IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

WESLEY A. MCCULLOUGH,	)	
	)	
Plaintiff,	)	
vs.	)	No. 05-0946-CV-W-FJG
	)	
CITY OF INDEPENDENCE, MISSOURI,	)	
	)	
Defendant.	)	

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. After review and consideration, the Court believes that entry of this judgment is in the interest of justice.

1. Plaintiff, Wesley A. McCullough ("McCullough"), commenced the above entitled action in the United States District Court for the Western District of Missouri, Western Division, alleging that the Defendant City of Independence ("City"), violated the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") by (a) requiring McCullough to provide official military orders or an official memorandum or letter to indicate that he was absent for military purposes, suspending him from employment, and placing him on a six month probationary period, and (b) failing and refusing to take appropriate action to remedy the effects of those violations, including failing and refusing to pay McCullough for the period he was not allowed to work due to his suspension, and failing and refusing to clear his personnel file of wrongdoing in this matter.

2. As a result of settlement discussions, McCullough and the City 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 all claims alleged in the Complaint filed in this case.

FINDINGS

3. Having examined the terms and provisions of the Consent Decree and based on the pleadings, records, and stipulations of the parties, the Court finds the following:

a. The Court has jurisdiction over the subject matter of the action and the parties to this action.

b. The terms and provisions of this Consent Decree are fair, reasonable, and just.

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 the 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-RETALIATION

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

REMEDIAL REQUIREMENTS

5. The City shall compensate McCullough for the loss of monetary compensation that McCullough incurred as a result of his suspension and probationary period.

To effectuate this relief, the City shall, within ten (10) days after the date of the entry of this Decree: (a) submit a check made payable to Wesley A. McCullough, in the amount of $735.14, which shall consist of $688.66, for McCullough's lost wages of February 17, 2004, and February 20, 2004, and $46.48 in interest on those lost wages; (b) remove from its records any reference to McCullough's above-referenced two day suspension as well as his six month probationary period that commenced February 23, 2004, and ended in August 2004; and (c) provide the United States of America, in care of David P. Avila, Trial Attorney, Room 4030, Patrick Henry Building, 950 Pennsylvania Avenue, N.W., Washington, DC 20530, written information that it has accomplished the requirements of 5(a) and 5(b) above.

6. The City and McCullough acknowledge and affirm that, pursuant to 38 U.S.C. §§ 4303(8), 4312(a)(1), any advance written or verbal notification of an obligation or intention to perform service in the uniformed services provided to an employer by the employee who will perform such service or by the uniformed service in which such service is to be performed constitutes adequate and proper notice of military leave. The City agrees that no employee will be disciplined for failing to provide notice for military leave when these requirements are met.

MISCELLANEOUS

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

8. 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 this action. This Court retains jurisdiction over this matter for a period of six (6) months for the purpose of interpreting and enforcing this judgment should that become necessary. After six (6) months, this Consent Decree shall expire of its own accord.

9. This Consent Decree constitutes the entire agreement and commitments of the parties.

EFFECTIVE DATE

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

IT IS SO ORDERED.

Date: December 6, 2005
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
United States District Judge