

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DOROTHY SHEPPARD, ROBERT W. BERRY,
IRMA J. MUSHATT, JAMES M. CARTER,
HAROLD MCKINZIE, LEONARD B. MIDDLETON,
DERICK C. HEWITT and JAMES W. AUSTIN,
individually and on behalf of all
others similarly situated,

SECOND
AMENDED COMPLAINT
(Class Action)

Plaintiffs,

CIVIL ACTION NO.
94 C.V. 0403 (DGT)

v.

CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC.

Defendant.
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Plaintiffs, for their Second Amended Complaint against the
defendant, respectfully allege on behalf of the above captioned
individual plaintiffs and the class they represent, as follows:

PRELIMINARY STATEMENT

1. This is an action for declaratory and injunctive relief and damages on behalf of the named plaintiffs. Plaintiffs are black and/or African-American employees of defendant CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. (hereinafter "CON ED"). Plaintiffs are qualified for promotion or transfer to higher level management positions, but have been denied promotions on the basis of their race and/or color. Plaintiffs also seek class based relief on behalf of similarly situated CON ED employees, of whom the named parties' claims are representative and typical.

2. This action challenges CON ED's failure to provide black and/or African-American employees equal enjoyment of all benefits, privileges, terms and conditions of employment granted

white employees. This complaint is based upon causes of action pursuant to: i) 42 U.S.C. §1981 et. seq., as amended; ii) Title VII of the Civil Rights of 1964, as amended, ("Title VII"), 42 U.S.C. Section 2000 (e), et. seq.; iii) Article 15 of the Executive Law of the State of New York (Human Rights Law); and iv) Title 8 of the Administrative Code of the City of New York.

JURISDICTION AND VENUE

3. Jurisdiction is conferred upon this court by 28 U.S.C. §§ 1331 and 1343 on the ground that this action arises under 42 U.S.C. § 1981, the Civil Rights Act of 1991, S. Res. 1745, 102 Cong. 2nd Sess. Cong. Rec. and Title VII of the Civil Rights Act of 1964, as amended, ("Title VII"), 42 U.S.C. 2000 (e), et. seq. Plaintiffs also invoke this Court's jurisdiction under the Declaratory Judgment Act, 28 U.S.C. §2201 and 2202, and its ancillary authority to address pendent claims of discrimination arising from violation of Article 15 of the New York State Executive Law, and arising under Title 8 of the Administrative Code of the City of New York.

4. The venue of this action is properly placed in the Eastern District of New York pursuant to 28 U.S.C. § 1391 (b) because, CON ED is a resident of the Eastern District, and a substantial part of the events or omissions giving rise to the claim have occurred there. All but one of the named plaintiffs reside in this District.

NATURE OF THE CASE

5. CON ED fails to carry out an equal employment opportunity ("EEO") policy to protect black and/or African-American employees against racial discrimination. This failure results in underutilization of blacks and/or African-Americans in all aspects of management.

6. The intentional and unlawful conduct resulting in this racial discrimination is caused by the commissions and omissions of the defendant at all management levels.

7. The intentional and unlawful conduct encompasses CON ED's systematic failure to implement stated or required EEO objectives in its personnel and managerial activities: CON ED does not practice or publicize its own stated or required EEO policy within the management work force; CON ED fails to systematically post jobs and abide by its written job descriptions; CON ED fails to administer its formal evaluation program(s) to ensure that they are based on objective and measurable criteria; CON ED does not systematically ensure that its evaluation program(s), which are often the stepping stone to promotion, transfer, and training, assess all employees by equal and objectively measurable criteria; and CON ED ignores the causes of underutilization of black and/or African-American employees qualified for promotion or transfer. Furthermore, CON ED has retaliated against those employees who have engaged in lawfully protected activity and opposed its discriminatory practices and disparate treatment.

8. In the alternative, CON ED's practices as concerns the terms and conditions of black and/or African American employees are discriminatory and have an adverse impact on these employees because of their race and/or color.

8a. CON ED is a federal government contractor, and, as such, is prohibited by law from discrimination in employment. In addition, as a government contractor, CON ED is mandated to take affirmative action to identify and eliminate prohibited discriminatory employment practices, as determined by consequence rather than intent. Although CON ED is required to prepare an affirmative action plan for minorities, CON ED has failed to carry forth an affirmative action plan. Alternatively, to the extent that CON ED has an affirmative action program, both the plan's organizational structure and CON ED's implementation of affirmative action goals are ineffective and without proper direction.

9. As a result of the aforescribed commissions and omissions, black and/or African-American employees at CON ED, who are qualified to be promoted to management or higher level positions in management, are deprived of opportunities of advancement; passed over for less qualified employees by white supervisors; passed over for less qualified employees friendly with white supervisors; and denigrated, harassed, and humiliated by superiors attempting to enforce and maintain this discriminatory pattern and practice of promotion. As a result of CON ED's failure to take corrective action on plaintiffs' complaints, plaintiffs have hit "glass ceilings," not been promoted beyond a certain

level, lost income and benefits, suffered psychological injuries, and sustained other consequential damages, described in this Complaint.

A CLAIM FOR CLASS BASED RELIEF UNDER FEDERAL RULE 23

10. The class consists of present, as well as former, black and/or African-American employees of CON ED, who are either high level union employees or lower to middle level management employees, qualified in terms of seniority and experience, who have received good performance reviews, and were denied promotion or transfer because of their race and/or color.

11. The class of black and/or African-American employees of CON ED is so numerous that joinder of all members is impracticable.

12. There are questions of law and fact common to the class.

13. The claims of the representative parties, described below, are typical of the claims of the proposed class members. Plaintiffs, as representative parties, will fairly and adequately protect the interests of the class.

14. The prosecution of separate actions by individual members of the class will likely create a risk of inconsistent or varying adjudications resulting in incompatible standards of conduct. Such litigation, as a practical matter, would not be dispositive of the interests of members not parties to the adjud-

ication, or would substantially impair or impede their ability to protect their interests.

15. Questions of law or fact common to the members of the class predominate over any questions particular to any one individual claim.

16. Through this action, the members of the class can have their right to equal employment opportunity protected without worry of jeopardizing their present work status.

17. The effects of the alleged violations are ongoing, and thus continue to impact upon the careers and lives of the representative plaintiffs, and upon all of the other members of the class.

THE REPRESENTATIVE PARTIES

18. The representative plaintiffs, whose causes of action are more fully set forth below (par. 20 et. seq.), are black and/or African-American citizens of the United States, and are hereby introduced as follows:

a) DOROTHY SHEPPARD, who resides at 516 Marshall Court, Uniondale, New York 11553, and has been employed by CON ED for 15 years. MS. SHEPPARD, a graduate of Holyoke College, began working for CON ED in 1978 as a Programmer Librarian. She has received good performance reviews, and is qualified for a range of middle management positions; however, she has hit a "glass ceiling" in that her managers have failed to promote her to such available

positions, including the position of Manager of Information Services because of deliberate racial discrimination. Far less qualified white employees have received jobs she has applied for during her tenure with CON ED. She has plainly been denied promotional opportunities and career advancement enjoyed by her white counterparts because of her race and/or color.

b) ROBERT W. BERRY, who resides at 195 Willoughby Avenue, Brooklyn, N.Y. 11205, and has been employed by CON ED for 23 years. MR. BERRY began working for CON ED in 1970 as a Junior Engineering Technician. Despite having received good performance reviews, and his completion of a Bachelors Degree in Economics in 1978, Mr. Berry hit a "glass ceiling," because of unlawful race discrimination at CON ED and was promoted only twice in his two decades of service at CON ED. Although MR. BERRY is qualified for a variety of management positions, he has been a Senior Engineering Technician in the Property Records Department at CON ED's Irving Place offices, a union level position, since 1975. MR. BERRY applied for and has been denied promotion to the position of Budget Analyst on three separate occasions because of his race and/or color. Additionally, MR. BERRY was not informed of or invited to interview for the management positions of Assistant Supervisor and Analyst in the Property Records Department when those positions became available in October 1991;

c) IRMA J. MUSHATT, who resides at 220-21 107th Avenue, Queens Village, New York 11429, and has been employed by CON ED for some 20 years. MS. MUSHATT began working for CON ED in 1970 as a Unit Assistant. In 1981, in rectification of an earlier complaint based on discrimination, MS. MUSHATT was promoted by CON ED to the position of Customer Service Representative ("CSR"), a union level position, in the Customer Service Department, Queens Division. Although over twenty white male CSRs have been promoted into management since 1982, MS. MUSHATT has remained at her position, having hit a "glass ceiling" because of CON ED's deliberate racial discrimination in the Customer Service Department. Because she has opposed CON ED'S discriminatory practices, MS. MUSHATT is perceived to be too assertive for a black and/or African-American employee, and has been made a target for harassment by her superiors. She is also a victim of retaliation by CON ED due to her race.

d) JAMES M. CARTER, who resides at 17 Pinetree Road, Westbury, N.Y. 11590, and has been employed by CON ED for 21 years. MR. CARTER began working for CON ED in 1972 as a Staff Assistant in the Construction Department. Although he earned a Bachelors Degree in Business Administration from Pace University in 1977, continues to take business courses, and receives good performance reviews, MR. CARTER was last promoted in 1981, when he became a Contract Administrator. MR. CARTER is qualified for middle and upper level management positions, but is repeatedly denied promotion or not informed of or invited to interview for these positions when they

become available. MR. CARTER has hit a "glass ceiling" within his department because of deliberate racial discrimination.

e) HAROLD MCKINZIE, who resides at 150-90 Village Road, Jamaica, N.Y. 11432, and has been employed by CON ED for 31 years. MR. MCKINZIE began working for CON ED in 1962 as a Meter Reader, a union level position. Despite early promotions, including two within management, and good performance reviews, MR. MCKINZIE has remained a Supervisor in the Customer Service Department, Queens Division, since 1974. MR. MCKINZIE is eligible for promotion to middle management position, but he has hit a "glass ceiling" because of deliberate racial discrimination. Although similarly situated white employees have advanced to middle management positions, MR. MCKINZIE has been denied promotion to these positions, and has not been invited to apply for, or informed of, open positions in middle management above level 8.

f) LEONARD B. MIDDLETON, who resides at 139 Bessida Street, Bloomfield, New Jersey 07003, and has been employed by CON ED for 27 years. MR. MIDDLETON began working for CON ED in 1966 as a Clerk in the Law Department. MR. MIDDLETON has received good performance reviews, and has been promoted on several occasions; however, MR. MIDDLETON has hit a "glass ceiling" within the Treasury and Insurance Department because of deliberate racial discrimination. MR. MIDDLETON has several decades of practical experience, and is qualified for a variety of middle management

positions. He has been passed over for promotion to Manager of the Workers' Compensation section of the department and other middle management positions. Similarly situated white employees, less qualified than MR. MIDDLETON, have been selected to fill some of these positions. Additionally, MR. MIDDLETON has been a highly visible and vocal participant in two organizations, the Consolidated Fraternal Organization, Inc. (1968-1975) and the Afrikan American Association of Utility Workers, Inc. (1979-present), which oppose discrimination at CON ED, and has met with company executives to protest discrimination at CON ED. MR. MIDDLETON charges that CON ED has refused to promote him in retaliation for his having opposed discriminatory practices, as well as on account of deliberate racial discrimination.

g) DERICK C. HEWITT, who resides at 309 Lafayette Avenue, Apt.#19M, Brooklyn, N.Y. 11238, and was employed by CON ED for 36 years. MR. HEWITT began working for CON ED in 1957 as a Junior Technician, regularly received good performance reviews, and was promoted through the ranks of union employees. In 1970, MR. HEWITT completed a B.S. in Economics from City College of New York. Although qualified by work experience and education, in 1970 MR. HEWITT was denied a promotion to an entry level management position in CON ED's Purchasing Department. MR. HEWITT has consistently and vigorously opposed discriminatory practices at CON ED, and has continuously objected on such ground to CON ED's failure to advance him. In 1982, MR. HEWITT earned a Masters in Business

Administration. MR. HEWITT hit a "glass ceiling" because of deliberate racial discrimination, and as a result remained in lower level (Level 7) management positions in the Department of Construction Services from 1972 through 1993. Since 1972, other lower level management personnel in Construction Services, all of whom were white, were promoted above him on at least twelve occasions. After receiving negative performance reviews in December 1990 and in July 1991, MR. HEWITT was notified that he would be terminated as of December 3, 1991; MR. HEWITT was then terminated. The negative performance reviews and decision to terminate MR. HEWITT were reflective of age and race discrimination directed toward him in order to prevent his promotion and force his retirement.

h) JAMES W. AUSTIN, who resides at 161 South Elliot Place, Brooklyn, N.Y. 11217, and has been employed by CON ED for 27 years. MR. AUSTIN began working for CON ED in 1966 as a Clerk ("A"). Since 1969, MR. AUSTIN has worked as a Junior Accountant. He is currently employed in the Corporate Accounting Department. MR. AUSTIN receives good performance reviews, but is known to CON ED as preeminent opponent of discrimination within the company. MR. AUSTIN has been on the executive board of two organizations, the Consolidated Fraternal Organization, Inc. (1968-1975) and the Afrikan American Association of Utility Workers, Inc. (1979-present), which oppose discrimination at CON ED; additionally, MR. AUSTIN has attended annual shareholders' meetings and has met with

company executives to protest discrimination at CON ED; MR. AUSTIN has been repeatedly denied promotional opportunities by CON ED, opportunities that are not denied to similarly situated, but less experienced, employees in the Corporate Accounting Department who do not oppose discrimination; having been told by a manager early in his career that speaking out against discrimination would hinder his promotion, MR. AUSTIN charges that CON ED has refused to promote him on account of deliberate racial discrimination and in retaliation for his having opposed discriminatory practices.

19. CON ED, a gas and electric utility corporation subject to Article 4 of the New York State Public Service Law, is the employer of plaintiffs.

PLAINTIFF DOROTHY SHEPPARD

20. DOROTHY SHEPPARD (hereinafter "MS. SHEPPARD") employed by CON ED for approximately 15 years, has been subjected to racially driven, intentional and unlawful employment discrimination by reason of CON ED's failure to promote her, notwithstanding her qualifications, in undervaluing her contribution to the work place, in treating her as a second-class citizen, harassing and humiliating her, and stifling her advancement in violation of her rights.

21. MS. SHEPPARD, a graduate of Holyoke College, was hired by CON ED in 1978 as a Programmer-Librarian, a low level (level 4) management position.

22. In the period from 1978 to 1987, CON ED gave MS. SHEPPARD good performance reviews, and promoted her six times.

23. In 1987, CON ED promoted MS. SHEPPARD to the position of Senior Systems Analyst in its Project Control and Support Department, Brooklyn Division.

24. The position of Senior Systems Analyst is classified by CON ED as a level 10 management position, and is considered to be a low level management position.

25. By 1989, MS. SHEPPARD was qualified for a variety of middle management positions.

26. In or about 1989, MS. SHEPPARD applied, and was not hired, for the position of Manager of Information Services in CON ED'S Bronx Office of the Division Controller, a position for which she was well qualified.

27. In or about 1990, the position of Manager of Information Services in CON ED'S Brooklyn Planning and Analysis Department became available, for which MS. SHEPPARD was qualified and should have been an apparent and successful candidate.

28. In or about July, 1991, the position of Manager of Information Services in CON ED'S Queens Office of the Division Controller became available, for which MS. SHEPPARD was qualified.

29. In or about December, 1991, the position of Manager of Information Services in CON ED'S Brooklyn Planning and Analysis Department again became available, for which MS. SHEPPARD was qualified and should have been an apparent and successful candidate.

30. MS. SHEPPARD was not informed of, or invited to interview for, the openings described in paragraphs 27-29.

31. Each of the positions referred to in paragraphs 25-29 were classified as approximately Level 12 management positions, and were considered to be middle management positions.

32. MS. SHEPPARD was qualified by education and experience for each of the positions referred to in paragraphs 25-29.

33. CON ED failed to hire MS. SHEPPARD for each of the positions referred to in paragraphs 25-29. CON ED made it practically impossible for Ms. Sheppard to apply for the positions in paragraph 27-29 because of its pattern and practice of intentional and unlawful discrimination.

34. Upon information and belief, each of the candidates selected for the positions referred to in paragraphs 26-29 are white.

35. Upon information and belief, numerous candidates selected for the positions referred to in paragraphs 25-29 were less qualified than MS. SHEPPARD.

36. Upon information and belief, in the period from 1989 to present, the upper and middle management of CON ED filled middle management positions within the departments described in paragraphs 25-29, namely, Bronx Office of the Division Controller, Queens Office of the Division Controller; and Brooklyn office Department of Planning and Analysis, in addition to the positions referred to in paragraphs 26-29.

37. Upon information and belief, in the period from 1989 to present, CON ED upper and middle management also filled middle management positions within similar departments for the Westchester, Staten Island and Manhattan divisions.

38. Upon information and belief, the departments described in paragraphs 25-29, 36 and 37 operate under the direction of CON ED'S Customer Service Organization branch headed by Charles F. Soutar, Executive Vice President.

39. Upon information and belief, several of the persons selected for the positions described in paragraphs 36 and 37 were white persons less qualified than MS. SHEPPARD.

40. MS. SHEPPARD would have applied for the positions referred to in paragraphs 25, 27-29, and 36 and 37 had she been informed that the positions were available, and had it not been shown to her that such effort would be futile.

41. As recently as December, 1991, MS. SHEPPARD was the victim of the aforesaid pattern and practices of intentional and unlawful discrimination and failure to promote her notwithstanding her abilities.

42. These intentional and unlawful pattern and practices continue to the present date.

43. Due to the aforesaid pattern and practice of intentional and unlawful racial discrimination within the department described in paragraphs 25-29, 36, and 37, it has proven impossible for MS. SHEPPARD to naturally advance in her field in

CON ED'S Customer Service Organization, under the direction of Charles F. Soutar, Executive Vice President.

44. As a result of CON ED'S discriminatory practices, on May 1, 1992, MS. SHEPPARD, compelled by her desire to move ahead, made a lateral transfer to a different Con Ed organization. This move required her to change her skills, rather than build upon the skills, she had acquired.

45. In addition to being deprived of the economic benefits, job satisfaction and respect she would have received from normal advancement, and as a result of having to make a lateral move in an attempt to counter these problems, MS. SHEPPARD has suffered humiliation, anxiety and depression.

46. Upon information and belief, MS. SHEPPARD hit a "glass ceiling" within each of CON ED'S division Offices of the Controller and Planning and Analysis Departments, under the direction of the Customer Service Organization headed by Charles F. Soutar, Executive Vice President.

47. As part of CON ED's pattern and practice of intentional race discrimination, CON ED fails to promote blacks and/or African-Americans within the aforesaid departments to middle management positions and to permit blacks and/or African-Americans within those departments to become eligible for middle management positions.

48. As part of this pattern and practice, CON ED fails to maintain in connection with aforesaid departments promotion and transfer policies based on objective, job related criteria that are

uniformly applied to blacks and/or African-Americans, as compared to whites.

49. As part of this pattern and practice, CON ED fills job openings within aforesaid departments primarily through special invitation recruitment, which unfairly restricts the promotion and transfer of qualified blacks and/or African-Americans to middle management positions within those departments.

50. Upon information and belief, MS. SHEPPARD also hit the "glass ceiling", referred to in paragraph 46, because racial stereotyping that exists within said departments disfavor black and/or African-American employees who are perceived not to be deferential or submissive.

51. Upon information and belief, MS. SHEPPARD is perceived to be too assertive for a black and/or African-American employee.

52. Upon information and belief, similarly-situated white employees who are as equivalently assertive as MS. SHEPPARD are perceived more favorably by CON ED than she.

53. In the period from 1989 to the present, MS. SHEPPARD, and, upon information and belief, other black and/or African-American employees, have consistently opposed discriminatory practices within these departments.

54. Upon information and belief, as part of its pattern and practice of intentional and unlawful discrimination and in retaliation for her desire to advance within CON ED, CON ED has limited MS. SHEPPARD'S promotional opportunities and improperly

treated her by curtailing her work, training and exposure to middle management with the intention of stifling her advancement.

55. Because of the historic and pervasive discrimination at CON ED, continuing until the present, disproportionately few employees who have the ability to make or influence promotion decisions at Con Ed today are black and/or African-American.

56. CON ED permits to operate within the aforesaid departments the practice of filling positions, including the positions referred to in paragraphs 25, 27-29, and 36 and 37 without posting or publicizing the positions. Upon information and belief, CON ED allows recommendations for promotion to be made on the basis of personal friendship or family relationship; and fails to scrutinize promotion decisions to determine whether the decisions are being made on an objective basis.

57. The intentional and unlawful discriminatory practices of CON ED, referred to in paragraph 56, result in a disparate treatment, to the detriment of black and/or African-American employees within these departments.

58. Upon information and belief, further evidence of the pattern and practice of intentional and unlawful discrimination referred to above, as occurs in all of the departments known as Division Offices of the Controller and/or Planning and Analysis, (including departments for each county, numbered 510, 530, 569, 571, 591 and 633) is that only one black and/or African-American has been promoted to middle management in these departments, although there are over fifteen such middle management positions

referred to in paragraphs 25-29, 36 and 37. This black and/or African-American manager was subsequently transferred to a lower level position, although this individual was restored to middle management after the representative plaintiffs in this action filed individual complaints with the New York City Commission on Human Rights.

59. The discriminatory conduct referred to above was carried out by employees of CON ED who exercise managerial or supervisory authority.

60. The discriminatory conduct referred to above was known by employees of CON ED who exercise managerial or supervisory authority.

61. The employees of CON ED referred to in paragraph 36 and 38 acquiesced and condoned the discriminatory conduct referred to above, or failed to take prompt and effective corrective action.

62. CON ED knew or should have known of the discriminatory conduct referred to above, and failed to exercise reasonable diligence to prevent such discriminatory conduct.

63. Because of CON ED'S actions and failure to act, MS. SHEPPARD was forced to experience a work environment in which the contributions of black and/or African-American employees were undervalued, and which imparted the message to her that black and/or African-American employees are second-class citizens, thereby denying MS. SHEPPARD terms and conditions of employment equal to those of white employees. In addition, MS. SHEPPARD

charges that she has suffered and continues to suffer as a result of CON ED'S deliberate discrimination.

64. Upon information and belief, other black and/or African-American employees qualified for managerial promotions have suffered harm of the nature and extent described herein because of CON ED'S aforescribed intentional and unlawful discriminatory practices.

65. CON ED'S conduct, as aforesaid, has damaged MS. SHEPPARD and, upon information and belief, has damaged other black and/or African-American employees of Con Ed.

65a. MS. SHEPPARD has also exhausted her administrative remedies for the purposes of filing a Title VII complaint under 42 U.S.C. § 2000(e), et. seq., as amended. On April 6, 1994, MS. SHEPPARD received a Notice of Right to Sue letter from the E.E.O.C. . . .

65b. In addition to bringing this action under 42 U.S.C. §1981 et. seq., as amended, and Title VII of the Civil Rights Act of 1964, as amended, ("Title VII"), 42 U.S.C. Section 2000 (e), et. seq.; and Article 15 of the Executive Law of the State of New York (Human Rights Law), MS. SHEPPARD commences this complaint under Title 8, Chapter 1 of the Administrative Code of the City of New York, and hereby alleges that CON ED violated Sections 8-107(a) and 8-107(7) of the Administrative Code. MS. SHEPPARD withdrew her complaint from the City of New York Commission on Human Rights on March 30, 1994.

PLAINTIFF ROBERT W. BERRY

66. ROBERT W. BERRY (hereinafter "MR. BERRY"), employed by CON ED for approximately 23 years, has been subjected to racially driven, intentional and unlawful employment discrimination by reason of CON ED's failure to promote him notwithstanding his qualifications, in undervaluing his contribution to the workplace, in treating him as a second-class citizen, and in harassing and humiliating him, and stifling his advancement, in violation of his rights.

66a. MR. BERRY has also been subjected to disparate treatment and disparate impact in the terms and conditions of his employment, including but not limited to, compensation, evaluations, promotions and job assignments as a result of his race and/or color.

67. MR. BERRY was hired by Con Ed in 1970 as a Junior Engineer Technician, a weekly (union) position.

68. From 1970 to 1991, CON ED gave MR. BERRY good performance reviews, but only promoted him twice. His last promotion was in 1975. He was promoted from Engineering Technician to Senior Engineering Technician, a weekly (union) position.

69. Since 1975, MR. BERRY has held the position of Senior Engineering Technician in the Property Records Department, Inside Plant Property Records, 4 Irving Place, New York, New York.

70. The position of Senior Engineering Technician is classified by CON ED as a top level union position.

71. In 1978, MR. BERRY obtained a Bachelor of Science Degree in Economics.

72. Since at least 1980, MR. BERRY has been qualified for a variety of management positions.

73. Since 1980, MR. BERRY has applied for a variety of management positions at CON ED for which he was qualified, but he was never promoted to same.

74. The three most recent jobs for which MR. BERRY applied and was denied in favor of lesser qualified white persons, were the following:

- i. Budget Analyst, Department of Planning and Analysis, Brooklyn (February, 1991);
- ii. Budget Analyst, Department of Construction, Manhattan (January, 1990); and
- iii. Budget Analyst, Power Generation, Peaking and Steam (October, 1989).

75. Upon information and belief, MR. BERRY was denied promotion to these positions by CON ED on account of his race and/or color.

76. In or about October 1, 1991, the management position of Assistant Supervisor (presently called analyst) in CON ED'S Property Records Department (Inside Plant) was filled without prior posting of availability. MR. BERRY was qualified for the position and should have been the most apparent and successful candidate. He was not hired for the position.

77. In or about October 1991, a second management position of Analyst in the Property Records Department (Inside

Plant) (Systems Section) of CON ED became available, without prior posting of availability, for which MR. BERRY was qualified and should have been an apparent and successful candidate. He was not hired for the position.

78. Further, MR. BERRY was neither informed of, or invited to interview for, the openings described in paragraphs 76-77.

79. Each of the positions referred to above are classified as Level 8 management positions, and were considered to be lower level entry management positions.

80. MR. BERRY was qualified by education and experience for each of the positions referred to above.

81. CON ED failed to hire MR. BERRY for any of the positions referred to above.

82. Upon information and belief, each of the candidates selected for the positions referred to above were white.

83. Upon information and belief, many of the candidates selected for the positions were less qualified than MR. BERRY.

84. Upon information and belief, in the period from 1980 to the present, CON ED'S upper and middle management filled the lower management positions within the departments described in paragraphs 72-73 and 76-77.

85. MR. BERRY would have applied for the positions referred to in paragraphs 76 and 77 had he been informed that the positions were available, and had it not been shown to him that

such effort would be futile. Upon information and belief, less qualified white persons were hired for the positions. -

86. As recently as October, 1991, MR. BERRY was the victim of the aforesaid unlawful discriminatory patterns and practices.

87. These patterns and practices of unlawful discrimination of CON ED continue to the present.

88. Due to the aforesaid pattern and practices of unlawful racial discrimination within the Property Records Department of CON ED, it has proven futile for MR. BERRY to seek to advance in his field at the company because whites are provided preferential treatment over African Americans because of their race and/or color.

89. As a result of being deprived of the economic benefits, job satisfaction and respect he would have received from normal advancement because of his race and/or color, MR. BERRY has suffered humiliation, anxiety and depression.

90. Upon information and belief, MR. BERRY hit a "glass ceiling" within CON ED'S Property Records Department, because CON ED maintains patterns and practices of unlawful racial discrimination.

91. As part of this unlawful pattern and practice of discrimination, CON ED disproportionately promotes whites to management positions over blacks and/or African-Americans because of their race and/or color.

92. As further evidence of the unlawful pattern and practices of CON ED, upon information and belief, blacks and/or African-Americans constitute approximately 25 percent of eligible senior weekly (Union) personnel within the Property Records Department, but black and/or African-American employees constitute only approximately 15 percent of lower level management within the department, demonstrating a significant underutilization of black and/or African-American eligible personnel in favor of white eligible personnel, when promoting from weekly (Union) to management.

93. CON ED also fails to maintain in connection with the aforesaid departments promotion and transfer policies based on objective, job related criteria that are uniformly applied to blacks and/or African-Americans, as compared to whites.

94. CON ED fills job openings within the aforesaid department mostly through special invitation recruitment, which unfairly restricts the promotion and transfer of qualified blacks and/or African-Americans to management positions within departments.

95. Upon information and belief, CON ED has limited MR. BERRY'S promotional opportunities, and improperly treated him by curtailing his exposure to management personnel with the intention of stifling his advancement.

96. Because of the historic and pervasive discrimination at CON ED, continuing until the present, disproportionately few

employees who have the ability to make or influence promotion decisions at the company today are black and/or African-American.

97. CON ED permits to operate within the aforesaid departments the practice of filling positions, including the positions referred to above, without posting or publicizing the positions.

98. Upon information and belief, CON ED allows recommendations for promotion to be made on the basis of personal friendship or family relationship; and fails to scrutinize promotion decisions to determine whether the decisions are being made on an objective basis.

99. The intentional and unlawful practices of CON ED referred to herein also result in a disparate impact, on black and/or African-American employees, as is Mr. Berry, within the aforescribed departments.

100. The unlawful discriminatory conduct referred to above was carried out by employees of CON ED who exercise managerial or supervisory authority.

101. The intentional and unlawful discriminatory conduct referred to above was known by employees of CON ED who exercise managerial or supervisory authority.

102. The employees referred to in paragraph 100 and 101 acquiesced and condoned the discriminatory conduct referred to above, or failed to take prompt and effective corrective action.

103. CON ED knew or should have known of the discriminatory conduct referred to above, and failed to exercise reasonable diligence in correcting same.

104. Because of CON ED'S actions and failure to act, MR. BERRY was forced to experience a hostile workplace environment in which the contributions of black and/or African-American employees were undervalued, and which imparted the message to him that black and/or African-American employees are second-class citizens, thereby denying MR. BERRY terms and conditions of employment equal to that of white employees. MR. BERRY charges that he has suffered and continues to suffer as a result of CON ED'S deliberate discrimination.

105. Upon information and belief, other similarly situated black and/or African-American employees have suffered harm of the nature and extent described herein because of CON ED'S intentional and unlawful discriminatory practices.

106. CON ED'S conduct, as herein described, has damaged MR. BERRY and, upon information and belief, has damaged other similarly situated black and/or African-American employees of CON ED.

106a. MR. BERRY has also exhausted his administrative remedies for the purposes of filing a Title VII complaint under 42 U.S.C. § 2000 (e), et. seq., as amended. On December 16, 1993, MR. BERRY received a Notice of Right to Sue letter from the E.E.O.C.

106b. In addition to bringing this action under 42 U.S.C. §1981 et. seq., as amended, and Title VII of the Civil Rights Act of

1964, as amended, ("Title VII"), 42 U.S.C. Section 2000 (e), et. seq.; and Article 15 of the Executive Law of the State of New York (Human Rights Law), MR. BERRY commences this complaint under Title 8, Chapter 1 of the Administrative Code of the City of New York, and hereby alleges that CON ED violated Sections 8-107(a) and 8-107(7) of the Administrative Code. MR. BERRY withdrew his complaint from the City of New York Commission on Human Rights on March 30, 1994.

PLAINTIFF IRMA J. MUSHATT

107. IRMA J. MUSHATT (hereinafter "MS. MUSHATT"), employed by CON ED for approximately 20 years, has been the victim of intentional and unlawful employment discrimination, on account of her race and/or color, by reason of CON ED's failure to promote her, notwithstanding her qualifications; in undervaluing her contribution to the work place; in treating her as a second-class citizen, and in harassing and humiliating her, and stifling her advancement in violation of her rights, as more fully alleged below.

108. MS. MUSHATT was hired by CON ED in 1974 as a Unit Assistant, a weekly employee (union) position.

109. In 1981, in rectification of a grievance discrimination complaint she filed, CON ED promoted MS. MUSHATT to the position of Customer Service Representative ("CSR") in its Customer Service Department, Queens Division ("the department").

110. Continuing to this date, MS. MUSHATT holds the position of CSR in the Customer Service Department.

111. The department is presently known as department #588.

112. The position of CSR is classified by CON ED as a weekly (union) employee position, and is considered to be a position affording entry level to management.

113. From 1982 to the present, MS. MUSHATT has been qualified for a variety of management positions, but has not been promoted.

114. During the period of time referred to in paragraph 113, over (20) twenty white male customer service representatives (CSR's) in the department were promoted from the position of CSR to management. During the same period, only two blacks and/or African-Americans were promoted from the position of CSR to management.

115. Because of CON ED's intentional and unlawful practice of promoting disproportionate numbers of whites from the position of CSR to management, MS. MUSHATT came to believe that it would be futile for her to apply for promotion.

116. Upon information and belief, MS. MUSHATT hit a "glass ceiling" within the department because CON ED maintains a pattern and practice of intentional and unlawful racial discrimination within the department.

117. As part of this intentional and unlawful pattern and practice, CON ED fails to provide blacks and/or African-Americans

mentors as an aid to advancement from the position of CSR to management in the same fashion it has provided to white employees.

118. As part of this intentional and unlawful pattern and practice, CON ED fails to promote blacks and/or African-Americans within the department in proper numbers from weekly employment to management positions, and fails to permit blacks and/or African Americans within the department to become eligible for management positions because of race and/or color.

119. As part of this intentional and unlawful pattern and practice, CON ED fails to maintain in connection with the department a promotion and transfer policy based on objective, job-related criteria that are uniformly applied to blacks and/or African-Americans as compared to whites.

120. As part of this intentional and unlawful pattern and practice, CON ED fills job openings within the department through "word of mouth" recruitment, which unfairly restricts the promotion and transfer of qualified blacks and/or African-Americans to management positions.

121. Upon information and belief, MS. MUSHATT also hit the "glass ceiling" referred to because of racial stereotyping that exists within this department, which disfavor black and/or African-American employees who are perceived not to be deferential or submissive.

122. MS. MUSHATT was compelled to transfer from the Jamaica, Queens Office in January 1992, where she had worked for two and one-half years, at the insistence of a former supervisor

(Ed Washer), who is now manager in the Jamaica Office. Mr. Washer dislikes MS. MUSHATT because, when she worked for him at College Point Boulevard she requested to be given work equivalent to white employee unit assistants, rather than menial labor. In response, he consistently and discriminately assigned her to menial labor, because of her race and/or color.

123. Upon information and belief, MS. MUSHATT is perceived to be too assertive for a black and/or African-American employee. She has been labeled throughout the Queens division as a troublemaker because of her opposition to discriminatory practices.

124. On account of retaliation due to race and/or color: MS. MUSHATT has been isolated and ridiculed at her job; she has been compelled to transfer to different sections within the department; and she has been subjected to harassment and humiliation, causing her anxiety, depression and emotional distress.

125. Upon information and belief, similarly-situated white employees, who are as assertive as MS. MUSHATT are perceived more favorably than she.

126. In the period from 1980 to the present, MS. MUSHATT, and, upon information and belief, other black and/or African-American employees have regularly opposed discriminatory practices within this department.

127. CON ED has limited MS. MUSHATT'S promotional opportunities and given her negative performance reviews, partly in

retaliation for her opposition to discriminatory practices, as well as because of deliberate racial discrimination.

128. Upon information and belief, other black and/or African-American employees have been similarly retaliated against.

129. Because of historic and pervasive discrimination at Con Ed, disproportionately few employees who have the ability to make or influence promotion decisions at Con Ed today are black and/or African-American.

130. CON ED permits to operate within this department the practice of filling managerial positions without regularly posting or publicizing these positions; allows recommendations for promotion to be made on the basis of personal friendship or family relationship; and fails to scrutinize promotion decisions to determine whether the decisions are being made on an objective basis.

131. The intentional and unlawful discrimination practices of CON ED referred to in the preceding paragraph result in a disparate impact to the detriment of black and/or African-American employees within this department.

132. The intentional and unlawful pattern and practices referred to hereinabove have caused MS. MUSHATT'S expressed desires for promotion to be futile.

133. As evidence of the pattern and practice of intentional and unlawful racial discrimination referred to above, approximately twenty-three (23) percent of weekly employees in the department are black and/or African-American, while approximately

nine percent of management employees are black and/or African-American. In comparison, approximately sixty-five (65) percent of weekly employees in the department are white, while approximately 89 percent of management are white. This illustrates a disproportionate promotion of whites, as compared to blacks and/or African-Americans.

134. The discriminatory conduct referred to above was carried out by employees of CON ED who exercise managerial or supervisory authority.

135. The discriminatory conduct referred to above was known by employees of CON ED who exercise managerial or supervisory authority.

136. Upon information and belief, the persons referred to in paragraphs 134 and 135 knew or should have known of the aforescribed discriminatory practices and failed to take prompt and effective corrective action.

137. The employees referred to in paragraph 136 acquiesced and condoned the discriminatory conduct referred to above.

138. CON ED knew or should have known of the discriminatory conduct referred to above, and failed to exercise reasonable diligence to prevent such discriminatory conduct.

139. Because of CON ED'S actions and failures to act, MS. MUSHATT was forced to experience a workplace environment in which the contributions of black and/or African-American employees were undervalued, and which imparted the message to her that black

and/or African-American employees are second-class citizens, thereby denying MS. MUSHATT terms and conditions of employment equal to that of white employees. MS. MUSHATT has suffered and continues to suffer as a result of CON ED'S deliberate discrimination.

140. CON ED'S conduct as aforesaid has damaged MS. MUSHATT and, upon information and belief, has damaged other black and/or African-American employees of CON ED.

140a. MS. MUSHATT has also exhausted her administrative remedies for the purposes of filing a Title VII complaint under 42 U.S.C. § 2000(e), et. seq., as amended. On March 30, 1994, MS. MUSHATT received a Notice of Right to Sue letter from the E.E.O.C. .

140b. In addition to bringing this action under 42 U.S.C. §1981 et. seq., as amended, and Title VII of the Civil Rights Act of 1964, as amended, ("Title VII"), 42 U.S.C. Section 2000 (e), et. seq.; and Article 15 of the Executive Law of the State of New York (Human Rights Law), MS. MUSHATT commences this complaint under Title 8, Chapter 1 of the Administrative Code of the City of New York, and hereby alleges that CON ED violated Sections 8-107(a) and 8-107(7) of the Administrative Code. MS. MUSHATT withdrew her complaint from the City of New York Commission on Human Rights on March 30, 1994.

PLAINTIFF JAMES M. CARTER

141. JAMES M. CARTER (hereinafter "MR. CARTER"), employed by CON ED for 21 years, has been the victim of racially driven, intentional and unlawful employment discrimination by CON ED's failure to promote him, notwithstanding his qualifications; undervaluing his contribution to the work place; treating him as a second-class citizen; harassing and humiliating him, and stifling his advancement in violation of his rights.

142. MR. CARTER was hired by CON ED in 1972 as a Staff Assistant in the Construction Department, an administrative level 9 position.

143. Working full-time at CON ED, MR. CARTER earned an Associate Degree from Queensborough Community College in 1973. MR. CARTER received a Bachelors Degree in Business Administration from Pace University in 1977. MR. CARTER continues to take college courses in management.

144. From 1972 through the present, CON ED has evaluated MR. CARTER annually, and given him good performance reviews.

145. In 1978, CON ED transferred MR. CARTER to the Staten Island Operation as a Division Contract Administrator with increased duties and responsibilities.

146. In 1981, CON ED promoted MR. CARTER to a Contract Administrator position in its Department of Contract Administration and Inspection, Electric Operations, Staten Island Division.

147. The position of Contract Administrator is a level 11 management position, and is considered to be a lower management position.

148. MR. CARTER has been qualified for middle and upper management positions since 1981.

149. MR. CARTER has remained a level 11 employee since 1981.

150. In 1989, the position of Division Manager of Contract Administration and Inspection, Electric Operations, Staten Island Division became available. MR. CARTER was qualified for this position and should have been a successful candidate.

151. In August of 1992, the position of Division Manager of Contract Administration and Inspection in Electric Operations, Staten Island Division again became available. MR. CARTER applied for the position, but was not hired for the job although he was well qualified.

152. The positions referred to in paragraphs 150 and 151 were classified as level 12 management positions, and were considered to be middle management positions.

153. In 1988, the position of Division Manager of Contract Administration and Inspection in Electric Operations, Bronx Division, became available. This position is a level 13 position, and was one for which MR. CARTER was qualified and should have been an apparent and successful candidate.

154. In 1989, the position of Superintendent of Contract Administration and Inspection, Queens Division, became available.

This position was a level 11 position, but would have paid a higher salary than a level 11 position on Staten Island because the Queens Division is considerably larger, and places greater demands on managers. MR. CARTER was qualified for this position and should have been an apparent and successful candidate.

155. In 1993, the position of Manager of Contract Operations in Electric Operations of the Brooklyn Division became available. This position was a level 11 position, but would have paid a higher salary than a level 11 position on Staten Island because the Brooklyn Division is considerably larger, and places greater demands on managers. MR. CARTER was qualified for this position and should have been an apparent and successful candidate.

156. MR. CARTER was qualified by education and experience for the positions referred to in paragraphs 150 and 151 and 153-155.

157. MR. CARTER was not informed of or invited to interview for the openings described in paragraphs 150 and 153-154.

158. CON ED failed to hire MR. CARTER for the positions referred to in paragraphs 150 and 151. MR. CARTER was unable to attain these positions because of CON ED'S pattern and practice of intentional and unlawful discrimination.

159. Upon information and belief, the candidates selected for the positions referred to in paragraphs 150 and 151 and 153-155 were white.

160. Upon information and belief, many of the candidates selected for the positions referred in paragraphs 150 and 151 and 153-155 were less qualified than MR. CARTER.

161. Upon information and belief, during the period from 1989 to the present, the upper and middle management of CON ED filled middle management positions within the departments described in paragraphs 150 and 151 and 153-155, in addition to those positions specifically referred to in paragraphs 150 and 151 and 153-155.

162. Upon information and belief, during the period from 1989 to the present, CON ED'S upper and middle management also filled middle management positions within similar departments for the Westchester and Manhattan divisions.

163. Upon information and belief, the departments described in paragraphs 150 and 151, 153-155, 161 and 162 act under the direction of CON ED'S Customer Service Organization branch, headed by Charles F. Soutar, Executive Vice President.

164. Upon information and belief, several of the persons selected for the positions described in paragraphs 161 and 162 were white persons less qualified than MR. CARTER.

165. MR. CARTER would have applied for the positions described in paragraphs 150, 153-154, and 161 and 162 had he been informed that the positions were available, and had it not been shown to him that such effort would be futile.

166. As recently as August of 1992, MR. CARTER was the victim of the aforesaid pattern and practices of intentional and

unlawful discrimination and failure to promote him notwithstanding his abilities. In August of 1992, the position of Manager of Contract Administration and Inspection in Electric Operations, Staten Island Division again became available. MR. CARTER applied for the position, but was not hired for the job although he was well qualified.

167. These intentional and unlawful patterns and practices continue to the present.

168. Due to the aforesaid pattern and practice of intentional and unlawful racial discrimination within the departments described in paragraphs 150-151 and 153-155, and 161 and 162, it has proven futile for MR. CARTER to seek advancement in his field in Division Operations, renamed in 1993 to Customer Service, under the direction of Charles F. Soutar, Executive Vice President for Customer Service.

169. MR. CARTER has been deprived of the economic benefits, job satisfaction and respect he would have received from normal career advancement.

170. Upon information and belief, MR. CARTER hit a "glass ceiling" within the departments operating under the direction of the Customer Service Organization headed by Charles F. Soutar, Executive Vice President, because CON ED maintains a pattern and practice of intentional and unlawful racial discrimination.

171. As part of this intentional and unlawful pattern and practice, CON ED fails to promote blacks and/or African-Americans within the aforesaid departments to middle and upper management

positions, and fails to permit blacks and/or African-Americans within those departments to become eligible for middle and upper management positions because of race and/or color.

172. As part of this intentional and unlawful pattern and practice, CON ED fails to maintain in connection with aforesaid departments promotion and transfer policies based on objective, job related criteria that are uniformly applied to blacks and/or African-Americans, as compared to whites.

173. As part of this intentional and unlawful pattern and practice, CON ED fills job openings within the aforesaid departments mostly through special invitation recruitment, which unfairly restricts the promotion and transfer of qualified blacks and/or African-Americans to middle management positions within those departments.

174. As part of this intentional and unlawful pattern and practice of discrimination, and in retaliation for MR. CARTER's desire to advance within CON ED, CON ED has improperly treated MR. CARTER, and curtailed his work and training:

a) In 1988, CON ED placed a performance analyst, on an acting basis, in MR. CARTER'S position of Contract Administrator and re-located him to another facility, causing MR. CARTER great embarrassment;

b) In 1989, after the Acting Contract Administrator failed to perform his duties, MR. CARTER was temporarily reassigned to his position and told to correct the mistakes of his replacement.

175. CON ED permits to operate within the aforesaid departments the practice of filling positions, including the positions referred to in paragraphs 150, 153-155, and 161 and 162, and 171-173 without posting or other publication, which, upon information and belief, allows recommendations for promotion to be made on the basis of personal friendship or family relationship. CON ED also fails to scrutinize promotion decisions to determine whether the decisions are being made on an objective basis.

176. The intentional and unlawful discriminatory practices of CON ED referred to in paragraph 175 result in a disparate impact to the detriment of black and/or African-American employees within those departments.

177. Upon information and belief, as evidence of the pattern and practice of intentional and unlawful discrimination referred to above, occurring in the departments of CON ED, 95 percent of all Division Managers are white and only 4 percent of Division Managers are black and/or African-American. In contrast, the position of Contract Administrator, from which MR. CARTER seeks promotion to Division Manager, is filled 83 percent by white employees and 17 percent by black and/or African-American employees.

178. The discriminatory conduct referred to above was carried out by employees of CON ED who exercise managerial or supervisory authority.

179. The discriminatory conduct was known by employees of CON ED who exercise managerial or supervisory authority.

180. The employees referred to in paragraph 178 and 179 acquiesced and condoned this discriminatory conduct or failed to take prompt and effective corrective action.

181. CON ED knew or should have known of the discriminatory conduct referred to above, and failed to exercise reasonable diligence to prevent such discriminatory conduct.

182. CON ED has limited the promotional opportunities of MR. CARTER by refusing to allow him to enroll in company sponsored "Executive Development" seminars, held at Babson College School of Executive Education and at Pennsylvania State University, designed to facilitate career advancement for managers.

183. Upon information and belief, all of the employees from the Staten Island Division selected to attend the Executive Development Seminars were white.

184. Upon information and belief, employees who complete the Executive Development Seminars of CON ED are more likely to receive promotions.

185. Upon information and belief, several of the persons selected for enrollment in the Executive Development seminar described in paragraph 182 were white persons, several of which were less qualified than MR. CARTER.

186. The administration of Executive Development seminars by upper and middle management at CON ED is part of the company's pattern and practice of intentional and unlawful discrimination.

187. Because of CON ED'S actions and failure to act, MR. CARTER was forced to experience a workplace environment in which

the contributions of black and/or African-American employees were undervalued, and which imparted the message to him that black and/or African-American employees are second-class citizens, thereby denying MR. CARTER the terms and conditions of employment equal to that of white employees. MR. CARTER charges that he has suffered and continues to suffer as a result of CON ED'S deliberate discrimination.

188. Upon information and belief, other similarly situated black and/or African-American employees, have suffered harm of the nature and extent described here as a result of CON ED'S aforescribed discriminatory practices.

189. The aforesaid conduct of CON ED, has damaged MR. CARTER and, upon information and belief, damaged other black and/or African-American employees of the company.

189a. MR. CARTER has also exhausted his administrative remedies for the purposes of filing a Title VII complaint under 42 U.S.C. § 2000(e), et. seq., as amended. On March 23, 1994, MR. CARTER received a Notice of Right to Sue letter from the E.E.O.C. .

189b. In addition to bringing this action under 42 U.S.C. §1981 et. seq., as amended, and Title VII of the Civil Rights Act of 1964, as amended, ("Title VII"), 42 U.S.C. Section 2000 (e), et. seq.; and Article 15 of the Executive Law of the State of New York (Human Rights Law), MR. CARTER commences this complaint under Title 8, Chapter 1 of the Administrative Code of the City of New York,

and hereby alleges that CON ED violated Sections 8-107(a) and 8-107(7) of the Administrative Code. MR. CARTER withdrew his complaint from the City of New York Commission on Human Rights on March 30, 1994.

PLAINTIFF HAROLD MCKINZIE

190. HAROLD MCKINZIE (Hereinafter "MR. MCKINZIE"), employed by CON ED for approximately 31 years, has been the victim of racially driven, intentional and unlawful employment by reason of CON ED's failure to promote him, notwithstanding his qualifications; undervaluing his contribution to the work place; treating him as a second-class citizen; harassing and humiliating him, and stifling his advancement in violation of his rights.

191. MR. MCKINZIE was employed by CON ED in 1962 as a Meter Reader, a weekly (Union) employee position.

192. During the period from 1962 to the present date, CON ED gave MR. MCKINZIE good performance reviews.

193. MR. MCKINZIE was promoted from Meter Reader to Customer Service Representative (Union) in 1964, to Senior Customer Service Representative (Union) in 1969 and to Assistant Business Officer Manager (management) in 1973.

194. In 1974, CON ED transferred MR. MCKINZIE laterally to the position of Supervisor in the Customer Service Department, Queens Division, ("the department"), a title he holds to this date.

195. The position of Supervisor is classified by CON ED as a Level 7 management position, and is considered to be a lower level management position.

196. Since at least 1978, MR. MCKINZIE has qualified for further promotions, but he has not received any. Had MR. MCKINZIE been regularly promoted, he would be eligible for a middle management position.

197. Since at least 1978, MR. MCKINZIE has been given less exposure for advancement within and outside of the department than similarly situated white persons within the department. Unlike white employees, MR. MCKINZIE did not receive the assistance of a mentor.

198. As a result of this conduct, MR. MCKINZIE'S promotion has been impeded.

199. Upon information and belief, in the period from 1978 to the present date, CON ED has advanced a disproportionate number of white persons to middle management positions within the department.

200. As evidence of the intentional and unlawful pattern and practice referred to in paragraph 202, inter alia, in the Customer Service Department of CON ED, Queens Division, approximately 90 percent of the positions of Level 8 or higher are held by white persons, while less than 80 percent of the positions below Level 8, in management, are held by white persons.

201. As part of that intentional and unlawful pattern and practice, CON ED fills many management openings within this

department through word of mouth recruitment, which unfairly restricts the promotion and transfer of qualified blacks and/or African-Americans to lower, middle and upper level management positions within this department.

202. CON ED permits to operate within this department the practice of filling many management positions, including the positions referred to in paragraph 205 below, without posting or publicizing the positions; allows recommendations for promotion to be made on the basis of personal friendship or family relationship; and fails to scrutinize promotion decisions to determine whether the decisions are being made on an objective basis.

203. As evidence of the pattern and practice of intentional and unlawful discrimination referred to above, 23 percent of non management personnel are black and/or African-American, whereas less than 9 percent of management personnel within this department are black and/or African-American.

204. In 1978, MR. MCKINZIE applied for a Level 8 position as Unit Manager of Queens Customer Service. He was never interviewed, although he was qualified for the position.

205. MR. MCKINZIE was never invited and, with few exceptions, was not informed of the existence of available positions of Level 8 or higher.

206. In 1978, MR. MCKINZIE applied outside the department for a Level 8 position. He was summarily refused this position although he was qualified.

207. As a result of CON ED'S pattern and practices of intentional and unlawful discrimination, it has become apparent to MR. MCKINZIE that applying for such positions of Level 8 or higher is futile within his department.

208. More recent examples of the aforescribed racial discriminatory promotions affecting MR. MCKINZIE within the department pertaining to openings desirable for him, for which he was eligible are as follows:

(i) In or about May, 1992, without posting or other publication, the position of Business Office Manager (Level 9) for the department's Flushing office was filled through personal invitation to a white person within the department at complainant's level, who had less experience with Con Ed and within management and with no better qualifications than MR. MCKINZIE.

(ii) (a) In or about March, 1992, without posting or other publication, two white employees within the department at complainant's level were transferred to a new section known as Enlightened Energy.

(b) Upon information and belief, MR. MCKINZIE had more experience with management and with CON ED, and was equally or better qualified. He desired this transfer, though the opportunity was never extended to him.

209. Upon information and belief, Enlightened Energy is within the department of Energy Services of CON ED, Queens division.

210. As evidence of the discrimination, upon information and belief, within the department of Energy Services, there are no black and/or African-American persons who hold Level 8 or higher management positions although there are blacks and/or African-Americans, including complainant, who would be eligible.

211. Upon information and belief, MR. MCKINZIE hit a "glass ceiling" within CON ED'S Customer Service Department and Energy Service Department, Queens Division, because CON ED maintains a pattern and practice of intentional and unlawful racial discrimination within these two departments.

212. As part of this intentional and unlawful pattern and practice, CON ED fails to routinely promote blacks and/or African-Americans within said departments to lower and middle management positions, and fails to permit blacks and/or African-Americans within said departments to become eligible for middle management positions because of race and/or color.

213. As part of this intentional and unlawful pattern and practice, CON ED fails to provide to black and/or African-American employees support for advancement in scope and extent as provided to white employees within said departments.

214. As part of this intentional and unlawful pattern and practice, CON ED fails to maintain in connection with said departments promotion and transfer policy based on objective, job-related criteria that are uniformly applied to blacks and/or African-Americans, as compared to whites.

215. Upon information and belief, MR. MCKINZIE also hit the "glass ceiling" referred to in paragraph 211 because racial stereotyping that exists within the departments disfavor black and/or African-American employees who are not perceived to be deferential or submissive.

216. In the period from 1982 to the present, MR. MCKINZIE, and, upon information and belief, other black and/or African-American employees, have regularly opposed discriminatory practices within said departments.

217. CON ED has limited MR. MCKINZIE'S promotional opportunities and evaluated him in a manner less favorable than he deserved in order to undermine his right to promotion.

218. Upon information and belief, other black and/or African-American employees have been similarly retaliated against.

219. Because of historic and pervasive discrimination at CON ED continuing to the present, disproportionately few employees who have the ability to make or influence promotion decisions at CON ED today are black and/or African-American.

220. The intentional and unlawful discriminatory practices of CON ED referred to in the preceding paragraph result in a disparate impact to the detriment of black and/or African-American employees within said departments.

221. Upon information and belief, the percentage of blacks and/or African-Americans within said departments who could qualify for entry level management positions far exceed the

percentages who are advanced to management within these departments.

222. The discriminatory conduct referred to above was carried out by employees of CON ED who exercise managerial or supervisory authority.

223. The discriminatory conduct referred to above was known by employees of CON ED who exercise managerial or supervisory authority.

224. The employees referred to in paragraphs 222 and 223 acquiesced and condoned the discriminatory conduct referred to above, or failed to take prompt and effective corrective action.

225. CON ED should have known of the discriminatory conduct referred to above, and failed to exercise reasonable diligence to prevent such discriminatory conduct.

226. Because of CON ED'S actions and failures to act, MR. MCKINZIE was forced to experience a workplace environment in which the contributions of black and/or African-American employees were undervalued and which imparted the message to him that black and/or African-American employees are second-class citizens, thereby denying MR. MCKINZIE the terms and conditions of employment equal to that of white employees. In addition, MR. MCKINZIE charges that he has suffered and continues to suffer as a result of CON ED'S deliberate discrimination.

227. The conduct of CON ED as aforesaid has damaged MR. MCKINZIE and, upon information and belief, has damaged other black and/or African-American employees of CON ED.

227a. MR. MCKINZIE has also exhausted his administrative remedies for the purposes of filing a Title VII complaint under 42 U.S.C. § 2000(e), et. seq., as amended. On March 23, 1994, MR. MCKINZIE received a Notice of Right to Sue letter from the E.E.O.C. .

227b. In addition to bringing this action under 42 U.S.C. §1981 et. seq., as amended, and Title VII of the Civil Rights Act of 1964, as amended, ("Title VII"), 42 U.S.C. Section 2000 (e), et. seq.; and Article 15 of the Executive Law of the State of New York (Human Rights Law), MR. MCKINZIE commences this complaint under Title 8, Chapter 1 of the Administrative Code of the City of New York, and hereby alleges that CON ED violated Sections 8-107(a) and 8-107(7) of the Administrative Code. MR. MCKINZIE withdrew his complaint from the City of New York Commission on Human Rights on March 30, 1994.

PLAINTIFF LEONARD B. MIDDLETON

228. LEONARD B. MIDDLETON (Hereinafter "MR. MIDDLETON"), employed by CON ED for approximately 27 years, has been the victim of racially driven, intentional and unlawful employment discrimination by reason of CON ED's failure to promote him notwithstanding his qualifications, in undervaluing his contribution to the work place, in treating him as a second-class citizen, and in harassing and humiliating him, and stifling his advancement in violation of his rights.

229. MR. MIDDLETON was hired by CON ED in 1966 as a Clerk B in the Law Department.

230. During the period from 1966 to the present, CON ED has given MR. MIDDLETON good performance reviews, and has on occasion promoted him.

231. In 1989, CON ED promoted MR. MIDDLETON to the position of Supervisor in the Treasury and Insurance Department, Workers Compensation Section.

232. The position of Supervisor is classified by CON ED as a Level 9 management position, and is considered to be a lower management position.

233. By 1991, MR. MIDDLETON was qualified for a variety of middle level management positions, including Manager of the Workers Compensation Section of his department.

234. In the Spring of 1991, MR. MIDDLETON learned that the incumbent manager of his section was planning to retire.

235. Throughout the period from February through July, 1991, MR. MIDDLETON expressed interest to his superiors in becoming the new manager of his section.

236. During this time there was no selection procedure or process of which MR. MIDDLETON was made aware.

237. A white male candidate was selected for the position, and started in this position on or about July 29, 1991.

238. Upon information and belief, the person selected for the manager position was less qualified than MR. MIDDLETON.

239. Upon information and belief, from 1990 to the present, CON ED filled other middle management positions within the Treasury and Insurance Department, in addition to the positions referred to in paragraphs 233 and 235.

240. Upon information and belief, some of the persons selected for these positions were white persons less qualified than MR. MIDDLETON.

241. Upon information and belief, MR. MIDDLETON hit a "glass ceiling" within the Treasury and Insurance Department of CON ED because CON ED maintains an intentional and unlawful pattern and practice of racial discrimination within this department.

242. As part of this intentional pattern and practice, CON ED fails to promote blacks and/or African-Americans within this department to middle management positions and excludes other blacks and/or African-Americans from lower level management positions which often lead to middle management positions.

243. As part of this intentional and unlawful pattern and practice, CON ED fails to maintain in connection with this department promotion and transfer policies based on objective, job-related criteria that are uniformly applied to blacks and/or African-Americans, as compared to whites.

244. As part of this intentional and unlawful pattern and practice, CON ED fills job openings within this department through word of mouth recruitment which unfairly restricts the promotion and transfer of qualified blacks and/or African-Americans to middle management positions within this department.

245. Upon information and belief, MR. MIDDLETON also hit the "glass ceiling" referred to in paragraph 241 because racial stereotyping exists within this department which disfavor black and/or African-American employees who are perceived not to be deferential or submissive.

246. Upon information and belief, MR. MIDDLETON is perceived by CON ED to be too assertive for a black and/or African-American employee.

247. Upon information and belief, similarly-situated white employees who are equivalently assertive as MR. MIDDLETON are perceived more favorably by CON ED than is he.

248. MR. MIDDLETON has regularly opposed discriminatory practices within this department. Upon information and belief, other black and/or African-American employees have also regularly opposed discriminatory practices within this department. In addition, MR. MIDDLETON has been a highly visible and vocal participant in two organizations, the Consolidated Fraternal Organization, Inc. (1968-1975) and the Afrikan American Association of Utility Workers, Inc. (1979-present), which oppose discrimination at CON ED. MR. MIDDLETON has been on the executive boards of both organizations, and has met with company executives to protest discrimination at CON ED. From 1981 to 1991, MR. MIDDLETON attended each annual shareholders' meeting, and protested the discriminatory practices at CON ED. MR. MIDDLETON charges that CON ED has refused to promote him in retaliation for his having

opposed discriminatory practices, as well as on account of deliberate racial discrimination.

249. CON ED has limited MR. MIDDLETON'S promotional opportunities and evaluated MR. MIDDLETON in a manner less favorable than he deserved in retaliation for his opposition to discriminatory practices.

250. As an example of the practice described in paragraph 249, MR. MIDDLETON received a performance review, assessed and signed by the director of the department, on September 24, 1991, that failed to acknowledge the extent to which he exceeded performance requirements.

251. Upon information and belief, other black and/or African-American employees have been similarly retaliated against by CON ED.

252. Because of historic and pervasive discrimination at Con Ed continuing until the present, disproportionately few employees who have the ability to make or influence promotion decisions at Con Ed today are black and/or African-American.

253. CON ED permits to operate within the Treasury and Insurance Department the practice of filling positions, including the positions referred to in paragraph 233, 239, and 242, without posting or publicizing those positions; allows recommendations for promotion to be made on the basis of personal friendship or family relationship; and fails to scrutinize promotion decisions to determine whether the decisions are being made on an objective basis.

254. The intentional and unlawful discriminatory practices of CON ED referred to in the preceding paragraph result in a disparate impact to the detriment of black and/or African-American employees within this department.

255. As evidence of the pattern and practice of intentional and unlawful discrimination referred to above, blacks and/or African-Americans within the Treasury and Insurance Department are under-represented in management and are entirely excluded from middle management positions.

256. The discriminatory conduct referred to above was carried out by employees of CON ED who exercise managerial or supervisory authority.

257. The discriminatory conduct referred to above was known by employees of CON ED who exercise managerial or supervisory authority.

258. The employees referred to in paragraphs 256 and 257 acquiesced and condoned the discriminatory conduct referred to above, or failed to take prompt and effective corrective action.

259. CON ED should have known of the discriminatory conduct referred to above, and failed to exercise reasonable diligence to correct such discriminatory conduct.

260. Because of CON ED'S actions and failures to act, MR. MIDDLETON was forced to experience a workplace environment in which the contributions of black and/or African-American employees were undervalued, and which imparted the message to him that black and/or African-American employees are second-class citizens,

thereby denying MR. MIDDLETON terms and conditions of employees equal to that of white employees. In addition, MR. MIDDLETON charges that he has suffered and continues to suffer as a result of CON ED'S deliberate discrimination.

261. CON ED'S conduct, as aforesaid, has damaged MR. MIDDLETON and, upon information and belief, has damaged other black and/or African-American employees of Con Ed.

261a. MR. MIDDLETON has also exhausted his administrative remedies for the purposes of filing a Title VII complaint under 42 U.S.C. § 2000(e), et. seq., as amended. On March 23, 1994, MR. MIDDLETON received a Notice of Right to Sue letter from the E.E.O.C. .

261b. In addition to bringing this action under 42 U.S.C. §1981 et. seq., as amended, and Title VII of the Civil Rights Act of 1964, as amended, ("Title VII"), 42 U.S.C. Section 2000 (e), et. seq.; and Article 15 of the Executive Law of the State of New York (Human Rights Law), MR. MIDDLETON commences this complaint under Title 8, Chapter 1 of the Administrative Code of the City of New York, and hereby alleges that CON ED violated Sections 8-107(a) and 8-107(7) of the Administrative Code. MR. MIDDLETON withdrew his complaint from the City of New York Commission on Human Rights on March 30, 1994.

PLAINTIFF DERICK C. HEWITT

262. DERICK C. HEWITT (hereinafter "MR. HEWITT"), employed by CON ED for approximately 36 years, has been the victim of racially driven, intentional and unlawful employment discrimination by reason of CON ED's failure to promote him notwithstanding his qualifications, in undervaluing his contribution to the work place, in treating him as a second-class citizen and harassing and humiliating him, stifling his advancement in violation of his rights, and terminating his employment.

263. MR. HEWITT was employed by CON ED in or about 1957 as a Junior Technician, a weekly employee (union) position.

264. Between 1957 and 1970, MR. HEWITT received good performance reviews and was promoted through the ranks of union employees.

265. In 1970, MR. HEWITT received a B.S. in Economics from City College of New York.

266. Upon receiving his college degree, MR. HEWITT applied for an entry level management opening that was available in the Purchasing Department. It was a position for which he was suited because of his extensive experience and college degree. Although he was interviewed by several persons in CON ED'S Purchasing Department for the position, and told he was being strongly considered, MR. HEWITT was ultimately rejected on the ground that "there are no presently available openings in Purchasing or any other area to match your education, experience and career interests".

267. Convinced that this rejection was unfounded and had discriminatory overtones, in November, 1970, MR. HEWITT wrote to CON ED's then Chairman of the Board, Charles F. Luce, informing him of this fact.

268. Similarly, in 1977 the Pastor of MR. HEWITT'S church wrote on his behalf to CON ED'S Vice President of Personnel asking the company to give more attention to MR. HEWITT'S grievance.

269. MR. HEWITT has consistently and vigorously opposed discriminatory practices at CON ED, and has continuously objected to CON ED'S failure to promote him. He has been actively associated with two organizations, the Consolidated Fraternal Association, Inc. and the Afrikan American Association of Utilities Workers, Inc., both of which have opposed discriminatory practices at CON ED. MR. HEWITT has also complained about discrimination to senior management.

270. Upon information and belief, MR. HEWITT is well-known to CON ED as a vocal opponent of discriminatory practices.

271. Between 1972 and 1982, MR. HEWITT held the lower level management positions of Audit Trainee, Chief Construction Clerk (1972-1975), Director of Veterans Affairs for the National Alliance of Businessmen on loan outside the company (1975), Chief Construction Clerk (1976), Construction Cost Accountant (1977-1987), and Expediter in the Department of Construction Services (1987 to present).

272. In 1982, MR. HEWITT received a masters degree in business administration from Long Island University.

273. The position of Expediter which MR. HEWITT presently holds is a lower level (Level 7) management position. .

274. Of the 14 management positions within the Department of Construction Services, MR. HEWITT is the only black and/or African-American person, and holds the lowest level position.

275. MR. HEWITT has been with the group, presently known as the Department of Construction Services, since 1976.

276. From 1976 to the present, MR. HEWITT has applied for jobs to further his advancement, half within and half outside the Construction Services Departments of CON ED, but he has not been promoted to a higher level since 1972. All of the positions MR. HEWITT has held since 1972 have been at Level 7.

277. During the same period of time, other lower level management personnel, all of whom were white, were promoted within the Construction Services Department when the opportunity for advancement existed. On at least a dozen occasions, white persons were promoted to positions within the Construction Services Department, which MR. HEWITT was equally if not more qualified for.

278. In December, 1990, MR. HEWITT received a yearly performance review from CON ED that underrated his performance. He refused to sign the review since it was not acceptable to him.

279. In July, 1991, MR. HEWITT was given a worse performance review and was told he had three months to "improve".

280. On November 20, 1991, MR. HEWITT was notified by CON ED that he would be terminated as of December 3, 1991.

281. MR. HEWITT has been terminated from employment with CON ED.

282. The negative performance reviews received in December, 1990 and July, 1991 and the notice of termination received November, 1991 were unjustified. Upon information and belief, no white employees in the department received similar baseless performance reviews or threats of termination.

283. Upon information and belief, the negative performance reviews and decision to terminate was the culmination of continuous intentional conduct of discrimination toward MR. HEWITT on account of race and/or color and age, in order to prevent his promotion, and force him, at the age of 57, out of the Department of Construction Services and into retirement.

284. Upon information and belief, a further material difference between MR. HEWITT and similarly situated employees who have received promotions is that MR. HEWITT has consistently and vigorously opposed discriminatory practices and the promoted employees have not.

285. Upon information and belief, MR. HEWITT hit a "glass ceiling" within the Department of Construction Services because CON ED maintains a pattern and practice of intentional and unlawful racial discrimination within the department.

286. Upon information and belief, MR. HEWITT also hit the "glass ceiling" referred to above because of racial stereotyping that exists within the Department of Construction Services and other departments at CON ED, which disfavor black and/or African-

American employees who are perceived not to be deferential or submissive.

287. Upon information and belief, similarly-situated white employees, who are as assertive as MR. HEWITT are perceived more favorably.

288. In the period from 1970 to the present, MR. HEWITT, and, upon information and belief, other black and/or African-American employees at CON ED have regularly opposed discriminatory practices.

289. CON ED has limited the promotional opportunities of MR. HEWITT and evaluated him in a manner less favorable than he deserved in retaliation for his opposition to CON ED'S discriminatory practices.

290. Upon information and belief, other black and/or African-American employees have been similarly retaliated against.

291. Because of historic and pervasive discrimination at CON ED continuing until the present date, disproportionately few employees who have the ability to make or influence promotion decisions at Con Ed today are black and/or African-American.

292. The intentional and unlawful discriminatory practices of CON ED referred to in the preceding paragraph results in a disparate impact to the detriment of black and/or African-American employees within the Department of Construction Services.

293. The intentional and unlawful pattern and practices referred to hereinabove have caused MR. HEWITT'S expressed desires

for promotion to be and remain a futile effort with no chance of success.

294. The discriminatory conduct referred to above was known by employees of CON ED who exercise managerial or supervisory authority.

295. Upon information and belief, the persons referred to in paragraph 294 are aware of the aforescribed discriminatory practices.

296. The employees referred to in paragraph 294 acquiesced and condoned the discriminatory conduct referred to above, or failed to take prompt and effective corrective action.

297. CON ED knew or should have known of the discriminatory conduct referred to above, and failed to exercise reasonable diligence to prevent such discriminatory conduct.

