

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

SHARON BLACKMON-MALLOY, <u>et al.</u> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:01CV02221(EGS)
	)	
UNITED STATES CAPITOL POLICE	)	
BOARD,	)	
	)	
Defendant.	)	
_____	)	

**JOINT FOURTH AMENDED CLASS ACTION COMPLAINT**<sup>1</sup>

1. By and through undersigned counsel, Plaintiffs Sharon Blackmon-Malloy, et al., hereby file this Joint Fourth Amended Class Action Complaint which addresses a pattern and practice of race discrimination, hostile work environment, and retaliation in employment, in violation of the Congressional Accountability Act, 2 U.S.C. § 1311, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, and the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

**Jurisdiction and Venue**

2. This Court has jurisdiction over this Complaint because questions of federal law are presented, pursuant to 2 U.S.C. § 1408 and 42 U.S.C. § 2000e, as amended.

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<sup>1</sup>This Amended Complaint was required by the U.S. District Court's Order dated March 8, 2010. It follows previous Court rulings published at 575 F.3d 699 (D.C. Cir. 2009) and 328 F. Supp. 2d 97 (D.D.C. 2004).

3. This Court is the proper venue pursuant to 2 U.S.C. § 1408 and 42 U.S.C. § 2000e.

**Parties**

4. Plaintiffs are all African American Officers who experienced race discrimination and retaliation in their employment with the U.S. Capitol Police and also filed timely requests for counseling and received end of mediation notices in this case or the companion cases which have been consolidated with it.<sup>2</sup>

5. The Defendant is the United States Capitol Police Board, 119 D Street, N.E., Washington, DC 20510. Defendant is being sued because of its systemic, racially discriminatory practices and actions which Defendant's officials have taken against Plaintiffs for many years in a severe and/or pervasive manner and have refused to correct. Defendant was timely served with the original Complaint on or about October 29, 2001.

**FACTS**

6. The Plaintiff African American Officers employed by the U.S. Capitol Police have been subjected to: (1) a racially hostile work environment; and/or (2) race discrimination in

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<sup>2</sup>Plaintiffs also include Officer Thomas Spavone, an Hispanic Officer who associates with the Black Officers.

promotions, other selections, work assignments, discipline, and termination; and/or (3) retaliation. There Plaintiffs requested counseling and received End of Mediation Notices from the Congress's Office of Compliance as a result of these discriminatory experiences.

7. The U.S. Capitol Police have subjected the Plaintiffs to a systemic pattern and practice of hostile environment, racial harassment, non-promotion, discriminatory discipline, and retaliation for protected EEO activity and opposition to discriminatory practices from the early 1960's through the date of filing of the original Complaint (October 29, 2001), and indeed, continuing to the present day.

8. Because of their race (African American), the Black Officers of the U.S. Capitol Police identified in this Complaint have experienced some or all of the discrimination described in this case, on an ongoing basis. Each of them has been subjected to unwelcome racial harassment and a hostile work environment in the form of racist actions and practices, racist statements and racial epithets - such as "nigger", "black bitch", "gangster", and "ghetto police" - and/or obvious mistreatment by certain white Officers, including but not limited to abuse, yelling, threats, denial of normal privileges, and posting of

Black Officer pictures on promotion examination files, thus identifying them for disparate treatment.

9. This systemic unwelcome racial harassment created a climate of fear among the Black Officers of the U.S. Capitol Police, such that even those who were not the direct target of the white Officers' racist words and actions were affected and intimidated by the hostile work environment. This climate of fear persists to the present day.

10. The treatment of the Black Officers of the U.S. Capitol Police has been sufficiently severe and/or pervasive to alter a term, condition, or privilege of employment of a reasonable Officer.

11. Indeed, the workplace of the U.S. Capitol Police has been permeated with discriminatory intimidation, insult, and ridicule for decades, continuing through and beyond the Black Officers' filing of formal requests for counseling in April and May, 2001.

12. The conduct of certain white Officers toward Black Officers unreasonably interfered with the Black Officers' work performance because it was frequent, severe, humiliating, intimidating, and on occasion physically threatening.

13. In fact, the systemic harassment and hostile work

environment did alter the terms, conditions, and privileges of the Black Officers of the U.S. Capitol Police so that they were forced, inequitably, to endure physically more demanding conditions and greater psychological stress and intimidation on the job.

14. The ongoing frequent, severe, systemic harassment to which the Black Officers have been unremittingly subjected for years, if not decades, constitutes a single employment practice.

15. The U.S. Capitol Police knew or should have known of the racial harassment and hostile work environment and failed to take proper remedial action.

16. From April to May 2001, the Plaintiffs in this case timely requested counseling from the Congress's Office of Compliance, initiating their discrimination claims, in response to discriminatory incidents they had experienced in the 180 days prior to seeking counseling.

17. For many years, Black Officers of the U.S. Capitol Police have been subjected to racist slurs, insults, and threats, a practice that has continued through the filing of the original Complaint in this case and afterward.

18. Among the many egregious examples of racist insults and threats were those experienced by Plaintiff Larry "Ike"

Ikard (now deceased). Officer Ikard was subjected to a racially hostile work environment in which white Officers referred to African Americans, whether fellow Officers or members of the public, as "Huks" or "gangsters," and characterized the D.C. Metropolitan Police Department as the "ghetto police."

19. When Officer Ikard worked in the K-9 Unit, a division well-known for its racism, the department procured a black-colored German shepherd dog named "Ike," and the white Officers of the K-9 unit would shout "Ike" at it and yell at it, to demean and humiliate Officer Ikard. An official of the K-9 Unit also announced at roll call that the Unit had another black-colored dog named "Huk." (The department backed down and changed that dog's name in response to outrage from Black Officers.)

20. Officer Ikard observed that white Officers who had friendly conversations with African Americans were labeled as a "Huk Lovers," "Friends of Gangsters" or a simply "FOGs." Many other Black Officers are aware of this practice.

21. In late 2000 and early 2001, Plaintiff Richard Webb continued to pursue an assignment to the K-9 Unit despite reports that the word "nigger" was used freely there. Management was aware of this practice but took no action to

address it. Officer Webb was denied a position with the K-9 Corps in favor of a less qualified white applicant.

22. On April 9, 2001, white Officer Patrick Millham called Recruit Officer Alana Lambert a "black bitch" in the presence of fellow Recruit Officer Anthony Stone. Officer Lambert described the incident to Officer Thurston Lewis, who wrote it up on April 13, 2001. No action was taken against Officer Millham.

23. During the 180 days before the Black Officers filed their requests for counseling with the Office of Compliance, white Officers repeatedly subjected multiple Black Officers to racist epithets, including "nigger" and variations such as "Huk" or "gangster." These racial slurs were used even when other Black Officers were present, and word of the fact that white Officers could use racist language toward Black Officers with impunity spread throughout the ranks.

24. One of the most dramatic instances was General Counsel John Caulfield's use of the word "nigger" toward a Virginia cab driver when Caulfield was detained in early February 2000. The slur from Caulfield, who had responsibility for giving advice on discipline and promotions in the department, was particularly chilling because it indicated that Black Officers would not

receive fair treatment. After Caulfield returned to work without incident, the Black Officers launched a series of public protests (the last of which occurred in November 2000) that ultimately led to the filing of the instant lawsuit.

25. In sum, "nigger", "Huk", "gangster" and other racist epithets were commonly employed by the white Officers of the U.S. Capitol Police, creating a clearly race-based hostile work environment for Officer Ikard, Officer Webb, Officer Lambert and other Black Officers whose work environments were affected, who are identified in Exhibit 1. All the Plaintiffs in this category, among others, made timely requests for counseling (or charges of discrimination) to the Office of Compliance; provided the Office with any and all information requested, received End of Mediation Notices; and timely filed in U.S. District Court within 90 days thereafter.

26. The systemic intimidation and hostility toward Black Officers was perpetuated not only by racist words but by overtly racist actions toward Black Officers, such as a hangman's noose, a swastika, death threats, unprovoked traffic stops of Black Officers by white Officers, and "bear hunting" (false write-ups). The impact of such overtly racist actions exceeded their immediate targets, and cast a pall of fear and intimidation over



other Black Officers who were aware of what had occurred. Officers who experienced such actions in the 180 days before filing their requests for counseling are identified in Exhibit 2. All the Plaintiffs in this category, among others, made timely requests for counseling (or charges of discrimination) to the Office of Compliance; provided the Office with any and all information requested, received End of Mediation Notices; and timely filed in U.S. District Court within 90 days thereafter.

27. Even when Black Officers of the U.S. Capitol Police were not being subjected to direct and overt racist statements or actions, they were frequently the target of abuse, yelling, threats, denial of normal privileges, and having their pictures posted on promotion examination files, thus identifying them for disparate treatment.

28. One glaring example was the command's undermining Lt. Donald Dixon when he attempted to conduct a disciplinary investigation of a white Officer; not only was the investigation thwarted, but Lt. Dixon ultimately was forced to accept a reassignment. Lt. Dixon and other Black Officers who experienced one or more such racist actions or practices during the 180 days prior to their request for counseling are identified in Exhibit

3. All the Plaintiffs in this category, among others, made timely requests for counseling (or charges of discrimination) to the Office of Compliance; provided the Office with any and all information requested, received End of Mediation Notices; and timely filed in U.S. District Court within 90 days thereafter.

29. Sergeant Vernier Riggs was subjected to ongoing discrimination with respect to leave from April 1999 through October 2000 when Lieutenant Michael Komara repeatedly harassed her and denied her leave requests. During this time, he routinely granted leave requests from white Sergeant Cathy Anderson, whom he did not subject to harassment.

30. Lieutenant Frank Adams was subjected to the racially hostile work environment on the U.S. Capitol Police force. While assigned to the Patrol Division, white management officials allowed, encouraged, and participated with white Officers in hostilities towards Plaintiff Adams in an effort to force him to request an assignment to another division. He was subsequently involuntarily transferred. Management ordered Lt. Adams to change the performance rating of an undisciplined, disruptive K-9 Officer and to remove instructive entries regarding the negative performance of other white Officers from

their Unit personnel records.

31. Lt. Adams was subjected to many unsubstantiated and frivolous investigations by the Internal Affairs Division, and management refused to investigate his charges against white subordinate Officers who made untruthful and unsupported allegations against him. The U.S. Capitol Police published throughout the department the inaccurate findings from an investigation of a complaint that a white Officer made against Lt. Adams.

32. Lt. Adams' primary discrimination facts and claims are set forth in four U.S. District Court cases against the U.S. Capitol Police, which have the following case numbers: 01-2221 (filed October 29, 2001), 04-0943 (filed June 9, 2004), 05-0491 (filed March 10, 2005), and 06-0653 (filed April 10, 2006). Lt. Adams' aforesaid facts and claims are incorporated into this Complaint and made a part hereof.

33. Plaintiff Derrick Macon was also subjected to the racially hostile work environment on the U.S. Capitol Police force as described above. Officer Macon was also denied a request for training while similarly-situated, less qualified white Officers were afforded training. His request for an explanation to his immediate supervisor was disregarded.

Subsequently, Plaintiff Macon was selected to attend a pick-pocket training class, and he asked management to notify him of the upcoming scheduled classes. A week later, Plaintiff Macon was informed by a junior white Officer that he had completed that training. When Plaintiff Macon inquired about upcoming classes, he was told that there were no future classes scheduled. Thereafter, Defendant denied Plaintiff Macon's request for sick leave in retaliation for his participation in this case.

34. Plaintiff Earl Allen was subjected to the racially hostile work environment on the U.S. Capitol Police force as described above. Assigned to the Speaker's detail for five years, Officer Allen himself was often protected by Speaker Newt Gingrich from the department's discriminatory practices. After Mr. Gingrich resigned from Congress, Officer Allen was assigned to the lowly task of being in charge of counting supplies. Officer Allen verbally requested reassignment to the new Speaker's detail, but this was refused. As a result of the department's refusal to reassign him, Officer Allen reluctantly retired in October 2000 at the age of 53. He had planned to retire four years later at the mandatory age of 57.

35. By subjecting some Black Officers to discriminatory

disparate treatment, white Officers were able to intimidate many more Black Officers with the threat of similar hostile treatment. Black Officers who witnessed their fellow Black Officers being subjected to abuse, yelling, threats, and denial of normal privileges are identified in Exhibit 4. All the Plaintiffs in this category, among others, made timely requests for counseling (or charges of discrimination) to the Office of Compliance; provided the Office with any and all information requested, received End of Mediation Notices; and timely filed in U.S. District Court within 90 days thereafter.

**Discrimination in Assignments/Hostile Work Environment**

36. Between 1960 and 2001 and on a continuing basis, the white Officers of the U.S. Capitol Police would consistently and deliberately deprive Black Officers of more desirable assignments and intimidate, humiliate, and harass Black Officers by giving them undesirable assignments in order to perpetuate the hostile work environment and the racist hierarchy in the U.S. Capitol Police. Black Officers were routinely relegated to the least desirable positions.

37. Plaintiff Dale Veal, an African American, was discriminated against on the basis of his race when he was denied overtime assignments. Officer Veal has been with the

U.S. Capitol Police since 1988. During 1999 and 2000, Officer Veal was on the House division list for overtime. The list is alphabetical, and the white official, Sgt. Barbara Davis, responsible for making overtime assignments was to go down the alphabetical list of Officers and assign overtime. However, this official did not go down the complete list so as a result, white Officers, such as Officer Belinda Keen, received numerous overtime assignments while Officer Veal did not.

38. Black Officers who suffered disparate treatment in assignments based on their race (African American) are identified in Exhibit 5. All the Plaintiffs in this category, among others, made timely requests for counseling (or charges of discrimination) to the Office of Compliance; provided the Office with any and all information requested, received End of Mediation Notices; and timely filed in U.S. District Court within 90 days thereafter.

**Additional Hostile Work Environment Claims**

39. In addition to the foregoing, Black Officers who were also exposed to the hostile work environment and made timely requests for counseling (or charges of discrimination) to the Office of Compliance; provided the Office with any and all information requested, received End of Mediation Notices; and

timely filed in U.S. District Court within 90 days thereafter are identified in Exhibit 6.

**Other Plaintiffs in the Hostile Work Environment**

40. Plaintiffs Jerry Dickson (deceased), Derek Hamilton, Linval Jones, Alana Lambert, Darius Rose, Wendell Summers, Kado Wilks (deceased) and non-Plaintiff Masood S. Darsanni were subjected to the racially hostile work environment of the U.S. Capitol Police force as described above. Though these Plaintiffs do not have Office of Compliance numbers, they attempted to file requests for counseling in April-May 2001. Plaintiffs Jones, Lambert, and Rose had their discrimination complaint information submitted to the Office of Compliance through counsel, as did non-Plaintiff Darsanni. Plaintiffs Hamilton and Summers personally went to the Office of Compliance to submit their information.

**A Long History of Racial Harassment**

41. The history of racial harassment and a hostile work environment at the U.S. Capitol extends back decades, at least until the mid-1960's, when it was at its most direct and brutal. Many of the incidents of harassment over the years that led up to the filing of this lawsuit are recounted in Plaintiffs' Joint Second Amended Complaint. The history of harassment – severe,

pervasive, and continuous over the years – led up to the original Complaint in this action. To this day Black Officers suffer harassment and are afraid to speak up out of fear of retaliation. Plaintiffs seek to recover for the ongoing hostile work environment over the years preceding filing of the requests for counseling in this case.

#### **Ongoing Harassment**

42. The racially hostile work environment did not abate after the filing of the Blackmon-Malloy class action. The consolidated cases now in this action demonstrate this. In addition, in 2002, Plaintiff Clifford Green reported to Plaintiff Donald Dixon that Officer Green had found a note on his protective vest outside his locker that stated: “For the love of God wash me NIGGER.” The department’s Internal Affairs investigated, but failed to find the offender(s).

#### **Denial of Promotions and Other Discrete Acts**

43. Numerous Black Officers were denied promotions. By the time of the 2000 promotion process, the department had a long history of discriminating against African Americans in promotions, a fact evident in the lopsided imbalance between the proportion of African Americans among the rank and file and the proportion of African Americans in the command structure.



44. As of February 2001, 67% of the sworn Officers on the U.S. Capitol Police force were white (817 out of a total of 1,221 Officers), while 29% (357) were African American.<sup>3</sup> As of February 2001, the upper ranks of the U.S. Capitol Police force comprised 240 sworn Officers - in descending order from the rank of Chief to Inspector to Captain to Lieutenant to Sergeant to Detective. Of these 240 high-ranking Officers, 84% (201) were white, while 13% (32) were African American.

45. A significant number of qualified Black Officers took part in the biased year 2000 promotion process and failed to receive promotions that were given to less qualified white Officers. They requested counseling within 180 days of their non-promotion.

46. In addition to subjecting Black Officers to disparate treatment in promotions, the U.S. Capitol Police Board maintained a facially neutral oral interview and experiential process whose subjective criteria resulted in a disparate impact against the Black Officers.

47. Lead Plaintiff Sharon Blackmon-Malloy,<sup>4</sup> an African

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<sup>3</sup>Note that over 300 Black Officers filed the original suit - well over 75 percent of the Black Officers.

