

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

MICHAEL T. RUSSELL,

Plaintiff,

v.

**WILLIAM T. SCHATZMAN, SHERIFF OF
FORSYTH COUNTY, NORTH CAROLINA
(IN HIS OFFICIAL CAPACITY),**

and

FORSYTH COUNTY, NORTH CAROLINA

Defendants.

Case No. 1:12-CV-580-JPJ-LPA

CONSENT DECREE

1. Plaintiff Michael T. Russell ("Russell") commenced the above entitled action in the United States District Court for the Middle District of North Carolina, alleging that Defendants William T. Schatzman, Sheriff of Forsyth County, North Carolina (in his official capacity) ("Schatzman") and Forsyth County, North Carolina ("Forsyth County") (collectively "Defendants") violated the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) by discharging Russell from his employment with the Forsyth County Sheriff's Office ("FCSO") without cause and less than one year after Russell's reinstatement to his position with FCSO following active military duty exceeding 180 days.

2. Schatzman and Forsyth County deny that they have violated USERRA.

3. Nevertheless, Russell, Schatzman, and Forsyth County (collectively referred to as the "Parties"), have resolved their differences and have agreed that this

action should be resolved by entry of this Consent Decree. It is the intent of the Parties that this Consent Decree be a final and binding resolution in full disposition of all claims arising out of the facts as alleged in the Complaint. By all Parties' signatures to this Decree, the Parties agree to the terms of this Decree.

STIPULATIONS

4. The Parties acknowledge the jurisdiction of the United States District Court for the Middle District of North Carolina 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.

5. Venue is proper in this District for purposes of this Decree and any proceedings related to this Decree only. The Parties agree that all statutory conditions precedent to the institution of this lawsuit have been fulfilled.

FINDINGS

6. Having examined the terms and provisions of the 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 fair, reasonable, and just. The rights of the Parties are protected adequately by this Decree.
- c. This Decree conforms with the Federal Rules of Civil Procedure and is not in derogation of the rights and privileges of any person. The entry of this Decree will be in the best interests of the Parties.

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

NON-ADMISSION

7. This Decree is being entered with the consent of the Parties and shall not constitute an adjudication or finding on the merits of the case or be construed as an admission by Schatzman or by Forsyth County of any violations of USERRA, or any other law, rule, or regulation dealing with, or in connection with, equal employment opportunities.

COMPLIANCE WITH USERRA

8. Schatzman and Forsyth County shall continue to comply with all of the provisions of USERRA and shall not take any action against any person, including but not limited to Russell, that constitutes retaliation or interference with the exercise of such person's rights under USERRA. They also shall not take any action against any person because such person gave testimony or assistance or participated in any manner in any investigation or proceeding in connection with this case.

REMEDIAL AND INJUNCTIVE REQUIREMENTS

9. Without admitting the allegations set forth in the Complaint, and in resolution of all claims raised in this case, Forsyth County agrees, within ten (10) business days from the date of entry of this Decree, to pay Russell or his retirement savings account designated in Paragraph 9(a) the gross sum of \$96,000, which is attributable to back pay and front pay.

- a. Of this gross sum, \$23,000 shall be tendered to Michael T. Russell's 401(k) account at Prudential Retirement, SSN XXX-XX-2030, by overnight

delivery service to the address provided to Forsyth County by counsel for Russell. This amount represents pre-tax contributions to a retirement savings account. Of this amount, \$11,500 represents pre-tax contributions for calendar year 2011, and \$11,500 represents pre-tax contributions for calendar year 2012. Forsyth County shall not withhold income tax from this amount.

