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2 IN THE UNITED STATES DISTRICT COURT  
3 FOR THE EASTERN DISTRICT OF CALIFORNIA  
4 SACRAMENTO DIVISION

5 UNITED STATES OF AMERICA, )  
6 Plaintiff, ) Case No. 2:09-cv-01229-LKK-EFB  
7 v. ) **Consent Decree**  
8 CALIFORNIA DEPARTMENT OF )  
CORRECTIONS AND REHABILITATION, )  
9 Defendant. ) The Hon. Lawrence K. Karlton  
10 \_\_\_\_\_ )

11 1. This matter is before the Court for entry of this judgment by consent of all parties  
12 to effectuate a compromise and settlement of all claims. After review and consideration, the  
13 Court determines that entry of this judgment is in the interest of justice.

14 2. Plaintiff United States of America ("United States") commenced this action in  
15 the United States District Court for the Eastern District of California, alleging that defendant  
16 California Department of Corrections and Rehabilitation ("CDCR") violated the Uniformed  
17 Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.*  
18 ("USERRA"), by failing to promptly and properly reemploy Dany Felix ("Felix") following his  
19 service with the Air Force.

20 3. As a result of settlement discussions, the United States and the CDCR have  
21 resolved their differences and have agreed that this action should be settled by entry of this  
22 Consent Decree ("Decree"). It is the intent of the parties that this Decree be a final and binding  
23 settlement in full disposition of any and all claims alleged in the Complaint filed in this case.  
24 By his signature to the accompanying release, attached hereto as Appendix A, Felix agrees that  
25 the relief provided in this case is a satisfactory resolution of his USERRA claims raised in  
26 Department of Labor Case No. CA-2007-00005-20-R-CO and the Complaint filed in this case,  
27 and adequately compensates him for those claims.  
28

**STIPULATED FACTS**

1  
2 4. The parties acknowledge the jurisdiction of the United States District Court for  
3 the Eastern District of California over the subject matter of this action and the parties to this  
4 case for the purpose of entering and, if necessary, enforcing this Decree.

5 5. Venue is proper in this district for purposes of this Decree and any proceedings  
6 related to this Decree. The CDCR agrees that all statutory conditions precedent to the  
7 institution of this lawsuit have been fulfilled.

8 **FINDINGS**

9 6. Having examined the terms and provisions of the Decree, the Court finds the  
10 following:

- 11 a. The Court has jurisdiction over the subject matter of this action and the  
12 parties to this action.
- 13 b. The terms and provisions of this Decree are lawful, fair, reasonable and  
14 just. The rights of Felix, the United States and the CDCR are protected  
15 adequately by this Decree.
- 16 c. This Decree conforms with the Federal Rules of Civil Procedure and  
17 USERRA, and is not in derogation of the rights and privileges of any  
18 person.
- 19 d. The entry of this Decree will further the objectives of USERRA, and will  
20 be in the best interests of the parties.

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

23 **NON-ADMISSION**

24 7. This Decree, being entered with the consent of the United States and the CDCR,  
25 shall not constitute an adjudication or finding on the merits of this case and shall not be  
26 construed as an admission by the CDCR of any violations of USERRA.

**COMPLIANCE WITH USERRA**

1  
2 8. The CDCR shall comply with all provisions of USERRA and shall not take any  
3 action against any person, including but not limited to Felix, that constitutes retaliation or  
4 interference with the exercise of such person's rights under USERRA because such person gave  
5 testimony or assistance or participated in any manner in any investigation or proceeding in  
6 connection with this case.

7  
8 **GENERAL RELIEF**

9 9. The CDCR has adopted a revised USERRA policy for Return to Work  
10 Coordinators that the United States agrees is in furtherance of the aims of USERRA.

11 10. No later than thirty (30) days from the date on which the Court enters this  
12 Decree, the CDCR shall post the policy described in Paragraph 9, above, on employee bulletin  
13 boards normally used for such purpose and on the CDCR Intranet. The CDCR shall also  
14 distribute a copy of the policy to all Return to Work Coordinators and Institution Personnel  
15 Officers. The CDCR shall also provide a copy of the policy to all new supervisors in any new  
16 supervisor program.

17 11. Within thirty (30) days of the posting and distribution of the policy described in  
18 Paragraph 9, above, the CDCR shall provide the United States with written verification that the  
19 posting and distribution has been completed in the manner prescribed in Paragraph 10, above.

20 12. Within twelve (12) months from the date on which the Court enters this Decree,  
21 the CDCR shall provide mandatory training regarding the reemployment requirements set forth  
22 in USERRA and its implementing regulations, as well as the policy described in Paragraph 9,  
23 above, as follows:

- 24 a. To all Return to Work Coordinators in the CDCR at any Regional Return  
25 to Work Coordinator training conferences held in 2010. If Regional  
26 Return to Work Coordinator training is not held before December 31,  
27 2010, the CDCR shall provide mandatory training regarding USERRA's  
28 reemployment requirements to all Return to Work Coordinators at the

1 CDCR in a state-wide conference call between the Return to Work  
2 Coordinators (RTWCs);

3 b. To all new RTWCs at all new RTWC trainings conducted by the CDCR,  
4 the Office of Employee Wellness; and

5 c. To all Institution Personnel Officers (IPOs) in the CDCR in a state-wide  
6 conference call between the IPOs.

7 13. Within thirty (30) days following the completion of the training required by  
8 Paragraph 12, above, the CDCR shall provide to the United States written verification that the  
9 training has been completed, that all employees required to attend such training by Paragraph  
10 12, above, did so, and that the training was conducted in accordance with Paragraph 12, above.  
11 The CDCR shall provide the United States with a copy of the materials distributed at the  
12 training and shall retain a record of all persons who have undergone such training for the  
13 duration of the Decree.

14 14. During the year following the date of entry of this Decree, the CDCR shall  
15 submit two reports to the United States. The CDCR shall provide the first report one hundred  
16 and fifty (150) days after entry of this Decree and shall provide the second report three hundred  
17 (300) days after the entry of this Decree. For each person with a service-connected injury or  
18 limitation seeking, requesting, or applying for reemployment with the CDCR's California  
19 Medical Facility following a service-related absence exceeding thirty (30) days, and which  
20 absence concludes after the date of the entry of this Decree, the report shall list:

21 a. The person's name; the position and rate of pay held by the person  
22 immediately prior to the commencement of his/her service-related  
23 absence;

24 b. The period of the person's service-related absence;

25 c. The date of the person's application or request for reemployment;

26 d. The position and rate of pay at which the person was reemployed  
27 following the person's service-related absence; and  
28

1 e. Any accommodation provided by CMF to a person with a service-  
2 connected injury or limitation pursuant to the requirements of USERRA.

3 15. The CDCR shall retain during the term of this Decree all documents, in paper  
4 and electronic form (including electronic mail), that come into its possession that are: (a) related  
5 to complaints (formal or informal) made by CDCR employees at its California Medical Facility  
6 and connected in any way with USERRA's employment and reemployment provisions, for  
7 persons with service-connected injuries or limitations, including documents relating to the  
8 CDCR's investigation and resolution of any such complaints; and (b) any supporting  
9 documentation used to compile the reports required by Paragraph 14, above. Upon giving thirty  
10 (30) days' written notice, the United States may request information or documentation to assess  
11 the CDCR's compliance with Paragraphs 14 and 15 of this Decree.

12 **SPECIFIC REMEDIAL RELIEF**

13 16. The CDCR shall, within twenty (20) business days from the date of entry of this  
14 Decree, pay Felix a total monetary award of \$43,750, comprised of \$31,975 in back wages plus  
15 \$7,000 in interest, and \$4,025 in unreimbursed medical insurance premiums plus \$750 in  
16 interest. The CDCR shall withhold from the \$31,975 paid to Felix that is attributable to back  
17 wages all appropriate income tax withholdings and statutory deductions. The CDCR shall  
18 separately pay its portion of any Social Security tax and other applicable federal, state and local  
19 employer-side taxes due on the \$31,975 paid to Felix, and shall not deduct its portion of such  
20 taxes from the amount paid to Felix. The CDCR shall pay all monies withheld to the  
21 appropriate governmental agencies and shall issue Felix the appropriate Internal Revenue  
22 Service tax forms on or before the date it is required by law to do so.

23 The CDCR shall pay the required amount to Felix by mailing a check to the following  
24 address:

25 Dany Felix  
26 220 Morgan Street  
27 Suisun City, California 94585  
28

1 The CDCR shall provide documentary evidence of having paid Felix by sending, via overnight  
2 mail, a photocopy of the check evidencing payment to the following address within twenty (20)  
3 days of making the payment to Felix:

4 Shayna Bloom  
5 United States Department of Justice  
6 601 D Street, NW, Room 4017  
7 Washington, D.C. 20579

8 **DISPUTE RESOLUTION AND COMPLIANCE**

9 17. The parties shall engage in good faith efforts to resolve any dispute concerning  
10 compliance prior to seeking review by the Court. Upon motion of either party, the Court may  
11 schedule a hearing for the purpose of reviewing compliance with this Decree. The parties shall  
12 be required to give notice to each other twenty (20) days before moving for review by the Court.  
13 Both parties may conduct expedited discovery under the Federal Rules of Civil Procedure for  
14 the purpose of determining compliance with this Decree or defending against a claim of non-  
15 compliance.

16 **EXPIRATION OF THIS DECREE**

17 18. This Decree shall expire, and this action shall be dismissed, one (1) year after the  
18 date of entry of this Decree, provided that the CDCR has provided Felix with the relief to which  
19 he is entitled and that the CDCR has otherwise complied with the provisions of this Decree.

20 **MISCELLANEOUS**

21 19. The parties shall bear their own costs and expenses of litigation, including  
22 attorneys' fees.

23 20. The Court shall retain jurisdiction and shall have all available equitable powers,  
24 including injunctive relief, to enforce this Decree.

25 21. If any provision of this Decree is found to be unlawful, only the specific  
26 provision in question shall be affected, and the other provisions will remain in full force and  
27 effect.  
28

1           22.     The terms of this Decree are and shall be binding upon the present and future  
2 directors, employees, agents, administrators, successors, representatives, and assigns of  
3 defendants and upon heirs, successors, and assigns of Felix.

4           23.     This Decree constitutes the entire agreement and commitment of the parties.  
5 Any modifications to this Decree must be mutually agreed upon and memorialized in a writing  
6 signed by the United States and the CDCR.

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

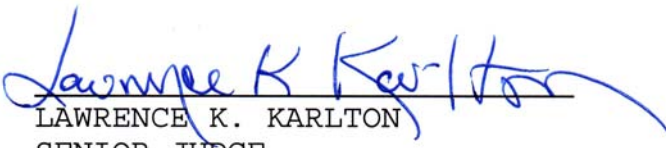
9           25.     Except as otherwise provided in this Decree, all documents required to be  
10 delivered under this Decree to the United States by the CDCR shall be sent overnight mail to the  
11 attention of:

12                             Shayna Bloom  
13                             United States Department of Justice  
14                             601 D Street, NW, Room 4017  
15                             Washington, D.C. 20579

16           26.     Any documents required to be delivered under this Decree by the United States  
17 to the CDCR shall be sent to the attention of:

18                             Vincent J. Scally, Jr. or Judith Recchio  
19                             State of California Attorney General's Office  
20                             1300 I Street, Suite 125  
21                             P.O. Box 944255  
22                             Sacramento, California 94244-2500

23                             APPROVED and ORDERED this 14th day of July, 2010.

24  
25     
26   LAWRENCE K. KARLTON  
27   SENIOR JUDGE  
28   UNITED STATES DISTRICT COURT

1 Agreed and Consented To:

2 On behalf of plaintiff  
3 The United States of America:

On behalf of defendant  
The California Department of Corrections  
and Rehabilitation:

4 THOMAS E. PEREZ  
5 Assistant Attorney General  
6 Civil Rights Division

6 BY:

7 /s/ John M. Gadzichowski  
8 JOHN M. GADZICHOWSKI  
9 Wisconsin Bar No. 1014294  
10 Chief

/s/ Robert Gaultney  
ROBERT GAULTNEY  
Staff Counsel IV  
Labor and Human Resources Legal Team  
Office of Legal Affairs  
California Department of Corrections and  
Rehabilitation

11 /s/ Karen D. Woodard  
12 /s/ Shayna Bloom  
13 /s/ Jennifer M. Swedish  
KAREN D. WOODARD  
Maryland Bar  
Deputy Chief  
SHAYNA BLOOM  
D.C. Bar No. 498105  
JENNIFER M. SWEDISH  
D.C. Bar No. 977746  
Trial Attorneys  
U.S. Department of Justice  
Civil Rights Division  
Employment Litigation Section  
950 Pennsylvania Avenue, NW  
PHB 4017  
Washington, D.C. 20530  
Telephone: (202) 305-1450  
Facsimile: (202) 353-8961

/s/ Judith Recchio  
EDMUND G. BROWN JR.  
Attorney General of California  
VINCENT J. SCALLY, JR.  
Supervising Deputy Attorney General  
JUDITH A. RECCHIO  
Deputy Attorney General  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2500  
Telephone: (916) 322-5526  
Facsimile: (916) 324-5567



**Appendix A**

**RELEASE**

I, Dany Eduardo Felix, for and in consideration of accepting the relief provided to me pursuant to the provisions of the Consent Decree entered in *United States v. California Department of Corrections and Rehabilitation*, release and discharge the California Department of Corrections and Rehabilitation (“CDCR”), its current, former and future officials, employees, and agents of all legal, statutory and equitable claims asserted in the complaint filed in that case and Department of Labor USERRA Case Number CA-2007-00005-20-R-CO.

I understand that the relief to be given to me does not constitute an admission by the CDCR 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.

This Release constitutes the entire agreement between the CDCR and me in connection with this case, without exception or exclusion and 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 7 day of July, 2010.

/s/ Dany Eduardo Felix  
Dany Eduardo Felix