

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DARREL FORNEY,

Plaintiff,

v.

BUD CLARY CHEVROLET,

Defendant.

No.

**STIPULATED MOTION FOR ENTRY OF
[PROPOSED] CONSENT DECREE AND
[PROPOSED] ORDER OF JUDGMENT
AND DISMISSAL**

STIPULATED MOTION

Plaintiff, Darrel Forney ("Mr. Forney"), commenced the above-captioned action in this Court on this date with a complaint alleging that Defendant, Bud Clary Chevrolet, violated the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") by terminating him for his intention to join the Armed Services. *See* Dkt. No. 1. Bud Clary Chevrolet denies that it violated any provision of USERRA or any other law with respect to Mr. Forney's employment or termination thereof.

Nevertheless, Mr. Forney and Bud Clary Chevrolet, desiring that this action be settled by an appropriate Consent Decree, and without the burden and risks of protracted litigation, agree to the jurisdiction of this Court over the parties, over the subject matter of this action, and for

**STIPULATION MOTION FOR ENTRY OF
[PROPOSED] CONSENT DECREE AND DISMISSAL - 1**

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
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(206) 553-7970

1 purposes of the following [Proposed] Consent Decree, along with its General Release of Claims
 2 and its other attachments (together, the "Decree"). Mr. Forney and Bud Clary Chevrolet also
 3 hereby waive, for purposes of the present Decree only, hearings and findings of fact and
 4 conclusions of law on all issues, and further agree to the entry of the Decree as a final and
 5 binding agreement between them with regard to the issues raised in the Complaint filed by Mr.
 6 Forney in this case. *See* Dkt. No. 1.

8 The Decree, being entered into with the consent of Mr. Forney and Bud Clary Chevrolet,
 9 shall in no way constitute an adjudication or finding on the merits of the case, nor be construed as
 10 an admission by Bud Clary Chevrolet or a finding of wrongdoing or violation of any applicable
 11 federal law or regulation.

13 In resolution of this action, the parties hereby AGREE, STIPULATE, and respectfully
 14 jointly MOVE this Court to APPROVE and ENTER the [Proposed] Consent Decree, attached
 15 hereto as Exhibit 1, along with its attachments, and the [Proposed] Order of Judgment and
 16 Dismissal.

17 Respectfully submitted,

18 ANNETTE L. HAYES
 19 United States Attorney

DAVIES PEARSON, P.C.

21 
 22 Christina Fogg, WSBA 40159
 23 Assistant United States Attorney
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 28 Attorney for Darrell Forney


 Trevor D. Osborne, WSBA
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 Attorney for Bud Clary Chevrolet

**STIPULATION MOTION FOR ENTRY OF
 [PROPOSED] CONSENT DECREE AND DISMISSAL - 2**

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EXHIBIT 1
[PROPOSED] CONSENT DECREE

I. PARTIES

1. The parties to this Consent Decree (the "Decree") are Plaintiff Darrel Forney ("Mr. Forney"), and Defendant Bud Clary Chevrolet.

2. This Decree will be binding and enforceable against Bud Clary Chevrolet (including successors in interest) for the acts and omissions of Bud Clary Chevrolet's employees committed within the scope of employment and upon Mr. Forney (including his heirs, successors, and assigns).

II. THE SCOPE OF THE DECREE

3. This Decree and the incorporated General Release of Claims (**Attachment A**) resolves all legal and equitable claims actually or potentially arising out of Mr. Forney's employment with and termination from Bud Clary Chevrolet, as of the date of the signing of this Decree. In consideration for Mr. Forney's execution of the General Release of Claims, appended and incorporated by reference to this Decree as Attachment A, and for Mr. Forney's agreement to be bound to the other provisions of the Decree set forth below, Bud Clary Chevrolet agrees to provide the relief and be bound by the provisions of the Decree set forth below.