- b. The remaining amount of the gross sum, \$73,000, shall be tendered to Russell by overnight delivery service to the address provided to Forsyth County by counsel for Russell, provided Forsyth County shall withhold from this amount the employee's share of all appropriate income taxes, costs, expenses and other statutory deductions associated with this amount, including the employee's 6% portion of the \$73,000 as a contribution to North Carolina Local Government Employees' Retirement System (LGERS).
- c. Forsyth County shall separately pay its portion of any Social Security tax and other applicable employer-side federal, state or local taxes, costs, or expenses, including County's contribution to LGERS, due on the back pay and front pay, and shall not deduct its portion of such taxes, costs, or expenses from the amount paid Russell or his retirement savings account designated in Paragraph 9(a).
- d. At the time Forsyth County tenders payment to Russell and his retirement savings account designated in Paragraph 9(a), Forsyth County shall also

provide Russell with an itemized statement of the specific amounts withheld from the payment(s) that are attributable to taxes, costs, expenses, and any other statutory deductions. Within the time required by law, Forsyth County shall issue to Russell all appropriate Internal Revenue Service (“IRS”) tax forms reflecting the amounts paid to Russell or his retirement savings account designated in Paragraph 9(a) and the amounts withheld by Forsyth County, including issuing to Russell a W-2 wage and tax statement for the amounts attributable to back pay and front pay.

- e. Upon receipt of the amounts outlined herein, Russell shall execute a mutually-agreed-upon release attached hereto as Appendix A.

10. Forsyth County shall provide documentary evidence of its payments to Russell and his retirement savings account designated in Paragraph 9(a), including the itemized statement of the specific amounts withheld from the payment(s) which are attributable to taxes and other statutory deductions, by sending, within ten (10) calendar days of its payment to Russell and his retirement savings account, proof of payment via electronic mail to Valerie Meyer at Valerie.Meyer@usdoj.gov.

11. All requests for an employment reference made to Schatzman, Forsyth County, or the Forsyth County Sheriff’s Office shall be responded to with the employment reference letter attached hereto as Appendix B, and signed by Schatzman. Forsyth County and Schatzman shall instruct their employees to limit any response to a request for an employment reference to the provision of this letter, except as otherwise required by law. Neither Forsyth County nor Schatzman shall state or suggest that the

termination of Russell's employment was the result of disciplinary proceedings or for performance-related reasons. Within ten (10) calendar days of entry of the Decree, a copy of Appendix B, signed by Schatzman, shall be sent via overnight delivery service to Russell at the address provided by counsel for Russell.

DISPUTE RESOLUTION AND COMPLIANCE

12. Until the expiration of this Decree, the Court shall retain jurisdiction over this matter and will have all available equitable powers, including injunctive relief, to enforce this Decree. Upon motion of any Party, the Court may schedule a hearing for the purpose of reviewing compliance with this Decree. The Parties shall engage in good faith 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 or defending against a claim of non-compliance.

MISCELLANEOUS

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

14. 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 this action.

15. The terms of this Decree shall be binding upon the present and future Sheriffs, employees, agents, administrators, successors, representatives and assigns of

Schatzman, upon the present and future Commissioners, employees, agents, administrators, successors, representatives and assigns of Forsyth County, and upon the heirs, successors, and assigns of Russell.

16. This 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 all Parties.

EFFECTIVE DATE AND EXPIRATION

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

18. This Decree shall expire, and this action shall be dismissed, without further order from this Court either two (2) years from the date that documentation of the monetary payments to Russell and his retirement savings account designated in Paragraph 9(a) has been submitted to the United States, or the date by which Forsyth County is required to provide pertinent tax documents to Russell, whichever is later. The Parties agree, however, that the obligations of Schatzman and Forsyth County under paragraphs 8, 11, and 15 of the Decree do not expire, but rather shall survive the expiration of the other terms of the Decree.

19. Russell may move the Court to extend the expiration date of this Decree for good cause shown if the relief provided in paragraphs 9 through 11 is not satisfactorily effectuated.

//

//

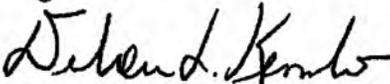
It is so ORDERED, this 4th day of April, 2013.


