RESPONDENT'S (CITY OF NORTH MIAMI)
POSITION STATEMENT

EEOC CHARGE NO.: 510-2013-01993

BACKGROUND

On or about March 14, 2013, Charging Party ("CP"), Natasha Jean Francios, an employee for the City of North Miami police department, ("City") filed a charge of discrimination in Charge No. 510-2013-01993, alleging that the City had discriminated against her on based on her gender in violation of Title VII of the Federal Civil Rights Act. Specifically, she alleges that she was treated differently and less favorably than her male counterparts, by issuing to her a written reprimand and notice of counseling for allegedly not following Sergeant Joseph Kissel's instructions regarding mailing envelopes and violating a non-existent dress code, respectively.

Following the CP's complaint, the City rescinded both the written reprimand dated December 18, 2012, for handwriting on an envelope as well as the notice of counseling dated May 22, 2012, for violating the dress code. (Ex. A) In addition to the recessions of the disciplinary actions, the City also ordered that Commander Scott Croye, Sergeant Angelo Brinson and Sergeant Joseph Kissel attend supervisor training; that Sergeant Kissel attend communication training; that all supervisors in the police department attend additional discrimination and harassment training; and the CP was removed from the supervision of Sergeant Kissel. (Ex. B)

The City of North Miami Police Department protects and serves the residents of the City of North Miami and has approximately 100 sworn police officers in the department. An integral part of the Department's mission is to maintain a safe and professional work environment, completely free of discrimination, harassment and retaliation. Every employee is aware that the

City has an absolute ZERO TOLERANCE for any harassment or discrimination. Any and all allegations of same are investigated thoroughly.

The City vehemently denies any and all allegations by the CP for the reasons set forth below.

DISCRIMINATION

THE CHARGING PARTY IS ALLEGING THAT HER SUPERVISOR JOSEPH KISSEL TREATED HER DIFFERENTLY AND LESS FAVORABLY THAN HER MALE COUNTERPARTS AND SPECIFICALLY, SHE WAS ISSUED DISCPLINARY ACTIONS FOR VIOLATING A NON-EXISTENT DRESS CODE AND NOT FOLLOWING SERGEANT KISSEL'S INSTRUCTIONS REGARDING ADDRESSING MAIL

The Charging Party alleges that she was treated differently and less favorably than her male counterparts, by allegedly violating a non-existent dress code and not following Sergeant Joseph Kissel's instructions regarding mailing envelopes.

Title VII of the Civil Rights Act prohibits employers from discriminating in the workplace on the basis of an individual's "race, color, religion, sex, or national origin." 42 U.S.C. § 2000e–2(a). To establish a prima facie case of race or sex discrimination, a plaintiff must show that: (1) she is a member of a protected class; (2) she was qualified for the position; (3) she suffered an adverse employment action; and (4) she was replaced by a person outside the protected class, or was treated less favorably than a similarly situated person outside the protected class. *See Jeronimus v. Polk County Opportunity Council, Inc.*, 145 Fed.Appx. 319, 324 (11th Cir. 2005). Disparate treatment can take the form either of a "tangible employment action," such as a firing or demotion, or of a "hostile work environment" that changes "the terms and conditions of employment, even though the employee is not discharged, demoted, or reassigned." *Hulsey v. Pride Rests.*, LLC, 367 F.3d 1238, 1245 (11th Cir. 2004). Disparate impact, in contrast, involves "facially neutral employment practices that have significant adverse

effects on protected groups . . . without proof that the employer adopted those practices with a discriminatory intent . . . . The evidence in these 'disparate impact' cases usually focuses on statistical disparities, rather than specific incidents, and on competing explanations for those disparities." *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 986–87, 108 S.Ct. 2777, 101 L.Ed.2d 827 (1988)

For several reasons, the CP's claim must fail. First, there was no evidence that she received the reprimand and counseling because she is a woman. Generally, courts have described direct evidence of discrimination as information that proves the existence of a fact in issue without inference or presumptions. Such evidence generally relates to the actions, statements, or biases of the defendant's decision maker. *Schweftfager v. Boynton Beach*, 42 F.Supp. 2d 1347, 1356 (S.D. Fla.1999). Where evidence is, by inference, subject to multiple meanings, it is not direct evidence. *Id* at 1357. Moreover, the law is well settled that to sustain this burden the complainant must present concrete evidence in the form of specific facts, not just conclusory allegations and assertions. *See Earley v. Champion International Corporation*, 907 F.2d 1077, 1081 (11th Cir. 1990). In the case, *sub judice*, CP's contention that she was discriminated against without any evidence substantiating the claim is fatally flawed.

Secondly, there is no evidence refuting the reasonable conclusion that the supervisor's actions were simply unfair or bad decision. It is axiomatic that it "is not enough that the Complainant show that the action was unfair, unreasonable, unwise or just a bad decision." *Combs v. Plantation Patterns,* 106 F.3d 1519, 1543 (11th Cir. 1997). An employee cannot overcome employer's proffered reason "merely by questioning the wisdom of the employer's reason. Complainant must show that it was unlawfully motivated. *Id.* The CP cannot meet this burden.

Next, there is absolutely no adverse action in this case. To show she suffered a materially adverse employment action, an employee must "establish an 'ultimate employment decision' or make some other showing of substantiality in the employment context." *Crawford v. Carroll*, 529 F.3d 961, 970 (11th Cir. 2008). A materially adverse employment action involves "a serious and material change in the terms, conditions, or privileges of employment." *Id.* at 970–71. The decision must, in some substantial way, "alter the employee's compensation, terms, conditions, or privileges of employment, deprive him or her of employment opportunities, or adversely affect his or her status as an employee." *Id.* at 970; *Davis v. Town of Lake Park, Fla.*, 245 F.3d 1232, 1239 (11th Cir. 2001) (finding that receipt of negative job performance memoranda did not constitute adverse employment actions in a case in which there was no showing that the plaintiff suffered any tangible consequence-loss of pay, benefits, or further discipline-as a result of receiving the memoranda).

Here, there could not have been any adverse action where the City rescinded both the written reprimand as well as notice of counseling. No adverse employment action occurs where an employer rescinds a decision to take action before the employee suffers a tangible harm. *See Pennington v. City of Huntsville*, 261 F.3d 1262, 1267 (11th Cir. 2001). In *Hills v. Wal-Mart Stores, Inc.* L 1839268, 4-5 (S.D. Fla. 2010), the plaintiff could not establish that she was subjected to an adverse employment action, and, thus, her discrimination claim failed as a matter of law. The plaintiff stated that her employment was terminated. However, the employer reversed the plaintiff's termination decision on the same day. The court restated the long standing principle that a plaintiff must show that she suffered "a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly

different responsibilities, or a decision causing a significant change of benefits." *Burlington Idus., Inc. v. Ellerth*, 524 U.S. 742, 761, 118 S.Ct. 2257, 141 L.Ed.2d 633 (1998).

Moreover, "[t]he employee's subjective view of the significance and adversity of the employer's action is not controlling; [rather], the employment action must be materially adverse as viewed by a reasonable person in the circumstances." *Hyde v. K.B. Home, Inc.,* 355 Fed. Appx. 266, 269 (11th Cir. 2009). Any reasonable person would conclude that where the action complained of was rescinded and the CP was removed from the chain of command of the supervisor that she complained about, her allegations cannot stand. Even if the disciplinary actions were not rescinded, there was insufficient evidence to sustain an action for discrimination.

Conclusion

The EEOC should deny the claims by the Charging Party Natacha Jean Francois for the above referenced reasons.

Respectfully submitted,

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