

Respectfully submitted,

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- ▶ Please provide by category of crime within years 2010 through 2015 (January 1, 2010 - December 31, 2015), the number of criminal homicide, rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft, and arson arrests that DOJ attorneys reviewed by ward. (District of Columbia's wards 1 through 8).
- ▶ Please provide information within years 2010 through 2015 (January 1, 2010 - December 31, 2015), the number of criminal homicide, rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft, and arson cases DOJ attorneys prosecuted by wards 1 through 8. Please separate this information by category of crime.
- ▶ Of those prosecuted, what is the conviction rate of each crime within each ward (1-8) between 2010 and 2015 (January 1, 2010 - December 31, 2015)?
- ▶ How many criminal homicide, rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft, and arson arrests were resolved by plea deals by ward (1-8) between 2010 and 2015 (January 1, 2010 - December 31, 2015)? Please separate this information by category of crime.

Id., ¶ 4 and Att. A, pp. 2-3. Plaintiff also requested a waiver of fees associated with processing the request, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). *Id.*, Att. A, p. 3.

3. By letter dated, November 23, 2015, the EOUSA FOIA/PA Unit acknowledged receipt of Plaintiff's request. *Id.*, ¶ 7 and Att. B, p. 1. Plaintiff was informed of the possibility of a fee assessment and that her request was assigned Tracking Number FOIA-2016-00356. *Id.*

4. On December 11, 2015, the EOUSA FOIA/PA Unit received Plaintiff's response to the acknowledgment letter in which she agreed to pay up to \$1,000 for search time. *Id.*, ¶ 8 and Att. C. This response was signed on November 30, 2015. *Id.*

5. By letter dated December 14, 2015, Plaintiff agreed to pay \$1,867 for the processing of the request. *Id.*, ¶ 9 and Att. D.

6. In response to the request, on November 13, 2015, EOUSA FOIA/PA Unit tasked the United States Attorney's Office for the District of Columbia ("USAO-DC") to search for responsive records. *Id.*, ¶ 5. The USAO-DC was tasked because it "serves as both the local and the federal prosecutor for the [District of Columbia] . . . [T]he local . . . prosecutions extend from

misdemeanor drug possession cases to murders.” Francis Dec., ¶ 6 (citing <https://www.justice.gov/usao-dc> (last visited July 27, 2016)).

7. The FOIA request was sent to the USAO-DC FOIA Coordinator, Supervisory Paralegal Specialist Theresa D. Jones. Declaration of Theresa D. Jones, Supervisory Paralegal Specialist, Civil Division, United States Attorney’s Office for the District of Columbia, United States Department of Justice (“Jones Dec.”), ¶ 6.

8. Ms. Jones reviewed the FOIA request and determined that a search for responsive records should be conducted by the Applications Information Management Unit of USAO-DC. *Id.*, ¶ 8.

9. On or about December 15, 2015, Petula Coon, Supervisor, Applications Information Management Unit, USAO-DC, reviewed the FOIA request and determined that “Plaintiff was requesting a report that would display specific statistical information about [District of Columbia] Superior Court cases that were filed between the years of 2010 and 2015 and were associated with specific arrest charges, prosecutions and plea agreements.” Petula Coon, Supervisor, Applications Information Management Unit, United States Attorney’s Office for the District of Columbia, United States Department of Justice (“Coon Dec.”), ¶ 6.

10. From a review of the FOIA request, Ms. Coon also understood Plaintiff to request “that the generated statistical information be displayed in groups by year of filing, specific arrest charge, and District of Columbia ward area.” *Id.*

11. As a result, Ms. Coon determined that a location which could contain responsive records was the Replicated Criminal Information System (“RCIS”). *Id.*, ¶ 7.

12. The Replicated Criminal Information System is a case management system for District of Columbia “Superior Court cases based on arrests and court data transferred daily to the USAO-

DC. The system allows for search capabilities and generates electronic forms for case preparation.” *Id.*, ¶ 8.

13. “Within RCIS, data regarding arrests for types of crime is collected and organized by District of Columbia Police District and Police Service Area (“PSA”) in which the crime occurs.” *Id.*, ¶ 9.

14. For purposes of policing, the District of Columbia “is divided into seven Police Districts, each of which is further subdivided into seven or more Police Service Areas (PSAs).” *Id.*, ¶ 10 (citing <http://mpdc.dc.gov/page/mpdc-who-we-are>) (last visited July 21, 2016)). *See id.* (citing <http://mpdc.dc.gov/page/police-districts-and-police-service-areas> (last visited July 21, 2016)).

15. The District of Columbia is divided into eight wards. *Id.*, ¶ 11 (citing <http://dccouncil.us/pages/learn-about-wards-and-ancs>) (last visited July 21, 2016). The boundaries of the wards are similar, but not identical to, the Police Districts. *Id.*, Exhibit (“Ex.”).
A.

16. By letter dated December 14, 2015, Plaintiff agreed to pay up to \$1,867 for the processing of the FOIA request. Francis Dec., ¶ 9, Ex. D.

17. Because Ms. Coon was familiar with “the types of data that is stored within the RCIS system, [she] knew that the RCIS system did not store information pertaining to arrest activities within a District of Columbia ward area. Nevertheless, [she] entered the system to again review the manner in which case information concerning arrests, prosecutions and plea agreements is stored. [Her] review confirmed that case information pertaining to arrests handled by the USAO-DC, is maintained according to the Police District and Police Service Area in which a crime is committed, not by the ward in which a crime is committed.” Coon Dec., ¶ 12.

18. “Within RCIS, data regarding prosecutions for types of crime is linked to the data regarding arrests. Therefore, it also is organized by District of Columbia Police District and Police Service Area, not by ward.” *Id.*, ¶ 13.

19. “Within RCIS, there is no flag or tracking indicator for identifying plea agreements. Hence, there is no retrieval method for this information.” *Id.*, ¶ 14.

20. Accordingly, Ms. Coon was “unable to retrieve the specific information sought in the FOIA request.” *Id.*, ¶ 15.

21. Ms. Coon was unaware of “any other method or means by which a further search could be conducted in RCIS that would likely uncover the . . . records [requested].” *Id.*, ¶ 17.

