

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:08-cv-946-FtM-29SPC
)	
STEVE WHIDDEN, Sheriff, Hendry)	
County, Florida (in his official capacity);)	
HENDRY COUNTY BOARD OF)	
COUNTY COMMISSIONERS,)	
FLORIDA,)	
)	
Defendants.)	
)	
_____)	

CONSENT DECREE

I. INTRODUCTION

This action was brought by the United States of America ("United States") against Sheriff Steve Whidden, Hendry County, Florida (in his official capacity) ("Sheriff"),¹ and the Hendry County Board of County Commissioners, Florida ("Board"),² to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq.* ("Title VII"). The Court has jurisdiction over this action under 42 U.S.C. § 2000e-5(f), 42 U.S.C. §

¹ This action was originally filed against Sheriff Ronnie E. Lee as Sheriff of Hendry County, Florida. Effective January 6, 2009, Sheriff Whidden succeeded Sheriff Lee as Sheriff. As a result, Sheriff Whidden was substituted for Sheriff Lee as a defendant in this action pursuant to the Court's January 16, 2009 order.

² The Board has been joined as a party pursuant to Fed. R. Civ. P. 19(a). The United States' complaint does not allege that the Board violated Title VII.

2000e-6(b), and 28 U.S.C. § 1345.

In its complaint, the United States alleges that Sheriff Lee discriminated against Tanya Shaw because of her sex, female, in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a), by demoting Ms. Shaw from investigator to bailiff deputy because of and during her pregnancy. The United States also contends that Sheriff Lee discriminated against Ms. Shaw and similarly situated pregnant females in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a), by adopting and implementing an unlawful fetal protection policy that requires pregnant female employees to take mandatory light duty regardless of their ability to perform the essential functions of their jobs. Further, the United States alleges that the acts and practices of Sheriff Lee described above constitute a pattern or practice of discrimination against pregnant female employees on the basis of their sex in violation of Section 707 of Title VII, 42 U.S.C. § 2000e-6.

The Sheriff and the Board deny that the Sheriff Lee discriminated against Ms. Shaw and similarly situated pregnant females because of their sex and pregnancies, and deny that Sheriff Lee's alleged acts and practices described above constitute a pattern or practice of discrimination against pregnant female employees in violation of Title VII. Nevertheless, the United States, the Sheriff, and the Board, desiring that this action be settled by an appropriate Consent Decree ("Decree") and without the burden of protracted litigation, agree to the entry of this Decree.

The United States, the Sheriff, and the Board agree to the jurisdiction of the Court over the parties and the subject matter of this action. For purposes of this Decree, and subject to its approval and entry by the Court, the parties waive hearings and findings of fact and conclusions of law on all issues, and further agree to the entry of this Decree as final and binding between

themselves as to the issues raised in the complaint filed by the United States and the matters resolved by this Decree. This Decree, being entered with the consent of the parties, shall not constitute an admission, adjudication, or finding on the merits of the allegations made in the complaint.

Accordingly, it is hereby **ORDERED** as follows:

II. THE PARTIES

1. The parties to this Decree are the United States of America, by the United States Department of Justice; Sheriff Steve Whidden, Hendry County, Florida (in his official capacity); and the Hendry County Board of County Commissioners, Florida.

2. Sheriff Whidden, Hendry County, Florida (in his official capacity) and his current, former, and future agents, employees, officials, designees, and successors in interests are hereinafter referred collectively as the "Sheriff."

3. The Hendry County Board of County Commissioners, Florida, and their current, former, and future agents, employees, officials, designees, and successors in interests are hereinafter referred collectively as the "Board."

III. GENERAL INJUNCTIVE RELIEF

4. The Sheriff and all individuals in active concert or participation with him are enjoined from:

a. subjecting any individual who is pregnant or may become pregnant to a policy or practice that discriminates on the basis of sex and pregnancy by requiring mandatory light duty without evaluating an individual's ability to perform the essential functions of her job;

b. discriminating against any employee on the basis of sex, including pregnancy. by

failing or refusing to hire or discharging any individual, or otherwise discriminating against any individual with respect to his or her compensation, terms, conditions, or privileges of employment, because of such individual's sex;

c. retaliating against or otherwise adversely affecting any person because that person has complained about discrimination on the basis of sex and pregnancy, or because that person has participated in or cooperated with the initiation, investigation, or litigation of this action, or the administration of this Decree.

IV. IMPLEMENTATION OF POLICIES AND PROCEDURES

5. The Sheriff shall implement an amended policy, as set forth in Appendix E hereto ("Policy"), that prohibits discrimination on the basis of sex, including pregnancy, and provides that light duty assignments for pregnant employees will be made, upon request of a pregnant employee, based on an individual medical assessment from a healthcare provider regarding a pregnant employee's ability to perform the essential functions of her job. No later than twenty (20) days after entry of this Decree, the Sheriff shall: (a) distribute a copy of the Policy to all current employees of the Hendry County Sheriff's Office ("HCSO") and obtain a signed acknowledgment from all current employees, which will be placed in their personnel files, that they have read and understood the Policy; and (b) shall incorporate the Policy in any policy manual, general orders manuals, or similar manual maintained by the Sheriff. To the extent that the Sheriff makes personnel policies available on any HCSO internet or intranet website during the term of this Decree, the Policy will also be made available on the website.

6. Each new employee of the HCSO shall receive a copy of the Policy at the time of the new employee's hire. Each new employee shall sign an acknowledgment that he or she has

read and understood the Policy and the signed acknowledgment shall be placed in his or her personnel file.

V. TRAINING

7. Within one-hundred and twenty (120) days from the date the Court enters this Decree, the Sheriff shall provide mandatory training regarding sex and pregnancy discrimination for all HCSO supervisors, managers, administrators, and human resources officials in all divisions of the HCSO responsible for: enforcing the Policy, making determinations as to the appropriateness of light duty, and reviewing complaints of sex and pregnancy discrimination by employees. This training may be live instructional training or may take the form of video or computer-based training. The training shall also be periodically administered for newly hired or promoted supervisors, managers, administrators, and human resources officials during the life of this Decree.

8. Within sixty (60) days from the date the Court enters this Decree, the Sheriff shall submit to the United States for review and approval a description of the proposed training provider and training program, along with copies of the training materials, and a list of employee positions (with titles) designated to be trained.

9. The United States' approval of the training shall not be unreasonably withheld. However, if the United States does not believe that the training complies with the terms of this Decree or with Title VII, the United States will notify the Sheriff within ten (10) days of receipt of the information regarding the proposed training. The parties shall thereafter confer in good faith regarding any disagreements concerning the training. Once the United States has approved the training, the Sheriff shall implement the training within twenty (20) days.

10. All persons who undergo the training shall sign an acknowledgment of attendance at the training. The Sheriff shall keep on file all signed acknowledgments for the duration of this Decree.

VI. INDIVIDUAL RELIEF FOR TANYA SHAW

11. Within seven (7) days of the entry of this Decree, the Sheriff shall offer to Ms. Shaw a total of \$33,280, which includes:

a. A monetary award of \$3,000.00, which is designated as backpay. This monetary award shall be subject to any applicable federal, state, and local taxes, in addition to payroll tax withholding deductions. The Sheriff shall separately pay all employer's contributions due on this monetary award. The employer's contribution shall not be deducted from this monetary award to Ms. Shaw.

b. A monetary award of \$560.00, which is designated as accumulated interest on backpay. This amount is not subject to wage withholding deductions.

c. A monetary award of \$29,720, which is designated as compensatory damages. This amount is not subject to wage withholding deductions.

12. The Sheriff shall report to the IRS all payments to Ms. Shaw using the appropriate IRS forms.

13. Within fourteen (14) days of the entry of this Decree, the Sheriff shall remove from Ms. Shaw's personnel file and place into a human resources litigation file any notations, remarks, or other documents relating to Ms. Shaw's demotion to bailiff deputy and/or the reason for her cessation of employment with the HCSO, to the extent that any such documents exist. The Sheriff shall also place in the human resources litigation file a copy of this Decree with a

cover memorandum indicating that the Sheriff considers the records to be void. The Sheriff shall also submit an amended Affidavit of Separation to the Florida Department of Law Enforcement ("FDLE") indicating "Administration – Routine – Voluntary separation not involving misconduct" as the reason for Ms. Shaw's prior cessation from employment. The Sheriff shall forward a copy of the Affidavit of Separation and notice of the expungement of Ms. Shaw's personnel record to the Glades County Sheriff's Office to the attention of Chief Robert Demann, to the Lee County Sheriff's Office to the attention of the Director of Personnel, and to the Fort Myers Police Department to the attention of Judy Masiero, Director of Personnel. Nothing in this Paragraph shall be construed to prevent the Sheriff from complying with any valid requests for public records made pursuant to applicable Florida law.

14. In the event the Sheriff is contacted by any prospective employers for an employment reference concerning Ms. Shaw's prior employment with the HCSO, the Sheriff shall restrict any reference given to the confirmation of Ms. Shaw's dates of employment.

15. If during the term of this Decree, the Sheriff fills a vacancy in a day shift position stationed in LaBelle for a deputy in the Special Operations Unit, a deputy in Road Patrol, or an investigator or detective position in CID, the Sheriff shall offer Ms. Shaw reinstatement to that vacancy prior to considering other candidates for that position, provided that Ms. Shaw meets the minimum qualifications for the position that would be required of any other candidate.

However, in the event that the Sheriff effects any layoffs or reductions in force during the term of this Decree, the Sheriff may elect to offer any subsequent vacant position to the laid off employee(s) prior to offering Ms. Shaw the position pursuant to this Paragraph. If Ms. Shaw rejects an offer of reinstatement made in accordance with this Paragraph, the Sheriff's obligation

to offer reinstatement to Ms. Shaw under this Decree will be satisfied, and the Sheriff need not offer to reinstate Ms. Shaw to future vacancies that arise during the term of this Decree. This Paragraph does not preclude or limit Ms. Shaw's right to apply for employment with the Sheriff's Office for any available vacancy.

16. If Ms. Shaw accepts an offer of reinstatement made pursuant to the preceding Paragraph, the Sheriff shall credit her with retroactive seniority in the position to which she is reinstated to November 14, 2005, the effective date of Ms. Shaw's demotion to bailiff deputy, such that her record with the HCSO shows no break in service for purposes of seniority. Ms. Shaw's date of original employment with the HCSO shall be the seniority date that shall be used for purposes of all of the emoluments of her position, including but not limited to amount of salary or other pay, future accrual of leave, layoffs/reductions in force, and eligibility for retirement. Ms. Shaw shall be entitled to purchase service credit with the Florida Retirement System ("FRS") Pension Plan for any portion of time during which she was not enrolled in the FRS Pension Plan between her cessation of employment with the HCSO and any reinstatement under this Paragraph. Ms. Shaw's purchase of service credit shall be in accordance with the FRS rules for such transactions, including any rules applicable to service credit for law enforcement officers. Nothing in this Paragraph shall be construed to entitle Ms. Shaw to any pay or leave that would have accrued between the cessation of her employment and her subsequent reinstatement.

17. The Sheriff shall notify Ms. Shaw of the individual relief being offered to her under the terms of this Decree within seven (7) days of the date of this Decree's entry by mailing to her, by certified mail, return receipt requested, a copy of the Notice Letter set forth in Appendix A, a copy of the Individual Relief and Release of Claims ("Release") and Election

forms set forth in Appendix B, a W-9 form, and a copy of this Decree. The Notice Letter shall advise Ms. Shaw that in order to accept the individual relief offered to her, she must execute the Release and Election forms, sign the W-9 form, and return the forms to the Sheriff, by hand or certified mail, return receipt requested, within thirty (30) days of her receipt of the Notice Letter. If Ms. Shaw fails to return these forms within thirty (30) days of her receipt of the Notice Letter, the Sheriff's obligation to offer her the relief specified in this Decree shall expire, unless the United States determines that there was good cause, based on circumstances beyond Ms. Shaw's control, for her failure to do so.

18. The Sheriff shall send a copy of the Notice Letter and its enclosures referred to in Paragraph 17 to the United States at the same time those materials are sent to Ms. Shaw.

19. The Sheriff shall pay to Ms. Shaw the monetary awards specified in Paragraph 11 by certified or bank check, within fifteen (15) days of his receipt of the executed Release and Election forms and W-9 form.

20. The Sheriff shall provide to the United States a copy of the executed Release and Election forms, the signed W-9 form, and the check sent to Ms. Shaw at the same time he sends the check to Ms. Shaw.

VII. ADDITIONAL INDIVIDUAL RELIEF

21. Within seven (7) days of the entry of this Decree, the Sheriff shall offer Kristy Herrera and Patricia Durrance a monetary award of \$1,500.00 each, for a total of \$3,000.00, which is designated as compensatory damages. These amounts are not subject to wage withholding deductions.

22. The Sheriff shall report to the IRS all payments to Ms. Herrera and/or Ms.

Durrance using the appropriate IRS forms.

23. The Sheriff shall notify Ms. Herrera and Ms. Durrance of the individual relief being offered to them under the terms of this Decree within seven (7) days of the date of this Decree's entry by mailing to them, by certified mail, return receipt requested, copies of the Notice Letter set forth in Appendix C, copies of the Release form set forth in Appendix D, and copies of this Decree. The Notice Letters shall advise Ms. Herrera and Ms. Durrance that in order to accept the individual relief offered to them, they must execute the Release forms and return the forms to the Sheriff, by hand or certified mail, return receipt requested, within thirty (30) days of their receipt of the Notice Letters. If Ms. Herrera or Ms. Durrance fail to return these forms within thirty (30) days of their receipt of the Notice Letters, the Sheriff's obligation to offer them the relief specified in this Decree shall expire, unless the United States determines that there was good cause, based on circumstances beyond Ms. Herrera's or Ms. Durrance's control, for their failure to do so.

24. The Sheriff shall send a copy of the Notice Letters and their enclosures referred to in Paragraph 23 to the United States at the same time those materials are sent to Ms. Herrera and Ms. Durrance.

25. The Sheriff shall pay the monetary award specified in Paragraph 21 by certified or bank check or by direct deposit, within fifteen (15) days of his receipt of any executed Release form from Ms. Herrera or Ms. Durrance.

26. The Sheriff shall provide to the United States a copy of the executed Release form and the check at the time he sends the check to Ms. Herrera or Ms. Durrance.

27. The Sheriff, to the best of his knowledge and belief, has represented that no other

pregnant female employees in sworn positions were placed on mandatory light duty regardless of their ability to perform the essential functions of their jobs within the three (3) years preceding the entry of this Decree. If any of the parties learn during the term of this Decree that any female employees in sworn positions, other than those already identified to the United States by the Sheriff, were placed on mandatory light duty due to pregnancy regardless of their ability to perform the essential functions of their jobs within the three (3) years preceding entry of this Decree, the parties shall fashion appropriate relief. If the parties are unable to agree upon such relief, the dispute shall be submitted to the Court for resolution.

VIII. RECORD KEEPING AND REPORTING

28. The Sheriff shall retain all records, including electronic mail, that comes into his possession relating to complaints or charges of employment discrimination based on sex and pregnancy made against the Sheriff or its employees, agents, or representatives through the HCSO's internal complaint procedure, the Equal Employment Opportunity Commission, or any other federal or state agency authorized to receive such complaints. For the duration of this Decree, the Sheriff shall provide copies of such complaints or charges to the United States within ten (10) days of his receipt of such complaints or charges. The United States shall have the right to inspect and copy all documents relating to such complaints or charges upon reasonable notice to the Sheriff.

29. During the term of this Decree, the Sheriff shall provide the United States with copies of any modifications or revisions to the HCSO's policies and procedures pertaining to sex and pregnancy discrimination. If the Sheriff receives a request from an employee for a light duty assignment based on pregnancy, or if a pregnant employee is otherwise assigned to light duty,

the Sheriff shall notify the United States within seven (7) days of the receipt of the request or assignment. If the Sheriff has accommodated or otherwise taken action concerning the light duty request at the time the written notice is due, the written notice shall contain an explanation of how the light duty request was accommodated. Upon receipt of such written notice from the Sheriff, the United States may request the Sheriff to produce any additional information or documentation necessary to evaluate whether the HCSO's Policy (as reflected in Appendix E) was followed in acting on the light duty request.

30. Upon written request of the United States, the Sheriff shall identify the number of persons, by title, who have attended the training described in Paragraph 7, and shall provide the United States with written confirmation that all persons covered by Paragraph 7 attended the training.

31. Within thirty (30) days of the Sheriff's receipt from Ms. Shaw of the executed forms described in Paragraph 17, the Sheriff shall submit to the United States a report describing the specific items removed from Ms. Shaw's personnel file and placed in the human resources litigation file, a copy of the amended Affidavit of Separation provided to the FDLE, and a copy of the correspondence provided to the Glades County Sheriff's Office, Lee County Sheriff's Office, and the Fort Myers Police Department, all as required by Paragraph 13.

IX. ADDITIONAL PROVISIONS

32. Without further order of the Court, the United States may review compliance with this Decree at any time, and shall have the right to inspect and copy any documents that are relevant and necessary to monitor the Sheriff's compliance with this Decree. Unless otherwise stated in this Decree, the Sheriff shall produce documents or make them available for inspection

within thirty (30) days of a written request by the United States.

33. The parties shall attempt to resolve informally any dispute that may arise under this Decree. If the parties are unable to resolve the dispute expeditiously, either party may move the Court for a resolution of the issue, provided that the moving party gives written notice to the other party at least ten (10) days prior to the filing of any motion.

34. The Court shall retain jurisdiction over this Decree for the purpose of resolving any disputes or entering any orders that may be necessary to implement the relief provided for in this Decree.

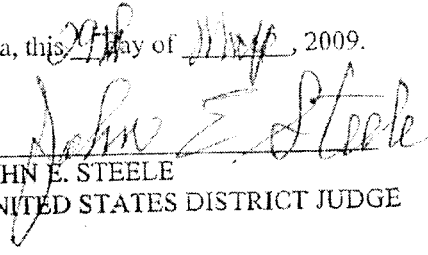
35. Two (2) years from the date of entry of this Decree, this Decree shall dissolve and this action shall be dismissed without further order of the Court, unless this Decree is extended by the Court. The time frame for completion of any act required by this Decree may be modified upon the mutual written consent of the parties. The parties may jointly agree to other modifications of this Decree with the approval of the Court.

36. The parties shall bear their own costs, expenses, and attorney's fees in this action, including the costs of compliance or monitoring.

37. All documents required to be delivered under this Decree to the United States shall be sent by an express mail service to:

Chief
Employment Litigation Section
U.S. Department of Justice
Civil Rights Division
PHB, Fourth Floor
601 D Street, N.W.
Washington, D.C. 20004

DONE AND ORDERED at Fort Myers, Florida, this 29th day of May, 2009.




JOHN E. STEELE
UNITED STATES DISTRICT JUDGE

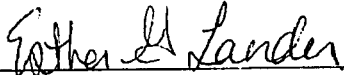
AGREED AND CONSENTED TO:

FOR PLAINTIFF UNITED STATES OF AMERICA:

LORETTA KING
Acting Assistant Attorney General
Civil Rights Division

By:


JOHN M. GADZICHOWSKI
Chief
WI Bar 1014294


ESTHER G. LANDER
Deputy Chief
DC Bar 461316
MEREDITH L. BURRELL
Senior Trial Attorney
MD Bar (no number)
CAROL WONG
Trial Attorney
IL Bar 6294123
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
Room 4924, PHB
950 Pennsylvania Ave., NW
Washington, DC 20530
Telephone: (202) 305-9053
Facsimile: (202) 514-1105
meredith.burrell@usdoj.gov

FOR DEFENDANTS SHERIFF STEVE WHIDDEN, HENDRY COUNTY, FLORIDA (IN HIS OFFICIAL CAPACITY), AND THE HENDRY COUNTY BOARD OF COUNTY COMMISSIONERS, FLORIDA:



BRIAN KOJI
FL Bar 0116297
RICHARD M. PIERRO, JR.
FL Bar 013023

Allen Norton & Blue, P.A.
324 S. Hyde Park Ave., Suite 225
Tampa, FL 33606-4127
Telephone: (813) 251-1210
Facsimile: (813) 253-2006
bkoji@anblaw.com

APPENDIX A: NOTICE LETTER

Via Certified Mail Return Receipt Requested

[DATE]

Tanya Shaw
13447 Little Gem Circle
Ft. Myers, FL 33913

Re: United States of America v. Steve Whidden, Sheriff, Hendry County, Florida (in his official capacity); Hendry County Board of County Commissioners, Florida, Case No. 2:08-cv-946-FtM-29SPC (M.D. Fla.)

Dear Ms. Shaw:

The United States, Sheriff Steve Whidden, Hendry County, Florida (in his official capacity) ("Sheriff"), and the Hendry County Board of County Commissioners, Florida ("Board"), have entered into a Consent Decree settling the case of United States of America v. Steve Whidden, Sheriff, Hendry County, Florida (in his official capacity); Hendry County Board of County Commissioners, Florida, Case No. 2:08-cv-946-FtM-29SPC (M.D. Fla.). A copy of the Consent Decree, which was approved and entered by the Court on [DATE], is enclosed.

Pursuant to the Consent Decree, the Sheriff is offering to do the following:

- (1) Pay you a monetary award of \$3,000.00, which is considered backpay and subject to appropriate wage withholdings;
- (2) Pay you a monetary award of \$30,280.00, which is considered compensatory damages and accumulated interest on the backpay award;
- (3) Offer you reinstatement under the circumstances described in Paragraphs 15 and 16 of the Consent Decree if a vacancy occurs in a day shift position in LaBelle for Road Patrol deputy, Special Operations Unit deputy, or a CID investigator or detective, with retroactive seniority to your original date of employment with the Hendry County Sheriff's Office ("HCSO");
- (4) Remove from your personnel file any notations, remarks, or other documents relating to your demotion to bailiff deputy and your termination from the HCSO, and submit an amended Affidavit of Separation to Florida Department of Law Enforcement amending your status to "Administrative – Routine – voluntary separation not involving misconduct;"

- (5) Give written notice to the Glades County Sheriff's Department, Lee County Sheriff's Office, and the Fort Myers Police Department of the expungement of your personnel record and amendment of your separation status with the Florida Department of Law Enforcement; and
- (5) Provide your prospective employers who make an inquiry for a reference only with confirmation of your dates of employment with the HCSO.

The above monetary awards will be paid to you via certified or bank check, within fifteen (15) days of the Sheriff's receipt of your executed Individual Relief and Release of Claims form, Election form, and W-9 form, which are enclosed with this letter.

In order to obtain the offered relief, you must complete the enclosed Individual Relief and Release of Claims form, Election form, and W-9 form and return the forms via hand delivery or certified mail, return receipt requested. These forms must be returned within **thirty (30) days** of your receipt of this letter to the Sheriff's and the Board's counsel, Brian Koji, at:

Allen Norton & Blue, P.A.
324 S. Hyde Park Ave., Suite 225
Tampa, FL 33606-4127

If you decline the relief offered by the Sheriff, the Sheriff and the Board nevertheless will have satisfied their obligation to the United States pursuant to the Consent Decree, and the United States will not seek additional relief on your behalf.

If you have any questions concerning the Consent Decree or the Sheriff's offer to you, you may contact the following Department of Justice Attorneys:

Meredith Burrell
Telephone: (202) 305-9053
Carol Wong
Telephone: (202) 514-4286
United States Department of Justice
Civil Rights Division
Employment Litigation Section- PHB
950 Pennsylvania Ave., NW
Washington, DC 20530

Sincerely,

Brian Koji
Allen Norton & Blue, P.A.
324 S. Hyde Park Ave., Suite 225
Tampa, FL 33606-4127

Enclosures

APPENDIX B: INDIVIDUAL RELIEF AND RELEASE OF CLAIMS FORM

IF YOU ARE ACCEPTING THE RELIEF, OR ANY PART OF THE RELIEF, OFFERED TO YOU, YOU MUST COMPLETE THIS FORM AND RETURN IT WITH A POSTMARK DATE ON OR BEFORE [DATE]. YOU MUST ALSO COMPLETE THE ENCLOSED ELECTION FORM AND W-9 FORM AND RETURN THEM WITH A POSTMARK DATE ON OR BEFORE [DATE]. A pre-addressed envelope is enclosed, which you may use to return this form. You must return this form to the address on the envelope within thirty (30) days of your receipt of this letter unless you show good cause for not meeting this deadline. The envelope enclosing this form must be postmarked by [DATE]. If you have any questions about how to complete this form, you may contact Meredith Burrell, (202) 305-9053, or Carol Wong, (202) 514-4286, at the United States Department of Justice.

RELEASE OF CLAIMS

For and in consideration of the acceptance of all or any part of the relief offered to me by Sheriff Steve Whidden, Hendry County, Florida (in his official capacity) ("Sheriff") pursuant to the provisions of the Consent Decree entered by the Honorable John E. Steele, United States District Judge, on [DATE] in United States of America v. Steve Whidden, Sheriff, Hendry County, Florida (in his official capacity); Hendry County Board of County Commissioners, Florida, Case No. 2:08-cv-946-FtM-29SPC (M.D. Fla.), I, Tanya Shaw, forever release and discharge the Sheriff, the Hendry County Board of County Commissioners, Florida ("Board"), and all of their current, former, and future agents, employees, officials, designees, predecessors and successors in interest, from all legal and equitable claims arising out of, or related in any manner to, the allegations set forth in the complaint filed by the United States in the above-captioned civil action and EEOC Charge No. 510-2006-01861 accruing prior to the date of this release.

I understand that the relief to be given to me does not constitute an admission by the Sheriff or the Board of the validity of any claim raised by me or on my behalf, nor does it constitute a finding of any wrongdoing or violation of any applicable federal law or regulation.

This release constitutes the entire agreement between the Sheriff and the Board and me, without exception or exclusion.

I acknowledge that a copy of the Consent Decree in 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.

Signed this _____ day of _____, 2009.

Signature

ELECTION FORM

Please complete by checking the appropriate response to each of the following:

A. Monetary Awards

___ I hereby accept the monetary awards totaling \$33,280.00, less applicable tax withholding, contained in the Consent Decree between the United States of America and Sheriff Steve Whidden, Hendry County, Florida (in his official capacity) and the Hendry County Board of County Commissioners, Florida.

B. Injunctive Relief

___ I hereby accept the other relief set forth in the Consent Decree between the United States of America and Sheriff Steve Whidden, Hendry County, Florida (in his official capacity) ("the Sheriff") and the Hendry County Board of County Commissioners, Florida, which requires the Sheriff to: offer me reinstatement under the circumstances described in Paragraphs 15 and 16 of the Consent Decree; to remove items from my personnel file and submit an amended Affidavit of Separation to the Florida Department of Law Enforcement as described in Paragraph 13 of the Consent Decree; to provide written notice to the Glades County Sheriff's Office, Lee County Sheriff's Office, and the Fort Myers Police Department of the removal of documents from my personnel file and the amended Affidavit of Separation submitted to the Florida Department of Law Enforcement; and to provide prospective employers only with confirmation of my dates of employment with the HCSO if requested.

Date: _____ Signature: _____

TO RECEIVE THE MONETARY AWARDS, YOU MUST ALSO COMPLETE AND RETURN THE ENCLOSED INDIVIDUAL RELIEF AND RELEASE OF CLAIMS FORM AND W-9 FORM. FAILURE TO RETURN ALL REQUIRED FORMS WITHIN THIRTY (30) DAYS MAY RESULT IN YOUR FORFEITURE OF THE MONETARY AWARDS UNLESS GOOD CAUSE IS SHOWN FOR YOUR FAILURE TO DO SO.

RETURN THE COMPLETED FORMS IN THE ENCLOSED ENVELOPE
ADDRESSED TO:

Brian Koji
Allen Norton & Bluc, P.A.
324 S. Hyde Park Ave., Suite 225
Tampa, FL 33606-4127

APPENDIX C: NOTICE LETTER

Via Certified Mail Return Receipt Requested

[DATE]

[NAME AND ADDRESS]

Re: United States of America v. Steve Whidden, Sheriff, Hendry County, Florida (in his official capacity); Hendry County Board of County Commissioners, Florida, Case No. 2:08-cv-946-FtM-29SPC (M.D. Fla.)

Dear Ms. [NAME]:

The United States, Sheriff Steve Whidden, Hendry County, Florida (in his official capacity) ("Sheriff"), and the Hendry County Board of County Commissioners, Florida ("Board"), have entered into a Consent Decree settling the case of United States of America v. Steve Whidden, Sheriff, Hendry County, Florida (in his official capacity); Hendry County Board of County Commissioners, Florida, Case No. 2:08-cv-946-FtM-29SPC (M.D. Fla.). A copy of the Consent Decree, which was approved and entered by the Court on [DATE], is enclosed.

Pursuant to the Consent Decree, the Sheriff is offering to pay you a monetary award of \$1,500.00, which will be considered compensatory damages.

The above monetary award will be paid to you via certified or bank check or direct deposit, within fifteen (15) days of the Sheriff's receipt of your executed Individual Relief and Release of Claims form, which is enclosed with this letter.

In order to obtain the offered relief, you must complete the enclosed Individual Relief and Release of Claims form and return the form via hand delivery or certified mail, return receipt requested. The form must be returned within **thirty (30) days** of your receipt of this letter to the Sheriff's and the Board's counsel, Brian Koji, at:

Allen Norton & Blue, P.A.
324 S. Hyde Park Ave., Suite 225
Tampa, FL 33606-4127

If you decline the relief offered by the Sheriff, the Sheriff and the Board nevertheless will have satisfied their obligation to the United States pursuant to the Consent Decree, and the United States will not seek additional relief on your behalf.

If you have any questions concerning the Consent Decree or the Sheriff's offer to you, you may contact the following Department of Justice Attorneys:

Meredith Burrell
Telephone: (202) 305-9053
Carol Wong
Telephone: (202) 514-4286
United States Department of Justice
Civil Rights Division
Employment Litigation Section- PHB
950 Pennsylvania Ave., NW
Washington, DC 20530

Sincerely,

Brian Koji
Allen Norton & Blue, P.A.
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Enclosures

APPENDIX D: INDIVIDUAL RELIEF AND RELEASE OF CLAIMS FORM

IF YOU ARE ACCEPTING THE RELIEF OFFERED TO YOU, YOU MUST COMPLETE THIS FORM AND RETURN IT WITH A POSTMARK DATE ON OR BEFORE [DATE]. A pre-addressed envelope is enclosed, which you may use to return this form. You must return this form to the address on the envelope within thirty (30) days of your receipt of this letter unless you show good cause for not meeting this deadline. The envelope enclosing this form must be postmarked by [DATE]. If you have any questions about how to complete this form, you may contact Meredith Burrell, (202) 305-9053, or Carol Wong, (202) 514-4286, at the United States Department of Justice.

RELEASE OF CLAIMS

For and in consideration of the acceptance of the monetary award totaling \$1,500.00 offered to me by Sheriff Steve Whidden, Hendry County, Florida (in his official capacity) ("Sheriff") pursuant to the provisions of the Consent Decree entered by the Honorable John E. Steele, United States District Judge, on [DATE] in United States of America v. Steve Whidden, Sheriff, Hendry County, Florida (in his official capacity); Hendry County Board of County Commissioners, Florida, Case No. 2:08-cv-946-FtM-29SPC (M.D. Fla.), I, [NAME], forever release and discharge the Sheriff, and the Hendry County Board of County Commissioners, Florida ("Board"), and all of their current, former, and future agents, employees, officials, designees, predecessors and successors in interest, from all legal and equitable claims arising out of the complaint filed by the United States in the above-captioned civil action accruing prior to the date of this release.

I understand that the relief to be given to me does not constitute an admission by the Sheriff or the Board of the validity of any claim raised by me or on my behalf, nor does it constitute a finding of any wrongdoing or violation of any applicable federal law or regulation.

This release constitutes the entire agreement between the Sheriff and the Board and me, without exception or exclusion.

I acknowledge that a copy of the Consent Decree in 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.

Signed this ____ day of _____, 2009.

Signature

APPENDIX E: AMENDED ANTI-DISCRIMINATION POLICY

**PROHIBITION OF UNLAWFUL DISCRIMINATION, HARASSMENT
AND RETALIATION**

I. Policy Prohibiting Unlawful Discrimination, Harassment and Retaliation:

The Hendry County Sheriff's Office is an equal opportunity employer. In furtherance of this policy, the Sheriff's Office is committed to maintaining a work environment free of discrimination and harassment on the basis of race, color, religion, gender, pregnancy, national origin, age, marital status, veteran status and disability. Persons seeking employment with, or currently employed by, the Sheriff's Office will be treated fairly, without regard to race, religion, gender, pregnancy, national origin, age, marital status, veteran status or disability. This policy applies to all employment practices and personnel actions including, but not limited to, recruitment, screening, selection, hiring, training and development, determinations of pay and benefits, evaluation, scheduling, job assignments, promotion, transfer, demotion, layoff, discipline and dismissal.

The Sheriff's Office will not tolerate unlawful harassment of any person in the workplace. Likewise, the Sheriff's Office will not tolerate retaliation against any person who objects to, reports, refuses to participate in, files a complaint of, or participates in an investigation of conduct alleged to be in violation of this policy or applicable law.

As detailed in this policy, all Sheriff's Office personnel are responsible for maintaining a workplace that is free of unlawful discrimination, harassment and retaliation. The Sheriff's Office is committed to promptly and thoroughly investigating all complaints of conduct alleged to be in violation of this policy. If, after a thorough investigation, it is determined that conduct in violation of this policy has occurred, prompt and appropriate remedial action, including possible disciplinary action up to and including discharge, will be taken.

II. Scope:

This Policy applies to all Sheriff's Office personnel, as well as persons applying for positions with the Sheriff's Office.

III. Unlawful Harassment:

As set forth above, the Sheriff's Office will not tolerate the harassment of any individual because of the individual's race, color, religion, gender/sex, pregnancy, national origin, age, marital status, veteran status or disability.

A. Sexual Harassment -- Definitions and Examples

Inproper harassment includes harassment on the basis of one's sex. Prohibited forms of sexual harassment includes, but is not limited to, unwelcome or offensive sexual

advances, requests for sexual favors, and any other unwelcome, intimidating, hostile or offensive physical, verbal or visual conduct of a sexual nature such as:

1. Unwelcome sexual propositions.
2. Sexual innuendo, including sexually suggestive remarks.
4. Conditioning personnel action on the individual's receptiveness, or lack thereof, to sexual propositions.
5. Vulgar or sexually explicit comments, gestures, noises or conduct.
6. Sexually oriented kidding, teasing or practical jokes.
7. Physical contact of a sexual nature such as brushing against another's body, pinching, grabbing, rubbing, hugging, poking or patting, sexually assaulting, kissing, and the like.
8. The publication, to anyone, of documents, objects, text, pictures, or graphics in the workplace that contains material that is of a sexual nature.
9. Using the computer to access any content that contains material of a sexual nature.

Accordingly, the Sheriff's Office prohibits all conduct described above from the workplace, even where the conduct does not appear to be unwelcome or offensive to others.

B. Other Forms of Prohibited Improper Harassment – Definitions and Examples

In addition to inappropriate sexual harassment, the Sheriff's Office also prohibits harassment on the basis of gender, pregnancy, race, national origin, disability, religion, color, age, veteran status and marital status. Any verbal or physical conduct of an offensive, intimidating, hostile or harassing nature and which is based upon, or directed toward, any individual based upon any of these characteristics will not be tolerated. Such prohibited conduct includes, but is not limited to:

1. Derogatory, critical, offensive or uncomplimentary jokes, comments, displays, posters, other written materials based upon another's gender, pregnancy, race, national origin, disability, religion, color, age, veteran status or marital status.
2. Any physical conduct taken against another individual because of his or her gender, pregnancy race, national origin, disability, religion, color, age,

veteran status and marital status.

3. Teasing or making fun of another individual's ethnicity, accent, cultural or religious beliefs or practices, mental or physical disabilities or medical limitations and other similar characteristics.
4. Epithets, slurs, negative stereotyping, or any form of threatening, intimidating, offensive or hostile acts that relate to gender, pregnancy race, national origin, disability, religion, color, age, veteran status and marital status.
5. Display or circulation of written or graphic material that denigrates or shows hostility toward an individual or group because of gender, pregnancy race, national origin, disability, religion, color, age, veteran status and marital status. This prohibition includes acts that purport to, or are meant to be, jokes or pranks, but that are hostile or demeaning, such as hate mail, threats, defaced photographs or any other similar conduct.

IV. Application of Policy to Specific Issues:

A. Job Announcements

All job postings, advertisements and announcements shall state that the Sheriff's Office is an Equal Opportunity Employer.

B. Reasonable Accommodation of Disabilities

In accordance with applicable law, the Sheriff's Office will provide reasonable accommodations upon request to otherwise qualified individuals (both employees and applicants) who have a legally-cognizable disability, to the extent that the reasonable accommodation does not constitute an undue hardship to the Sheriff's Office or pose a direct threat of substantial harm to the health or safety of the individual or anyone else. Individuals who believe they need a reasonable accommodation should submit a request to Human Resources. Any supervisor who receives a request for a reasonable accommodation of a medical condition should promptly advise Human Resources.

C. Pregnancy

No employee or applicant will be subject to discrimination on the basis of a pregnancy or anticipated pregnancy.

Employees who become pregnant during their employment may voluntarily request light duty and/or a leave of absence (pursuant to the Sheriff's FMLA policy or otherwise), which the Sheriff's Office will consider and administer in accordance with applicable law. The Sheriff's Office will not require a pregnant

employee to take a leave of absence or a light duty assignment without first seeking and receiving an individualized medical assessment from a healthcare provider regarding the pregnant employee's ability to perform the essential functions of her job.

V. Reporting and Investigating Alleged Violations of this Policy:

A. Reporting Violations of this Policy

1. All Sheriff's Office personnel are responsible for maintaining a workplace that is free of unlawful discrimination, harassment and retaliation. If any person experiences or witnesses conduct in violation of this policy, he or she has an affirmative obligation to report the conduct. If, after an investigation is conducted, it is determined that conduct in violation of this policy has occurred, and it is determined that any employee(s) failed to fulfill their affirmative obligation to report it, such a failure may be grounds for discipline.
2. Any employee who believes he or she has been subjected to conduct prohibited by this policy must immediately report the harassment to either (1) his or her immediate supervisor; or, (2) the Human Resources department.
3. Employees are not expected to report violations to the person they believe is subjecting them to conduct in violation of this policy. However, in such cases, employees are expected to report the conduct to another employee identified above. In the event that the conduct involves the employee's supervisor and the Human Resources department, the employee must immediately report the conduct to the Sheriff.
4. Upon receiving a reported violation of this policy or witnessing a potential violation of this policy, supervisors are responsible for immediately reporting it to Human Resources and their immediate supervisor, without regard to whether the alleged conduct involves the supervisor's subordinate employee(s). Failure to report will be grounds for discipline.
5. Additionally, supervisors, together with Human Resources, are responsible for ensuring that their subordinate employees are properly trained as to this policy and the Sheriff's prohibition of unlawful discrimination, harassment and retaliation.

B. Investigation of Complaints

1. All reported violations of this policy will be investigated and resolved as promptly as the circumstances of the allegations allow. The Human Resources department, in consultation with the Sheriff, shall determine

how best to investigate the reported violation, as well as who shall conduct the investigation.

2. Investigation of a complaint will normally include conferring with the parties involved and any named or apparent witnesses. The investigation may also entail reviewing pertinent documents, e-mail communications, pictures and/or any other relevant physical evidence.
3. All investigations will be conducted in a fair and impartial manner. If, after a thorough investigation, it is determined that a violation of this policy has occurred, immediate and appropriate action will be taken to promptly remedy any improper conduct and to ensure that no prohibited actions occur in the future. Such action may include discipline of anyone determined to be in violation of this policy, remedial training concerning the Sheriff's Office's policies and procedures relating to prohibited discrimination, harassment and retaliation, and any other measure determined to be necessary for the effective enforcement of this policy.

C. Prohibition of Retaliation

All persons who report an alleged violation of this policy or participate in an investigation pursuant to this policy shall be protected from coercion, intimidation, retaliation, interference or discrimination for filing a complaint or participating in an investigation. Employees who believe they have been subjected to retaliation on the basis of having filed a complaint or having participated in an investigation, must immediately report it pursuant to subsection (A) above. Any employee determined to have retaliated against another individual in violation of this policy will be subject to discipline up to and including potential discharge.

**PROHIBITION OF UNLAWFUL DISCRIMINATION,
HARASSMENT AND RETALIATION**

ACKNOWLEDGMENT FORM

I acknowledge that I have received and fully read the Hendry County Sheriff's Office Prohibition of Unlawful Discrimination, Harassment and Retaliation Policy. I further acknowledge that I fully understand and agree to comply with the requirements of that policy.

Additionally, I specifically understand and agree that:

1. All employees have the right to work in an environment free from unlawful discrimination, harassment and retaliation of any kind.
2. All employees have a responsibility not to engage in conduct and actions in violation of the Sheriff's Office's prohibition of unlawful discrimination, harassment and retaliation.
3. I have an affirmative obligation to report any conduct that I am subjected to, witness or otherwise become aware of, which violates the terms of this policy.
4. I have an affirmative obligation to fully and truthfully cooperate in any investigation concerning alleged violations of this policy.

Signature

Date

Printed Name