

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

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UNITED PROBATION OFFICERS	:	
ASSOCIATION, individually and on behalf of its	:	
members, JEAN BROWN, TANGA JOHNSON,	:	
TARA SMITH, EMMA STOVALL, and CATHY	:	
WASHINGTON, on behalf of themselves and all	:	CLASS ACTION COMPLAINT
other similarly-situated individuals,	:	
	:	
Plaintiffs,	:	Case No. 21-cv-218
-against-	:	
	:	JURY DEMAND ON ALL COUNTS
	:	
CITY OF NEW YORK and NEW YORK CITY	:	
DEPARTMENT OF PROBATION,	:	
	:	
Defendants.	:	
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Plaintiffs, by their attorneys, The Kurland Group, having offices at 85 Broad St.,
 28th Floor, New York, NY 10004, complaining of the Defendants, allege as follows:

NATURE OF ACTION

1. Plaintiffs United Probation Officers Association (“UPOA”),
 individually and on behalf of its members, Jean Brown, Tanga Johnson, Tara Smith, Emma
 Stovall, and Cathy Washington, on behalf of themselves and all other similarly-situated
 individuals, (collectively, the “Named Plaintiffs” or “Plaintiffs”) bring this action against
 Defendants City of New York (“City”) and New York City Department of Probation
 (“DOP”) (collectively, “Defendants”) to secure injunctive and monetary relief from
 discrimination on the basis of sex, gender, and/or race based on Defendants’ employment
 practices.

2. Plaintiffs allege that Defendants, through their acts and omissions, caused discriminatory treatment and impact against them and members of the class they represent by engaging in discriminatory employment practices including but not limited to disparate employment opportunities including promotions, suppression of wages in a segregated workforce, and discriminatory hiring and compensation practices in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000, *et seq.*, the New York State Human Rights Law (“NYSHRL”), New York Executive Law §§ 290, *et seq.*, the New York City Human Rights Law (“NYCHRL”), Administrative Code of the City of New York §§ 8-101, *et seq.*, the Civil Rights Act of 1871, 42 U.S.C. §1981, *et seq.* (“§1981”), and Civil Rights Act of 1871, 42 U.S.C. §1983, *et seq.* (“§1983”).

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over Plaintiffs’ federal claims pursuant to 42 U.S.C. §2000, 28 U.S.C. §1331, 42 U.S.C. §206, 42 U.S.C. §1981, and 42 U.S.C. §1983.

4. This Court may exercise supplemental jurisdiction over Plaintiffs’ remaining state and local law claims pursuant to 28 U.S.C. §1367.

5. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)(1)(2), as Defendants’ principal place of business is in this District and the events giving rise to Plaintiffs’ claims occurred in this District.

JURY DEMAND

6. Plaintiffs demand a trial by jury in this action on each and every one of their claims.

PLAINTIFFS

7. Plaintiff UPOA represents more than 800 Probation Officer Trainees, Probation Officers, and Supervising Probation Officers employed by Defendants and more than 400 former Probation Officer Trainees, Probation Officers, and Supervising Probation Officers (hereinafter referred to as “Probation Officers”) with offices at 2510 Westchester Avenue, Suite 207, Bronx, NY 10461.

8. Plaintiff Jean Brown is an African-American woman who has been employed by the City of New York since 1993 as a Probation Officer in DOP.

9. Plaintiff Tanga Johnson is an African-American woman who was employed by the City of New York beginning in 1983, and as a Supervising Probation Officer in DOP from 1992 until 2019, when she retired.

10. Plaintiff Tara Smith is an African-American woman who has been employed by the City of New York since 2001, and as a Probation Officer in DOP since 2015.

11. Plaintiff Emma Stovall is a Hispanic woman who has been employed by the City of New York in DOP since 2001, and as a Supervising Probation Officer since 2007.

12. Plaintiff Cathy Washington is an African-American woman who has been employed by the City of New York since 1990, and as a Probation Officer in DOP since 1999.

DEFENDANTS

13. Defendant City of New York is a municipality duly incorporated under the laws of the State of New York and maintains its principal place of business at 260

Broadway, New York, New York 10007. The City has at all times relevant to this action been an employer within the definition of Title VII. The City is a “person” for purposes of 42 U.S.C. §1983.

14. Defendant New York City Department of Probation is an agency of the City of New York. DOP’s work includes “community corrections, working within the criminal and juvenile justice systems and in the community to create a safer New York.”¹ DOP’s work is a combination “of enforcement, structure, treatment and support, [to] hold people on probation accountable and give them ...a stage of opportunity within the justice system.”² DOP maintains its principal place of business at 33 Beaver Street, New York, New York 10004.

PROCEDURAL BACKGROUND

15. On June 7, 2019, UPOA filed a Charge of Discrimination individually and on behalf of its members and similarly-situated individuals with the Equal Employment Opportunity Commission (“EEOC”), alleging violations by their employer, Defendants herein, of federal, state, and local law, including but not limited to Title VII, the NYSHRL, the NYCHRL §1981, and §1983.

16. On or around October 15, 2020, after more than 180 days had elapsed since Plaintiffs filed their Charge of Discrimination with the EEOC, the U.S. Department of Justice issued a Notice of Right to Sue, annexed hereto as **Exhibit A**.

17. Any and all other prerequisites to the filing of this suit have been met.

¹ “About Probation,” available online at <https://www1.nyc.gov/site/probation/about/about-department-of-probation.page> (last visited January 11, 2021).

² Id.

FACTUAL BACKGROUND

18. Probation Officer's work in the DOP serves a vital role in law enforcement and public safety for the City of New York. The work is demanding, high risk and requires significant skill, knowledge and ability. Probation Officers are firearm trained peace officers who perform a host of services that range from law enforcement to social work.

19. Yet Plaintiffs assert the Defendants have failed to properly discharge their obligation to ensure that the employment practices in DOP have been non-discriminatory.

20. In addition, as the demographics in the positions of Probation Officers has become more female and non-white Defendants have undervalued and changed the terms of employment of Probation Officers in violation of federal state and local non-discrimination laws.

21. By way of background, Probation Officers were historically primarily white and male. However, over the past several decades these demographics have changed such that presently Probation Officers are over 90% non-white and 80% female.

22. Upon information and belief, in or around 1985, Probation Officers were only about 15% non-white and 25% female. These demographics began changing in the early 1990's so that in and around 1992 to 1994 Probation Officers were approximately 40% non-white and 35% female. By the early 2000's, these numbers had grown such that Plaintiffs estimate Probation Officers were approximately 70% non-white and 65% female. By approximately 2010 Plaintiffs assert that Probation Officers were over 80% non-white and over 70% female. Today Probation Officers are overwhelming and almost exclusively

non-white and female.

23. In and around the same time these demographic changes began Defendants began engaging in policies and practices which led to the reduction of the compensation including salaries and benefits of Probation Officers. This process has continued under Defendants motto of “do more with less.” This objective included requiring predominately of color and female Probation Officers to take on overwhelmingly more work, with less support and less pay.

24. However, while Probation Officers were underpaid and lost benefits, others within DOP were discretionarily hired and paid substantially more.

25. Prior to these demographic changes, the salary ranges and benefits more appropriately reflected the value of the job. However, as the numbers of non-white and female Probation Officers increased, Defendants began to suppress salaries while simultaneously increasing the requirements of the job.

26. In specific, while there is a range of salary for Probation Officers, the DOP routinely hired Probation Officers, and specifically non-white and female Probation Officers at the lowest rate of salary and suppressed their salaries to the most minimum amount allowable over the duration of their employment.

27. While suppressing to the most minimum the rate of compensation for the predominately of color and female Probation Officers, the DOP uses substantial resources to pay at higher rates upper-level employees and employees who are in titles in the DOP that are more white and male.

28. The DOP also disproportionately promotes white and male Probation Officers and other DOP employees.

29. In addition, the DOP engages in a process where it creates positions for which it hires outside individuals without promoting internally Probation Officers. These outside hires tend to be more white and male and are again paid at higher rates than Probation Officers.

30. Further, the DOP does not offer promotional opportunities for Probation Officers or advertise when there are openings for positions that pay higher rates within the DOP to let Probation Officers know of these opportunities.

31. In fact, rather than allow promotional and other employment opportunities to Probation Officers, Defendants have attempted to eliminate one of the positions that would allow upward mobility and the chance for higher pay, namely the title of Senior Probation Officer (*See Probation Officers Agreement, attached hereto as **Exhibit B***).

32. When current and past pay rates for Probation Officers are analyzed comparing the difference before and after the demographic changes, it shows that Defendants have engaged in a pattern and/or practice of wage suppression of Probation Officers, along with disparate promotional and other employment practices that have adversely impacted women and people of color employed in the DOP. (*See Precision Analytics Report, attached hereto as **Exhibit C***).

33. These changes in employment practices referenced in paragraph 25 of this complaint include, but are not limited to, significant increases in administrative work and casework for Probation Officers without commensurate increase in pay.

34. By way of example, when Probation Officers were predominantly white and male, significant administrative support was provided to Probation Officers. This

administrative support was eliminated once Probation Officers were no longer predominately white and male, causing Probation Officers to have to take on these responsibilities, again without proper compensation.

35. In addition, with the change in demographics, the step increases for Probation Officers that provide increases in pay were also decreased, thereby further diminishing and keeping non-white and female Probation Officers at a lower threshold of payment.

36. This underpayment has caused exponential hardship over time for Probation Officers who struggle to cover costs of living while completing the work of a Probation Officer which includes risking their lives in the line of duty for the City of New York.

37. The underpayment and other discriminatory employment practices of Defendants have also caused a significantly high rate of turnover in employment of Probation Officers. Rather than correct this discriminatory treatment and underpayment, Defendants instead then require that the remaining Probation Officers cover the workload of the Probation Officers who have left, without additional pay or even allowing payment of overtime to complete this work. This causes further hardship by placing additional responsibilities on the remaining Probation Officer without additional pay. In fact, Defendants even require the remaining Probation Officers to then train the new Probation Officers once they finally hire them, again without additional compensation.

38. As a result of Defendants refusing to employ or promote Probation Officers to the Senior Probation Officer position, Plaintiffs are unfairly denied the opportunity to advance in their career. The elimination of one of just a few positions

available to Plaintiffs in their career ladder closes the door on an opportunity to increase their pay and the promotion into a senior position. In fact, Defendants' decision to eliminate one of only two senior positions available to Plaintiffs, furthers the reality of Plaintiffs being stuck in the lowest levels in their profession with the smallest salary possible and helps effectuate Defendants' wage suppression.

39. Moreover, the few who are able to climb the career ladder to Supervising Probation Officer now are, at a higher rate, white and male.

40. Opportunities for paid overtime have also become limited in DOP, which is a stark contrast to DOP's policies and practice when the agency was predominantly white and male. Moreover, while payment of overtime has been greatly reduced, work that requires overtime has been greatly increased.

41. Defendants simultaneously overwhelm Probation Officers with more work than they can complete in a regular work schedule while denying overtime or making it impossible to get permission for overtime in time to be paid overtime for this work.

42. While there are limited opportunities for paid overtime, Probation Officers are routinely expected to take on additional work, which compels them to work longer hours, without receiving additional pay for working more hours.

43. In addition, as the demographics of the DOP changed, Defendants began taking away resources, support and compensation while increasing risk and responsibility.

44. By way of example, Probation Officers are now required to execute their own warrants, and perform their own arrests without sufficient training or police assistance. When Probation Officers were predominately white and male, this work was delegated to one specific unit who received assistance from the NYPD to complete this work. Despite

now being required to perform this dangerous work, which normally NYPD and other uniform officers perform, Probation Officers are not paid commensurate others who perform this same work and received no increase in pay when these responsibilities were added to their job duties.

45. Moreover, while Plaintiffs regularly encounter dangerous situations on the job, during which they can and do get seriously injured, they do not receive Hazard Pay or unlimited sick time, as others in uniform service who perform this work do.

46. Probation Officers provides services for almost all individuals who are arrested in the City of New York, including those who have committed the most dangerous and/or violent offenses. Probation Officers conduct investigations, in which they interview the defendant/respondent, victim, families, and other members of the community, and produce reports which are then utilized, if necessary, for sentencing and/or supervision if the individual is placed on probation. DOP has evolved such that there are now at least 12 units covering every facet of a defendant/respondent's case, including those of adults and youth, in family court and criminal court, with a focus on rehabilitation. Probation Officers are critical in providing alternatives to incarceration as they provide the services and supervision necessary to give those involved in the criminal justice system a second chance to rehabilitate, correct behavior, prevent recidivism, and ensure accountability and public safety. DOP is a field-based agency in which Probation Officers are required to conduct continuous home visits and have regular contact with individuals who have been convicted or adjudicated of serious crimes, including homicide, murder, sex offenses, and other high risk offenders. Probation Officers also regularly work with NYPD, as well as the U.S. Marshall's Office, the Drug Enforcement Agency, U.S. Immigration and Customs

Enforcement and other federal, state, and local law enforcement agencies. Yet despite the high demands, high risk and high level of ability and knowledge necessary to perform this work they are paid significantly less than other professionals involved in these areas of law enforcement.

47. Probation Officers are now expected to perform increasingly diverse tasks, maintain significantly larger caseloads and/or more work for that caseload, and complete more administrative tasks, take on more law enforcement responsibilities without assistance, all without receiving salaries commensurate with their workloads or their qualifications and paid less than others in the DOP who have less responsibility, less risk and require less knowledge skill and training.

48. When Probation Officers were more white and male they were compensated additionally for increases in their caseload work, and given meritorious salary increases.

49. Furthermore, the discretion in pay within the DOP which results in other more white and male titles and other employees being paid more than Probation Officers and given more employment opportunities than Probation Officers exists in part because the City has failed to properly discharge its obligation to “ensure that appointments and promotions in city service are made, and that wages are set...without unlawful discrimination based on sex, race, color, religion, religious observance, national origin, disability, age, marital status, citizenship status or sexual orientation,” as explained in the New York City Charter. N.Y.C. Charter Ch. 35, §812.

50. The City maintains a Department of Citywide Administrative Service (“DCAS”) for the purpose of discharging its duties to be “responsible for citywide

personnel matters,” Id. at §811, including but not limited to “Establish[ing] and enforce[ing] uniform procedures and standards to be utilized by city agencies in establishing measures, programs and plans to ensure a fair and effective affirmative employment plan for equal employment opportunities for minority group members and women who are employed by, or who seek employment with, city agencies,” Id. at §814.1.

51. The City through DCAS has failed to properly execute these duties mandated by the City’s charter, instead delegating their authority to make these decisions regarding hiring and compensation to DOP (and other City agencies) without the proper oversight or regulations in place to ensure non-discriminatory employment practices for Probation Officers.

