

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

NOV 20 11:16 AM '08

REBECCA DEAN,

Plaintiff,

v.

DAVITA, INCORPORATED,

Defendant.

Civil Action No. 08-CV-1656 ORL-22-KRS

CONSENT DECREE

This matter is before the Court for entry of this judgment by consent of the parties to effectuate a compromise and settlement of all claims in the above-captioned case.

1. Plaintiff Rebecca Dean ("Dean") commenced this action in the United States District Court for the Middle District of Florida, alleging that defendant, DaVita, Incorporated ("DaVita"), violated the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301, *et seq.*, ("USERRA") by: (a) failing or refusing to promptly reemploy Dean upon her return from active duty in the United States Air Force ("USAF"); (b) failing to reemploy Dean in a position of like seniority, status and pay; and (c) terminating Dean without cause within one (1) year of the completion of her active duty service in the USAF.

2. As a result of settlement discussions, Dean and DaVita have resolved their dispute and have agreed that this action should be settled by entry of this Consent Decree ("Decree"). It is the intent of the parties that this Decree be a final and binding settlement in full disposition of any and all claims alleged in the Complaint filed in this case.

STIPULATIONS

3. The parties acknowledge the jurisdiction of the United States District Court for the Middle District of Florida over the subject matter of this action and of the parties to this action for the purpose of entering and, if necessary, enforcing this Decree and the Private Letter of Agreement referenced in Paragraph 8, below.

4. Venue is proper in this district for purposes of entering this Decree and any proceedings related to this Decree and the Private Letter of Agreement referenced in Paragraph 8, below. DaVita agrees that all statutory conditions precedent to the institution of this lawsuit have been fulfilled.

FINDINGS

5. Having examined the provisions of this 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 Decree are lawful, fair, reasonable and just. The rights of the parties are adequately protected by this Decree.
- c. This 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 Decree will further the objectives of USERRA, 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 Dean and DaVita, shall not constitute an adjudication or finding on the merits of the case and shall not be construed as an admission by DaVita of any liability under USERRA. DaVita expressly denies any violation of

USERRA and DaVita expressly denies Dean's allegations.

NON-RETALIATION

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

REMEDIAL RELIEF

8. For and in consideration of the settlement of all claims in this action, DaVita has agreed to provide remedial relief to Dean. The parties have agreed to keep confidential the terms relating to the remedial relief provided to Dean and have executed a Private Letter of Agreement reflecting these terms.

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

9. The entry of this 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 Dean in this action. The Court, however, shall retain jurisdiction and have all available equitable powers, including injunctive relief, to enforce this Decree and the Private Letter of Agreement referenced in Paragraph 8, above.

10. Upon motion of either party, the Court may schedule a hearing for the purpose of reviewing compliance with this Decree and/or the Private Letter of Agreement referenced in Paragraph 8, above. The parties shall engage in good faith efforts to resolve any dispute concerning compliance prior to seeking a resolution of such dispute by the Court. In the event of a dispute, the parties shall give notice to each other ten (10) business days before moving for

review by the Court. The parties may conduct expedited discovery under the Federal Rules of Civil Procedure for the purpose of determining compliance with this Decree and/or the Private Letter of Agreement referenced in Paragraph 8, above.

EXPIRATION OF THIS DECREE

11. This Decree shall expire and this action shall be dismissed, without further order of this Court, one year from the date of its entry by this Court, provided that DaVita has provided Dean with the relief to which she is entitled pursuant to this Decree and the Private Letter of Agreement, and DaVita has otherwise complied with the provisions of this Decree.

MISCELLANEOUS

12. The parties shall bear their own costs and expenses in this action, including attorneys' fees.

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

14. The terms of this Decree and the Private Letter of Agreement referenced in Paragraph 8, above, are and shall be binding upon the heirs, successors, and assigns of Dean and upon the present and future owners, officers, directors, employees, agents, representatives, successors, and assigns of DaVita.

/

/

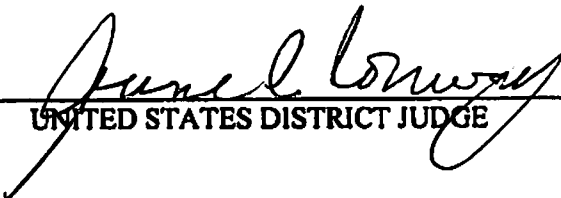
/

/

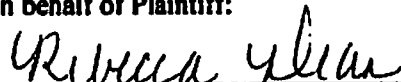
/


15. This Decree, along with the Private Letter of Agreement referenced in Paragraph 8, above, constitute the entire agreement and commitments of the parties. Any modifications to this Decree and/or the Private Letter of Agreement must be mutually agreed upon and memorialized in writing signed by Dean and DaVita.


APPROVED and ORDERED this 29th day of October, 2008.


UNITED STATES DISTRICT JUDGE

Agreed and Consented to
on behalf of Plaintiff:


REBECCA DEAN
PLAINTIFF


JOHN M. GADZICHOWSKI
Acting Chief
Employment Litigation Section


KAREN D. WOODARD
Deputy Chief
JOSEPH J. SPERBER IV
Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, NW
Patrick Henry Building, Room 4035
Washington, DC 20530
Telephone: (202) 514-8138
Facsimile: (202) 514-1005



ROBERT E. O'NEILL
United States Attorney

SCOTT PARK
Assistant United States Attorney
Identifying No. USA084
Office for the U.S. Attorney for the
Middle District of Florida
501 W. Church Street, Suite 300
Orlando, Florida 32805
Telephone: (407) 648-7543
Facsimile: (407) 648-7643
Email: Scott.Park@usdoj.gov

ATTORNEYS FOR PLAINTIFF REBECCA DEAN

Agreed and Consented to
on behalf of Defendant:



STEVEN M. COOPER
Assistant General Counsel, Labor
DaVita, Incorporated.
601 Hawaii Street
El Segundo, CA 90245
Telephone: (425) 822-4376
Facsimile: (866) 275-1578

ATTORNEY FOR DEFENDANT DAVITA, INCORPORATED

APPENDIX A

INDIVIDUAL RELIEF AND RELEASE OF CLAIMS

For and in consideration of the acceptance of all or any part of the relief offered to me by DaVita, Incorporated ("DaVita"), pursuant to the provisions of the Consent Decree ("Decree") entered by the United States District Judge in Rebecca Dean v. DaVita, Incorporated and the Private Letter of Agreement referenced in that Decree, I, Rebecca Dean, forever release and discharge DaVita and all current, former and future agents, employees, officials, designees, predecessors and successors in interest from all legal and equitable claims, arising out of the Complaint filed in the above-captioned civil action, Department of Labor USERRA Case Number FL-2007-00035-10-V, including any claim for wrongful discharge arising under USERRA accruing prior to the date of this release.

I understand that the relief to be given to me does not constitute an admission by DaVita of the validity of any claim raised by me or on my behalf, nor does it constitute a finding of any wrongdoing or liability under applicable federal law or regulation.

This release and the Private Letter Agreement referenced in the Decree constitutes the entire agreement between DaVita and me, without exception or exclusion.

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

Signed this 22nd day of September, 2008.

Rebecca Dean
Signature

Subscribed and sworn to before me this

22nd day of Sept, 2008

David Gaskins
Notary Public

DAVID GASKINS

My Commission expires: 06/04/09

