

obligations, and by failing to promptly reemploy her when she returned from active duty in the Army Reserves.

HCI denies that it has violated USERRA, and its agreement to the terms of this Consent Decree is not an admission of liability or any violations of that statute. Nevertheless, as a result of settlement discussions, the Parties have resolved their dispute 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 disposition of all claims alleged in the Complaint filed in this case.

STIPULATIONS

1. The Parties acknowledge the jurisdiction of the United States District Court for the District of New Jersey over the subject matter of this action and of the Parties to this action for the purpose of entering this Consent Decree and, if necessary, enforcing this Consent Decree.

2. Venue is proper in this judicial district for purposes of entering this Consent Decree and any proceedings related to this Consent Decree. The Parties agree that all conditions precedent to the institution of this action and its settlement have been fulfilled.

FINDINGS

3. Having reviewed and considered the provisions of this Consent 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 Consent Decree are lawful, fair, reasonable, and just. The rights of the Parties are adequately protected by this Consent Decree.
- c. This Consent Decree conforms to 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 will be in the best interest of the Parties.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

NON-ADMISSION

4. This Consent Decree is being entered into with the consent of the Parties and shall not constitute an admission by HCI of any violations of USERRA.

NON-RETALIATION

5. HCI shall not take any action against any person, including but not limited to Toliver, which 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 an investigation or proceeding in connection with this action.

REMEDIAL REQUIREMENTS

6. Prior to or within ten (10) calendar days from the date of the Court's entry of this Consent Decree, and the expiration of the seven (7) day revocation period described in Section 16(c) below, HCI shall pay (or cause to be paid) to Toliver a total sum of EIGHTEEN THOUSAND FIVE HUNDRED DOLLARS AND NO/100 (\$18,500.00), less applicable withholdings and deductions, (the "Settlement Amount") in the form of a certified bank check pursuant to the following requirements:

- a. The check shall be made payable to Megan Toliver.
- b. Of the Settlement Amount, nine-thousand two hundred and fifty dollars (\$9,250.00) shall be attributable to back pay (less the required employee withholdings and contributions on the back pay award as required by law), with the balance being attributable to liquidated damages.
- c. HCI also shall separately pay the appropriate employer's contribution to Social Security and Medicare fund due on the back pay award and the employer's contribution shall not be deducted from the overall settlement amount. HCI further agrees that it will pay all monies withheld from the back pay and front pay award to the appropriate governmental agencies.
- d. Upon being paid this Settlement Amount (\$18,500.00 less withholdings), Toliver acknowledges that she is not owed any further monies by HCI.
- e. HCI shall mail the Settlement Amount check described in paragraphs 6(a) through 6(d), together with proof of withholding on the back pay award, to Toliver by overnight delivery service to the following address:

Megan Toliver
5 Mifflin Avenue
New Castle, DE 19720

- f. HCI also shall mail proof of such payment and withholding to the United States Attorney's Office ("United States") by overnight delivery service to the following address:

Michael E. Campion
Assistant U.S. Attorney
Civil Rights Coordinator
970 Broad Street
Suite 700
Newark, NJ 07102

7. Prior to or within ten (10) calendar days from the date of the Court's entry of this Consent Decree, HCI shall draft a personnel policy, to be included in its employee handbook, that notifies employees of their rights and obligations under USERRA, including their right to reemployment under 38 U.S.C. § 4312 and 38 U.S.C. § 4313 and their right be free from discrimination and retaliation under 38 U.S.C. § 4311. The personnel policy shall also include a statement that HCI is committed to complying fully with the provisions of USERRA.

8. HCI shall integrate the policy described in paragraph 7 into its employee handbook within sixty (60) calendar days from the date of the Court's entry of this Consent Decree.

9. At least thirty (30) calendar days before the date that HCI intends to integrate the policy into its employee handbook, HCI shall send the United States, for

review and approval, a copy of the policy. All documents provided to the United States shall be sent via overnight delivery service to the address set forth in paragraph 6(g).

10. The United States shall provide HCI with comments and/or approval of the policy within twenty-one (21) calendar days of receipt. If the Parties cannot agree on the content of the policy, the dispute resolution provisions in paragraphs 19 through 20 shall apply.

