

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
C.A. NO. 0984CV00576

SPENCER TATUM, GWENDOLYN BROWN,
LOUIS ROSARIO JR., and FRANCISCO BAEZ
individually and on behalf of a class of individuals
similarly situated,

Plaintiffs,

v.

COMMONWEALTH OF MASSACHUSETTS,
and PAUL DIETL, in his capacity as Personnel
Administrator for the Commonwealth
of Massachusetts, Human Resources Division,

Defendants.

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement ("Agreement") is entered into between a class represented by Plaintiffs Spencer Tatum, Louis Rosario Jr., and Francisco Baez and Defendants Commonwealth of Massachusetts, and Paul Dietl, in his capacity as personnel Administration for the Commonwealth of Massachusetts, Human Resources Division.

RECITALS AND BACKGROUND

On February 11, 2009, Plaintiffs filed this action pursuant to Mass. R. Civ. P. 23 and Mass. General Laws c. 151B, challenging certain statewide and Boston police promotional examinations for sergeant administered by Defendants as having an unlawful disparate impact upon minority (Black and Hispanic) candidates. The operative Third Amended Complaint concerns disparate impact challenges to exams administered in 2005, 2006, 2007, 2008, 2010, and 2012. This action was originally dismissed, then appealed to the Supreme Judicial Court, which reversed the dismissal and remanded to the Superior Court. See Lopez v. Com., 463 Mass. 696 (2012).

The Superior Court granted Plaintiffs' motion for class certification on September 16, 2013, certifying a class action on behalf of minority (Black and Hispanic) police officers within the Commonwealth of Massachusetts who had taken promotional examinations for the position of police sergeant administered statewide and in Boston in 2005, 2006, 2007, 2008, 2010, and 2012. The parties estimate that there are approximately 600 class members.

The Superior Court conducted a trial as to liability ("Phase I") in June and July 2022, and entered a ruling on liability in favor of Plaintiffs on October 27, 2022. The matter was scheduled for a trial with respect to remedy ("Phase II") in March 2023.

The parties now wish to resolve the matter amicably without further litigation. All parties believe that a settlement of this matter is in the interest of the public, the Commonwealth, and the class members.

Therefore, the parties agree to settle this case in its entirety, subject to the Court's approval under Rule 23, as follows:

1. Monetary Settlement Amount:

- a. Defendants shall pay a gross amount of **\$40,000,000** to resolve all claims brought in this case. The amounts identified in this paragraph shall be allocated as follows:
 - i. \$40,000,000 less an award of attorneys' fees and costs set forth in Paragraph 1(a)(iv), shall be paid to plaintiffs and class members who have not been promoted to sergeant and submit claims as set forth in Paragraph 4(b) below;
 - ii. \$50,000 shall be allocated for incentive awards to be paid to the named plaintiffs Spencer Tatum, Louis Rosario, Jr., Francisco Baez, Gwendolyn Brown and class member Abel Cano (\$10,000 each);
 - iii. \$300,000 shall be allocated into a fund to resolve any disputes filed by class members who have been inadvertently omitted from the class list or otherwise provide class counsel with good cause to adjust their pro-rata share of the settlement fund; and
 - iv. At the final approval hearing, Plaintiffs shall submit a motion for attorneys' fees and costs, the final amount of which shall be determined by the Court.

2. Non-Monetary Settlement Relief:

- a. In addition to the monetary component of this Settlement Agreement set forth in Paragraph 1, the parties agree that the Commonwealth will create and administer a new examination for the position of police sergeant, based on a new job analysis that the Commonwealth is currently performing. The terms of such relief are set forth in **Exhibit A** attached hereto. The terms set forth in Exhibit A include an agreement by the Commonwealth to use a police promotional examination that is developed consistent with generally accepted validation principles. The parties agree that the terms set forth or described in Exhibit A are fully incorporated by reference into this Settlement Agreement.

b. As set forth in Exhibit A, the Commonwealth agrees that the Court's final approval order shall contain a provision stating that the Commonwealth will administer a promotional exam for police sergeant that is developed consistent with generally accepted validation principles.

c. As set forth in Exhibit A, the parties agree that the Court shall determine at the final approval hearing the issue of what oversight, if any, Plaintiffs' experts will have with respect to the revised police sergeant's promotional examination.

3. Non-Admission

It is expressly agreed by the Parties that this Settlement Agreement shall not constitute any admission by any party regarding the claims and defenses asserted in this action and this Agreement may not be used as evidence in any other case, except with respect to enforcing the terms of this Settlement Agreement.

4. Allocation and Distribution of Settlement Funds

a. Upon the Court's entry of a final approval order of this Agreement and subject to paragraph 5 below, the Commonwealth shall pay the gross settlement payment into a qualified settlement fund, which shall be administered by a Class Action Administrator agreed upon by the Parties. The Administrator shall distribute the funds to class members in accordance with this agreement and the Court's final approval order, will bear responsibility for the tax treatment of all such payments (including reporting to tax authorities), and will distribute attorneys' fees and costs as approved by the Court, as well as undertake all other conduct reasonably related to the distribution of Settlement Funds consistent with this Agreement.

b. Subject to the parties' identification of all eligible class members, class members shall be paid shares from the settlement fund according to the following formula:

Each eligible Boston police officer shall receive a fixed amount that is estimated to be no less than \$60,000,

Each eligible police officer outside Boston in cities or towns in which there were minority shortfalls during the relevant years shall receive a fixed amount that is estimated to be no less than \$45,000. Because there was less opportunity in those municipalities compared to Boston, this amount will be less than that received by Boston police officers,

Eligible police officers in cities or towns with no minority shortfalls during the relevant years shall receive \$5,000 only (for alleged emotional distress).

c. The administrator will place \$300,000 of the Settlement Fund into a dispute fund, which will be used to resolve any claims that a settlement share was improperly calculated or that an individual should have been included as a class member. In the event that an individual contacts class counsel claiming that they have been allocated an improper share, or that they have been excluded from receiving a share, class counsel will in good faith determine the merits of such claim.

d. For class members in the final category above who are receiving only the minimum share of \$5,000, the Administrator shall issue an IRS 1099 form, as this payment for alleged emotional distress damages. For class members in the first two categories, the Administrator shall allocate 50% of their settlement share as back wages, for which an IRS W-2 form shall be issued; 45% of the settlement share as prejudgment interest, for which an IRS 1099-INT form shall be issued; and 5% of the settlement share as alleged emotional distress damages,, for which an IRS 1099-MISC form shall be issued.

5. Appropriations and Receipt of Funding

The parties acknowledge that the timing of the payment of the settlement payments referred to in Paragraph 4 is subject to the legislative appropriations process. Upon final approval by the Court, the Commonwealth will request that the Legislature make the appropriations necessary to comply with the terms of this Agreement.

6. Class Notice and Court Approval:

a. The parties shall file a joint motion with the Superior Court Justice assigned to this case seeking preliminary approval and the issuance of notice to class members summarizing the terms of this settlement. The proposed form of notice is attached hereto as **Exhibit B**. The notice describes the settlement and provides the time and place of the final settlement approval hearing and the right of any class member to object to the settlement and to attend the final settlement approval hearing.

b. Class counsel shall mail and email this approved notice to all known mailing addresses and electronic mail addresses of the class members. Class counsel shall also make this notice and claims form available on a public website. In addition, the parties further agree that class counsel shall be afforded the right to publish the notice in newspapers circulated within the Commonwealth of Massachusetts, provided class counsel provides Defendants with the names of these newspapers prior to seeking to publish the notice therein.

d. The parties shall not oppose any of the terms set forth in this Settlement Agreement, including the monetary terms and distribution of the Settlement Fund.

e. The parties will request that the Court schedule a Final Approval hearing in May 2023.

f. In the event that the Court does not approve the settlement with or without modifications, this agreement shall be void, and nothing contained herein may be used in any manner for any purpose.

7. Class Member Release, Waiver of Right to Appeal, Dismissal:

a. Upon Court approval of this Settlement Agreement and effectuation of its terms, in consideration of the provisions of this agreement and the promises and undertakings contained herein, Plaintiffs, their counsel, and all class members shall forever discharge and release all claims, causes of action, and demands of any kind against Defendants, related in any way to the claims that were asserted in this action or that could have been brought in this action based on the same underlying factual allegations. The class member release provided by class members will extend from the beginning of time to the time of final approval of this settlement.

b. Should the Court approve this Settlement, the Commonwealth waives any and all rights to appeal any orders or decisions from the Superior Court in this action.

c. Should the Court approve this Settlement, upon compliance with the terms of the Settlement as described herein, this action shall be jointly dismissed with prejudice, and the releases and waivers described herein shall become effective.

8. Non-Reversionary Nature of Agreement and Cy Pres

This Settlement is non-reversionary, meaning that all settlement funds shall be distributed to Settlement Class members, to Plaintiffs, and to class counsel, and no part of the settlement amount shall revert to Defendants. After distribution of all settlement funds (including follow-up by class counsel to find all class members and encourage them to submit claims), any residual funds from uncashed checks shall be held for 120 days and may be used to resolve any disputes which may arise. After the 120 days have elapsed, all remaining unclaimed funds or any portion of the dispute fund that has not been used shall be paid on a cy-pres basis to charitable organizations to be selected by the parties.

IN WITNESS WHEREOF, the Parties and their counsel have executed this Agreement on the date below their signatures or the signature of their representatives. The date of the Agreement shall be the date of the latest signature.

Dated: 3/31/2023

Lichten & Liss-Riordan, P.C.

Harold Lichten

Harold L. Lichten

Counsel for the Settlement Class

Dated: 3/31/2023

Andrea Joy Campbell, Attorney General

Kate Isley

Kate Isley, Assistant Attorney General

Counsel for Defendants Commonwealth of
Massachusetts and Paul Dietl in His
Capacity as Personnel Administrator for the
Commonwealth of Massachusetts, Human
Resources

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
C.A. NO. 0984CV00576

SPENCER TATUM, GWENDOLYN BROWN,
LOUIS ROSARIO JR., and FRANCISCO BAEZ
individually and on behalf of a class of individuals
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v.

COMMONWEALTH OF MASSACHUSETTS,
and PAUL DIETL, in his capacity as Personnel
Administrator for the Commonwealth
of Massachusetts, Human Resources Division,

Defendants.

EXHIBIT A TO CLASS ACTION SETTLEMENT AGREEMENT

1. The Commonwealth of Massachusetts's Human Resources Division ("HRD") agrees to develop, implement, and administer a police sergeant's promotional examination that is developed consistent with generally accepted validation principles

2. The Parties acknowledge that HRD is in the process of developing a new police sergeant promotional examination in response to the Court's order on liability in this matter, issued October 27, 2022.

3. HRD has agreed to develop a new police sergeant's promotional examination consistent with Paragraphs 4 through 15 below.

4. HRD, with the assistance of its testing consultant, Talogy, has started a job analysis of the police sergeant position and plans to revise the police sergeant promotional exam based on the results of that job analysis.

5. HRD has held a subject matter expert (“SME”) meeting to review the duties and tasks performed in the position of a sergeant.

6. HRD has also sent an online job analysis survey to police departments across the state from which it will collect duty and task ratings. HRD will examine the survey results by the size of department.

7. HRD is also planning to conduct a second statewide survey or panel session to address abilities and job knowledges critical to the duties performed by officers in three higher police ranks, including sergeant. The second survey or panel session will require SMEs and incumbents to indicate the degree of relevance that the abilities and job knowledges have for performing the duties required of the police sergeant role. The information about abilities and job knowledges will be collected using both SME panel sessions and an online survey.

8. HRD is reviewing the job knowledge component of the exam and, based on the results of the job analysis, is considering the following changes:

- a. Reduce the reading list: The job analysis portion that examines the job knowledge areas/sources will drive the inclusion of the most relevant sources. In addition, candidates will be informed that they did not have to study those sections within a source that are not relevant or that are of low relevance to the position. Finally, HRD will not include sources that duplicate material and a single source will be identified by SMEs.
- b. Organize items by reading list source on the job knowledge test: As is currently the case—but was not the case prior to 2012—items will be grouped into sections by reading list source to avoid item language that requires the source to be identified as the item stem (e.g., “According to [source] ...”).
- c. Reduce the number of items: The number of items on the test will be reduced to no fewer than 70, with a duration of no more than 2 hours. Further reductions in the number of items without compromising the validity of the exam may be possible when the job analysis is completed, and the reading list is determined. . A 60-65 item test may be feasible when all of the information is collected.
- d. Focus items on the most job relevant content: SMEs will review test items and assist in including the most job relevant content. Test items will employ a lower reading level than those used between 2005 and 2012 and be more directed.

- e. Provide an examination guide to candidates: HRD will provide an examination guide that includes sample questions and answers to candidates.
9. Upon the completion and review of the job analysis survey responses and SME panel ratings, HRD will create a test plan to target the job knowledges and abilities that are identified as critical to the position of sergeant.
10. The weight to be accorded to the various components of the examination shall be based upon the job analysis and not a pre-determined formula or allocation.
11. As supported by the job analysis, HRD plans to include a Situational Judgment Test (“SJT”) component to the exam and to revise the training, education, and experience (“E&E”) component of the exam, both of which will be closely anchored to the key abilities and technical knowledges used on the job.
12. HRD plans to use the SJT component to measure essential abilities and application of technical knowledges identified by the job analysis by describing situations that require the candidate to analyze the information and make decisions by applying abilities (e.g., interpersonal, accountability, etc.) and using judgment in the application of technical knowledges developed through experience in similar situations.
13. HRD plans to redesign the E&E process to focus on the following score categories: job experience both internal to and outside the employing department (experience in the current position and temporarily performing in other roles such as at the next rank), specialized training (certifications), and academic degree (college degrees). The various E&E areas will be linked to job knowledges and abilities that are determined to be relevant to the position. The ratings collected from SMEs on these linkages will be used to establish the relevance of the E&E component and the relative relevance of the score categories to the position.

14. HRD will not use a cut score for the job knowledge component of the exam that would prevent the assessment of other components and will use standardized scoring to ensure that each component receives the intended weight (i.e., effective weights match the desired weights). The lack of a cut score on any one exam component will also allow a candidate to compensate for lower performance in one exam component with higher performance in another exam component and should contribute to improving adverse impact on minority candidates.

15. HRD is also considering banding options, to the extent that the banding options are consistent with Chapter 31 and any necessary changes to the PAR Rules.

16. The parties agree that the Court shall determine at the final approval hearing the issue of what oversight, if any, Plaintiffs' experts will have with respect to the revised police sergeant's promotional examination.

17. HRD reserves its right to revise the components of future statewide police sergeant's promotional exams beyond the 2023 exam, including by implementing additional or different components as informed by future validation procedures.

IN WITNESS WHEREOF, the Parties and their counsel have executed this Agreement on the date below their signatures or the signature of their representatives. The date of the Agreement shall be the date of the latest signature.

Dated: 3/31/2023

Lichten & Liss-Riordan, P.C.

Harold Lichten

Harold L. Lichten
Counsel for the Settlement Class

Dated: 3/31/2023

Andrea Joy Campbell, Attorney General

Kate Isley

Kate Isley, Assistant Attorney General
Counsel for Defendants Commonwealth of
Massachusetts and Paul Dietl in His
Capacity as Personnel Administrator for the
Commonwealth of Massachusetts, Human
Resources

EXHIBIT B

LICHTEN & LISS-RIORDAN, P.C.

ATTORNEYS AT LAW

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BENJAMIN J. WEBER*^{AO} OF COUNSEL

* ADMITTED IN MASSACHUSETTS
* ADMITTED IN CALIFORNIA
* ADMITTED IN NEW YORK
* ADMITTED IN PENNSYLVANIA
* ADMITTED IN ILLINOIS
* ADMITTED IN NEW JERSEY
* ADMITTED IN CONNECTICUT
* ADMITTED IN DISTRICT OF COLUMBIA
* ADMITTED IN TENNESSEE

April 3, 2023

COURT APPROVED NOTICE OF SETTLEMENT OF CLASS ACTION LAWSUIT

Tatum et al. v. Commonwealth of Massachusetts et al.
Suffolk County Superior Court Civil Action No. 0984CV00576

TO: All Black and Hispanic Police Officers who took a promotional examination for the position of police sergeant administered statewide or in Boston in 2005, 2006, 2007, 2008, 2010, or 2012.

We are writing to notify you that a proposed settlement has been reached in a class action lawsuit brought on behalf of minority (Black and Hispanic) police officers in the Commonwealth of Massachusetts who took promotional examinations for the position of police sergeant that were administered statewide and in Boston in 2005, 2006, 2007, 2008, 2010, and 2012.

The Plaintiffs in this lawsuit claimed that the police promotional examinations for the position of police sergeant that were administered statewide and in Boston by the Commonwealth of Massachusetts's Human Resources Division had an unlawful disparate impact upon minority candidates in violation of Mass. General Laws c. 151B. Following a trial on liability, the Court found in favor of the Plaintiffs on liability on October 27, 2022.

The parties have agreed to a proposed settlement in this case on behalf of a class of all individuals who fit the class definition set forth above. If you are a current or former Black or Hispanic police officer who took one of the police sergeant promotional examinations during the relevant years (2005, 2006, 2007, 2008, 2010, or 2012), and you have not been promoted to sergeant, you are entitled to a share of the settlement reached in this case. **In order to receive your share of the settlement, you must complete and sign the enclosed claim form and tax**

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form, and return them to class counsel at Lichten & Liss-Riordan, P.C., 729 Boylston Street, Ste. 2000, Boston, MA 02116, or by email at PromoExamSettlement@llrlaw.com or by fax at (617) 994-5801.

If you do not have a claim form, you may obtain one by calling class counsel at (617) 994-5800. Or you may submit a claim form electronically at the following website <http://www.PromoExamSettlement.com> or by contacting class counsel at PromoExamSettlement@llrlaw.com. Assuming prompt court approval of the settlement, class members who submit their claim forms by May 3, 2023, will receive their payment later this calendar year.

The total amount of the proposed settlement of this case is \$40,000,000. If the Court approves the settlement, Defendants will pay this settlement amount into a fund. A portion of the total settlement amount to be determined by the Court will be allocated to Class Counsel for attorneys' fees and costs, which includes reimbursement of expenses of approximately \$1,000,000 for bringing and prosecuting the lawsuit and administering the settlement. In addition, five plaintiffs and class members who assisted class counsel in prosecuting this action will receive an additional payment in the amount of \$10,000 as an incentive payment, which will compensate them for their efforts in supporting the case on behalf of other class members and working with counsel to pursue it.

Based upon our analysis of the potential damages that could be obtained in this case and our firm's broad experience litigating similar cases, we believe that the settlement is fair, reasonable; and adequate. The settlement accounts for approximately the total amount of lost base pay and overtime (but not interest) that our experts calculated that minority applicants for sergeant across Massachusetts collectively lost as a result of not receiving the promotion to sergeant during the relevant years. We estimate that there are approximately 600 class members in this case. Because it is not possible to determine which officers would have received promotions had there been no discrimination, the law permits recovery for the lost opportunity to obtain the position (not full back pay for each class member).

The distribution of the funds will be made pursuant to a formula to the following three categories of class members:

Each eligible Boston police officer shall receive a fixed amount that is estimated to be no less than \$60,000,

Each eligible police officer outside Boston in cities or towns in which there were minority shortfalls during the relevant years shall receive a fixed amount that is estimated to be no less than \$45,000. Because there was less opportunity in those

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municipalities compared to Boston, this amount will be less than that received by Boston police officers,

Eligible police officers in cities or towns with no minority shortfalls during the relevant years shall receive \$5,000 only (for alleged emotional distress).

In addition, as part of the Settlement Agreement, the Commonwealth has agreed to develop, implement, and administer a new valid police sergeant promotional examination for future exams. The Commonwealth's proposed plans for development are set forth in Exhibit A to the Settlement Agreement. The full terms of the Settlement Agreement are available for your review at the following website: <http://www.PromoExamSettlement.com>.

There will be a court hearing on May 10 at 11:00 AM at the Suffolk County Courthouse in Courtroom 304. The courthouse is located at 3 Pemberton Square, Boston, MA 02108. While the Court has granted preliminary approval of this settlement and has authorized this notice to be issued, at this hearing, the Court will consider whether or not to grant final approval to this settlement. You are not required to attend this hearing in order to participate in the settlement, but you are free to do so if you choose. Under Massachusetts law, you are free to object to the settlement and to propose alternatives, but you may not opt out of the case as long as you are a member of the plaintiff class, as finally defined by the Court after the hearing. If the settlement is approved by the Court, you will be bound by the terms and conditions of the settlement.

If you object to the proposed settlement, you must send your written objection to class counsel at 729 Boylston Street, Suite 2000, Boston, MA 02116, or by e-mail at PromoExamSettlement@llrlaw.com no later than **May 3, 2023**. Objections must include your name, address, and telephone number; information sufficient to establish your membership in the Settlement Class; and an explanation of why you object to the settlement. You are also free to attend the hearing on **May 10, 2023** and explain your objection to the Court.

Again, in order to claim your share of the settlement, you must complete and sign the enclosed claim form, and return it promptly to Lichten & Liss-Riordan, P.C., 729 Boylston Street, Ste. 2000, Boston, MA 02116, or by email at PromoExamSettlement@llrlaw.com or by fax at (617) 994-5801.

If you have any questions about this settlement, please feel free to contact Settlement Administrator Hyun Ji Yim at claims@llrlaw.com or (617) 994-5800; you may also e-mail the firm at PromoExamSettlement@llrlaw.com.

Sincerely,

Harold L. Lichten

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CLAIM FORM

Tatum et al. v. Commonwealth of Massachusetts et al.
Suffolk County Superior Court Civil Action No. 0984CV00576

In order to claim a share of the settlement proceeds from the settlement of the class action lawsuit brought against the Commonwealth of Massachusetts, and Paul Dietl, in his capacity as Personnel Administrator for the Commonwealth of Massachusetts, Human Resources Division, on behalf of minority (Black and Hispanic) police officers within the Commonwealth of Massachusetts who took promotional examinations for the position of police sergeant that were administered statewide and in Boston in 2005, 2006, 2007, 2008, 2010, and 2012, and have not received a promotion to sergeant, you must complete and return this form and the accompanying tax form to the address below. Please return your claim form promptly. Assuming prompt final court approval of the settlement, eligible class members who submit claim forms by May 3, 2023 should receive their payments later this calendar year.

Please submit your claim form by mail, fax, or email to:

Lichten & Liss-Riordan, P.C.
Attn: Hyun Ji Yim, Settlement Administrator
729 Boylston St., Suite 2000
Boston, MA 02116
www.llrlaw.com
Fax: 617-994-5801
Phone: 617-994-5800
Email: claims@llrlaw.com or PromoExamSettlement@llrlaw.com

Name: _____

Address: _____

Phone: _____ Alternate Phone: _____

Email address: _____

City or town for which you took the Sergeant promotional exam: _____

Estimated year(s) in which you took the Sergeant promotional exam: _____

I am (please check): Black _____ Hispanic _____