III. NON-RETALIATION

4. Bud Clary Chevrolet shall not take any action against any person, including but not limited to Mr. Forney, which constitutes retaliation or interference with the exercise of such person's rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), or because such person gave testimony or assistance or participated in any manner in any investigation or proceeding in connection with this case.

IV. INDIVIDUAL RELIEF

5. In full settlement of the claims raised in this case and in consideration for his execution of the General Release of Claims (Attachment A), Bud Clary Chevrolet shall pay to Mr. Forney FIFTEEN THOUSAND FIVE HUNDRED DOLLARS (\$15,500.00) payable no later than thirty (30) day after approval and entry by the Court of this Decree. Bud Clary Chevrolet shall make appropriate employer-based income tax withholdings and other statutory deductions. Bud Clary Chevrolet shall not deduct its portion of such tax from the amount paid to Mr. Forney. Mr. Forney shall be responsible for paying any income taxes he may owe on amounts paid to him by Bud Clary Chevrolet. Bud Clary Chevrolet shall pay the required amounts by mailing to Mr. Forney the check, sent by overnight mail delivery service, requiring a signature upon receipt, addressed as follows:

Darrel Forney
c/o Christina Fogg, AUSA
United States Attorney's Office
700 Stewart Street, Suite 5200
Seattle, WA 98101; and

Bud Clary Chevrolet shall timely issue to Mr. Forney the appropriate Internal Revenue Service tax forms reflecting the amounts paid to Mr. Forney and the amounts withheld by Bud Clary Chevrolet, including issuing to Mr. Forney a W-2 wage and tax statement.

6. Mr. Forney shall refer all potential future employers/references/inquiries to Bud Clary Chevrolet's Head of Human Resources. Upon inquiry about Mr. Forney's employment with or leaving of Bud Clary Chevrolet, Bud Clary Chevrolet's Head of Human Resources shall state only Mr. Forney's dates of employment, positions (namely "service lube technician"), and compensation history. Bud Clary Chevrolet's Head of Human Resources shall make no other statements about Mr. Forney to a prospective employer/reference/inquirer unless required by law,

1 other than to state that “company policy allows them only to verify the information that is listed
 2 above.” Further, Bud Clary Chevrolet will segregate (in a separate file located in the Bud Clary
 3 Chevrolet’s Head of Human Resources’ office entitled “Forney Litigation File”) the employee
 4 termination records from his personnel file. Finally, Bud Clary Chevrolet will not disclose Mr.
 5 Forney’s personnel file without his express consent, unless required by law.
 6

7 **V. TRAINING/RETRAINING REQUIREMENTS**

8 7. No later than ninety (90) calendar days after the Court’s approval and entry of
 9 this Decree, Bud Clary Chevrolet shall require the following individuals to undergo USERRA
 10 training:
 11

- 12 a. All Owners of Bud Clary Chevrolet;
- 13 b. All Employees with the authority to hire or fire other employees;
- 14 c. The Head of Human Resources of Bud Clary Chevrolet;
- 15 (collectively, the “Trainees”).

16 8. The training will consist of requiring the Trainees to view, in one or more group
 17 sessions, a U.S. Office of Personnel Management’s USERRA training video located at the
 18 following URL: <https://www.opm.gov/news/media-center/mediacentervideos.aspx?vid=8071>.
 19

20 9. The Trainees will observe this training video in one or more group sessions, on a
 21 set date, and at a set time. An owner or upper-management level employee of Bud Clary
 22 Chevrolet will introduce the video and state as follows: “The following training video relates to
 23 employer and employee rights and obligations under the Uniformed Services Employment and
 24 Reemployment Rights Act, or USERRA. USERRA generally protects members of the
 25 uniformed, military services who also work outside of the military. The company takes its
 26
 27
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1 obligations under USERRA seriously, and it is important that you give your full attention to this
2 presentation. If you have any questions about this material, please speak with me.”

