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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;

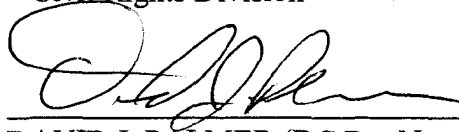
18. Award Ellias liquidated damages pursuant to 38 U.S.C. § 4323(d)(1)(c) for Scoggins' willful violation of USERRA; and

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

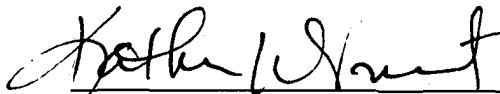


JODI B. DANIS (DC Bar No. 453493)
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United States Attorney

BY:



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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

**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 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. Jordan - #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

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I. (a) PLAINTIFFS

SAMUEL G. ELLIAS

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

(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

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

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.

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)

- (For Diversity Cases Only)
- | | | | | | |
|---|--------------------------------|--------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State | PTF ☐ 1 | DEF ☐ 1 | Incorporated or Principal Place of Business In This State | PTF ☐ 4 | DEF ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury PERSONAL INJURY ☐ 362 Personal Injury - Med. Malpractice ☐ 365 Personal Injury - Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs. ☐ 660 Occupational Safety/Health ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Customer Challenge 12 USC 3410 ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 444 Welfare ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☒ 440 Other Civil Rights	PRISONER PETITIONS ☐ 510 Motions to Vacate Sentence Habeas Corpus: ☐ 530 General ☐ 535 Death Penalty ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition		

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):

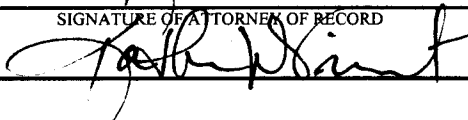
JUDGE

DOCKET NUMBER

DATE

01/26/2007

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE