

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

CASE NO.: 9:20-cv-80075

VICTOR HERNANDEZ,

Plaintiff,

v.

PALM BEACH COUNTY FIRE RESCUE,

Defendant.

\_\_\_\_\_ /

**NOTICE OF REMOVAL**

COMES NOW, the Defendant, PALM BEACH COUNTY (“the County”), by and through undersigned counsel, and pursuant to Title 28, United States Code, Sections 1331, 1441, and 1446, hereby files this Notice of Removal and states:

1. On January 13, 2020, the County was served with Plaintiff’s Complaint in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida where it was assigned Case No. 502019CA015241XXXXMB AI. A true and accurate copy of the Complaint is attached hereto as Exhibit 1.

2. A copy of the Fifteenth Judicial Circuit docket regarding the instant case is attached hereto as Exhibit 2.

3. The face of the Complaint indicates that Count I arises out of an alleged violation of American with Disabilities Act of 1990 U.S.C. § 12111 and the Florida Civil Rights Act of 1992, Chapter 760, *et. seq.*. Exhibit 1, ¶ 1.

4. The Complaint also alleges jurisdiction under 28 USC §1331 and 28 USC §1343. Exhibit 1, ¶ 2. The County asserts that Court has original jurisdiction over this action as

provided in 28 U.S.C. § 1331, and is properly removable pursuant to 28 U.S.C. § 1441(a) and 28 U.S.C. § 1446(b). *See e.g. Incredible Invs., LLC v. Fernandez-Rundle*, 984 F. Supp. 2d 1318, 1323 (S.D. Fla. 2013) (action seeking declaratory relief, alleging violations of federal and Florida constitutions, was removed to this Court, pursuant to 28 U.S.C. §§ 1441(a) & 1446).

5. Notice of this removal has been provided to Plaintiff and the Clerk of Court for the Fifteenth Judicial Circuit pursuant to 28 U.S.C. § 1446(d).

6. This Notice of Removal has been filed within thirty (30) days after service of the Complaint in compliance with 28 U.S.C. § 1446(b).

Dated: January 21, 2020.

Respectfully submitted,

/s/ Kim Phan /

Kim Phan, Esquire  
Assistant County Attorney  
Florida Bar No. 026781  
300 North Dixie Highway, Third Floor  
West Palm Beach, Florida 33401  
Tel.: (561) 355-2529 / Fax: (561) 355-4234  
Email: [kphan@pbcgov.org](mailto:kphan@pbcgov.org); [ldennis@pbcgov.org](mailto:ldennis@pbcgov.org)  
[swebber@pbcgov.org](mailto:swebber@pbcgov.org)

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via the E-Filing Portal to: Rainier Regueiro, Esquire of REMER & GEORGES-PIERRE, PLLC, 319 Clematis Street, Suite 606, West Palm Beach, FL 33401 at [rregueiro@rgpattorneys.com](mailto:rregueiro@rgpattorneys.com) on this 21 day of January, 2020.

/s/ Kim Phan /

Kim Phan, Esquire  
Assistant County Attorney  
Florida Bar No. 026781  
300 North Dixie Highway, Third Floor  
West Palm Beach, Florida 33401  
Tel.: (561) 355-2529 / Fax: (561) 355-4234  
Email: [kphan@pbcgov.org](mailto:kphan@pbcgov.org); [ldennis@pbcgov.org](mailto:ldennis@pbcgov.org)  
[swebber@pbcgov.org](mailto:swebber@pbcgov.org)

JS 44 (Rev. 02/19)

**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 NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Victor Hernandez

(b) County of Residence of First Listed Plaintiff Palm Beach  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Rainier Regueiro, Esquire of Remer & Georges-Pierre, PLLC; 319 Clematis St., Suite 606, WPB, FL 33401; 561-225-1970

**DEFENDANTS**

Palm Tran

County of Residence of First Listed Defendant Palm Beach  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)  
Kim Phan, Esquire of Palm Beach County Attorney's Office; 300 North Dixie Highway, Third Floor, WPB, FL 33401; 561-355-2529

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | 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 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 |

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

Click here for: Nature of Suit Code Descriptions.

