

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 13-cv-

MICHAEL J. SIPOS, and  
GARY D. SMITH,

Plaintiffs,

v.

FLIGHTSAFETY SERVICES CORPORATION, and  
DELAWARE RESOURCE GROUP OF OKLAHOMA, LLC,

Defendants.

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**COURT APPROVED SETTLEMENT AGREEMENT**

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This matter is before the Court on the parties' joint motion for entry of a Court Approved Settlement Agreement between Plaintiffs Michael J. Sipos and Gary D. Smith ("Plaintiffs"), and Defendants FlightSafety Services Corporation ("FlightSafety") and Delaware Resource Group of Oklahoma, LLC ("DRG") ("Defendants") (collectively the "Parties") to effectuate a final compromise and settlement of all claims asserted by Plaintiffs in their complaint.

1. Plaintiffs, two veterans of the United States Air Force, filed this action against Defendants asserting that Defendants, as Plaintiffs' employers, violated USERRA by not allowing them to make "catch-up" contributions to the FlightSafety or the DRG 401(k) plans, and by not matching such contributions, for the contributions that they missed while on active duty in the Air Force.
2. Defendants deny that they have violated USERRA and do not admit the allegations in the complaint. Defendants also state that FlightSafety and DRG are separate and distinct entities with no affiliation other than contractual arrangement.

3. Nevertheless, as a result of settlement discussions, and to avoid the expense and distraction of litigation, the Parties have resolved their dispute and have agreed that this action should be resolved by entry of this Settlement Agreement.

4. It is the intent of the Parties that this Settlement Agreement be a final and binding settlement in full disposition of the claims alleged by Plaintiffs in this action, or in their respective complaints filed with the U.S. Department of Labor in Case Nos. CO-2012-00009-10R-R and CO-2012-00006-10-R.

#### **STIPULATIONS**

5. The Parties acknowledge the jurisdiction of the United States District Court for the District of Colorado over the subject matter of this action and over the Parties for purpose of entering, and, if necessary, enforcing this Settlement Agreement.

6. Venue is proper in this judicial district for the purposes of this Settlement Agreement and proceedings relating to this Settlement Agreement.

7. The Parties agree that all statutory conditions precedent to the institution of the lawsuit have been fulfilled.

#### **FINDINGS**

8. Having examined the terms and provisions of this Settlement Agreement, the Court finds the following:

a. The Court has jurisdiction over the subject matter of this action and the Parties to this action.

b. The terms and conditions of this Settlement Agreement are fair, reasonable, and just.

c. The Settlement Agreement conforms with the Federal Rules of Civil Procedure and USERRA, and is not in derogation of the rights and privileges of any person.

d. The entry of this Settlement Agreement will further the objectives of USERRA and other applicable law, and will be in the best interests of the Parties.

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

**NON-ADMISSION**

9. This Settlement Agreement is being entered with the Parties' consent and shall not constitute an adjudication of the merits of the case. This Settlement Agreement is not intended to be construed as an admission by FlightSafety or DRG of any violations of USERRA.

**NON-DISCRIMINATION**

10. Defendants, by and through their officials, agents, and employees, shall not fail or refuse to hire or promote any individual, discharge any employee, or take any adverse action against any employee, based on his or her past or present military service obligations, in violation of USERRA.

**NON-RETALIATION**

11. Defendants, by and through their officials, agents, and employees, shall not retaliate against, or interfere with, Plaintiffs' exercise of their rights under USERRA, or because they gave testimony or assistance or participated in any manner in any investigation or proceeding under USERRA.

**REMEDIAL RELIEF**

12. In exchange for the promises made by Plaintiffs in this Settlement Agreement and pursuant to 38 U.S.C. § 4318(b)(2), Defendants, through DRG, will allow Plaintiffs to make "catch-up" contributions to the DRG 401(k) plan. Defendants, through DRG, will provide matching employer contributions under the following terms:

- a. Mr. Sipos may make catch-up contributions to the DRG 401(k) plan from the effective date of this Settlement Agreement through the earlier of April 1, 2017 or Mr. Sipos' termination of employment with DRG for any reason; however, if Mr. Sipos is subsequently employed by a joint employer with, or successor in interest to, DRG and/or FlightSafety, Mr. Sipos' new employer will continue to allow him to make catch-up contributions to its 401(k) plan through April 1, 2017, (or, if earlier, Mr. Sipos' termination with such employer),

assuming that such a plan exists and includes an employer matching contribution on such catch up contributions of at least 4% per pay period. If the new employer has no such 401(k) plan, Defendants, through DRG, will allow Mr. Sipos to make a lump sum catch-up contribution, and obtain the employer matching contribution, for any or all outstanding contributions, as set forth in paragraph 13.

b. Mr. Smith may make catch-up contributions to the DRG 401(k) plan from the Effective Date of this Settlement Agreement through the earlier of April 1, 2017, or Mr. Smith's termination of employment with DRG for any reason; however, if Mr. Smith is subsequently employed by a joint employer with, or successor in interest to, DRG and/or FlightSafety, Mr. Smith' new employer will continue to allow him to make catch-up contributions to its 401(k) plan through April 1, 2017, (or, if earlier, Mr. Smith's termination with such employer), assuming that such a plan exists and includes an employer matching contribution on such catch up contributions of at least 4% per pay period.. If the new employer has no such 401(k) plan, Defendants, through DRG, will allow Mr. Smith to make a lump sum catch-up contribution, and obtain the employer matching contribution, for any or all outstanding contributions, as set forth in paragraph 13.

