

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

FRANTZ JULIEN,

Plaintiff,

v.

SYMPHONY DIAGNOSTIC SERVICES, INC.  
(d/b/a MobilexUSA),

Defendant.

Civil Action No. 09-cv-01049

**CONSENT DECREE**

This matter is before the Court for entry of judgment by consent of the parties to effectuate a compromise and settlement of all claims in the above-captioned case.

1. Plaintiff Frantz Julien (“Julien”) commenced this action in the United States District Court for the Eastern District of Pennsylvania, alleging that defendant Symphony Diagnostic Services, Inc. (doing business as MobilexUSA) (“Mobilex”), willfully violated the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.* (“USERRA”) by: (a) failing or refusing to promptly reemploy Julien upon his return from active duty in the United States Army; and (b) failing to reemploy Julien in a position of like seniority, status and pay.

2. Mobilex denies that it has violated USERRA. Nevertheless, as a result of settlement discussions, Julien and Mobilex (collectively, the “Parties”) have resolved their dispute and have agreed that this action should be resolved by entry of this Consent Decree (“Decree”). It is the intent of the Parties that this Decree be a final and binding settlement in full disposition of any and all claims alleged in the Complaint filed in this action.

**STIPULATIONS**

3. The Parties acknowledge the jurisdiction of the United States District Court for the Eastern District of Pennsylvania over the subject matter of this action and of the Parties to this action for the purpose of entering and, if necessary, enforcing this Decree.

4. Venue is proper in this judicial district for purposes of entering this Decree and any proceedings related to this Decree. Mobilex agrees that all conditions precedent to the institution of this action have been fulfilled.

**FINDINGS**

5. Having examined the provisions of this 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 lawful, fair, reasonable and just. The rights of the Parties are adequately protected by this Decree.
  - c. This 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 the Decree will further the objectives of USERRA and will be in the best interest of the Parties.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

**NON-ADMISSION**

6. This Decree is being entered with the consent of the Parties, and shall not

constitute an adjudication or finding on the merits of the action or be construed as an admission by Mobilex of any violations of USERRA.

**NON-RETALIATION**

7. Mobilex shall not take any action against any person, including but not limited to Julien, that constitutes retaliation or interference with the exercise of such person's rights under USERRA because such person gave testimony, provided assistance or participated in any manner in any investigation or proceeding in connection with this action.

**REMEDIAL RELIEF**

8. Subject to the terms of a separate Release agreement between the Parties, Mobilex shall, within ten (10) working days from the date of entry of this Decree, pay Julien a total of \$24,000 in back pay, less the required employee withholdings and contributions on the back pay award as required by law. Mobilex shall pay all monies withheld from this back pay award to the appropriate governmental agencies. Mobilex also shall separately pay the appropriate employer's contribution to the Social Security fund due on the back pay award, *i.e.*, the employer's contribution shall not be deducted from the back pay award to Julien. Mobilex shall mail the payment to Julien by overnight delivery service to the following address:

Frantz Julien  
295 Greenwich Street, #108  
New York, NY 10007

9. Within fourteen (14) days from the date of entry of the Decree, Mobilex shall:
- a. Remove from all personnel records maintained by Mobilex any discipline or proposed discipline of Julien based on his absence for military service. In addition, Mobilex shall not consider any such prior discipline or

proposed discipline based on Julien's absence for military service in any future disciplinary decisions involving Julien.

- b. Update all personnel records maintained by Mobilex to reflect that Julien returned to Mobilex on March 26, 2007 following his military service.

10. Within fourteen (14) days of compliance with paragraphs eight (8) and nine (9) of this Decree, Mobilex shall provide written confirmation of its compliance to the following counsel for Julien by facsimile and overnight delivery service to:

Chief  
Employment Litigation Section  
Civil Rights Division, PHB  
601 D Street, NW, Fourth Floor  
Washington, DC 20530  
Facsimile: (202) 514-1005

**RETENTION OF JURISDICTION,  
DISPUTE RESOLUTION AND COMPLIANCE**

11. The entry of 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 or that could have been asserted by Julien in this action. The Court, however, shall retain jurisdiction over this action and shall have all available equitable powers, including injunctive relief, to enforce this Decree.

12. The Parties shall engage in good faith efforts to resolve any dispute concerning compliance with this Decree. In the event of a dispute, the Parties shall give notice to each other fifteen (15) days before seeking resolution of the dispute by the Court, and may conduct expedited discovery under the Federal Rules of Civil Procedure for the purpose of determining compliance with this Decree.

**EXPIRATION OF THIS DECREE**

13. This Decree shall expire and this action shall be dismissed with prejudice without further order of this Court eighteen (18) months from the date of entry hereof.

**MISCELLANEOUS**

14. The Parties shall bear their own costs and expenses in this action, including attorneys' fees.

15. If any provision of this Decree is found to be unlawful, only the specific provision in question shall be affected and the other provisions shall remain in full force and effect.

16. The terms of this Decree are and shall be binding upon the heirs, successors, and assigns of Julien and upon the present and future owners, officers, directors, employees, agents, representatives, successors, and assigns of Mobilex.

17. This Decree constitutes the entire agreement and commitments of the Parties. Any modifications to this Decree must be mutually agreed upon and memorialized in writing signed by Julien and Mobilex.

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

APPROVED and ORDERED this 16<sup>th</sup> day of June, 2009.

Norma L. Shapiro  
UNITED STATES DISTRICT JUDGE

Agreed and Consented to by and on behalf of Plaintiff:

/s/ Frantz Julien  
FRANTZ JULIEN  
Plaintiff

/s/ John M. Gadzichowski  
JOHN M. GADZICHOWSKI  
(WI Bar No. 1014294) Chief

/s/ Louis Lopez, /s/ Joseph J. Sperber IV  
LOUIS LOPEZ  
(DC Bar No. 461662)  
Deputy Chief  
JOSEPH J. SPERBER IV  
(NY Bar No. 2662526)  
Trial Attorney  
U.S. Department of Justice  
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Washington, DC 20530  
Telephone: (202) 514-8138  
Facsimile: (202) 514-1005  
Email: joseph.sperber@usdoj.gov

Attorneys for Plaintiff

Agreed and Consented to on behalf of Defendant:

/s/ Joseph D. Jardine

Joseph D. Jardine  
Director of Human Resources and  
Risk Management  
Symphony Diagnostic Services, Inc.

/s/ Larry Besnoff

Larry Besnoff  
(Pennsylvania Bar No. 26532)  
Obermayer Rebmann Maxwell & Hippel LLP  
One Penn Center, 19<sup>th</sup> Floor  
1617 John F. Kennedy Boulevard  
Philadelphia, PA 19103  
Phone: (215) 665-3126  
Facsimile: (267) 675-4777  
Email: lb@obermayer.com

Attorneys for Defendant Symphony Diagnostic Services, Inc.