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ROBERT H. SHEMWELL, CLERK

DATE 1/31/07

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA**

<p>SAMUEL G. ELLIAS,</p> <p>Plaintiff,</p> <p>v.</p> <p>DON A. SCOGGINS D/B/A FIVE STAR JANITORIAL SUPPLY,</p> <p>Defendant.</p>

2:07-CV-0156 **LC**
JUDGE DOHERTY
MAGISTRATE JUDGE METHVIN

JURY DEMAND

CONSENT DECREE

This matter is before the Court for entry of this judgment by consent of all parties to effectuate a compromise and settlement of all claims. After review and consideration, the Court believes that entry of this judgment is in the interest of justice.

1. Plaintiff, Samuel G. Elias ("Elias"), commenced this action in the United States District Court for the Western District of Louisiana, alleging that Defendant, Don A. Scoggins ("Scoggins" d/b/a Five Star Janitorial Supply ("Five Star"), violated the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") by considering Elias' military service in the Louisiana National Guard ("Guard") as a motivating factor in his decision to discharge Elias.

2. As a result of settlement discussions, Elias and Scoggins have resolved their differences and have agreed that this action should be settled by entry of this Consent Decree. It is the intent of the parties that this Consent Decree be a final and binding settlement in full

2 (2)

disposition of any and all claims alleged against Scoggins that could have been alleged in the Complaint filed on behalf of Elias. Elias, by his signature to this document and the attached release, has indicated his acceptance of the terms and conditions contained in this Consent Decree.

STIPULATED FACTS

3. Pursuant to USERRA, the parties acknowledge the jurisdiction of the United States District Court for the Western District of Louisiana over the subject matter of this action and of the parties to this case for the purpose of entering this Decree and, if necessary, enforcing this Decree.

4. Venue is proper in this district for purposes of this Decree and any proceedings related to this Decree only. Scoggins agrees that all statutory conditions precedent to the institution of this lawsuit have been fulfilled.

FINDINGS

5. Having examined the terms and provisions of the Consent Decree, 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 provisions of this Consent Decree are fair, reasonable, and just. The rights of Scoggins and Elias are protected adequately by this Decree.
- c. This Consent Decree conforms with the Federal Rules of Civil Procedure and USERRA, and is not in derogation of the rights and privileges of any person. The entry of this Consent Decree will further the objectives of USERRA and other applicable law, and will be in the best interests of the parties.

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

NON-ADMISSION

6. This Decree, being entered with the consent of the United States Department of Justice – Civil Rights Division, Elias, and Scoggins, shall not constitute an adjudication or finding on the merits of the case and shall not be construed as an admission by Scoggins of any violations of USERRA, or any other law, rule or regulation dealing with or in connection with equal employment opportunities. Scoggins denies any wrongdoing.

NON-VIOLATION AND NON-RETALIATION

7. Scoggins shall not take any action against any person that constitutes retaliation or interference with the exercise of such person's rights under USERRA because such person gave testimony or assistance or participated in any manner in any investigation or proceeding in connection with this case.

8. Scoggins shall not fail or refuse to hire any individual, discharge any employee, or take any other adverse action against any employee, based on the military service obligation or past or present military service status of such individual or employee, in violation of USERRA.

REMEDIAL REQUIREMENTS

9. Scoggins shall pay Elias the amount of \$2,500, to be paid in an initial payment of \$1,000 within ten days of the Court's entry of this Decree, followed by ten additional monthly payments of \$150 per month due to Elias on the first of each subsequent month. If Scoggins fails to effectuate payment to Elias within three days of its due date, the entire remaining amount owed shall become immediately due and payable. Additionally, Scoggins shall be responsible to

Ellias for any costs, including reasonable attorneys fees, associated with collecting any amount due. Each payment to Ellias shall be made by a cashier's check or money order. The total payment of \$2,500 represents \$1,802 in lost wages in connection with Ellias' discharge, plus interest on that sum of \$391, plus additional liquidated damages as allowed under USERRA, 38 U.S.C. § 4323(d)(1)(c). Ellias shall be responsible for payment of all income taxes associated with this amount. Scoggins shall be responsible for payment of any additional amount of federal or state employer taxes on the amount that represents lost wages.

10. Scoggins shall provide documentary evidence of having paid Ellias each payment as directed above by mailing the same to the following address within fourteen days after this Consent Decree has been entered by the Court for the first payment, and within seven days of the due date for each payment thereafter:

Jeffrey G. Morrison
United States Department of Justice
950 Pennsylvania Avenue NW
Civil Rights Division
Employment Litigation Section, PHB, Room 4506
Washington, D.C. 20530

DISPUTE RESOLUTION AND COMPLIANCE

1. The Court shall retain jurisdiction and will have all available equitable powers, including injunctive relief, to enforce this Decree. Upon motion of either party, the Court may schedule a hearing for the purpose of reviewing compliance with this Decree. The parties shall engage in good faith efforts to resolve any dispute concerning compliance prior to seeking review by the Court. The parties shall be required to give notice to each other ten (10) days before moving for review by the Court. All parties may conduct expedited discovery under the Federal

Rules of Civil Procedure for the purpose of determining compliance with this Decree or defending against a claim of non-compliance.

MISCELLANEOUS

12. All parties shall bear their own costs and expenses of litigation, including attorneys' fees.

13. This Consent Decree constitutes the entry of final judgment within the meaning of Rule 54 of the Federal Rules of Civil Procedure on all claims asserted in or that could have been asserted by Ellias in this action. The Court retains jurisdiction over this matter, however, for the purpose of entering appropriate orders interpreting and enforcing this judgment.

14. If any provision of this Consent Decree is found to be unlawful, only the specific provision in question shall be affected and the other provisions will remain in full force and effect.

15. The terms of this Consent Decree are and shall be binding upon the heirs, successors, and assigns of Scoggins and upon the heirs, successors, and assigns of Ellias.

16. This Consent Decree constitutes the entire agreement and commitments of the parties. Any modifications to this Decree must be mutually agreed upon and memorialized in a writing signed by Scoggins and Ellias.

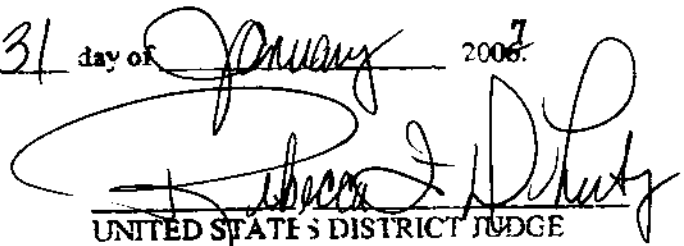
EFFECTIVE DATE

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

18. This Consent Decree shall expire, and this action shall be dismissed, without further order of this Court thirty days from the date that documentation of the last payment due to

Ellias has been submitted to counsel for Ellias, or after any dispute arising under this Consent Decree has been finally resolved by the Court, whichever is later. Ellias, by and through his attorneys, may move, for good cause, to extend the Consent Decree if the remedial relief called for herein has not been effectuated. The Consent Decree will not be extended, however, unless the Court grants Ellias's motion. Any such extension may be granted by the Court only for such time as is necessary to effectuate the relief set forth in this Consent Decree.

APPROVED and ORDERED this 31 day of January 2007.


UNITED STATES DISTRICT JUDGE

The Clerk of Court is hereby INSTRUCTED
Respectfully submitted,



DAVID J. PALMER (DC Bar No. 417834)
Chief

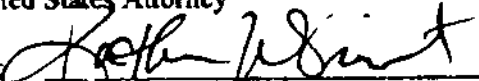


JODI DAVIS (DC Bar No. 453493)

Deputy Chief
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to ~~of~~ administratively
close this matter.
A telephone status
conference is SET
on March 31, 2008
at 3:00 p.m.
to discuss the parties'
compliance with this
Decree. The telephone
conference is to be initiated
by counsel for defendant
with all parties and this
Court, ~~on March 31, 2008~~
~~at 3:00 p.m.~~

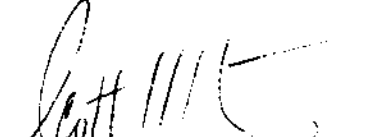
DONALD W. WASHINGTON
United States Attorney

BY: 

KATHERINE W. VINCENT (18717)
Assistant United States Attorney
800 Lafayette Street, Suite 2200
Lafayette, Louisiana 70501-6832
Telephone: (337) 262-6618
Facsimile: (337) 262-6693

ON BEHALF OF PLAINTIFF SAMUEL G ELLIAS


SAMUEL G. ELLIAS



SCOTT J. SCOFIELD
Scofield, Gerald, Singletary & Pohorelsky
~~110 East Texas Street~~ P. O. Drawer 3028
~~Leesville, Louisiana 71446~~ Lake Charles LA 70602
Telephone: (337) 239-2684 (337) 433-9436

ON BEHALF OF DEFENDANT DON A. SCOGGINS


DON A. SCOGGINS

**APPENDIX A
RELEASE OF ALL CLAIMS**

STATE OF LOUISIANA)
) ss:
PARISH OF VERNON)

For and in consideration of my acceptance of the relief, or any part of it, to be provided to me pursuant to the provisions of the Consent Decree I have signed and that is to be entered in the case of Samuel G. Elias v. Don A. Scoggins, d/b/a Five Star Janitorial Supply, to be filed in the United States District Court for the Western District of Louisiana, I, Samuel G. Elias, hereby forever release and discharge Defendant in this case, Don A. Scoggins ("Scoggins"), from all legal and equitable claims arising out of the Complaint to be filed in this action and USERRA Case No. 06-LA-04-00012-10-G filed with the United States Department of Labor.

I understand that the relief to be provided to me by Scoggins under the terms of the Consent Decree does not constitute an admission by any of the parties hereby released of the validity of any claim raised by me, or on my behalf. I further understand that Scoggins expressly denies having violated any of my legal rights and that the payments and other terms and conditions set forth in this release are in settlement of disputed claim.

This release constitutes the entire agreement between Scoggins and me, without exception or exclusion.

I acknowledge that a copy of the Consent Decree this action has been made available to me for my review.

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

Signature: Samuel G. Elias
 Samuel G. Elias

Date: 1/19/07

Subscribed and sworn to before me this 19th day of January

2007
Bertha S. Jackson - #6626
Notary Public

My Commission expires
at my death