

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

| | | |
|---------------------------------------|---|-------------------------|
| ANTHONY LUKE |) | CASE NO.: 1:02 CV 01225 |
| 17210 Milburn Avenue |) | |
| Cleveland, Ohio 44135 |) | |
| (individually and on behalf of others |) | |
| similarly situated) |) | JUDGE PAUL MATIA |
| |) | |
| and |) | |
| |) | |
| KEITH ACEY |) | |
| 4296 East 164 th Street |) | |
| Cleveland, Ohio 44128 |) | |
| (individually and on behalf of others |) | |
| similarly situated) |) | |
| and |) | |
| |) | |
| RUDOLPH BUFFINGTON |) | |
| 3282 East 143 rd Street |) | |
| Cleveland, Ohio 44120 |) | |
| (individually and on behalf of others |) | |
| similarly situated) |) | |
| and |) | |
| |) | |
| MICHAEL ODUM |) | |
| 3152 Elisha Lane |) | |
| Twinsburg, Ohio 44087 |) | |
| (individually and on behalf of others |) | |
| similarly situated) |) | |
| and |) | |
| |) | |
| BASHIR RAHMAN |) | |
| 2994 Becket road |) | |
| Cleveland, Ohio 44120 |) | |

Luke, et al vs. City of Cleveland

Third Amended Complaint

Page 1 of 52

(individually and on behalf of others)
similarly situated))

and)
)

DARYL McGINNIS)
10231 Joan Avenue)
Cleveland, Ohio 44111)
(individually and on behalf of others)
similarly situated))

)
and)

)
KENNETH GUYTON)
2060 Superior Avenue)
Cleveland Heights, Ohio 44118)
(individually and on behalf of others)
similarly situated))

)
and)

)
BRUCE WILLIAMS)
1774 EAST 238TH Street)
Euclid, Ohio 44117)
(individually and on behalf of others)
similarly situated))

)
and)

)
KEVIN ECHOLS)
3046 Becket Road)
Cleveland, Ohio 44120)
(individually and on behalf of others)
similarly situated))

)
and)

)
GRANVILLE WHITE)
2846 Ludlow Avenue)
Cleveland, Ohio 44120)

| | |
|---------------------------------------|---|
| (individually and on behalf of others |) |
| similarly situated), |) |
| |) |
| and |) |
| |) |
| ASA NEWSOME |) |
| 821 E. 156 th Street |) |
| Cleveland, Ohio 4410 |) |
| (individually and on behalf of others |) |
| similarly situated) |) |
| |) |
| and |) |
| |) |
| LAWRENCE MOORE |) |
| 10720 Hathaway Avenue |) |
| Cleveland, Ohio 44108 |) |
| (individually and on behalf of others |) |
| similarly situated) |) |
| |) |
| and |) |
| |) |
| FRED McMICKLE |) |
| 1187 E. 170 th St. |) |
| Cleveland, Ohio 44110 |) |
| (individually and on behalf of others |) |
| similarly situated) |) |
| |) |
| and |) |
| |) |
| RONALD ASKEW |) |
| 18309 Marcella Avenue |) |
| Cleveland, Ohio 44119 |) |
| (individually and on behalf of others |) |
| similarly situated) |) |
| |) |
| and |) |
| |) |
| ANTHONY JACKSON |) |
| 3743 Sumpter Ct. |) |

Cleveland, Ohio 44115)
(individually and on behalf of others)
similarly situated))
)
and)
)

ALONZO PAYNE)
1872 East 75th Street)
Cleveland, Ohio 44103)
(individually and on behalf of others)
similarly situated))
)
and)
)

ANTHONY NICKERSON)
3126 Becket)
Cleveland, Ohio 44120)
(individually and on behalf of others)
similarly situated))
)
and)
)

DALE WOODARD)
3347 Milverton)
Shaker Heights, Ohio 44120)
(individually and on behalf of others)
similarly situated))
)
and)
)

DARYL WILLIAMS)
12000 Fairhill, #402)
Cleveland, Ohio 44120)
(individually and on behalf of others)
similarly situated))
)
and)

)
RICHARD NICKERSON)
1075 East 74th Street, #3)
Cleveland, Ohio 44103)
(individually and on behalf of others)
similarly situated))
)
and)
)

)
DAPHNE TYUS)
14609 Westropp)
Cleveland, Ohio 44110)
(individually and on behalf of others)
similarly situated))
)
and)
)

)
BERNARD RUSSELL)
11715 Rutland)
Cleveland, Ohio 44108)
(individually and on behalf of others)
similarly situated))
)
and)
)

)
EMANUEL WILLIAMS)
13216 Terminal)
Cleveland, Ohio 44135)
(individually and on behalf of others)
similarly situated))
)
and)
)

)
DAVID AUSTIN)
4262 East 189th Street)
Cleveland, Ohio 44122)
(individually and on behalf of others)

similarly situated))
)
and)
)
SEAN HODGES)
2897 MLK Blvd.)
Cleveland, Ohio 44104)
(individually and on behalf of others)
similarly situated))
)
and)
)

JAMES CARTWRIGHT)
2108 Rossmoor)
Cleveland Heights, Ohio 44118)
(individually and on behalf of others)
similarly situated))
)
and)
)

DAVID BUTLER)
2475 E. 127th St.)
Cleveland, Ohio 44120)
(individually and on behalf of others)
similarly situated))
)
and)
)

KAREEM HASAN)
6669 Tupelo)
Bedford Heights, Ohio 44146)
(individually and on behalf of others)
similarly situated))
)
and)
)

MARCUS TURNER)

2621 N. Moreland #101)
Cleveland, Ohio 44120)
(individually and on behalf of others)
similarly situated))
)
and)
)
HERBERT PENNYMAN)
9710 Empire)
Cleveland, Ohio 44108)
(individually and on behalf of others)
similarly situated))
)
and)
)

TERRENCE WATSON)
1939 Green)
Cleveland, Ohio 44121)
(individually and on behalf of others)
similarly situated))
)
and)
)

ANTHONY ALFORD)
9423 Heath Avenue)
Cleveland, Ohio 44104)
(individually and on behalf of others)
similarly situated))
)
and)
)

NEVILLE LEE)
2032 Rossmoor)
Cleveland Heights, Ohio 44118)
(individually and on behalf of others)
similarly situated))
)

| | |
|--|---|
| and |) |
| |) |
| JOHN BOYD, JR. |) |
| 9222 Columbia Avenue |) |
| Cleveland, Ohio 44108 |) |
| |) |
| and |) |
| |) |
| DAMON JOHNSON |) |
| 12621 Britton |) |
| Cleveland, Ohio 44120 |) |
| |) |
| Plaintiffs. |) |
| |) |
| vs. |) |
| |) |
| CITY OF CLEVELAND |) |
| c/o Subodh Chandra, Law Director |) |
| 601 Lakeside Avenue, Room 106 |) |
| Cleveland, Ohio 44114 |) |
| |) |
| and |) |
| |) |
| KEVIN GERRITY |) |
| Chief of Fire Division |) |
| City of Cleveland |) |
| Department of Safety, Division of Fire |) |
| 1645 Superior Avenue |) |
| Cleveland, Ohio 44114 |) |
| (in his official capacity) |) |
| |) |
| and |) |
| |) |
| BARRETT & ASSOCIATES, INC. |) |
| 1772 State Road |) |
| Cuyahoga Falls, Ohio 44223-1306 |) |
| |) |
| and |) |
| |) |
| GERALD BARRETT |) |

c/o Barrett & Associates, Inc.)
1772 State Road)
Cuyahoga Falls, Ohio 44223-1306,)
)
Defendants.)

THIRD AMENDED COMPLAINT
(Race Discrimination, 42 U.S.C. §§1981, 1988;
Conspiracy to Interfere with Civil Rights, 42 U.S.C. §§ 1985(3), 1988;
Equal Protection, 42 U.S.C. §§1983, 1988
Public Records Destruction, R.C. § 149.351; Spoliation of Evidence;
Race Discrimination, R.C. 4112.02(A);
Aiding and Abetting, R.C. § 4112.02(J);
Action for Declaratory Judgment and Injunctive Relief)

CLASS ACTION, FED. CIV. RULE 23(a) and (b)(3)

JURY DEMAND ENDORSED HEREON

I. INTRODUCTION

1. This is an action by several African-American firefighters of the City of Cleveland Department of Safety, Fire Division alleging race discrimination in employment, including disparate treatment in promotion, maintaining and promoting a racially hostile environment, race discrimination and retaliation in duty assignments and race discrimination and disparate treatment in disciplinary actions.

II BACKGROUND AND PARTIES

2. All Plaintiffs are black or African-American firefighters of Defendant City of Cleveland, Division of Fire.
3. Currently within Defendant City of Cleveland Fire Division there are approximately 1007 firefighters, including officers. Of this number, slightly over 21% are black or African-American. Of the officers, 13.5% are black or African-American.
4. According to the 2000 Census, the city of Cleveland has a total population of 478,403, of which 243,939 (52%) are black or African-American.
5. During the years 1983 through 1995, Defendant City of Cleveland was party to a consent decree entered into as a result of litigation alleging race discrimination in hiring and promotion within the City of Cleveland Fire Division filed in the United States District Court by the labor union representing African-American firefighters. This consent decree expired as to promotion in 1995.
6. The consent decree, in part, required the City of Cleveland to promote equal numbers of candidates of black and African-American firefighters as non-minority candidates to correct a historically established past practice of disparate treatment towards black and African-American persons in promotion and hiring.
7. In complying with the consent decree, Defendant City of Cleveland did promote equal number of black and African-American firefighters as non-minorities, but still promoted roughly the same absolute number of non-minority firefighters by simply increasing the total number of promotions to rank during the decree period.

8. As a result of this practice, the number of ranking officers with Defendant City of Cleveland Fire Division increased over the level that had existed for the years prior to the consent decree.
9. Since the expiration of the consent decree, Defendant City of Cleveland Fire Department has returned to and engaged in practices that have resulted in the disparate treatment of African-American firefighters within the Department in the areas of promotion, duty assignments and discipline.
10. Since the expiration of the consent decree, Defendants have administered two (2) promotional examinations prior to 2002: one in 1996 and another in 2000.
11. The promotional examination process administered in 1996 was originally scheduled for 1995, but was delayed at the motion of the Defendant City of Cleveland and the labor union representing the firefighters.
12. There are two Battalions within Defendant City of Cleveland Fire Division, both located on the west side of the city, where no black or African-American officers are assigned at all. In these same two Battalions, there are less than 15 black or African-American firefighters out of in excess of 250 firefighters assigned.
13. Most black or African-American officers are not assigned to suppression units, but are assigned instead predominantly to administrative duties or offices of Defendant City of Cleveland Fire Division.
14. When African-American officers are able to transfer to suppression units, their authority and responsibilities are generally usurped or circumvented by senior authority within the Fire

Division, which has resulted in senior ranking black or African-American officers actually reporting to lower ranking non-minority officers.

15. Black and African-American officers are routinely assigned to units within the Fire Division that have become “Traditional Black Assignments,” to the exclusion of assignments that are more lucrative in terms of compensation and experience and can lead to better assignments.
16. There is and has been a racially hostile environment that has been maintained and tolerated within the Division of Fire, becoming so serious on at least one occasion that a fire station had to be temporarily closed to relieve the tensions before they escalated into a situation beyond the control of the administration and Division of Fire officers.
17. Defendant City of Cleveland has perpetrated and maintained a culture of racial discrimination within the Division of Fire dating back at least to the 1996 promotional examinations, including hostile work environment, disparate treatment in assignments, discipline, overtime and acting time.
18. Defendant Barrett and Associates (“B&A”) and Gerald Barrett (“Barrett”) were employed by Defendant City of Cleveland to develop, conduct, and grade the promotional examinations administered in 1996, 2000 and 2002.
19. The service performed by Barrett and B&A was a public function of the City of Cleveland pursuant to R.C § 124.45 and City Ord. No. 290-01, delegated by contract to the private consultant for public purposes.

PLAINTIFFS

Keith Acey

20. Plaintiff Keith Acey was first hired by the City of Cleveland Fire Department on July 18, 1983.
21. Throughout the term of his employment, Plaintiff Acey has accumulated a satisfactory work record.
22. Plaintiff Acey is currently at the rank of Firefighter First Grade and successfully passed the promotion examination to the rank of Lieutenant in 1996, where he ranked # 119C.
23. Plaintiff Acey was not promoted from the 1996 eligibility list.
24. Plaintiff Acey successfully passed the Lieutenant promotional examination in 2000, where he ranked #73.
25. Plaintiff Acey was not promoted from the 2000 eligibility list.
26. Plaintiff Acey underwent the promotional examination for 2002 to the rank of Lieutenant, but did not pass the examination.

Rudolph Buffington

27. Plaintiff Rudolph Buffington was first hired by the City of Cleveland Fire Department in March 9, 1998.
28. Throughout the term of his employment, Plaintiff Buffington has accumulated a satisfactory work record.
29. Plaintiff Buffington is currently at the rank of Firefighter First Grade and successfully passed the promotion examination to the rank of Lieutenant in 2000, where he ranked #145.
30. Plaintiff Buffington was not promoted from the 2000 eligibility list.

31. Plaintiff Buffington underwent the promotional examination in 2002, but did not pass the examination.

Granville White

32. Plaintiff Granville White was first hired by the City of Cleveland Fire Department in February 14, 1994.
33. Throughout the term of his employment, Plaintiff White has accumulated a satisfactory work record.
34. Plaintiff White is currently at the rank of Firefighter First Grade and successfully passed the promotion examination to the rank of Lieutenant in 1996, where he ranked #103D.
35. Plaintiff White was not promoted from the 1996 eligibility list.
36. Plaintiff White successfully passed the promotional examination for the rank of Lieutenant in 2000, where he ranked #65.
37. Plaintiff White was not promoted from the 2000 eligibility list.
38. Plaintiff White underwent the promotional examination in 2002, but did not pass the examination.

Anthony Luke

39. Plaintiff Anthony Luke was first hired by the City of Cleveland Fire Department in February 14, 1994.
40. Throughout the term of his employment, Plaintiff Luke has accumulated a satisfactory work record.

41. Plaintiff Luke successfully passed the Lieutenant promotional examination in 1996, where he was ranked at #40A, the highest of any African-American or black firefighter for the Lieutenant rank.
42. Plaintiff Luke was promoted from the 1996 eligibility list.
43. Plaintiff Luke successfully passed the Captain promotional examination in 2000, where he was ranked #35, the highest of any black or African-American firefighter for the rank of Captain.
44. Plaintiff Luke was not promoted from the 2000 eligibility list.
45. Plaintiff Luke has successfully passed the 2002 promotional examination for the rank of Captain, and is ranked at #29.

Kevin Echols

46. Plaintiff Kevin Echols was first hired by the City of Cleveland Fire Department in May 8, 1989.
47. Throughout the term of his employment, Plaintiff Echols has accumulated a satisfactory work record.
48. Plaintiff Echols successfully passed the promotion examination for the rank of Lieutenant in 1996, where he ranked at #131A.
49. Plaintiff Echols was not promoted from the 1996 eligibility list.
50. Plaintiff Echols successfully passed the promotional examination for the rank of Lieutenant in 2000, and was ranked at #52.
51. Plaintiff Echols was promoted from the 2000 eligibility list in April 2002, immediately prior to the expiration of that eligibility list.

52. Per the Civil Service rules, any firefighter who has been promoted must remain in rank for a period of one (1) year before they are eligible to sit for the promotional examination for the next rank.
53. Past practice of the Division of Fire has been to waive the one-year requirement for firefighters seeking promotion to the next rank.
54. The Division of Fire is enforcing the one-year policy, prohibiting him from undergoing the promotional examination process for the rank of Captain in 2002.

Bruce Williams

55. Plaintiff Bruce Williams was first hired by the City of Cleveland Fire Department in June 2, 1981.
56. Plaintiff Williams successfully passed the promotional examination for the rank of Captain in 2000, being ranked #57.
57. Plaintiff Williams was not promoted from the 2000 eligibility list.
58. Plaintiff Williams successfully passed the promotional examination to the rank of Captain in 2002, being ranked #44.
59. Plaintiff Williams was subjected to formal disciplinary action for conduct that Caucasian firefighters were not, to wit, missing an emergency run with his crew.

Michael Odum

60. Plaintiff Michael Odum was first hired by the City of Cleveland Fire Department in March 1981.

61. Throughout the term of his employment, Plaintiff Odum has accumulated a satisfactory work record.
62. Plaintiff Odum successfully passed the promotional examination for the rank of Captain in 1996 and was promoted from that eligibility list in 1997.
63. Plaintiff Odum was a candidate for promotion and took the underwent the promotional examination process in the year 2000.
64. As part of that process, he received from Defendants a copies of his coded answer sheets for the Job Knowledge and In-basket portions of the promotional examination process; the originals were retained by the City of Cleveland.
65. When Plaintiff Odum examined the answer sheets he was given, he noticed that the handwriting on one of the answer sheets was not his even though it bore his name, but another with handwriting not his own.
66. Plaintiff Odum successfully passed the promotional examination for the rank of Battalion Chief in 2000, being ranked at #24.
67. Plaintiff Odum was not promoted from the 2000 eligibility list..

Kenneth Guyton

68. Plaintiff Kenneth Guyton was first hired by the City of Cleveland Fire Department in March 8, 1982.
69. Throughout the term of his employment, Plaintiff Guyton has accumulated a satisfactory work record.

70. Plaintiff Guyton successfully passed the promotional examination for the rank of Captain in 1996, being ranked at #26.
71. Plaintiff Guyton was promoted from the 1996 eligibility list.
72. Plaintiff Guyton successfully passed the promotional examination for the rank of Battalion Chief in 2000, being ranked at #21.
73. Plaintiff Guyton was not promoted from the 2000 eligibility list.

Bashir Rahman

74. Plaintiff Bashir Rahman was first hired by the City of Cleveland Fire Department in June 1973.
75. Throughout the term of his employment, Plaintiff Rahman has accumulated a satisfactory work record.
76. Plaintiff Rahman successfully passed the promotional examination for the rank of Assistant Chief in 1996, being ranked #8.
77. Plaintiff Rahman was not promoted from the 1996 eligibility list.
78. Plaintiff Rahman has not undergone the promotional examination process since 1996 due to his belief that the process is futile for black and African-American firefighters.

Daryl McGinnis

79. Plaintiff Daryl McGinnis was first hired by the City of Cleveland Fire Division on April 22, 1985.
80. Plaintiff McGinnis had successfully passed the promotional examination for the rank of Captain in 1996, being ranked #37A.

81. Plaintiff McGinnis was promoted to the rank of Captain from the 1996 eligibility list.
82. Plaintiff McGinnis successfully passed the promotional examination to the rank of Battalion Chief in 2000, being ranked #6.
83. Plaintiff McGinnis was promoted to the rank of Battalion Chief from the 2000 eligibility list in April 2002, right before the eligibility period expired..
84. Per the policy of the Fire Division, any firefighter who has been promoted must remain in rank for a period of six (6) months before they are eligible for promotion to the next rank.
85. Past practice of the Fire Division has been to waive this eligibility requirement for past examinations.
86. Fire Division is enforcing the time in rank policy as to McGinnis, and therefore due to the date of Plaintiff McGinnis' promotion to Battalion chief, he is ineligible for promotion to the rank of Assistant Chief.

Fred McMickle

87. Plaintiff Fred McMickle has accumulated a satisfactory work record as a firefighter for the City of Cleveland.
88. Plaintiff McMickle successfully passed the promotional examination for the rank of Lieutenant in 2000, being ranked #145A.
89. Plaintiff McMickle was not promoted from the 2000 eligibility list.
90. Plaintiff McMickle successfully passed the promotional examination for the rank of Lieutenant in 2002, being ranked #2.

Ronald Askew

91. Plaintiff Ronald Askew has accumulated a satisfactory work record as a firefighter for the City of Cleveland.
92. Plaintiff Askew successfully passed the promotional examination for the rank Lieutenant in 2000, being ranked #129.
93. Plaintiff Askew was not promoted from the 2000 eligibility list.
94. Plaintiff Askew successfully passed the promotional examination for Lieutenant in 2002, being ranked #7.

Lawrence Moore

95. Plaintiff Lawrence Moore has accumulated a satisfactory work record as a firefighter for the City of Cleveland.
96. Plaintiff Moore has been subjected to disparate treatment in relation to disciplinary action he received in relation to a verbal argument he had with a Caucasian co-worker, who was not disciplined in any manner for the same incident.

Asa Newsome

97. Plaintiff Lawrence Newsome has accumulated a satisfactory work record as a firefighter for the City of Cleveland.
98. Plaintiff Newsome was subjected to disparate and retaliatory disciplinary treatment when he complained about lighted fireworks being thrown into the watch area by Caucasian firefighters at the station where he was assigned.

Bernard Russell

99. Plaintiff Bernard Russell has accumulated a satisfactory work record as a firefighter for the City of Cleveland.
100. Plaintiff Russell successfully passed the promotional examination for the rank of Lieutenant in 1996, being ranked #197C.
101. Plaintiff Russell was not promoted from the 1996 eligibility list.
102. Plaintiff Russell successfully passed the promotional examination for the rank of Lieutenant in 2000, being ranked #119.
103. Plaintiff Russell was not promoted from the 2000 eligibility list.

Daphne Tyus

104. Plaintiff Daphne Tyus has accumulated a satisfactory work record as a firefighter for the City of Cleveland.
105. Plaintiff Tyus successfully passed the promotional examination for the rank Lieutenant in 1996, being ranked at #172C.
106. Plaintiff Tyus was not promoted from the 1996 eligibility list.
107. Plaintiff Tyus underwent the promotional examination for the rank of Lieutenant in 2002, but did not successfully pass.

David Butler

108. Plaintiff Butler has accumulated a satisfactory work record as a firefighter for the City of Cleveland.

109. Plaintiff Butler successfully passed the promotional examination for the rank of Lieutenant in 1996, being ranked at #113A.
110. Plaintiff Butler was not promoted off the 1996 eligibility list.
111. Plaintiff Butler underwent the promotional examination for the rank of Lieutenant in 2002, but did not successfully pass.

Kariem Hasan

112. Plaintiff Hasan has accumulated a satisfactory work record as a firefighter for the City of Cleveland.
113. Plaintiff Hasan successfully passed the promotional examination for the rank of Lieutenant in 1996, being ranked #132.
114. Plaintiff Hasan was not promoted from the 1996 eligibility list.
115. Plaintiff Hasan successfully passed the promotional examination for the rank of Lieutenant in 2000, being ranked at #76.
116. Plaintiff Hasan was not promoted from the 2000 eligibility list.

Emanuel Williams

117. Plaintiff Williams has accumulated a satisfactory work record as a firefighter for the City of Cleveland.
118. Plaintiff Williams successfully passed the promotional examination for the rank of Lieutenant in 1996, being ranked at #162.
119. Plaintiff Williams was not promoted from the eligibility list for 1996.

Sean Hodges

- 120. Plaintiff Sean Hodges has accumulated a satisfactory work record as a firefighter for the City of Cleveland.
- 121. Plaintiff Hodges successfully passed the promotional examination for the rank of Lieutenant in 1996, being ranked at #112.
- 122. Plaintiff Hodges was not promoted from the 1996 eligibility list.
- 123. Plaintiff Hodges successfully passed the promotional examination for the rank of Lieutenant in 2000, being ranked at #138.
- 124. Plaintiff Hodges was not promoted from the 2000 eligibility list.

David Austin

- 125. Plaintiff Austin has accumulated a satisfactory work record as a firefighter for the City of Cleveland.
- 126. Plaintiff Austin successfully passed the 2000 promotional examination for the rank of Lieutenant in 2000, being ranked 136B.
- 127. Plaintiff Austin was not promoted from the 2000 eligibility list.

James Cartwright

- 128. Plaintiff James Cartwright has accumulated a satisfactory work record as a firefighter for the City of Cleveland.
- 129. Plaintiff Cartwright successfully passed the promotional examination for the rank of Lieutenant in 2000, being ranked #112.

130. Plaintiff Cartwright was not promoted from the 2000 eligibility list.

Terence Watson

131. Plaintiff Terence Watson has accumulated a satisfactory work record as a firefighter for the City of Cleveland.

132. Plaintiff Watson successfully passed the promotional examination for the rank of Lieutenant in 1996, being ranked #175B.

133. Plaintiff Watson was not promoted from the 1996 eligibility list.

Richard Nickerson

134. Plaintiff Richard Nickerson has accumulated a satisfactory work record as a firefighter for the City of Cleveland.

135. Plaintiff Nickerson successfully passed the promotional examination for the rank of Lieutenant in 2000, being ranked #150.

136. Plaintiff Nickerson was not promoted from the 2000 eligibility list.

Anthony Nickerson

137. Plaintiff Anthony Nickerson has accumulated a satisfactory work record as a firefighter for the City of Cleveland.

138. Plaintiff Nickerson successfully passed the promotional examination for the rank of Lieutenant in 1996, being ranked #132C.

139. Plaintiff Nickerson was not promoted from the 1996 eligibility list.

Remaining Plaintiffs

140. All remaining Plaintiffs have experienced the racially hostile environment within Defendant City of Cleveland, Division of Fire.

DEFENDANTS

141. Defendant City of Cleveland is a municipal corporation located in Cuyahoga County, Ohio; the City of Cleveland Fire Department is a subdivision of the City of Cleveland.

142. Defendant Chief is the Chief of the Fire Department of the City of Cleveland, and according to the Charter and established practice, is responsible for the creation and administration of policies for the Department, including those relating to the promotional examination process.

143. The City of Cleveland Fire Division is organized by Battalions, which are designate by various geographic sections of the City. There are two (2) Battalions located on the City's west side, and there are four (4) Battalions located on the City's east side. Each Battalion is further subdivided into Stations, and there are 4-6 Stations per Battalion.

144. Each station is assigned companies, which are in turn assigned apparatus.

145. The promotional examination process, disciplinary actions and duty assignments are all part of the policies and procedures for the City of Cleveland Safety Forces, Fire Division or under the direction of Defendant City's Civil Service Commission; all actions taken against or directed to Plaintiffs have been ostensibly pursuant to these policies and procedures.

146. Defendant Barrett & Associates, Inc. ("B&A") is a company doing business in the State of Ohio which prepares, administers and scores promotional examinations for various

municipalities including at all times pertinent herein Defendant City of Cleveland's Division of Fire promotional examinations for the years 1996, 2000 and 2002.

147. Defendant Gerald Barrett ("Barrett") is President of Barrett & Associates, Inc., and is responsible for the overall management and operations of the company, including its record maintenance and destruction.
148. Specifically Defendant City of Cleveland employed Barrett and B&A via "emergency ordinances" intended to "employ by contract one or more consultants for the purpose of supplementing the regularly employed staff of the several departments of the City of Cleveland in order to perform a job analysis and to develop, administer and grade promotional examinations for the division of Fire, Department of Public Safety." (Exhibits 1 (Ord. No. 290-01) and 2 (Contract)).
149. At all times pertinent the Defendant City maintained ownership of the job analyses, exam development, preparatory materials, study materials, examinations, answer sheets, grade materials, reports and recommendations, and all other documents and reports pertaining to the promotion of the firefighters pursuant to the examinations conducted on behalf of the City. (Exhibit 2, at 9-10).
150. At all times during the process, Defendants Barrett and B& A retained custody of the City's promotional records.
151. At all times during the process, Defendant City reserved the right "[t]o effectively verify proposals and all work performed by [Barrett and B&A]" and "to conduct site visits at

- [Barrett's and B&A's] location. (Exhibit 3, City Employment Letter).
152. Defendant City required Barrett and B&A as part of its employment "supplementing" the City to produce "eligibility lists" detailing grade results, name, address birthdate, and race of each candidate. (Exhibits 2, at 2; 3, at 4).
153. At all times pertinent herein, Barrett and B& A were specifically employed to perform a public function: supplementing the City in its duty to perform promotional tests in accordance with R.C. § 124.45.
154. The records, proposals, examinations, grade sheets, answer sheets, and all other documents generated by B&A in supplementing the City's promotional functions within the Division of Fire are public records as defined under R.C. § 149.43.
155. The 1996 and 2000 promotional examinations have been the subject of other civil rights litigation in the United States District Court for the Northern District of Ohio.
156. Defendant Gerald Barrett is an attorney.
157. Defendants Barrett and B&A, per contract, agreed to serve as "expert witnesses" and to assist the City in the production, preparation and maintenance of any employment litigation involving the promotional process. (Exhibit 3 at 4); Defendant Barrett charges \$350 per hour to serve as a witness and be involved in litigation preparation on behalf of examinations developed and conducted for the City by B&A.
158. Defendants Barrett and B&A have destroyed all documents relating to the promotional examinations conducted by the City, via B&A, in 1996 and 2000.

159. Defendant Barrett and B&A conspired with Defendant City in the preparation, administration, grading, and recommendations based upon, the promotional examinations, resulting in discriminatory treatment and disparate impact on African-American and black firefighters.
160. By improperly and, without authorization, destroying public records, B&A and Barrett conspired with Defendant City, and aided and abetted Defendant City's racially discriminatory practices toward African American and black firefighters.
161. By improperly and, without authorization, destroying public records in its capacity of performing a public function and being pervasively entwined with the Defendant City, Defendants Barrett and B&A acted under color of state law and deprived Plaintiffs of their civil rights under the law.
162. By performing being pervasively entwined and performing the public function of conducting the examinations in a discriminatory and disparate manner based on the candidates' race, Barrett and B&A acted under color of state law to deprive the African- American and black examinees of equal protection under the law.

III. THE PROMOTIONAL EXAMINATIONS

163. The promotional examination process used by the City of Cleveland Fire Division is used by policy of the Fire Division and/or Defendant City's Civil Service Commission and consists of three (3) separate parts: 1) Job Knowledge; 2) In-basket; and 3) Oral Interview.
164. The Job Knowledge test and its answer key are to be kept highly confidential and secure at all times, and are never to be distributed or otherwise disseminated at any time to any individual

other than as necessary during the examination period to eligible candidates actually taking the examination.

165. Many of the questions on successive Job Knowledge test examinations are the same or very similar.
166. The answer sheets for the Job Knowledge portion have historically requested not only the social security number and date of birth of the candidate, but includes a box where the candidate is to identify their race.
167. Answer keyed copies of the Job Knowledge examination have been disseminated to non-minority promotional candidates.
168. The In-basket portion of the promotional examination process is subjective and consists of reviewing documents and placing them in a sequence to respond to some questions regarding them.
169. The answer sheets for the In-basket portion request not only the social security number and date of birth of the candidate, but includes a box where the candidate is to identify their race.
170. The oral interview portion of the examination process is subjective and conducted at a different location weeks after the other portions of the process have been completed, scored and the results known to the administrators and senior ranking officials of the Fire Department.
171. The oral interview portion of the promotional examination process is tape recorded, but no black or African-American candidate has ever been permitted to review the tapes of their oral interview when they have requested to do so.

172. The oral interview portion of the promotional examination process is totally subjective with no objective criteria involved in administration, evaluation and scoring.
173. The Cleveland Civil Service Commission rules do not permit oral promotional examinations for firefighters.
174. The Ohio Revised Code mandates that all promotional examination for firefighters “shall be in writing.”
175. To be considered eligible for any promotion with the Division of Fire, a candidate must already have been promoted to or have attained the immediately subordinate rank; there is no skipping of ranks.

A. 1996 PROMOTIONAL EXAMINATION

176. The 1996 promotional examination was administered in July 1996.
177. At the Lieutenant rank there were 248 total candidates, of which 46 were black or African-American.
178. The highest ranking black or African-American candidate was Plaintiff Luke, who ranked at number 40A.
179. Of the 46 black or African-American candidates who passed the 1996 promotional examination for the Lieutenant rank, only 5 were ranked in the top third and 33 were ranked in the bottom half of the eligible candidates.
180. There were 86 candidates who were promoted to the rank of Lieutenant from the 1996

promotional examination, of which only 5 were black or African-American.

181. For the 1996 promotional examination for the rank of Captain, out of 89 total candidates only 4 were black or African-American and none ranked higher than number 15.
182. Out of 43 total promotions to the rank of Captain, only 4 were black or African-American.
183. For the 1996 promotional examination for the rank of Battalion Chief, out of 39 total candidates, 1 was black or African-American, who ranked number 16 and was promoted to the rank of Battalion Chief out of 22 promotions.
184. For the 1996 promotional examination for the rank of Assistant Chief, there were 13 total candidates of which 3 were black or African-American.
185. Paul Stubbs was the highest ranking black or African-American candidate at number 6, and was originally ranked at #5 but was downgraded to #6 after Brent Collins, a Caucasian firefighter, was elevated in rank over him.
186. Stubbs initiated litigation to remedy his being passed over for promotion due to race discrimination and was eventually promoted as settlement of that litigation.

B. 2000 PROMOTIONAL EXAMINATION

187. For the year 2000 promotion examination for the rank of Assistant Chief, five (5) candidates underwent the process. Three (3) candidates passed, including one (1) African-American, Edward Whatley.

188. At the time of the promotional process in the year 2000, there were 24 Battalion Chiefs, of which only three (3), or 12.5%, were black or African-American.
189. The Caucasian candidates were promoted shortly after they successfully completed the promotional examination process.
190. Whatley was not promoted until immediately before the expiration of the eligibility period in April 2002.
191. After promotion in April 2002, there were seven (7) Assistant Chiefs, of which two (2), or 28.5%, are black or African-American.
192. For the year 2000 promotional examination for the rank of Battalion Chief, 41 candidates underwent the examination process of which 40 passed, of which only four were black or African-American.
193. The top five candidates for the rank of Battalion Chief were Caucasians, who were each promoted shortly after their successful completion of the promotional process.
194. Darryl McGinnis, the sixth eligible candidate and an African-American, was not promoted to the rank of Battalion Chief until the end of the eligibility period in April 2002, upon the promotion of Whatley to the rank of Assistant Chief..
195. After McGinnis's promotion, there were 30 Battalion Chiefs, of which three (3), or 10% are black or African-American.
196. For the year 2000 promotional examination process for the rank of Captain, 89 candidates passed the examination, of which 11 were black or African-American.

197. Of the 11 black or African American candidates who passed the examination process, the highest ranking black or African-American candidate was Plaintiff Luke, who ranked at number 34A.
198. 17 persons were promoted to the rank of Captain; none were black or African-American.
199. After the promotions, there were 64 Captains, of which three (3), or 4.8%, are black or African-American.
200. For the year 2000 promotional examination process for the rank of Lieutenant, 158 candidates successfully completed the examination process, of which 28 were black or African-American; only two (2) blacks or African-Americans ranked among the top 30.
201. 61 candidates were promoted, of which ten (10) were black or African-American.
202. After these promotions, there were 173 Lieutenants of which 28, or 16%, are black or African-American.
203. The disparities in the 1996 promotional examination results between black and African-American firefighters and non-minority firefighters is demonstrates a similar pattern as that of the 2000 promotional examination results.
204. Because promotion to successively higher ranks is dependent upon achieving the rank of Lieutenant, black or African-American under-representation at this level adversely affects the ability of black or African-Americans to achieve higher ranks within the City of Cleveland Fire Department and therefore the higher compensation, responsibility and increased pensions attendant with promotion.

205. From the 1996 and 2000 promotional examinations, a total of 242 promotions were made, of which only 22 (9.0%) were black or African-American.

C. 2002 PROMOTIONAL EXAMINATION

206. The 2002 promotions examinations for Lieutenant were administered in June 2002; the examination was administered after this suit was commenced.

207. Approximately 212 firefighters signed up to take the promotional examination to the rank of Lieutenant, but only 98 actually underwent the examination process.

208. The lack of participation for the 2002 promotional examinations was substantially lower than that experienced for either the 1996 and 2000 promotional examinations, for which 248 and 158 firefighters, respectively underwent the examination process to the rank of Lieutenant.

209. Only 39 candidates successfully passed the 2002 promotional examination, of which 11 were black or African-American.

210. Plaintiff McMickle was highest ranking black or African-American at number 2; Plaintiff Askew ranked at number 7; Plaintiff Hasan ranked at number 18.

211. At the Captain rank, out of 68 total candidates, 11 were black or African-American.

212. The highest ranking black or African-American was #24; Plaintiff Luke ranked at #29.

D. DROP Program

213. The Deferred Retirement Option Plan (DROP) was enacted by the Ohio General Assembly and effective January 1, 2003.
214. The DROP program is a deferred compensation program that allows firefighters to divert their pension contributions to a deferred compensation account instead of their pension plan.
215. In order to remain eligible for the DROP program, an enrolled firefighter must remain within the program for at least 3 years, but no more than 8 years.
216. The DROP program causes a reduction of the number of firefighters leaving the force for retirement because of the eligibility requirements.
217. Because of the DROP, the number of promotional vacancies for the eligibility period of the 2002 promotional examination is expected to be much less than that experienced in either the 1996 or 2000 promotional periods.
218. Should promotions be made from the 2002 promotional examination, irreparable harm will result to the black and African-American firefighters who suffered the effects of discrimination from the 1996 and 2000 promotional examinations, as fewer positions will be available for corrective measures.
219. Because of the disparate impact on blacks and African-Americans due to the promotional examinations and/or examination process including the administration of the promotional examinations, black and African-American fire fighters have been and are being denied promotions and the opportunity for promotion within the City of Cleveland Fire Division as enjoyed by Caucasian firefighters, including having fewer black and African-American

firefighters at the lower ranks from which to draw eligible and qualified officer candidates.

220. The disparate treatment experienced by black and African-American firefighters from the past promotional examinations has served to reduce the number of eligible candidates for promotion to higher ranks within the Division of Fire as well as discourage and chill the participation of black and African-American firefighters from participating in the promotional process.

IV. DISCIPLINE

221. The Fire Division has its own disciplinary procedures and disciplinary process that it uses to reprimand and discipline personnel.
222. The disciplinary process is divided into formal and informal disciplinary processes.
223. Informal discipline is generally handled without involvement of Defendant Chief's office, and there are no or few records kept of firefighter discipline handled in this manner.
224. Formal discipline is disciplinary action that is processed through Defendant Chief's office, and results in becoming part of the firefighter's permanent record.
225. Defendant Chief Gerrity has complete authority and discretion in formulating and implementing disciplinary policies and procedures for the Division of Fire.
226. During the years 1997 through 2000, there were 93 formal disciplinary actions within the Fire Division. Of those, 49 (52.7%) involved black or African-American firefighters, 41 involved Caucasian firefighters, and 3 involved other minorities.
227. Applied to total population, almost one in four black or African-American firefighters were

subjected to formal disciplinary action during the period 1997 through 2000, while only one in sixteen (16) Caucasian firefighters were subjected to formal disciplinary action during the same period.

228. Black and African-American firefighters are subjected to more serious disciplinary actions for conduct that Caucasian firefighters are not subjected to disciplinary actions or who receive lesser discipline.

229. The entire disciplinary process has resulted in a disparate impact upon black and African-American firefighters.

230. Specific examples of disparate treatment of black and African-American firefighters in discipline include, but are not limited to, the following:

(A) Plaintiff Lawrence Moore was involved in an argument with a Caucasian co-worker, yet he was the only firefighter punished and made to submit to a drug screen. Several Caucasian firefighters then made a concerted effort to have Plaintiff Moore re-assigned by having their wives send letter to Defendant Gerrity claiming they were fearful for their husband's lives due to alleged threats from Plaintiff Moore;

(B) Plaintiff Asa Newsome was subjected to racial harassment at his station, culminating when lighted fireworks into the watch area where he was located which exploded next to his head. Newsome immediately went to the kitchen of the station where the other Caucasian members of the station were sitting and complained about the incident. Assistant Chief Brent Collins claimed he did not hear the explosion of the fireworks, but that he could hear Newsome's complaining about same. After

Newsome made several requests for forms of explanation were submitted by Newsome, he was detailed to the Fire Training Academy for “retraining.” No Caucasian firefighters were punished nor was any investigation conducted until other African-American members of the Fire Division continued to complain.

(C) Plaintiff Keith Acey was subjected to harassment by a Caucasian Captain and complained to appropriate administration about the harassment. No investigation was ever conducted regarding the harassment and no action has ever been taken. There have been several instances where Caucasian firefighters have complained about being “harassed” or “threatened” by black or African-American firefighters who were then removed from the unit and re-assigned. (D) On another occasion, a

Caucasian firefighter who reported for work obviously impaired due to being under the influence of alcohol was simply taken home by the officer, also Caucasian, who found a replacement to cover for the impaired officer’s absence; no discipline was imposed upon the impaired firefighter, yet without any investigation or reason, an entire firehouse which was predominantly staffed with African-American and black firefighters was forced to undergo drug screens, even though no firefighter was impaired or under the influence and no officer observed any firefighter under the influence of any substance at the time the drug screens were ordered.

(E) On another occasion, a black firefighter was suspended without pay pending an investigation into allegations of theft and when acquitted, the firefighter was demoted and removed from his assignment; a Caucasian firefighter transferred funds from the Fire Prevention house fund into his personal account, yet no official police investigation was ever requested nor was he ever removed from

his assignment or demoted.

(F) Black and African-American firefighters at two stations reported and filed numerous reports of racial discrimination and a racially hostile environment at the respective stations. At one station, Defendants City and Gerrity had to actually close the companies assigned to the stations and seek intervention from the Employee Assistance officers to attempt to diffuse the explosive racial tensions; when Caucasian firefighters at another station complained about what they perceived as racial remarks from a black officer, he was removed from his position and re-assigned.

(G) Another black firefighter was re-assigned from his assignment and suspended for one day when he failed to report a DUI charge to Fire Division administration, even though he retained occupational driving privileges; a Caucasian firefighter who had his driver's license suspended and failed to disclose this fact to his company captain (who was African-American) was not removed until complaints to senior Fire Division administration were made by this company officer; another Caucasian firefighter with at least three DUIs known to Fire Division administration was never subjected to disciplinary action nor removed from his assignment.

(H) A Caucasian Division officer reported to work intoxicated and urinated on the head of another Caucasian firefighter who had refused to engage in racially hostile acts, resulting in a physical altercation between the two resulting in damage to Fire Division property and blood stains in the carpet of the station; other Caucasian firefighters repaired the damage and denied that the incident and altercation ever occurred, despite one of the firefighters having sustained actual physical injuries; no discipline was ever imposed on either Caucasian firefighter.

(I) Defendant Gerrity sent a memo regarding firehouses with large Caucasian populations where photographs had been taken by other Defendant City employees of various incidents of wrongdoing and rules violations occurring in those stations; despite the photographic evidence, no investigations were ever conducted and no discipline was ever imposed on any of the Caucasian firefighters at the stations.

(J) A Caucasian member of the Fire Investigation Unit was found heavily intoxicated in a bar with his weapon in violation of Division rules , but was never subjected to disciplinary action.

(K) An African-American firefighter was subjected to informal disciplinary action for a rule violation, then also improperly subjected to formal disciplinary action for the same offense.

V. ASSIGNMENTS

231. The two Battalions on the west side within the Fire Division have no black or African-American officers assigned at all.

232. In these same two (2) Battalions, there are only approximately 15 African-American or black firefighters assigned.

233. When Plaintiff McGinnis was promoted to Captain, over half of his complement, all Caucasian firefighters, transferred out of his Company.

234. Even though as Captain he is required by policy to sign all transfer requests, Plaintiff McGinnis had not signed nor even seen the transfer requests for the Caucasian firefighters who transferred.

235. Defendants Gerrity and City of Cleveland have used re-assignment as a disciplinary method

against black and African-American firefighters while not re-assigning Caucasian firefighters who had committed the same types of violations or alleged violations.

236. Defendants Gerrity and City of Cleveland have used re-assignment as a retaliatory method against black and African-American firefighters who have complained about racial inequities and disparate treatment within the Fire Division.

237. Defendant Chief Gerrity has complete discretion in making assignments of personnel within the Fire Division.

VI. RACIALLY HOSTILE ENVIRONMENT

238. All Plaintiffs and black and African-American firefighters are subjected to a racially hostile environment with the Division of Fire, including without limitation, suffering disparate disciplinary treatment, racial harassment, enforced segregation, selective assignment and assignment for retaliatory or discriminatory purposes, subjecting black and African-American firefighters to drug screens and testing without reasonable cause, undermining the authority of black and African-American officers, using a promotional process that discriminates against black and African-American firefighters, and denial of overtime and acting time.

235. Despite numerous complaints by various black and African-American firefighters to the administration within the Division of Fire and the Defendant City of Cleveland, there has been no correction or even an acknowledgment of the current racially disparate treatment or the racially hostile environment within the Division of Fire.

236. The racial strife has been so serious that it has required the closing of at least one station on an unscheduled emergency basis due to elevated racial tensions at the station house so severe that physical violence was feared imminent by the Fire Division administration.

VII. CLASS ALLEGATIONS

237. Plaintiffs bring this action as a class action pursuant to Fed. Civ. P. 23(a) and (b)(3) on behalf of themselves and a class of employees and former employees of Defendants in the who, within the applicable liability period, have worked as firefighters and are black or African-American.

238. Plaintiffs are members of the class they seek to represent.

239. Numerosity. There are approximately 210 black or African-American firefighters currently on the active payroll of Defendant City and an indeterminate number of black and African-American firefighters who were actively employed during the pertinent statutory period but have retired or otherwise separated their employment with Defendant City. The number of persons are so numerous that joinder of all the members of the class is impracticable.

240. Commonality. There are questions of law and fact common to the class which predominate over any actions affecting only individual members of the class, including, without limitation, whether, as alleged herein, whether Defendants have engaged in discriminatory practices in assignment, discipline, promotion, and by creating and maintaining a racially hostile environment towards black and African-American firefighters.

241. Typicality. The claims of the Plaintiffs are typical of the claims of the class.

242. Adequacy of Representation. Plaintiffs will fairly and adequately represent and protect the interest of the members of the class. Counsel representing Plaintiffs are competent and experienced in representing plaintiffs in employment litigation.
243. Class certification is appropriate under Fed. R. Civ., P 23(b)(3) because questions of law and fact common to the class predominate over any questions affecting only individual members of the class. Each member of the class has been damaged and is entitled to recovery by reason of Defendants discriminatory policies and/or practices directed towards black and African-American firefighters.

VIII. JURISDICTION

244. Jurisdiction is conferred upon this Court over Plaintiffs' federal claims by virtue of 42 U.S.C. §1988 and 28 U.S.C. §1331, federal question jurisdiction.
245. Jurisdiction is conferred upon this Court over Plaintiffs' state law claims by virtue of R.C. 28 U.S.C. §1367, supplemental jurisdiction.

COUNT I

Race Discrimination in Employment, 42 U.S.C. §1981

246. Plaintiffs incorporate by reference each of the allegations contained in paragraphs 1 through 243 of this complaint as if fully rewritten herein.
247. Defendants' various acts and omissions relating to promotion, the promotional examinations and the promotional process constitute discrimination on the basis of race in violation of 42 U.S.C. §1981.

248. Defendants Kevin Gerrity and City of Cleveland's various acts and omissions relating to assignment, racially hostile environment and disciplinary actions constitute discrimination on the basis of race in violation of 42 U.S.C. §1981.

COUNT II
Equal Protection, 42 U.S.C. §1983

249. Plaintiffs incorporate by reference each of the allegations contained in paragraphs 1 through 243 of this complaint as if fully rewritten herein.

250. Defendants' various acts and omissions relating to promotion, the promotional examinations and the promotional process constitute denial of equal protection under the 14th Amendment of the Constitution of the United States in violation of 42 U.S.C. §1983.

251. Defendants Gerrity and City of Cleveland's various acts and omissions relating to disparate treatment in assignments, maintaining a racially hostile environment, and disparate treatment in disciplinary actions constitute denial of equal protection under the 14th Amendment of the Constitution of the United States in violation of 42 U.S.C. §1983.

COUNT III
Race Discrimination, R.C. §§ 4112.02(A) & 4112.99
Disparate Impact

252. Plaintiffs incorporate by reference each of the allegations contained in paragraphs 1 through 243 of this complaint as if fully rewritten herein.

253. The policies and practices of the Defendants regarding promotion, the promotional and the promotional process have a disparate impact upon the Plaintiffs and African-American and

black firefighters as a class.

254. The policies and practices of Defendants Gerrity and City of Cleveland in disparate or retaliatory treatment in assignments, disparate disciplinary treatment and promoting and maintaining a racially hostile environment have a disparate impact upon Plaintiffs and African-American and black firefighters as a class.
255. Defendants' various acts and omissions constitute discrimination on the basis of race in violation of R.C. §§ 4112.02(A) and 4112.99.

COUNT IV
Race Discrimination, R.C. §§ 4112.02(A) & 4112.99
Disparate Treatment

256. Plaintiffs incorporate by reference each of the allegations contained in paragraphs 1 through 243 of this complaint as if fully rewritten herein.
257. Defendants' various acts and omissions regarding promotion, the promotional examination and the promotional process constitute discrimination on the basis of race in violation of R.C. §§ 4112.02(A) and 4112.99.
258. Defendants' Gerrity and City of Cleveland's various acts and omissions regarding disparate or retaliatory treatment in assignments, disparate disciplinary treatment and the promoting and maintaining of a racially hostile environment constitute discrimination on the basis of race in violation of R.C. §§ 4112.02(A) and 4112.99.

COUNT V

Aiding and Abetting, R.C. §§ 4112.02(J), 4112.99

259. Plaintiffs incorporate by reference each of the allegations contained in paragraphs 1 through 243 of this complaint as if fully rewritten herein.
260. Defendants' Barrett and Barrett & Associates Inc. use of a promotional examination and examination process that does not conform with Ohio law or the City of Cleveland Civil Service rules and results in discrimination on the basis of race by Defendants City and Gerrity constitutes aiding and abetting discrimination in violation of R.C. §§ 4112.02(J) and 4112.99.
261. Defendants' Gerrity and City of Cleveland's various acts and omissions regarding authorizing the utilization of a promotional examination and examination process that is not in conformity with Ohio law and the City of Cleveland Civil Service rules and that results in having a discriminatory impact and disparate treatment of black and African-American firefighters by Defendants Barrett and Barrett & Associates, Inc. constitutes aiding and abetting discrimination in violation of R.C. §§ 4112.02(J) and 4112.99.

**COUNT VI
Conspiracy, 42 U.S.C. §1985**

262. Plaintiffs incorporate by reference each of the allegations contained in paragraphs 1 through 243 of this complaint as if fully rewritten herein.
263. Defendants' Barrett and Barrett & Associates Inc. use of a promotional examination and examination process that does not conform with Ohio law or the City of Cleveland Civil

Service rules and results in discrimination on the basis of race by Defendants City and Gerrity constitutes conspiracy in violation of 42 U.S.C. §1985.

264. Defendants' Gerrity and City of Cleveland's various acts and omissions regarding authorizing the utilization of a promotional examination and examination process that is not in conformity with Ohio law and the City of Cleveland Civil Service rules and that results in having a discriminatory impact and disparate treatment of black and African-American firefighters by Defendants Barrett and Barrett & Associates, Inc. constitutes conspiracy in violation of 42 U.S.C. §1985.

COUNT VII
Destruction of Public Records; R.C. §149.351

265. Plaintiffs incorporate by reference each of the allegations contained in paragraphs 1 through 243 of this complaint as if fully rewritten herein.
266. Defendant Barrett & Associates, Inc. was retained by Defendant City to prepare, administer and score the Fire Division promotional examinations for the years 1996, 2000 and 2002.
267. Defendant Gerald Barrett is the President and owner of Defendant Barrett & Associates who at all times pertinent herein controlled and directed the operations of Defendant Barrett & Associates.
268. At all times pertinent herein, Defendants Barrett and Barrett & Associates were agents of Defendant City in the preparation, administration and scoring of the promotional examinations.
269. As part of the promotion process, Defendants Barrett and Barrett & Associates prepared

documents and records necessary to the promotional examination process for each of the years 1996, 2000 and 2002.

270. On information and belief, the number of documents and records prepared or used by Defendants Barrett and Barrett & Associates for the 1996 promotional examination exceeds 100,000.
271. On information and belief, the number of documents and records prepared or used by Defendants Barrett and Barrett & Associates for the 2000 promotional examination exceeds 100,000.
272. The promotional documents and records prepared and/or used by Defendants Barrett and Barrett & Associates are public records as provided by R.C. § 149.43 and by virtue of Defendant City's continuing ownership and control of them.
273. Without authority or privilege to do so, Defendants Barrett, B&A and the City of Cleveland have destroyed or caused to be destroyed all documents and records associated with both the 1996 and 2000 Fire Division promotional examinations.
274. Plaintiffs did not discover that the 1996 promotional examination public records had been destroyed until August 15, 2002, when in response to a subpoena duces tecum, Defendants informed Plaintiffs that the 1996 promotional examination material had all been destroyed.
275. Plaintiffs did not discover that the 2000 promotional examination public records had been destroyed until September 23, 2002, when Defendants B&A and Barrett notified Plaintiffs, through counsel, that these public records had also been destroyed.

276. Defendants destruction and/or unauthorized removal of the promotional examination documents for 1996 and 2000 constitute destruction of public records, in violation of R.C. §149.351.

COUNT VII
Spoliation of Evidence

277. Plaintiffs incorporate the allegations contained in paragraphs 1 through 276 of this complaint as if fully rewritten herein.

278. Defendants' City of Cleveland's, Barrett's and B&A's destruction of records and documents which are not only germane but essential to the promotional examination process constitutes spoliation of evidence.

279. Defendants were on notice that the documents were disputed, as at least one prior lawsuit by a current Plaintiff (timely re-filed in this action), concerned the development, administration and grading of the 2000 examination and named both Defendant City and Defendant B&A as defendants in that case.

280. Defendants Barrett and B&A also have contracted to serve as "expert witnesses" for the City of Cleveland to testify based on their production and administration of documents and examinations on behalf of the City of Cleveland; such terms of the contract exceed the time period of the contract performance.

281. Defendants conspired and destroyed the documents in violation of the law requiring them to seek Civil Service permission prior to destruction of public documents, constituting unlawful destruction of public records and spoliation of evidence.

IX. RELIEF SOUGHT

282. Plaintiffs initially seek an injunction preventing the promotion of any firefighters from the June 28, 2002, examination process.
283. Plaintiffs seek promotion of black and African-American firefighters who were subjected to the 1996 or 2000 promotional examination process who successfully passed the examination but who were not promoted at that time.
284. Plaintiffs seek a preliminary and permanent injunction preventing the promotion of a firefighters from the 2002 promotional examination until adequate remedial and corrective measures have been made to promote and make whole those black and African-American firefighters who were improperly denied promotion from the 1996 and 2000 promotional examinations.
285. Plaintiffs seek a preliminary injunction relating to transfers and assignments, or the imposing of any discipline upon any firefighter until implementation of adequate safeguards and review procedures to ensure fairness of the processes.
286. Plaintiffs seek a declaratory judgment that Defendants have violated 42 U.S.C. § 1981, 42 U.S.C. §1983 and R.C. §§ 4112.02(A) and 4112.99.
287. Plaintiffs seek a permanent injunction precluding the use of any indicators of race or identity in the promotional testing process.
288. Plaintiffs seek a permanent injunction precluding the use of any oral examination or unwritten examination as part of the promotional process.

289. Plaintiffs seek a permanent injunction barring the use of either Gerald Barrett or Barrett & Associates as a third party testing service or consultant in any future promotional examinations.
290. Plaintiffs seek damages in an amount to be proved at trial relating to loss of pay resulting from duty assignments and promotions not made for black or African-American firefighters who were eligible for promotion or assignment but not promoted or assigned due to past discriminatory practices.
291. Plaintiffs seek statutory damages as to all Defendants, jointly and severally, for the destruction of public records as provided by R.C. § 149.351, at \$1,000 per record.
292. Plaintiffs seek damages as to all Defendants, jointly and severally, for spoliation of evidence.
293. Plaintiffs seek punitive damages against Defendants, jointly and severally, in an amount to be proved at trial.
294. Plaintiffs seek compensatory damages against Defendants, jointly and severally, in an amount to be proved at trial.
295. Plaintiffs seek their reasonable attorneys fees, costs and any expert fees.
296. Plaintiffs seek any other relief this Court deems necessary and just.

Respectfully submitted,

/s/ Dennis R. Thompson

Dennis R. Thompson #0030098

Thompson Law Offices

2719 Manchester Rd.

Akron, Ohio 44319

330-753-6874

330-753-7082(Fax)

tmpsnlaw@akron.infi.net

tmpsnlaw@scb.global.net (As of 12/2002)

ATTORNEY FOR PLAINTIFFS

JURY DEMAND

Plaintiffs demand a jury for each of their claims and causes of action in this complaint.

/s/ Dennis R. Thompson

Dennis R. Thompson

CERTIFICATE OF SERVICE

A copy of the foregoing was sent to Kevin Gibbons, Attorney for Defendants Kevin Gerrity and City of Cleveland, and Thomas Barnard, Attorney for Defendants Barrett & Associates, Inc. and Gerald Barrett, via electronic filing this 31 day of March, 2003.

/s/ Dennis R. Thompson

Dennis R. Thompson