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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF NEVADA,

and

THE OFFICE OF THE STATE
CONTROLLER,

Defendants.

Civil No. 3:09-cv-00314-LRH-WGC

SETTLEMENT AGREEMENT

This matter is before the Court for entry of this Settlement Agreement (“Agreement”) by consent of all parties to effectuate a final compromise and settlement of all claims raised in the United States’ Complaint. After review and consideration, the Court believes that entry of this Agreement is in the interest of justice.

1. Plaintiff United States of America commenced this action in the United States District Court for the District of Nevada, alleging that Defendants State of Nevada and the Office of the State Controller (collectively, “Nevada”) violated the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.* (“USERRA”) by failing to promptly reemploy Arthur F. Ingram, III (“Ingram”) following his service with the U.S. Army and by discriminating against him for engaging in protected conduct when they withdrew a job offer and terminated his employment.

2. As a result of settlement discussions, the United States and the Nevada have agreed that this action should be settled by entry of this Agreement. It is the intent of the parties that this Agreement be a final and binding settlement in full disposition of any and all claims alleged in the Complaint filed in this case, and any and all claims now or hereinafter of any

1 nature whatsoever either known or unknown that the United States or Ingram may have against
2 Nevada, its officers or employees arising out of this lawsuit, and adequately compensates Ingram
3 for those claims.

4 **STIPULATED FACTS**

5 3. Pursuant to USERRA, the parties acknowledge the jurisdiction of the United
6 States District Court for the District of Nevada over the subject matter of this action and of the
7 parties to this case for the purpose of entering this Agreement and, if necessary, enforcing this
8 Agreement.

9 4. Venue is proper in this district for purposes of this Agreement and any
10 proceedings related to this Agreement. Nevada agrees that all statutory conditions precedent to
11 the institution of this lawsuit have been fulfilled.

12 **FINDINGS**

13 5. Having examined the terms and provisions of the Agreement, the Court finds the
14 following:

- 15 a. The Court has jurisdiction over the subject matter of this action and the
16 parties to this action.
- 17 b. The terms and provisions of this Agreement are lawful, reasonable, fair
18 and just. The rights of Ingram, Nevada, and the United States are
19 protected adequately by this Agreement.
- 20 c. This Agreement conforms with the Federal Rules of Civil Procedure and
21 USERRA, and is not in derogation of the rights and privileges of any
22 person.
- 23 d. The entry of this Agreement will further the objectives of USERRA, and
24 will be in the best interests of the parties.

25 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS
26 FOLLOWS:

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1 **NON-ADMISSION**

2 6. This Agreement, being entered with the consent of the United States and Nevada,
3 shall not constitute an adjudication or finding on the merits of the case and shall not be construed
4 as an admission by Nevada of any violations of USERRA, or any other law, rule, or regulation
5 dealing with or in connection with equal employment opportunities.

6 **NON-RETALIATION**

7 7. Nevada shall not take any action against any person, including but not limited to
8 Ingram, that constitutes retaliation or interference with the exercise of such person's rights under
9 USERRA because such person gave testimony or assistance or participated in any manner in any
10 investigation or proceeding in connection with this case.

11 **REMEDIAL RELIEF**

12 8. Without admitting the allegations of the United States, and in settlement of the
13 United States' claims for relief for Ingram who, by his signature to the release attached as
14 Appendix A accepts the relief to be given him pursuant to this Agreement, Nevada has agreed to
15 provide remedial relief to Ingram.

16 9. Within fifteen (15) business days from the date of approval of any payment or
17 funding made pursuant to this Agreement by the State of Nevada Board of Examiners,
18 anticipated to be at a July 10, 2012 meeting, Nevada shall pay Ingram a total monetary award of
19 two hundred sixty-two thousand dollars (\$262,000.00), all of which shall be attributed to back
20 wages. Nevada shall only withhold all appropriate federal income tax. Pursuant to Section 218
21 of the Social Security Act, Nevada state employees are not subject to Social Security
22 withholdings. On or before the date it is required by law to do so, Nevada shall issue to Ingram
23 the appropriate Internal Revenue Service tax forms reflecting the amounts paid to Ingram as
24 Nevada back wages and the amounts withheld by Nevada.

