

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

GERALD BURTON
7310 Powhatan Street
Lanham, MD 20706

Plaintiff,

CIVIL ACTION NO. _____

and

JURY TRIAL DEMANDED

JOSHUA FULLER
1501 Fort Dupont, S.E.
Washington, DC 20020

Plaintiff,

and

CHARLES FLORENCE
4030 19th Street, N.E.
Washington, DC 20018

Plaintiff,

JAMES JOHNSON
4301 Longleaf Court
Bowie, MD 20716

Plaintiff,

JOHN THOMAS
1016 Woods Place
Alexandria, VA 22302

Plaintiff,

and

ANTHONY BOUKNIGHT
1618 Winesap Drive
Odenton, MD 21113

Plaintiff,

and

ANTHONY WILLIAMS
8312 Sunnybrook Ct.
Brandywine, MD 20613

Plaintiff,

and

DONALD SIMPSON
9104 Friar Road
Fort Washington, MD 20744

Plaintiff,

and

TAWANNA ROBINSON
4339 Southern Avenue
Capitol Heights, MD 20743

Plaintiff,

and

JAY BROWN
302 Upshur Street, N.W.
Washington, DC 20011

Plaintiff,

and

DAVID DRIGGERS
4905 Plata Street
Clinton, MD 20735

Plaintiff,

and

KEITH HICKS
15201 Ridall Court

Accokeek, MD 20607

Plaintiff,

and

PRESTON WILLIAMS, JR.
401 Mohican Drive
Frederick, MD 21201

Plaintiff,

and

CRANSTON LEE, JR.
3424 Navy Day Drive
Suitland, MD 20746

Plaintiff,

and

COURTNEY BASS
11445 Red Jade Court
Upper Marlboro, MD 20774

Plaintiff,

and

RICHARD SHINE
6106 Clinton Way
Clinton, MD 20735

Plaintiff,

DANIEL BOTTS, SR.
3636 Sixteenth Street, N.W.
Apartment #B-1112
Washington, DC 20010

Plaintiff,

and

CHARLES ADDO
1724 D Street, N.E.
Washington, DC 20002

Plaintiff,

and

ATON C. KENT-TROUT
1726 Irving Street, N.W.
Washington, DC 20010

Plaintiff,

and

THERESA SHANKLIN
3902 Cole Boulevard, S.E.
Washington, DC 20032

Plaintiff,

and

DOMINIQUE TAYLOR
70 Q Street, N.W.
Washington, DC 20001

Plaintiff,

and

MARIO CRUDUP
305 Fifteenth Street, N.E.
Washington, DC 20002

Plaintiff,

and

WAYNE NELSON
PO Box 193
Accokeek, MD 20607

Plaintiff,

and

CRAIG COSTELLO
1421 Nineteenth Street, S.E.
Washington, DC 20020

Plaintiff,

and

NORMAN W. SANDERS
2157 Thirtieth Street, N.E.
Washington, DC 20018

Plaintiff,

and

ERIK L. BARNES
434 37th Place, S.E.
Apt. 102
Washington, DC 20019

Plaintiff,

and

MICHAEL T. BELL
8205 Greyhawk Court
Brandywine, MD 20613

Plaintiff,

and

ALFRED C. WILLIAMS
249 Savannah Street, S.E.
Washington, DC 20032

Plaintiff,

and

JEROME DRAPER
9234 Alcola
Lanham, MD

Plaintiff,

and

MICHAEL SIMS

Plaintiff

and

DERRICK HINES
1118 3rd Street, S.W.
Washington, DC 20024,

Plaintiff,

v.

DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Suite 419
Washington, DC 20004

Defendant

and

HON. ADRIAN FENTY
Executive Office of the Mayor
1350 Pennsylvania Avenue, N.W.
Suite 316
Washington, DC 20004
(In his official capacity only),

Defendant

and

DENNIS L. RUBIN
Fire Chief, DCFEMS
1923 Vermont Avenue, N.W.

