

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JAMES M. FOSTER, MIKE J. SHARP,
TIMOTHY CHRISTIAN, TARIQ
JAMAL-FRANCIS, and DARRICK
PAYTON, on Behalf of Themselves and
All Others Similarly Situated,

Plaintiffs,

v.

THE CITY OF PITTSBURGH,

Defendant.

Case No. 2:12cv1207

District Judge David Stewart Cercone

CLASS ACTION

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT - CLASS ACTION

Plaintiffs James M. Foster, Mike J. Sharp, Timothy Christian, Tariq Jamal-Francis and Darrick Payton (collectively “Plaintiffs”), on behalf of themselves and all others similarly situated, by and through their undersigned counsel, hereby submit this Complaint against Defendant, the City of Pittsburgh (“Defendant” or “City”), which includes its Bureau of Police.

INTRODUCTION

1. The City of Pittsburgh at all times relevant hereto has been and is responsible for the recruitment of new police officers, the setting of standards for the selection of new entry level police officers, and the administration of the processes and procedures employed in the selection of new entry level police officers to be employed in the City’s Bureau of Police (“BOP”).

2. Since 2001, the City has hired about 440 entry-level police officers for its BOP. Of those, only 17 – less than 4% of all hires – were African-American. Since 2007, the City has hired 260 police officers, only eight of whom – 3% – are African-American.¹

3. The City's hiring process for entry-level police officers operates as a pattern or practice of systemic disparate treatment and has a disparate impact on African-American candidates. There is a significant and material statistical imbalance in the race of the City's recent police recruit hires when compared to the qualified labor market for African-American police officers. African-American males represent 22% of Pittsburgh's labor market for sworn protective services but only 2% of police officers hired since 2001. African-American females represent 10% of Pittsburgh's qualified labor market for sworn protective services but only 1.82% of police officers hired since 2001.

4. The City's screening and hiring process result in statistically significant disparities against African-American applicants for the position of entry level police officer. The City lacks any legitimate business justification for the hiring practices challenged in this Complaint, and there are other, less discriminatory alternatives available to the City.

5. This process includes several stages, beginning with written and oral examinations, subsequent reading and physical-fitness tests, and background investigations, which include a credit history check. The next-to-final selection stage is known as the "Chief's Roundtable," which produces conditional offers of employment, which then are followed by medical screening, a written psychological test and an interview with a psychologist.

¹ One additional African-American was invited to participate in the 2011 Policy Academy class but was terminated from the program. Plaintiffs also note that this case does not include a 2007 BOP class made up entirely of former Housing Authority officers, since they were not entry-level applicants.

6. This class action suit challenges the City's longstanding pattern and practice of racial discrimination against African-Americans in the screening and hiring of applicants for entry-level police officer positions ("Hiring Process"). As more fully set forth below, the City's hiring practices violate Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, as amended ("Title VII"), 42 U.S.C. § 1981, as applied by 42 U.S.C. § 1983, the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, and the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. § 951, *et seq.* ("PHRA"). Plaintiffs, on behalf of themselves and all other similarly situated persons, seek, among other remedies, injunctive relief to correct the City's policies and practices that have deprived members of the plaintiff class of their right to equal employment opportunities.

PARTIES

7. Plaintiff James M. Foster ("Foster") is an African-American male who lives in Allegheny County, Pennsylvania.

8. Plaintiff Mike J. Sharp ("Sharp") is an African-American male who lives in Allegheny County, Pennsylvania.

9. Plaintiff Timothy Christian ("Christian") is an African-American male who lives in Allegheny County.

10. Plaintiff Tariq Jamal-Francis ("Francis") is an African-American male who lives in Allegheny County.

11. Plaintiff Darrick Payton ("Payton") is an African-American male who lives in Allegheny County.

12. The City is a municipality in the Commonwealth of Pennsylvania that operates through a number of agencies, offices, and departments, including the Bureau of Police ("BOP").

The City operates pursuant to its Home Rule Charter as a City of the Second Class. Under the Home Rule Charter, the City has the authority to set its own municipal hiring requirements so long as these do not violate the State Constitution or state law.

13. The City is an employer within the meaning of Title VII and the PHRA, and a state actor for purposes of 42 U.S.C. §§ 1981 and 1983, and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

JURISDICTION AND VENUE

14. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a) because this action arises under the laws of the United States. Supplemental jurisdiction exists over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

15. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) because the City is located in and conducts business in this judicial district and because the events giving rise to the claims set forth herein occurred in this judicial district.

PROCEDURAL AND ADMINISTRATIVE REQUIREMENTS

16. Plaintiffs Foster and Sharp have exhausted their administrative remedies as necessary to bring this lawsuit.

17. Plaintiff Sharp has exhausted the procedural and administrative requirements for his claims as follows:

A. On or about September 28, 2011, Plaintiff Sharp filed a timely written charge of discrimination (Charge No. 533-2012-00004) against the City with the Equal Employment Opportunity Commission ("EEOC") alleging discrimination based on race and/or color;

B. Plaintiff Sharp cross-filed the aforementioned charge of discrimination with the Pennsylvania Human Relations Commission (“PHRC”);

C. On or about May 30, 2012, the EEOC issued a Notice of Right to Sue on the foregoing charge. Plaintiffs commenced this action on August 23, 2012, less than ninety days after Plaintiff Sharp received his Notice of Right to Sue.

18. Plaintiff Foster has exhausted the procedural and administrative requirements for his Title VII claims as follows:

A. On or about November 7, 2011, Plaintiff Foster filed a timely written charge of discrimination (Charge No. 533-2012-00186) against the City with the EEOC alleging discrimination based on race and/or color;

B. Plaintiff Foster cross-filed the aforementioned charge of discrimination with the PHRC;

C. On or about May 30, 2012, the EEOC issued a Notice of Right to Sue on the foregoing charge. Plaintiffs commenced this action on August 23, 2012, less than ninety days after Plaintiff Foster received his Notice of Right to Sue.

FACTUAL BACKGROUND

19. Defendant City of Pittsburgh maintains an active Bureau of Police which, among other things, is responsible for protecting individuals and property in the City of Pittsburgh.

20. The City of Pittsburgh is the responsible employer with the power to establish, implement, administer and revise the standards, processes, and procedures for the recruitment and selection of new entry level police officers for the BOP.

21. The City has maintained, and continues to maintain, a multi-stage screening, testing and/or hiring process by which applicants for the position of entry level Police Officer are selected.

22. For instance, the City operates a website that provides information on the recruitment and selection of new entry level police officers for the City's BOP, and through which applicants may apply for such positions.

23. The City also provides legal assistance from its City Solicitor's office regarding the recruitment and selection of new entry level police officers.

24. The City has retained from time to time the services of professional consulting services to be used in connection with the selection of BOP entry level police personnel, including the retention of E.B. Jacobs, Inc., for the period from July 1, 2011 through August 31, 2013, and, upon information and belief, for several years before that.

25. The City also appoints a civilian Director of Public Safety who is responsible for the operation of the City of Pittsburgh's Department of Public Safety, which includes the BOP.

26. In short, the City has legal authority and maintains complete control over the entire selection process, which results in hiring an average of about forty entry-level police officers per year.

The City of Pittsburgh's Police Officer Recruit Hiring Process

27. To be hired as a police officer recruit, an applicant must first complete two Civil Service examinations, consisting of a written test and an oral test. Assuming that the applicant passes both tests, he or she receives a ranking based on a combined score. The applicant then proceeds to what is termed processing for an academy class ("Processing"), which includes a reading test, a physical fitness test, and background screening. If successful at each of these

stages, the applicant continues to the “Chief’s Roundtable,” which may make a conditional offer of employment as a police officer recruit. To enter the police academy, the recruit must then successfully complete a psychological suitability evaluation, consisting of a written psychological assessment and an interview with a licensed psychologist, and a medical examination. Applicants must also become a resident of the City prior to beginning training at the Police Academy.

The Civil Service Examinations

28. The City requires candidates to take and pass two Civil Service Examinations – one written and the other oral.

29. The written examination is the Law Enforcement Aptitude Battery (“LEAB”), which consists of a multiple choice cognitive ability test and two non-cognitive measures: The Work Styles Questionnaire and The Life Experience Survey. According to information on the City’s website, this test measures, among other things, “written comprehension.” According to the website, the definition of “written comprehension” as tested by the LEAB is:

the ability to understand written language. This ability involves the understanding of individual words as well as patterns of words (sentences and phrases), so it is more than simply vocabulary. It is also the ability to read a sentence or series of sentences and understand the meaning. This involves receiving information, not giving it....

30. Candidates must score seventy percent (70%) or higher in order to pass the written test. Those who pass are then scheduled for the oral examination.

31. There is a statistically significant imbalance between “minorities”² and “whites” with respect to the failure rate for the written exam. For the 2008-09 examination, the racial-minority fail rate was 13.8% versus 2.8% for Caucasian applicants.

32. According to materials on the City’s website, the oral examination is designed to test the verbal and cognitive abilities of applicants, as well as comprehension. During the oral examination, candidates are presented with several hypothetical factual scenarios and are asked a series of questions related to each situation, such as particular police rules and regulations that apply or may have been violated. Different scenarios are used on different days so the candidates are not supposed to know the specific scenario(s) applicable to them prior to the examination.

33. After the written and oral examinations, Police Officer Recruit candidates are given a final score. Final scores are comprised of a combination of a candidate’s passing score on the written and oral examinations and veteran’s preference points, where applicable (“Final Scores”).

34. The City places only those candidates who take and receive a passing score on each examination on its Eligibility List, which the City posts after the written and oral examinations have been scored. The City maintains the Eligibility List for eighteen months. When the decision is made to hire new police officers, the City schedules candidates for further

² Plaintiffs have received demographic documents from the City which include certain breakdowns as between “minorities” and “whites.” References herein to “minorities” are derived from these documents. In contrast, the City’s Annual Reports for 2009 to 2011 provide demographic information regarding the City’s BOP personnel, broken down into five categories, American-Indian or Alaskan, Asian or Pacific Islander, Black, Hispanic, and White.

processing in order of their rank on the eligibility list. All Police Officers hired over the 18-month period will come from the current eligibility list.

35. Candidates are placed on the Eligibility List in descending order based upon their Final Scores, i.e., the highest scoring candidate is ranked number 1.

36. Upon information and belief, the City's utilization of the written and oral examinations has a disparate impact on African-American candidates.

37. The City uses the written and oral examinations for two purposes: to screen out candidates entirely and to rank candidates on the Eligibility List. The City creates this ranking by combining the scores on the written and oral tests. If a candidate ranks low on the Eligibility List, he or she may never be considered for a position because selection at the Chief's Roundtable (assuming satisfactory completion of other subsequent steps discussed below) begins with the highest ranked candidates. In addition, a low ranking may delay any consideration of that candidate. Both the screening and the ranking have had a disparate impact on African-American candidates.

38. As explained below, the City routinely manipulates the oral examination.

39. For many years, the City used an oral-examination panel that generally consisted of three BOP personnel: a detective, a patrolman and a supervisor. Several different panels interview applicants simultaneously and each panel conducts multiple examinations over a two-week period.

40. The City contracted with the firm of EB Jacobs to develop and help implement the oral examination process. EB Jacobs has prepared the scenarios, model answers and identified the standard associated with each of the scores. EB Jacobs has been responsible for

training the members of the panel as to what should – and should not – be considered in grading the oral examinations.

- A. For instance, EB Jacobs has instructed the panel members that they should not participate in an oral examination if a member knows the candidate, which promotes objectivity and avoids bias.
- B. EB Jacobs has instructed the panel members that they should not seek to learn the identity of the candidates they question prior to the examination.
- C. EB Jacobs has instructed the panel members that they were not to evaluate whether the candidate would be a good police officer. Rather, the focus was on whether the candidate identified the correct issues and rules that applied to the factual scenario(s) that was the subject of the examination.
- D. EB Jacobs has instructed the panel members that the members should not discuss the scores given to a particular candidate with each other prior to submitting the scores. Rather, each member should independently grade each candidate so panel members do not influence (or attempt to influence or intimidate) other panel members.

41. Upon information and belief, the City disregards and violates the instructions and guidelines established by EB Jacobs for the proper administration of the oral examinations, including by allowing the oral examination panels and others to disregard and violate the rules and guidelines established by EB Jacobs. In particular:

- A. The City has allowed supervisors to obtain a copy of the list of candidates and look for candidates who were related to or friends of police officers, and to take

actions to improperly influence or pressure panel members to score the preferred candidates more favorably.

- B. The City has allowed and enabled panel members, often higher-ranking officers, to learn the identities of candidates in advance, and create lists of the favored candidates that were shown to or discussed with other panel members, thus improperly influencing them to score those candidates more favorably.
- C. The City has allowed panel members to participate in panels when those members knew the candidates, thus favoring family members, friends, or friends of relatives of other police officers, which has a disparate impact on African-Americans.
- D. The City has allowed and enabled panel members to obtain application files for certain candidates to ensure that those candidates appeared before their panel, resulting in more favorable evaluations.
- E. The City has allowed panel members to lobby and influence other panel members before whom particular candidates were to appear, resulting in more favorable scores for the preferred candidates.
- F. The City has allowed panel members to inform their preferred candidates of the factual scenarios and rules and regulations *in advance of the oral examination* such that the preferred candidates knew the answers. In fact, there have been instances when nervous candidates accurately provided answers to scenarios that had not been provided yet (but were to be part of that examination). Panel members were provided with the scenarios and answers in advance of the examinations so that they could prepare, but certain members either photocopied

or brought the materials home in order to educate the preferred candidates. The particular scenarios provided to a candidate varied depending on the day of the examination, so certain panel members planned in advance to make sure the candidates received the correct answers for the specific day of the examination.

42. Upon information and belief, panel members gave African-American candidates low scores during the evaluations based on subjective views of how the candidates looked, dressed, talked, or spoke or for other reasons unrelated to the merits of the examination and standards established by EB Jacobs. These members voiced those reasons to other panel members.

43. A recent example of the problems that African-Americans face in applying for positions with the BOP involves an African-American candidate for the 2011 class who previously had been a Pittsburgh Police Officer for approximately fifteen years. He left in the mid-2000's to pursue another career. He had a strong police record, including deployments with federal law enforcement task forces, an assignment given only to the best officers. After being away several years, he decided to return to the BOP and re-applied. He received a high score on the written test. He knew two of the three proctors for the oral examination, who told him he should not have to do the oral examination. They did not ask him any questions. When he received his Final Scores, however, he was ranked very low on the Eligibility List, demonstrating that he was given an extremely low score on the oral examination that panel members had told him he did not have to take. On the same day, however, the very same panel told a similarly-situated Caucasian candidate, also a former Pittsburgh Police Officer who appeared immediately before the aforementioned former African-American police officer, that he did not have to take the oral examination because he had previously been a Pittsburgh Police

Officer. On information and belief, the Caucasian candidate received high scores on the oral examination and thus was ranked much higher on the Eligibility List than the African-American candidate. The African-American candidate, a decorated former Pittsburgh Police Officer, seeing that he was so low on the Eligibility List as to have no chance of selection, quit the process in disgust and is pursuing another career.

44. The above-described irregularities occurring during the oral examinations have continued to the present. In 2011, acceding to pressure from community groups to address the statistical disparity in hiring of racial minorities, the City agreed to include a civilian representative on the panels in addition to the three police members. It was hoped and believed that the inclusion of a fourth panel member, someone from the community without ties to law enforcement, would deter any overt discrimination and favoritism by the police officers in connection with the oral examinations.

45. In December 2011, however, after only two days of using a civilian representative, City officials terminated participation of the civilian representative after one of the community representatives was found to have a prior arrest. The City had not publicized or established standards for what qualified or disqualified a civilian from serving as the civilian representative. Significantly, that same standard was not applied to the police members of the oral boards as several of them had recent, prior arrests for felony offenses. They were not, however, disqualified from participation.

46. Rather than find an alternative civilian representative or establish standards for civilian representatives, City officials immediately halted the inclusion of a civilian representative on the remaining oral review panels.

47. Nevertheless, even in the day and a half that civilians, many of them clergy from local religious institutions, sat on the panels, some of them observed the same favoritism and irregularities described above.

48. On information and belief, the City fails to perform any quality control to determine whether the oral examination panels followed the instructions from EB Jacobs and otherwise were properly conducting the oral examinations.

49. In short, the oral examination process is a vehicle to favor family members and friends of police officers and to disadvantage and otherwise discriminate against African-American candidates. In that regard, a large majority of the police force is Caucasian, so the preference to family members and friends necessarily has a disparate adverse impact on African-Americans.

50. The rankings generated by the first two steps of the selection process – the written and oral examinations – determine whether an applicant has a legitimate chance for employment. Since only about the top one hundred ranked applicants have a chance for a position in a recruit class, and there are typically no more than two such classes produced by an Eligibility List, applicants ranked below 200 are effectively precluded from employment even though they may have “passed” the tests.

51. The City has less discriminatory alternatives for how the written and oral examination are conducted, including but not limited to hiring an outside company to conduct the oral examinations, preserving the confidentiality of the candidate names before the oral examinations occur, and videotaping the oral examinations to ensure the examinations are conducted properly.

Background Processing

52. Once the Eligibility List is created, the City requires candidates to undergo additional tests, including the State of Pennsylvania Municipal Police Officers' Education and Training Commission's ("MPOETC") physical fitness test, a reading test, and a background investigation.

53. If a candidate fails the reading test, the candidate is disqualified from further consideration.

54. The reading test is an unusual and unnecessary step in the process because the written test, given at the outset, already screens candidates for reading comprehension.

55. During the physical-fitness test, which occurs in Schenley Park and is open to the public, candidates must perform a 300-meter sprint, sit-ups, a bench press, and a timed 1.5 mile run. If a candidate fails this test, the candidate is given one additional opportunity to pass the test.

56. Rather than using an independent company to perform the MPOETC testing, which is an available alternative, the City utilizes proctors who are either civilians or retired police officers. It is common for proctors to be related to individuals who are still on the police force or who are retired from the police force.

57. Certain proctors exercise discretion in administering the fitness test that favors non-African-American candidates:

A. They pass certain preferred candidates when they otherwise would have failed, such as by crediting sit-ups that otherwise did not meet the applicable standard.

B. They run along with and encourage preferred candidates in the sprint or the 1.5 mile run but do not provide that assistance to all candidates.

C. They do not use calibrated stop watches for the sprint and the 1.5 mile run, and, on information and belief, did not use accurate starting and stopping times.

58. Further, because the fitness test is open to the public, supervisors and other police officers in uniform often attend the tests for preferred candidates and make it clear to the proctors that they support those candidates, thereby influencing the proctors.

59. The City has not divulged statistical pass-fail results for the two tests, but rather combines them into one phase of the selection process. For the 2011 class of candidates, the failure rate for the physical fitness and reading tests combined was 57% for minorities versus 32% for Caucasians.

60. The City has other alternatives for conducting the fitness test that are readily available to it, including but not limited to treating all candidates the same when conducting the test, preventing contact by police officers with the proctors, and maintaining quality control measures to prevent partiality and favoritism. As discussed above, the reading test is redundant and thus unnecessary.

Background Investigation

61. Assuming a candidate passes the reading and fitness tests, the City conducts a background investigation that requires candidates to undergo finger printing, criminal-background check, polygraph test and a drug test.

62. Under the established procedure for the polygraph test, which is administered by City employees, questions are based on the answers a candidate provided on his or her job application.

63. On information and belief, some polygraph examiners ask questions of certain candidates that are not in the application. In addition, it is believed and therefore averred that

City personnel responsible for supervising the background investigation consult with the examiner prior to administration of the polygraph for particular candidates in an effort to have the examiner probe certain issues unrelated to the application, which is a violation of procedure and unnecessary to the polygraph.

64. The City has nondiscriminatory, available alternatives concerning administration of the polygraph, including but not limited to prohibiting access to the examiner prior to the polygraph test and videotaping the polygraph test.

65. The background investigation also addresses a candidate's employment, education, military service, criminal record, credit, and behavioral history.

66. The City uses police officers and other employees to perform the background investigations and exercises discretion as to how detailed to make the investigation. On information and belief, the City is more critical of backgrounds for African-American candidates than for non-African-American candidates.

67. For example, to pass the background investigation, a candidate may not have a misdemeanor or felony conviction. In 2011, the City investigated Plaintiff Christian and disqualified him based on the allegation that he had violated a domestic-violence ordinance. However, he in fact had a 10-year old conviction for disorderly conduct, which is a summary offense, and thus should not have been disqualified under the ordinance. The City disqualified him anyway and then refused to instate him to the position even after he won a civil service appeal.

68. The City has nondiscriminatory, available alternatives concerning the background investigation, including but not limited to retaining an outside company to conduct the background investigation and performing the same background investigation for all candidates.

69. Once again, as with the preceding steps in the recruit selection process, the background checks and polygraph tests are applied to disqualify disproportionately African-American applicants.

70. For the 2011 Police Officer Recruit Class, the City disqualified five out of the nine minorities who reached that point in the evaluation, for a 55.6% disqualification rate. In contrast, only seven out 64 Caucasian candidates (three had withdrawn) were disqualified, for an 11% disqualification rate.

71. Candidates that successfully pass the physical-fitness and reading tests and all components of the background investigation, including the polygraph and drug test, are deemed “certified” for employment as Police Officer Recruits and are placed on the Certification for Appointment List (“Certified List”).

Chief’s Roundtable

72. The City has given ultimate selection authority to a committee of top-ranked police officials, commonly known as the “Chief’s Roundtable,” who decide by majority vote whether to accept or reject each applicant on the Certified List.

73. It is believed and therefore averred that approximately a dozen senior officers – the chief, all assistant chiefs and all commanders available on that day - and three to four other City employees decide by majority vote which individuals from the Certified List are to be made a conditional offer of employment for a position as Police Officer Recruit.

74. Conditional offers of employment are extended to the candidates selected at the Chief’s Roundtable. A final offer of employment is contingent upon successful completion of a psychological-suitability evaluation and medical examination.

75. It is believed and therefore averred that members of the Chief's Roundtable are given written materials concerning the candidates on the Certified List. These materials include, *inter alia*, the candidate's Civil Service Examination scores, physical fitness testing results and background-investigation results. The applicants' race is discernible from the materials in the file.

76. It is believed and therefore averred that members of the Chief's Roundtable know and/or are told who is related to a police officer or preferred by a police officer, facilitating their ability to vote based on nepotism and cronyism, resulting in an adverse impact on African-American candidates.

77. The City applies the "Rule of Three" methodology to govern the process by which the Chief's Roundtable selects candidates.

78. Under the "Rule of Three" methodology, the first three candidates on the Certified List are reviewed and one is chosen by a vote of the Chief's Roundtable to be made a conditional offer of employment as a Police Officer Recruit. The two remaining candidates from the first group of three go into consideration with the next individual on the Certified List. One of these candidates is chosen by a vote of the Chief's Roundtable to be made a conditional offer of employment as a Police Officer Recruit. The remaining two candidates go into consideration with the next person on the list. One of these candidates is chosen by a vote of the Chief's Roundtable to be made a conditional offer of employment as a Police Officer Recruit.

79. Under the "Rule of Three," if a candidate is rejected after three rounds, the candidate is removed from consideration and will not be made a conditional offer of employment as a Police Officer Recruit.

80. It is believed and therefore averred that the City has adopted no standards, guidelines or objective criteria to constrain the discretion of the people voting on applicants in the Chief's Roundtable.

81. It is believed and therefore averred that the City has not required members of the Chief's Roundtable to state their reasons for selecting or rejecting a particular candidate.

82. It is believed and therefore averred that certain members of the Chief's Roundtable routinely vote based on nepotism and cronyism rather than on the merit of a candidate, making decisions that are entirely subjective, discretionary and discriminatory, resulting in an adverse impact on African-American candidates.

83. When a candidate has been passed over three times during a Roundtable session, the candidate is then removed from the Eligibility List and must re-apply and go through the entire selection process again, even though the candidate previously passed all aspects of the testing.

84. For the 2011 class, the Chief's Roundtable passed over three of the four minority candidates presented on the Certified List, for a 75% non-select rate. They were ranked 3, 11, and 42 on the Certified List. In contrast, the Chief's Roundtable passed over only seven of the 57 Caucasian candidates, for a 12.2% non-select rate. Only one of the 49 Police Officer Recruits selected by the Chief's Roundtable was African-American, and he was terminated from the Police Academy.

85. Plaintiff Foster was ranked third on the Certified List and Plaintiff Sharp was ranked eleventh. Candidate 42 was an African-American female who was a combat veteran. Forty-nine candidates were selected. Consequently, all three African-American candidates were passed over for lower-ranked Caucasian candidates.

86. The City had nondiscriminatory alternatives available concerning the Chief's Roundtable, including but not limited to establishing standards to guide decisionmaker discretion, requiring members of the Chief's Roundtable to articulate the reasons for not selecting a candidate, and employing other quality-control measures.

87. There is a disproportionate impact on African-American candidates at every stage of the hiring process, including during the final selection phase, the Chief's Roundtable.

88. As a result of these discriminatory practices, since 2001 less than 4% of police officers hired by the City are African-American. Since 2007, the disparate treatment and impact are even starker, with only about 3% of new recruits being African-American.

Statistics for 2009 and 2011 Recruit Classes

89. The 2008 Civil Service examination produced an Eligibility List from which the City selected the 2009 and 2011 recruit classes. Prior to 2012, the Eligibility List produced by the Civil Service examinations was good for three years. That has now been changed so the List is only good for 18 months.

90. In 2008, 1,357 candidates applied to be a BOP officer, of whom 280 were racial minorities, or about 20.6%.

91. For the written examination, 135 minority candidates failed to appear, so 145 racial minorities took the examination (19.7% of total applicants sitting for the written test). Of those, seven were disqualified for lack of a college transcript, leaving 138 minorities among 712 candidates, which is 19.4%. Thereafter, 19 of the 138 minorities failed the written test, or 13.8%. Only 16 out of 574 Caucasian applicants failed the test, which is 2.8%.

92. For the oral examination, 119 racial minorities remained eligible after the written examination, but 14 did not appear, leaving 105 eligible minority candidates out of 592 total

candidates, which is 17.7% of eligible candidates. The oral exam “failure” rates were approximately the same for racial minorities and Caucasians, i.e., just under 5%.

93. The 2009 class ultimately had 45 Police Officer Recruits. The Eligibility List included 31 racial minorities out of 202 total applicants, or 15.3%. The failure rate on the physical fitness and reading tests for minority applicants was 42%, compared to a 15.3% failure rate for Caucasian candidates. At the background-investigation stage, 50% of the 10 remaining African-American candidates were disqualified, while 36 of 101, or 35.6% of Caucasian candidates were disqualified.

94. The Certified List sent to the Chief’s Roundtable had 70 candidates, of whom only five were minorities, or about 7%.

95. Of the five minority candidates on the Certified List, two were passed over (40%). Another minority candidate was not considered at the Chief’s Roundtable.

96. Thus, two minority candidates were selected out of 56 total recruits, or 3.6%. They were an African-American male and an Asian male.

97. Of the 66 Caucasian candidates, only 11 were passed over or dropped out (16%).

98. The final 2009 class had 44 Police Officer Recruits and only two were minorities (4.5%), only 1 of whom was African-American, or less than 2.3% of the class.

99. The 2009 class was thus 95.5% Caucasian.

100. For 2011, the Eligibility List included 292 applicants, of whom 51 were minorities, or about 17.5%. Of the 21 minorities showed up for the fitness and reading tests, 12 failed (57%). The failure rate for Caucasian applicants was only 31.6%. After the testing, therefore, nine of the 76 remaining applicants were African-American, or 11.8%. At the background-investigation stage, the City disqualified five of the 9 minority candidates, or 56%.

The disqualification rate for Caucasian applicants was only 11%. Consequently, only four African-American candidates were placed on the Certified List sent to the Chief's Roundtable.

101. At the Roundtable, three out of four minority candidates, including Plaintiffs Sharp and Foster, were not selected, for a 75% non-selection rate. Of 57 Caucasian applicants on the Certified List, only seven were not selected, for a 12.2% non-selection rate.

Consequently, of the 49 candidates offered conditional employment, only one was African-American, or just 2%. And that single African-American was terminated from the Police Academy, meaning that the final graduating class did not include a single African-American. The three African-Americans not selected by the Chief's Roundtable were ranked 3, 11 and 42.

102. In the August 2012 class, there was one African-American male and one African-American female out of 41 new recruits, which is less than 5%. In the April 2013 class, there are two African-Americans out of a class of 31, which is less than 6.5%. While a slight improvement over other recent classes, the numbers are still far below what would be expected based on the demographics of the relevant community.

103. The disparate treatment and disparate impact experienced by African-American applicants is evidenced by the statistics from the past four Recruit Classes, which mirrors the numbers for other classes since 2001, confirming that the City has engaged in continuing violations of the employment laws. The following chart shows the demographics of those classes:

Hiring Statistics for Classes 2001 - Present				
Date	Total recruits	Caucasian	African-American	Other Minorities
May '01-Oct. '01	32	31	1	0
Dec. '01-May '02	39	35	4	0
Jan '05-July '05	48	46	2	0
Sept. '05-Apr '06	61	59	2	0
Feb '07-Aug 07	27	26	1	0

July '07	40	39	1	0
Oct. 07	27	26	1	0
Sept. '08	13	13	0	0
Sept. '09	45	43	1	1
June '11	36	35	1	0
August '12	41	36	2	3
April '13	31	29	2	0
TOTALS	440	418	18	4
% of Recruits		95%	4.09%	0.91%

Hiring Statistics for Classes 2007 - Present				
Date	Total recruits	Caucasian	African-American	Other Minorities
Feb '07-Aug 07	27	26	1	0
July '07	40	39	1	0
Oct. 07	27	26	1	0
Sept. '08	13	13	0	0
Sept. '09	45	43	1	1
June '11	36	35	1	0
August '12	41	36	2	3
April '13	31	29	2	0
TOTALS	260	247	9	4
%		95%	3.5%	1.5%

104. According to documents that the City filed with the EEOC, the qualified labor market for African-American males seeking law-enforcement jobs is 22%, and 10% for African-American females. The City's above-cited hiring statistics are far below those figures.

Plaintiff James M. Foster

105. Plaintiff James Foster is African-American. He is a college graduate who is studying for a Master's degree. He works in the behavioral-health field.

106. Plaintiff Foster first applied for the position of Police Officer Recruit with the City in 2008.

107. Plaintiff Foster completed the written and oral examinations and was placed on the Eligibility List.

108. Based on his Final Score, Foster received a rank of 141 out of approximately 600 candidates.

109. The ranking materially impacts applicants' chances for employment because hiring is made, in significant part, based the applicants rank, i.e., higher ranked candidates have a better chance of making onto a Certified List whereas very low ranking candidates have no chance of being considered for and offered a position.

110. Plaintiff Foster proceeded to the next phase, where he successfully completed the physical fitness and reading testing, background check, polygraph, and drug test.

111. It is believed and therefore averred that Plaintiff Foster was placed on the Certified List for the 2009 Police Officer Recruit class.

112. Although he was placed on the Certified List, Foster was not selected for a position in the 2009 Police Officer Recruit class.

113. Plaintiff Foster was informed by an employee in the Civil Service Office that the last candidate receiving a conditional offer of employment was ranked approximately three places above him on the Certified List.

114. The City selected only one African-American for the 2009 Police Officer Recruit Class.

115. Because the City elected to utilize the 2008 Eligibility List for three years, Foster knew that candidates who were not selected for the 2009 class could again be considered for the next class, which was announced in 2011, and that he would be at or near the top of the list.

116. In February of 2011, the City notified Foster that another Police Officer Recruit class was to be created and invited Foster to re-apply.

117. Foster re-submitted his application and again successfully completed the various phases of the Hiring Process, including the physical-fitness and reading tests, background check, polygraph, and drug test.

118. On or about May 27, 2011, Plaintiff Foster was placed on the Certified List.

119. Foster was ranked third on the Certified List.

120. Foster's application materials were provided to the Chief's Roundtable for consideration.

121. By letter dated June 2, 2011, Plaintiff Foster was informed that in accordance with "Section 14 of the General Civil Service Act," he was "no longer eligible for appointment as a Police Officer Recruit because three or more persons below [him] on the certified list were selected."

122. The June 2, 2011 letter from the City to Plaintiff Foster stated that he was not entitled to a reason for his non-hire and that he had no right of appeal.

123. In June of 2011, the City selected 36 individuals from the Certified List for its Police Officer Recruit class.

124. Of those 36 individuals, only one recruit was African-American. The City proceeded to expel the one African-American recruit from the Training Academy, with the result that the 2011 class did not include a single African-American officer.

125. Accordingly, the City selected at least 32 Caucasian applicants ranked lower than Plaintiff Foster on the Certified List for a position in the 2011 Police Officer Recruit class.

126. In 2011, the City announced that it was creating a new Eligibility List for upcoming Police Recruit classes.

127. Plaintiff Foster again applied for employment with the City as a Police Officer Recruit in the winter of 2011.

128. The City required Foster to take another written test and submit to an oral examination, which he did.

129. After being ranked 141 when he took the test in 2008, in 2011 the City ranked Foster 353, a ranking that effectively precludes him from obtaining a Police Recruit position.

130. Indeed, the City has now hired two classes of recruits from the 2011 Eligibility List – one in 2012 and one in April 2013 -- and Foster's ranking was too low for him to be considered for placement on the Certification List for either class.

131. Upon information and belief, the City will discontinue using the current Eligibility List and will conduct written and oral examinations this summer for a new Eligibility List.

132. In response to Mr. Foster's EEOC Charge of Discrimination, filed in late 2011, the City asserted that Mr. Foster's "background check showed that he had a bad driving record which included at least nine moving violations and three warrants for failing to respond to citations and also that he'd been discharged from one private employment for violating protocol and from another private employer for failing to appear for training." Those assertions are pretextual and false and thus do not justify Mr. Foster's rejection.

133. Upon information and belief, other candidates who were selected over Mr. Foster for the 2011 class had similar and worse driving records and other transgressions but were nonetheless hired. All of these applicants were Caucasian.

134. There was no objective, merit-based reason why the Chief's Roundtable failed to select Plaintiff Foster.

Plaintiff Mike J. Sharp

135. Plaintiff Sharp is African American. He graduated from the Police Training Academy at Indiana University of Pennsylvania in 2007.

136. Since that time, Mr. Sharp has been employed as a police officer in several suburban Pittsburgh police departments, and is currently employed part time by two different police departments.

137. Mr. Sharp applied for the position of Police Officer Recruit with the City in 2009.

138. Mr. Sharp completed the written and oral examinations and was placed on the Eligibility List.

139. Mr. Sharp successfully completed the physical fitness and reading testing in 2009.

140. Mr. Sharp was ranked too low on the Eligibility List (the mid 100's) and thus the City did not consider him for a position in the 2009 Police Officer Recruit class.

141. Mr. Sharp knew, however, that his mid-100 ranking was high enough on the Eligibility List ensure that he would be considered for employment in the next Recruit Class.

142. In February of 2011, the City notified Mr. Sharp that another Police Officer Recruit class was to be created and invited him to re-apply. This class was being created from the 2008 Eligibility List.

143. Plaintiff Sharp re-submitted his application and once more successfully completed the physical fitness and reading tests.

144. Mr. Sharp proceeded to the Processing stage, where he was subjected to a polygraph test and drug testing. An extensive background check was also conducted.

145. On or about May 27, 2011, Plaintiff Sharp was placed on the Certified List. Thus, the City did not find anything disqualifying in his background and he did not test positive for drug use.

146. Plaintiff Sharp was ranked eleventh on the Certified List.

147. By letter dated June 2, 2011, Plaintiff Sharp was informed that in accordance with “Section 14 of the General Civil Service Act,” he was “no longer eligible for appointment as a Police Officer Recruit because three or more persons below [him] on the certified list were selected.”

148. The June 2, 2011, letter from the City advised Plaintiff Sharp that he was not entitled to know the reasons for the denial and that he had no right of appeal.

149. In June of 2011, the City selected 36 individuals from the Certified List for its police recruit class. Of those 36 individuals, only one recruit was African-American, and upon information and belief he had been ranked seventh.

150. Accordingly, at the Chief’s Roundtable, at least 25 Caucasian applicants ranked lower than Plaintiff Sharp on the Certification List were selected for a position in the 2011 Police Officer Recruit class.

151. There was no objective, merit-based reason why the Chief’s Roundtable failed to select Plaintiff Sharp.

152. In response to Plaintiff Sharp’s EEOC Charge of Discrimination, the City asserted that Mr. Sharp was not hired “because he admitted that between 1996 and 2004 he smoked marijuana between 800 and 1000 times and assisted in arranging drug deals.” Those assertions are pretextual and false. If in fact they had been true, he never would have passed the background checks and been certified for consideration by the Chief’s Roundtable.

153. Moreover, Mr. Sharp has been a police officer since 2007 and is drug-tested regularly as part of his position. He has never failed a drug test.

154. It is believed and therefor averred that some of the six Caucasian applicants selected over Plaintiffs Foster and Sharp had histories of drug use during their youth, and one even was found to have demonstrated a high degree of deception during his polygraph exam when asked about prior drug use.

155. Mr. Sharp was too upset by the City's unexplained refusal to hire him that he did not apply for the next civil service testing process in 2011, though he still wants to be a Pittsburgh Police Officer.

Plaintiff Timothy Christian

156. Plaintiff Timothy Christian is African-American. He received an Associate's Degree from the Career Training Academy specifically to get the credits he needed to become a police officer, and graduated in December 2004 from the Allegheny County Police Academy.

157. Plaintiff Christian has worked at a number of security and borough police department jobs. Since April 2008, he has worked as a police officer for Tarentum and then Frazier Township, as well as Verona Borough.

158. Plaintiff Christian applied for a police officer position with the Pittsburgh Bureau of Police in October 2008. In connection with this application, he successfully completed the oral and written examinations with a total score of 264.13. The District processed him to take the reading test, and then informed him he had failed.

159. In March 2011, the City advised Mr. Christian that because of his position on the 2009 Eligibility List, he would again be processed for a new round of hiring. He successfully

completed the reading and physical fitness tests, but the City disqualified him at the background investigation stage on account of an alleged violation of a domestic-violence ordinance.

160. Plaintiff Christian successfully challenged the disqualification in a civil service appeal. On information and belief, this was because his actual offense was not a basis for disqualification but was rather a 10-year old conviction for a summary offense, disorderly conduct. Although he won his appeal, the City refused to instate him in the 2011 class, and merely offered to consider him for subsequent classes.

161. On information and belief, the City has not disqualified Caucasian applicants for entry level police officer positions who have committed offenses similar to or even more serious than Plaintiff Christian's offense.

162. For the 2011 police officer recruit class, the City disqualified five out of the nine minorities who reached that point in the evaluation, for a 55.6% disqualification rate. In contrast, only seven out of 64 Caucasian candidates (three had withdrawn) were disqualified, for an 11% disqualification rate.

163. In August 2011, Mr. Christian once again successfully completed the written and oral tests, receiving a score of 276 and a ranking of 381 on the eligibility list, which is retained for use in the appointment of police officers for eighteen months. Mr. Christian has been waiting since that time to be contacted by the City to proceed with the application process, but has not been contacted.

164. Plaintiff Christian has filed a charge of discrimination with the Equal Employment Opportunity Commission, charging systemic discrimination in the City's failure to hire him.

Plaintiff Tariq Jamal-Francis

165. Plaintiff Tariq Jamal-Francis is African-American. He is a 2004 graduate of the University of Pittsburgh and a substitute teacher in the Pittsburgh Public Schools, where he is head basketball coach at Westinghouse High School.

166. After applying for the position of Police Officer Recruit with the City in March of 2012, Plaintiff Jamal-Francis successfully completed the written and oral examinations and was ranked 29 on the Eligibility List.

167. Mr. Jamal-Francis proceeded to the next phase of the hiring process, where he successfully completed the physical fitness and reading testing, background check, polygraph, and drug test.

168. Mr. Jamal-Francis was placed on the Certified List for the 2012 Police Officer Recruit class, and received a conditional offer of employment as a police officer recruit. The offer advised him that it was conditioned on demonstrating full compliance with the City's residence requirement, and passing the pre-employment medical exam and the psychological evaluation.

169. On or about July 13, 2012, Plaintiff Jamal-Francis took the written psychological evaluation and was interviewed by a psychologist. A City employee later advised him that that he did not pass but would not give him a reason. A second psychologist then interviewed him and stated that he would pass him, but that the final decision would result from a panel of three psychologists, the first and second psychologists who interviewed him and a third who had not. Plaintiff was notified by phone shortly thereafter that he had not passed, but the City gave him no reason.

170. Jamal-Francis has no history of mental health problems.

171. In August 2012, the City hired 41 police recruits, only two of whom were African-American. Mr. Jamal-Francis has filed a charge of discrimination with the Equal Employment Opportunity Commission, charging systemic discrimination in the City's failure to hire him.

Plaintiff Darrick L. Payton

172. Plaintiff Darrick L. Payton is African-American. He received an Associate's Degree from the Art Institute of Pittsburgh. He has worked at several jobs including as a news writer and producer for KDKA radio.

173. Plaintiff Payton first applied for a police position with the City in 2007. His rank was well below 200 on the Eligibility List after the written and oral testing stage. He successfully completed the other stages of testing and was offered a conditional letter of employment, but the City failed to hire him, although he was otherwise qualified, because the City did not pass him on the psychological evaluation.

174. He again applied for a position in 2011 and after taking the written and oral examinations, was informed on February 7, 2012 that his rank on the Eligibility List was 545, more than 345 ranks below his 2007 ranking.

175. The City has not yet called Plaintiff Payton for processing.

176. Plaintiff Payton has filed a charge of discrimination with the Equal Employment Opportunity Commission, charging systemic discrimination in the City's failure to hire him.

Racial Discrimination in the City of Pittsburgh's Police Hiring Process

177. The City has engaged in and continues to engage in employment policies and practices that discriminate against African-American applicants for Police Officer Recruit positions on the basis of their race and/or color.

178. The City has engaged in and continues to engage in employment policies and practices that have a significant disparate impact on African-American applicants for Police Officer Recruit positions.

179. It is believed and therefore averred that the City of Pittsburgh's population is approximately 26% African-American based on the 2010 census.

180. It is believed and therefore averred that of the approximately 440 Police Officer Recruits hired by the City between 2001 and 2013, only 17 were African-American -- less than 4%.

181. Since 2007, the City has hired 260 entry-level police officers, only 8 of whom -- 3% -- are African-American.

182. It is believed and therefore averred that the percentage of minority applicants who began the City's Police Officer Recruit application process in 2008 was 19.7%. These were the Police Officer Recruit applicants that formed the pool of applicants for the 2009 and 2011 Police Officer Recruit classes.

183. It is believed and therefore averred that the combined percentage of African-Americans hired as Police Officer Recruits in 2009 and 2011 was 3.3%.

184. When compared to the relevant labor market, African-Americans are significantly under-represented in the job category of "Protective Services: Sworn," *i.e.* police officers.

185. It is believed and therefore averred that the qualified labor pool in Pittsburgh for Sworn Protective Services is 22% for African-American males and 10% for African-American females.

186. It is believed and therefore averred that a significant number of African-Americans are discouraged from even applying for the position of Police Officer because, *inter alia*, so few African-Americans are actually hired.

187. Beyond the extreme statistical imbalance generated by the City's overall hiring process, several specific practices employed by the City result in discrimination on the basis of race and/or color, including but not limited to:

A. A higher failure rate on the written examination by minority applicants than by Caucasian applicants, approximately 13.8% versus 2.8%, respectively, for the 2008 testing, which produced the Eligibility Lists for the 2009 and 2011 Recruit Classes;

B. The circulation of names of candidates who have relatives on the police force to the individuals administering the oral examination, which has disparate impact on African-American applicants;

C. Distribution of the oral examination scenarios to certain Caucasian candidates prior to testing;

D. Subjectivity in the scoring of the oral examination which has been more heavily weighted than the written examination and presently is equally weighted;

E. The provision of assistance and encouragement by proctors of the physical-fitness test to some Police Officer Recruit applicants during the testing;

F. The inclusion of a redundant and unnecessary reading test that, combined with the physical fitness test, has a disparate impact in disqualifying African-American candidates.

G. The use of background and polygraph examinations to screen out minority applicants at a higher rate than Caucasian applicants, approximately 56% versus 11%, respectively, for the 2011 Police Officer Recruit class;

H. The unfettered discretion given to the Chief's Roundtable in the final stage of the selection process that results in the rejection of a disproportionate number of African-American applicants compared to Caucasian applicants, approximately 75% versus 12.2%, respectively, for the 2011 Police Officer Recruit class; and

I. The use of psychological testing and screening in a manner that has a disparate impact in disqualifying African-American candidates.

188. The elements of the City's hiring process are not capable of separation for analysis and have a cumulative discriminatory effect such that the entire hiring process should be analyzed as one employment practice.

189. Alternatively, if the elements are capable of separation, numerous elements have a significant disparate impact on African-Americans as explained above. The City does not have any legitimate business reasons for the discriminatory elements of its hiring process.

Class Allegations

190. Plaintiffs bring this action pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class of all African-Americans who (1) have applied for, are applying for, or will in the future apply for the position of police officer with the City of Pittsburgh; (2) submitted or will submit their application by a date that made or will make them eligible to take any written and oral police officer examinations offered by the City in 2008 or thereafter; (3) were not or in the future are not given a final offer of employment as a police officer recruit with the City, **or** did not or will not receive a final offer to join the first available Police Academy class after they receive a ranking based on their scores on the written and oral examinations.

191. Plaintiffs seek to certify the claims in each of the following Counts:

- Count I -- Title VII (Disparate Impact)
- Count II -- Title VII (Systemic Disparate Treatment)
- Count IV -- 42 U.S.C. §§ 1981 and 1983
- Count V -- the Fourteenth Amendment and 42 U.S.C. § 1983
- Count VI -- Pennsylvania Human Relations Act (Disparate Impact)
- Count VII -- Pennsylvania Human Relations Act (Systemic Disparate Treatment)

192. Plaintiffs are members of the proposed class they seek to represent.

193. The members of the proposed class are sufficiently numerous – in or around 300, with future additional members -- that joinder of all members is impracticable. ·

194. There are questions of law and fact common to all class members as to whether the City's Hiring Process violates Title VII, the Pennsylvania Human Relations Act, 42 U.S.C. §§ 1981 and 1983, and the Fourteenth Amendment, and such common questions will predominate over any questions that affect or might affect only individual members of the class in the disposition of this action. Such common questions of law and fact include but are not limited to the following:

- A. Whether the City has failed or refused to hire African-American applicants for the position of Police Officer Recruit on the same basis as Caucasian applicants;
- B. Whether the City's Hiring Process has a disparate impact on African-Americans;
- C. Whether the City's Hiring Process is justified as a valid basis for assessing police recruits;

- D. Whether there are alternative Hiring Processes which are equally as valid for assessing police recruits, but which have no or less of a disparate impact on African-Americans;
- E. Whether the City has adversely treated African-American applicants for the position of Police Officer Recruit during its Hiring Process;
- F. Whether the stark statistical imbalance of hiring Caucasian applicants over African-American applicants for Police Officer Recruits shows systemic disparate treatment of African-American applicants for Police Officer Recruit positions;
- G. Whether the City has employed subjective factors, including nepotism, and favoritism towards current officers' friends and family during its Hiring Process in a manner which discriminates against African-American applicants;
- H. Whether the City has failed to employ valid standards during the Chairman's Roundtable, resulting in discrimination against African-American candidates;
- I. Whether there is a significant disparity in the failure rate on the written and oral examinations between African-American candidates and Caucasian candidates;
- J. Whether the City circulated names of preferred candidates prior to or during the oral examinations in a manner which discriminated against African-Americans;
- K. Whether members of the oral examination panels considered subjective factors in scoring applicants in a manner which discriminated against African-Americans;
- L. Whether there is a significant disparity in the failure rate on the reading examination between African-American candidates and Caucasian candidates;
- M. Whether the City's use of background checks has an adverse impact on African-American applicants or involves disparate treatment;

- N. Whether the Chief's Roundtable lacked objective criteria in selecting candidates in a manner which discriminated against African-Americans;
- O. Whether psychological screening has a disparate impact on African-American applicants or involves disparate treatment;
- P. Whether injunctive relief is suitable to abate the conduct at issue in this Complaint;
- Q. Whether the City violated Title VII by the acts alleged herein;
- R. Whether the City violated the PHRA by the acts alleged herein;
- S. Whether the City violated 42 U.S.C. §§ 1981 and 1983 by the acts alleged herein; and
- T. Whether the City violated the Fourteenth Amendment and 42 U.S.C. § 1983 by the acts alleged herein.

195. Plaintiffs' claims, and the legal theories underlying those claims, are typical of the claims of the class as all are subject to the same hiring process, and all class members were subject to disparate treatment and disparate impact as a result of their race and/or color, giving rise to the employment claims herein.

196. Plaintiffs' claims, and the legal theories underlying those claims, are typical of the claims of the class. All of the Plaintiffs either failed or were ranked on the basis of their combined scores on the written examination and the oral examination.

197. Plaintiffs and their counsel will fairly and adequately represent the class members. In particular: (a) counsel will vigorously and adequately represent the interests of the class and have significant experience in civil rights and class action law suits; and (b) the class representatives have no conflict of interest in maintaining a class action.

198. Counsel are advancing the costs and expenses associated with this case contingent on the outcome.

199. Class certification is appropriate pursuant to Federal Rule of Civil Procedure 23(b)(2) because the City has acted, or has refused to act, on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declarative relief with respect to the class.

200. Class-wide monetary relief for all Class Members is properly certified under Federal Rule of Civil Procedure 23(b)(3) because questions of law and fact common to the Class predominate over any questions affecting individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this case.

CLAIMS

COUNT I – Title VII (Disparate Impact) Plaintiffs on Behalf of Themselves and All Others Similarly Situated v. Defendant City of Pittsburgh

201. Plaintiffs incorporate the allegations in the preceding paragraphs as if fully set forth below.

202. As shown above, there has been a significant statistical disparity based on race resulting in a substantial adverse impact on African-Americans in the City's hiring of entry level police officer candidates, when compared to the relevant labor market, in violation of Title VII.

203. The elements of the City's hiring process are not capable of separation for analysis and therefore the entire hiring process should be analyzed as one employment practice.

204. Pleading in the alternative, if the hiring process is not considered to be one employment practice incapable of separation for statistical analysis, then the individual elements identified above each cause a significant statistical imbalance and substantial adverse impact

between the hiring of Caucasian applicants, on the one hand, and the hiring of African-Americans, on the other hand.

205. The City's hiring process has adversely affected Plaintiffs and the class they seek to represent.

206. The City has no justification for failing to use a hiring process or processes that have a less severe adverse impact on African-Americans.

207. The City's hiring practices and procedures deprive African-Americans of employment opportunities with the Bureau of Police because of their race and/or color in violation of Title VII. The City has implemented these practices and procedures, in ways that include, but are not limited to, the following:

- A. By failing or refusing to hire African-American applicants for the position of Police Officer Recruit on the same basis as Caucasian applicants;
- B. By using employment practices that have an adverse impact on African-American applicants; and
- C. By failing or refusing to take appropriate action to correct the present effects of its discriminatory policies and practices.

208. The City's discriminatory hiring practices and procedures are not job-related for the position of Police Officer Recruit, not consistent with business necessity, and there are available equally valid and less discriminatory alternatives to its discriminatory practices.

209. The City's discriminatory practices described above have denied African-American applicants opportunities and compensation to which they are entitled, which has resulted in the loss of past and future wages and other job benefits.

210. As a direct and proximate cause of The City's unlawful conduct, Plaintiffs and the proposed class members have suffered and continue to suffer irreparable harm. This harm will continue indefinitely into the future absent the requested relief.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, respectfully request judgment against the City as set forth in the Requested Relief below.

**COUNT II – Title VII (Systemic Disparate Treatment)
Plaintiffs on Behalf of Themselves and
All Others Similarly Situated v. Defendant City of Pittsburgh**

211. Plaintiffs incorporate the allegations in the preceding paragraphs as if fully set forth herein.

212. As shown above, there has been a significant statistical disparity based on race to the detriment of African-American candidates in the City's hiring of entry-level police officers, when compared to the qualified relevant labor market.

213. There is no reasonable explanation for this continuing statistical disparity other than intentional racial discrimination in violation of Title VII.

214. It is believed and therefore averred that the BOP representatives employed and/or engaged by the City to participate in the hiring of Police Officer Recruits including, without limitation, certain individuals participating in the oral examination, the reading and MPOETC fitness tests, the polygraph test, the background investigation, the Chief's Roundtable, and the psychological reviews intentionally discriminated against Plaintiffs specifically and African-Americans generally as a group because of their race and/or color.

215. It is believed and therefore averred that discrimination is the City's standard operating procedure with respect to police officer training.

216. As more fully set forth above, Plaintiffs were qualified for appointment to the position of Police Officer Recruit. However, Plaintiffs were denied employment by the City for pretextual reasons.

217. It is believed and therefore averred that other class members were qualified for appointment to the position of Police Officer Recruit; however, the City denied employment to them because of their race and/or color.

218. At all times relevant hereto, individuals employed and/or engaged by the City to participate in the hiring process for the City's Police Officer Recruits were acting as agents for the City.

219. The City's employment policies, practices, and procedures deprived Plaintiffs of their right to equal employment opportunities without discrimination based on race and/or color in violation of Title VII.

220. It is believed and therefore averred that the City acted willfully, intentionally and with callous disregard and reckless indifference to Plaintiffs' and class members' rights under Title VII.

221. As a direct and proximate cause of the City's unlawful conduct, Plaintiffs and class members have suffered damages including, without limitation, lost wages in the form of lost back pay and front pay, emotional distress, humiliation, inconvenience, and mental anguish.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, respectfully request judgment against the City as set forth in the Requested Relief below.

COUNT III – Title VII (Disparate Treatment)
Plaintiffs vs. Defendant City of Pittsburgh

222. Plaintiffs incorporate by reference the allegations in each of the preceding paragraphs as if set forth at length herein.

223. It is believed and therefore averred that the City representatives employed and/or engaged by BOP to participate in the hiring of Police Officer Recruits including, without limitation, certain individuals participating in the oral examination, the reading and MPOETC fitness tests, the polygraph test, the background investigation, the Chief's Roundtable, and the psychological assessment intentionally discriminated against Plaintiffs because of their race and/or color.

224. It is believed and therefore averred that the City representatives on the Chief's Roundtable knew Plaintiffs were African-American based on the application materials provided to the members of the Chief's Roundtable.

225. As more fully set forth above, Plaintiffs were qualified for appointment to the position of Police Officer Recruit; however, Plaintiffs were denied employment by the City.

226. In each instance, the City selected many Caucasian applicants ranked lower than Plaintiffs on the Certified List for positions in the 2011 police recruit class.

227. It is believed and therefore averred that the City selected many Caucasian applicants ranked lower than class members on the Certified List for positions in prior years.

228. At all times relevant hereto, individuals employed and/or engaged by the City to participate in the hiring process for the City's Police Officer Recruits were acting as agents for the City.

229. The City does not have a legitimate, nondiscriminatory reason for its failure to hire Plaintiffs as Police Officer Recruits and the reasons given by the City are pretext for

discrimination. Plaintiffs allege they were not selected and/or hired as Police Officer Recruits because of their race and/or color.

230. The City's employment practices and procedures violate Title VII of the Civil Rights Act of 1964, as Plaintiffs were disparately treated on the basis of their race and/or color.

231. The City's employment policies, practices, and procedures deprived Plaintiffs of their right to equal employment opportunities without discrimination based on race and/or color in violation of Title VII.

232. It is believed and therefore averred that the City acted willfully, intentionally and with callous disregard and reckless indifference to Plaintiffs' rights under Title VII.

233. As a direct and proximate cause of the City's unlawful conduct, Plaintiffs have suffered lost wages in the form of lost back pay and front pay, emotional distress, humiliation, inconvenience, and mental anguish.

WHEREFORE, Plaintiffs respectfully request judgment against the City and request an award of the Requested Relief, below.

**COUNT IV – 42 U.S.C. §§ 1981 and 1983
Plaintiffs on Behalf of Themselves and
All Others Similarly Situated v. Defendant City of Pittsburgh**

234. Plaintiffs incorporate by reference the allegations in each of the preceding paragraphs as if set forth at length herein.

235. At all times relevant hereto, the City was acting under the color of state law.

236. Through the practices described above, the City has engaged in a continuing pattern and practice of intentional race discrimination.

237. The City's hiring process has deprived Plaintiffs and the class of their right to enter into employment contracts guaranteed by 42 U.S.C. § 1981 in that said practices

unlawfully and intentionally discriminate against Plaintiffs on the basis of their race and/or color in seeking and obtaining employment contracts with the City.

238. The City acting under color of state law instituted, authorized, tolerated, ratified, permitted and acquiesced in policies, practices and customs that intentionally discriminated against applicants for the position of Police Officer Recruit because of their race and/or color.

239. The City's acts were performed in knowing violation of Plaintiffs' legal and constitutional rights, and have directly and proximately caused Plaintiffs to suffer damages, including, but not limited to, lost wages in the form of lost back pay and front pay, emotional distress, humiliation, inconvenience, and mental anguish.

WHEREFORE, Plaintiffs respectfully request judgment against the City and seek the relief set forth in the Requested Relief, below.

**COUNT V – The Fourteenth Amendment and 42 U.S.C. § 1983
Plaintiffs on Behalf of Themselves and
All Others Similarly Situated v. Defendant City of Pittsburgh**

240. Plaintiffs incorporate by reference the allegations in each of the preceding paragraphs as if set forth at length herein.

241. At all times relevant hereto, the City was acting under the color of state law.

242. As more fully set forth above, Plaintiffs were qualified for appointment to the position of Police Officer Recruit; however, Plaintiffs were denied employment by the City.

243. It is believed and therefore averred that the individuals employed and/or engaged by the City to participate in the hiring process for Police Officer Recruits including, without limitation, certain individuals participating in the oral examination, the reading and MPOETC fitness tests, the polygraph test, the background investigation the Chief's Roundtable, and the

psychological reviews, intentionally discriminated against Plaintiffs because of their race and/or color.

244. At all times relevant hereto, individuals employed and/or engaged by the City to participate in the City's hiring process for the City's Police Officer Recruits were acting as agents for the City.

245. As a direct and proximate cause of the City's unlawful conduct, Plaintiffs and the class have suffered damages including, but not limited to, lost wages in the form of lost back pay and front pay, emotional distress, humiliation, inconvenience, and mental anguish.

WHEREFORE, Plaintiffs respectfully request judgment against the City and seek the relief set forth in the Requested Relief, below.

COUNT VI – Pennsylvania Human Relations Act (Disparate Impact)
Plaintiffs on Behalf of Themselves and
All Others Similarly Situated v. Defendant City of Pittsburgh

246. Plaintiffs incorporate the allegations in each of the preceding paragraphs as if set forth herein.

247. As shown above, there has been a significant statistical disparity based on race resulting in a substantial adverse impact on African-Americans in the City's hiring of entry level police officer candidates when compared to the relevant labor market, in violation of the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. § 951 *et seq.* The elements of the City's hiring process are not capable of separation for analysis and therefore the entire hiring process should be analyzed as one employment practice.

248. Pleading in the alternative, if the hiring process is not considered to be one employment practice incapable of separation for statistical analysis, then the individual elements identified above each cause a significant statistical imbalance and substantial adverse impact

between the hiring of Caucasian applicants, on the one hand, and the hiring of African-Americans, on the other hand.

249. The City's hiring process has adversely affected Plaintiffs and the class they seek to represent.

250. The City has no justification for failing to use a hiring process or processes that have a less severe adverse impact on African-Americans.

251. The City's hiring practices and procedures deprive African-Americans of employment opportunities with the Bureau of Police because of their race and/or color in violation of in violation of the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. § 951 *et seq.*

252. The City has implemented these practices and procedures in ways that include, but are not limited to, the following.

253. The City's discriminatory hiring practices and procedures are not job-related for the position of Police Officer Recruit, not consistent with business necessity, and there are available equally valid and less discriminatory alternatives to its discriminatory practices.

254. The City's discriminatory practices described above have denied African-American applicants opportunities and compensation to which they are entitled, which has resulted in the loss of past and future wages and other job benefits.

255. As a direct and proximate cause of The City's unlawful conduct, Plaintiffs and the proposed class members have suffered and continue to suffer irreparable harm. This harm will continue indefinitely into the future absent the requested relief.

256. The City's actions deprive African-Americans of their right to equal employment opportunities without discrimination based on race and/or color in violation of the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. § 951, *et seq.*

257. As a direct and proximate cause of The City's unlawful conduct, Plaintiffs and the proposed class members have suffered and continue to suffer irreparable harm. This harm will continue absent the requested relief.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, respectfully request judgment against the City and request the Requested Relief set forth below.

**COUNT VII – Pennsylvania Human Relations Act (Systemic Disparate Treatment)
Plaintiffs on Behalf of Themselves and All Others Similarly Situated v.
Defendant City of Pittsburgh**

258. Plaintiffs incorporate the allegations in the preceding paragraphs as if fully set forth herein

259. It is believed and therefore averred that the City representatives employed and/or engaged by the City to participate in the hiring of Police Officer Recruits including, without limitation, certain individuals participating in the oral examination, the reading and MPOETC fitness tests, the polygraph test, the background investigation, the Chief's Roundtable, and the psychological reviews, intentionally discriminated against Plaintiffs specifically and African-Americans generally as a group because of their race and/or color.

260. It is believed and therefore averred that accepted statistical methodologies show gross statistical disparities that cannot be explained as a product of chance.

261. It is believed and therefore averred that discrimination is The City's standard operating procedure.

262. As more fully set forth above, Plaintiffs were qualified for appointment to the position of Police Officer Recruit; however, Plaintiffs were denied employment by The City for pretextual reasons.

263. It is believed and therefore averred that other class members were qualified for appointment to the position of Police Officer Recruit; however, The City denied employment to them because of their race and/or color.

264. At all times relevant hereto, individuals employed and/or engaged by The City to participate in the hiring process for the City's Police Officer Recruits were acting as agents for The City.

265. The City's employment policies, practices, and procedures deprived Plaintiffs of their right to equal employment opportunities without discrimination based on race and/or color in violation of the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. § 951, *et seq.*

266. It is believed and therefore averred that The City acted willfully, intentionally and with callous disregard and reckless indifference to Plaintiffs' and class members' rights under the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. § 951, *et seq.*

267. As a direct and proximate cause of The City's unlawful conduct, Plaintiffs and class members have suffered damages including, without limitation, lost wages in the form of lost back pay and front pay, emotional distress, humiliation, inconvenience, and mental anguish.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, respectfully request judgment against the City as set forth in the Requested Relief below.

**COUNT VIII – Pennsylvania Human Relations Act
Plaintiffs v. City of Pittsburgh**

268. Plaintiffs incorporate by reference the allegations in each of the preceding paragraphs as if set forth herein.

269. As more fully set forth above, Plaintiffs were qualified for appointment to the position of Police Officer Recruit; however, Plaintiffs were denied employment by Defendant City of Pittsburgh.

270. At all times relevant hereto, individuals employed and/or engaged by the City to participate in the hiring process for the City's Police Officer Recruits were acting as agents for the City.

271. It is believed and therefore averred that the individuals employed and/or engaged by the City to participate in the hiring process for Police Officer Recruits including, without limitation, certain individuals participating in the oral examination, the reading and MPOETC fitness tests, the polygraph test, the background investigation, the Chief's Roundtable, and the psychological reviews, discriminated against Plaintiffs because of their race and/or color.

272. It is believed and therefore averred that the individuals on the Chief's Roundtable knew Plaintiffs were African-American from the materials contained in the files provided to the Chief's Roundtable.

273. In each instance, the City selected many Caucasian applicants ranked lower than Plaintiffs on the Certification for Appointment List, for positions in the 2011 police recruit class.

274. The City does not have a legitimate, nondiscriminatory reason for its failure to hire Plaintiffs as Police Officer Recruits and the reasons given by the City are pretext for discrimination. Plaintiffs allege they were not selected and/or hired as Police Officer Recruits because of their race and/or color.

275. The City's employment policies and practices were violative of the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. § 951, *et seq.*, to the extent Plaintiffs were denied employment on the basis of their race and/or color.

276. The City discriminated against Plaintiffs in violation of the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. § 951, *et seq.* in failing and/or refusing to hire Plaintiffs because of their race and/or color.

277. The City's employment practices, policies and procedures deprived Plaintiffs of their right to equal employment opportunities without discrimination based on race and/or color in violation of the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. § 951, *et seq.*

278. It is believed and therefore averred that there have been numerous other instances of discrimination by the City in the screening and selection of Police Officer Recruits based on race and/or color.

279. As a direct and proximate cause of the City's unlawful conduct, Plaintiffs have suffered emotional distress, humiliation, inconvenience, and mental anguish.

WHEREFORE, Plaintiffs respectfully request judgment in their favor and request the relief set forth below in the Requested Relief.

REQUESTED RELIEF

280. Plaintiffs, individually and on behalf of the class, request the following relief:

A. An order certifying this lawsuit as a class action, designating Plaintiffs as representatives of the Class, and designation of Plaintiffs' counsel of record as Class Counsel;

B. A permanent injunction restraining the City from maintaining and enforcing policies, practices, customs, or usages that discriminate on the basis of race or color with respect to the testing, screening, and hiring of Police Officer Recruits in the City;

C. An order enjoining the City from the use of its hiring process, as a whole, because it results in systemic disparate treatment and has a disparate impact upon African-Americans, is not job related for the position in question and consistent with business necessity, and does not otherwise meet the requirements of Title VII, 42 U.S.C. §2000e, *et seq.* and of the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. § 951, *et seq.*;

D. An order requiring the City to take appropriate action to correct the present effects of its discriminatory policies and practices;

E. An order requiring the City to take other non-discriminatory measures to overcome the effects of its discriminatory policies and practices;

F. Instatement of each Plaintiff to the position of Police Officer Recruit with back pay, front pay, and compensatory damages including, without limitation, for future loss and for emotional distress, pain and suffering, inconvenience, mental anguish and loss of enjoyment of life;

G. An award to class members in the form of back pay, front pay, general and special damages for lost compensation and job benefits that they would have received but for the City's discriminatory practices;

H. A declaratory judgment that the practices complained of in this Complaint are unlawful;

I. Attorneys' fees, expert fees, costs, and expenses pursuant to Title VII, 42 U.S.C. § 1988, and other applicable laws;

J. Prejudgment and post-judgment interest where recoverable, and

K. Such other and further relief as this Court shall deem just and appropriate.

Jury Trial Request

Plaintiffs demand a trial by jury.

Respectfully submitted,

Dated: April 15, 2013

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