11. Within sixty (60) calendar days from the date of the Court's entry of this Consent Decree, HCI shall provide at least one hour of training on the requirements of USERRA and on employers' and service members' rights and obligations under the statute, to all of HCI supervisors, managers, and administrative staff. Such training shall be held at HCI's own expense.

12. At least thirty (30) calendar days before the date of the training described in paragraph 11, HCI shall send the United States, for review and approval, a description of the training and the proposed training materials. All documents provided to the United States shall be sent via overnight delivery service to the address set forth in paragraph 6(g).

13. The United States shall provide HCI with comments and/or approval of the training materials within twenty-one (21) calendar days of receipt. If the Parties cannot agree on the content of the training and/or the training materials, the dispute resolution provisions in paragraphs 19 through 20 shall apply.

14. Within ten (10) calendar days from the date that HCI conducts the training described in paragraph 11, HCI shall provide the United States with documentary

evidence that the training occurred, including a copy of the final training materials, a disclosure of when the training was provided, and a list of all persons trained. All documents provided to the United States shall be sent via overnight delivery service to the address set forth in paragraph 6(g).

RELEASE OF CLAIMS

15. For and in consideration of the remedial relief being provided to her as described in paragraphs 6 through 14 of this Consent Decree, Toliver releases and discharges HCI (including any and all of its officers, directors, Board members, employees, agents, attorneys, insurers, and all of their predecessors and successors in interest) from all USERRA claims arising out of or relating to her prior employment with HCI. This release and discharge of claims is subject to HCI's compliance with the terms of this Consent Decree.

RETENTION OF JURISDICTION, DISPUTE RESOLUTION, AND COMPLIANCE

16. This Court shall retain jurisdiction over this action and shall have all available equitable powers, including injunctive relief, to enforce the terms of this Consent Decree.

17. The Parties shall engage in good faith efforts to resolve any dispute concerning compliance with this Consent Decree prior to seeking a resolution from the Court.

18. In the event of a dispute, the Parties shall give notice to each other at least twenty-one (21) calendar 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 Consent Decree or defending against a claim of noncompliance.

MISCELLANEOUS

19. The Parties shall bear their own costs and expenses in this action, including attorney fees.

20. If any provision of this Consent 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.

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

22. The Parties agree not to disparage one another, directly or indirectly, in connection with any matters set forth in this Consent Decree or Toliver's separation from employment with HCI. Aside from the disclosures necessary to effectuate the terms of this Consent Decree, Toliver agrees not disclose any of the terms or conditions of this Consent Decree to any other persons except her counsel, immediate family, financial advisor, as may be required to enforce the terms of this Consent Decree, or as may be required by applicable law. Nothing in this paragraph shall be construed as imposing a confidentiality provision on the United States.

EFFECTIVE DATE AND DURATION

23. This Consent Decree shall be effective on the date upon which it is entered by the Court following the expiration of the seven (7) day revocation period set forth in paragraph 16(c).

24. This Consent Decree shall expire, and this action shall be dismissed without further order of this Court, one (1) year from the date of entry of this Consent Decree, or when all of the remedial provisions of this Consent Decree have been effectuated, whichever is later.

APPROVED and ORDERED this _____ day of _____, 2015.

UNITED STATES DISTRICT JUDGE

Agreed and Consented to by and on behalf of Plaintiff:

MEGAN TOLIVER
Plaintiff

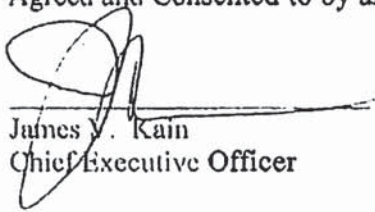
Date

PAUL J. FISHMAN
United States Attorney
District of New Jersey
970 Broad Street, Suite 700
Newark, NJ 0710

By:

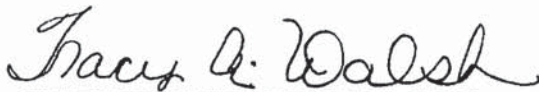
MICHAEL E. CAMPION
Assistant United States Attorney
Attorneys for Plaintiff

Agreed and Consented to by and on behalf of Defendant:


James V. Kain
Chief Executive Officer

Date

9-8-2015



TRACY A. WALSH, ESQ.
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Date

9-14-15