

For Dockets See [1:97CV01411](#)

United States District Court, E.D. New York.

William HAYDEN, Rosemarie Albrecht, Christopher J. Barrella, Edward Bauer, III, Diane J. Bartscherer, Keith Bergersen, Michael A. Cantwell, Jr., Eric Christopherson, Christopher T. Crowley, Thomas Cumming, James F. Davolio, Peter J. Descovich, Stace Domagala, Jeremy Eill, Alan Foppiano, Patrick Hack, Maureen Halbohn, Diane Harnisher, Michael Hefferon, Michael Hefner, Carl M. Hetzel, Christopher T. Hirsch, Anthony Hoffman, Robert R. Howell, Kevin Hunt, Daniel Jackson, Tim Kelly, Alan Kessler, Thomas C. Kiniroins, Andrew J. Klein, Patrick J. Longo, Michael P. Lucere, Terry Maler, John K. Markwalter, Donatina Mastropieri, Lisa Mastropieri, Robert Mastropieri, Sam Mastropieri, William McBride, John McCabe, Robert McDermott, Edward McDowell, Barry McGovern, William Meed, Cynthia McKenna-Mertz, Joseph A. Montilli, John W. Moisa, Patricia A. Neill, Robert O'Brien, Joseph Picini, Jr., Michael A. Pizzo, Andy Radovic, Michael Reilly, Juan C. Requeiro, Thomas R. Rice, Barbara Rugen, Thomas J. Rule, Steve Sarbak, Christine Schmucker, Eric E. Sperling, Kara Anne Sperling, Jennifer Stierle, Erik Sulzbach, Jamie Squicciarino, David Tomasini, Lettice Vega, Charles Ward, and Michael Yasso, individually and as representatives of a class, Plaintiffs,

v.

COUNTY OF NASSAU, The Nassau County Civil Service Commission, The Nassau County Police Department, Thomas S. Gullotta, in his capacity as County Executive of Nassau County, Karl Kampe, in his capacity as the Executive Director of the Nassau County Civil Service Commission, and Donald. Kane, in his capacity as Commissioner of the Nassau County Police Department, Defendants;
The United States of America, Defendant-Intervenor,
Nassau County Guardians Association, Inc., Defendant-Intervenor.
Civil Action No. CV 97 1411.
October 31, 1997.

Second Amended Class Action Complaint and Jury Trial Demand

Judge [Mishler](#).

Plaintiffs, WILLIAM HAYDEN, ROSEMARIE ALBRECHT, CHRISTOPHER J. BARRELLA, EDWARD BAUER, III, DIANE J. BARTSC HERER, KEITH BERGERSEN, MICHAEL A. CANTWELL, Jr., ERIC CHRISTOPHERSON, CHRISTOPHER T. CR OWLEY, THOMAS CUMMING, JAMES F. D AVOLIO, PETER J. DESCOVICH, STACE DOMAGALA, JEREMY EILL, ALAN FO PPIANO, PATRICK HACK, MAUREEN HALBOHN, DIANE HAR NISHER, MICHAEL HEFFERON, MICHAEL HEFNER, CARL M. HETZEL, CHRISTOPHER T. HI RSCH, ANTHONY HOFFMAN, ROBERT R. HOWELL, KEVIN HUNT, DANIEL JACKSON, TIM KELLY, ALAN KESSLER, THOMAS C. KINIROINS, ANDREW J. KLEIN, PATRICK J. LONGO, MICHAEL P. LUCERE, TERRY MALER, JOHN K. MARKWALTER, DONATINA MASTROPIERI, LISA MASTROPIERI, ROBERT MASTROPIERI, SAM MASTROPIERI, WILLIAM McBRIDE, JOHN McCABE, ROBERT McDERMOTT, EDWARD McDOWELL, BARRY McGOVERN, WILLIAM MEED, CYNTHIA McKENNA-MERTZ, JOSEPH A. MONTILLI, JOHN W. MOISA, PATRICIA A. NEILL, ROBERT O'BRIEN, JOSEPH PICINI, Jr., MICHAEL A. PIZZO, ANDY RADOVIC, MICHAEL REILLY, JUAN C. REQUEIRO, THOMAS R. RICE, BARBARA RUGEN, THOMAS J. RULE, STEVE SARBAK, CHRISTINE SCHMUCKER, ERIC E. SPERLING, KARA ANNE SP ERLING, JENNIFER STIERLE, ERIK SULZBACH, JAMIE SQUICCIARINO, DAVID TOMASINI, LETTICE VEGA, CHARLES WARD, and MICHAEL YASSO (hereafter "Plaintiffs"), as and for their amended complaint, by their attorneys Atlantic Legal Foundation. for themselves individually and as representatives of a class, allege as follows:

