

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
Case No.:

UNITED STATES OF AMERICA,

Plaintiff,

v.

TOWN OF DAVIE, FLORIDA,

Defendant.

CONSENT DECREE

This action was brought by the United States against the Town of Davie, Florida (“Davie”), to enforce the provisions of § 706 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5 (“Title VII”), following receipt by the Department of Justice from the Equal Employment Opportunity Commission (“EEOC”) of charges timely filed by Lori Davis and Monica Santana, employees of the Davie Fire Rescue Department (“Fire Department”).

In its Complaint, the United States alleges that Davie discriminated based on gender (pregnancy) against Lori Davis (“Davis”) by denying her light duty until the start of her second trimester despite her medical or physical needs while routinely granting other non-pregnant firefighters’ requests for light duty for non-work related injuries. The United States also alleges that other similarly-situated pregnant firefighters (Devon Sweet and Kirsten Rohrer) were also required by Davie’s pregnancy policy and practice to remain on active duty during the first trimesters of their pregnancy when they would have requested light duty to avoid the risks

associated with firefighting while pregnant. The United States alleges that Davie retaliated against Monica Santana (“Santana”) because she engaged in activities protected by Title VII by complaining about actions by Davie that she reasonably believed were gender discrimination.

Davie denies these allegations, and maintains that it has not discriminated or retaliated against any female firefighters.

The Parties, desiring that this action be settled by appropriate consent decree and without the burden of protracted litigation, agree to the jurisdiction of this Court over the parties and to the Court’s subject matter jurisdiction. 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 pattern or practice violations alleged in the United States’ Complaint filed in this case.

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 Davie of a finding of any wrongdoing or violation of any applicable federal or state law or regulation.

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. FINDINGS OF THE COURT

Having examined the provisions of this 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 Decree are lawful, fair, reasonable and just. The rights of the Parties are adequately protected by this Decree.

- (c) This Decree conforms with the Federal Rules of Civil Procedure and Title VII, and is not in derogation of the rights and privileges of any person. The entry of the Decree will further the objectives of Title VII and will be in the best interest of the Parties.

B. GENERAL INJUNCTIVE RELIEF

Davie, by and through its officials, agents, employees and all persons in active concert or participation with Davie in the performance of employment or personnel functions, are enjoined from:

- (a) subjecting any employee who is pregnant or may become pregnant to a policy or practice that discriminates on the basis of sex (including pregnancy) by requiring mandatory light duty without evaluating the employee's ability to perform the essential functions of her job;
- (b) subjecting any employee who is pregnant or may become pregnant to a policy or practice that discriminates on the basis of sex (including pregnancy) by treating that employee differently than any non-pregnant employee suffering a non-work related injury with regards to the application, availability or opportunity to perform light duty work assignments;
- (c) engaging in any act or practice that has the purpose or effect of unlawfully discriminating against any employee or potential employee in Davie because of that individual's sex or pregnancy;
- (d) retaliating against or adversely affecting the terms or conditions of employment of any person because that person has opposed policies or practices that allegedly violate any provision of Title VII; has engaged in any activity protected by Title

VII; has filed a charge with the Equal Employment Opportunity Commission (“EEOC”), any corresponding state agency, or through the Davie EEO office; or because of that person’s participation in or cooperation with the initiation, investigation, litigation or administration of this case or this Decree; and

- (e) enforcing or becoming a party to, any contractual agreement that operates to discriminate on the basis of sex (including pregnancy).

C. IMPLEMENTATION OF POLICIES AND PROCEDURES

1. Within one hundred and twenty (120) calendar days from the date of entry of this Decree, Davie shall review and, to the extent necessary, adopt or amend its written policies and procedures that prohibit retaliation, to ensure the following provisions are included therein:

- (a) A description of the manner in which an employee or potential employee of Davie may make a complaint of retaliation, including the name and contact information for the Davie Equal Employment Opportunity (“EEO”) Officer;
- (b) The identification, by job title and telephone contact information, of all individuals, including the EEO Officer, who are authorized to accept complaints of retaliation against Davie, including with whom employees or potential employees register complaints if one of the identified contacts is the alleged retaliator. The policy will also include a description of any procedure for the EEO Officer to designate other employees to accept complaints on the Officer’s behalf;
- (c) A statement that all complaints of retaliation will be promptly and objectively investigated;