22. Ms. Coon was unaware of “any other locations or information systems within USAO-DC where records responsive to Plaintiff’s request [were] likely to be located because the RCIS system is the primary case management system used by USAO to store and maintain Superior Court case-related information.” *Id.*

23. On December 15, 2015, Ms. Coon informed the FOIA Coordinator for the USAO-DC that she was unable to retrieve the requested information. *Id.*, ¶ 16 and Ex. B.

24. On December 16, 2015, Ms. Jones provided this information to the EOUSA FOIA/PA Unit. Jones Dec., ¶ 16.

25. By letter dated January 5, 2016, the EOUSA FOIA/PA Unit advised Plaintiff, *inter alia*, that:

A search for records located in the United States Attorney’s Office(s) for the District of Columbia has revealed no responsive records regarding the above subject. The USAO does not track this information[.]

Francis Dec., ¶ 11 and Att. E. Plaintiff also was advised that if she was “not satisfied with [the] response to [her] request, [she could] administratively appeal by writing to the Director, Office of Information Policy (OIP) Department of Justice[.]” *Id.*, Att. E.

26. By letter dated January 8, 2016, Plaintiff requested the status of her FOIA request. This letter was received by EOUSA on February 2, 2016. *Id.*, ¶ 12 and Att. F. Plaintiff indicated that she was “willing to pay . . . \$1000 plus an additional \$1000 [to process the request].” *Id.*

27. However, EOUSA did not assess any fees for the processing of the FOIA request. *Id.*, ¶ 17. EOUSA also did not adjudicate Plaintiff’s request for a fee waiver because, “in under two hours of search time,” the USAO-DC determined that it did not possess records responsive to Plaintiff’s request. *Id.* (citing 5 U.S.C. § 552(a)(4)(A)(iv)(II)).

28. By letter dated January 21, 2016, Plaintiff filed an administrative appeal with the Department of Justice, Office of Information Policy (“OIP”). Francis Dec., ¶ 13 and Att. G.

29. By letter dated February 4, 2016, OIP acknowledged receipt of Plaintiff’s appeal and assigned it Appeal No. AP-2016-01425. *Id.*, ¶ 14 and Att. H.

30. By letter dated February 2, 2016, OIP mistakenly again acknowledged receipt of Plaintiff’s appeal, assigning it Appeal No. AP-2016-01556. *Id.*, and Att. I.

31. By letter dated March 16, 2016, OIP affirmed EOUSA FOIA/PA Unit’s response to Plaintiff’s request. *Id.*, ¶ 15 and Att. J. OIP also indicated that Plaintiff’s appeal in No. AP-2016-01556 was a duplicate of Appeal No. AP-2016-01425. Accordingly, Appeal No. AP-2016-01425 was adjudicated and AP-2016-01556 was administratively closed. *Id.*

32. The March 16, 2016 letter also indicated that the USAO-DC conducted an “adequate, reasonable search” for responsive records. *Id.*, ¶ 16 and Att. J, p. 1.

33. The OIP’s affirmance also stated,

[p]lease be advised that police service areas, also known as the districts, are used for reporting purposes. The USAO does not track this information by ward or in the specific manner which you are requesting.

Id.

34. OIP also stated,

[b]ased on the type of records that you appear to be seeking, you might wish to make a new request to EOUSA for prosecutions and convictions by crime or by district. I trust that this information will be of some assistance to you as you attempt to locate these records.

Id., Att. J, p. 1, n.1.

35. Finally, Plaintiff was informed that, “[i]f [she was] dissatisfied with [the] action on [the] appeal, the FOIA permit[ted her] to file a lawsuit in federal district court[.]” *Id.* at 2.

36. On May 16, 2016, Plaintiff filed the instant lawsuit. ECF No. 1.

Respectfully submitted,

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Declaration of Declaration of Tricia Francis, Attorney-Advisor, Freedom of Information Act/Privacy Act Staff, Executive Office for United States Attorneys, United States Department of Justice, (“Francis Dec.”), ¶ 4 and Attachment (“Att.”) A, pp. 1-2. As demonstrated below, the Department of Justice has fully complied with its obligations pursuant to the FOIA by conducting a reasonable and adequate search for records responsive to Plaintiff’s request. Accordingly, based upon the declarations of Ms. Francis, Petula Coon, Supervisor, Applications Information Management Unit, United States Attorney’s Office for the District of Columbia, United States Department of Justice, Theresa D. Jones, Supervisory Paralegal Specialist, Civil Division, United States Attorney’s Office for the District of Columbia, United States Department of Justice, and the entire record herein, Defendant submits that it is entitled to judgment as a matter of law.

II. FACTS

Defendant hereby incorporates its Statement of Material Facts Not in Genuine Dispute, filed together with this memorandum.

III. APPLICABLE LEGAL STANDARDS

A. Motions for Summary Judgment

Where there is “no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law,” summary judgment is required by Rule 56(a) of the Federal Rules of Civil Procedure. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) (interpreting Rule 56(c), the prior version of Rule 56(a)); *Gaujacq v. EDF, Inc.*, 601 F.3d 565, 575 (D.C. Cir. 2010). A genuine issue of material fact is one that would change the outcome of the litigation. *Anderson*, 477 U.S. at 248 “By its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported

motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.” *Id.* at 247-248 (emphasis in original).

The burden on the party moving for summary judgment “may be discharged by ‘showing’—that is, pointing out to the [Court]—that there is an absence of evidence to support the non-moving party’s case.” *Sweats Fashions, Inc. v. Pannill Knitting Co., Inc.*, 833 F.2d 1560, 1563 (Fed. Cir. 1987). Once the moving party has met its burden, the non-movant may not rest on mere allegations, but must “make a sufficient showing on an essential element of [his] case” to establish a genuine dispute. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986); *Burke v. Gould*, 286 F.3d 513, 517-20 (D.C. Cir. 2002) (requiring a showing of specific, material facts). “[T]he mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.” *Anderson*, 477 U.S. at 252 Thus, to avoid summary judgment, the plaintiff must present some objective evidence that would enable the court to find he is entitled to relief. *See Celotex*, 477 U.S. at 322-23 *See also Laningham v. Navy*, 813 F.2d 1236, 1242 (D.C. Cir. 1987) (non-moving party is “required to provide evidence that would permit a reasonable jury to find” in its favor).

FOIA Actions and Summary Judgment

The summary judgment standards set forth above also apply to FOIA cases, which are typically decided on motions for summary judgment. *See Dugan v. Dep’t of Justice*, 82 F. Supp. 3d 485, 493 (D.D.C. 2015) (“FOIA cases typically and appropriately are decided on motions for summary judgment.”) (citing *Defenders of Wildlife v. U.S. Border Patrol*, 623 F. Supp. 2d 83, 87 (D.D.C. 2009) (add’l citation omitted); *Harrison v. Executive Office for United States Attorneys*, 377 F. Supp. 2d 141, 145 (D.D.C. 2005) (FOIA cases are typically and appropriately decided on

motions for summary judgment.). In a FOIA suit, an agency is entitled to summary judgment once it demonstrates that no material facts are in dispute, and that each document that falls within the class requested either has been produced or is exempt from disclosure. *Students Against Genocide v. Dep't of State*, 257 F.3d 828, 833 (D.C. Cir. 2001). An agency that demonstrates this by providing the Court and the plaintiff with declarations or affidavits and other evidence satisfies summary judgment requirements. *See Hayden v. Nat'l Sec. Agency/Cent. Sec. Serv.*, 608 F.2d 1381, 1386 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 937 (1980).

The district court is required to accord substantial weight to declarations or affidavits submitted by an agency . . . and [they] . . . are presumed to be submitted in good faith. *SafeCard Servs., Inc. v. Sec. and Exchange Comm'n*, 926 F.2d 1197, 1200 (D.C. Cir. 1991). The “presumption of good faith[] . . . cannot be rebutted by ‘purely speculative claims about the existence and discoverability of other documents.’” *Leal v. Dep't of Homeland Sec.*, 519 F. Supp. 2d 105, 107 (D.D.C. 2007) (citing *SafeCard Servs., Inc.*, 926 F.2d at 1200 (quoting *Ground Saucer Watch, Inc. v. Cent. Intelligence Agency*, 692 F.2d 770, 771 (D.C. Cir. 1981)). “[I]n the absence of countervailing evidence or apparent inconsistency of proof, affidavits that explain in reasonable detail the scope and method of the search conducted by the agency will suffice to demonstrate compliance with the obligations imposed by FOIA.” *Perry v. Block*, 684 F.2d 121, 127 (D.C. Cir. 1982). *See Fed. R. Civ. P. 56(c)*; *Bigwood v. Dep't of Def.*, 132 F. Supp. 3d 124, 136 (D.D.C. 2015) (A court “may award summary judgment [in a FOIA case] solely on the basis of information provided by the department or agency affidavits or declarations); *Judicial Watch, Inc. v. Dep't of Commerce*, 337 F. Supp. 2d 146, 169-72 (D.D.C. 2004) (An agency may meet its burden by submitting reasonably detailed affidavits from agency personnel.).

In the event a search reveals no records responsive to a FOIA request and the agency, in good faith, has submitted a relatively detailed, non-conclusory affidavit explaining this, the Agency has satisfied the FOIA's requirements. As this Court has stated, "[w]hen . . . responsive records are not located, an agency is entitled to summary judgment if it establishes 'beyond material doubt [] that it conducted a search reasonably calculated to uncover all relevant documents.'" *Love v. Dep't of Homeland Sec'y*, 960 F. Supp. 2d 254, 260 (D.D.C. 2013) (citing *Blunt-Bey v. Dep't of Justice*, 612 F. Supp. 2d 72, 74 (D.D.C. 2009) (summary judgment granted for Department of Justice where no records were located and USAO-DC "conducted a search reasonably calculated to recover all responsive records") (quoting *Weisberg v. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983)). See *Elliott v. Nat'l Archives & Records Admin.*, No. 06-1246 (JDB), 2006 WL 3783409, at *3 (D.D.C. Dec. 21, 2006) ("The fact that NARA did not locate responsive records is not dispositive. An agency's search is not presumed unreasonable because it fails to find all the requested information.") (citing *Steinberg v. Dep't of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994) (the question is not "whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was adequate")). See *Petit-Frere v. U.S. Attorney's Office for S. Dist. of Fla.*, 800 F. Supp. 2d 276, 280 (D.D.C. 2011) (where U.S. Attorney's Office searched files most likely to contain responsive records but found none, Court found that search was adequate). This is because the FOIA "only obligates [agencies] to provide access to those [documents] which it in fact has created and retained." *Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136, 152, (1980).

III. ARGUMENT

A. Defendant Conducted a Search Reasonably Calculated to Recover Responsive Records.

In responding to a FOIA request, an agency is under a duty to conduct a reasonable search for responsive records. *Oglesby v. Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). The established reasonableness standard by which FOIA searches are judged “does not require absolute exhaustion of the files; instead it requires a search reasonably calculated to uncover the sought materials.” *Miller v. Dep't of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1986); *accord*; *Oglesby*, 920 F.2d at 68 (the agency “must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.”). “There is no requirement that an agency search every record system, but the agency must conduct a good faith, reasonable search of those systems of records likely to possess the requested information.” *West v. Spellings*, 539 F. Supp. 2d 55, 62 (D.D.C. 2008) (citing *Blanton v. Dep't of Justice*, 182 F. Supp. 2d 81, 84 (D.D.C. 2002)). Conducting a “reasonable” search is a process that requires “both systemic and case-specific exercises of discretion and administrative judgment and expertise[,]” and is “hardly an area in which the courts should attempt to micro-manage the executive branch.” *Schrecker v. Dep't of Justice*, 349 F.3d 657, 662 (D.C. Cir. 2003). Thus, declarations that “explain in reasonable detail the scope and method of the search conducted by the agency will suffice to demonstrate compliance with the obligations imposed by the FOIA.” *Perry v. Block*, 684 F.2d 121, 127 (D.C. Cir. 1982).

1. There Were No Records Responsive to Plaintiff's Request.

Plaintiff's FOIA request stated:

► Please provide by category of crime within years 2010 through 2015 (January 1, 2010 - December 31, 2015), the number of criminal homicide, rape, robbery, aggravated assault,

burglary, larceny, motor vehicle theft, and arson arrests that DOJ attorneys reviewed by ward. (District of Columbia's wards 1 through 8).

► Please provide information within years 2010 through 2015 (January 1, 2010 - December 31, 2015), the number of criminal homicide, rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft, and arson cases DOJ attorneys prosecuted by wards 1 through 8. Please separate this information by category of crime.

► Of those prosecuted, what is the conviction rate of each crime within each ward (1-8) between 2010 and 2015 (January 1, 2010- December 31, 2015)?

► How many criminal homicide, rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft, and arson arrests were resolved by plea deals by ward (1-8) between 2010 and 2015 (January 1, 2010 - December 31, 2015)? Please separate this information by category of crime.

Francis Dec., ¶ 4 and Att. A, pp. 1-2. *See* Complaint (“Cmplt”), ¶ 2. Therefore, in response to the FOIA request, the Department of Justice, Executive Office of United States Attorneys (“EOUSA”), Freedom of Information Act/Privacy Act Unit (“FOIA/PA Unit”) tasked the United States Attorney’s Office for the District of Columbia (“USAO-DC”) to search for responsive records. The USAO-DC was tasked because it “serves as both the local and the federal prosecutor for the [District of Columbia]. . . [T]he local . . . prosecutions extend from misdemeanor drug possession cases to murders.” Francis Dec., ¶ 16 (citing <https://www.justice.gov/usao-dc> (last visited July 27, 2016)).¹ Hence, USAO-DC was the office most likely to possess responsive records.

On November 13, 2015, the FOIA request was sent to the USAO-DC FOIA Coordinator, Supervisory Paralegal Specialist Theresa D. Jones. Declaration of Theresa Jones, Supervisory Paralegal Specialist, Civil Division, USAO-DC (“Jones Dec.”), ¶ 6 Ms. Jones then referred the request to the USAO-DC Applications Information Management Unit. Jones Dec., ¶ 8. In

¹ The District of Columbia Office of the Attorney General, “Criminal Section of the Public Safety Division, . . . prosecutes adults [for the remainder of the local offenses which include] . . . five primary categories of criminal offenses: Criminal Traffic Offenses[,] . . . [c]ertain Weapons Offenses[,] . . . Quality of Life Offenses[,] . . . D[istrict of] C[olumbia] Municipal Regulation Offenses[,] and c[ertain] Fraud Against the District Offenses[.]” <http://oag.dc.gov/page/criminal-section> (last visited July 26, 2016).

response, Ms. Coon, Supervisor, Applications Information Management Unit, reviewed the FOIA request and determined that “Plaintiff was requesting a report that would display specific statistical information about [District of Columbia] Superior Court cases, handled by the USAO-DC, that were filed between the years of 2010 and 2015 and were associated with specific arrest charges, prosecutions and plea agreements.” Petula Coon, Supervisor, Applications Information Management Unit, United States Attorney’s Office for the District of Columbia, United States Department of Justice (“Coon Dec.”), ¶ 6. Ms. Coon also understood Plaintiff to request that “the generated statistical information be displayed in groups by year of filing, specific arrest charge, and District of Columbia ward area.” *Id.* As a result, Ms. Coon determined that a location which could contain responsive records was the Replicated Criminal Information System (“RCIS”). *Id.*, ¶ 7

The Replicated Criminal Information System is a “case management system for the District of Columbia Superior Court cases based on arrests and court data transferred daily to the USAO-DC. *Id.*, ¶ 8. The system allows for search capabilities and generates electronic forms for case preparation.” *Id.* “Within RCIS, data regarding arrests for types of crime is collected and organized by District of Columbia Police District and Police Service Area (“PSA”) in which the crimes occur.” *Id.*, ¶ 9. For purposes of policing, the District of Columbia “is divided into seven Police Districts, each of which is further subdivided into seven or more Police Service Areas (PSAs).” *Id.* (citing <http://mpdc.dc.gov/page/mpdc-who-we-are>) (last visited July 21, 2016)). *See id.* (citing <http://mpdc.dc.gov/page/police-districts-and-police-service-areas> (last visited July 21, 2016)). The District of Columbia is divided into eight wards. *Id.*, ¶ 11 (citing <http://dccouncil.us/pages/learn-about-wards-and-ancs> (last visited July 21, 2016)). However, the boundaries of the wards are similar, but not identical to, the Police Districts. *Id.*, Att. A.

Because Ms. Coon was familiar with the types of data that is stored within the RCIS system, she “knew that the RCIS system did not store information pertaining to arrest activities within a District of Columbia ward area. Nevertheless, [she] entered the system to again review the manner in which case information concerning arrests, prosecutions and plea agreements is stored. [Her] review confirmed that case information pertaining to arrests handled by the USAO-DC, is maintained according to the Police District and Police Service Area in which a crime is committed, not by the ward in which a crime is committed.” Coon Dec., ¶ 12. The search also revealed that “data regarding prosecutions for types of crime is linked to the data regarding arrests. Therefore, it also is organized by District of Columbia Police District and Police Service Area, not by ward.” *Id.*, ¶ 13. Finally, the search revealed that “there is flag or tracking indicator for identifying plea agreements. Hence, there is no retrieval method for this information.” *Id.*, ¶ 14. As a result, Ms. Coon was “unable to retrieve the specific information sought in the FOIA request.” *Id.*, ¶ 15. Ms. Coon was unaware “of any other method or means by which a further search could be conducted in RCIS that would likely uncover the records requested.” *Id.*, ¶ 17. Ms. Coon also was unaware “of any other locations or information systems where records . . . responsive to Plaintiff’s request [were] likely to be located[.]” *Id.*

On December 15, 2015, Ms. Coon informed the FOIA Coordinator for the USAO-DC that the USAO-DC did not track the requested information by ward. *Id.*, ¶ 16 and Ex. B. On December 16, 2015, Ms. Jones provided this information to the EOUSA-FOIA/PA Unit. Jones Dec., ¶ 16.

By letter dated January 5, 2016, the EOUSA FOIA/PA Unit advised Plaintiff, *inter alia*, that:

A search for records located in the United States Attorney's Office(s) for the District of Columbia has revealed no responsive records regarding the [requested] subject. The USAO does not track this information[.]

Francis Dec., ¶ 11 and Att. E. Plaintiff also was advised that if she was “not satisfied with [the] response to [her] request, [she could] administratively appeal by writing to the Director, Office of Information Policy (OIP) Department of Justice[.]” *Id.*, Att. E.

By letter dated January 8, 2016, Plaintiff requested the status of her FOIA request. This letter was received by EOUSA on February 2, 2016. *Id.*, ¶ 12 and Att. F. Plaintiff indicated that she was “willing to pay . . . \$1000 plus an additional \$1000 [to process the request].” *Id.* However, EOUSA did not assess any fees for the processing of the FOIA request. *Id.*, ¶ 17. EOUSA also did not adjudicate Plaintiff's request for a fee waiver because, “in under two hours of search time, . . . [the USAO-DC determined] that it did not possess records responsive to Plaintiff's request.” *Id.* (citing 5 U.S.C. § 552(a)(4)(A)(iv)(II)).

By letter dated January 21, 2016, Plaintiff filed an administrative appeal with the Office of Information Policy (“OIP”). Francis Dec., ¶ 13 and Att. G. By letter dated February 4, 2016, OIP acknowledged receipt of Plaintiff's appeal. *Id.* and Att. I. By letter dated March 16, 2016, OIP affirmed EOUSA FOIA/PA Unit's response to Plaintiff's request. *Id.*, ¶ 15 and Att. J. The letter indicated that the USAO-DC conducted an “adequate, reasonable search” for responsive records. *Id.*, ¶ 16 and Att. J, p. 1. OIP advised Plaintiff

that police service areas, also known as the districts, are used for reporting purposes. The USAO does not track this information by ward or in the specific manner which you are requesting.

Id. OIP also stated,

[b]ased on the type of records that you appear to be seeking, you might wish to make a new request to EOUSA for prosecutions and convictions by crime or by district. I trust that this information will be of some assistance to you as you attempt to locate these records.

Id., Att. J, p. 1, n.1.

Hence, after being tasked with the FOIA request, Ms. Coon conducted a search in the location most likely to contain responsive records. However, this location did not maintain data regarding arrests, prosecutions or plea agreements according to the ward in which the crime is committed. Coon Dec., ¶¶ 12-14. Therefore, there were no records responsive to Plaintiff’s FOIA request. *See id.*, ¶ 15. Moreover, Ms. Coon was unaware of any other location likely to contain responsive records. *Id.*, ¶ 17. As this Court has stated, “[i]f an agency does not locate records responsive to a FOIA request, it still may prevail on summary judgment if it establishes ‘that it located no records responsive to plaintiff’s request after a reasonable search.’” *Concepcion v. Fed. Bureau of Investigation*, 606 F. Supp. 2d 14, 30 (D.D.C. 2009) (quoting *Davidson v. Env’tl. Prot. Agency*, 121 F. Supp. 2d 38, 39 (D.D.C. 2000)). Here, as the declaration of Ms. Coon demonstrated, a search reasonably calculated to recover responsive records was conducted, and, therefore, summary judgment is appropriate. Notably, a suit is only authorized under the FOIA and injunctive relief is only available in order to remedy an agency’s improper withholding of information.² *Kissinger*, 445 U.S. at 150 *see also* 5 U.S.C. § 552(a)(4)(B) & (f)(1). Hence, because Defendant did not improperly withhold agency records, Defendant has met its obligations under the FOIA.

Although in its March 16, 2016 response to Plaintiff’s appeal, the Office of Information and Privacy informed Plaintiff that the USAO-DC did “not track th[e] requested information by ward or in the specific manner which [she was] requesting[.]” Francis Dec., Att. J, p. 1, OIP did state that “[b]ased on the type of records that [Plaintiff] appear[ed] to be seeking, [she] might

² To prevail in a FOIA case, the plaintiff must show that an agency has (1) improperly (2) withheld (3) agency records. *Dep’t of Justice v. Tax Analysts*, 492 U.S. 136, 142 (1989); *United We Stand Am., Inc. v. Internal Revenue Serv.*, 359 F.3d 595, 598 (D.C. Cir. 2004).

wish to make a new request . . . for prosecutions and convictions by crime or by district.” *Id.*, Att. J, p.1. n.1. *See* Cmplt, ¶ 8 (“on March 16, 2016, the DOJ . . . affirm[ed] its Denial, but notably implied that it may have the data in a slightly different format than [Plaintiff] originally requested[.]”). However, Plaintiff chose not to do so. While in her Complaint, Plaintiff claims that Defendant “is unable to articulate any valid reason for not releasing [the requested] data,” Cmplt, ¶ 16, the language of the March 16, 2016 OIP correspondence makes clear that it did.

Despite the explanation, Plaintiff, nevertheless, contends that she is entitled to the precise information she seeks. In support of her argument, Plaintiff states that “the DOJ does appear to maintain data relating to criminal prosecutions in the District of Columbia[.]” *id.*, ¶ 58 and contends that it is “highly unlikely from a logical standpoint that an agency charged with criminal prosecutions would not maintain data related to what prosecutions it is maintaining[.]” Cmplt, ¶ 13; *see id.* at 59 But, Defendant did not indicate that it did not maintain data related to its prosecutions. Rather, Defendant indicated that “[t]he USAO does not track th[e requested] information by ward or in the specific manner [Plaintiff was] requesting.” Francis Dec., ¶ 17, Att. J. p. 1. Indeed, Plaintiff’s Complaint acknowledges that her “Request asked for the data organized by Ward[and] the Affirmance indicated that the DOJ may have this information organized by police district.” Cmplt, ¶ 56.³

Plaintiff states, “[o]n information and belief, the DOJ is able to query on one or more . . . systems to obtain the data that [she] has requested with a reasonable amount of effort.” *Id.* at ¶ 61. However, Defendant searched the location which would most likely contain responsive records. “[T]here is no requirement that an agency search every record system,” as long as it

³ Plaintiff states that the DOJ “will not provide *the very same data* underlying its reports to the citizens[.]” Cmplt, ¶ 14 (emphasis added). However, the DOJ does not provide *the very same data* to citizens which Plaintiff is requesting; it provides the data in accordance with the manner in which it is maintained in its record system. Notably, Plaintiff also states that “the DOJ had issued reports to the public that *appeared to rely on* the data she was requesting[.]” *Id.*, ¶ 7 (emphasis added).

