

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

FILED BY [Signature] D.C.

AUG 25 PM 3:52

STEVEN M. LARMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIA

_____))
 UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF FORT PIERCE,)
)
 Defendant.)
)
 _____)

Civil Action No. **08 - 14309**
 Jury Trial Demanded
CIV-GRAHAM
MAGISTRATE JUDGE
LYNCH

COMPLAINT

Plaintiff, United States of America, alleges:

1. This action is brought on behalf of the United States 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").
2. This court has jurisdiction over the action under 42 U.S.C. § 2000e-5(f) and 28 U.S.C. § 1345.
3. Defendant, City of Fort Pierce (the "City"), is a corporate, governmental body, and a political subdivision of the State of Florida, established pursuant to the laws of the State of Florida.
4. The City is a person within the meaning of 42 U.S.C. § 2000e(a), and an employer within the meaning of 42 U.S.C. § 2000e(b).
5. Shirley Kirby ("Kirby"), an African-American woman, lives within this judicial district in Fort Pierce, Florida. She has been employed by the City since November 1981.
6. Kirby filed a timely charge of discrimination and retaliation (Charge Number 510-

2006-03182) against the City with the Equal Employment Opportunity Commission (“EEOC”) on or about August 14, 2006.

7. Pursuant to Section 706 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5, the EEOC investigated the charge of discrimination and retaliation filed by Kirby, issued a Determination finding that there is reasonable cause to believe the City violated Title VII with respect to Kirby, and unsuccessfully attempted to conciliate the charge. The EEOC subsequently referred the matter to the United States Department of Justice.

8. All conditions precedent to the filing of suit have been performed or have occurred.

RETALIATION COUNT

9. Because Kirby complained in May and June 2006 of racially discriminatory treatment against her and other African-American Code Enforcement Officers (“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), by, among other ways, moving her to “inside duty,” assigning her to work in an isolated cubicle and subsequently transferring her to a less desirable Data Entry Clerk position that constituted an effective demotion.

10. In 2006, Kirby was a twenty-five year veteran Code Enforcement Officer employed by the City.

11. On or about May 24, 2006, and on or about June 2, 2006, Kirby and fellow African-American Officers Ricky Duncan (“Duncan”), Fritz Burlinson (“Burlinson”) and Geneva Hasranah (“Hasranah”) complained to City management about what they reasonably believed to be racially disparate treatment in the handling and content of their written annual performance evaluations compared to white Officers.

12. On those same dates, Kirby, Duncan, Burlinson and Hasranah also complained to City management about what they reasonably believed to be racially disparate treatment by the City in paying newly hired, African-American Officers (not including Kirby) lower wages than similarly situated, newly hired, white Officers, and in maintaining the newly hired, African-American Officers in a probationary status while their newly hired, white counterparts were made permanent employees.

13. On those same dates, Kirby complained to City management about what she reasonably believed to be racially discriminatory treatment of her by the City's Director of the Code Enforcement Department, John Alcorn ("Alcorn"), based on an incident in the workplace when Alcorn referred to Kirby as a "monkey."

14. On or about July 17, 2006, Kirby complained to City management that she was being harassed by her white coworkers based on a newspaper report regarding Kirby's allegations of race discrimination that had been published on or about July 10, 2006.

15. On or about July 18, 2006, the City took Kirby off the "outside duty" of inspecting structures for code violations and reassigned her to "inside duty" handling data entry for the other Officers. The City ordered Kirby to work in a specially constructed, isolated cubicle that was unlike that of any of her coworkers, and that limited her ability to communicate with other employees. Kirby's white coworkers openly joked about her banishment to a "cell."

16. On July 27, 2006, despite Kirby having informed Alcorn that she never spoke to the press, Alcorn gave Kirby a document that purported to reprimand her and suspend her without pay for two days for "making or causing to be made the publishing of false, vicious or malicious statements concerning any employee, supervisors, the City or its operations." City management

later rescinded this discipline before it took effect.

17. Also on July 27, 2006, Alcorn requested in a memorandum directed to the Deputy City Manager, David Recor ("Recor"), that the City transfer Kirby out of the Code Enforcement Department.