13. Defendants, through DRG, will provide an employer matching contribution under the DRG 401(k) plan for any catch-up contributions that each Plaintiff contributes to the DRG 401(k) plan based on the employer matching contribution that was in effect under the FlightSafety 401(k) plan during the period of Plaintiffs' respective military leaves as follows:

a. Mr. Sipos may contribute \$388.92 per pay period for 52 pay periods, and \$270.92 for the final pay period. This totals \$20,494.76. To the extent Mr. Sipos makes such contributions, Defendants, through DRG, shall make a 4% match per pay period.

b. To the extent Mr. Sipos makes such contributions, they are designated as follows: \$10,111.92 (26 pay periods) for 2007; \$10,111.92 (26 pay periods) for 2008; and \$270.92 (one pay period) for 2006.

c. Mr. Smith may contribute \$274.55 per pay period for 130 pay periods. This totals \$35,691.50. To the extent Mr. Smith makes such contributions, Defendants, through DRG, shall make a 4% match per pay period.

d. To the extent Mr. Smith makes such contributions, they are designated as follows: \$10,707.45 for 2006; \$10,707.45 for 2007; \$10,707.45 for 2008; \$10,707.45 for 2009; and \$10,707.45 for 2010.

#### **RELEASE OF CLAIMS**

14. For and in return for the consideration they are to receive under the Settlement Agreement, the sufficiency of which is recognized, Plaintiffs and on behalf of their successors, heirs and assigns, release, waive, and discharge FlightSafety and DRG and their subsidiaries, divisions, and affiliates, officials, agents, and employees and its employee benefit plans and their administrators and fiduciaries, from the claims asserted by Plaintiffs in this action, and in their complaints filed with the U.S. Department of Labor in Case Nos. CO-2012-00009-10R-R and CO-2012-00006-10-R.

#### **RETENTION OF JURISDICTION, DISPUTE RESOLUTION, AND COMPLIANCE**

15. The Court shall retain jurisdiction over this matter and shall have all equitable powers to enforce this Settlement Agreement.

16. The Parties shall engage in good faith efforts to resolve any dispute concerning compliance before seeking review by the Court. Upon motion of either party, the Court may schedule a hearing for the purpose of reviewing compliance with this Settlement Agreement. The Parties may conduct expedited discovery under the Federal Rules of Civil Procedure to determine compliance with this Settlement Agreement or for defending against a claim of non-compliance.

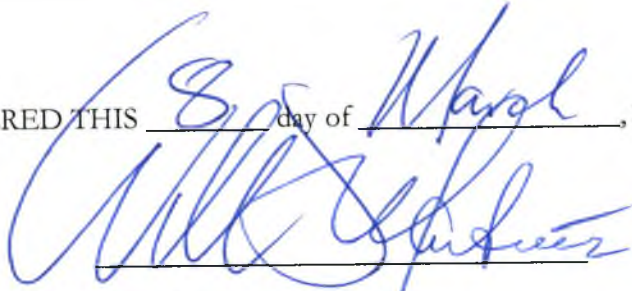
**MISCELLANEOUS**

- 18. The Parties shall bear their own costs and expenses of litigation, including attorneys' fees.
- 19. This Settlement Agreement constitutes the entry of final judgment under Fed. R. Civ. P. 54(a) as to all claims asserted in this action.
- 20. Each of the parties has had full opportunity to consult and obtain the advice of counsel. The Parties have read this Settlement Agreement and understand their terms and their legal significance.
- 21. If any provision of this Settlement Agreement is found to be invalid, only the specific provision in question shall be affected, and the other provisions will remain in full force and effect.
- 22. This Settlement Agreement constitutes the entire agreement and commitment of the Parties. There are no other agreements or representations, oral or written, between the parties. Any modifications to this Settlement Agreement must be mutually agreed upon and memorialized in a writing signed by the Parties.

**EFFECTIVE DATE**

- 23. The effective date of this Settlement Agreement shall be the date upon which it is entered by the Court. The Settlement Agreement shall expire, and this action shall be dismissed without further order of the Court, either one year after the date of entry of this Settlement Agreement, or when all of the remedial provisions of this Settlement Agreement have been effectuated, whichever is later.

DATED AND ENTERED THIS 8<sup>th</sup> day of March, 2013.



United States District Judge

We hereby agree to the terms and conditions of the foregoing Settlement Agreement. (This document may be signed in counterparts, and may be signed via facsimile or portable document format (.pdf). A copy of a signature shall be as valid as the original.)

\_\_\_\_\_  
MICHAEL J. SIPOS  
Plaintiff

Dated: \_\_\_\_\_

\_\_\_\_\_  
GARY D. SMITH  
Plaintiff

Dated: 03/04/2013

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Dated: 3/4/2013

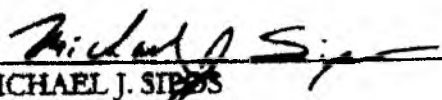
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Dated: 3/1/2013

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Attorney for FlightSafety

Dated: 3/2/2013

We hereby agree to the terms and conditions of the foregoing Settlement Agreement. (This document may be signed in counterparts, and may be signed via facsimile or portable document format (.pdf). A copy of a signature shall be as valid as the original.)

  
MICHAEL J. SIPOS  
Plaintiff

Dated: 03/04/13

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Dated: \_\_\_\_\_

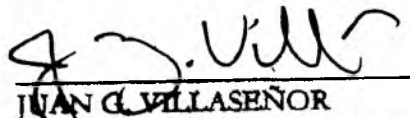
\_\_\_\_\_  
GARY D. SMITH  
Plaintiff

Dated: \_\_\_\_\_

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Dated: 3/4/2013