

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 06-61483-CIV-MOORE/GARBER

UNITED STATES EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

and

DANIEL WOLANSKY,

Plaintiff-Intervenor,

v.

UNITED HEALTHCARE OF FLORIDA, INC,

Defendant.

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**CONSENT DECREE**

1. This Consent Decree ("Decree") is made and entered into by and between Plaintiff, the United States Equal Employment Opportunity Commission (the "Commission" or "EEOC"), Daniel Wolansky ("Wolansky"), and Defendant, United HealthCare of Florida, Inc. ("Defendant" or "United HealthCare"). The Commission, Wolansky and Defendant are collectively referred to as the "Parties" throughout this Decree.

2. The Commission filed this action on September 28, 2006 under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e *et seq.* ("Title VII") and Title I of the Civil Rights Act of 1991, alleging unlawful employment practices on the basis of sex (male) and retaliation, and to provide appropriate relief to Wolansky, whom it alleged was adversely affected by such practices.

3. The Court granted Wolansky's Motion to Intervene in this action. Like the EEOC, Wolansky alleged that Defendant violated Title VII. Wolansky's Complaint also alleged that Defendant violated the Florida Civil Rights Act of 1992, Fla. Stat. § 760 et seq.

4. Nothing contained in this Decree shall be deemed by any Party to be an admission of liability on the part of Defendant. Nor does the settlement of this matter constitute an admission by EEOC or Wolansky as to any claims made by Defendant in its Answers and Affirmative Defenses.

5. In the interest of resolving this matter, to avoid the cost of litigation, and as a result of having engaged in comprehensive settlement negotiations, the Parties have agreed that this action should be finally resolved by the entry of this Decree. This Decree is final and binding on the Parties, their successors and assigns.

6. The Parties agree that this Decree resolves all claims against Defendant alleged in EEOC Charge Number 150-2005-01956 and the Complaint filed in this action. The Parties further agree that this Decree does not resolve any future or pending EEOC Charges of Discrimination other than the Charge referred to in this Paragraph.

#### **I. FINDINGS**

7. Having carefully examined the terms and provisions of this Decree, and based on the pleadings, record, and stipulations of the Parties, the Court finds the following:

a. This Court has jurisdiction over the subject matter of this action and of the Parties.

b. No Party shall contest the jurisdiction of this federal court to enforce this Decree and its terms or the right of EEOC to bring an enforcement suit upon alleged breach of any term(s) of this Decree.

c. The terms of this Decree are adequate, fair, reasonable, equitable, and just. The rights of Wolansky and the public interest are adequately protected by this Decree.

d. This Decree conforms with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights or privileges of any person. The entry of this Decree will further the objectives of Title VII and will be in the best interests of Wolansky, United HealthCare, EEOC and the public.

e. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, and officers, successor and assigns of United HealthCare.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

## **II. GENERAL INJUNCTIVE PROVISIONS**

8. Defendant, its officers, managers, employees, agents and partners, successors and assigns, are enjoined from engaging in conduct that discriminates on the basis of sex in violation of Title VII.

9. Defendant, its officers, managers, agents and partners, successors and assigns, and all persons acting in concert with it are enjoined from discriminating or retaliating against any employee because he or she has opposed any of Defendant's practices which the employee believed to be a violation of Title VII, filed a charge of discrimination with the EEOC alleging violation(s) of such statute, testified or participated in any manner in any investigation, proceeding, or hearing under Title VII, or asserted any rights under this Decree.