1. This is an action to remedy violations of the rights of plaintiffs under the Fifth and Fourteenth Amendments to the United States Constitution, [42 U.S.C. §§ 1981](#), et seq., [42 U.S.C. §§2000e](#), et seq., [Article V, §6 of the New York State Constitution](#) and [New York Civil Service Law §61](#), and [New York Executive Law §296\(1\)\(a\)](#).
2. This court has jurisdiction over this action under [42 U.S.C. § 1983](#), [42 U.S.C. § 2000e-5\(f\)](#) and under [28 U.S.C.A.](#)

[§§ 1331](#) and [1343\(4\)](#) and, as to the state claims asserted, this Court's pendent jurisdiction.

3. Venue is proper in this Court because all of the defendants reside within this district and the unlawful employment practices alleged herein were committed in whole or in part in this district.

PARTIES

4. Each of the named Plaintiffs took Nassau County Civil Service Commission Open Competitive Examination No. 4200 for Police Officer in various police departments in Nassau County administered on July 30, July 31 or October 9, 1994 (the "Police Exam" or the "Exam"), and each of them paid the non-refundable \$50.00 fee for the right to do so.

5. The named plaintiffs include one or more white male candidates who took the Exam, one or more white female candidates who took the Exam, one or more Hispanic male candidates who took the Exam and one or more Hispanic female candidates who took the Exam.

6. WILLIAM HAYDEN resides at 176 Sunrise Ave., Sayville, NY. He holds a B.S. degree in fire protection from Empire State College of the State University of New York. He has been a Fire Marshal for approximately 14 years. He received a grade of 78.87 on the Exam.

7. ROSEMARIE ALBRECHT resides at 32 Wyant St., Selden, NY. She is currently employed as a Suffolk County Probation Officer, a position for which she took and passed a civil service exam administered by Suffolk County. She has a master's degree in social work from the State University of New York at Stony Brook. She received a grade of 64.14 on the Exam.

8. CHRISTOPHER J. BARRELLA, resides at 2 Hampton Blvd., Massapequa, NY. He is employed as a police officer of the Village of Freeport in Nassau County. He holds a master of arts degree, and he is a third year law student at St. John's University. He received a numerical grade of 67 on the Exam.

9. EDWARD BAUER III resides at 385 Scranton Ave., Lynbrook, NY. He is employed as a police officer on the New York City Police Department. He received a numerical grade of 55.36 on the Exam.

10. DIANE J. BARTSCHERER resides at 98 Seward Ave., Mineola, NY. She is employed as a registered nurse. She holds a bachelor of science degree. She received a grade of 59 on the Exam.

11. KEITH BERGERSEN resides at 2339 Mitchell Pl., Bellmore, NY. He is employed as a New York City Corrections Officer. He received a grade of 74.9 on the Exam.

12. MICHAEL A. CANTWELL resides at 80 Chandler Ave., Staten Island, NY. He is a New York City Police Officer. He received a grade of 74.38 on the Exam.

13. ERIC CHRISTOPHERSON resides at 2050 Stirrup Path, Seaford, NY. He has been employed as a New York City police officer for 6 1/2 years and he has an associate's degree in criminal justice. He received a grade of 78.59 on the Exam.

14. CHRISTOPHER T. CROWLEY, resides at 308 Massapequa Ave., Massapequa, NY. He has been a New York City Police Officer for the past ten years. He received a grade of 71.08 on the Exam.

15. THOMAS CUMMING resides at 129 Garfield St., Massapequa, Park, NY. He is employed as an operations manager for a maritime shipping firm. He has a bachelor's degree. He received a grade of 73 on the Exam.

16. JAMES F. DAVOLIO resides at 38 Seaman Neck Rd., Dix Hills, NY. He is employed as a New York City Police Officer. He received a grade of 75.91 on the Exam.

17. PETER J. DESCOVICH resides at 5 Ellen Ct., Glen Head, NY. He has a associate's degree in criminal justice. He received a grade of 78 on the Exam.

18. STACE DOMAGALA resides at 23 Thorpe Lane, Plainview, NY. He is a New York City Police Officer. He received a grade of 78.08 on the Exam.

19. JEREMY EILL resides at 11 Manetto Dr., Plainview, NY. He is employed at North Shore Hospital and has an associate's degree in criminal justice. He received a grade of 45 on the Exam.

20. ALAN FOPPIANO resides at 12 Burleigh Dr., Holbrook, NY. He has been employed as a New York City Police Officer for eight years. He has 64 college credits. He received a grade of 75.7 on the Exam.

21. PATRICK HACK resides at 99 Beaverdam Rd., Islip, NY. He is a student at Suffolk County Community College. He received a grade of 75 on the Exam.

22. MAUREEN HALBOHN resides at 55 No. Nancy Pl., No. Massapequa, NY. She received a grade of 78 on the Exam.

23. DIANE HARNISHER resides at 1604 Channel Rd., Broad Channel, NY. She is a New York City Police Officer and has a bachelor's degree. She received a grade of 76.020 on the Exam.

24. MICHAEL HEFFERON resides at 479 Grand Blvd., Massapequa Park, NY. He has 35 college credits. He received a grade of 80.7 on the Exam.

25. MICHAEL HEFNER resides at 88-67 62nd Dr., Rego Park, NY. He is employed as a paralegal and has a bachelor's degree in political science. He received a grade of 68 on the Exam.

26. CARL M. HETZEL resides at 154 Charles St., East Williston, NY. He has been employed as a police officer in the Village of Freeport for three years and has a bachelor's degree from Adelphi University. He received a grade of 72 on the Exam.

27. CHRISTOPHER T. HIRSCH resides at 46 Charter Rd., Selden, NY. He is a student. He received a grade of 79.3 on the Exam.

28. ANTHONY HOFFMAN resides at 175 Brown St., Mineola, NY. He is a student. He received a grade of 65.36 on the Exam.

29. ROBERT R. HOWELL resides at 7 Edison Dr. So., Huntington, NY. He is a student. He received a grade of 79.61 on the Exam.

30. KEVIN HUNT resides at 276 No. Lewis Ave., Lindenhurst, NY. He is a director of safety for a hospital. He has a B.S. in Economics. He received a grade of 74.32 on the Exam.

31. DANIEL JACKSON resides at 48 Lincoln Ave, Massapequa, NY. He is a Sergeant in the New York City Police Department and has been a New York City Police officer for 9 years. He has a bachelor's degree in criminal justice. He

scored below 80 on the Exam.

32. TIM KELLY resides at 227 Broad St., Williston Park, NY. He is a New York City Police Officer. He received a grade of 80.34 on the Exam.

33. ALAN KESSLER resides at 10 Martha St., Freeport, NY. He is employed as a Police Officer by the Village of Freeport and he has a bachelor's degree. He received a grade of 71 on the Exam.

34. THOMAS C. KINIRONS resides at 460 Rose Street, Oceanside, NY. He is employed as a plumber. He received a grade of less than 80 on the Exam.

35. ANDREW J. KLEIN resides at 239 No. Elm Street, No. Massapequa, NY. He is employed as a New York City Police Officer. He received a grade of 76.11 on the Exam.

36. PATRICK J. LONGO resides at 157-48 85th Street, Howard Beach, NY. He has a bachelor's degree in political science and is the owner of an art distributorship. He received a grade of 69 on the Exam.

37. MICHAEL P. LUCERE resides at 29 New Hampshire Avenue, Massapequa, NY. He is a New York City Police Officer and has an associates' degree in biology. He has not received notice of a grade on the Exam from the Nassau County Civil Commission.

38. TERRY MALER resides at 75 Lincoln Avenue, Port Jefferson, NY. He is an Airman First Class in the New York Air National Guard. He has an associate's degree in criminal justice. He received a grade of 57.07 on the Exam.

39. JOHN K. MARKWALTER resides at 1598 Stevens Avenue, No. Merrick, NY. He is employed as a hydrologist and has a bachelor of science degree. He received a grade of 70 on the Exam.

40. DONATINA MASTROPIERI resides at 85 Winter Street, Lynbrook, NY. She has a bachelor's degree in history and economics and is currently a candidate for a master's degree. She received a grade of 77 on the Exam.

41. LISA MASTROPIERI resides at 85 Winter Street, Lynbrook, NY. She is a student at the State University of New York at Southampton. She received a grade of 85.31 on the Exam.

42. ROBERT MASTROPIERI resides at 85 Winter Street, Lynbrook, NY. He is a mechanic for the Jamaica Water Company. He received a grade of 81.52 on the Exam.

43. SAM MASTROPIERI resides at 86 Spencer Avenue, Lynbrook, NY. He is employed by the Lynbrook Highway Department. He received a grade of 76.85 on the Exam.