- (d) A description of the procedures which will be used to investigate complaints of retaliation, and identification of the person or persons by position title in Davie, who will conduct the investigation and make conclusions about the results of the investigation;
- (e) A statement that Davie will provide the results of an investigation of a complaint of retaliation to the complaining party in writing no later than thirty (30) calendar days from the date the complaint is received. If Davie is not capable of completing the investigation in that timeframe due to the Officer's Bill of Rights, pursuant to Florida Statute, Title X, Chapter 112, it will provide the results of the investigation to the complaining party within a timeframe not to exceed the period allowed by that statute.
- (f) A statement that nothing in Davie's policies or any other Davie contract or agreement shall restrict any Davie employee's ability to report any complaints of discrimination or retaliation to the appropriate Federal or State administrative agencies, or to cooperate with any governmental investigation of such a complaint.

Davie shall present to the United States for its review a draft of the proposed new or revised policies to comply with the requirements of C 1(a)-(e) at least thirty (30) calendar days prior to their initial anticipated adoption. In the event the United States proposes modifications to the policies submitted by Davie, the United States agrees to advise of said modifications in writing within thirty (30) calendar days of receiving said policies from Davie and allow a reasonable opportunity, but not less than sixty (60) days, for Davie to incorporate said modifications and adopt the proposed new or revised policies.

2. Within sixty (60) calendar days from the date upon which Davie implements the written policies and procedures set forth in Paragraph C 1, above, Davie shall take the following steps:

- (a) Davie shall distribute copies of such policies and procedures to all of its employees, supervisors and agents and shall provide a copy to the United States. Each individual (other than the United States) who receives a copy shall sign an acknowledgment that it has been received and read. The signed acknowledgment by each employee shall be placed in the employee's personnel file, and the signed acknowledgment by each supervisor also shall be maintained by the EEO Officer. Electronic means of distribution of, access to, and acknowledgment of Davie's policies and procedures shall be a sufficient means of complying with this provision.
- (b) Davie shall publicize such policies and procedures by, *inter alia*, posting them in all buildings and facilities used for posting EEO information, by email to all employees, and on any internet or intranet website used for posting notices or policy changes for or concerning Davie, if available.
- (c) Davie shall ensure that each new employee or supervisor receives a copy of the written policies and procedures implemented pursuant to Paragraph C 1, above, at the time of the new employee's hire or at the time of the supervisor's election or appointment. Each new Davie employee or supervisor shall sign an acknowledgment that she or he has read and understands such policies. The signed acknowledgment by a new employee shall be placed in the employee's personnel file, and the signed acknowledgment by a new supervisor also shall be

maintained by the EEO Officer. Electronic acknowledgments shall be acceptable to comply with this provision.

3. Within one hundred and twenty (120) calendar days from the date upon which Davie implements the written policies and procedures set forth in Paragraph C 1, above, Davie shall provide training with respect to Title VII's prohibitions against retaliation and Davie's policies and procedures relating to the prohibition retaliation to all supervisory personnel in the Davie Fire Department who are involved in the hiring and selection procedure, evaluation of job performance, or discipline of Davie employees. Davie shall also provide separate training on this material to all non-supervisory employees in the Davie Fire Department. Each training session shall be held live and include, at a minimum, a detailed explanation of the prohibitions against retaliation contained in Title VII and Davie's policies and procedures regarding retaliation. The training will be conducted by professional, outside third-party instructors who will be retained by Davie. The names, resumes, and credentials of proposed instructors shall be submitted to counsel for the United States for review and approval at least forty-five (45) calendar days before the date upon which Davie proposes conducting either training session. A description of each of the proposed training programs, including copies of all proposed training materials, shall be submitted to counsel for the United States for review and approval at least thirty (30) calendar days before the date upon which Davie proposes conducting either training session. Representatives from the Department of Justice will be invited to attend all training sessions conducted under this paragraph. Notification via electronic mail to counsel for the United States shall be deemed sufficient invitation for this purpose.

D. RECORD KEEPING AND REPORTING

1. Davie shall retain during the life of this Decree all records necessary to document the implementation of this Decree. Davie shall furnish all records and documents relevant to its compliance with the implementation of this Decree to counsel for the United States within thirty (30) calendar days of any written request, or such greater time as provided by the United States, but not less than thirty (30) calendar days.

2. Davie shall provide written notice to counsel for the United States of any notification by a firefighter of that firefighter's pregnancy within fifteen (15) calendar days of Davie's receipt of that information. The United States shall have the right to inspect and copy all documents related to such matter upon reasonable notice to Davie without further order of this Court, which reasonable notice shall not be less than thirty (30) calendar days after notification by a firefighter of that firefighter's pregnancy. If practicable, Davie may elect to produce the aforementioned documents by electronic means.

3. Davie shall retain all records that come into its possession relating to complaints or charges of employment discrimination or retaliation that may be filed against Davie or any employee, agent or representative of Davie and pertaining to an employee or applicant for employment with Davie: (a) through any informal channels of complaint; (b) through Davie's internal grievance procedure or with the Davie EEO Officer; (c) with the EEOC; or (d) through or with any other federal, state or local agency authorized to receive such complaints. Davie shall provide copies of documents reflecting such complaints or charges to counsel for the United States within fifteen (15) calendar days of its receipt of such complaints or charges. In addition, the United States shall have the right to inspect and copy all documents related to such complaints or charges upon reasonable notice to Davie without further order of this Court, which

reasonable notice shall not be less than thirty (30) calendar days. Davie may elect to produce the aforementioned documents by electronic means.

4. Davie shall provide written notice to counsel for the United States of any disciplinary or other adverse employment action proposed or taken against Davis during the life of this Decree promptly after such action is proposed or taken. The United States shall have the right to inspect and copy all documents related to such action upon reasonable notice to Davie without further order of this Court.

5. Davie shall provide written notice to counsel for the United States of any disciplinary or other adverse employment action proposed or taken against Santana during the life of this Decree promptly after such action is proposed or taken. The United States shall have the right to inspect and copy all documents related to such action upon reasonable notice to Davie without further order of this Court.

E. SPECIFIC RELIEF

1. In settlement of the claim of the United States for relief on behalf of Davis and Santana, Davie agrees to the following and it is hereby ordered by the Court that within thirty (30) calendar days of the date of entry of this Decree:

- (a) In exchange for a written release of Davis' individual claims against Davie, Davie shall pay Davis a monetary award as reflected in a separate agreement between Davie and Davis, which represents compensatory damages to fully compensate her for the pain and suffering caused by Davie's alleged discriminatory conduct and her reasonable attorney's fees and costs. No portion of this award is attributable to back pay, and the award shall not be subject to income tax withholding and FICA. Davie shall issue an IRS Form 1099, and any other

appropriate IRS forms, to Davis to reflect this payment and shall not deduct any additional employer or employee taxes from that amount. Davis shall be responsible for paying any income taxes due. The payment shall be made payable to Davis and sent to her in care of her counsel. The specific written release to be executed by Davis has been separately negotiated by Davie and Davis' counsel.

- (b) In exchange for a written release of Santana's individual claims, Davie shall pay Santana a monetary award as reflected in a separate agreement between Davie and Santana, which represents compensatory damages to fully compensate her for the pain and suffering caused by Davie's alleged retaliatory conduct and her reasonable attorney's fees and costs. No portion of this award is attributable to back pay, and the award shall not be subject to income tax withholding and FICA. Davie shall issue an IRS Form 1099, and any other appropriate IRS forms, to Santana to reflect this payment and shall not deduct any additional employer or employee taxes from that amount. Santana shall be responsible for paying any income taxes due. The payment shall be made payable to Santana and sent to her in care of her counsel. The specific written release to be executed by Santana has been separately negotiated by Davie and Santana's counsel.

2. Davie shall seal from Davis' personnel files and any other Davie files any negative references pertaining to Davis's complaints of discrimination or retaliation. In order to accomplish this objective, Davie shall submit to the United States, within thirty (30) calendar days from the Court's entry of this Decree, a complete copy of the personnel file of Davis and complete copies of any and all other relevant files and documents pertaining to Davis. Upon

identification by the United States of the appropriate documents, Davie shall seal such documents from its records and files.

3. Davie shall seal from Santana's personnel files and any other Davie files any negative references pertaining to Santana's complaints of discrimination or retaliation. In order to accomplish this objective, Davie shall submit to the United States, within thirty (30) calendar days from the Court's entry of this Decree, a complete copy of the personnel file of Santana and complete copies of any and all other relevant files and documents pertaining to Santana. Upon identification by the United States of the appropriate documents, Davie shall seal such documents from its records and files.

4. Davie agrees to offer firefighters Devon Sweet and Kirsten Rohrer each a monetary award as reflected in Appendix A and B. This amount represents compensatory damages to fully compensate each of these firefighters, who were similarly-situated to Davis, for the pain and suffering caused by Davie's alleged discriminatory conduct in subjecting them to a pregnancy policy or practice that prevented them from obtaining a light duty assignment during the first trimester of their pregnancy. Davie shall notify Devon Sweet and Kirsten Rohrer of the terms of this Decree within seven (7) calendar days of its date of entry by providing her 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 and Election forms as set forth in Appendix B. The letter identified as Appendix A will inform each similarly-situated firefighter that in order to accept the relief offered to her, she must return the Release and Election forms to Davie within thirty (30) calendar days of her receipt of the letter in Appendix A. No portion of these awards, if accepted, will be attributable to back pay, and the award shall not be subject to income tax withholding and FICA. Davie shall issue an IRS Form 1099, and any other appropriate IRS forms, to each firefighter accepting

the award to reflect this payment and shall not deduct any additional employer or employee taxes from that amount. Each of these firefighters shall be responsible for paying any income taxes due, and the payment shall be made payable to the individual firefighter. Davie shall pay each of the firefighters the amount within thirty (30) calendar days of its receipt of her executed Release and Election forms.

F. DISPUTE RESOLUTION

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 to expeditiously resolve the issue, either Party may move the Court for resolution, provided that written notice is first provided to the other Party at least ten (10) calendar days in advance of taking such action.

G. 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 shall terminate two (2) years from the date of its entry without further order of the Court.

H. COSTS

The parties shall bear their own costs in this action, including attorney's fees. The attorney's fees and costs for Davis and Santana are separately provided for in the Specific Relief section above in Paragraph E I.

I. SCOPE OF THE DECREE

1. Other than the amount of the monetary awards that Davie will pay to Davis and Santana, this Decree sets forth the entire agreement between the United States and Davie, and supersedes all other negotiations, representations or agreements, either written or oral, between the United States and Davie.

2. If any provision of this Decree is found unlawful, only the specific provision in question shall be affected and the other provisions shall remain in full force and effect.

J. COMMUNICATIONS

The Parties agree that all requests from either Party to the other shall be made in writing. Moreover, all responses to written requests shall be made within fifteen (15) calendar days, or such greater time as provided by the requesting Party. Notice shall be sent to the following addresses:

To United States: U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, NW
Patrick Henry Building, Room 4613
Washington, DC 20530
Attn: Jeffrey G. Morrison, Esq.,- jeffrey.morrison@usdoj.gov

To Davie: Town of Davie
6591 Orange Drive
Davie, Florida 33314
Attn: Stacey Hipsman, Human Resources Director
Stacey_Hipsman@davie-fl.gov

With Copy to: Lydecker | Diaz
1221 Brickell Avenue, 19th Floor
Miami, Florida 33131
Attn: Onier Llopiz, Esq.- ol@lydeckerdiaz.com
Stephanie Pidermann, Esq.- sp@lydeckerdiaz.com

To Lori Davis and
Monica Santana: Christopher M. McShane, Esq.
910 N.E. 73rd Street
Miami, FL 33138
Via e-mail only: Franklin@nelsonfranklin.com

DONE AND ORDERED this _____ day of _____, 2015.