## **III. ADOPTION AND DISTRIBUTION OF ANTI-HARASSMENT POLICY**

10. Defendant has maintained an anti-harassment policy ("Policy"), which will be revised pursuant to this Paragraph 10. This Policy prohibits sexual harassment at work, and

urges employees to speak freely about sexual harassment without any fear of retaliation. The Policy must clearly define prohibited conduct and specifically prohibit harassing employees based on their sex regardless of their gender. The Policy also must specify that prohibited behavior will not be tolerated from employees, customers, clients and any other persons present at any of Defendant's facilities. The Policy shall provide that complaints of sexual harassment, regardless of gender, and/or retaliation may be made to any person in the chain of command above an employee or directly to Human Capital or HRdirect personnel; employees will not be required to complain of sexual harassment and/or retaliation to a person against whom they allege harassment and/or retaliation has occurred; employees who make good faith complaints of harassment or provide information related to such complaints will be protected against retaliation; Defendant will take immediate and appropriate corrective action if and when it determines that harassment and/or retaliation has taken place; employees who violate the Policy are subject to discipline up to and including termination. Defendant agrees to add a section to its anti-harassment policy that investigations of complaints of harassment and retaliation made to a manager, Human Capital, or HRdirect shall be initiated within five (5) business days.

11. A copy of the Policy, with the new section on the timing of investigations, shall be forwarded to EEOC within thirty (30) calendar days of entry of this Decree. This and any other submissions, reports, certifications, notices, or other materials that are required to be submitted to EEOC shall be mailed to: United HealthCare Settlement, c/o Senior Trial Attorney Cheryl Cooper, United States Equal Employment Opportunity Commission, One Biscayne Tower, 2 South Biscayne Boulevard, Suite 2700, Miami, Florida 33131.

12. The Policy shall be distributed electronically within sixty (60) calendar days to all of Defendant's employees (including managers) at its Florida facilities, with notice that

Defendant has revised the Policy and that all employees (including managers) must read it. The Policy shall be included in any relevant policy or employee manuals used by Defendant's businesses, and shall also be kept and maintained in a conspicuous and accessible place for all employees and printed in a font that is easily legible (at least 12 point font). Defendant will make Human Capital or HRdirect personnel available to discuss the Policy if any employee (including a manager) does not understand the Policy.

13. A copy of the Policy shall be distributed to each new regular full-time, part-time or temporary employee (including managers) at Defendant's Florida facilities on or about the day the employee is hired. Distribution may be accomplished through Defendant's New Employee Orientation process. United HealthCare shall maintain records demonstrating that each new employee received the Policy. Defendant will make Human Capital or HRdirect personnel available to discuss the Policy if any employee (including a manager) does not understand the Policy.

#### **IV. TRAINING**

14. During each of the three (3) years covered by this Decree, Defendant shall provide training to all United HealthCare employees at its Sunrise, Florida location, including all of its managers and supervisory personnel, on equal employment opportunity laws (including sexual harassment and retaliation) and the Policy. The training shall be conducted by an organization mutually agreed upon with the EEOC. Additionally, Defendant agrees that the EEOC shall, at the EEOC's discretion, be in attendance at each training session. The first training shall take place within sixty (60) calendar days of entry of this Decree. The remainder of the training sessions shall take place annually and no later than September 30<sup>th</sup> of each year throughout the duration of the Decree.

15. Within ten (10) days of completion of the training, Defendant shall notify EEOC of the dates the training was conducted, the name and job title of the person(s) who conducted the training, and the name and job title of each person who received the training.

16. Defendant agrees to provide EEOC, upon request, with any and all copies of pamphlets, brochures, outlines or other written materials provided to the participants during the training sessions.

#### **V. POSTING**

17. Within five (5) business days after entry of this Decree, United HealthCare shall post an eleven (11) inches by fourteen (14) inches laminated copy of the Notice attached as Exhibit A to this Decree. The Notice shall be posted at Defendant's Sunrise, Florida facility for the duration of this Decree in a conspicuous location accessible to all employees (i.e. employee bulletin board or lunch room). The Notice shall remain posted for three (3) years from the date of entry of this Decree. Defendant shall take all reasonable steps to ensure that the posting is not altered, defaced or covered by any other material. Defendant shall certify to EEOC in writing within ten (10) business days after entry of the Decree that the Notice has been properly posted.

#### **VI. RECORD KEEPING**

18. For a period of three (3) years following entry of this Decree, United HealthCare shall maintain and make available for inspection and copying by EEOC, records (including name, address, home telephone number, mobile number, complaint and resolution of the complaint) of each person complaining about sexual harassment or retaliation for complaining about sexual harassment at Defendant's Sunrise, Florida facility.

19. United HealthCare shall make all documents or records referred to in Paragraphs 12, 13, 16, and 17, available for inspection and copying within ten (10) business days after

EEOC so requests. In addition, Defendant shall provide the last known home address and home telephone number for all persons within its employ during the term of the Decree whom EEOC requests and identifies for purposes of verifying compliance with this Decree within ten (10) business days of EEOC's request. Moreover, United HealthCare shall permit employees whom EEOC requests to interview for the purposes of verifying compliance with this Decree to speak confidentially with EEOC. In the event that EEOC is unable to contact an employee for purposes of verifying compliance with this Decree, it shall notify United HealthCare and United HealthCare shall, within ten (10) business days, provide EEOC with the employee's scheduled hours of work over the next fourteen (14) day period so that EEOC can conduct the interview at the employee's breaks, at the end of the day, or at some other time convenient to the employee and EEOC. Defendant agrees that it will not discourage employees from participating in these interviews.

20. Nothing contained in this Decree shall be construed to limit any obligation United HealthCare may otherwise have to maintain records under Title VII or any other law or regulation.

## **VII. REPORTING**

21. United HealthCare shall furnish to EEOC the following written reports twice annually for a period of three (3) years following entry of this Decree. The first report shall be due no later than January 1, 2008 and thereafter by July 1<sup>st</sup>, and January 1<sup>st</sup> annually. Each such report shall contain:

a. A description of each complaint of sexual harassment or retaliation for complaining about sexual harassment at Defendant's Sunrise, Florida facility, including the names, home address and home and mobile phone number of the complaining parties and

witnesses and the resolution of such complaint, occurring within the six (6) month period preceding the report.

b. A certification by United HealthCare that the Notice required to be posted in Paragraph 17, above, remained posted during the entire six (6) month period preceding the report.

#### **VIII. EXPUNGEMENT OF PERSONNEL FILES**

22. United HealthCare agrees to remove from Wolansky's personnel files any documents regarding termination, warnings, reports, corrective action, performance improvement, or disciplinary memorandum within ten (10) business days of the entry of this Decree. Defendant further agrees to give Wolansky a letter of verification of employment, attached as Exhibit B, within ten (10) business days of the entry of this Decree. Defendant agrees to verify Wolansky's employment attached as Exhibit B if asked to do so by a prospective employer performing a reference check. In addition, consistent with Exhibit B, Defendant will limit its disclosure of information regarding Wolansky's personnel files solely to the information contained in Exhibit B. Moreover, if a third party requests a copy of Wolansky's personnel files, Defendant will notify Wolansky directly by mail as follows: 13015 Keystone Terrace, North Miami, Florida 33181.

#### **IX. MONETARY RELIEF**

23. Defendant shall pay an aggregate of One Million Eight Hundred Thousand Dollars and No Cents (\$1,800,000.00) to resolve this litigation as described in attached Exhibit C. All payments shall issue within fifteen (15) calendar days from the later of either the Court's execution of this Decree or provision to Defendant of executed IRS W-9 Forms by Wolansky and Rothstein Rosenfeldt Adler P.A., by overnight delivery, to Wolansky, c/o Shawn L. Birken,



Esq., Rothstein Rosenfeldt Adler P.A., Las Olas City Centre, Suite 1650, 401 East Las Olas Boulevard, Fort Lauderdale, FL 33301. Copies of the payments and the IRS Form W-2 and Form 1099s shall be forwarded to the attention of Cheryl A. Cooper, Senior Trial Attorney, U.S. Equal Employment Opportunity Commission, One Biscayne Tower, 2 South Biscayne Boulevard, Suite 2700, Miami, Florida 33131.

24. If Defendant fails to tender the payment described in Paragraph 23 above, and Exhibit C in violation of this Decree, then Defendant shall pay interest on the defaulted payment at the rate calculated pursuant to 26 U.S.C. Section 6621(b) until the same is paid, and bear any additional costs incurred by the EEOC or Wolansky, including attorneys' fees, caused by the non-compliance or delay of the Defendant.

#### **X. APPOINTMENT**

25. Defendant agrees to consider in good faith Wolansky's application for appointment to sell UnitedHealthcare products, including Neighborhood Health Plan products, in accordance with its standards and policies for appointment and applicable state and federal laws regarding agent licensure and appointment, and without regard to the circumstances underlying and giving rise to this action, Wolansky's participation in this action, or any other protected activity engaged in by Wolansky under Title VII. If Wolansky is appointed to sell UnitedHealthcare products, Defendant agrees to allow Wolansky the same access to UnitedHealthcare employees as it affords to other persons who are authorized to sell UnitedHealthcare products for the purpose of selling such products. In addition, United HealthCare's CEO will inform United HealthCare's employees who are involved in supporting the sale of UnitedHealthcare products that Wolansky has been appointed to sell UnitedHealthcare products, that they may interact with Wolansky for the purpose of supporting

such sales, and that there will not be any repercussions to any United HealthCare employees for interacting with Wolansky in the normal course of business.

#### **XI. DISPUTE RESOLUTION**

26. In the event that EEOC believes that Defendant has failed to comply with any provision(s) of the Decree, EEOC shall have the right to seek Court intervention. Additionally, no Party shall contest the Court's jurisdiction to hear a dispute arising from the Decree nor challenge EEOC's ability to bring an action to enforce the terms of the Decree in this Court.

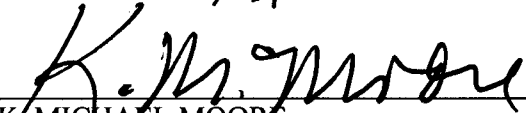
#### **XII. COSTS**

27. Each Party shall bear its own costs associated with this litigation.

#### **XIII. DURATION OF CONSENT DECREE**

28. All provisions of this Decree shall be in effect for a period of three (3) years immediately following entry of the Decree. In the event Wolansky revokes the General Release and Settlement Agreement between Defendant and Wolansky (pursuant to the seven (7) day revocation period in Paragraph 6 of the agreement), this Decree will be void and unenforceable, and Defendant's obligations under the Decree shall be nullified.

SO ORDERED, ADJUDGED AND DECREED, this 4<sup>th</sup> day of October, 2007.

  
K. MICHAEL MOORE  
UNITED STATES DISTRICT JUDGE

AGREED TO:  
FOR THE PLAINTIFF  
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

by: /s/Nora E. Curtin  
Nora E. Curtin  
Regional Attorney  
U.S. Equal Employment Opportunity Commission  
Miami District Office  
One Biscayne Tower, Suite 2700  
2 South Biscayne Boulevard  
Miami, Florida 33131

Date: 10/3/07

AGREED TO:  
FOR THE PLAINTIFF-INTERVENOR  
DANIEL WOLANSKY

by: /s/Shawn L. Birken  
Shawn L. Birken  
Rothstein Rosenfeldt Adler P.A.  
Las Olas City Centre, Suite 1650  
401 East Las Olas Boulevard  
Fort Lauderdale, FL 33301

Date: 10/3/07

AGREED TO:  
FOR THE DEFENDANT  
UNITED HEALTHCARE OF FLORIDA, INC.

by: /s/Frederick T. Smith  
Frederick T. Smith  
Seyfarth Shaw LLP  
1545 Peachtree Street N.E., Suite 700  
One Peachtree Pointe  
Atlanta, GA 30309-2401

Date: 10/3/07

## **EXHIBIT A**

### **NOTICE TO ALL EMPLOYEES POSTED PURSUANT TO A CONSENT DECREE BETWEEN THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND UNITED HEALTHCARE OF FLORIDA, INC.**

This notice is being posted pursuant to a Consent Decree entered by the Court in EEOC vs. United HealthCare of Florida, Inc., Civil Action No. 06-61483-CIV-MOORE/GARBER. EEOC alleged that Daniel Wolansky, a former Senior Account Executive in United HealthCare of Florida, Inc.'s Key Accounts line of business, was subjected to sexual harassment, retaliated against for complaining about such harassment, and constructively discharged. The parties settled the lawsuit without any admission of liability by United HealthCare of Florida, Inc.

United HealthCare of Florida, Inc. maintains a policy that prohibits discrimination against employees based on sex in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). Title VII protects individuals from employment discrimination because of their race, religion, color, national origin, or sex. Title VII also protects individuals from retaliation for having complained of an unlawful employment practice. United HealthCare of Florida, Inc. will not condone employment discrimination of any kind as set forth in federal anti-discrimination laws, including, but not limited to, sexual harassment and retaliation.

United HealthCare of Florida, Inc. assures its employees that it supports Title VII and will not take any action against an individual because he/she has exercised his/her rights under the law to oppose discriminatory acts or to file charges with the EEOC. Appropriate corrective action, up to and including termination, based upon the circumstances involved, shall be taken against any employee (including management personnel) found to have violated United HealthCare of Florida, Inc.'s policy prohibiting discrimination.

This notice shall remain posted for three (3) years from the date the Decree is entered. Employees or applicants for employment who have questions about their rights under Title VII or any other federal anti-discrimination law may contact United HealthCare of Florida, Inc.'s Human Capital representatives, telephone HRdirect at (800) 561-0861, or telephone the Miami District Office of the Equal Employment Opportunity Commission at (800) 669-4000.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
DAN ROSENTHAL, CEO, UNITED HEALTHCARE OF FLORIDA, INC.  
DO NOT REMOVE BEFORE \_\_\_\_\_, 2010.

## **EXHIBIT B**

United HealthCare of Florida, Inc. Letterhead

[DATE]

To Whom It May Concern:

This letter will confirm that Daniel Wolansky was employed with United HealthCare of Florida, Inc. ("United"), from April 1, 1996 through January 11, 2005. Mr. Wolansky was hired as a full-time Account Executive. He was then promoted to Senior Account Executive and remained in that position in the Key Accounts line of business at United's Sunrise, Florida location (13621 NW 12th Street, Sunrise, FL 33323) until his separation on January 11, 2005. Mr. Wolansky's compensation consisted of salary earnings plus commissions. Mr. Wolansky's base salary at the time of separation was \$60,060, and his last full year commission earnings totaled \$254,683.29 plus approximately another \$30,000 in other compensation.

Sincerely,

Dan Rosenthal  
Chief Executive Officer  
United HealthCare of Florida, Inc.

## **EXHIBIT C**

### **ALLOCATION OF MONETARY RELIEF**

United HealthCare of Florida, Inc. agrees to pay a total gross amount of One Million Eight Hundred Thousand Dollars and No Cents (\$1,800,000.00) to resolve this litigation, which will be payable as follows:

1. A check made payable to Daniel Wolansky in the amount of Six Hundred Sixty Thousand Dollars and No Cents (\$660,000.00), less all applicable payroll and other taxes, withholdings or other deductions required by law, in settlement of claims for alleged lost wages. United HealthCare of Florida, Inc. shall issue Mr. Wolansky a Form W-2 for this amount;
2. A check made payable to Daniel Wolansky in the amount of Five Hundred Thousand Dollars and No Cents (\$500,000.00), with no deductions or withholdings, in settlement of claims for alleged damages that are not wages. United HealthCare of Florida, Inc. shall issue Mr. Wolansky a Form 1099 for this amount; and
3. A check made payable to Rothstein, Rosenfeldt, Adler, P.A. (Tax ID # 01-0587961), Mr. Wolansky's private counsel, in the amount of Six Hundred Forty Thousand Dollars and No Cents (\$640,000.00), representing Mr. Wolansky's attorneys' fees and costs. United HealthCare of Florida, Inc. shall issue Rothstein, Rosenfeldt & Adler a Form 1099 for this amount.