25 10. Nevada shall pay the required amount to Ingram by mailing a check to the
26 following address:
27
28

1 Arthur F. Ingram, III
2 4370 Spring Drive
3 Carson City, Nevada 89701

4 Within twenty (20) days of making the payment to Ingram, Nevada shall provide the United
5 States with documentation of having paid Ingram the monetary award due him pursuant to
6 paragraph 9, *supra*, by sending, via overnight delivery service, a photocopy of the check
7 evidencing payment to the following address:

8 John Buchko
9 United States Department of Justice
601 D Street, NW, Room 4912
10 Washington, DC 20579

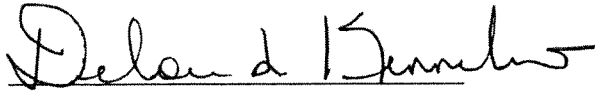
11 11. Within fifteen (15) business days from the date of approval of any payment or
12 funding made pursuant to this Agreement by the State of Nevada Board of Examiners,
13 anticipated to be at a July 10, 2012 meeting, Nevada shall fully fund Ingram's Public
14 Employees' Retirement System ("PERS") account pursuant to the provisions of USERRA and
15 Nevada Revised Statute 286.435 to achieve nine (9) years of state service credit at the maximum
16 Chief Deputy Controller rate of pay as set forth in the Nevada Statutes in effect for the years
17 between 2003 and 2012. Such total funding shall not exceed two hundred fifty thousand two-
18 hundred and sixty-nine dollars and seventy-seven cents (\$250,269.77). As a result of such
19 funding, Ingram shall fully vest with PERS. Nevada agrees not to seek any contribution from
20 Ingram for any portion of the PERS contribution.

21 12. Nevada shall withdraw and remove the December 15, 2008, letter of termination
22 from Ingram's personnel file, with the understanding that Ingram's employment with Nevada has
23 ceased and, pursuant to this Agreement, he has no current or future claim to employment with
24 Nevada.

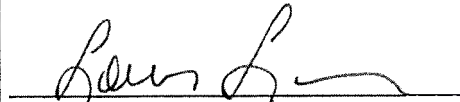
25 **DISPUTE RESOLUTION AND COMPLIANCE**

26 13. The entry of this Agreement constitutes the entry of final judgment within the
27 meaning of Rule 54 of the Federal Rules of Civil Procedure on all claims asserted in or that
28 could have been asserted by the United States in this action. The Court, however, shall retain

1 Agreed and Consented to on behalf of Plaintiff
United States of America:

2 

3 DELORA L. KENNEBREW
4 Chief

5 

6 LOUIS LOPEZ
7 Deputy Chief

8 

9 JOHN F. BUCHKO
10 JEFFREY G. MORRISON
11 Trial Attorneys
12 U.S. Department of Justice
13 Civil Rights Division
14 Employment Litigation Section
15 950 Pennsylvania Avenue, NW, PHB 4500
16 Washington, DC 20530
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Agreed and Consented to on Behalf of Defendants
State of Nevada and Office of the State Controller

CATHERINE CORTEZ MASTO
Nevada Attorney General



STEPHEN D. QUINN
Chief Deputy Attorney General
Nevada Bar No. 5746

JOSEPH C. REYNOLDS
Deputy Attorney General
Nevada Bar No. 8630
Bureau of Litigation
Public Safety Division
100 N. Carson Street
Carson City, Nevada 89701
Tel: (775) 684-1222
Fax: (775) 684-1275

KIM R. WALLIN, CMA, CFM, CPA
Nevada State Controller



KIM R. WALLIN, CMA, CFM, CPA
Nevada State Controller
101 N. Carson Street, Suite 5
Carson City, Nevada 89701

APPENDIX A

RELEASE

I, Arthur F. Ingram, III, for and in consideration of accepting the relief to be provided to me pursuant to the provisions of the Settlement Agreement entered in *United States v. State of Nevada and the Office of the State Controller*, 3:09-cv-00314-LRH-WGC, release and discharge the State of Nevada and its current, former and future officials, employees and agents from all legal and equitable claims of every nature whatsoever either known or unknown arising out of the complaint filed in that case occurring prior to the date of this Release.


I understand that the relief to be given to me does not constitute an admission by Nevada of the validity of any claim raised by me, or on my behalf.

This Release constitutes the entire agreement between Nevada and myself, without exception or exclusion, and I hereby authorize Nevada to change my PERS designations to employer paid where necessary to effectuate the purposes of this Agreement.

I acknowledge that a copy of the Settlement Agreement in this action was provided to me.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Signed this 4 day of May, 2012.


Arthur F. Ingram, III
Social Security Number: