

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO**

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**YOLANDA MCKAY and CHRISTINE  
SCOTT,**

*Plaintiffs,*

**Civil Action No.:** 1:23-cv-02330

v.

**CITY OF CLEVELAND, and CLEVELAND  
DEPARTMENT OF PUBLIC SAFETY,  
DIVISION OF FIRE,**

*Defendants.*

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**COMPLAINT AND DEMAND FOR TRIAL BY JURY**

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Plaintiffs Yolanda McKay and Christine Scott (“Plaintiffs”), by and through their attorneys, hereby submit this Complaint against the City of Cleveland and the Cleveland Department of Public Safety, Division of Fire (“Defendants”), and allege as follows:

**INTRODUCTION**

1. Plaintiffs bring this lawsuit to remedy the City of Cleveland’s long-standing policy of discrimination against women in hiring for the position of firefighter. It is a well-known fact that prior to 2019, Defendants had not hired a single female firefighter in 30 years. The consequences of Defendants’ discriminatory conduct are plain—although there were well over 778 Cleveland firefighters as of year-end 2022, just 14 of them are women.

2. One reason for this disparity is Defendants’ use, until at least 2020, of a discriminatory physical agility test (“PAT”) in the firefighter hiring process. The PAT required candidates to complete five separate tasks on a timed course.

3. Women failed the PAT at a statistically significantly higher rate than men. The PAT had an adverse impact on female candidates for the firefighter position, both with respect to the content of the test itself and the way in which it is administered. When Plaintiffs took the exam in 2017, they were met with numerous barriers to success. This included large and ill-fitting gear, a testing course and equipment that differed from that used in the Division of Fire's training program, inconsistent information on the time required to successfully complete the test, and a lack of transparent time keeping and scoring.

4. The PAT was not job related for the firefighter position and not justified by business necessity. Despite the known discriminatory effects of the test, Defendants continued to use it for decades, declining to adopt a less discriminatory alternative. Defendants chose this course of conduct even though alternative testing measures, namely the Candidate Physical Ability Test ("CPAT"), are readily available. Defendants only recently adopted an alternative test, the Firefighter Mile, in 2020.

5. On information and belief, Defendants continued to use the PAT with the intention of discriminating against female candidates or with reckless disregard of the fact that the PAT had the effect of discriminating against women.

6. To end this pattern of discrimination, Plaintiffs Yolanda McKay and Christine Scott bring claims for sex discrimination under Title VII of the Civil Rights Act of 1964 ("Title VII") as amended, 42 U.S.C. §§ 2000e *et seq.* Plaintiffs seek declaratory and injunctive relief, back pay, retroactive seniority and pension benefits, compensatory damages, and all other available relief to ensure that Defendants' practices are deemed unlawful, that a fair and lawful testing process is put in place, and that the women who have been harmed by Defendants' conduct are made whole.

**JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 over the claims alleged herein that arise under federal law.

8. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) because Defendants are domiciled within this District and under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims occurred in this District.

9. On May 10, 2018, Plaintiffs filed charges of discrimination with the United States Equal Employment Opportunity Commission (“EEOC”) against Defendants under Title VII.

10. On November 13, 2019, the EEOC issued determinations that Defendants discriminated against Plaintiffs and other similarly situated women candidates because of sex and engaged in a pattern or practice of discrimination against women in violation of Title VII. The EEOC’s determinations are attached as Exhibit 1.

11. After attempting to conciliate their claims through the EEOC without success, Plaintiffs’ charges were referred to the United States Department of Justice. The Department of Justice issued Plaintiffs notice of their right to sue on April 28, 2023, which are attached as Exhibit 2.

12. Plaintiffs and Defendants agreed to toll the time limit for filing suit through December 8, 2023. A copy of the agreement is attached as Exhibit 3.

13. Having exhausted their administrative remedies, Plaintiffs timely bring this action against Defendants.

**THE PARTIES**

14. Plaintiff Yolanda McKay is a woman. She is and was at all relevant times an adult resident of Cleveland, Ohio.

15. Plaintiff Christine Scott is a woman. She is an adult resident of Cleveland, Ohio. At the time she took the PAT, Ms. Scott was a resident of North Royalton, Ohio and was willing and able to become a resident of Cleveland, Ohio, to the extent that was required, if appointed to a firefighter position.

16. Defendant City of Cleveland is an incorporated municipality organized under the laws of Ohio. The City of Cleveland is and was at all relevant times an employer under Title VII.

17. Defendant Cleveland Department of Public Safety, Division of Fire is a division of the City of Cleveland's Department of Public Safety. The Division of Fire is and was at all relevant times an employer under Title VII.

### **FACTUAL ALLEGATIONS**

18. Defendants have engaged in a long-standing pattern or practice of discrimination against female applicants for the position of firefighter.

19. Until at least 2020, in order to obtain a firefighter position with Defendants, a candidate was required to, among other things, take and pass the PAT. Upon information and belief, the most recent iteration of the PAT used by Defendants had been in place since approximately 1995. The test required completing the following five tasks over a timed course while wearing ankle weights, a helmet and an oxygen tank: (1) stair climb while carrying a hose; (2) hose hoist; (3) forcible entry; (4) hose advance; and (5) victim rescue. The test was administered by Defendants through Cuyahoga Community College ("Tri-C").

20. After receiving passing scores on the City of Cleveland's written firefighter exam, both Ms. McKay and Ms. Scott took the PAT on or around July 16, 2017.

21. Before taking the PAT, Plaintiffs attended voluntary practice sessions hosted by Defendants at the Division of Fire's training facility. During the practice sessions, Plaintiffs were given faulty and broken equipment with which to practice.

22. When Plaintiffs later took the PAT at Tri-C, they discovered that the course itself, the equipment provided, and the policies concerning both gear and timing varied as between the practice sessions and the actual PAT. For instance:

- a. The "dummy" used for the victim rescue task was shaped and weighted differently than the dummy on which they had practiced.
- b. The layout of the course was different, and the distances between the tasks during testing was not consistent with distances between tasks during practice sessions.
- c. During practice, Ms. Scott was permitted to use "carpenter gloves" which have the fingertips cut off. She was not permitted to use these gloves during the actual PAT. As noted below, the only gloves provided to test takers were sized for men and were too large for Ms. Scott to use without them slipping off. Ms. Scott was told that her carpenter gloves could not be used moments before she was to take her test. Fortunately, another female candidate gave her a pair of gloves to use. Ms. McKay used the gloves that were provided to her by the test proctors and found them to be too large for her.
- d. The time allotted to candidates during the practice test varied from the time given on the actual test, and information provided to candidates about the time limits for both the practice test and the actual PAT was inconsistent and unclear.

23. Plaintiffs also discovered that the PAT was administered unfairly and inconsistently. For example:

- a. The gear and other equipment provided during the PAT, such as helmets, gloves, and oxygen tanks, were too large to properly fit Plaintiffs or other female candidates. This made it more difficult for Plaintiffs to complete the test, as the helmets often slipped and had to be repositioned.
- b. A cut-off time of 4 minutes and 30 seconds was imposed for the PAT, which differed from the cut-off time during the practice sessions, and the cut-off time was not included in the notice that they received before taking the PAT. Because the form did not include the cut-off time, Ms. Scott called to inquire what the cut-off time would be and was informed she could not be given that information.
- c. Each candidate's journey through the PAT course was timed by a single male test monitor using a single stopwatch that only the test monitor himself could see or control. No buzzer was used to signify the start or end of the test. The proctor simply called "time's up" when he determined the time for the test had elapsed. Neither the Plaintiffs, nor anyone else in attendance, were able to see their time as they completed the PAT, nor was there any confirmation of the timer's accuracy.
- d. The test monitor did not advise Plaintiffs of the time that they had remaining as they took the PAT, although they were both given this information throughout the PAT practice sessions and expected to be given the same information during testing.

24. Both Plaintiffs failed the PAT. As they were completing the final task, victim rescue, the test monitor simply informed Plaintiffs that their time was up. They were not permitted

to finish the course and were not informed of their times or scores. Both Ms. McKay and Ms. Scott were mere steps away from finishing when time was called.

25. Throughout the relevant timeframe, the PAT had a disparate impact on women with respect to both its content and the manner in which it is administered. Women failed the PAT at a statistically significantly higher rate than men.

26. Upon information and belief, the PAT was not job related for the firefighter position and not justified by business necessity.

27. Despite the known discriminatory effects of the test, Defendants continued to use it until they adopted a different test, the Firefighter Mile, in 2020.

28. Upon information and belief, prior to 2019, Defendants had not hired a single female firefighter in 30 years. And although there were well over 778 Cleveland firefighters as of year-end 2022, just 14 of them are women.

29. In October 2021, Plaintiff McKay successfully completed the Firefighter Mile physical exam that Defendants' instituted to replace the PAT.

30. In August 2022, Ms. McKay was hired by the City of Cleveland as a firefighter.

31. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs were not hired as firefighters and have both sustained, and continue to sustain, lost wages and other benefits of employment.

**COUNT I – SEX DISCRIMINATION**

**Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.***

32. Plaintiffs reallege and incorporate by reference the allegations in all preceding paragraphs.

33. Title VII makes it unlawful for an employer (1) to fail or refuse to hire or otherwise discriminate against any individual with respect to their terms, conditions, or

privileges of employment because of sex, or (2) to limit, segregate, or classify applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect their status as an employee because of sex. 42 U.S.C. § 2000e-2(a).

34. Throughout the relevant time period, Defendants' use of the PAT had a disparate impact on female applicants for the position of firefighter. The use of the PAT was neither job related nor consistent with business necessity. Defendants failed to consider and refused to use available alternatives that were valid and less discriminatory. Defendants knew, and in fact intended, that their actions would result in otherwise qualified female applicants for the position of firefighter being prevented from becoming firefighters.

35. The foregoing conduct, as alleged, constitutes a violation of Title VII.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs Yolanda McKay and Christine Scott pray for relief as follows:

- A. A declaration that the practices complained of herein are unlawful and violate Title VII;
- B. An injunction against Defendants from engaging in the unlawful practices complained of herein;
- C. An order requiring Defendants to adopt a valid, non-discriminatory method for determining whether firefighter candidates are physically capable of performing the job;
- D. An order requiring Defendants to hire Plaintiffs with retroactive seniority and benefits, or in lieu of reinstatements, an order for front pay and benefits;
- E. An order awarding back pay to Plaintiffs (including interest and benefits);
- F. An order awarding Plaintiffs attorneys' fees, costs, and expert costs;
- G. An order awarding Plaintiffs pre-judgment and post-judgment interest, as allowed by law;



H. Such further relief as may be appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury on all issues so triable.

Respectfully Submitted:

Dated: December 6, 2023

By s/Robert E. DeRose

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*\*\*Motion Pro Hac Vice Forthcoming*

ATTORNEYS FOR PLAINTIFFS

# **EXHIBIT 1**

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**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
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Charge No. 532-2018-01727

Yolanda McKay  
33 44 W. 1274<sup>th</sup> Street  
Cleveland, OH 44111

Charging Party

City of Cleveland, Division of Fire  
601 Lakeside Ave.  
Cleveland, OH 44114

Respondent

**DETERMINATION**

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended (Title VII). All requirements for coverage have been met.

Charging Party alleged that Respondent maintains a pattern or practice of discrimination against females in hiring. Charging Party further alleged that the Physical Agility Test (PAT) used in the hiring process has a disparate impact on females. Despite its negative outcome against female firefighter applicants, Respondent continues to use the PAT to further create a chilling effect on efforts to recruit and hire more females. Consequently, Charging Party was denied the opportunity to be employed as a firefighter. In addition, Charging Party believes that there are other females who also been discriminatorily denied employment as firefighters, in violation of Title VII.

Upon review of the evidence in this matter, the PAT related to Respondent's 2016 hiring cycle for entry-level firefighters was found to adversely impact female candidates. Specifically, females that took the PAT failed at a statistically significantly higher rate than the males who took the PAT. The evidence collected did not show the PAT was job related and consistent with business necessity. Moreover, even if the PAT was job related and consistent with business necessity, it appeared that Respondent could have used a valid, alternative practices that would have caused less adverse impact.

Growing out of the evidence collected in this matter, the written test related to Respondent's 2016 hiring cycle for entry-level firefighters was also found to adversely impact female candidates. Specifically, females that took the written test failed at a statistically significantly higher rate than the males who took the written test. The evidence collected did not show that the written test was job related and consistent with business necessity, it appeared that Respondent could have used valid, alternative practices that would have caused less adverse impact.

Therefore, I find that Respondent discriminated against Charging Party, and a group of aggrieved individuals who are females, because of their sex, and that Respondent has a pattern or practice of discriminating against females, in violation of Title VII.

Additionally, I find that growing out of this investigation and related to the written test administered for the 2016 hiring of entry-level firefighters Respondent discriminated against a group of aggrieved individuals who are females, because of their sex, in violation of Title VII.

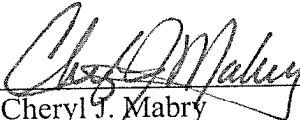
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If Respondent fails to engage in conciliation, or if the Commission determines, in its sole discretion, that conciliation has failed, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission.

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On Behalf of the Commission:

NOV 13 2019  
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Date

  
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Cheryl J. Mabry  
Director

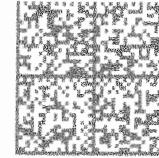
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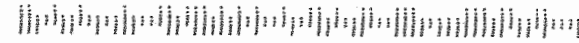
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Christine Scott  
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North Royalton, OH 44133

Charging Party

City of Cleveland, Division of Fire  
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Cleveland, OH 44114

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Charging Party alleged that Respondent maintains a pattern or practice of discrimination against females in hiring. Charging Party further alleged that the Physical Agility Test (PAT) used in the hiring process has a disparate impact on females. Despite its negative outcome against female firefighter applicants, Respondent continues to use the PAT to further create a chilling effect on efforts to recruit and hire more females. Consequently, Charging Party was denied the opportunity to be employed as a firefighter. In addition, Charging Party believes that there are other females who also been discriminatorily denied employment as firefighters, in violation of Title VII.

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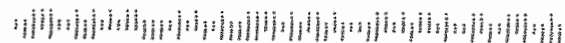
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On Behalf of the Commission:

December 17, 2020

Date



Karen McDonough  
Acting Director

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On Behalf of the Commission:

December 17, 2020

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Acting Director

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ZASHIN & RICH  
Ernst & Young Tower  
950 Main Ave, 4<sup>th</sup> Floor  
Cleveland, Ohio 44113

# **EXHIBIT 2**



**U.S. Department of Justice**  
Civil Rights Division

KC:MLB:KLF  
DJ 170-57-248

*Employment Litigation Section – 4CON*  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
[www.usdoj.gov/crt/emp](http://www.usdoj.gov/crt/emp)

NOTICE OF RIGHT TO SUE WITHIN 90 DAYS

VIA EMAIL

April 28, 2023

Ms. Yolanda McKay  
c/o Dana Lossia, Esquire  
Law Office of Levy & Ratner  
80 Eighth Ave.  
New York, NY 10011

Re: Yolanda McKay v. City of Cleveland, et al.  
EEOC Charge No. 532-2018-01727

Dear Ms. McKay:

Because you filed the above charge with the Equal Employment Opportunity Commission (EEOC), and conciliation on this charge has failed, and because you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq., against the above-named respondent. It has been determined that the Department of Justice will not file suit on the above-referenced charge of discrimination that was referred to us by the EEOC. This should not be taken to mean that the Department of Justice has made a judgment as to whether or not your charge is meritorious.

You are hereby notified that conciliation in this matter was unsuccessful by the EEOC. If you choose to commence a civil action, such suit must be filed in the appropriate court within 90 days of your receipt of this Notice.

If you or your attorney have any questions concerning these matters or wish to inspect the investigative files, please feel free to address your inquiry to: Dilip Gokhale, Director, EEOC, Anthony J. Celebrezze Federal Building, 1240 E. Ninth Street, Ste. 3001, Cleveland, OH 44199.

Sincerely,

Kristen Clarke  
Assistant Attorney General  
Civil Rights Division

By: *Meredith L. Burrell*

Meredith L. Burrell  
Principal Deputy Chief  
Employment Litigation Section

cc: City of Cleveland c/o Mark Griffin  
Robert Schug, Esquire  
Rebekah Cook-Mack, Esquire  
EEOC, Cleveland Field Office



**U.S. Department of Justice**

**Civil Rights Division**

KC:MLB:KLF  
DJ 170-57-249

*Employment Litigation Section – 4CON  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
www.usdoj.gov/crt/emp*

**NOTICE OF RIGHT TO SUE WITHIN 90 DAYS**

VIA EMAIL

April 28, 2023

Ms. Christine Scott  
c/o Dana Lossia, Esquire  
Law Office of Levy & Ratner  
80 Eighth Ave.  
New York, NY 10011

Re: Christine Scott v. City of Cleveland, et al.  
EEOC Charge No. 532-2018-01728

Dear Ms. Scott:

Because you filed the above charge with the Equal Employment Opportunity Commission (EEOC), and conciliation on this charge has failed, and because you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq., against the above-named respondent. It has been determined that the Department of Justice will not file suit on the above-referenced charge of discrimination that was referred to us by the EEOC. This should not be taken to mean that the Department of Justice has made a judgment as to whether or not your charge is meritorious.

You are hereby notified that conciliation in this matter was unsuccessful by the EEOC. If you choose to commence a civil action, such suit must be filed in the appropriate court within 90 days of your receipt of this Notice.

If you or your attorney have any questions concerning these matters or wish to inspect the investigative files, please feel free to address your inquiry to: Dilip Gokhale, Director, EEOC, Anthony J. Celebrezze Federal Building, 1240 E. Ninth Street, Ste. 3001, Cleveland, OH 44199.

Sincerely,

Kristen Clarke  
Assistant Attorney General  
Civil Rights Division

By: *Meredith L. Burrell*

Meredith L. Burrell  
Principal Deputy Chief  
Employment Litigation Section

cc: City of Cleveland c/o Mark Griffin  
Robert Schug, Esquire  
Rebekah Cook-Mack, Esquire  
EEOC, Cleveland Field Office

# **EXHIBIT 3**



**SECOND TOLLING AGREEMENT**  
**(Yolanda McKay – EEOC Charge No. 532-2018-01727)**  
**(Christine Scott – EEOC Charge No. 532-2018-01728)**

This Second Tolling Agreement is entered into between the City of Cleveland, Yolanda McKay, and Christine Scott. On April 28, 2023, the U.S. Department of Justice, Civil Rights Division separately issued Yolanda McKay and Christine Scott a 90-day right to sue letter regarding the above-referenced U.S. Equal Employment Opportunity Commission (“EEOC”) charges (copies of the right to sue letters are collectively attached and incorporated as “Exhibit 1”). McKay’s and Scott’s respective 90-day deadline in which “to commence a civil action” in an appropriate court “under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq.” expires on or about July 28, 2023. In order to allow the parties to attempt to explore a possible pre-litigation resolution to the claim(s) stated in the above-referenced EEOC charges, the parties agree to toll the above “on or about July 28, 2023” deadline for a second time, this time from September 26, 2023 until December 8, 2023. Therefore, McKay and Scott, individually or collectively, shall have until Friday, December 8, 2023 in which “to commence a civil action” in an appropriate court under Title VII regarding their respective EEOC charge referenced above.

No supplement, modification, or amendment of this Agreement will be binding unless it is in writing and signed and dated by all parties. By affixing his/her/its signature to and dating this document, each party is affirming that he/she/it has read, understands, and consents to the Agreement and agrees to be legally bound by and to its terms. This Agreement binds and inures to the benefit of all parties and their

respective successors and assigns. This Agreement cannot be assigned without the prior written consent of all other parties. This Agreement shall be construed and enforced under Ohio law. Each party has cooperated in, and, in any construction of this Agreement, shall be deemed to have cooperated in, the drafting and preparation of this Agreement.

This Agreement may be executed in counterparts, each of which is considered an original, but all of which constitute one and the same instrument.

**FOR YOLANDA MCKAY**

\_\_\_\_\_  
Yolanda McKay Date

**FOR THE CITY OF CLEVELAND**

\_\_\_\_\_  
Mark Griffin, Director Date  
Department of Law

**FOR CHRISTINE SCOTT**

\_\_\_\_\_  
Christine Scott Date

RECOMMENDED FOR APPROVAL BY:

\_\_\_\_\_  
William Menzalora Date  
Chief Assistant Director of Law  
Department of Law

RECOMMENDED FOR APPROVAL BY:

*Dana Lossia* 9-18-2023

\_\_\_\_\_  
Dana Lossia, Esq.  
Law Offices of Levy & Rattner  
New York, NY 10011

One of the Attorneys for Yolanda McKay  
& Christine Scott

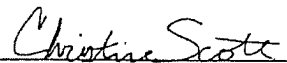
respective successors and assigns. This Agreement cannot be assigned without the prior written consent of all other parties. This Agreement shall be construed and enforced under Ohio law. Each party has cooperated in, and, in any construction of this Agreement, shall be deemed to have cooperated in, the drafting and preparation of this Agreement.

This Agreement may be executed in counterparts, each of which is considered an original, but all of which constitute one and the same instrument.

**FOR YOLANDA MCKAY**

\_\_\_\_\_  
Yolanda McKay Date

**FOR CHRISTINE SCOTT**

 9/16/2023  
\_\_\_\_\_  
Christine Scott Date

RECOMMENDED FOR APPROVAL BY:

\_\_\_\_\_  
Dana Lossia, Esq.  
Law Offices of Levy & Rattner  
New York, NY 10011

One of the Attorneys for Yolanda McKay  
& Christine Scott

**FOR THE CITY OF CLEVELAND**

\_\_\_\_\_  
Mark Griffin, Director Date  
Department of Law

RECOMMENDED FOR APPROVAL BY:

\_\_\_\_\_  
William Menzalora Date  
Chief Assistant Director of Law  
Department of Law



U.S. Department of Justice  
Civil Rights Division

KC:MLB:KLF  
DJ 170-57-248

Employment Litigation Section – JCON  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
[www.usdoj.gov/crt/emp](http://www.usdoj.gov/crt/emp)

NOTICE OF RIGHT TO SUE WITHIN 90 DAYS

VIA EMAIL

April 28, 2023

Ms. Yolanda McKay  
c/o Dana Lossia, Esquire  
Law Office of Levy & Ratner  
80 Eighth Ave.  
New York, NY 10011

Re: Yolanda McKay v. City of Cleveland, et al.  
EEOC Charge No. 532-2018-01727

Dear Ms. McKay:

Because you filed the above charge with the Equal Employment Opportunity Commission (EEOC), and conciliation on this charge has failed, and because you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq., against the above-named respondent. It has been determined that the Department of Justice will not file suit on the above-referenced charge of discrimination that was referred to us by the EEOC. This should not be taken to mean that the Department of Justice has made a judgment as to whether or not your charge is meritorious.

You are hereby notified that conciliation in this matter was unsuccessful by the EEOC. If you choose to commence a civil action, such suit must be filed in the appropriate court within 90 days of your receipt of this Notice.

If you or your attorney have any questions concerning these matters or wish to inspect the investigative files, please feel free to address your inquiry to: Dilip Gokhale, Director, EEOC, Anthony J. Celebrezze Federal Building, 1240 E. Ninth Street, Ste. 3001, Cleveland, OH 44199.

Sincerely,

Kristen Clarke  
Assistant Attorney General  
Civil Rights Division

By: *Meredith L. Burrell*

Meredith L. Burrell  
Principal Deputy Chief  
Employment Litigation Section

cc: City of Cleveland c/o Mark Griffin  
Robert Schug, Esquire  
Rebekah Cook-Mack, Esquire  
EEOC, Cleveland Field Office

EXHIBIT

1



U.S. Department of Justice  
Civil Rights Division

KC:MLB:KLF  
DJ 170-57-249

Employment Litigation Section – 4CON  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
[www.usdoj.gov/crt/emp](http://www.usdoj.gov/crt/emp)

NOTICE OF RIGHT TO SUE WITHIN 90 DAYS

VIA EMAIL

April 28, 2023

Ms. Christine Scott  
c/o Dana Lossia, Esquire  
Law Office of Levy & Ratner  
80 Eighth Ave.  
New York, NY 10011

Re: Christine Scott v. City of Cleveland, et al.  
EEOC Charge No. 532-2018-01728

Dear Ms. Scott:

Because you filed the above charge with the Equal Employment Opportunity Commission (EEOC), and conciliation on this charge has failed, and because you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq., against the above-named respondent. It has been determined that the Department of Justice will not file suit on the above-referenced charge of discrimination that was referred to us by the EEOC. This should not be taken to mean that the Department of Justice has made a judgment as to whether or not your charge is meritorious.

You are hereby notified that conciliation in this matter was unsuccessful by the EEOC. If you choose to commence a civil action, such suit must be filed in the appropriate court within 90 days of your receipt of this Notice.

If you or your attorney have any questions concerning these matters or wish to inspect the investigative files, please feel free to address your inquiry to: Dilip Gokhale, Director, EEOC, Anthony J. Celebrezze Federal Building, 1240 E. Ninth Street, Ste. 3001, Cleveland, OH 44199.

Sincerely,

Kristen Clarke  
Assistant Attorney General  
Civil Rights Division

By: *Meredith L. Burrell*

Meredith L. Burrell  
Principal Deputy Chief  
Employment Litigation Section

cc: City of Cleveland c/o Mark Griffin  
Robert Schug, Esquire  
Rebekah Cook-Mack, Esquire  
EEOC, Cleveland Field Office

**TOLLING AGREEMENT**  
**(Yolanda McKay – EEOC Charge No. 532-2018-01727)**  
**(Christine Scott – EEOC Charge No. 532-2018-01728)**

This Tolling Agreement is entered into between the City of Cleveland, Yolanda McKay, and Christine Scott. On April 28, 2023, the U.S. Department of Justice, Civil Rights Division separately issued Yolanda McKay and Christine Scott a 90-day right to sue letter regarding the above-referenced U.S. Equal Employment Opportunity Commission (“EEOC”) charges (copies of the right to sue letters are collectively attached and incorporated as “Exhibit 1”). McKay’s and Scott’s respective 90-day deadline in which “to commence a civil action” in an appropriate court “under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq.” expires on or about July 28, 2023. In order to allow the parties to attempt to explore a possible pre-litigation resolution to the claim(s) stated in the above-referenced EEOC charges, the parties agree to toll the above “on or about July 28, 2023” deadline for 60 days. Therefore, McKay and Scott, individually or collectively, shall have until Monday, September 26, 2023 in which “to commence a civil action” in an appropriate court under Title VII regarding their respective EEOC charge referenced above.

No supplement, modification, or amendment of this Agreement will be binding unless it is in writing and signed and dated by all parties. By affixing his/her/its signature to and dating this document, each party is affirming that he/she/it has read, understands, and consents to the Agreement and agrees to be legally bound by and to its terms. This Agreement binds and inures to the benefit of all parties and their respective successors and assigns. This Agreement cannot be assigned without the


prior written consent of all other parties. This Agreement shall be construed and enforced under Ohio law. Each party has cooperated in, and, in any construction of this Agreement, shall be deemed to have cooperated in, the drafting and preparation of this Agreement.

This Agreement may be executed in counterparts, each of which is considered an original, but all of which constitute one and the same instrument.

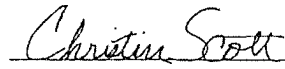
**FOR YOLANDA MCKAY**

\_\_\_\_\_  
Yolanda McKay Date

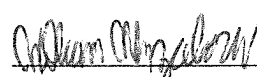
**FOR THE CITY OF CLEVELAND**

  
\_\_\_\_\_  
Mark Griffin, Director Date  
Department of Law


**FOR CHRISTINE SCOTT**

  
\_\_\_\_\_  
Christine Scott Date  
7/13/2023

RECOMMENDED FOR APPROVAL BY:

  
\_\_\_\_\_  
William Mehzalora Date  
7/13/23  
Chief Assistant Director of Law  
Department of Law

RECOMMENDED FOR APPROVAL BY:

  
\_\_\_\_\_  
Dana Lossia, Esq.  
Law Offices of Levy & Rattner  
New York, NY 10011  
7-13-23

One of the Attorneys for Yolanda McKay  
& Christine Scott

Agreement, shall be deemed to have cooperated in, the drafting and preparation of this Agreement.

This Agreement may be executed in counterparts, each of which is considered an original, but all of which constitute one and the same instrument.

**FOR YOLANDA MCKAY**

**FOR THE CITY OF CLEVELAND**

Yolanda McKay 7/13/23  
Yolanda McKay Date

\_\_\_\_\_  
Mark Griffin, Director Date  
Department of Law

**FOR CHRISTINE SCOTT**

RECOMMENDED FOR APPROVAL BY:

\_\_\_\_\_  
Christine Scott Date

RECOMMENDED FOR APPROVAL BY:

\_\_\_\_\_  
William Menzalora Date  
Chief Assistant Director of Law  
Department of Law

\_\_\_\_\_  
Dana Lossia, Esq.  
Law Offices of Levy & Rattner  
New York, NY 10011

One of the Attorneys for Yolanda McKay  
& Christine Scott





U.S. Department of Justice  
Civil Rights Division

KC:MLB:KLF  
DJ 170-57-248

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NOTICE OF RIGHT TO SUE WITHIN 90 DAYS

VIA EMAIL

April 28, 2023

Ms. Yolanda McKay  
c/o Dana Lossia, Esquire  
Law Office of Levy & Ratner  
80 Eighth Ave.  
New York, NY 10011

Re: Yolanda McKay v. City of Cleveland, et al.  
EEOC Charge No. 532-2018-01727

Dear Ms. McKay:

Because you filed the above charge with the Equal Employment Opportunity Commission (EEOC), and conciliation on this charge has failed, and because you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq., against the above-named respondent. It has been determined that the Department of Justice will not file suit on the above-referenced charge of discrimination that was referred to us by the EEOC. This should not be taken to mean that the Department of Justice has made a judgment as to whether or not your charge is meritorious.

You are hereby notified that conciliation in this matter was unsuccessful by the EEOC. If you choose to commence a civil action, such suit must be filed in the appropriate court within 90 days of your receipt of this Notice.

If you or your attorney have any questions concerning these matters or wish to inspect the investigative files, please feel free to address your inquiry to: Dilip Gokhale, Director, EEOC, Anthony J. Celebrezze Federal Building, 1240 E. Ninth Street, Ste. 3001, Cleveland, OH 44199.

Sincerely,

Kristen Clarke  
Assistant Attorney General  
Civil Rights Division

By: *Meredith L. Burrell*

Meredith L. Burrell  
Principal Deputy Chief  
Employment Litigation Section

cc: City of Cleveland c/o Mark Griffin  
Robert Schug, Esquire  
Rebekah Cook-Mack, Esquire  
EEOC, Cleveland Field Office

EXHIBIT

1



U.S. Department of Justice  
Civil Rights Division

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NOTICE OF RIGHT TO SUE WITHIN 90 DAYS

VIA EMAIL

April 28, 2023

Ms. Christine Scott  
c/o Dana Lossia, Esquire  
Law Office of Levy & Ratner  
80 Eighth Ave.  
New York, NY 10011

Re: Christine Scott v. City of Cleveland, et al.  
EEOC Charge No. 532-2018-01728

Dear Ms. Scott:

Because you filed the above charge with the Equal Employment Opportunity Commission (EEOC), and conciliation on this charge has failed, and because you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq., against the above-named respondent. It has been determined that the Department of Justice will not file suit on the above-referenced charge of discrimination that was referred to us by the EEOC. This should not be taken to mean that the Department of Justice has made a judgment as to whether or not your charge is meritorious.

You are hereby notified that conciliation in this matter was unsuccessful by the EEOC. If you choose to commence a civil action, such suit must be filed in the appropriate court within 90 days of your receipt of this Notice.

If you or your attorney have any questions concerning these matters or wish to inspect the investigative files, please feel free to address your inquiry to: Dilip Gokhale, Director, EEOC, Anthony J. Celebrezze Federal Building, 1240 E. Ninth Street, Ste. 3001, Cleveland, OH 44199.

Sincerely,

Kristen Clarke  
Assistant Attorney General  
Civil Rights Division

By: *Meredith L. Burrell*

Meredith L. Burrell  
Principal Deputy Chief  
Employment Litigation Section

cc: City of Cleveland c/o Mark Griffin  
Robert Schug, Esquire  
Rebekah Cook-Mack, Esquire  
EEOC, Cleveland Field Office

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Yolanda McKay and Christine Scott

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Robert E. DeRose, Esq., Barkan Meizlish DeRose Cox, LLP 4200 Regent Street, Ste 210, Columbus, OH 43219 Tel: (614) 221-4221

DEFENDANTS

City of Cleveland, and Cleveland Department of Public Safety, Division of Fire

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

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

Attorneys (If Known) William Menzalora, Esq., City of Cleveland, Department of Law 601 Lakeside Avenue, Cleveland, OH 44114

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

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

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

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 210 Land Condemnation, 422 Appeal, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. 2000e, et seq. (Title VII of the Civil Rights Act of 1964, as amended) Brief description of cause: Violation of Title VII of the Civil Rights Act of 1964, as amended pertaining to sex discrimination

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ > 75,000 CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [ ] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 12/6/2023 SIGNATURE OF ATTORNEY OF RECORD /s/Robert E. DeRose

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

I. Civil Categories: (Please check one category only).

- 1.  General Civil
- 2.  Administrative Review/Social Security
- 3.  Habeas Corpus Death Penalty

\*If under Title 28, §2255, name the SENTENCING JUDGE: \_\_\_\_\_

CASE NUMBER: \_\_\_\_\_

II. **RELATED OR REFILED CASES** See LR 3.1 which provides in pertinent part: "If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regard for the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such cases to the attention of the Court by responding to the questions included on the Civil Cover Sheet."

This action:  is **RELATED** to another **PENDING** civil case  is a **REFILED** case  was **PREVIOUSLY REMANDED**

If applicable, please indicate on page 1 in section VIII, the name of the Judge and case number.

III. In accordance with Local Civil Rule 3.8, actions involving counties in the Eastern Division shall be filed at any of the divisional offices therein. Actions involving counties in the Western Division shall be filed at the Toledo office. For the purpose of determining the proper division, and for statistical reasons, the following information is requested.

ANSWER ONE PARAGRAPH ONLY. ANSWER PARAGRAPHS 1 THRU 3 IN ORDER. UPON FINDING WHICH PARAGRAPH APPLIES TO YOUR CASE, ANSWER IT AND STOP.

(1) **Resident defendant** If the defendant resides in a county within this district, please set forth the name of such county

**COUNTY:** Cuyahoga County

**Corporation** For the purpose of answering the above, a corporation is deemed to be a resident of that county in which it has its principal place of business in that district.

(2) **Non-Resident defendant**. If no defendant is a resident of a county in this district, please set forth the county wherein the cause of action arose or the event complained of occurred.

**COUNTY:**

(3) **Other Cases**. If no defendant is a resident of this district, or if the defendant is a corporation not having a principle place of business within the district, and the cause of action arose or the event complained of occurred outside this district, please set forth the county of the plaintiff's residence.

**COUNTY:**

IV. The Counties in the Northern District of Ohio are divided into divisions as shown below. After the county is determined in Section III, please check the appropriate division.

**EASTERN DIVISION**

AKRON

(Counties: Carroll, Holmes, Portage, Stark, Summit, Tuscarawas and Wayne)

CLEVELAND

(Counties: Ashland, Ashtabula, Crawford, Cuyahoga, Geauga, Lake, Lorain, Medina and Richland)

YOUNGSTOWN

(Counties: Columbiana, Mahoning and Trumbull)

**WESTERN DIVISION**

TOLEDO

(Counties: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca VanWert, Williams, Wood and Wyandot)

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Ohio

YOLANDA MCKAY and CHRISTINE SCOTT

Plaintiff(s)

v.

CITY OF CLEVELAND, and CLEVELAND DEPARTMENT OF PUBLIC SAFETY, DIVISION OF FIRE

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) CITY OF CLEVELAND 601 Lakeside Ave. Cleveland, OH 44114

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert E. DeRose, Esq. Barkan Meizlish DeRose Cox, LLP 4200 Regent Street, Suite 210 Columbus, OH 43219 bderose@barkanmeizlish.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

SANDY OPACICH, CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Ohio

YOLANDA MCKAY and CHRISTINE SCOTT

Plaintiff(s)

v.

CITY OF CLEVELAND, and CLEVELAND DEPARTMENT OF PUBLIC SAFETY, DIVISION OF FIRE

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) CLEVELAND DEPARTMENT OF PUBLIC SAFETY, DIVISION OF FIRE 601 Lakeside Ave. Cleveland, OH 44114

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert E. DeRose, Esq. Barkan Meizlish DeRose Cox, LLP 4200 Regent Street, Suite 210 Columbus, OH 43219 bderose@barkanmeizlish.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

SANDY OPACICH, CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: