

FORSYTH COUNTY
BOARD OF COMMISSIONERS

Additional
Item

MEETING DATE: MARCH 25, 2013 AGENDA ITEM NUMBER: 9

**SUBJECT: RESOLUTION APPROVING SETTLEMENT OF ALL CLAIMS IN THE CASE OF
MICHAEL T. RUSSELL VS WILLIAM T. SCHATZMAN, SHERIFF AND FORSYTH
COUNTY (CASE NO. 1:12-CV-580-JPJ-LPA) AND AUTHORIZING EXECUTION OF
RELATED DOCUMENTS**

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS: Recommend Approval

SUMMARY OF INFORMATION:

See attached

ATTACHMENTS: YES NO

SIGNATURE: _____ DATE: March 25, 2013
COUNTY MANAGER

**RESOLUTION APPROVING SETTLEMENT OF ALL CLAIMS
IN THE CASE OF MICHAEL T. RUSSELL VS
WILLIAM T. SCHATZMAN, SHERIFF AND FORSYTH COUNTY
(CASE NO. 1:12-CV-580-JPJ-LPA) AND AUTHORIZING EXECUTION
OF RELATED DOCUMENTS**

WHEREAS, on or about June 20, 2012, an action was filed on behalf of Michael T. Russell against William T. Schatzman, Sheriff and Forsyth County (the "Parties") in the U.S. District Court for the Middle District of North Carolina alleging the violation of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), relating to the discharge of Mr. Russell from employment with the Forsyth County Sheriff's Office; and

WHEREAS, the Sheriff and the County deny any violation of USERRA and the Parties acknowledge that the resolution of the said case does not constitute an admission of any wrongdoing or liability; and

WHEREAS, the Parties now desire to fully and finally resolve the said case and have negotiated a resolution of the claims which will require the execution by the Parties and/or their counsel of the attached Consent Decree, execution of the attached Release by Mr. Russell consistent with the provisions of the Consent Decree and the Release, and payment by the County, to or on behalf of Mr. Russell, in the amount of Ninety-Six Thousand and 00/100 Dollars (\$96,000.00), plus the County's portion of any federal, state, and local taxes, costs, and expenses relating to said payment, subject to entry and approval of the Consent Decree by the U.S. District Court for the Middle District of North Carolina,.

NOW, THEREFORE, BE IT RESOLVED that the Forsyth County Board of Commissioners hereby approves the terms of the attached Consent Decree, which document is incorporated herein by reference, including payment for the benefit of Michael T. Russell in the amount of Ninety-Six Thousand and 00/100 Dollars (\$96,000.00) in resolution of all claims raised by Mr. Russell, plus payment of the County's portion of any federal, state, and local taxes, costs, and expenses relating to said payment, subject to entry and approval of the Consent Decree by the U.S. District Court for the Middle District of North Carolina, and further subject to a pre-audit certificate thereon by the Chief Financial Officer, where applicable, and approval as to form and legality by the County Attorney.

BE IT FURTHER RESOLVED that the legal counsel for the County is hereby authorized to execute, on behalf of Forsyth County, the attached Consent Decree, and the County Chief Financial Officer is hereby authorized to make payments, on behalf of Forsyth County, to and on behalf of Michael T. Russell, consistent with the provisions of the said Consent Decree, in exchange for execution of the Release identified herein by Mr. Russell, all subject to entry and approval of the Consent Decree by the U.S. District Court for the Middle District of North Carolina, and subject to a pre-audit certificate thereon by the Chief Financial Officer, where applicable, and approval as to form and legality by the County Attorney.

Adopted this the 25th day of March 2013.

**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. Forsyth County shall withhold all appropriate income tax and other statutory deductions associated with this amount.
- 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 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 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 ___ day of _____, 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
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Michael T. Russell
Plaintiff

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Schatzman and Forsyth County, North
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BY:

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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