52. Upon information and belief, DOP is given significant discretion to determine who they will hire as Probation Officers and otherwise without proper oversight accountability and/or supervision. As a result, the compensation and opportunities of these employees occurs in a way that adversely impacts Probation Officers and women and non-white DOP employees.

53. DOP is permitted to make these decisions in a discretionary manner and this discretion lacks transparency and allows for disparate pay and discriminatory employment practices in violation of Plaintiffs’ and class member’s statutory rights.

54. Upon information and belief, the salaries of Probation Officers are significantly lower than those of other titles within the DOP that have more white and male employees. Even when the skill knowledge and ability required for these positions is lesser than that of Probation Officers, titles which are more white and male are paid more. By way of example, Administrative Staff Analysts employed by the DOP, who are

predominantly white and male, are paid significantly more than Probation Officers.

55. This pay disparity exists despite the fact that Probation Officers have more extensive job duties, and their job is more demanding and higher risk. Furthermore, Probation Officers are required to hold a bachelor's degree (many hold master's degrees).

56. Despite these requirements and the skills, knowledge, and ability which the job demands, Defendants have suppressed the salaries of Probation Officers who are paid less than reasonable, including less than other titles in DOP, even titles with less responsibilities, which are more white and male.

57. Specifically, according to preliminary analysis by Plaintiffs' expert statistician, half of Probation Officers make less than \$55,000 per year, and none are paid the maximum salary for the title. (*See* Precision Analytics Report, attached hereto as **Exhibit C**).

58. In addition, while purporting to offer a "range" for the salary when advertising Probation Officer positions, in reality Defendants have suppressed Probation Officers' salaries so that they stay at the lowest end of the salary range throughout their employment, and have no real hope of being paid the range advertised, as illustrated by the experiences of the Named Plaintiffs and expert analysis.

59. Even within the title of Probation Officer, Plaintiffs experience discriminatory pay practices. Specifically, Probation Officers who are female and non-white are paid less than their white and male counterparts in the same titles, despite the fact that they are performing the same or substantially the same work. They are also given less employment opportunities such as promotions, pay increases and career opportunities.

60. This was confirmed by the then-New York City Public Advocate's

recent report, which found that, as of 2017, men in the DOP earn, on average, nearly \$5,000 more than women. *See Exhibit D*, Tipping the Scales: Wage and Hiring Inequity in New York City Agencies). Even among recent hires, male Probation Officers earned, on average, over \$2,500 more than female Probation Officers, and the average salary increase from 2014-2017 was nearly \$1,000 higher for men than for women in the DOP. *See Id.*

61. Further, Plaintiffs' expert's initial analysis of Probation Officers' salaries found that this problem has only gotten worse despite Defendants' knowledge of these disparities. As illustrated in the attached initial report by Precision Analytics, white men are paid, on average, more than \$14,500 more than women of color working as Probation Officers. *See Exhibit C*.

62. In addition, and in further violation of Defendants' extensive obligations to ensure equal employment opportunities and to prevent discriminatory employment policies or practices, Plaintiffs have no opportunity to advance up the pay scale, leaving Probation Officers hovering at the lowest levels of pay in the DOP.

63. In fact, Probation Officers earn pay that often puts these civil servants who place themselves in harms' way to perform critical law enforcement work for the City of New York in a position where they are earning an income that puts them in near poverty.

64. Due to the pay structure maintained by Defendants, even Probation Officers who have worked at DOP for over ten (10), twenty (20) or even thirty (30) years have difficulty reaching the maximum salary for their position and the overwhelming majority of these employees never do.

65. Initial statistical analysis by Plaintiffs' expert illustrates that, for those discretionary promotions that do occur, white men are promoted at statistically significant

higher rates than women and/or non-white employees, and these promotions are not commensurate with time in title, education, experience, or other merit-based qualifications. *See Exhibit C*. In fact, this statistical analysis shows that “white males with the exact same tenure at and exact same education level as their counterparts of other races and/or gender are almost twice as likely to become supervising probation officers.” **Exhibit C**, p. 4).

66. Plaintiffs assert that the disparities described herein are the result of discriminatory employment practices including but not limited to disparate employment opportunities including promotions, suppression of wages in a segregated workforce, and discriminatory hiring and compensation practices which have adversely impacted women and people of color.

67. Upon information and belief, Defendants have continued these practices that have adversely impacted women and people of color, despite the fact that they violate their own obligations under the New York City Charter, and despite the fact that they had knowledge of the disparate impacts and despite being given opportunities to correct them³.

68. As a result of the foregoing, current and former Probation Officers have been subjected to a pattern and/or practice of discrimination in the terms, conditions, benefits, and privileges of their employment by Defendants based upon the sex, gender, and/or race of the individual members.

³ In addition to investigative reports, such as the report of then-Public Advocate Letitia James cited herein, the City has also been the subject of numerous complaints of employment discrimination, including but not limited to repeated class actions. *See, e.g., Latino Officers Ass’n City of New York, Inc. v. City of New York*, No. 99-cv-9568 (LAK) (S.D.N.Y. 2000); *U.S. v. City of New York*, No. 07-cv-2067 (NGG)(RLM) (E.D.N.Y. 2007); *Hill v. City of New York*, No. 13-cv-6147(PKC)(JO) (E.D.N.Y. 2013); *Miller v. City of New York*, No. 15-cv-7563 (WHP) (S.D.N.Y. 2015); *Richardson v. City of New York*, No. 17-cv-9447 (JPO) (S.D.N.Y. 2017); *Local 1180, Communications Workers of America, AFL-CIO v. City of New York*, No. 17-cv-3048 (LGS) (S.D.N.Y. 2017); *Local 3621, EMS Officers Union, DC-37, AFSCME, AFL-CIO v. City of New York*, No. 18-cv-4476 (LJL)(SLC) (S.D.N.Y. 2018); *Pinto v. NYPD et al.*, 20-cv-10154 (CM) (SDNY 2020).

69. Accordingly, Defendants have limited, segregated, and/or classified Probation Officers in a manner that has deprived them of employment opportunities and/or otherwise adversely affected their status as employees, because of their sex, gender and/or race in violation of Title VII, the NYSHRL, the NYCHRL, §1981, and §1983.

REPRESENTATIVE PLAINTIFFS

70. Plaintiff Jean Brown is an African-American woman who earned a bachelor's degree in 1982 and has been employed by the City of New York since 1993, first as a Probation Officer Trainee and then as a Probation Officer in DOP. Ms. Brown is currently stationed in the Staten Island ACE (Anyone Can Excel) Unit, which is a specialized unit that focuses on clients age 16-24, who are at the highest risk of re-arrest, recidivism, and gun violence. She is typically responsible for no less than 45 cases at any given time, often more, and the number of cases for which she was responsible has been upwards of 70 because she was required to take over cases from 3 probation officers who left and were not immediately replaced. She supervises many clients with significant mental health issues, many of whom have been accused of violent crimes. Even during the COVID-19 pandemic, she is required to go out in the field, visit homes, and at times make arrests. Her base salary is currently approximately \$68,000 after 28 years as a Probation Officer.

71. Plaintiff Tanga Johnson is an African-American woman who earned a bachelor's degree in 1981, was then employed by the City of New York beginning in 1983, and as a Supervising Probation Officer in DOP from 1992 until 2019, when she retired. At the time she retired, she was stationed at Evening Intake located at the Crossroads Juvenile Detention Center in Brooklyn, prior to which she worked at Evening Intake located at

Horizons Juvenile Detention Center in the Bronx. When Ms. Johnson began working as a Probation Officer in 1985, most of the Probation Officers in DOP were white men and meritorious salary increases were common in DOP. Over the past 36 years, however, as the demographics of DOP have changed to include more people of color and more women, workloads increased dramatically along with the responsibilities of the job, and yet Ms. Johnson's salary did not increase commensurate with these changes, she did not receive meritorious salary increases, and she never reached the maximum salary for the title. In 2007, Ms. Johnson interviewed for, and received, the title of Assistant Director, which required significant additional work, for which she was promised additional pay, however she never received this pay. At the time Ms. Johnson retired, her base salary was approximately \$81,000 after 26 years as a supervisor, and 36 years of total service.

72. Plaintiff Tara Smith is an African-American woman who has been employed by the City of New York since 2001, and as a Probation Officer in DOP since 2015. She earned a bachelor's degree in 2001 and a master's degree in 2009. Ms. Smith is currently stationed in the Brooklyn ACE (Anyone Can Excel) Unit, which is a specialized unit that focuses on clients age 16-24, who are at the highest risk of re-arrest, recidivism, and gun violence. She supervises many clients with significant mental health issues, many of whom have been arrested numerous times and accused of violent crimes. Her work includes regular in-home visits and continuous contact with clients, and their families and communities, in order to assess risks, address counterproductive behavior, and improve decision-making. Her base salary is currently approximately \$54,000.

73. Plaintiff Emma Stovall is a Hispanic woman who has been employed by the City of New York in DOP since 2001, and as a Supervising Probation Officer since

2007. Before working for the City, she earned a bachelor's degree in 1993 and many years of casework experience with Safe Horizons and well as work in the foster care system. She is currently stationed in the Engagement and Monitoring Unit, which covers cases in Manhattan and the Bronx. She supervises 6 Probation Officers, and is required to maintain close contact with clients, including home visits, supervising ankle bracelets and other electronic equipment, as well as monitoring and rapid response cases such as violent felonies after or during probation. Prior to this assignment, Ms. Stovall worked for 6 years in the Harlem Neighborhood Opportunity Network (NeON) Unit, where for a period of time she supervised 10 Probation Officers, including upwards of 1,000 cases, in addition to many other tasks. She also often needs to cover prior Probation Officers' cases and train new Probation Officers because there is a significant amount of turnover in DOP. Ms. Stovall also assists Probation Officers in the field in hostile situations, which led to the break of one of her spinal disks in 2008 when an emotionally disturbed person resisted arrest and various officers were injured. Ms. Stovall's injury required surgery to remove the broken disk, which was stabbing her sciatic nerve. Her base salary is currently approximate \$77,000 after working in DOP for two decades, and as a Supervising Probation Officer for 14 years.

74. Plaintiff Cathy Washington is an African-American woman who has been employed by the City of New York since 1990, and as a Probation Officer in DOP since 1999. Prior to working for the City, she earned a bachelor's degree in 1987. Ms. Washington is current stationed in the Bronx Adult Sex Offenders Unit, in which she is typically responsible for no less than 50 cases at any given time, often more. She is required to visit each client's home 2 times per month, check phones and computers for

illicit pictures, verify employment, program assignments, and drug and/or mental health treatment regularly. Over the past 22 years, her workload has increased dramatically along with the responsibilities of her job in DOP, however her salary has not increased commensurate with these changes. Her base salary is currently approximately \$60,000 after 22 years as a Probation Officer.

FRCP RULE 23 CLASS ACTION ALLEGATIONS

75. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure (“FRCP”) on behalf of themselves and all others similarly situated.

76. The proposed class is defined as:

All people employed by the City of New York and its Department of Probation in the titles of Probation Officer Trainee, Probation Officer, or Supervising Probation Officer (defined as “Probation Officers”) as of the commencement of this action and at any time during the preceding three-year period.

77. The essential job duties of the Class is the same or substantially similar to Plaintiffs, and the Class is paid in the same manner and pursuant to the same policies and practices as Plaintiffs.

78. Plaintiffs have standing to seek the relief sought as stated herein, as all Class Representatives are members of the Class they seek to represent and have been harmed by Defendants’ unlawful practices and policies. The Class Representatives seek to secure relief applicable to themselves and the similarly situated Class members. Such relief is properly sought in a class action as much of the necessary relief addresses systemic issues of unequal pay and discriminatory policies and practices that have harmed all Class members and all those who will become Class members.

79. Numerosity is satisfied pursuant to FRCP 23(a)(1), as the Class is so numerous that joinder is impracticable. The estimated Class size is more than 1,000 and Defendants have the ability and control to ascertain an exact class size.

80. Plaintiffs and the Class have been subject to the same unlawful policies and practices of Defendants, including discriminatory pay practices, suppression of wages, and denial of employment opportunities. All of these consequences result in qualified non-white and female employees facing discriminatory barriers to equal pay, employment opportunities and career advancement.

81. During the time in question, Defendants were fully aware of the discriminatory effects of their unlawful employment practices complained of herein. Defendants have thus intentionally discriminated against Plaintiffs and the Class they represent by continuing to maintain policies that discriminate against female and non-white employees.

82. Due to Defendants' conduct described and alleged herein, Defendants violated federal, state, and local laws knowingly, negligently, and without a good faith basis, causing pecuniary and emotional damages to Plaintiffs and the Class, the full extent of which are not yet known.

83. Defendants are liable to Plaintiffs and the Class for these violations for monetary damages, including back pay, front pay, and compensatory damages, as well as equitable relief, including injunctive and affirmative relief. All relief sought is applicable to the Class as a whole.

84. Certification of the Class's claims as a class action is the most efficient and economic means of resolving the questions of law and fact common to Plaintiffs'

claims and Class claims. Failure to proceed as a class action would result in an impracticable number of individual suits seeking to resolve the same claims with the same evidence. Proceeding on an individual basis would further pose an unnecessary risk of inconsistent adjudications. Additionally, individual Class members face a high threat of being financially unable or unwilling out of fear of retaliation to seek vindication of their statutory rights through individual claims.

85. The Named Plaintiffs, all of whom either are or were employed as Probation Officer Trainees, Probation Officers, or Supervising Probation Officers, raise claims typical of the claims of the classes that they seek to represent. Class Representatives pursue the same factual and legal theories as the class they seek to represent, and seek similar relief.

86. Defendants have been and continue to be engaged in a pattern and practice of discrimination against Plaintiffs, intentionally and unintentionally, on the basis of race, sex and/or gender by engaging in discriminatory employment practices including but not limited to disparate employment opportunities including promotions, suppression of wages in a segregated workforce, and discriminatory hiring and compensation practices which have adversely impacted women and people of color. Defendants' acts and omissions have harmed and affected the Class Representatives and the Class members in substantially the same or similar ways.

87. Defendants have failed to redress or seek to mitigate the known unlawful consequences of these policies and practices. Class Representatives and Class members have been harmed by these failures in substantially the same or similar ways.

88. Class Representatives and Class members all seek the relief described

herein.

89. Plaintiffs' claims raise questions of law that are common to the Class including:

- a. Appropriate standards for proving a pattern and practice of discrimination against female and non-white Probation Officers on both disparate treatment and disparate impact theories of liability;
- b. Whether Defendants have engaged in unlawful, systemic discrimination on the basis of race and gender through its employment policies, practices, and procedures;
- c. Whether Defendants failed to mitigate or cure a known problem of discrimination against Probation Officers;

90. Plaintiffs' claims raise common questions of fact including:

- a. Whether Defendants' employment policies and practices has caused disparate treatment of employees in the titles of Probation Officer Trainee, Probation Officer, and Supervising Probation Officer;
- b. Whether Defendants' employment policies and practices has caused disparate impact to employees in the titles of Probation Officer Trainee, Probation Officer, and Supervising Probation Officer;
- c. Whether Defendants engaged in discriminatory employment practices including but not limited to

disparate employment opportunities including promotions, suppression of wages in a segregated workforce, and discriminatory hiring and compensation practices which have adversely impacted women and people of color.

91. Plaintiffs seek relief common to the class, namely, monetary relief, including back pay, front pay, and compensatory damages, as well as equitable relief, including injunctive and affirmative relief.

92. Plaintiffs will fairly and adequately represent and protect the interests of the classes. The interests of the Class Representatives are coextensive with the interests of the members of the proposed Class. Class Representatives seek to remedy Defendants' discriminatory employment practices, policies, and procedures so as to remedy disparate employment opportunities including promotions, suppression of wages in a segregated workforce, and discriminatory hiring and compensation practices which have adversely impacted women and people of color, and secure equitable prospective relief so that Probation Officers will no longer face disparate treatment, all of which harm the titles of Probation Officer Trainee, Probation Officer, and Supervising Probation Officer as a whole.

93. Class Representatives are all willing and able to represent the interests of the proposed Class fairly and vigorously, as each of them would in pursuing their individual claims. Each Class Representative is prepared to assist in the instant litigation and make informed decisions based on the interests of the proposed Class.

94. Plaintiffs' lawyers are experienced in the litigation of civil rights and

employment matters and will vigorously prosecute this action on behalf of the class. Plaintiffs' counsel has sufficient experience and resources to litigate a class action of this size. Further, as Plaintiffs' counsel has represented Plaintiffs and the Class in all related actions from 2018 through present, Plaintiffs' counsel is intimately familiar with the procedural and factual history of the instant matter, the factual and statistical information underlying Plaintiffs' claims, and is best positioned to litigate this class action. The experience, knowledge, and resources of Plaintiffs' counsel, together with the assistance of the Class Representatives and financial resources of Plaintiff UPOA satisfies the adequacy requirements of FRCP 23(a)(4).

95. Defendants have acted on grounds generally applicable to the class and appropriate injunctive and declaratory relief would apply to and benefit the class as a whole.

AND AS FOR THE FIRST CAUSE OF ACTION
FOR VIOLATIONS OF
TITLE VII

96. Plaintiffs repeat and reiterate each and every allegation contained in the foregoing paragraphs with the same full force and effect as if hereinafter set forth at length.

97. Defendant City of New York at all relevant times has been Plaintiffs' employer as defined by Title VII.

98. Defendants have at all relevant times discriminated against Plaintiffs, intentionally and unintentionally, on the basis of race, sex and/or gender by engaging in discriminatory employment practices including but not limited to disparate employment opportunities including promotions, suppression of wages in a segregated workforce, and discriminatory hiring and compensation practices which have adversely impacted women

and people of color.

99. As a direct result of the actions and inactions of Defendants, which have been ongoing and continuous, Plaintiffs and the Class they represent have suffered injuries and damages and continue to suffer such injuries, including but not limited to loss of wages, salaries and benefits, as well as emotional hardship and mental anguish.

AND AS FOR THE SECOND CAUSE OF ACTION
FOR VIOLATIONS OF
THE NEW YORK STATE HUMAN RIGHTS LAW

100. Plaintiffs repeat and reiterate each and every allegation contained in the foregoing paragraphs with the same full force and effect as if hereinafter set forth at length.

101. Defendant City of New York at all relevant times has been Plaintiffs' employer as defined by NYS HRL.

102. Defendants have at all relevant times discriminated against Plaintiffs, intentionally and unintentionally, on the basis of race, sex and/or gender by engaging in discriminatory employment practices including but not limited to disparate employment opportunities including promotions, suppression of wages in a segregated workforce, and discriminatory hiring and compensation practices which have adversely impacted women and people of color.

103. As a direct result of the actions and inactions of Defendants, which have been ongoing and continuous, Plaintiffs and the Class they represent have suffered injuries and damages and continue to suffer such injuries, including but not limited to loss of wages, salaries and benefits, as well as emotional hardship and mental anguish.

AND AS FOR THE THIRD CAUSE OF ACTION
FOR VIOLATIONS OF
THE NEW YORK CITY HUMAN RIGHTS LAW

104. Plaintiffs repeat and reiterate each and every allegation contained in the foregoing paragraphs with the same full force and effect as if hereinafter set forth at length.

105. Defendant City of New York at all relevant times has been Plaintiffs' employer as defined by NYC HRL.

106. Defendants have at all relevant times discriminated against Plaintiffs, intentionally and unintentionally, on the basis of race, sex and/or gender by engaging in discriminatory employment practices including but not limited to disparate employment opportunities including promotions, suppression of wages in a segregated workforce, and discriminatory hiring and compensation practices which have adversely impacted women and people of color.

107. As a direct result of the actions and inactions of Defendants, which have been ongoing and continuous, Plaintiffs and the Class they represent have suffered injuries and damages and continue to suffer such injuries, including but not limited to loss of wages, salaries and benefits, as well as emotional hardship and mental anguish.

AND AS FOR THE FOURTH CAUSE OF ACTION
FOR VIOLATIONS OF
42 U.S.C. §1981

108. Plaintiffs repeat and reiterate each and every allegation contained in the foregoing paragraphs with the same full force and effect as if hereinafter set forth at length.

109. By way of the acts, practices, and policies described above, Defendants have deprived the individual Plaintiffs and Plaintiff Class of their statutory civil rights

secured through NYSHRL and NYCHRL based on their race in violation of the Civil Rights Act of 1871, 42 U.S.C. § 1981, *et seq.*

110. Plaintiffs and the majority of the Class they seek to represent are non-white women, and therefore members of racial minorities.

111. The titles of Probation Officer Trainee, Probation Officer, and Supervising Probation Officer has a higher percentage of non-white employees than the average for City employees.

112. Defendants establish the policies by which Plaintiffs are employed, and Defendants at all relevant times maintain exclusive control over these policies. Defendants knew that their policies had the effect of unlawful disparities between white and non-white employees, and that this result constituted unlawful conduct on the basis of race.

113. Defendants nonetheless failed to remedy these policies and, instead, maintained the policies, which led to the perpetuation of racial discrimination in employment opportunities including promotions, suppression of wages in a segregated workforce, and discriminatory hiring and compensation practices which have adversely impacted non-white employees, in violation of state and local law. Defendants knew that their actions constituted unlawful conduct on the basis of race and/or showed reckless disregard for Plaintiffs' statutorily protected rights.

114. This discriminatory treatment concerned the terms and conditions of Plaintiffs' contractual employment with Defendants, the full enjoyment of which is secured by 42 U.S.C. § 1981(b).

115. As a direct result of the actions and inactions of Defendants, which have been ongoing and continuous, Plaintiffs and the Class they represent have suffered injuries

and damages and continue to suffer such injuries, including but not limited to loss of wages, salaries and benefits, as well as emotional hardship and mental anguish.

AND AS FOR THE FIFTH CAUSE OF ACTION
FOR VIOLATIONS OF
42 U.S.C. §1983

116. Plaintiffs repeat and reiterate each and every allegation contained in the foregoing paragraphs with the same full force and effect as if hereinafter set forth at length.

117. By way of the acts, practices, and policies described above, Defendants have deprived the individual Plaintiffs and Plaintiff Class of their statutory civil rights secured by Title VII based on their race, sex and/or gender in violation of the Civil Rights Act of 1871, 42 U.S.C. § 1983, *et seq.*

118. Defendants establish the policies by which Plaintiffs are employed, and Defendants at all relevant times maintain control over these policies. Defendants knew that their policies had either the intention or effect of unlawful disparities in employment on the basis of sex and/or gender.

119. Defendants failed to redress these statutory violations and/or showed reckless disregard for Plaintiffs' statutorily protected rights.

120. Defendants were the only entities capable of remedying the unlawful effects of their policies and customs, and yet failed to do so despite ample knowledge and opportunity.

121. As a direct result of the actions and inactions of Defendants, which have been ongoing and continuous, Plaintiffs and the Class they represent have suffered injuries and damages and continue to suffer such injuries, including but not limited to loss of wages, salaries and benefits, as well as emotional hardship and mental anguish.

DEMAND FOR JURY

122. Plaintiffs demand trial by jury on all issues so triable.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court grants the following relief:

- A. Designate this action as a class action pursuant to Rule 23(a);
- B. Issue a permanent injunction enjoining Defendants from further violating Title VII, the New York State Human Rights Law, the New York City Human Rights Law, §1981, and §1983, requiring Defendants to abolish their disparate pay practices and discriminatory employment policies and practices requiring Defendants to:
 - 1. Take such affirmative action as is necessary to ensure that the effects of their unlawful pay practices are eliminated;
 - 2. Direct Defendants to appoint an agreed-upon independent monitor to review the Defendants' employment policies and practices and to initiate and enforce remedial steps to cure discriminatory employment practices and to further investigate enforcement of any orders of this Court with respect to equitable and curative relief and to report on its findings;
- C. Issue a Declaratory Judgment finding that Defendants discriminated against Plaintiffs in violation of Title VII, New York State Human Rights Law, New York City Human Rights Law, §1981, and §1983;
- D. Award Plaintiffs back pay and appropriate front pay together with all other benefits to which Plaintiffs are entitled, with prejudgment interest;
- E. Award Plaintiffs compensatory damages;

- F. Award Plaintiffs reasonable attorneys' fees, expenses and costs of this proceeding;
- G. Such other and further relief as this Court deems just and proper.

Date: January 11, 2021
New York, NY



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