Suite 201
Washington, DC 20001
(In his official capacity only),

Defendant,

and

BRIAN LEE
Assistant Fire Chief of Operations
DCFEMS
1923 Vermont Avenue, N.W.
Suite 201
Washington, DC 20001
(In his official capacity only),

Defendant,

and

LAWRENCE SCHULTZ,
Assistant Fire Chief,
DCFEMS
1923 Vermont Avenue, N.W.
Suite 201
Washington, DC 20001
(In his official capacity only),

Defendant.

CLASS ACTION COMPLAINT

1. By and through undersigned counsel, Plaintiffs Gerald Burton and 29 other African American firefighters currently or formerly employed by the District of Columbia Fire and Emergency Medical Services ("D.C. Fire Department"), on behalf of themselves and all African American firefighters disciplined or denied promotions from October 15, 2007 to the present, hereby

file this Class Action Complaint. Defendants have subjected the Plaintiffs in this case to a race-based hostile work environment in violation of 42 U.S.C. § 1981. The custom, policy, pattern and practice of the District of Columbia and its Fire Chief has been to subject African American firefighters to more severe punishments than white firefighters in violation of 42 U.S.C. § 1981 and 42 U.S.C. § 1983. In addition, the District of Columbia and its Fire Chief have intentionally discriminated against African American employees by denying them promotions for which they were qualified and eligible in order to reserve the positions at issue for white employees in violation of 42 U.S.C. § 1981 and 42 U.S.C. § 1983.

2. Plaintiffs are seeking any and all relief available under 42 U.S.C. § 1981 and § 1983, including but not limited to declaratory relief and an injunction against further discrimination, clean records and reinstatement as appropriate, back pay and back benefits, compensatory and punitive damages, and the reasonable attorneys fees and expenses of bringing this Class Action Complaint.

Jurisdiction and Venue

1. This Court has jurisdiction over this Complaint pursuant to 28 U.S.C. § 1343.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

Parties

3. Plaintiffs are current and former African American firefighters employed by the D.C. Fire Department at any time within the applicable statute of limitations who have been disciplined, treated unfairly, denied a promotion, or subjected to a hostile work environment based on race.

4. Defendant District of Columbia is a governmental organization and municipal corporation. The District of Columbia Fire and Emergency Medical Services is an agency of the District of Columbia government. For purposes of 42 U.S.C. § 1983, Defendant is a "state actor."

5. Defendant Adrian Fenty is the Mayor of the District of Columbia. He is sued in his official capacity only. For purposes of 42 U.S.C. § 1983, Defendant is a "state actor."

6. At all times relevant hereto, Dennis L. Rubin has been the Chief of the D.C. Fire Department, with ultimate responsibility for personnel actions in the Department. Chief Rubin is white. Chief Rubin is being sued in his official capacity only. His office is located at 1923 Vermont Avenue, N.W., Washington, DC 20001. For purposes of 42 U.S.C. § 1983,

Defendant is a "state actor."

7. Defendant Brian Lee is the Assistant Fire Chief of Operations at the D.C. Fire Department. He is being sued in his official capacity only. His office is located at 1923 Vermont Avenue, N.W., Washington, DC 20001. For purposes of 42 U.S.C. § 1983, Defendant is a "state actor."

8. Defendant Lawrence Schultz is the Assistant Fire Chief of Operations at the D.C. Fire Department. He is being sued in his official capacity only. His office is located at 1923 Vermont Avenue, N.W., Washington, DC 20001. For purposes of 42 U.S.C. § 1983, Defendant is a "state actor."

9. Defendants have engaged in a custom, policy, and pattern and practice of discriminating in discipline and promotions against African American firefighters at all levels of the D.C. Fire Department.

10. Defendants knowingly and intentionally violated the discrimination laws for the benefit of white employees over African American employees.

11. Plaintiffs have been subjected to harsher penalties for comparable offenses and denied promotions that have been given to white persons, and have therefore been denied the same rights as "white persons . . . to make and enforce contracts . . . and

to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens" and have not been subject to "like punishment, pains, penalties, taxes, and licenses, and exactions of every kind, and to no other." 42 U.S.C. § 1981(a).

12. By their imposition of harsher punishments for disciplinary offenses on African American firefighters because of their race than on white firefighters, Defendants have subjected African American firefighters because of their race to unequal "punishment, pains [and] penalties." 42 U.S.C. § 1981.

13. The terms "make and enforce contracts" includes "the making performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." 42 U.S.C. § 1981(b).

14. By their imposition of harsher punishments for disciplinary offenses on African American firefighters than white firefighters, Defendants have denied Plaintiffs the rights of white firefighters in the modification and termination of contracts and in the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship in violation of 42 U.S.C. § 1981 and of rights, privileges, and

immunities secured by the Constitution and the laws in violation of 42 U.S.C. § 1983.

15. By their imposition of harsher punishments for disciplinary offenses on African American firefighters than white firefighters, Defendants have denied Plaintiffs equal protection of the laws under the Fifth Amendment in violation of 42 U.S.C. § 1981 and of rights, privileges, and immunities secured by the Constitution and the laws in violation of 42 U.S.C. § 1983. See Bolling v. Sharp, 347 U.S. 497 (1954)

16. By their imposition of harsher punishments for disciplinary offenses on African American firefighters than white firefighters, Defendants have deprived Plaintiffs of protected liberty and property interests without due process required by the Fifth Amendment in violation of 42 U.S.C. § 1981.

17. Defendants deliberately denied opportunities for promotion to African American firefighters who placed with scores on the Department's promotion test in order to promote white firefighters based on their race at a later date. In so doing, Defendants violated the Constitutional, statutory, regulatory, and contractual rights of the African American firefighters protected under 42 U.S.C. § 1981 and 42 U.S.C.

§ 1983.

Definition of the Class

18. The Class is comprised of all African American firefighters at the D.C. Fire Department who experienced a hostile work environment, were subjected to discipline unequal to that of their similarly situated white colleagues, were discriminatorily denied promotions that were awarded to their white colleagues, or were otherwise subjected to discrimination within the applicable statute of limitations.

Class Allegations

19. This action is properly maintainable as a class action under Rule 23(a) of the Federal Rules of Civil Procedure.

20. In light of the fact that more than half of the 2,200 person Department is non-white, the number of the proposed class is likely to approach 1,000 firefighters and is sufficiently numerous to make joinder impracticable. See Fed. R. Civ. P. 23(a)(1).

21. Plaintiffs' claims raise questions of law or fact common to the class. The common questions are whether Defendants discriminated against its African American firefighters (represented by the Plaintiff Class Representatives) by (a) subjecting them to a hostile work

environment that was severe or pervasive and altered the conditions of their workplace; (b) subjecting them to discipline that was more severe than that to which similarly situated white firefighters were given for similar offenses; or (c) denying them promotions for which they were qualified in order to promote white firefighters based on their race. See Fed. R. Civ. P. 23(a)(2).

22. The Plaintiffs have common issues of fact because they have all experienced the hostile work environment created by the Fire Department. In addition, the Department has consistently applied a pattern and practice of disciplining African American firefighters more severely than white firefighters, the effects of which have been felt by all members of the class who have been subjected to discipline. Class members affected by the 2008 and 2010 promotion process are affected by the same examinations respectively. Finally, the class members have common issues of fact because the personnel decisions were entirely determined and administered by the D.C. Fire Department, either directly or through its contractors. See Fed. R. Civ. P. 23(a)(2).

23. The class members are all being subjected to discrimination based on their race (African American) and

therefore have claims in common. See Fed. R. Civ. P. 23(a)(2).

24. The class members are all African American. See Fed. R. Civ. P. 23(a)(2).

25. The claims of the Plaintiff Class Representatives are typical of the claims of the class. Like all class members, the Plaintiff Class Representatives are African American firefighters who have experienced a hostile work environment and who have either been subjected to unequal discipline based on their race or denied promotions based on their race. See Fed. R. Civ. P. 23(a)(3).

26. The named Plaintiff Class Representatives and undersigned counsel will properly represent the interests of the class and its members. See Fed. R. Civ. P. 23(a)(4).

27. This class action is properly maintainable pursuant to Fed. R. Civ. P. 23(b)(1) because there is a real danger of inconsistent and varying adjudications with respect to the members of the class. Those class members complaining of unequal discipline have already suffered the effects of an inconsistent and unjust pattern and practice with respect to discipline, a pattern and practice that is apparent and properly addressed when the penalties are considered in the aggregate. With respect to the non-promotions, the delay in appointments

under the 2008 promotion examination and the failure to sequester the officials administering the examination in 2010 affected all of the firefighters denied promotions in the same way and they should received consistent adjudications.

28. This class action should properly be maintained under Fed. R. Civ. P. 23(b)(2) because Defendant's actions in creating a hostile work environment are applicable to all members of the class, and Defendant has either unequally disciplined or denied promotions to all members of the class. Injunctive relief is appropriate and sought in this case.

29. In addition, this class action is properly maintainable pursuant to 23(b)(3) because the questions of law and fact common to members of the class predominate over questions affecting individual members, and a class action is superior to other available methods for the fair and efficient resolution of this controversy.

FACTS

30. The D.C. Fire Department's inequitable and racially biased system of discipline constitutes a series of acts that are severe or pervasive and alter the conditions of the workplace for African American firefighters that is both objectively and subjectively harmful.

31. Because African American firefighters are routinely punished more severely than white firefighters, the Department has created a climate of fear and intimidation that extends itself to all Plaintiffs.

32. The D.C. Fire Department has a deeply engrained system of racially disparate punishment that is customary and pervasive at all levels and for all degrees of offenses.

33. Lead Plaintiff Lieutenant Gerald Burton, an African American firefighter, arrived at a fire scene where immediate action was required. In keeping with his training and obligations to the public as a firefighter, Lt. Burton ordered his engine to put the fire out, thus preventing a significant property loss and possibly saving several lives.

34. For taking the initiative and performing a public service by putting out this fire, Lt. Burton was charged with Violating Standard Operating Guidelines, for which he received a 60-hour suspension.¹

35. In contrast to Lt. Burton, white firefighters found to have violated Standard Operating Guidelines for far less compelling reasons than Lt. Burton have received little or no

¹Lt. Burton was also wrongly and discriminatorily charged with Disobeying a Direct Order, for which he received a 120-hour suspension.

discipline.

36. Chief Dennis L. Rubin, who is white, violated Standard Operating Guidelines (and NFPA standards) with the result that one firefighter under his command was seriously burned, but he received no penalty.

37. Lt. Richard Lehan, who is white, was subjected neither to an investigation nor a penalty when he violated Standard Operating Guidelines.

38. Sgt. Kevin Anderson, who is white, received only a verbal reprimand for violating Standard Operating Guidelines.

39. In addition to giving lighter penalties to white firefighters than Lt. Burton received, the Department has allowed at least one white firefighter, James Fitzgerald, to accrue "overtime" hours while was suspended. The Department has not allowed African American firefighters to accrue overtime hours while they are suspended.

40. Because Lt. Burton contested his discipline and the fact that he was unfairly subjected to the Department's administrative Trial Board process, he has been subjected to a series of retaliatory transfers, unlike white firefighters.

41. Firefighter Joshua Fuller, who is African American, learned that one of his colleagues was in possession of a firearm. He rebuked his colleague and took away the handgun in

order to turn it in. Firefighter Fuller was stopped by the Metropolitan police on an alleged "routine" traffic stop, who discovered the handgun. As a result, Firefighter Fuller was charged with having the handgun and not reporting the arrest, and his employment was terminated.

42. In stark contrast to Firefighter Fuller, a white firefighter was apprehended with a firearm after allegedly graphically assaulting his neighbor with his handgun. Because that firefighter is white, however, he only received a suspension.

43. Lt. Charles Florence, who is African American, was wrongly found to have engaged in "sexual harassment" on the basis of a single ill-considered remark and was forced to resign from the Department after more than 26 years of service.

44. In contrast, Sgt. James Clem, who is white, emailed a picture of his penis to an African American female firefighter. Although Clem admitted that he sent the email, he was not found to have engaged in "sexual harassment" and received only a demotion, which was coupled with a beneficial transfer to a high-profile position, which has positioned him to apply for jobs in other Agencies such as the Department of Homeland Security.

45. Meanwhile, the victim of Sgt. Clem's harassment

suffered retaliation for reporting the offense when the Department refused to assist her in finding light duty during her pregnancy.

46. Sgt. Clem is not the only white firefighter to have flaunted his anatomy before women in the fire house. White firefighters Rutter and Johnson stripped naked and cooked the meals at a Fire Department retirement party. Far from being retired themselves as a result, they were merely transferred without any penalty being proposed until after their misconduct was publicly revealed.

47. For misrepresenting his assignment on a report in order to cover up another white firefighter's misconduct, Captain Terry Reynolds, who is white, was not disciplined and, in fact, was subsequently promoted.

48. African American firefighter James Johnson was transferred against his will after a verbal disagreement with a white firefighter, but no action was taken against the white firefighter. Firefighter Johnson also required to go to EMT school even though white firefighters with less seniority were not required to go to EMT school. Firefighter Johnson has also been called a racist and a troublemaker.

49. Likewise, African American firefighter Lawrence Clark was summarily terminated, in violation of the Collective

Bargaining Agreement, after allegedly accidentally injuring another firefighter while playing with a knife.

50. However, when Lt. Gregory Crowe, who is white, threw a plate at an African American firefighter, Jay Brown, and injured him in the eye, Lt. Crowe was merely demoted to Sergeant and was subsequently rewarded with the beneficial assignment of driving the Fire Chief.

51. John E. Thomas is an African American Sergeant who received unfavorable assignments cleaning his unit, while white firefighters were allowed to attend ceremonial events. Sergeant Thomas was also disciplined for a traffic offense when white firefighters were not so disciplined.

52. African American firefighter Dominique Taylor was convicted for refusing to testify against another firefighter. She was forced to resign from the Fire Department.

53. In contrast, Lt. Marconi, who is white, was convicted of stalking his spouse and served 10 days of a 90-day sentence in jail. He received no discipline.

54. Daniel Botts is an African American Fire Inspector with 28 years at the Department who was discriminated against regarding his National Registry EMT Certification, which was not required of white firefighters with less seniority. Firefighter Botts has also experienced a hostile environment, which includes

being referred to as "nigger," having his car "keyed," and having ground glass placed in his firefighting gear.

55. Charles Addo is an African American firefighter who was reprimanded after he allegedly failed to send an email to the Fire Chief about missing a Police Fire Clinic appointment.

56. Aton C. Kent-Trout is an African American applicant to the Fire Department whose conditional offer was wrongfully withdrawn on the basis of a psychological evaluation in which the psychologist provoked Mr. Kent-Trout.

57. Craig Costello is an African American firefighter and paramedic who was suspended as a result of not passing his annual physical in September 2008, however white firefighters who did not pass their physical examinations were not suspended.

58. Norman W. Sanders is an African American sergeant at the Fire Department who was given a 60-hour suspension after being arrested, but white firefighters were not similarly disciplined.

59. Tawanna Robinson, an African American firefighter, was charged with improperly contacting Captain Leland regarding a payroll issue after he had been sequestered because of his role in administering the 2010 promotion examination. [?] Firefighter Robinson was also falsely accused of failing to enter a burning building in 2007.