<sup>4</sup>Sgt. Blackmon-Malloy was eventually promoted to Lieutenant on November 8, 2004, more than three years after filing this

American woman and President of the U.S. Capitol Black Police Association, has been discriminated against on the basis of her race by being denied promotions and promotional opportunities and unfairly written up. Lt. Blackmon-Malloy was employed with the U.S. Capitol Police from October 12, 1982, until she retired early on October 31, 2007. She has taken part in promotional examinations a number of times. She was finally promoted to Sergeant on July 12, 1993. Thereafter, then-Sgt. Blackmon-Malloy took part in three examinations for promotion to Lieutenant. In the examination administered on November 4, 2000, then-Sgt. Blackmon-Malloy received an on-site score of 75, which would have moved her into the next phase of the Lieutenant's examination. However, when the applicants' scores were posted, her score was recorded as a 69, which impacted her overall score and resulted in her not being promoted. Sgt. Blackmon-Malloy questioned this discrepancy by speaking with Inspector Stephen Ring and Chief James Varey, two white officials, and by lodging numerous complaints of race discrimination regarding the change in her score.

48. Plaintiff Blackmon-Malloy was later informed that there was an error in the calculation of her on-site score.

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case.

Plaintiff Blackmon-Malloy submits that the limited number of African American Sergeants and Lieutenants in the department is the direct result of racially discriminatory practices, including the lowering of her examination score in 2000.

49. Plaintiff Donald Dickson reports that Robert Howe, the number two official on the U.S. Capitol Police department, informed a group of managers at a class Dickson attended that he wanted to control the Officers who were promoted, so some Officers applying for promotions would always miss the required score by a few points. Howe's comments laid bare the discriminatory policy and racist agenda of the department in promotions.

50. Further reflecting Howe's comments and the department's agenda, as of 2002, no Black Officer on the U.S. Capitol Police was in the department's developmental pool for high-ranking Officers.

51. Officer Richard Webb requested counseling on May 1, 2001, after he was not included among the recruits on the K-9 mini-list announced on April 18, 2001, which instead included less experienced white recruits.

52. Officer Barry Nixon was able to pass the written examination six or seven times, but he was never able to pass

the department's subjective oral examination.

53. Black Officers who took the year 2000 Sergeant's examination and were unfairly denied promotions are identified in Exhibit 7. All the Plaintiffs in this category, among others, made timely requests for counseling (or charges of discrimination) to the Office of Compliance; provided the Office with any and all information requested, received End of Mediation Notices; and timely filed in U.S. District Court within 90 days thereafter.

54. Black Officers took the year 2000 Lieutenant's promotion exam and were unfairly denied promotions are identified in Exhibit 8. All the Plaintiffs in this category, among others, made timely requests for counseling (or charges of discrimination) to the Office of Compliance; provided the Office with any and all information requested, received End of Mediation Notices; and timely filed in U.S. District Court within 90 days thereafter.

55. Sandra Brown and Governor Latson were among the Plaintiffs discriminated against in the 2002 promotional process. See Kendrick Young v. U.S. Capitol Police Board, Case No. 04-0320 (EGS)(D.D.C.).

56. Officer Leonard Ross took the promotion exam multiple

times. He consistently succeeded on the written exam, and was just as consistently downgraded on the oral examination by white managers. As a result, he never received a promotion.

57. The long and well-known history of discrimination in the department's promotion process, coupled with racist statements by former Chief Gary Abrecht alleging that "Blacks can't compete" or that Blacks can't take tests, augmented the already hostile environment at the U.S. Capitol Police and effectively discouraged Black Officers from participating in a process that was obviously discriminatory. Such statements affected the terms and conditions of each Black Officer's employment by denying them opportunities that were granted to white Officers. Black Officers who would otherwise have participated in the promotion process but concluded that participation was futile based on the racist history of the promotion process are identified in Exhibit 9. All the Plaintiffs in this category, among others, made timely requests for counseling (or charges of discrimination) to the Office of Compliance; provided the Office with any and all information requested, received End of Mediation Notices; and timely filed in U.S. District Court within 90 days thereafter.

**Discriminatory Discipline**

58. Black Officers also faced discrimination throughout the investigation of alleged offenses and the imposition of discipline. Furthermore, the discipline was typically more severe for Black Officers than that which white Officers received for comparable offenses.

59. Luther Peterson, an African American Officer, was discriminated against on the basis of his race when he was unfairly disciplined. Officer Peterson had been with the U.S. Capitol Police since October 10, 1978. Officer Peterson received a CP-535 disciplinary action for improper use of his weapon for shooting at an intruder while off duty in his home. Officer Peterson was home alone on September 5, 2000 (his wife and children were out of town) when his burglar alarm sounded and he witnessed someone in his doorway. Officer Peterson fired his service revolver at the intruder. The Maryland police were called, and no charges were filed against Officer Peterson.

60. In October 2000, Officer Peterson received notice of an Internal Affairs investigation and in November received notice that the investigation was concluded. Officer Peterson, along with his union representative, met with white Inspector Jarboe who informed him that he was being disciplined for not

having his weapon fully loaded, although the department does not require that a weapon be fully loaded. Nonetheless, Officer Peterson grieved the discipline, and it was subsequently dismissed.

61. In January 2001, Defendant's Associate General Counsel Kenneth Benjamin called Officer Peterson into a meeting about the shooting that occurred in his home. Officer Peterson was informed he could either accept the CP-535 discipline and be docked 64 hours or he could contest the charges and the penalty. Officer Peterson chose to contest the charges. The day before his hearing, Officer Peterson was called in to see white Sergeant Stillman, who informed him that he was receiving a CP-550 performance note for not responding to calls from Inspector Thompson about his case. Officer Peterson explained that he was represented by a union representative. Officer Peterson received a CP-535 discipline for discharging his weapon and was docked 64 hours.

62. In contrast, white Officer Edward Bailor shot at an individual without provocation, and no disciplinary action was taken against him by the department.

63. Black Officer Leonard Ross brought a Complaint in U.S. District Court, Ross v. U.S. Capitol Police Board, 1:02-cv-2481

(consolidated with the main case here on July 27, 2005), for retaliation and race discrimination due to the U.S. Capitol Police's unequal discipline and non-promotion of Mr. Ross. Officer Ross was subjected to unequal, discriminatory discipline when he was formally disciplined for reporting that a white Officer had illegally brandished a firearm, while another white Officer was not disciplined for making a similar disclosure about the same Officer.

64. Officer Duvall Phelps, an African American Officer, was discriminated against on the basis of his race when he was constructively discharged and forced into early retirement. Officer Phelps joined the U.S. Capitol Police on October 6, 1975, and 25 years later was forced into early retirement on October 31, 2000. After years of discrimination in assignments and working conditions, and a racially hostile work environment, Officer Phelps filed charges with Internal Affairs against a number of white Officers, including Lieutenants Michael Komara and William Kaval, Sergeants David Miller, Dennis Kitchen, William Perkins, Harold Fitzgerald and Christopher Givens, and Officers Richard Brown and Susan Galifaro. While his complaint was pending with Internal Affairs, Officer Phelps was accused of domestic assault by Internal Affairs, and later in Prince



George's County, and placed on suspension by the department pending the outcome of the case and the outcome of an Internal Affairs investigation. Chief Gary Abrecht (white) ordered Officer Phelps to take a polygraph test regarding the alleged assault. However, Officer Phelps' physician, who was treating him for job-related stress, opined that the stress could affect the outcome of the test and recommended that he not take the test. Based on his physician's recommendation, he did not take the polygraph.

65. Because of the alleged assault, the department began processing Officer Phelps for termination. Faced with options of early retirement or termination, Officer Phelps chose early retirement. While Officer Phelps faced termination for this alleged incident, white Officers faced with similar and/or more serious allegations were allowed to remain on the job.

66. For example, a white Officer, Keith Pickett, also accused of domestic violence, was suspended for two weeks and allowed to remain on the job. Another white Officer, John Kurtz, accused of stalking an ex-girlfriend, was suspended and docked 64 hours of leave but remained on the job. A white Officer, Marshall Glenn Hoffman, alleged to have held his family hostage at gunpoint, was placed on light duty for two years and

remained on the job. A white Officer who allegedly called in a bomb threat to the U.S. Capitol, Gerald Scott Pfister, was taken off duty, and then returned to light duty and reinstated. Officer Phelps and other Plaintiffs contend that African American Officers received harsher discipline and were disciplined at higher rates than their white counterparts.

67. Plaintiff Frank Adams was also subjected to retaliation from upper management for filing complaints of discrimination. His supervisor, Captain Preloh, reprimanded him for following direct orders from a higher-ranking Lieutenant. Captain Preloh disregarded the performance rating issued to Lt. Adams by his commanding supervisor, which impeded his opportunity for promotion. In addition, Captain Preloh and Inspector Parisi participated in and supported the making of false accusations against Lt. Adams, which in turn led to an investigation by Internal Affairs. Ultimately, Chief Varey himself authorized that corrective documentation be placed in Lt. Adams' personnel file and published in official department correspondence, regarding the findings of this flawed investigation. These actions not only hindered Lt. Adams' ability to advance in his career, but they substantially damaged his reputation, well-being, and ability to perform his duties

effectively.

68. Black Officers who were more severely disciplined than white Officers within the 180 days before filing their requests for counseling are identified in Exhibit 10. All the Plaintiffs in this category, among others, made timely requests for counseling (or charges of discrimination) to the Office of Compliance; provided the Office with any and all information requested, received End of Mediation Notices; and timely filed in U.S. District Court within 90 days thereafter.

#### **Retaliation**

69. In response to protests and demonstrations by the Black Officers in reaction to the Caulfield scandal, their mass filing of requests for counseling, the initiation of the Blackmon-Malloy lawsuit by three fourths of the Black Officers, and other protected EEO activity, many Black Officers also suffered unlawful retaliation in the 180 days before and after the filing of the main Blackmon-Malloy case or, in some cases, its subsequent consolidated companion cases, including but not limited to: Regina Bolden-Whitaker, et al. v. U.S. Capitol Police Board, Case No. 03-2644 (EGS), Kendrick Young v. U.S. Capitol Police Board, 04-0320, and Sharon Blackmon-Malloy v. U.S. Capitol Police Board, Case No. 02-1859, Ross v. U.S.

Capitol Police Board, Case No. 02-2481 (EGS), and multiple cases by Plaintiff Arnold Fields.

70. Plaintiff Blackmon-Malloy's verbal and written complaints of discrimination against the department were the cause of unwarranted performance notes in her personnel jacket. Then-Sgt. Blackmon-Malloy received a CP-550 performance note entry in March 2001 for an incident that occurred in September 2000. Prior to her complaints about the 2000 promotion exam, no action was taken regarding this incident; Chief Howe dismissed the matter in January 2001. Sgt. Blackmon-Malloy also received five CP-550 performance note entries for an incident occurring on February 23, 2001, involving the incorrect placement of Notices of Infractions. Sgt. Blackmon-Malloy submits that this was such a minor infraction that there should not have been any entries in her personnel jacket. Prior to these entries, Sgt. Blackmon-Malloy had an unblemished record, with a spotless personnel jacket. As a result of disagreeing with the five CP-550 performance notes, Sgt. Blackmon-Malloy received a CP-534 command discipline report. Sgt. Blackmon-Malloy unsuccessfully appealed the CP-534 command disciplinary report. Sgt. Blackmon-Malloy timely exhausted her administrative remedies, completing counseling and mediation with the Office of Compliance.

71. The day after Sergeant Vernier Riggs filed a request for counseling with the Office of Compliance on April 12, 2001, Lieutenant Proctor admonished her for not wearing a blue, long-sleeved shirt to roll call. He did not admonish either Sergeant Neiman or Sergeant Stillman, both white and neither of whom wore a blue long-sleeve shirt to roll call. Three days later, on April 16, 2001, white Officer Donna Boswell was in flagrant violation of the uniform requirements when she wore a cardigan over her uniform. In addition, Officer Boswell did not wear a blue, long-sleeve shirt when she was required to do so. Officer Boswell was neither admonished or disciplined for her violations of the uniform requirements. Officer Riggs timely requested counseling from the Office of Compliance on this instance of retaliation.

72. On December 24, 2003, Regina Bolden-Whitaker, Ave Maria Harris, Arnold Fields, and Duvall Phelps filed an additional timely Class Complaint of retaliation, which was subsequently consolidated with this case and whose allegations are incorporated by reference. See Bolden-Whitaker v. U.S. Capitol Police Board, Case No. 03-2644 (EGS) (D.D.C.).

73. Officers who made timely requests for counseling in response to retaliation are identified in Exhibit 11. All the

Plaintiffs in this category, among others, made timely requests for counseling (or charges of discrimination) to the Office of Compliance; provided the Office with any and all information requested, received End of Mediation Notices; and timely filed in U.S. District Court within 90 days thereafter.

**Class Allegations**

74. This action is properly maintainable as a class action under Rule 23(a) of the Federal Rules of Civil Procedure.

75. The members of the proposed class are sufficiently numerous to make joinder impracticable.

76. Plaintiffs' claims raise questions of law or fact common to the class. These common questions include, but are not limited to:

- a. Whether Defendant subjected the Plaintiffs to a hostile work environment based on their race (African American).
- b. Whether Defendant discriminated against certain of the Plaintiffs in promotions and promotional opportunities based on their race (African American).
- c. Whether Defendant discriminated against certain of the Plaintiffs in discipline and terminations

based on their race (African American).

- d. Whether Defendant retaliated against Plaintiffs because of their protected activity in filing discrimination complaints and opposing discrimination.

77. The claims of the Plaintiff Class Agents and named class members are typical of those advanced by the class.

78. The named Plaintiffs and counsel will properly represent the interests of the class and its members.

79. The class action is also properly maintainable pursuant to Fed.R.Civ.P.23(b)(2) and (b)(3) because Defendant has acted on grounds generally applicable to the class, making appropriate final injunctive relief or declaratory relief with respect to the entire class and the questions of law and fact common to members of the class predominate over questions affecting individual members and a class action is superior to other available methods for the fair and efficient resolution of this controversy.

**Additional Allegations of Discrimination**

80. All allegations of fact in Plaintiffs' Joint Second Amended Complaint dated January 29, 2003 (see pages 2-47), which are not specifically set forth in this Complaint and which are

not inconsistent with this Complaint, are hereby incorporated by reference and made a part of this Complaint.

**Status of Other Plaintiffs**

81. The Plaintiffs listed in category b.1 to the Parties' Joint Response to the Court's March 8, 2010 Order indicated to Class Counsel that they wished to withdraw from this case.

82. The Plaintiffs listed in Category b to the Parties' Joint Response to the Court's March 8, 2010 Order wished to pursue their cases but were determined by Class Counsel to be untimely or otherwise not to have fulfilled the requirements for proceeding in this case. Counsel nevertheless requests that before dismissing any of these Plaintiffs (in ¶¶ 76-77) the Court issue each of them an Order to Show Cause Why They Should Not Be Dismissed.

**Causes of Action**

**Count I**

83. The U.S. Capitol Police have subjected the Plaintiffs to a discriminatory hostile work environment based on their race (African American) in violation of the Congressional Accountability Act, 2 U.S.C. § 1311, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq., which it applies.



**Count II**

84. The U.S. Capitol Police have discriminated against certain of the Plaintiffs based on their race (African American) in promotions, discipline, and terminations in violation of the Congressional Accountability Act, 2 U.S.C. § 1311, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq., which it applies.

**Count III**

85. The U.S. Capitol Police have maintained a promotion system leading to ranking positions which has an unlawful disparate impact on Plaintiffs based on their race (African American) in violation of the Congressional Accountability Act, 2 U.S.C. § 1311, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq., which it applies.

**Count IV**

86. The U.S. Capitol Police have unlawfully retaliated against Plaintiffs because Plaintiffs have engaged in activity protected by the Congressional Accountability in violation of the Congressional Accountability Act, 2 U.S.C. § 1311, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq., which it applies.

**Relief Requested**

87. WHEREFORE, Plaintiffs respectfully request this Court to:

a. Declare that the practices described in this Complaint exist at the U.S. Capitol Police and that they are unlawful;

b. Issue a permanent injunction prohibiting the U.S. Capitol Police, its officers, agents, employees, and successors, from engaging in the discriminatory employment practices alleged herein;

c. Issue a permanent mandatory injunction requiring that the U.S. Capitol Police adopt employment practices in conformity with the requirements of the Congressional Accountability Act, 2 U.S.C. § 1311, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. Specifically, the Court should require new Court-approved and Court-monitored systems for a cessation of the hostile work environment against the Black Officers and for promotions, other selections, work assignments, performance evaluations, discipline, and termination that are race neutral and that provide for equal treatment and opportunities regardless of the Officer's race at the U.S. Capitol Police, and creation of an ombudsman's position;

d. Award back pay and front pay and other job benefits

sufficient to make aggrieved Plaintiffs whole;

e. Award compensatory damages to aggrieved Plaintiffs appropriate to the proof at trial;

f. Award reasonable attorney fees and costs, including expert fees, pursuant to 2 U.S.C. § 1311, 42 U.S.C. § 2000e, and 42 U.S.C. § 1988; and

g. Order such other and further relief as the Court deems just and proper.

**Jury Demand**

88. Plaintiffs request a trial by jury on all issues triable before a jury.

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