“conduct[s] a good faith, reasonable search of those systems of records likely to possess the requested information.” *West*, 539 F. Supp. 2d at 62 (citing *Blanton*, 182 F. Supp. 2d at 84). In addition, despite Plaintiff’s speculation, the DOJ is not required to query systems to create new records displaying data in the precise form Plaintiff has requested. As the Supreme Court has made clear, the FOIA requires agencies to provide access to records that are in its possession. *See Kissinger*, 445 U.S. 151-152. “Because the Court’s jurisdiction under the FOIA extends only to claims arising from the improper *withholding* of agency records,” a defendant is not required to create or compile records in order to respond to a plaintiff’s request. *Carson*, 534 F. Supp. 2d at 103 (emphasis added).

In *Wilson v. Dep’t of Transportation*, Plaintiff’s FOIA request was interpreted as seeking the comments submitted by employees of the Federal Highway Administration (“FHWA”), Office of the Chief Financial Officer, on [a] 2007 All Employee Survey. 730 F.Supp.2d 140, 152 (D.D.C. 2010). “The FHWA explained[, however,] that employee comments on the 2007 All Employee Survey were anonymous and identified only as coming from FHWA headquarters, FHWA field offices or FHWA federal lands offices. . . The survey results were not broken down any further to reveal originating office[.]” *Id.* The court found that

[t]he records that [plaintiff] was interpreted to be requesting . . . cannot be culled out from the hundreds of comments submitted by all other FHWA headquarters employees. Therefore, the records that [plaintiff] requests simply do not exist in the format he requests them, and “[a]gencies need not organize documents to facilitate FOIA responses.”

Id. (citing *Goulding v. Internal Revenue Serv.*, 1998 WL 325202, at *5; *Sears, Roebuck & Co.*, 421 U.S. at 162). *See also Blakey v. Dep’t of Justice*, 549 F. Supp. 362, 366-67 (D.D.C. 1982) (“The FOIA was not intended to compel agencies to become ad hoc investigators for requesters whose requests are not compatible with their own information retrieval systems.”), *aff’d*, 720 F.2d 215 (D.C. Cir. 1983) (unpublished table decision). Hence, the court found that the FHWA

conducted a reasonable search in response to the plaintiff's request.

Here, the information Plaintiff requested regarding arrests, prosecutions and plea agreements does not exist in the format she requests. *See* Coon Dec., ¶¶ 12-14. Moreover, “there is no flag or tracking indicator for identifying plea agreements[, so] there is no retrieval method for this information.” *See id.*, ¶ 14. However, although no responsive records were located, the USAO-DC conducted a reasonable, diligent, and adequate search which was reasonably expected to locate records responsive to Plaintiff's FOIA request. Indeed, “the adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search.” *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003) (citation omitted). As this Circuit has made clear,

[t]he question is not whether there might exist any . . . documents possibly responsive to the request, but rather whether the search for those documents was adequate. The adequacy of the search, in turn, is judged by a standard of reasonableness and depends . . . on the facts of each case.

Steinberg, 23 F.3d at 551 (citing *Weisberg v. Dep't. of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)). Here, the facts reveal that the search conducted was reasonable and adequate, and Defendant satisfied its obligations under the FOIA.

2. Defendant Is Not Required to Create Records.

Plaintiff states that the fact that the information possessed by Defendant is “perhaps not in the exact format and organization requested by [Plaintiff] (by Ward, not police district)[,] . . . [is] a technicality . . . [and] not a valid basis for denial of a FOIA request.” Cmpl't, ¶¶ 66-67. But, the law is not a mere technicality. Plaintiff appears to “misunderstand[] the uses and limits of the Freedom of Information Act [which] . . . provides access to *existing* records but does not establish a research service.” *Aland v. Dep't of the Interior*, No. 13 C 3547, 2014 WL 4680747, at *2 (N.D. Ill. Sept. 19, 2014) (citing *Frank v. Dep't of Justice*, 941 F. Supp. 4, 5 (D.D.C.

1996)). It is well settled that an agency is not required by FOIA to create a document that does not exist in order to satisfy a request. *See Skinner v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, No. 12-5319, 2013 WL 3367431, at *1 (D.C. Cir. May 31, 2013) (“FOIA does not require federal agencies to create . . . records.”); *Yeager v. Drug Enforcement Agency*, 678 F.2d 315, 321 (D.C. Cir. 1982) (“It is well settled that an agency is not required by FOIA to create a document that does not exist in order to satisfy a request.”); *Krohn v. Dep’t of Justice*, 628 F.2d 195, 197-98 (D.C. Cir. 1980) (“An agency cannot be compelled to produce requested documents where those documents do not exist.”); *Singleton v. Executive Office For U.S. Attorneys*, No. 05-2413 (EGS), 2006 WL 3191186, at *5 (D.D.C. Nov. 1, 2006) (“The FOIA does not require an agency to create and retain records, but rather to provide access to records that have been retained.”) (citing *Kissinger*, 445 U.S. at 151-52). Further, an agency is not required to produce a document that compiles data in a particular format if that document has not been created and retained by the agency. Therefore, Defendant is not required to compile and organize by ward, the specific information Plaintiff requests. As this Court has made plain, a defendant is not required “to dig out all the information that might exist, in whatever form or place it might be found, and to create a document[.]” *Frank*, 941 F. Supp. at 5 Therefore, while Plaintiff asserts that Defendant possesses, and she is entitled to, the precise information she requests, Plaintiff is incorrect.⁴

⁴ Curiously, while arguing that she is entitled to the requested information “in the exact form” in which it was requested, Plaintiff also states that “the DOJ is required to provide the data sought by the Request in the manner in which it is stored.” Cmpl’t, ¶ 71. To the extent Plaintiff, through her Complaint, is now requesting information organized by Police District or PSA, she did not do so in her FOIA request and cannot do so now. *See Kowalczyk v. Dep’t of Justice*, 73 F.3d 386, 388-89 (D.C. Cir. 1996) (“an agency need only conduct a search as to the original request, and not to subsequent additions or clarifications.”). *Cf. Hidalgo v. FBI*, 344 F.3d 1256, 1258 (D.C. Cir. 2003) (“Exhaustion of administrative remedies is generally required before filing in federal court so that the agency has an opportunity to exercise its discretion and expertise on the matter and to make a factual record to support its decision.”) (quoting *Oglesby*, 920 F.2d at 61; *Dettmann v. Dep’t of Justice*, 802 F.2d 1472, 1476 (D.C. Cir. 1986) (“It goes without saying that exhaustion of remedies is required in FOIA cases.”); *Wilbur v. Cent. Intelligence Agency*, 355 F.3d 675, 677 (D.C. Cir. 2004) (“The D.C. Circuit has held that the FOIA’s administrative scheme

Moreover, although, in Plaintiff's request for relief, she asks the Court to "[o]rder Defendant DOJ to immediately . . . make available the requested documents in their entirety[,] Cmplt, p. 13,

[b]ecause the Court's jurisdiction under the FOIA extends only to claims arising from the improper withholding of agency records, *see McGehee v. CIA*, 697 F.2d [1095,] 1105 [D.C. Cir. 1983] . . ., [a] request that [a] Court order [a] defendant to create records . . . that plaintiff thinks defendant is required to create . . . is not cognizable under the FOIA.

Carson v. U.S. Office of Special Counsel, 534 F. Supp. 2d 99, 103 (D.D.C. 2008) (internal citation omitted). *See Krohn*, 628 F.2d at 197-98 (holding that an agency cannot be compelled to create new documents where plaintiff requested information regarding "each and every criminal case" where a certain rule of criminal procedure was used); *Am. Civil Liberties Union v. Ariz. Dep't of Child Safety*, No. 14-0781, 2016 WL 3211460, at *6 (Ariz. Ct. App. June 9, 2016) ("requests for information that has not been previously compiled, are not requests for existing records under FOIA"). Therefore, Plaintiff's request that Defendant compile and provide the information "in the exact format and organization" Complaint ("Cmplt"), ¶ 66, she requests should be denied.

3. Defendant Is Not Required to Answer Questions Posed in a FOIA Request.

In the third prong of Plaintiff's FOIA request, she asked:

- ▶ Of those prosecuted, what is the conviction rate of each crime within each ward (1-8) between 2010 and 2015 (January 1, 2010- December 31, 2015)?

Francis Dec., ¶ 4 and Att. A, p. 1. *See Cmplt*, ¶ 2. Hence, Plaintiff was asking the Defendant to

'favors treating failure to exhaust as a bar to judicial review.')

(citation omitted). Further, to require an agency to adjust or modify its FOIA responses based on post-response occurrences could create an endless cycle of judicially mandated reprocessing. *Bonner v. Dep't of State*, 928 F.2d 1148, 1153 (D.C. Cir. 1991) *See Kenney v. Dep't of Justice*, 603 F. Supp. 2d 184, 189 (D.D.C. 2009) ("Plaintiff cannot allege that the agency failed to produce responsive records, when the records he now identifies fall outside the scope of his . . . request."). *Bonner*, 928 F.2d at 1153 (court should not require agency to reprocess FOIA request despite a change in circumstance absent an error in the first instance because "[u]nless the [agency] unlawfully withheld information in its prior responses, a court has no warrant to place [a FOIA requester] at the head of the current [agency] FOIA queue").

answer a question. In addition to the fact that Defendant did not possess the requested information in the exact format requested by Plaintiff, Defendant did not, and is not required to, respond to Plaintiff's question. As this Court repeatedly has held, "[t]he FOIA places no obligation on an agency 'to answer questions disguised as a FOIA request[.]'" *Espinoza v. Dep't of Justice*, 20 F. Supp. 3d 232, 245 (D.D.C. 2014) (citing *Hudgins v. Internal Revenue Serv.*, 620 F. Supp. 19, 21 (D.D.C. 1985), *aff'd*, 808 F.2d 137 (D.C. Cir. 1987), *cert. denied*, 484 U.S. 803, 108 (1987)). "FOIA is a mechanism to obtain access to records, not answers to questions." *Amnesty Int'l USA v. Cent. Intelligence Agency*, No. 07-5435 (LAP), 2008 WL 2519908, at *40 (S.D.N.Y. 2008). See *Hall & Associates v. Envtl. Prot. Agency*, 83 F. Supp. 3d 92, 102 (D.D.C. 2015) ("an agency is not required to answer questions disguised as a FOIA request, . . . nor conduct research in response to a FOIA request.") (internal citations omitted); *Harrison v. Fed. Bureau of Prisons*, 681 F. Supp. 2d 76, 83 (D.D.C. 2010) ("the FOIA does not require an agency to answer questions or to do research."); *Maydak v. Dep't of Justice*, 254 F. Supp. 2d 23, 46 (D.D.C. 2003) ("Plaintiff's request was no more than a series of questions or requests for information that went beyond the scope of the FOIA."); *Frank*, 941 F. Supp. at 4-5 (request asking Department of Justice for the "number of Special Assistant United States Attorneys that were state and local prosecutors" for certain period of time improper under FOIA as "FOIA provides access to existing records but does not establish a research service"); *Am. Civil Liberties Union*, 2016 WL 3211460, at *6 (because "an agency need not respond to or answer questions disguised as a FOIA request," agency had no duty to respond to requests for statistical or aggregate data, such as the number of certain types of documents and the gender/race breakdown of certain information) (internal citations omitted) (citing *Serv. Women's Action Network v. Dep't of Def.*, 888 F. Supp. 2d 231, 241 (D. Conn. 2012)). Ultimately,

[u]nder [the] FOIA, an individual may obtain access to records ‘written or transcribed to perpetuate knowledge or events.’ . . . [The] FOIA neither requires an agency to answer questions disguised as a FOIA request, [n]or to create documents or opinions in response to an individual’s request for information.

