

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

FILED 03 NOV '11 09:14 USDC-ORP

PORTLAND DIVISION

MATTHEW KING,

Civil **CV '11 - 1320** . PK

Plaintiff,

**CONSENT DECREE**

v.

LOWE'S,

Defendant.

**INTRODUCTION**

This matter is before the Court for entry of this decree 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 decree is in the interest of justice.

1. Plaintiff, Matthew King ("King"), commenced the above entitled action in the United States District Court for the District of Oregon, alleging that Defendant ("Lowe's") violated the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) by discharging King without cause within one year of his reemployment following a deployment for military service.

2. Lowe's denies that it has violated USERRA and reasserts its longstanding commitment to employing veterans and supporting veterans' organizations. Nevertheless, King and Lowe's (collectively referred to as the "Parties"), as a result of settlement discussions, have resolved their differences and have agreed that this action should be settled by entry of this Consent Decree, instead of protracted litigation. 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. By Kings' signature to both this Decree and the "Release of all Claims" attached hereto as Appendix A, King accepts the terms of this Decree.

### **STIPULATED FACTS**

3. Pursuant to USERRA, the parties acknowledge the jurisdiction of the United States District Court for the District of Oregon 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. The parties agree 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 the action and the parties to this action.
- b. The terms and provisions of this Consent Decree are fair, reasonable, and just. The rights of the parties 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 laws 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 case or be construed as an admission by Lowe's of any violations of USERRA, or any other law, rule or regulation, dealing with or in connection with equal employment opportunities.

**NON-RETALIATION**

7. Lowe's 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 AND INJUNCTIVE REQUIREMENTS**

8. For and in consideration of the settlement of all claims in this action, Lowe's has agreed to provide the following remedial relief to King.

9. Without admitting the allegations set forth in the complaint, and in settlement of King's claims in this action, Lowe's shall, within ten (10) days from the date of entry of this Decree, pay King the gross sum of \$45,000 in one lump sum, by check, mailed to counsel for King at the U.S. Attorney's Office, by first class mail to the following address:

Adrian L. Brown  
Assistant U.S. Attorney  
1000 SW Third Ave, Suite 600  
Portland, OR 97204 .

Of the total amount, \$30,000 is attributable to back pay and shall be subject to mandatory tax withholding. The remainder shall be attributable to liquidated damages for Lowe's action in terminating King, and King's out-of-pocket expenses incurred due to the termination, and therefore not subject to tax withholding. Lowe's is separately and additionally responsible for paying any applicable federal, state, and local employer-side taxes due on the monies paid to King. King is responsible for paying income tax owed. Lowe's shall provide appropriate tax-related documents necessary for King to calculate deductions and timely file tax returns.

10. Within ten (10) days of entry of this decree by the Court, Lowe's agrees to remove any documents and data entries referring to King's discharge as involuntary. Any documents referring to an involuntary discharge, or the circumstances surrounding it, will be removed from any personnel or disciplinary files or records maintained or retained at any of Lowe's local, regional, or national offices. Within ten (10) days of such removal, Lowe's shall provide a letter to King's counsel confirming that these removals have occurred, and listing the removed items and locations from which they were removed.

11. Upon entry of this decree by the Court, Lowe's agrees to provide a neutral reference as part of its work history service, "The Work Number," for any employment inquiries it receives about King's employment. Such reference shall include: the dates of his employment, the positions he held, and his salary (if King authorizes the Work Number service to provide salary

'information) received in those positions, and list his employment status is "inactive." No reference of any kind will indicate the nature of Mr. King's separation from Lowe's employment, nor his USERRA complaint. Lowe's will direct any person who contacts Lowe's regarding a reference for King to "The Work Number" and will not provide any further information. Lowe's shall provide a copy of the above permitted reference language to any human resources office or employee who may receive an inquiry regarding Lowe's, designating it as a legally required response to all inquiries regarding King's employment history at Lowe's.

12. Within 14 days of compliance with paragraphs 10 and 11 of this Decree, Lowe's shall provide written confirmation of its compliance to the following counsel for King by first class mail to:

Adrian L. Brown  
Assistant U.S. Attorney  
1000 SW Third Ave, Suite 600  
Portland, OR 97204

#### **DISPUTE RESOLUTION AND COMPLIANCE**

13. This Court shall retain jurisdiction over this matter 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 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

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

15. 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.

16. The terms of this Consent Decree shall be binding upon the present and future directors, employees, agents, administrators, successors, representatives, and assigns of Lowe's and upon the heirs, successors, and assigns of King.

17. 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 by all parties.

### EFFECTIVE DATE

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

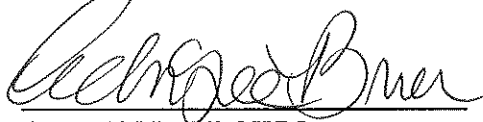
19. This Decree shall expire, and this action shall be dismissed, without further order of this Court either one year from the date that documentation of the monetary payment due to King has been submitted to the United States, or the date by which Lowe's is required to provide pertinent tax documents to King, whichever is later. King may move, for good cause, to extend the decree if the remedial relief called for herein has not been effectuated.

Respectfully submitted on this 3<sup>rd</sup> day of November, 2011.

DELORA KENNEBREW  
Chief, Employment Litigation Section  
Civil Rights Division

S. AMANDA MARSHALL  
United States Attorney  
District of Oregon

/s/ Jodi B. Danis  
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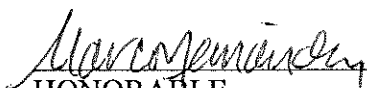
  
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*Attorneys On Behalf of Plaintiff Matthew King*

/s/ Matthew King  
Matthew King  
Plaintiff

/s/ W. Michael Battle  
W. Michael Battle, Senior Counsel  
1000 Lowe's Blvd.  
Mail Code NB6LG  
 Mooresville, NC 28117  
*Attorney for Defendant Lowe's*

APPROVED and ORDERED this 3 day of November, 2011.

  
HONORABLE  
United States District/Magistrate Judge

APPENDIX A

INDIVIDUAL RELIEF AND RELEASE OF CLAIMS

For and in consideration of the acceptance of the relief offered to me by Lowe's, pursuant to the provisions of the Consent Decree ("Decree") entered by the United States District Court for the District of Oregon in *Matthew King v. Lowe's, I*, Matthew King, forever release and discharge Lowe's and all current, former and future agents, employees, officials, designees, predecessors and successors in interest of Lowe's from all legal, statutory and equitable claims, which have been or could have been asserted in the Complaint filed in the above-captioned civil action concerning my claim against Lowe's regarding the Uniformed Services Employment and Reemployment Rights Act.

I understand that the relief to be given to me does not constitute an admission by Lowe's of the validity of any claim raised by me or on my behalf in this action, nor does it constitute a finding of any wrongdoing or liability under applicable federal law or regulation.

This release and the Decree submitted by the parties in this case constitutes the entire agreement between Lowe's and me, without exception or exclusion.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF, AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
MATTHEW KING, Plaintiff

Subscribed and sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_