3 10. All Trainees will sign a form acknowledging their attendance at the training for
4 the full length of the video. Within ten (10) calendar days from the date that Bud Clary
5 Chevrolet conducts the training described in Paragraph 8, Bud Clary Chevrolet will provide the
6 United States with a written statement attesting that the training occurred, the date it occurred, a
7 statement that the introductory language in Paragraph 9 was read, and that all Trainees attended.
8 Bud Clary Chevrolet shall also provide copies of the Trainees’ acknowledgement forms. These
9 documents shall be provided to the United States by overnight delivery service to the address
10 listed in Paragraph 5.
11

12 11. To reinforce the training described above, Bud Clary Chevrolet agrees to post
13 information about USERRA in its workplace. Specifically, within thirty (30) calendar days after
14 the date of this Agreement, Bud Clary Chevrolet will display the “USERRA Rights Notice”
15 poster issued by the United States Department of Labor (appended as **Attachment B** to this
16 Decree) in all places where other non-discrimination notices are posted, including but not limited
17 to breakrooms and other common areas.
18
19

20 VI. MISCELLANEOUS

21 12. The undersigned representatives of Bud Clary Chevrolet certify that they are
22 fully authorized to enter into the terms and conditions of this Decree and to execute and legally
23 bind Bud Clary Chevrolet.
24

25 13. This Decree will be binding and enforceable against Bud Clary Chevrolet
26 (including successors in interest) for the acts and omissions of Bud Clary Chevrolet’s employees
27
28

1 committed within the scope of employment and upon Mr. Forney (including his heirs, successors,
2 and assigns).

3 14. This Decree may be signed in counterparts, and its validity shall not be
4 challenged on that basis. All such counterparts, together, shall be deemed to be one document
5 and a photocopy of this Decree and any signature page thereto is as valid as the original. This
6 Decree constitutes the entire agreement and commitments of the parties. Any modifications to
7 this Decree must be mutually agreed upon and memorialized in a writing by all parties.
8

9 15. Each party shall bear their own costs and expenses of litigation, including
10 attorneys' fees.
11

12 **VII. RETENTION OF JURISDICTION, DISPUTE RESOLUTION AND COMPLIANCE**

13 16. This Court retains jurisdiction over this matter for the purpose of entering
14 appropriate orders enforcing this Decree.

15 17. The effective date of this Decree shall be the date upon which it is entered by the
16 Court.
17

18 18. The parties shall engage in good faith efforts to resolve any dispute concerning
19 compliance with this Decree. In the event of a dispute, the parties shall give written notice to
20 each other fourteen (14) days before seeking resolution of the dispute by the Court, and may
21 conduct expedited discovery under the Federal Rules of Civil Procedure for the purpose of
22 determining compliance with the terms of the Decree.

23 19. The terms of this Decree shall expire without further action from the Court one
24 (1) year from the date of entry of the Decree and judgment dismissing this lawsuit. The parties
25 agree, however, that the terms of the General Release of Claims (Attachment A) and Bud Clary
26
27
28

1 Chevrolet's obligations under Paragraphs 6 and 11, do not expire, but rather shall survive the
2 expiration of the other terms of the Decree.

3 20. Either party may move the Court to extend the expiration date of the Decree for
4 good cause shown.

5 Dated this 7th day of July, 2015.

6
7
8 By:

9 ANNETTE L. HAYES
10 United States Attorney

DAVIES PEARSON, P.C.

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12 Christina Fogg, WSBA 40159
13 Assistant United States Attorney
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22 tosborne@dpearson.com
23 Attorney for Bud Clary Chevrolet

**ATTACHMENT A
TO THE
CONSENT DECREE**

GENERAL RELEASE OF CLAIMS

Bud Clary Chevrolet ("BCC") and Darrel Forney, his spouse or domestic partner (if any), executors, administrators, successors and assigns (collectively referred to throughout this General Release as "Employee"), agree that:

1. Last Day of Employment. Employee's last day of employment with BCC was January 31, 2014.

2. Consideration. The consideration for signing this General Release ("Release") and the respective obligations of BCC and Employee are set forth in the Consent Decree ("Decree") (to which this release is appended) submitted to the United States District Court for the Western District of Washington for approval and entry.