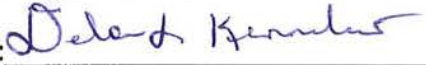
UNITED STATES DISTRICT JUDGE

Agreed and Consented To:


On behalf of Plaintiff
The United States of America:

On behalf of Defendant
The Town of Davie, Florida:

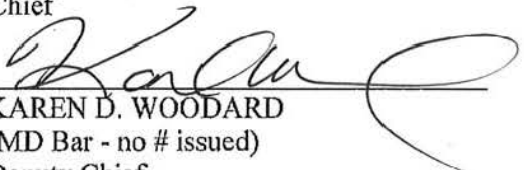
VANITA GUPTA
Acting Assistant Attorney General
Civil Rights Division

BY: 


DELORA L. KENNEBREW
(GA Bar No. 414320)
Chief



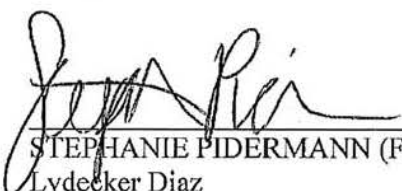
ONIER LLOPIZ (FBN 579475)
Lydecker Diaz



KAREN D. WOODARD
(MD Bar - no # issued)
Deputy Chief



JEFFREY G. MORRISON
(MO Bar No. 44401)
Senior Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, NW
Patrick Henry Building, Room 4613
Washington, DC 20530
Telephone: (202) 353-1845
Facsimile: (202) 353-8961
jeffrey.morrison@usdoj.gov



STEPHANIE PIDERMANN (FBN 60414)
Lydecker Diaz
1221 Brickell Ave, 19th Fl
Miami, Florida 33131
Telephone: (305) 416-3180
Facsimile: (305) 416-3190
www.lydeckerdiaz.com

APPENDIX A
NOTICE LETTER

[Date]

[Name]

[Employee's current home address]

Re: *United States of America v. Town of Davie, Florida*

Dear Ms. _____:

On _____, 2015, a Consent Decree was entered settling a complaint of employment discrimination based on gender (pregnancy) and retaliation filed by the United States of America against the Town of Davie, Florida ("Davie") in the case of *United States of America v. Town of Davie, Florida*, Civil Action No. _____ (S.D. Fl.). This case was filed by the United States against Davie based upon charges filed with the Equal Employment Opportunity Commission by other female firefighters at Davie.

Under the terms of the Consent Decree, you are being offered a monetary award of \$5000. This amount represents compensatory damages to fully compensate you for Davie subjecting you to a pregnancy policy or practice that prevented you from obtaining a light duty assignment during the first trimester of your pregnancy while employed at Davie.

This relief is being offered to you on the following condition: if you accept the relief, Davie will require you to release it from all employment discrimination claims you may presently have against it that are based upon any gender discrimination because Davie would not allow you light duty during the first trimester of your pregnancy. If you decline the relief, Davie will nevertheless have satisfied its obligation to the United States pursuant to the Consent Decree in the above-captioned case and the United States will not seek additional relief for you.

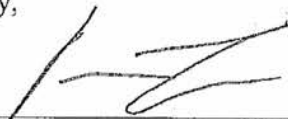
In order to obtain the offered relief, or any part of it, you must complete and return the enclosed Release and Election form. The Release must be signed in the presence of a notary public and thereafter notarized.

If you accept the offered relief, Davie will send you the appropriate monetary award within 30 calendar days of its receipt of your Release. Davie will also send you appropriate IRS forms with respect to the monetary award.

IF YOU FAIL TO SUBMIT THE RELEASE AND ELECTION FORM, AS DIRECTED IN THIS LETTER, WITHIN 30 CALENDAR DAYS FROM YOUR RECEIPT OF THIS LETTER, YOU WILL FORFEIT YOUR RIGHTS TO ANY MONETARY OR OTHER RELIEF UNDER THE CONSENT DECREE.

A copy of the Consent Decree is enclosed. If you have any questions concerning this settlement, you may contact Jeffrey Morrison, attorney for the United States Department of Justice, at (202) 353-1845.

Sincerely,



Onier Llopiz, Esq.
Lydecker | Diaz
1221 Brickell Avenue, 19th Floor
Miami, Florida 33131
Attorney for the Town of Davie, Florida

Enclosures

APPENDIX B

RELEASE

The United States of America v. Town of Davie, Florida

For and in consideration of the acceptance of the relief, or any part of it, offered to me by the Town of Davie, Florida pursuant to the provisions of the Consent Decree entered by the Honorable _____, United States District Judge, on _____, 2015 in *United States of America v. Town of Davie, Florida*, Civil Action _____, I, _____, hereby release and forever discharge the Town of Davie, Florida, its current, future, and past officials, employees and agents, of and from all legal and equitable claims, which accrued prior to _____ [date of entry of Consent Decree by the Court], for discrimination based on gender (pregnancy) because Davie would not allow me light duty during the first trimester of my pregnancy while I was employed at Davie.

I understand that the relief granted to me in consideration for this Release does not constitute an admission by the Town of Davie, Florida of the validity of any claim raised on my behalf.

This Release constitutes the entire agreement between the Town of Davie and me, without exception or exclusion.

I acknowledge that a copy of the Consent Decree in this action has been made available to me.

I HAVE READ THIS RELEASE WITH THE OPPORTUNITY TO EMPLOY THE ASSISTANCE OF COUNSEL OF MY OWN CHOOSING AND UNDERSTAND THE CONTENTS THEREOF AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Date: _____
[Name] _____

Subscribed and sworn to before me this ___ day of _____, 2015.

Notary Public

My commission expires: _____

ELECTION FORM

Please complete by checking the appropriate response to the following:

_____ I hereby accept the monetary award totaling \$5,000 provided for in the Consent Decree in *United States of America v. Town of Davie, Florida*, Civil Action No. _____ (S.D. Fl.).

_____ I hereby decline the monetary award provided for in the Consent Decree in *United States of America v. Town of Davie, Florida*, Civil Action No. _____ (S.D. Fl.).

Date _____ Signature: _____
[Name]

TO RECEIVE THIS AWARD, YOU ALSO MUST COMPLETE AND RETURN THE ENCLOSED RELEASE. FAILURE TO RETURN BOTH FORMS WITHIN 30 CALENDAR DAYS MAY RESULT IN YOUR FORFEITURE OF THE AWARD UNLESS GOOD CAUSE IS SHOWN FOR YOUR FAILURE TO DO SO.


RETURN THE COMPLETED FORMS IN THE ENCLOSED ENVELOPE ADDRESSED TO:

Lydecker | Diaz
1221 Brickell Avenue, 19th Floor
Miami, Florida 33131
Attn: Onier Llopiz, Esq.- ol@lydeckerdiaz.com
Stephanie Pidermann, Esq.- sp@lydeckerdiaz.com

Respectfully submitted,

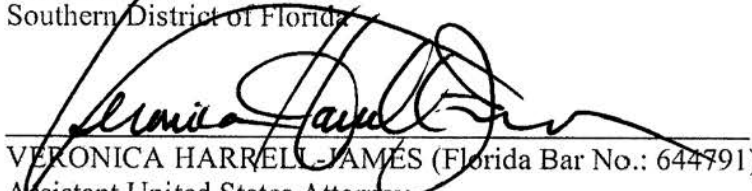
VANITA GUPTA
Acting Assistant Attorney General
Civil Rights Division

BY:


DEBORAH W. KENNEBREW (GA Bar No. 414320)
Chief
KAREN D. WOODARD (MD Bar - no number issued)
Deputy Chief
JEFFREY G. MORRISON (MO Bar No. 44401)
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Patrick Henry Building, Room 4613
Washington, DC 20530
Telephone: (202) 353-1845
Facsimile: (202) 353-8961
Email: jeffrey.morrison@usdoj.gov

WIFREDO A. FERRER
U.S. Attorney
Southern District of Florida

BY:


VERONICA HARRELL-JAMES (Florida Bar No.: 644791)
Assistant United States Attorney
99 N.E. 4th Street, 3rd Floor
Miami, Florida 33132
Telephone: (305) 961-9327
Facsimile: (305) 530-7139

Attorneys for the United States of America