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 (Excludes 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	<b>PERSONAL INJURY</b> <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 <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <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"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <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))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <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"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <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	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input checked="" type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**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 - Transfer
- 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 American with Disabilities Act 42 USC 12112 and Civil Rights 28 USC 1343  
 Brief description of cause:

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ \_\_\_\_\_ CHECK YES only if demanded in complaint:  
 JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 01/16/2020 SIGNATURE OF ATTORNEY OF RECORD *Victor Hernandez*

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

IN THE CIRCUIT COURT OF THE  
15<sup>th</sup> JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY,  
FLORIDA

CASE NO.: 50-2019-CA-015241-XXXX-MB

VICTOR HERNANDEZ,

Plaintiff,

vs.

PALM BEACH COUNTY FIRE RESCUE.

Defendant.

*MC*  
*#1055*  
*1/13/20*  
*11:25*

SUMMONS IN A CIVIL CASE

TO: PALM BEACH COUNTY FIRE RESCUE. Through its Mayor:

MACK, BERNARD  
301 NORTH OLIVE AVENUE, STE, 1201  
WEST PALM BEACH, FL. 33401

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY

RAINIER REGUEIRO, ESQ.  
REMER & GEORGES-PIERRE, PLLC.  
COMEAU BUILDING  
319 CLEMATIS STREET  
SUITE 606  
WEST PALM BEACH, FL. 33401

an answer to the complaint which is herewith served upon you, within **20 days** after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

**SHARON R. BOCK**

CLERK

DATE **Jan 02 2020**

*Josie Lucce*

(BY) DEPUTY CLERK **JOSIE LUCCE**



**EXHIBIT 1**

IN THE CIRCUIT COURT OF THE  
15TH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY,  
FLORIDA

**VICTOR HERNANDEZ**  
Plaintiff,

Case No.

vs.

**PALM BEACH COUNTY FIRE RESCUE**  
Defendant(s).

**COMPLAINT**

Plaintiff, **VICTOR HERNANDEZ** (hereinafter "Plaintiff"), by and through the undersigned counsel, hereby sues Defendant, **PALM BEACH COUNTY FIRE RESCUE** ("Defendant"), and in support avers as follows:

**GENERAL ALLEGATIONS**

1. This is an action by the Plaintiff for damages, declaratory and injunctive relief and damages under the Americans with Disabilities Act of 1990 42 U.S.C. § 12111, *et seq.* ("ADA"), as amended, the Florida Civil Rights Act of 1992, Chapter 760, *et seq.* ("FCRA"), to redress injuries resulting from Defendant's unlawful, disability-based discriminatory treatment against Plaintiff.
2. Jurisdiction of this Court is invoked pursuant 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1343 (civil rights claim jurisdiction). Declaratory, injunctive, legal and equitable reliefs are sought pursuant to the laws set forth above together with attorneys' fees, costs and damages.
3. Plaintiff continues to be, a resident of Palm Beach County, Florida.

4. Plaintiff was an employee of Defendant, performing duties in Palm Beach County, Florida.
5. Defendant was a “person” and/or an “employer” pursuant to Florida Civil Rights Act of 1992, *Fla. Stat. Section 760.01, et seq.*, since it employs fifteen or more employees for the applicable statutory period; and it is subject to the employment discrimination provisions of the applicable statute, the FCRA.
6. Defendant is a “person” within the purview of the Florida Civil Rights Act of 1992, *Fla. Stat. Section 760.01, et seq.*
7. At all times material hereto Defendant was an “employer” within the meaning of Florida Civil Rights Act of 1992, *Fla Stat. Section 760.01, et seq.*
8. At all times material hereto, Plaintiff was an “employee” within the meaning of Florida Civil Rights Act of 1992, *Fla Stat. Section 760, et seq.*
9. Venue is proper in West Palm Beach County because all of the actions complained of herein occurred within the jurisdiction of Palm Beach County.
10. On January 28, 2019, Plaintiff filed a timely charge of employment discrimination with the Equal Employment Opportunity Commission, the agency which is responsible for investigating claims of employment discrimination.
11. On February 15, 2019, Plaintiff filed an Amended charge of employment discrimination with the Equal Employment Opportunity Commission.
12. All conditions precedent for the filing of this action before this Court has been previously met, including the exhaustion of all pertinent administrative procedures and remedies.

**FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

13. Plaintiff was employed by Defendant from on or about May 19, 2008, and left for Florida and Medical Leave (FMLA) on or about March, 2018.
14. Throughout his employment with Defendant, Plaintiff performed his duties in an exemplary fashion.
15. Plaintiff started dating Rachael Norman in May, 2017. Rachael Norman is the former spouse of Lt. Alejandro Herrera.
16. Plaintiff's ex-girlfriend, Nicole Ackerman, and Lt. Alejandro Herrera both anonymously sent allegedly "compromising pictures" to Plaintiff's supervisor. However, the pictures were found inconclusive.
17. On January 6, 2018, Plaintiff left his private residence to go out of town.
18. Although the Palm Beach County Fire Rescue had documentation that Plaintiff was on vacation, on January 8, 2018, the Palm Beach County Fire Rescue broke into Plaintiff's residence without verbal or written notice or consent, due to the belief Plaintiff was suicidal, according to Chief Wasielewski and Chief Gaffney.
19. Before this incident, Plaintiff never had suicidal thoughts or tendencies, and the breaking and entering into Plaintiff's premises was based on the unfounded belief of Plaintiff's suicidal and mental issues.
20. Plaintiff received an email on January 23<sup>rd</sup>, 2018 regarding disciplinary action for unauthorized absence and "accumulative discipline" although according to the Employee Performance Review Addendum, Plaintiff's overall rating is acceptable and was condemned by EMS Captain Nahas.



21. Plaintiff met with Chief Gaffney, who made several inappropriate comments about Plaintiff's health, referring Plaintiff to the Employee Assistance Program (EAP) for a mental health evaluation.
22. Plaintiff complained to his Union Representative, Joel Briar, that he was being treated unfairly and the conditions were getting worse and worse, causing the investigation to be handled with bias.
23. Chief Gaffney perceives Plaintiff has a mental disability and has acted in a manner to eliminate Plaintiff from his station due to prejudice he has towards mentally disabled individuals.
24. Plaintiff was not suicidal before this incident; however, after the accusations and referrals for mental health evaluations, Plaintiff has become emotionally distressed and acquired suicidal tendencies.
25. Because Plaintiff was perceived to have a mental disability, causing emotional distress and suicidal tendencies, Plaintiff had no choice but to go on FMLA leave.
26. Plaintiff continues to see the FLMA therapist, although his recommendation is that Plaintiff does not need, nor never needed to see a therapist.
27. Any reason proffered by Defendant for Plaintiff's recommendation of dismissal as a firefighter is mere pretext for unlawful discrimination on the basis of his perceived disability; throughout Plaintiff's employment he was able to perform the essential functions of his job duties and responsibilities, and at all relevant times Plaintiff did perform his job at satisfactory or above-satisfactory levels
28. Plaintiff has retained the undersigned counsel in order that his rights and interests may be protected.

**COUNT I**

***Disability Discrimination in Violation of the ADA against  
PALM BEACH COUNTY FIRE RESCUE***

29. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1-29 above as if set out in full herein.
30. Plaintiff is a member of a protected class under the ADA.
31. By the conduct describe above, Defendant has engaged in discrimination against Plaintiff because of Plaintiff's disability and subjected the Plaintiff to disability-based animosity.
32. Such discrimination was based upon the Plaintiff's perceived disability in that Plaintiff would not have been the object of discrimination but for the fact that Plaintiff was perceived as disabled.
33. Defendant's conduct complained of herein was willful and in disregard of Plaintiff's protected rights. Defendant and its supervisory personnel were aware that discrimination on the basis of Plaintiff's disability was unlawful but acted in reckless disregard of the law.
34. At all times material hereto, the employees exhibiting discriminatory conduct towards Plaintiff possessed the authority to affect the terms, conditions, and privileges of Plaintiff's employment with the Defendant.
35. Defendant retained all employees who exhibited discriminatory conduct toward the Plaintiff and did so despite the knowledge of said employees engaging in discriminatory actions.
36. As a result of Defendant's actions, as alleged herein, Plaintiff has been deprived of rights, has been exposed to ridicule and embarrassment, and has suffered emotional distress and damage.

37. The conduct of Defendant, by and through the conduct of its agents, employees, and/or representatives, and the Defendant's failure to make prompt remedial action to prevent continued discrimination against the Plaintiff, deprived the Plaintiff of statutory rights under federal law.
38. The actions of the Defendant and/or its agents were willful, wanton, and intentional, and with malice or reckless indifference to the Plaintiff's statutorily protected rights, thus entitling Plaintiff to damages in the form of compensatory and punitive damages pursuant to federal law, to punish the Defendant for its actions and to deter it, and others, from such action in the future.
39. Plaintiff has suffered and will continue to suffer both irreparable injury and compensable damages as a result of Defendant's discriminatory practices unless and until this Honorable Court grants relief.