60. White Firefighter Cosker and Captain Leland, also white, violated the same Special Order sequestering Captain Leland when they ran a marathon together and were photographed together at the event in an obvious conflict of interest and violation of the Department's Order. Neither white firefighter was disciplined, and Firefighter Cosker did suspiciously well on the promotion examination.

61. Firefighter Theresa Shanklin experienced a hostile work environment at the Fire Department in the form of racial epithets, mistreatment, derogatory comments, denial of training, and discouragement from pursuing opportunities within the Department.

62. Firefighter Derrick Hines, who is African American, allegedly failed to report an arrest and license suspension and faced a trial board. Other white officer in similar circumstances have not faced a trial board.

63. African American Firefighter Garry Mayo received harsher treatment than white firefighters.

64. African American Firefighter Michael Sims was denied the opportunity to take the promotion exam based on an infraction many years earlier.

2008 Promotion Examination

65. Anthony Williams was one of 18 African American firefighters eligible for promotion on the list generated as a result of the 2006 promotion examination. There were 15 white firefighters on the list. Firefighter Williams was fourth in line for a promotion, and positions were fully funded. Upon receiving the results of the 2008 examination, which were included 24 white firefighters and only nine African firefighters and did not include Firefighter Williams, the Department deliberately allowed the predominantly African American 2006 list to expire in order to promote white firefighters.

66. Sergeant Donald Richard Simpson, an African American EMT Technician with 27 years at the Department, was next in line to be promoted to Lieutenant when Defendants deliberately allowed the 2006 Promotion List to expire in order to deny Sgt. Simpson a promotion and promote a white firefighter instead.

67. Wayne R. Nelson, an African American firefighter, was denied a promotion when Defendants deliberately allowed the 2006 Promotion List to expire in order to deny Firefighter Nelson a promotion and promote a white firefighter instead.

68. Charles Addo, an African American firefighter, was denied a promotion when Defendants deliberately allowed the 2006 Promotion List to expire in order to deny Firefighter Addo a promotion and promote a white firefighter instead.

69. Michael T. Bell, an African American Sergeant, was denied a promotion when Defendants deliberately allowed the 2006 Promotion List to expire in order to deny Firefighter Bell a promotion and promote a white firefighter instead.

70. John Thomas, an African American Sergeant, was denied a promotion when Defendants deliberately allowed the 2006 Promotion List to expire in order to deny Firefighter Thomas a promotion and promote a white firefighter instead.

71. Courtney Bass, an African American firefighter, was subjected to harsher discipline as a result of alleged DUI while white firefighters received lighter penalties.

2010 Promotion Examination

72. Sergeant Keith Hicks is an African American firefighter and Technician who maintains he would have placed higher on the 2010 promotion list had it not been for the unlawful violation of the Special Order sequestering the test administrators and unlawful coaching given to white members of the Department.

73. Sergeant Donald Richard Simpson is an African American firefighter and Technician who maintains he would have placed higher on the 2010 promotion list had it not been for the unlawful violation of the Special Order sequestering the test administrators and unlawful coaching given to white members of the Department.

74. Firefighter Wayne R. Nelson is an African American firefighter and Technician who maintains he would have placed higher on the 2010 promotion list had it not been for the unlawful violation of the Special Order sequestering the test administrators and unlawful coaching given to white members of the Department.

75. Richard Shine is an African American Sergeant who maintains he would have placed higher on the 2010 promotion list had it not been for the unlawful violation of the Special Order sequestering the test administrators and unlawful coaching given to white members of the Department.

76. Erik L. Barnes is an African American Sergeant who maintains he would have placed higher on the 2010 promotion list had it not been for the unlawful violation of the Special Order sequestering the test administrators and unlawful coaching given

to white members of the Department.