298. Because of CON ED'S actions and failure to act, MR. HEWITT was forced to experience a workplace environment in which the contributions of black and/or African-American employees were undervalued and which imparted the message to him that black and/or African-American employees are second-class citizens, thereby denying MR. HEWITT terms and conditions of employment equal to those of white employees.

299. MR. HEWITT charges that CON ED refused and continued to refuse to promote him in retaliation for his having opposed discriminatory practices. In addition, MR. HEWITT charges that he has suffered and continues to suffer as a result of CON ED'S deliberate discrimination.

300. Upon information and belief, CON ED'S conduct as aforesaid, has damaged MR. HEWITT as well as other black and/or African-American employees by asserting a chilling effect on their willingness to oppose unlawful discriminatory practices.

301. The conduct of CON ED, as aforesaid, has caused MR. HEWITT to suffer economic loss, and physical and emotional harm entitling him to monetary damages.

301a. MR. HEWITT has also exhausted his administrative remedies for the purposes of filing a Title VII complaint under 42 U.S.C. § 2000(e), et. seq., as amended. On April 20, 1994, MR. HEWITT received a Notice of Right to Sue letter from the E.E.O.C. .

301b. In addition to bringing this action under 42 U.S.C. §1981 et. seq., as amended, and Title VII of the Civil Rights Act of 1964, as amended, ("Title VII"), 42 U.S.C. Section 2000 (e), et. seq.; and Article 15 of the Executive Law of the State of New York (Human Rights Law), MR. HEWITT commences this complaint under Title 8, Chapter 1 of the Administrative Code of the City of New York, and hereby alleges that CON ED violated Sections 8-107(a) and 8-107(7) of the Administrative Code.

301c. MR. HEWITT also commences this complaint under the Age Discrimination in Employment Act, 29 U.S.C. §623 et. seq., and alleges that his termination was motivated, in part, by age discrimination, and further alleges that this instance of age discrimination by defendant violates Article 15 of the Executive Law of the State of New York (Human Rights Law) and Sections 8-

107(a) and 8-107(7) of the Administrative Code of the City of New York. MR. HEWITT withdrew his complaint from the City of New York Commission on Human Rights on March 30, 1994.

PLAINTIFF JAMES W. AUSTIN

302. JAMES W. AUSTIN (hereinafter "MR. AUSTIN"), employed by CON ED for approximately 27 years, has been the victim of racially driven, intentional and unlawful employment discrimination by reason of CON ED's failure to promote him notwithstanding his qualifications, undervaluing his contribution to the work place, in treating him as a second-class citizen, and harassing, humiliating and stifling his advancement in violation of his rights.

303. MR. AUSTIN has been employed by CON ED since 1966.

304. MR. AUSTIN'S first job was as a weekly employee. His title was "Clerk A."

305. Since 1969, MR. AUSTIN has been employed as a Junior Accountant, and is currently in the section known as General Accounts of the Corporate Accounting Department.

306. MR. AUSTIN has an Associate (2-year) Degree in accounting.

307. As a Junior Accountant, MR. AUSTIN has reached one of the highest levels of weekly employees and is qualified and eligible for an entry level management position.

308. MR. AUSTIN has consistently performed his work in a professional manner. In May, 1991, for example, his performance

review stated that he "possesses excellent problem solving skills and is a very cooperative and dependable individual who completes his assignments with minimal supervision."

309. MR. AUSTIN has also consistently and vigorously opposed discriminatory practices at CON ED. For example, since 1968, he has been actively associated with two organizations, the Consolidated Fraternal Association, Inc. (1968-1975) and the African American Association of Utility Workers, Inc. (1979-present), which have opposed discriminatory practices at CON ED. MR. AUSTIN has been on the executive board of both organizations. From 1981 to 1991, MR. AUSTIN attended each annual shareholders' meeting and protested the discriminatory practices at CON ED. Also, MR. AUSTIN attended meetings with company executives in January, 1991 to complain about discriminatory practices, and to propose changes at CON ED.

310. Upon information and belief, MR. AUSTIN is well-known to CON ED as a preeminent opponent of discriminatory practices in the company.

311. Upon information and belief, at least nine white CON ED employees within the Corporate Accounting Department with educational and performance backgrounds similar to MR. AUSTIN'S, and with experience less than he have received and continue to receive promotions.

312. MR. AUSTIN has been repeatedly denied promotional opportunities by CON ED.

313. The material difference between MR. AUSTIN and similarly-situated employees who have received promotions is that MR. AUSTIN has consistently and vigorously opposed discriminatory practices and the promoted employees have not.

314. MR. AUSTIN was told by a managerial employee early in his career that speaking out against discrimination would destroy his chances for advancement within CON ED.

315. MR. AUSTIN charges that CON ED has refused and continues to refuse to promote him because of both race and/or color, as he is a target for deliberate racial discrimination, and in retaliation for his having opposed discriminatory practices.

316. Upon information and belief, MR. AUSTIN hit a "glass ceiling" within the Corporate Accounting Department because CON ED maintains a pattern and practice of intentional and unlawful racial discrimination within the department.

317. CON ED'S conduct, as aforesaid, has damaged MR. AUSTIN and, upon information and belief, has damaged other black and/or African-American employees of Con Ed by exerting a chilling effect on their willingness to oppose unlawful discriminatory practices.

317a. MR. AUSTIN has exhausted his administrative remedies for the purposes of filing a Title VII complaint under 42 U.S.C. § 2000 (e), et. seq., as amended. On February 10, 1994, MR. AUSTIN received a Notice of Right to Sue letter from the E.E.O.C.

317b. In addition to bringing this action under 42 U.S.C. §1981 et. seq., as amended, and Title VII of the Civil Rights

Act of 1964, as amended, ("Title VII"), 42 U.S.C. Section 2000 (e), et. seq; and Article 15 of the Executive Law of the State of New York (Human Rights Law), MR. AUSTIN commences this complaint under Title 8, Chapter 1 of the Administrative Code of the City of New York, and hereby alleges that CON ED violated Sections 8-107(a) and 8-107(7) of the Administrative Code. MR. AUSTIN withdrew his complaint from the City of New York Commission on Human Rights on March 30, 1994.

FIRST CAUSE OF ACTION

317c. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 317b.

317d. Defendant intentionally discriminated against plaintiffs by failing to accord them the same terms and conditions of employment as whites because of their race and/or color.

317e. Defendant's unlawful discriminatory conduct violated 42 U.S.C. §1981 et. seq, as amended.

SECOND CAUSE OF ACTION

317f. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 317b.

317g. The aforesaid acts of defendant constitute disparate treatment of plaintiffs in the terms and conditions of employment and violate 42 U.S.C. §1981 et. seq., as amended.

THIRD CAUSE OF ACTION

317h. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 317b.

317i. The aforesaid acts of defendant also constitute disparate treatment of plaintiffs in the terms and conditions of employment in violation of Title VII of the Civil Rights Act of 1964, as amended.

FOURTH CAUSE OF ACTION

317j. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 317b.

317k. The aforesaid acts of unlawful discrimination in the terms and conditions of employment have a disproportionate impact on black and/or African American employees at CON ED because of their race and/or color, and violated Title VII of the Civil Rights Act of 1964, as amended.

FIFTH CAUSE OF ACTION

317l. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 317b.

317m. The aforescribed actions of defendant violate Article 15 of the Executive Law of the State of New York (Human Rights Law).

SIXTH CAUSE OF ACTION

317n. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 317b.

317o. The aforescribed actions of defendant violate Sections 8-107(1)(a) and 8-107(7) of the Administrative Code of the City of New York.

SEVENTH CAUSE OF ACTION

317p. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 317b.

317q. Defendant has retaliated against plaintiffs as a consequence of their expressed opposition to the racially discriminatory practices of defendants, and as a result of them exercising their rights to combat such practices.

317r. Defendant's actions violate Title VII of the Civil Rights Act of 1964, as amended, Article 15 of the Executive Law of the State of New York (Human Rights Law), and Title 8, Chapter 1 of the Administrative Code of the City of New York.

PRAYER FOR RELIEF

318. Plaintiffs and the class of persons of which the plaintiffs are representative demand the following relief:

A. As for Compensatory Damages: the plaintiffs and the class of persons of which plaintiffs are representative request monetary damages for loss of income, including bonuses and merit raises, managerial pension plan contributions, due to failure to promote; and for serious and permanent emotional distress due to degradation, denigration, harassment, and humiliation. Lost income is to be paid with interest accruing from the appropriate dates at which promotions should have occurred.

B. As for Affirmative and Injunctive Relief: the plaintiffs and the class of persons of which plaintiffs are representative request injunctive relief, including, but not limited to, the conferral of full seniority to them at the work place; the expunging of adverse material from their work files at CON ED; Court ordered training of supervisors and those employees of CON ED engaged in assessment of candidates for promotion and executive promotions, on their legal obligations in regard to equal employment opportunity, anti-discrimination, and affirmative action; the implementation of an effective affirmative action policy and program; the reform of hiring policies to guarantee the inclusion of minorities in the recruiting process, and guarantee the placement of sufficient numbers of minorities in management to mirror the demographics of CON ED'S customer base; injunctive relief to ensure that CON ED conforms with the requirements of federal contractors with respect to an affirmative action plan and implementation of the same; and other equitable relief as the Court deems appropriate to prevent CON ED from engaging in unlawful employment practices. In addition, plaintiffs request equitable relief as the Court deems appropriate to prevent any retaliation against all of the plaintiffs.

C. As for Punitive Damages: the plaintiffs and the class of persons of which plaintiffs are representative request punitive damages, including but not limited to, the payment of civil penalties in an amount up to \$100,000.00 for each violation of the

Administrative Code of the City of New York which occurred on or after September 16, 1991.

D. As for Attorneys Fees, Experts Fees, Costs, and Interest: the plaintiffs and the class of persons of which plaintiffs are representative request attorneys fees, experts fees, costs and interest.

JURY TRIAL DEMAND

E. Plaintiffs, individually and as representatives of the class, hereby demand trial by jury on all issues to which they are entitled to a jury.

DATED: New York, New York
May 23, 1994

Respectfully submitted,

By: Alan L. Fuchsberg, Esq. (6626)

On behalf of Plaintiffs

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