44. WILLIAM McBRIDE resides at 159 Sportsman Avenue, Freeport, NY. He is a Sergeant on the New York City Police Department and holds an associate's degree in criminal justice. He received a grade of less than 80 on the Exam.

45. JOHN McCABE resides at 55 Wood Lane, Valley Stream, NY. He is a college student. He received a grade of 60.5 on the Exam.

46. ROBERT McDERMOTT resides at 104 Cleveland Avenue, Rockville Centre, NY. He is employed by the United States Postal Service and holds an associate's degree. He received a grade of 77 on the Exam.

47. EDWARD McDOWELL resides at 8 1/2 Dolphin Lane West, Copiague, NY. He is the owner of a marina. He

received a grade of 70.38 on the Exam.

48. BARRY McGOVERN resides at 293 Len a Avenue, Freeport, NY. He is a Police Officer for the Village of Freeport and has 45 college credits. He received a grade of 72 on the Exam.

49. WILLIAM MEED resides at 45 George Street, Manhasset, NY. He is employed as a New York State parole officer. He received a grade of 75.97 on the Exam.

50. CYNTHIA McKENNA-MERTZ resides at 84 Nassau Avenue, Plainview, NY. She has a master's in business administration. She received a grade of 78 on the Exam.

51. JOSEPH A. MONTILLI resides at 426 Cedarhurst Avenue, Cedarhurst, NY. He is a licensed plumber and owns a plumbing contracting business and is a volunteer fire chief in Cedarhurst, NY. He received a grade of 67 on the Exam.

52. JOHN W. MOISA resides at 11 Sandpiper Lane, Centereach, NY. He is a deputy sheriff in Suffolk County. He received a grade of 78.59 on the Exam.

53. PATRICIA A. NEILL resides at 4081 Eve Drive, Seaford, NY. She has an associate's degree and is currently studying for a bachelor's degree. She received a grade of less than 80 on the Exam.

54. ROBERT O'BRIEN resides at 2349 Beach Street, Bellmore, NY. He is a Nassau County Police ambulance technician. He has approximately 30 college credits. He received a grade of 79.6 on the Exam.

55. JOSEPH. PICINI, Jr. resides at 6 7th Avenue, Farmingdale, NY. He is a graphic artist. He received a grade of 79.89 on the Exam.

56. MICHAEL A. PIZZO resides at 62 Fenimore Street, Lynbrook, NY. He is a New York City Police Officer. He received a grade of less than 80 on the Exam.

57. ANDY RADOVIC resides in College Point, NY. He is employed in the United States Merchant Marine. He received a grade of 69 on the Exam.

58. MICHAEL REILLY resides at 16 Drum Court, Sayville, NY. He is employed as a computer technician at Computer Associates, one of the largest computer software companies in the world and he has a bachelor's degree. He received a grade of less than 80 on the Exam.

59. JUAN C. REQUEIRO resides at 2 Corbett Court, East Quogue, NY. He is employed as a Suffolk Deputy Sheriff. He received a grade of 79 on the Exam.

60. THOMAS R. RICE resides at 26 S. Bayles Avenue, Port Washington, NY. He is a New York City Police Officer. He received a grade of less than 80 on the Exam.

61. BARBARA RUGEN resides at 11 Wood Lane, Levittown, NY. She is employed by the Nassau County Police Department as a data processor. She received a grade of 69.2 on the Exam.

62. THOMAS J. RULE resides at 1901 Bly Rd., East Meadow, NY. He is employed as a stockbroker and has a bachelor's degree. He received a grade of 71.57 on the Exam.

63. STEVE SARBAK resides at 21 E. Orowoc Avenue, [slip, NY. He is the owner of a glass business and completed

two years of college. He received a grade of less than 80 on the Exam.

64. CHRISTINE SCHMUCKER resides at 98 Center Street, Williston Park, NY. She is a student at Hofstra University. She received a grade of 85 on the Exam.

65. ERIC E. SPERLING resides at 154 Pollock Place, Syosset, NY. He received a grade of less than 80 on the Exam.

66. KARA ANNE SPERLING resides at 154 Pollock Place, Syosset, NY. She received a grade of less than 80 on the Exam.

67. JENNIFER STIERLE resides at 137 Old Oak Lane, Levittown, NY. She is employed as a bank teller and holds a bachelor's degree. She received a grade of less than 70 on the Exam.

68. ERIK SULZBACH resides at 573 Central Avenue, Massapequa, NY. He holds a bachelor's degree. He received a grade of less than 80 on the Exam.

69. JAMIE SQUICIARINO resides at 428 Maple Street, West Hempstead, NY. He received a grade of 68 on the Exam.

70. DAVID TOMASINI resides at 12 Abbey Court, Plainview, NY. He is New York City Police Officer and has a bachelor's degree. He received a grade of 80.97 on the Exam.

71. LETTICE VEGA resides at 31 Hillside Avenue, Lynbrook, NY. She is employed as a secretary in the office of the Nassau County Police Commissioner. She received a grade of 72 on the Exam.

72. CHARLES WARD resides at 210 Harmony Drive, Massapequa Park, NY. He has an associate's degree in mechanical engineering. He received a grade of less than 70 on the Exam.

73. MICHAEL YASSO resides at 49-43 166 Street, Flushing, NY. He is employed as a police officer for the Long Island Railroad and has a bachelor's degree in police science. He received a grade of 70.43 on the Exam.

74. Defendant NASSAU COUNTY is a political subdivision of the State of New York, and at all relevant times, had its principal place of business at I West Street, Mineola, New York, within this district.

75. Defendant NASSAU COUNTY CIVIL SERVICE COMMISSION is a commission of Nassau County, with its principal office located at 140 Old Country Road, Mineola, NY, within this district.

76. Defendant NASSAU COUNTY POLICE DEPARTMENT is a part of the government of Nassau County, with its principal office located at 1490 Franklin Avenue, Mineola, NY, within this district.

77. Defendant THOMAS S. GULLOTTA ("Gullotta"), upon information and belief, maintains a regular place of business at I West Street, Mineola, NY, within this district. At all relevant times herein, Gullotta has been employed by Nassau County as its County Executive.

78. As County Executive, Gullotta had the power to make personnel decisions regarding employment of and qualifications for positions as police officers in the Nassau County Police Department. Gullotta has aided and abetted the unlawful conduct described herein.

79. Defendant KARL KAMPE is Executive Director of the Nassau County Civil Service Commission.

80. As Executive Director of the Nassau County Civil Service Commission, Karle Kampe had the power to make personnel decisions regarding the design, administration and scoring of the Exam, and the setting of qualifications for positions as police officers in the Nassau County Police Department. Karl Kampe has aided and abetted the unlawful conduct described herein.
81. Upon information and belief, Nassau County employed the person or persons who designed the Exam.
82. Upon information and belief, the Nassau County Civil Service Commission or its servants designed the Exam.
83. Nassau County and the Nassau County Civil Service Commission procured the Exam.
84. Upon information and belief, Nassau County and the Nassau County Civil Service Commission or their servants administered and scored the Exam.
85. Upon information and belief, the Nassau County Civil Service Commission or its servants determined the passing score for the Exam.
86. Upon information and belief, the Nassau County Police Department recruits candidates for the position of police officers for Nassau County.
87. Upon information and belief, the Nassau County Police Department or its servants determines the qualifications for candidates for police officers for Nassau County.
88. Defendant DONALD KANE is and has at all relevant times been the Commissioner of Police of Nassau County.
89. Upon information and belief, as Commissioner of Police, Defendant Donald Kane has had the power to make personnel decisions regarding the design, administration and scoring of the Exam, and the setting of qualifications for positions as police officers in the Nassau County Police Department.
90. Defendant Donald Kane has aided and abetted the unlawful conduct described herein.
91. At all relevant times herein, each of the defendants was an “employer” within the meaning of [42 U.S.C.A. §§ 2000e, et seq.](#)

FACTS

92. Each of the named Plaintiffs took Nassau County Civil Service Commission Open Competitive Examination No. 4200 for Police Officer in various police departments in Nassau County administered on July 30, July 31 or October 9, 1994 and each of them paid the non-refundable \$50.00 fee for the right to do so.
93. Upon information and belief, approximately 25,421 persons took the Exam on July 30, July 31 and October 9, 1994.
94. Upon information and belief, after the Exam was administered to the approximately 25,421 candidates who took the Exam, the approximately 25 components of the Exam were tested on a approximately 508 incumbent Nassau County police officers.