UNITED STATES JUDGE

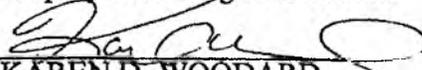
Agreed and Consented to:

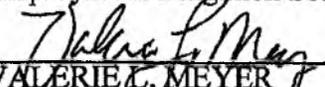
Attorneys for Plaintiff Michael T.
Russell

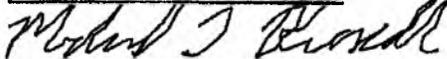
THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

BY: 

DELORA L. KENNEBREW
Chief
Georgia Bar No. 414320
United States Department of Justice
Civil Rights Division
Employment Litigation Section

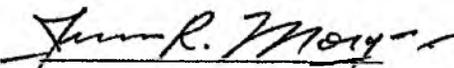

KAREN D. WOODARD
Deputy Chief
Maryland Bar – No Number Issued
United States Department of Justice
Civil Rights Division
Employment Litigation Section


VALERIE E. MEYER
Senior Trial Attorney
Arizona Bar No. 023737
United States Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, NW, PHB
4019
Washington, DC 20530
Telephone: (202)305-3179
Facsimile: (202) 514-1005
Valerie.Meyer@usdoj.gov


Michael T. Russell
Plaintiff

Attorneys for Defendants William T.
Schatzman and Forsyth County, North
Carolina

BY:


JAMES R. MORGAN, JR.
Womble Carlyle Sandridge & Rice
One West Fourth Street
Winston-Salem, NC 27101
jmorgan@wcsr.com

Appendix A

I, Michael T. Russell (“Russell”), hereby release William T. Schatzman, Sheriff of Forsyth County, the Forsyth County Sheriff’s Office, and Forsyth County, North Carolina, and their officers, agents, and employees (collectively “the Released Parties”), this ____ day of _____, 2013, as is described herein.

For and in consideration of the relief provided to me pursuant to the provisions of the Consent Decree entered in Michael T. Russell v. William T. Schatzman, Sheriff of Forsyth County, North Carolina (in his official capacity) and Forsyth County, North Carolina, Case No. 1:12-CV-580-JPJ-LPA, I hereby release and discharge the Released Parties of all legal, statutory and equitable claims arising out of the facts as alleged in the Complaint filed in this case and Department of Labor USERRA Case No. NC-2011-00035-20-G.

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

I understand that each party is responsible for the payment and satisfaction of any claims for attorneys’ fees, disbursements, costs, and other expenses incurred by it with respect to its legal representation in this controversy. No party will seek an award of attorneys’ fees from the court.

This Release and the Consent Decree to which it is attached constitute the entire agreement between the Released Parties and me in connection with this case, without exception or exclusion. This Release is subject to the Court’s approval and entry of the Consent Decree.

I acknowledge that a copy of the Consent Decree entered in this action has been made available to me.

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

Signed this __ day of _____, 2013.

Michael T. Russell

Appendix B

[FCSO Letterhead]

[Date]

Re: Employment Reference for Michael T. Russell

To Whom It May Concern:

This letter will serve to confirm Michael T. Russell's employment with the Forsyth County Sheriff's Office from October 1989 to November 29, 2010. During this time, Mr. Russell held the position of Deputy Sheriff. As a Deputy Sheriff, Mr. Russell served as a Court Bailiff, Patrol Deputy, Undercover Narcotics Investigator, Patrol Corporal, FBI/U.S. Marshal Service Joint Fugitive Task Force Member, Patrol Sergeant, and Court Division Sergeant. Mr. Russell routinely supervised up to fourteen subordinates during his assignments as Patrol Corporal, Patrol Sergeant, and Court Division Sergeant. Mr. Russell also had responsibility for providing specialized instruction to agency personnel in topics including physical fitness, subject control and arrest techniques, Taser use, baton use, and ground fighting techniques.

Mr. Russell's performance evaluations demonstrate that he consistently met or exceeded performance expectations. Mr. Russell's evaluations describe him as a very proactive officer and supervisor who created an atmosphere that revolved around teamwork and trust. His immediate supervisor praised him for understanding the platoon's goals and working to make each member of the platoon a shareholder in the vision for its success. Also, according to his Lieutenant, Mr. Russell always provided good customer service, making it a point to spend extra time with citizens to make them feel that they are truly important to the Forsyth County Sheriff's Office.

Please direct any additional questions regarding Mr. Russell's employment to Shannon Hutchins, Forsyth County Sheriff's Office Human Resource Manager.

Sincerely,

Sheriff William T. Schatzman
Forsyth County, North Carolina