3. No Consideration Absent Execution of this Agreement. Employee understands and agrees that Employee would not receive the monies and/or benefits specified in the Decree except for Employee's execution of this Release.

4. General Release of All Claims. Employee knowingly and voluntarily releases and forever discharges, to the full extent permitted by law, BCC, its parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof, the employee benefit plans for BCC, plan fiduciaries and plan administrators (whether internal or external), both individually and in their official capacities (collectively referred to throughout the remainder of this Release as "Releasees") of and from any and all claims, causes of action, suits, liabilities, demands, damages, equitable remedies or other actions or remedies including those known or unknown and asserted or unasserted, which Employee has or may have against Releasees as of the date of execution of this Release and, including, but not limited to, any alleged violation of, liability for, or obligation under any of the following:

- The Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA");
- Title VII of the Civil Rights Act of 1964;
- The Post War Civil Rights Act of 1964;
- The Post War Civil Rights Acts (42 USC Sections 1981 and 1988);
- The Civil Rights Act of 1991;
- The Americans with Disabilities Act;
- The Family Medical Leave Act;
- The Fair Labor Standards Act;
- The National Labor Relations Act;
- The Employee Retirement Income Security Act;
- The Fair Credit Reporting Act;
- Washington's Law Against Discrimination; Washington's Minimum Wage Act;
- Any claim based on federal, state or local law, rule, regulation or ordinance;
- Any claim for breach of contract or promise, express or implied;
- Any common law claim of any kind; and

- Any basis for recovering costs, fees or other expenses, including attorneys' fees incurred in these matters.

Also, specifically included in this Release, but not by way of limitation, are all claims which are or could have been asserted in the Complaint pending before the United States District Court for the Western District of Washington in the litigation captioned as *Darrel Forney v. Bud Clary Chevrolet*, Case No. _____ ("the Lawsuit"). This release includes, but is not limited to, the waiver of any right Employee may have to reinstatement as an employee of Releasees." Employee has been advised to consult with outside counsel prior to waiving any claims that are not based on USERRA. Employee has consulted with outside counsel or has waived that right. Employee agrees that Employee's Complaint will be dismissed with prejudice upon the expiration of the Decree, and that Employee will not re-file that Complaint or any other charges over the matters herein released.

If any claim is not subject to release, to the extent permitted by law, Employee waives any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a claim in which Employer or any other Releasees identified in this Release is a party.

5. Taxation. BCC will make appropriate employer-based income tax withholdings and other statutory deductions. BCC shall pay the employer portion of any social security tax on the back pay portion of the amount separately and shall not deduct its portion of such tax from the amount paid to Mr. Forney. Mr. Forney shall be responsible for paying any income taxes he may owe on amounts paid to him by BCC. Releasees make no representation as to the taxability of the amounts paid to Employee.

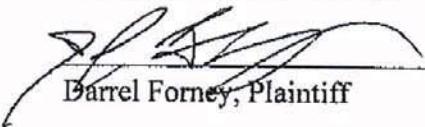
6. No Reemployment. Employee agrees that he will not seek employment with BCC or any entity that he knows is affiliated with BCC in the future, and that BCC is entitled to reject, with or without cause, any application for employment made to BCC based upon this Release. Employee agrees that BCC has an unlimited and unrestricted right to reject any application for employment submitted by him.

7. Non-admission of Wrongdoing. The Parties agree that neither this Release nor the furnishing of the consideration for this Release that is embodied in the Decree shall be deemed or construed at any time for any purpose as an admission by Releasees of any liability or unlawful conduct of any kind.

8. Entire Agreement. This Release and the Decree to which it is appended set forth the entire agreement between the parties hereto and fully supersedes any prior agreements or understandings between the parties. Employee acknowledges that Employee has not relied on any representations, promises, or agreements of any kind made to Employee in connection with Employee's decision to accept this Release or the Decree.

The parties knowingly and voluntarily sign this Release as of the date(s) set forth below:

EMPLOYEE FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS GENERAL RELEASE INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS EMPLOYEE HAS OR MIGHT HAVE AGAINST RELEASEES.


Darrel Forney, Plaintiff

ANNETTE L. HAYES
United States Attorney


Christina Fogg, WSBA 40159
Assistant United States Attorney
700 Stewart Street, Suite 5220
Seattle, WA 98101
(206) 553-4299
christina.fogg@usdoj.gov
Attorney for Darrel Forney

Dated: 7/6/15

_____, for Bud Clary Chevrolet

DAVIES PEARSON, P.C.

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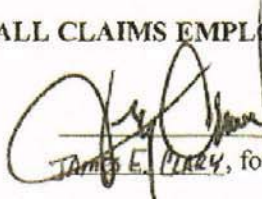
WAIVE, SETTLE AND RELEASE ALL CLAIMS EMPLOYEE HAS OR MIGHT HAVE AGAINST RELEASEES.

Darrel Forney, Plaintiff


ANNETTE L. HAYES
United States Attorney

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Attorney for Darrel Forney

Dated: _____



James E. Hayes, for Bud Clary Chevrolet
DAVIES PEARSON, P.C.



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Attorney for Bud Clary Chevrolet

**ATTACHMENT B
TO THE
CONSENT DECREE**



YOUR RIGHTS UNDER USERRA

THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

REEMPLOYMENT RIGHTS

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- ☆ you ensure that your employer receives advance written or verbal notice of your service;
- ☆ you have five years or less of cumulative service in the uniformed services while with that particular employer;
- ☆ you return to work or apply for reemployment in a timely manner after conclusion of service; and
- ☆ you have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.

RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION

If you:

- ☆ are a past or present member of the uniformed service;
- ☆ have applied for membership in the uniformed service; or
- ☆ are obligated to serve in the uniformed service;

then an employer may not deny you:

- ☆ initial employment;
- ☆ reemployment;
- ☆ retention in employment;
- ☆ promotion; or
- ☆ any benefit of employment

because of this status.

In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

HEALTH INSURANCE PROTECTION

- ☆ If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.
- ☆ Even if you don't elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.

ENFORCEMENT

- ☆ The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.
- ☆ For assistance in filing a complaint, or for any other information on USERRA, contact VETS at **1-866-4-USA-DOL** or visit its **website at <http://www.dol.gov/vets>**. An interactive online USERRA Advisor can be viewed at <http://www.dol.gov/elaws/userra.htm>.
- ☆ If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice or the Office of Special Counsel, as applicable, for representation.
- ☆ You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

The rights listed here may vary depending on the circumstances. The text of this notice was prepared by VETS, and may be viewed on the internet at this address: <http://www.dol.gov/vets/programs/userra/poster.htm>. Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying the text of this notice where they customarily place notices for employees.



U.S. Department of Labor
1-866-487-2365



U.S. Department of Justice



Office of Special Counsel



1-800-336-4590

Publication Date—July 2008

[PROPOSED] ORDER APPROVING AND ENTERING
[PROPOSED] CONSENT DECREE
AND ORDER OF JUDGMENT AND DISMISSAL

AND NOW, this _____ day of _____, 2013, upon consideration of the Complaint of Plaintiff, Darrel Forney, and the parties' above-signed Stipulated Motion, and all other documents before it, it is hereby ORDERED that:

- The below-agreed [Proposed] Consent Decree (Exhibit 1) with its attachments, including the General Release of Claims incorporated into the Decree, is APPROVED and ENTERED as the final decree of this Court in full settlement of this action;
- Judgment is ENTERED per the terms provided in the Consent Decree; and
- This matter is DISMISSED with prejudice and without costs or attorneys' fees.

The Court retains jurisdiction over this matter for purpose of enforcing the Consent Decree as approved therein.

APPROVED AND ENTERED BY THIS COURT

This ____ day of _____, 2015.

HONORABLE _____
United States District Judge