95. The Exam as administered consisted of 25 parts or units.
96. Each of the Plaintiffs took the 25 parts or units of the Exam.
97. None of the Plaintiffs was informed prior to taking the Exam that some of the 25 parts of the Exam would not be used in determining scores on the Exam.
98. Upon information and belief, all or most of the 25,421 persons who took the Exam were not informed prior to taking the Exam that some of the 25 parts of the Exam would not be used in determining scores on the Exam.
99. Upon information and belief, the Defendants or their servants graded each of the 25 parts of the Exam that were administered.
100. Upon information and belief, the Defendants or their servants decided after grading all 25 parts of the Exam not to use the scores on 16 of the 25 parts of the Exam for the purpose of ranking candidates.
101. Upon information and belief, the Defendants or their servants decided after the Exam was administered not to use the scores on 16 of the 25 parts of the Exam for the purpose of ranking candidates.
102. Upon information and belief, approximately 500 police officers will be appointed from the civil service eligibility list to be derived from the scores on the Exam.
103. Upon information and belief, the defendants estimate that approximately 5,650 candidates will be called from the civil service eligibility list to be derived from the scores on the Exam to be further evaluated and screened for police officer positions in Nassau County.
104. Upon information and belief, approximately the top 5,650 candidates on the civil service eligibility list to be derived from the scores on the Exam will have to have scored 80 or above on the Exam.
105. Upon information and belief, the job analysis performed by the Defendants or their servants showed that cognitive skills are important attributes for performing successfully as police officers.
106. Upon information and belief, the Defendants or their servants decided before the Exam was administered not to include certain cognitive tests which had been shown to be job related for the purpose of increasing the number of African-American candidates who would score 80 or above on the Exam.
107. Upon information and belief, the Defendants or their servants decided after the Exam was administered not to use 16 of the 25 parts of the Exam for determining scores solely or primarily for the purpose of benefitting one racial group.
108. Upon information and belief, Defendants or their servants decided to eliminate, rescore or adjust the scores of all of the cognitive parts of the Exam.
109. The elimination, rescoring or score adjustment of the cognitive parts of the Exam materially reduced the validity of the Exam.
110. Upon information and belief, Defendants or their servants decided to eliminate, or adjust the passing score of, all of the cognitive parts of the Exam solely or primarily for the purpose of increasing the number of African-American candidates who would score 80 or above on the Exam.

111. Upon information and belief, had Defendants or their servants used the cognitive parts of the Exam in a professionally supportable manner for the purpose of determining the overall scores of candidates, Plaintiffs would have achieved higher scores than they were given on the Exam.

112. Upon information and belief, Defendants or their servants intentionally miscalculated the validity of the Exam.

113. Upon information and belief, Defendants or their servants intentionally miscalculated the validity of the individual parts of the Exam.

114. Upon information and belief, Defendants or their servants miscalculated the validity of the Exam as a result of gross negligence.

115. Upon information and belief, Defendants or their servants miscalculated the validity of the individual parts of the Exam as a result of gross negligence.

116. Upon information and belief, the Defendants failed properly to compare the Exam with prior examinations used by Nassau County for the selection of police officers so as to ascertain whether the Exam was as valid as earlier examinations.

117. Upon information and belief, Defendants or their servants failed to make available basic data and results required by federal guidelines and necessary for independent observers to calculate the validity of the Exam.

118. Upon information and belief, Defendants or their servants failed to disclose to this Court all of the facts necessary to enable this Court to make a fair and independent evaluation of the validity of the Exam.

119. Upon information and belief, Defendants or their servants failed to disclose to this Court all of the facts necessary to enable this Court to make a fair and independent evaluation of the lawfulness of the Exam.

PROCEDURAL REQUIREMENTS

120. Plaintiffs have satisfied all procedural requirements prior to commencing this action. Each of the named plaintiffs filed a timely charge of race discrimination with the Equal Employment Opportunity Commission.

121. Each of the named plaintiffs, with the exception of Michael A. Cantwell, Thomas C. Kinirons, Patricia A. Neill and Michael Pizzo, has received a “right to sue letter” issued by the United States Department of Justice. Less than 90 days had elapsed between the time any of the plaintiffs received his or her “right to sue letter” and the commencement of this action.

122. Upon information and belief, “right to sue letters” for Michael A. Cantwell, Thomas C. Kinirons, Patricia A. Neill and Michael Pizzo have been or shortly will be issued.

CLASS ACTION ALLEGATIONS

123. Plaintiffs are representatives of a class as defined by [Rule 23 of the Federal Rules of Civil Procedure](#) and bring this action on behalf of themselves and other persons, other than African-Americans, who took the Exam, as described in paragraphs 92 and 93, and who scored below 80 on the Exam and would have scored 80 or above on the Exam had the Exam been fairly and properly designed and scored, and persons, other than African-Americans, who took the Exam, as described in paragraphs 92 and 93, and who scored 80 or above on the Exam and would have scored even

higher on the Exam had the Exam been fairly and properly designed and scored.