77. Michael T. Bell is an African American Sergeant who maintains he would have placed higher on the 2010 promotion list had it not been for the unlawful violation of the Special Order sequestering the test administrators and unlawful coaching given to white members of the Department.

78. Alfred C. Williams is an African American Sergeant who maintains he would have placed higher on the 2010 promotion list had it not been for the unlawful violation of the Special Order sequestering the test administrators and unlawful coaching given to white members of the Department.

79. John Thomas is an African American Sergeant who maintains he would have placed higher on the 2010 promotion list had it not been for the unlawful violation of the Special Order sequestering the test administrators and unlawful coaching given to white members of the Department.

80. Preston Williams is an African American firefighter who maintains he would have placed higher on the 2010 promotion list had it not been for the unlawful violation of the Special Order sequestering the test administrators and unlawful coaching given to white members of the Department.

81. Courtney Bass is an African American firefighter who maintains he would have placed higher on the 2010 promotion list had it not been for the unlawful violation of the Special Order sequestering the test administrators and unlawful coaching given to white members of the Department.

82. Mario Crudup is an African American firefighter who maintains he would have placed higher on the 2010 promotion list had it not been for the unlawful violation of the Special Order sequestering the test administrators and unlawful coaching given to white members of the Department.

83. David Driggers is an African American firefighter who maintains he would have placed higher on the 2010 promotion list had it not been for the unlawful violation of the Special Order sequestering the test administrators and unlawful coaching given to white members of the Department.

84. Jerome Draper is an African American firefighter who maintains he would have placed higher on the 2010 promotion list had it not been for the unlawful violation of the Special Order sequestering the test administrators and unlawful coaching given to white members of the Department.

CAUSES OF ACTION

Count I - Hostile Work Environment

85. In violation of 42 U.S.C. § 1981, Defendants have subjected Plaintiffs to a hostile work environment based on their race.

Count II - Discriminatory Punishment

86. In violation of 42 U.S.C. § 1981, Defendants have subjected Plaintiffs based on their race to unequal punishment thus depriving them of rights enjoyed by white persons, including but not limited to equal punishment, contractual rights, and Constitutional rights to equal protection and due process.

Count III - Discriminatory Punishment

87. In violation of 42 U.S.C. § 1983, Defendants have subjected Plaintiffs based on their race to unequal punishment and deprived Plaintiffs based on their race of the protection of rights guaranteed by the Constitution and laws, including but not limited to equal protection and due process.

Count IV - Unequal Promotions

88. In violation of 42 U.S.C. § 1981, Defendants have denied Plaintiffs promotions based on their race, thus depriving them of rights enjoyed by white persons, including but not

limited to contractual rights, and Constitutional rights to equal protection and due process.

Count V - Unequal Promotions

89. In violation of 42 U.S.C. § 1983, Defendants have denied Plaintiffs promotions based on their race, Defendants thus depriving them of the protection of rights guaranteed by the Constitution and laws, including but not limited to equal protection and due process.

RELIEF REQUESTED

90. Plaintiffs seek declaratory and injunctive relief and request that this Court find that discrimination has occurred in discipline and promotions at the D.C. Fire Department and issue an injunction requiring that it cease.

91. A clean record and, as appropriate, reinstatement retroactive to the date of termination of all African American firefighters subjected to discriminatory discipline.

92. Plaintiffs seek retroactive promotion of all African American firefighters denied promotions from the 2008 promotion process.

93. For each Plaintiff who has lost pay as a result of Defendants' discriminatory actions, Plaintiffs seek full back

pay and benefits.

94. Plaintiffs seeks appropriate compensatory damages for causes including but not limited to loss of reputation and physical and emotional distress.

95. For Defendants wanton, willful, and deliberate discrimination in knowing violation of the federal statutes prohibiting their conduct, Plaintiffs are seeking punitive damages in light of the extraordinary circumstances of this case.

Jury Demand

96. Plaintiffs request trial by jury on all counts triable to a jury.

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October 15, 2010

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