18. Recor proposed to Kirby that she transfer to an available position in the Human Resources Department as an Executive Assistant/Secretary to the Human Resources Director, Mazella Smith ("Smith"). Kirby told Recor that she did not want to transfer to that position because she did not meet the typing requirements of the position and was concerned that she would be unable to perform the duties of that position. Smith also objected to Recor transferring Kirby to the position because Smith believed Kirby could not perform the job.

19. On August 7, 2006, Recor nevertheless transferred Kirby from her position as a Code Enforcement Officer to the Executive Assistant/Secretary position in the Human Resources Department. After Kirby proved unable to perform the duties as Smith's Executive Assistant/Secretary, Kirby was reassigned to a Data Entry Clerk position in the Human Resources Department.

20. Kirby's reassignment to the Data Entry Clerk position was an adverse action and constituted an effective demotion. Although Kirby's pre-existing salary was not altered, the Data Entry Clerk position to which she was transferred normally had a lower salary than her Officer position, had little opportunity for advancement compared to the Officer position, and did not have the flexibility, public interaction, independence or the prestige of the Officer position.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court grant the following relief:

(a) enjoin the City from further retaliation against Kirby and other African-American employees in violation of Title VII;

(b) order the City to offer Kirby reinstatement in her former position of Code Enforcement Officer, on "outside duty," together with back pay, interest and retroactive seniority as if she had not been transferred from the position;

(c) award compensatory damages to Kirby to fully compensate her for the pain and suffering caused by the City's retaliatory conduct as alleged in this Complaint, pursuant to and within the statutory limitations of Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a;

(d) order the City to remove from Kirby's personnel files and any other City files any negative references pertaining to Kirby's racial discrimination and retaliation complaints, the attempted retaliatory suspension of Kirby, and her retaliatory transfers;

(e) order the City to take remedial steps to ensure a non-discriminatory workplace for Code Enforcement Officers, including providing adequate training to all employees and officials responsible for making determinations regarding complaints of discrimination and retaliation;
and

(f) award such additional relief as justice may require, together with the United States' costs and disbursements in this action.



JURY DEMAND

The United States hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

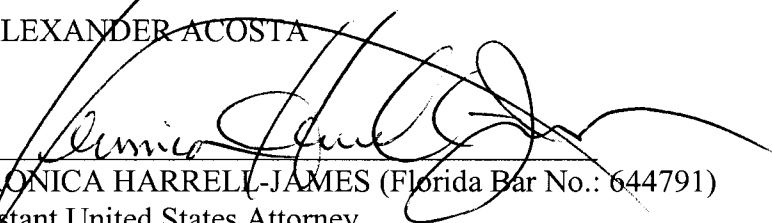
Respectfully submitted,

GRACE CHUNG BECKER
Acting Assistant Attorney General
Civil Rights Division

BY: 
JOHN M. GADZICHOWSKI (WI Bar No. 1014294)
Acting Chief



JODI B. DANIS (DC Bar No. 453493)
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
Email: jeffrey.morrison@usdoj.gov

R. ALEXANDER ACOSTA

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

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p>I. (a) PLAINTIFFS UNITED STATES OF AMERICA</p> <p>(b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) Please see attached.</p>	<p>DEFENDANTS 08-14309 CITY OF FORT PIERCE CIV-GRAHAM</p> <p>County of Residence of First Listed Defendant <u>ST. LUCIE</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known) Robert V. Schwerer, City Attorney's Office P.O. Box 1480 Fort Pierce, FL 34954</p>
--	---

MAGISTRATE JUDGE
LYNCH

(d) Check County Where Action Arose: DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input checked="" type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

FTP-08-14309-CV-GRAHAM-LYNCH

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<p>PERSONAL INJURY</p> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p style="text-align: center;">PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <p style="text-align: center;">SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p style="text-align: center;">FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <p style="text-align: center;">Habeas Corpus:</p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION Title VII, 42 U.S.C. 2000e, et seq. employment discrimination

LENGTH OF TRIAL via _____ days estimated (for both sides to try entire case)

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____ **CHECK YES only if demanded in complaint:**
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 8-25-08 SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____