Adams v. Fed. Bureau of Investigation, 572 F. Supp. 2d 65, 68 (D.D.C. 2008) (citing *Hudgins*, 620 F. Supp. at 21, *aff’d*, 808 F.2d at 137, *cert. denied*, 484 U.S. at 803 (citations omitted)). Therefore, even if responsive records were located, Defendant was not required to answer the question posed in the third prong of Plaintiff’s request.⁵

B. Plaintiff’s Request For a Fee Waiver Is Moot.

While no count in the Complaint addresses the denial of Plaintiff’s request for a fee waiver, in her claim for relief, she asks the Court to “[o]rder Defendant DOJ to grant [her] request for a fee waiver[.]” Cmpl, p. 14. The Freedom of Information Act, as amended by the Freedom of Information Reform Act of 1986, provides that:

an agency may properly charge a FOIA requester a fee sufficient to recover: the cost of searching for documents within the scope of the request; the direct cost of initially reviewing any documents unearthed by the search in order to determine whether they are disclosable; and the cost of duplicating the documents that are disclosed.

Nat’l Sec. Archive v. Dep’t of Def., 880 F.2d 1381, 1382 (D.C. Cir. 1989) (citing 5 U.S.C. § 552(a)(4)(A)(iv)) (internal quotation marks omitted). Hence, a party who requests documents under the FOIA must generally pay reasonable search, review and duplication costs. *VoteHemp, Inc. v. DEA*, 237 F. Supp. 2d 55, 58 (D.D.C. 2002) (citing 5 U.S.C. § 552(4)(A)(ii)(I)). However, pursuant to 5 U.S.C. § 552(a)(4)(A)(iv)(II), “[n]o fee may be charged by any agency . . . for the first two hours of search time[.]”

Here, Plaintiff asked that the fees be waived for the processing of her FOIA request. Specifically, by document dated on November 30 and received on December 11, 2015, Plaintiff

⁵ The fourth prong of Plaintiff’s request is formulated as a question. However, it seeks similar information requested in the first two prongs of Plaintiff’s request which were not posed as questions. The only difference is that, in the fourth prong, Plaintiff requests the information as it pertains to plea agreements. See Francis Dec., Att. 1, p. 1.

agreed to pay up to \$1,000 for “search time.” Francis Dec., ¶ 7, Att. C. By letter dated December 14, 2015, she agreed to pay up to \$1,867 for the processing of her request. *Id.*, ¶ 8 Att. D. By letter dated January 8, and received on February 2, 2016, Plaintiff inquired about the status of her FOIA request. She indicated that she was “willing to pay . . . \$1000 plus an additional \$1000 [to process the request].” *Id.*, ¶ 13 and Att. F. But, while Plaintiff agreed to pay those fees, EOUSA did not assess any fees for the processing of her FOIA request. *Id.*, ¶ 18; see Jones Dec., ¶ 7 (“I did not receive notification from the EOUSA FOIA/PA Unit that Plaintiff had submitted payment for the search.”). In addition, EOUSA did not adjudicate Plaintiff’s request for a fee waiver because, in less than two hours, the USAO-DC’s search revealed that it did not possess records responsive to Plaintiff’s request. *Id.* Therefore, although Plaintiff requests a fee waiver for the instant FOIA request, that request is moot as she was assessed no fees. “Moot cases lie beyond the judicial power because the case or controversy ceases to exist once the matter has been resolved.” *Nat’l Wildlife Fed’n v. Dep’t of Interior*, 616 F. Supp. 889, 892 (D.D.C. 1984) (citing C. Wright, *Law of Federal Courts*, 38-39 (3d ed. 1976)). See *Better Gov’t Ass’n v. Dep’t of State*, 780 F.2d 86, 91 (D.C. Cir. 1986) (Court held that “appellants’ challenge to standards as applied to their specific fee waiver requests . . . was moot. Even assuming appellants’ claims that they were improperly denied fee waivers were well-founded, we cannot order the appellee departments to do something they have already done, i.e. waive the FOIA fees in the instant cases.”). Cf. *Schoenman v. Fed. Bureau of Investigation*, 573 F. Supp. 2d 119, 136 (D.D.C. 2008) (“[an agency’s] decision to release documents to [a FOIA requester] without seeking payment from him moots [the requester’s] arguments that [a] denial of a fee waiver was substantively incorrect.”) (citing *Hall v. Cent. Intelligence Agency*, 437 F.3d 94, 99 (D.C. Cir. 2006)). Hence, Plaintiff’s request should be denied.

V. CONCLUSION

As indicated herein, Defendant has met all of its obligations under the FOIA. Therefore, for the foregoing reasons, Defendant respectfully requests that its Motion for Summary Judgment be granted as there are no genuine issues of material fact, and Defendant is entitled to judgment as a matter of law. *See* Fed. R. Civ. Proc. 56(a).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 4th day of August, 2016, the foregoing was served upon Plaintiff's counsel, via the Court's Electronic Filing System, as follows:

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

K. DENISE RUCKER KREPP,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 16-0926 (KBJ)
)	
UNITED STATES DEPARTMENT)	
OF JUSTICE,)	
)	
Defendant.)	
_____)	

ORDER

This matter is before the Court on Defendant’s Motion for Summary Judgment. Upon consideration of this Motion and the entire record of this case, it is this __ day of _____, 2015,

ORDERED that Defendant’s Motion for Summary Judgment should be and hereby is **GRANTED**.

UNITED STATES DISTRICT JUDGE