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WESTERN DISTRICT OF LOUISIANA
LAFAYETTE, LOUISIANA

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

SAMUEL G. ELLIAS,

Plaintiff,

v.

DON A. SCOGGINS

D/B/A FIVE STAR JANITORIAL SUPPLY,

Defendant.

2:07-CV-0156

LC

JUDGE DOHERTY

MAGISTRATE JUDGE METHVIN

JURY DEMAND

COMPLAINT

Plaintiff, Samuel G. Ellias ("Ellias"), by the undersigned attorneys, makes the following averments:

1. This is a civil action brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 - 4333 ("USERRA").

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 38 U.S.C. § 4323(b).

3. Venue is proper in this district under 38 U.S.C. § 4323(c)(2) and 28 U.S.C. § 1391(b). Defendant, Don A. Scoggins ("Scoggins"), resides in this judicial district. He owns and operates a business, Five Star Janitorial Supply ("Five Star"), that maintains a place of business in this judicial district. Additionally, a substantial part of the events giving rise to the claim occurred in this district.

PARTIES

4. Ellias resides in 610 Elm Street, New Llano, Louisiana 71461, within the jurisdiction of this Court.

5. Scoggins, through Five Star, distributes janitorial supplies in Leesville, Louisiana. Five Star maintains its principal place of business at 109 E. Lula Street, Leesville, Louisiana 71446, within the jurisdiction of this Court. Scoggins also resides in Leesville, Louisiana, within the jurisdiction of this Court.

CLAIM FOR RELIEF

6. For thirteen years, Ellias served on active duty in the United States Army in a tank combat unit. He received multiple commendations during his active duty career, served under fire in Operation Desert Storm, and completed a total of three overseas tours of duty in Kuwait and Iraq.

7. On or about September 4, 2001, Ellias was honorably discharged from active duty and began a three year commitment in the Louisiana Army National Guard ("Guard").

8. On or about December 15, 2002, Ellias began working for Scoggins as a sales representative at Five Star. While working at Five Star, Ellias continued to serve in the Guard.

9. In January of 2004, Ellias notified Scoggins that he had enrolled in two occupational training courses offered by the Guard. He told Scoggins that, to attend the training, he would need to be away from Five Star from February 28, 2004 to March 12, 2004 and from April 24, 2004 to May 7, 2004.

10. On or about February 16, 2004, Scoggins told Ellias that if he attended the training courses, Scoggins would terminate his employment. Ellias told Scoggins that he intended to still attend the classes.

11. On or about February 16, 2004, Scoggins terminated Ellias' employment at Five Star.

12. Scoggins willfully terminated Ellias' employment because of Ellias' military service in the Guard.

13. As a result of Scoggins' unlawful termination of Ellias' employment, Ellias has suffered loss of earnings and other benefits of employment.

PRAYER FOR RELIEF

WHEREFORE, Ellias prays that the Court enter judgment against Scoggins as follows:

14. Declare that Scoggins' discharge of Ellias from Five Star in February 2004 was unlawful and in violation of USERRA, 38 U.S.C. § 4311;

15. Require that Scoggins fully comply with the provisions of USERRA by paying Ellias for his loss of wages and other benefits suffered by reason of Scoggins' failure or refusal to comply with the provisions of this law;

16. Enjoin Scoggins from taking any action against Ellias that fails to comply with the provisions of USERRA;

17. Award Ellias prejudgment interest on the amount of lost wages found due;

18. Award Ellias liquidated damages pursuant to 38 U.S.C. § 4323(d)(1)(c) for Scoggins' willful violation of USERRA; and

19. Grant such other and further relief as may be just and proper.

Respectfully submitted,

WAN J. KIM
Assistant Attorney General
Civil Rights Division

BY:



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

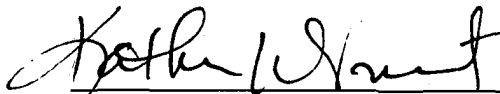


JODI B. DANIS (DC Bar No. 453493)
Deputy Chief

JEFFREY G. MORRISON (MO Bar No. 44401)
Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, NW
Patrick Henry Building, Room 4613
Washington, DC 20530
Telephone: (202) 353-1845
Facsimile: (202) 353-8961

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

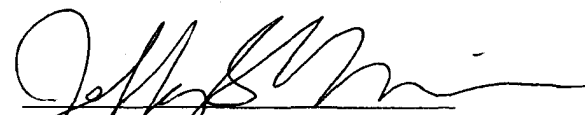
Attorneys for Plaintiff Samuel Ellias

CERTIFICATE OF SERVICE

I hereby certify that today I served the foregoing **Complaint** on the counsel of the defendant via U.S. first-class mail, postage prepaid, to the following address:

Scott J. Scofield, Esq.
Scofield, Gerald, Singletary & Pohorelsky LLC
Post Office Drawer 3028
Lake Charles, Louisiana 70602

Dated this 24 Day of January, 2007



JEFFREY G. MORRISON

Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, NW
Patrick Henry Building, Room 4613
Washington, DC 20530

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

SAMUEL G. ELLIAS,

Plaintiff,

v.

DON A. SCOGGINS
D/B/A FIVE STAR JANITORIAL SUPPLY,

Defendant.

2:07-CV-0156

JUDGE DOHERTY

MAGISTRATE JUDGE METHVIN

LC

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

disposition of any and all claims alleged against Scoggins that could have been alleged in the Complaint filed on behalf of Ellias. Ellias, 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 Ellias 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, Ellias, 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 Ellias 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 Ellias on the first of each subsequent month. If Scoggins fails to effectuate payment to Ellias 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 4500
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.

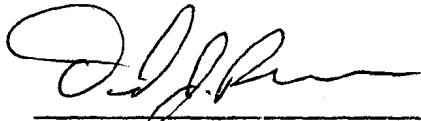
18. This Consent Decree shall expire, and this action shall be dismissed, without further order of this Court thirty days from the date that documentation of the last payment due to

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.

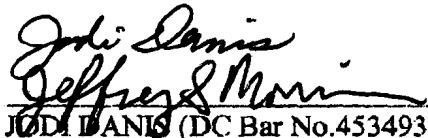
APPROVED and ORDERED this _____ day of _____ 2006.

UNITED STATES DISTRICT JUDGE

Respectfully submitted,



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



JODI L. ANIS (DC Bar No. 453493)

Deputy Chief

JEFFREY G. MORRISON (MO Bar No. 44401)

Trial Attorney

U.S. Department of Justice

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Facsimile: (202) 353-8961

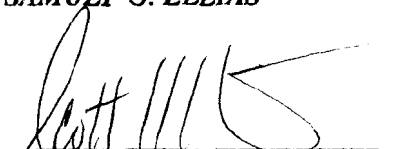
DONALD W. WASHINGTON
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BY: 

KATHERINE W. VINCENT (18717)
Assistant United States Attorney
800 Lafayette Street, Suite 2200
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Telephone: (337) 262-6618
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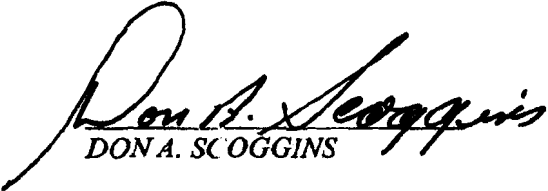
ON BEHALF OF PLAINTIFF SAMUEL G. ELLIAS


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 claims.

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

I acknowledge that a copy of the Consent Decree in 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
Debra S. Jandura - #6626
Notary Public

My Commission expires:
at my death

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement by local rules of court. This form, approved by the Judicial Conference of the United States in the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

JUDGE DOHERTY

MAGISTRATE JUDGE METHVIN

ided ting

I. (a) PLAINTIFFS

SAMUEL G. ELLIAS

DON A. SCOGGINS d/b/a FIVE STAR JANITORIAL SUPPLY

(b) County of Residence of First Listed Plaintiff Vernon Parish (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Vernon Parish (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Katherine W. Vincent; U.S. Attorney's Office; 800 Lafayette St., Ste. 2200; Lafayette, LA 70501 (337) 262-6618

Attorneys (If Known)

Scott J. Scofield, P.O. Drawer 3028, Lake Charles, LA 70602 (337) 433-9436

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF, DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Includes various legal categories like Insurance, Real Estate, Personal Injury, etc.

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 38 U.S.C. Secs. 4301-4333

Brief description of cause: Employee terminated because of military service in the National Guard.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 01/26/2007

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature of Katherine W. Vincent

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE