

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Case No. 08-14309-CIV-MOORE/LYNCH

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CITY OF FORT PIERCE,

Defendant.

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**ORDER GRANTING JOINT MOTION FOR ENTRY OF CONSENT DECREE**

THIS CAUSE came before the Court upon the Parties' Joint Motion for Entry of Consent Decree and Relief from November 9, 2009, Order (dkt # 123).

UPON CONSIDERATION of the Motion, pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that the Motion is GRANTED. The Court has reviewed the Parties' proposed Consent Decree (dkt # 123-1), and finds that the Decree's terms and proposed injunctive relief are in the public interest and consistent with the purposes of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. The Court hereby approves and enters the Consent Decree, which supersedes the Court's November 9, 2009, Order (dkt # 122). This Court retains jurisdiction to enforce the terms of the Consent Decree for one (1) year from the date of entry of this Order. This cause shall be dismissed with prejudice without further Order of this Court one year from the date of entry of this Order.

DONE AND ORDERED in Chambers at Miami, Florida, this 14<sup>th</sup> day of December,

2009.



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E. MICHAEL MOORE  
UNITED STATES DISTRICT JUDGE

cc: All counsel of record

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
FT. PIERCE DIVISION  
Case No: 08-14309-CIV-MOORE

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UNITED STATES

Plaintiff,

v.

CITY OF FORT PIERCE,

Defendant.

---

**CONSENT DECREE**

This action was brought by the United States against the City of Fort Pierce, Florida ("City") to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-3(a), ("Title VII"), following receipt by the Department of Justice from the Equal Employment Opportunity Commission of a charge filed by Shirley Kirby ("Kirby"), now a former employee of the City.

In its Complaint, the United States alleges that, because Ms. Kirby complained of racially discriminatory treatment against her and other African-American Code Enforcement Officers by her supervisors, the City retaliated against her, in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a). The City denied and continues to deny that it retaliated against Ms. Kirby for any complaints, or that any of its actions violated Title VII in any manner.

The parties acknowledge the other's opposing and contrasted view of this dispute and desire that this action be settled by an appropriate consent decree and without the burden of protracted litigation, with its attendant costs. They, therefore, agree to the jurisdiction of this Court over the parties and the subject matter of this action. Subject to the Court's approval of this Consent Decree ("Decree"), the parties waive a hearing 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 United States' Complaint filed in this case and the matters resolved in this Decree.

This Decree, being entered with the consent of the parties, shall in no way constitute an adjudication or finding on the merits of the case, nor be construed as an admission by the City or a finding of any wrongdoing or violation of any applicable federal or state law or regulation, nor shall it prejudice either party or be admissible by either party in any future unrelated proceeding.

As used in this Decree, the term "date of entry of this Decree" is defined as the date on which the Court grants final approval to and enters this Decree as a final order of the Court.

It is therefore, ORDERED, ADJUDGED AND DECREED as follows:

**A. GENERAL RELIEF**

1. The City, by and through its officials, agents, and employees, affirms its continued commitment not to engage in any act or practice that has the purpose or effect of unlawfully discriminating against any employee or potential employee of the City based upon any protected class, including, but not limited to, that individual's race or ethnicity.

2. The City, by and through its officials, agents, and employees, affirms its continued commitment not to engage in any act of retaliation or act which in any respect

adversely affects any other person because that person has opposed policies or practices that allegedly constitute unlawful employment actions or who has filed a charge with the Equal Employment Opportunity Commission or other investigating agency, or because of that person's participation in or cooperation with the initiation, investigation, litigation or administration of this case or this Decree.

3. The parties jointly agree that good business practices contemplate that published personnel policies and procedures be reviewed within reasonable intervals of time and, to the extent necessary, rules and procedures be amended or new rules and procedures be adopted to maintain consistency with the current state of the law and industry standards. In furtherance of those goals, the City will within thirty (30) calendar days from the date of entry of this Decree commence and within one hundred and eighty (180) calendar days from the date of entry of this Decree complete a review of its written policies and procedures and, to the extent necessary, adopt or amend its rules designed to prohibit discrimination and retaliation on the basis of any protected class or activity identified by Federal or State law or City Ordinance, policy or rule. The City's compliance with this paragraph shall ensure that the written policies include the following provisions:

- (a) a description of the manner in which an employee of the City may make complaints of discrimination or retaliation, which identifies the position titles of persons to whom complaints may be made;
- (b) a statement of the manner in which any such complaint may be made that specifies that the complaint may be oral or written, but, if made orally, the City employee or official receiving such complaint may elect to memorialize the oral

complaint in his or her own writing and request verification of its accuracy by the complaining employee;

- (c) a description of the procedures which will be used to investigate complaints, and identification by position or job title in the City of the individuals who will conduct the investigation and make conclusions about the results of the investigation;
- (d) a statement that the City will investigate a complaint of discrimination on the basis of membership in a protected class, or of retaliation based on a protected activity, and provide the results of such investigations to the complaining party in writing. The results of such investigation will be provided as soon as practicable in light of the City's financial and staffing resources and within a time period consistent with Title VII law; and
- (e) A statement that in accordance with applicable law, no employee will be disciplined or retaliated against because that employee: (i) opposed an unlawful employment action; (ii) filed a complaint or charge with any federal, state, or local agency authorized to receive such complaints or charges, or filed such a complaint or charge prior to or without using the City's grievance procedures; (iii) participated in an investigation initiated under City procedures or (iv) participated in an investigation conducted by federal, state, or local agencies authorized to receive such complaints or charges.

The City will provide a copy of a draft of the proposed new or revised policies to the United States at least thirty (30) days prior to their adoption. The United States agrees to provide a

writing describing any objections to the proposed policies. The United States will send such a writing to the City of Fort Pierce within fourteen (14) days of the United States' receipt of the proposed policy and will identify and describe how the proposed policy is inconsistent with the requirements of this Decree. The parties will attempt to resolve objections in good faith but, if they are unable to agree upon a resolution of any objections by the United States, the parties may utilize the dispute resolution mechanism set forth in Paragraph D of this Decree.

4. The parties further agree that the current state of the law and good business practices contemplate written procedures governing the distribution of personnel policies and procedures to the City's employees. To facilitate that goal, the City will within ten (10) calendar days from the date upon which the City adopts the written policies and procedures set forth in Paragraph 3, above, utilize reasonable and standard practices for the distribution of the revised or new policies, which shall include:

- (a) assigning its Human Resources Department to (i) distribute copies of such policies and procedures to all of its employees; (ii) obtain from each individual who receives a copy a signed acknowledgment that it has been received and read; and (iii) maintain the signed acknowledgment by each employee within the employee's personnel file;
- (b) publication of the revised or new written policies and procedures by posting them in such buildings and facilities used for posting equal employment opportunity information, by City e-mail to all employees having City e-mail, and on any internet or intranet website used for posting notices or policies for or concerning the City;

- (c) to ensure that each new employee or supervisor receives a copy of the written policies and procedures implemented pursuant to Paragraph 3 above, at the time of the new employee's hire or appointment, obtain from each new City employee a signed acknowledgment that she or he has read and understands such policies and procedures, and maintain such acknowledgment within the employee's personnel file; and
- (d) within ninety (90) days of the adoption of revised or new written policies, providing training sessions for City employees regarding those policies and procedures pertaining to workplace discrimination, retaliation, and complaints of such alleged conduct, with separate training sessions for supervisory and non-supervisory employees in order to more efficiently address those obligations or procedures that may be different for supervisory employees. The parties agree that such training will be administered by the law firm Dean, Ringers, Morgan & Lawton, PA. The attorneys conducting this training and the Department of Justice will consult with one another in good faith to devise a curriculum for this training.

**B. SPECIFIC RELIEF**

1. In settlement of the claim of the United States for relief on behalf of Ms. Kirby, and as consideration for Ms. Kirby's agreement through her private legal counsel to release all of her claims against the City, the City agrees to the following and it is hereby ordered by the Court that within seven (7) days of the date of entry of this Decree:

- (a) The City or its representative shall offer to pay Ms. Kirby a monetary award in the total amount of One Hundred and Fifty Thousand Dollars (\$150,000), consisting

of two separate drafts. The first draft shall be for One Hundred and Ten Thousand Dollars (\$110,000) representing compensatory damages to fully compensate her for damages available under Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a, and the second draft shall be a payroll check for Forty Thousand Dollars (\$40,000) representing lost wages and benefits. The total payment of \$150,000 is offered as full satisfaction of all past and present claims for money damages. The City or its representative shall issue the first draft within fifteen (15) days of receiving the Release form contained in Appendix B. Following the City's receipt of the Release form contained in Appendix B and upon the City's receipt of an executed I.R.S. form W-9 from Ms. Kirby, the payroll draft will be issued in the first full payroll cycle following the receipt of those forms. The City or its representative shall issue an IRS Form 1099, and any other appropriate IRS forms, to Ms. Kirby to reflect its payments to her, and shall not deduct any employer or employee taxes from that amount other than any withholdings requested by Ms. Kirby in her W-9 form. Ms. Kirby shall be responsible for paying any income taxes due. Both checks shall be made payable to Ms. Kirby and sent to Ms. Kirby in care of her counsel, at the following address:

Ms. Shirley Kirby  
In care of Rebecca Ingram Leonard, Esq.  
P.O. Box 651838  
Miami, Florida 33265

- (b) The City shall offer to expunge from Ms. Kirby's personnel files documents generated or maintained by the City which contain negative references pertaining

to Ms. Kirby's complaints of racial discrimination or retaliation. In order to accomplish this objective, within thirty (30) days from the date of the executed Release from Ms. Kirby pursuant to Paragraph B.2 of this Decree, the City will provide to the United States a copy of the documents that comprise Ms. Kirby's personnel file. For this purpose, Ms. Kirby's "personnel file" shall be defined as the file or documents that the City would normally make available to an employer who requests to review Ms. Kirby's work history with the City. Upon identification by the United States of the appropriate documents, the City shall expunge such documents from said file. For the purposes of this specific provision of the Decree, and with respect only to this specific provision of the Decree, "expunge" shall mean that the documents identified by the United States shall be placed in a separate folder. The documents contained within this folder are maintained solely to comply with the Florida State Constitution and Florida State laws requiring the maintenance of public records. The documents in the folder will be affixed to a cover statement executed by the City Manager or City Counsel for the City of Fort Pierce, which shall read:

The documents maintained within this file have been expunged from employee Shirley Kirby's personnel files, and do not constitute the City of Fort Pierce's actions, decisions or views regarding Ms. Kirby or her employment with the City of Fort Pierce. The documents contained within this folder are maintained solely to comply with the Florida State Constitution and Florida State laws requiring the maintenance of public records.

The City will permanently stamp on each page contained within the folder a notation stating "Expunged by Court Order," and any reproduction of those

documents shall include the stamp and the affixed cover sheet. Nothing in this Paragraph shall be construed to prevent the City from complying with any valid requests for public records made pursuant to applicable Florida law.

2. The City shall notify Ms. Kirby of the terms of this Decree within seven (7) days of its date of entry by mailing to her in care of her counsel, by certified mail, return receipt requested, a copy of the letter in the form set forth in Appendix A and enclosing a copy of this Decree and a copy of the Release form in the form set forth in Appendix B. The letter identified as Appendix A will inform Ms. Kirby that in order to accept the relief offered to her, she must return the Appendix B Release form to the City within thirty (30) days of her receipt of the Appendix A letter.

**C. RECORD-KEEPING AND REPORTING**

1. The City agrees to retain during the life of this Decree records necessary to document the implementation of this Decree. The City agrees to furnish non-privileged records and documents relevant to the City's compliance with this Decree to the United States within thirty (30) days of any written request from counsel for the United States.

2. As required by the Florida Public Records Act, the City shall retain all records that come into its possession relating to complaints or charges of employment discrimination based on race or retaliation that may be filed against the City or an employee, agent or representative of the City and pertaining to an employee or applicant for employment with the City: (a) through any employee, contract employee or independent contractor; (b) through the City's internal grievance procedure; (c) with the United States Equal Employment Opportunity Commission; or (d) through or with any other federal, state or local agency authorized to receive

such complaints. The United States may inspect and copy all documents related to such complaints or charges upon reasonable notice to the City without further order of this Court, provided that the United States' right to inspect and copy shall not be construed to require the City to produce any documents that it would not have to provide due to privileges or confidentiality protections afforded it under applicable law or judicial precedent.

**D. DISPUTE RESOLUTION**

Unless specifically and otherwise stated, the parties shall attempt to resolve informally any dispute that may occur under this Decree. The parties shall engage in good faith efforts to resolve the issue before seeking action by the Court. If the parties are unable expeditiously to resolve the issue, either party may move the Court for resolution, provided that written notice is first provided to the other party at least twenty (20) calendar days in advance of taking such action.

**E. JURISDICTION OF THE COURT**

1. During the life of this Decree, the Court shall retain jurisdiction over this Decree for the purposes of enforcing its provisions, resolving any disputes that may arise between the parties under it and entering such orders as may be appropriate.

2. This Decree will be dissolved and this action will be administratively dismissed with prejudice without further order of the Court one year from the date of entry of the Decree.

**F. COSTS**

The parties shall bear their own costs in this action, including attorney's fees.

**G. SCOPE OF THE DECREE**

This Consent Decree sets forth the entire agreement between the United States and the City, and supersedes all other negotiations, representations or agreements, either written or oral, between the United States and the City.

DONE AND ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2009

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K. MICHAEL MOORE  
UNITED STATES DISTRICT JUDGE

Agreed and Consented To:

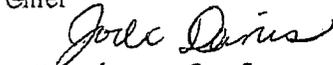
On behalf of Plaintiff  
The United States of America:

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

BY:



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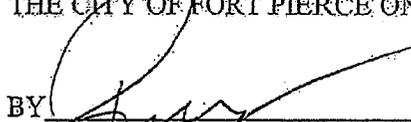
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On behalf of Defendant  
The City of Fort Pierce, Florida:



DAVID RECOR  
City Manager

APPROVED AS TO FORM AND  
CORRECTNESS FOR  
THE CITY OF FORT PIERCE ONLY:



BY  
ROBERT V. SCHWERER  
City Attorney