CUSTOMER SERVICES

CITY AND COUNTY OF HONOLULU

DIVISION OF MOTOR VEHICLE, LICENSING AND PERMITS

MOTOR VEHICLE CONTROL SECTION

P.O. BOX 30350

HONOLULU, HAWAII 96120-0350

INTERNET: WWW.HONOLULU.GOV

KIRK CALDWELL
MAYOR

SHERI T. KAJIWARA
DIRECTOR

GALEN K. ONOUYE
LICENSING ADMINISTRATOR

(DATE)

NOTIFICATION OF ABANDONED VEHICLE IN CUSTODY

TO: RECIPIENT COPY SENT TO LEGAL OWNER
ADDRESS LINE 1
ADDRESS LINE 2

REPORT: ####

In accordance with Section 290-1, Hawaii Revised Statutes, as the registered and/or legal owner you are hereby notified that the following described vehicle was taken into custody by the Department of Customer Service.

TOW DATE: DATE & TIME

DESCRIPTION OF VEHICLE:

LICENSE PLATE NO: XXXX
SERIAL NO. (VIN): XXXX
MAKE: XXXX
TYPE: XXXX

VIOLATION: ABANDONED

REMOVED FROM: ADDRESS OF VEHICLE REMOVAL

For information on location and tow charges, please call:

NAME _____ ADDRESS _____ PHONE: _____

Non-Servicemembers: In the event this vehicle remains unclaimed for a continuous period of 10 (ten) days after the mailing of this notice, the Director of Customer Service is authorized to dispose of it at the public auction. You are entitled to reclaim the vehicle at any time prior to such auction upon payment of all applicable costs and expenses. You will be required to present ownership to the above towing contractor when claiming the vehicle.

Servicemembers: In the event this vehicle remains unclaimed for a continuous period of 60 (sixty) days after the mailing of this notice, the Director of Customer Service may begin court proceedings against you to dispose of it at public auction. You are entitled to reclaim the vehicle at any time prior to such auction upon payment of all applicable costs and expenses. If you are unable to personally reclaim the vehicle, you can complete a power of attorney and designate a representative to claim the vehicle on your behalf. If you do not intend to reclaim the vehicle, you can complete an SCRA waiver of rights form, which can be found at [insert web address], and the vehicle will be disposed of by the City and County of Honolulu at no cost to you.

If you have any questions, please contact the Motor Vehicle Control Section at 733-2530.

Sincerely,

Steven Wong
Supervising Motor Vehicle Control Inspector

ATTACHMENT C

IMPORTANT NOTICE AFFECTING MILITARY SERVICEMEMBERS

WAIVER OF RIGHTS AND PROTECTIONS AFFORDED UNDER THE SERVICEMEMBERS CIVIL RELIEF ACT

The City and County of Honolulu ("City") has in its custody the following described motor vehicle, which is registered in your name:

Make:	Model:
Year:	VIN:

The motor vehicle was towed because it was either abandoned on the City's public street or constituted a traffic code violation, and you or your authorized representative did not claim the vehicle in response to notice to you by certified mail and notice by publication.

If you wish to claim your vehicle, please contact the Department of Customer Services at (808) 768-2530 or mvc@honolulu.gov.

If you do not want the vehicle, the City is requesting that you execute the attached waiver so that the City may dispose of the vehicle. It is a waiver of rights and protections that may be applicable to you and your dependents pursuant to 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 restricts the foreclosure or enforcement of a lien on the property or effects of a servicemember during any period of military service and 90 days thereafter without court-ordered permission.

If you choose to sign the waiver, the City will have the option to auction or scrap the vehicle.

Before waiving these important statutory rights, you should consult an attorney regarding how best to exercise your rights or whether it is in your interest to waive these rights under the conditions offered by the City. For more information, you may consider:

- **CONSULTING 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 may 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/contentlocator.php>
- **MILITARY ONESOURCE:** "Military OneSource" is the U.S. Department of Defense's information resource. Go to www.militaryonesource.com.

I have read and understood this **IMPORTANT NOTICE AFFECTING MILITARY SERVICEMEMBERS.**

<p>PLEASE RETURN A COPY OF THIS NOTICE WITH THE WAIVER OF RIGHTS TO: Department of Customer Services, City and County of Honolulu, Division of Motor Vehicle, Licensing and Permits, Motor Vehicle Control Section, P.O. Box 30350, Honolulu Hawaii 96820, or to mvc@honolulu.gov.</p>

ATTACHMENT C (cont'd)

**WAIVER OF RIGHTS UNDER
SERVICEMEMBERS CIVIL RELIEF ACT**

**Please read the attached IMPORTANT NOTICE AFFECTING MILITARY
SERVICEMEMBERS before executing this waiver**

I, _____, am/was a servicemember with the
(name)

(branch/unit of military)

and I am aware that I have protections available to me under the Servicemembers Civil Relief Act ("SCRA"). This includes, but is not limited to, legal rights relating to the foreclosure or enforcement of a lien on the property or effects of a servicemember during any period of military service and 90 days thereafter without court-ordered permission.

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

Make:	Model:
Year:	VIN:

I am not the owner of the motor vehicle described above.

By signing this waiver, I acknowledge and agree that:

- I have read and understood the attached **IMPORTANT NOTICE AFFECTING MILITARY SERVICEMEMBERS**.
- I am waiving the SCRA protections related to the property listed above, including any protections against the sale or disposal of the motor vehicle and the right to claim any proceeds from the sale of the motor vehicle. I agree to the application of any proceeds from the sale towards any fees and expenses related to the sale.
- This waiver applies to any form of proceeding or transaction through which someone else receives ownership and/or possession of the motor vehicle, or any part 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.
- In exchange for waiving my SCRA rights with respect to this property, the City 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: _____

(print name)

ATTACHMENT D

LIST OF HONOLULU MILITARY INSTALLATIONS

Marine Corps: Marine Corps Base Hawaii (Kaneohe Bay), Camp H. M. Smith, and Pu'uloa Range Training Facility

Army: Fort Shafter, Schofield Barracks, Wheeler Army Airfield (formerly Wheeler Air Force Base), and Tripler Medical Center

Navy: Joint Base Pearl Harbor-Hickam, c/o Navy Region Legal Services Office, Legal Assistance Department, 850 Willamette Street Bldg. 1746, JBPHH, HI 96860

Air Force: Joint Base Pearl Harbor-Hickam c/o Navy Region Legal Services Office, Legal Assistance Department, 850 Willamette Street Bldg. 1746, JBPHH, HI 96860

Coast Guard: USCG ISC Honolulu and USCG Air Station Barbers Point

ATTACHMENT E-1
EMPLOYEE TRAINING ACKNOWLEDGMENT

I acknowledge that on _____, 20____, in order to maintain efficiency and government operations, and to be in compliance with state and federal law, I received training on the requirements of the Servicemembers Civil Relief Act for designated City and County of Honolulu’s employees requiring training pursuant to a Settlement Agreement in *United States v. City and County of Honolulu and P M Autoworks Inc., d/b/a All Island Automotive Towing* (D. Hawaii, No. 1:18-cv-00061). I also acknowledge that I was provided the SCRA Policies and Procedures adopted by the City and County of Honolulu in resolution of the above captioned matter. I understood the training and the SCRA Policies and Procedures provided, and I shall comply with those responsibilities.

Signature

Print Name

Employer

Job Title/Position

Start Date (when employment commenced)

Date

ATTACHMENT E-2

**SCRA TRAINING ACKNOWLEDGMENT FOR CONTRACTORS AND/OR
SUBCONTRACTORS OF THE CITY AND COUNTY OF HONOLULU**

I acknowledge that on _____, 20____, I received training on the requirements of the Servicemembers Civil Relief Act required for all employees and agents of any contractor and/or subcontractor performing duties under towing contracts with the City and County of Honolulu pursuant to a Settlement Agreement in *United States v. City and County of Honolulu and P M Autoworks Inc., d/b/a All Automotive Island Towing* (D. Hawaii, No. 1:18-cv-00061).

I also acknowledge that I was provided the SCRA Policies and Procedures adopted by the City and County of Honolulu in resolution of the above captioned matter. I understand my legal responsibilities and agree that, as a condition of my employer’s contractual relationship with the City and County of Honolulu and/or its master tow company, I shall comply with those responsibilities.

Signature

Print Name

Employer

Job Title/Position

Start Date (when employment commenced)

Date

ATTACHMENT F

FULL AND FINAL RELEASE OF CLAIMS

In consideration of the payment to me by the City and County of Honolulu (“Honolulu”) and P M Autoworks, Inc., d/b/a All Island Automotive Towing (“All Island Towing”) of \$ _____, I/we _____ and _____ hereby release and forever discharge all claims against Honolulu and All Island Towing, and each and all of their respective employees, officers, directors, affiliated entities, agents, contractors, subcontractors, successors in interest, and insurers, arising prior to the date of this Release, related to the facts and laws at issue in the lawsuit entitled *United States v. City and County of Honolulu and P M Autoworks Inc., d/b/a All Island Automotive Towing* (D. Hawaii, No. 1:18-cv-00061), including without limitation the alleged violation of Section 3958 of the Servicemembers Civil Relief Act. I hereby acknowledge that I have read and understand this Release and have executed it voluntarily, with full knowledge of its legal consequences, and after an opportunity to consult with legal counsel of my choice.

Executed this _____ day of _____, 20____.

Signature

Print Name

Signature of Spouse (if on vehicle title)

Print Name

ATTACHMENT G

**NOTICE TO SERVICEMEMBERS REGARDING VEHICLES
AUCTIONED OR SOLD IN VIOLATION OF THE SCRA**

On February 15, 2018, the City and County of Honolulu (“Honolulu”), All Island Automotive Towing (“All Island Towing”), and the United States entered into a Settlement Agreement resolving a lawsuit brought by the United States. The lawsuit alleged that Honolulu and All Island Towing auctioned, sold, or otherwise disposed of motor vehicles owned by active-duty servicemembers without first obtaining a court order or valid SCRA waiver, in violation of Section 3958 of the Servicemembers Civil Relief Act, 50 U.S.C. § 3958.

You may be entitled to a monetary award from the Settlement Fund if:

- (1) you were an active-duty servicemember in Honolulu between February 1, 2008, and February 15, 2018 **and** your vehicle was auctioned, sold, or otherwise disposed of post auction; or
- (2) you were an active-duty servicemember in Honolulu prior to February 1, 2008 **and** you have sufficient documentation to show that your vehicle was auctioned, sold, or otherwise disposed of post auction.

If you believe you may qualify for compensation, or if you have information about someone else whom you believe may qualify, please contact the United States Department of Justice, no later than August 14, 2018, at 1-800-896-7743 and select menu option 996. You may also send an email to servicemembers@usdoj.gov or write to:

United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
950 Pennsylvania Avenue -- NWB
Washington, DC 20530
Attn: DJ # 216-21-1

Your telephone message or letter must include your name, address, and, if possible, your email address and at least TWO telephone numbers where you may be reached.