124. The class is comprised of six sub-classes. Sub-class A is comprised of white male persons who took the Exam and scored lower than 80, but who would have scored 80 or above had the Exam been fairly and properly designed and scored. Sub-class B is comprised of white male persons who took the Exam and scored higher than 80, but who would have achieved a higher score than each was actually given had the Exam been fairly and properly designed and scored. Sub-class C is comprised of white female persons who took the Exam and scored lower than 80, but who would have scored 80 or above had the Exam been fairly and properly designed and scored. Sub-class D is comprised of white female persons who took the Exam and scored higher than 80, but who would have achieved a higher score than each was actually given had the Exam been fairly and properly designed and scored. Sub-class E is comprised of Hispanic female persons who took the Exam and scored lower than 80, but who would have scored 80 or above had the Exam been fairly and properly designed and scored. Sub-class F is comprised of Hispanic male persons who took the Exam and scored lower than 80, but who would have scored 80 or above had the Exam been fairly and properly designed and scored.

125. The number of persons in the class, and in each sub-class is presently unknown, but, upon information and belief, is so numerous that joinder of all members of such sub-class is impracticable. The number of persons in the class and in each sub-class is, upon information and belief, ascertainable from documents or other records in the possession of the defendants. There are questions of law or fact common to the class and to each sub-class. The claims of the representative parties are typical of the claims of the class and each sub-class, and the representative plaintiffs will fairly and adequately protect the interests of the class and each sub-class.

126. Each class member has suffered injury due to defendants' failure, or the failure of defendants' servants, to design, administer and score the Exam in a race-neutral, technically valid and fair manner.

127. The prosecution of separate actions by individual members of the class and each sub-class would create the risk of

- (a) inconsistent or varying adjudications with respect to individual members of the class and each sub-class which would establish incompatible standards of conduct for the party opposing the class and each sub-class, or
- (b) adjudications with respect to individual members of the class and each sub-class which would as a practical matter be dispositive of the interest of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

128. In designing, administering and scoring the Exam, defendants have acted, will act or have refused to act on grounds generally applicable to the class and each sub-class, thereby making final injunctive relief or corresponding declaratory relief with respect to the class as a whole and to each sub-class appropriate.

129. The questions of law and fact common to the members predominate over any questions affecting only individual members and a class action is superior to other available means for the fair and efficient adjudication of the controversy.

FIRST CLAIM FOR RELIEF

[Denial of Equal Protection]

130. Plaintiffs repeat and reallege paragraphs I through 129 as if fully set forth hereat.

131. By designing, administering and scoring the Exam in a race-conscious way, with the intent of solely or primarily benefitting one racial group to the detriment of other racial or ethnic groups, Defendants have violated the rights of Plaintiffs and the Class to the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution

of the United States.

SECOND CLAIM FOR RELIEF

[Race Discrimination - Title VII]

132. Plaintiffs repeat and reallege paragraphs 1 through 129 as if fully set forth hereat.

133. Defendants are employers within the meaning of [42 U.S.C. § 2000e\(b\)](#).

134. Defendants have unlawfully failed or refused to hire Plaintiffs and members of the Class because of their race, color or national origin, in violation of [42 U.S.C. § 2000e-2\(a\)](#).

135. As a proximate result of Defendants' racial discrimination against Plaintiffs and the Class, Plaintiffs and members of the Class have suffered and continue to suffer substantial losses, including the loss of past and future earnings, bonuses, deferred compensation, and other employment benefits.

136. As a further proximate result of Defendants' actions, Plaintiffs and members of the Class have suffered and continue to suffer impairment and damage to plaintiffs' good names and reputations.

137. As a further proximate result of Defendants' actions, Plaintiffs and members of the Class have suffered and continue to suffer severe and lasting embarrassment, humiliation and anguish, and other incidental and consequential damages and expenses.

THIRD CLAIM FOR RELIEF

[Violation of [42 U.S.C. § 2000e-2\(1\)](#)]

138. Plaintiffs repeat and reallege paragraphs I through 129 as if fully set forth hereat.

139. Upon information and belief, Defendants and their servants by designing, administering and scoring the Exam as aforesaid, unlawfully adjusted the scores of or otherwise altered the results of an employment related test on the basis of race.

140. Upon information and belief, Defendants and their servants by designing, administering and scoring the Exam as aforesaid violated §106 of the Civil Rights Act of 1991, [Pub. L. 102-166](#), [42 U.S.C. §2000e-2\(1\)](#).

FOURTH CLAIM FOR RELIEF

[Racial Discrimination -- New York State Human Rights Law]

141. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 129 as if fully set forth herein.

142. Defendants' disparate treatment of Plaintiffs and members of the Class was in violation of the New York State Human Rights Law, N.Y. Exec. L. §296(1)(a).

143. As a result of the foregoing, Plaintiffs have been denied employment; have lost wages, benefits, promotional opportunities, and bonuses; have suffered mental anguish, emotional distress and loss of enjoyment of life; and have

incurred damages thereby.

FIFTH CLAIM FOR RELIEF

[Violation of New York State Law Requiring Merit Hiring]

144. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 129 as if fully set forth herein.

145. Upon information and belief, the position of County or Village police officer in Nassau County is a competitive class position, and permanent appointment to that position must be from an “eligible list.”

146. The appointment of candidates based on the eligible list generated from the Exam would not be according to merit, and thus in violation of [Article V, § 6 of the State Constitution](#), which requires appointments in the civil service to be made, and fitness to be ascertained by competitive examination.

147. The appointment of candidates based on the eligible list generated from the Exam would not be according to merit, and thus in violation of [section 61 of the New York Civil Service Law](#) which requires all permanent appointments to be made from three persons certified as standing highest on an eligible list.

JURY DEMAND

148. Plaintiffs demand a jury of six persons for all claims stated herein.

PRAYER FOR RELIEF

WHEREFORE, each of the plaintiffs pray that this Court grant judgment to him or her providing the following relief:

1. A declaration that defendants' actions in utilizing a racially motivated discriminatory examination for police officers were in violation of plaintiffs' rights under the Fifth and Fourteenth Amendments to the United States Constitution.

2. A declaration that defendants' actions in utilizing a racially motivated discriminatory examination for police officers were in violation of plaintiffs' rights under the Civil Rights Act of 1866, as amended.

3. A declaration that defendants' actions in utilizing a racially motivated discriminatory examination for police officers were in violation of plaintiffs' rights under the Civil Rights Act of 1964, as amended.

4. A declaration that defendants' actions in utilizing a racially motivated discriminatory examination for police officers were in violation of plaintiffs' rights under the New York Executive Law;

5. A declaration that defendants' actions in utilizing a racially motivated and discriminatory examination for police officers was in violation of the rights of plaintiffs and the class under [Article V, §6 of the New York State Constitution](#) and [New York Civil Service Law §61](#).

6. Issuance of an order enjoining defendants from engaging in the wrongful practices alleged herein and from continuing or maintaining the policy, practice and/or custom of denying employment and the benefits of employment to persons on the basis of race;

7. Issuance of an order enjoining defendants promptly to administer and grade a validated job-related examination for

police officer, and hire from a civil service list of eligibles based upon such job-related examination;

8. Issuance of an order enjoining the defendants from hiring any person from a civil service list created on the basis of the scores previously awarded to candidates on the Exam.

9. Issuance of an order requiring the defendants to hire those plaintiffs whose scores place them within the group who would be called for further processing as police officers but for defendants' illegal conduct and who were otherwise eligible to serve as police officers in Nassau County, with full seniority, status, salary increments, bonuses and benefits, to the extent that each of them would have received but for defendants' unlawful conduct;

10. An award to each of the plaintiffs of actual damages in an amount not less than \$1,000,000.00, the precise amount to be determined at trial, for loss of wages, benefits, and promotional opportunities, including an award of front pay, compensating those plaintiffs who would have been hired as police officers in Nassau County but for defendants' illegal conduct for loss of future salary and benefits;

11. An award of damages in an amount not less than \$1,000,000.00, the precise amount to be determined at trial to compensate each of the plaintiffs for mental anguish, humiliation, embarrassment, and emotional injury.

12. Interest on all amounts due;

13. An award of reasonable attorneys' fees and the costs of this action; and

14. Such other and further relief as this Court may deem just and proper.

William HAYDEN, Rosemarie Albrecht, Christopher J. Barrella, Edward Bauer, III, Diane J. Bartscherer, Keith Bergersen, Michael A. Cantwell, Jr., Eric Christopherson, Christopher T. Crowley, Thomas Cumming, James F. Davolio, Peter J. Descovich, Stace Domagala, Jeremy Eill, Alan Foppiano, Patrick Hack, Maureen Halbohn, Diane Harnisher, Michael Hefferon, Michael Hefner, Carl M. Hetzel, Christopher T. Hirsch, Anthony Hoffman, Robert R. Howell, Kevin Hunt, Daniel

1997 WL 33789573 (E.D.N.Y.) (Trial Pleading)

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