**JURY DEMAND**

Plaintiff demands trial by jury of all issues triable as of right by jury.

Dated: 11/27/2019

Respectfully submitted,

/s/Rainier Regueiro  
Rainier Regueiro, Esq.  
Florida Bar No. 115578  
**REMER & GEORGES-PIERRE, PLLC**  
319 Clematis St. Suite 606  
West Palm Beach, FL 33401  
Telephone: 561-225-1970  
Fax: 305-416-5005

EEOC Form 6 (2007)

# CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented to: Agency(ies) Charge No.(s)

FEPA (MDCCHR & FCHR)  
 EEOC

EEOC - U.S. Equal Employment Opportunity Commission,  
 FCHR - Florida Commission on Human Relations and  
 MDCCHR - Miami-Dade County Commission on Human Rights  
 State or local Agency, if any

Name (Indicate Mr. Ms. Mrs.) **Mr. Victor Hernandez** Home Phone (Incl. Area Code) **(954) 638-7906** Date of Birth **04/28/1981**

Street Address **2224 Artera Ct.** City, State and ZIP Code **Royal Palm Beach, FL, 33411**

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name **Palm Beach County Fire Rescue** No. Employees, Members **50+** Phone No. (Include Area Code) **(561) 616-7000**

Street Address **405 Pike Road** City, State and ZIP Code **West Palm Beach, FL, 33411**

Name **RECEIVED** No. Employees, Members Phone No. (Include Area Code)

Street Address **JAN 30 2019** City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)  
 RACE  COLOR  SEX  RELIGION  NATIONAL ORIGIN  RETALIATION  AGE  DISABILITY  OTHER (Perceived Disability)

DATE(S) DISCRIMINATION TOOK PLACE  
 Earliest **1/2018** Latest **Present**  
 CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attached extra sheet(s)):

I feel that I have been discriminated and retaliated against by my employer Palm Beach County Fire Rescue. (government entity) through their Senior Employees, (my direct supervisors), Chief Hoch, Chief Wasieleski, Chief Gaffney, Captain Little, Firefighter/Medic Vinyets, and Lieutenant Prather due to my perceived disability. I am a male individual with a perceived mental disability of Depression and Anxiety who underwent a series of retaliations and discriminations and I have been employed by this company since May 19, 2008. The discrimination I was subject to includes, but is not limited to, the following:

I was the victim of a smear campaign involving my ex-girlfriend (Nicole Ackerman) and current girlfriend of my fellow co-worker, Lt. Alejandro Herrera, where Ms. Ackerman and Lt. Herrera both anonymously sent allegedly "compromising" pictures to my supervisors with the hopes of getting me fired as a fire fighter and to end my career because Ackerman and I used to date and she was vengeful. However, the photos were deemed inconclusive, and I have been unfairly treated, threatened, mocked by my superiors ever since, and I have been sent to a mandated therapist, weekly, ever since even though the therapist has stated that there is no reason for me to be there. For the first Ten years of my employment I have received excellent yearly evaluations and was without incident requiring a write up. At the time this smear campaign was under investigation, I was under enormous stress and took leave to alleviate the stressful work environment and thereafter is when I was transferred to a new station assignment and started to receive multiple written reprimands, four in total, from Chief Gaffney that lead to his ultimate recommendation of dismissal as a firefighter. These reprimands all mention my alleged declining mental health even though my mental health is not declining. The first of these write-ups was for threatening an employee and for conducting a false report during a formal investigation. These are false accusations and I was cleared of all formal wrong doing by the administration. The second was while I was on approved leave. The write-up, dated 3/9/18, although I was on leave 1/8/18, concluded I was "AWOL", even though it was documented I was in Orlando on vacation. Further, they broke into my house looking for me while I was on vacation, thinking I was a suicide threat. I received the recommendation of being suspended for three shifts, was told that I was mentally unstable, and told that I had mental and personal problems. It was also falsely fabricated, in the write-up, that I had a record of disciplinary issues. I had also discussed these matters with Chief Gaffney at an earlier time, and then was strategically transferred to work under Chief Gaffney by Chief Hoch, as a retaliation tactic and to be intentional subjected to multiple discriminatory practices.

The third write-up, 3/12/18 had stated that I missed the Presidential detail at Mar-a-Lago, when the truth is I was merely late due to our truck being rerouted by security detail, a circumstance Chief Gaffney was aware. The action taken by chief Gaffney recommended my dismissal, even though proper protocol of written notice or verbal discipline beforehand was not followed. The fourth write-up, 3/16/18, was a referral to be sent to EAP for a mental health evaluation, by Chief Gaffney, stating I had a noticeable decline in my professional performance and work attitude. I was also told that any

... grievance that he would be denied... Gaffney including I have mental and personal life issues. It is my feeling that Chief... they perceives that... disabilities which I do not and has acted in this manner to eliminate me from his station due to a prejudice he has towards mentally disabled individuals. I had no choice but to go on FMLA leave or risk being terminated and due to this I continue to see a mandated FMLA therapist even though his recommendation is that I don't need, nor ever needed to see him. I have been unnecessarily harassed, threatened and mocked by the supervisors, and colleagues, I trusted with the truth of my matter, and I feel I have been unfairly treated.

I feel that I am very qualified, and employer records would demonstrate that I am a good employee. I believe that I have been discriminated against in violation of the Civil Rights Act of 1964, Title VII, the Florida Civil Rights Act, and local laws.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements



*J. BRAVO* 01.28.2019

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.  
SIGNATURE OF COMPLAINANT

1/28/2019  
Date  
*[Signature]*  
Charging Party Signature

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
(month, day, year) 01.28.2019

RECEIVED

JAN 30 2019

EEOC-MIAMI DISTRICT OFFICE

EEOC Form 5 (5/01)

<p><b>AMENDED CHARGE OF DISCRIMINATION</b>                  This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</p>	Charge Presented to: Agency(ies) Charge No(s):  <input checked="" type="checkbox"/> FEPA (MDCCHR & FCHR) <input checked="" type="checkbox"/> EEOC
---	--

EEOC – U.S. Equal Employment Opportunity Commission,  
 FCHR – Florida Commission on Human Relations and  
 MDCCHR – Miami-Dade County Commission on Human Rights  
*State or local Agency, if any*

Name ( <i>indicate Mr. Ms. Mrs.</i> ) <b>Mr. Victor Hernandez</b>	Home Phone (Incl. Area Code) <b>(954) 638-7906</b>	Date of Birth <b>04/28/1981</b>
--	---	------------------------------------

Street Address <b>2224 Artera Ct.</b>	City, State and ZIP Code <b>Royal Palm Beach, FL, 33411</b>
--	--

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I believe Discriminated Against Me or Others. (*If more than two, list under PARTICULARS below.*)

Name <b>Palm Beach County Fire Rescue</b>	No. Employees, Members <b>50+</b>	Phone No. (Include Area Code) <b>(561) 616- 7000</b>
--	--------------------------------------	---

Street Address <b>405 Pike Road</b>	City, State and ZIP Code <b>West Palm Beach, FL, 33411</b>
--	---

Name	No. Employees, Members	Phone No. (Include Area Code)
------	------------------------	-------------------------------

Street Address	City, State and ZIP Code
----------------	--------------------------

DISCRIMINATION BASED ON ( <i>Check appropriate box(es).</i> )  <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN  <input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input checked="" type="checkbox"/> DISABILITY <input checked="" type="checkbox"/> OTHER (Perceived Disability)	DATE(S) DISCRIMINATION TOOK PLACE  <table style="width:100%; border: none;"> <tr> <td style="text-align: center;">Earliest 1/201</td> <td style="text-align: center;">Latest Present</td> </tr> <tr> <td colspan="2" style="text-align: center;"><input checked="" type="checkbox"/> CONTINUING ACTION</td> </tr> </table>	Earliest 1/201	Latest Present	<input checked="" type="checkbox"/> CONTINUING ACTION	
Earliest 1/201	Latest Present				
<input checked="" type="checkbox"/> CONTINUING ACTION					

THE PARTICULARS ARE (*If additional paper is needed, attached extra sheet(s)*):

I feel that I have been discriminated and retaliated against by my employer Palm Beach County Fire Rescue. (government entity) through their Senior Employees, (my direct supervisors), Chief Hoch, Chief Wasielski, Chief Gaffney, Captain Little, Firefighter/Medic Vinyets, and Lieutenant Prather due to my perceived disability. I am a male individual with a perceived mental disability of Depression and Anxiety who underwent a series of retaliations and discriminations and I have been employed by this company since May 19, 2008. The discrimination I was subject to includes, but is not limited to, the following:

I was the victim of a smear campaign involving my ex-girlfriend (Nicole Ackerman) and current girlfriend of my fellow co-worker, Lt. Alejandro Herrera, where Ms. Ackerman and Lt. Herrera both anonymously sent allegedly "compromising" pictures to my supervisors with the hopes of getting me fired as a fire fighter and to end my career because Ackerman and I used to date and she was vengeful. However, the photos were deemed inconclusive, and I have been unfairly treated, threatened, mocked by my superiors ever since, and I have been sent to a mandated therapist, weekly, ever since even though the therapist has stated that there is no reason for me to be there. For the first Ten years of my employment I have received excellent yearly evaluations and was without incident requiring a write up. At the time this smear campaign was under investigation, I was under enormous stress and took leave to alleviate the stressful work environment and thereafter is when I was transferred to a new station assignment and started to receive multiple written reprimands, four in total, from Chief Gaffney that lead to his ultimate recommendation of dismissal as a firefighter. These reprimands all mention my alleged declining mental health even though my mental health is not declining. The first of these write-ups was for threatening an employee and for conducting a false report during a formal investigation. These are false accusations and I was cleared of all formal wrong doing by the administration. The second was while I was on approved leave. The write-up, dated 3/9/18, although I was on leave 1/8/18, concluded I was "AWOL", even though it was documented I was in Orlando on vacation. Further, they broke into my house looking for me while I was on vacation, thinking I was a suicide threat. I received the recommendation of being suspended for three shifts, was told that I was mentally unstable, and told that I had mental and personal problems. It was also falsely fabricated, in the write-up, that I had a record of disciplinary issues. I had also discussed these matters with Chief Gaffney at an earlier time, and then was strategically transferred to work under Chief Gaffney by Chief Hoch, as a retaliation tactic and to be intentional subjected to multiple discriminatory practices.

The third write-up, 3/12/18 had stated that I missed the Presidential detail at Mar-a-Lago, when the truth is I was merely late due to our truck being rerouted by security detail, a circumstance Chief Gaffney was aware. The action taken by chief Gaffney recommended my dismissal, even though proper protocol of written notice or verbal discipline beforehand was not followed. The fourth write-up, 3/16/18, was a referral to be sent to EAP for a mental health evaluation, by Chief Gaffney, stating I had a noticeable decline in my professional performance and work attitude. I was also told that any

grievance I may file would be denied by Gaffney out of spite, and was again forced to hear derogatory comments by Chief Gaffney including I have mental and personal life issues. It is my feeling that Chief Gaffney perceives that I have mental disabilities which I do not and has acted in this manner to eliminate me from his station due to a prejudice he has towards mentally disabled individuals. I had no choice but to go on FMLA leave or risk being terminated and due to this I continue to see a mandated FMLA therapist even though his recommendation is that I don't need, nor ever needed to see him. I have been unnecessarily harassed, threatened and mocked by the supervisors, and colleagues, I trusted with the truth of my matter, and I feel I have been unfairly treated.

I feel that I am very qualified, and employer records would demonstrate that I am a good employee. I believe that I have been discriminated against in violation of the Americans with Disabilities Act and the Florida Civil Rights Act, and local laws.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

*Jezenia Bravo*



I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

*Provided FL DL*

*[Handwritten signature]*

*2/15/2019*  
Date

*[Handwritten signature]*  
Charging Party Signature

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
(month, day, year) *02/15/2019*





**CASE NUMBER: 50-2019-CA-015241-XXXX-MB**  
**CASE STYLE: HERNANDEZ, VICTOR V PALM BEACH COUNTY FIRE RESCUE**

Dockets & Documents ▾

Public =

VOR =

In Process =   
Page Size: 25 ▾

Docket Number	Effective Date	Description
1	11/27/2019	CIVIL COVER SHEET
2	11/27/2019	COMPLAINT
3	12/04/2019	DIVISION ASSIGNMENT
4	12/04/2019	PAID \$401.00 ON RECEIPT 3442039
5	01/02/2020	SUMMONS ISSUED
6	01/02/2020	PAID \$10.00 ON RECEIPT 3479016
7	01/19/2020	SERVICE RETURNED (NUMBERED)

## EXHIBIT 2