

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
JACKSONVILLE BRANCH,

**JACKSONVILLE BROTHERHOOD OF
FIREFIGHTERS, A CHAPTER OF THE
INTERNATIONAL ASSOCIATION OF
AFRICAN-AMERICAN PROFESSIONAL
FIRE FIGHTERS.**

DOMINIQUE BARTLEY,

BYRON JACKSON,

CORY MCKINNEY,

EMANUEL PORTER,

ERNEST GLOVER, JR.,

ERVIN YOUNG, JR.,

ESLEY L. BAKER, JR.,

GREGORY NEAL, SR.,

HOWARD SMOTHERS, JR.,

KING ROSEVELT DAVIS, JR.,

ROOSEVELT PRIER, JR.,

MICHAEL HARRIS,

SHARON GOULD.

ON BEHALF OF THEMSELVES AND
THE CLASS THEY REPRESENT,

Civil Action No:
3:12-cv-451-TJC-MCR

Plaintiffs,)
)
v.)
)
CONSOLIDATED CITY OF JACKSONVILLE,)
)
Defendant,)
and)
)
JACKSONVILLE ASSOCIATION OF)
FIREFIGHTERS, LOCAL 122, INTERNATIONAL)
ASSOCIATION OF FIREFIGHTERS,)
Defendant.)

COMPLAINT IN INTERVENTION

Plaintiff-Intervenors, Jacksonville Branch of the National Association for the Advancement of Colored People (“NAACP”), Jacksonville Brotherhood of Firefighters, a Chapter of the International Association of African-American Professional Fire Fighters, (“JBOF”), Dominique Bartley, Byron Jackson, Cory McKinney, Emanuel Porter, Ernest Glover, Jr., Ervin Young, Jr., Esley L. Baker, Jr., Gregory Neal, Sr., Howard Smothers, Jr., King Roosevelt Davis, Jr., Michael Harris, Roosevelt Prier, Jr., Sharon Gould, and the class they represent allege as follows:

SUMMARY OF CLAIMS

1. This action is brought on behalf of the above named plaintiffs and a class of Black firefighters (hereinafter “Plaintiff- Intervenors”) for violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., (“Title VII”). As set forth more fully below, the parties allege that Defendant, the Consolidated City of Jacksonville (“Jacksonville”), through its Fire and Rescue Department (“JFRD”), has used and continues to use examinations for screening and selecting candidates for promotion to the

ranks of Engineer, Lieutenant (Suppression), Captain (Suppression), and/or District Chief (Suppression) that have a disparate impact on Black candidates, are not job related or consistent with business necessity for the positions in question, and do not otherwise meet the requirements of Title VII.

JURISDICTION

2. The Court has jurisdiction under 28 U.S.C. § 1331 and § 1343 (a)(4) as this claim arose under the Constitution, laws, or treaties of the United States, and under § 706 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5, *et seq.*

PARTIES

3. Plaintiff-Intervenor NAACP is an organization representing the interests of minority groups in Jacksonville, Florida. The mission of the NAACP is to eliminate racial prejudice and to remove racial discrimination through the democratic process. The NAACP's members include former and current employees of the JFRD who have been, and continue to be, subjected to the JFRD's unlawful discriminatory employment practices. On July 30, 2008, the NAACP filed a charge of discrimination on its own behalf, on behalf of its individual members, and on behalf of a class of Black firefighters who have been, and continue to be, harmed by the Fire Department's discriminatory practices. On August 3, 2012, the NAACP received a right to sue letter from the Department of Justice ("DOJ").

4. Plaintiff-Intervenor JBOF is an organization representing the interests of minority firefighters in Jacksonville. The objectives of the Brotherhood include encouraging Blacks to consider a career in firefighting, ensuring a fair and equitable

working environment for minority firefighters, and advancing Blacks to the upper ranks of the JFRD. The JBOF's members include current and former employees of the JFRD who have been, and continue to be, subjected to unlawful discriminatory employment practices. On July 30, 2008, the JBOF filed a charge of discrimination on its own behalf, on behalf of its individual members, and on behalf of a class of Black firefighters who have been, and continue to be, harmed by the Fire Department's discriminatory practices. The JBOF has requested a right to sue but has not yet obtained one.

5. Dominique Bartley is a Black female firefighter with the JFRD. From 2001-2009, Bartley was a dispatcher with JFRD. In February 2009, Bartlett was hired as a firefighter with the department. In June 20011, she sat for the written examination for promotion from firefighter to engineer. She received a score of 90 on the examination and a total adjusted score of 91.183, which placed her at number 214 on the eligibility list. Because of her low ranking on the list, it is extremely unlikely that she will be promoted to engineer before the list expires.

6. Byron Jackson is a Black male firefighter who commenced employment with the JFRD in 2000. In 2007 and again in 2011, Jackson sat for the examination for promotion from engineer to lieutenant. Jackson passed the exam in 2007 but had not been promoted off the rank order list at the time when the list expired. Jackson passed the exam in 2011 but to date has not been promoted off the rank order list.

7. Emanuel Porter is a Black male who commenced employment with JFRD in 1990. Porter is presently a lieutenant and sat for the 2008 captain's exam. He failed to reach the cut-off score of 70 and was not promoted to captain.

8. Ernest Glover, Jr. is a Black male who commenced employment with JFRD in 1987. Glover is presently a captain with JFRD. In 2006, he sat for and passed the district chief exam. He was ranked number 14 on the list and was not promoted before the list expired. Glover took and passed the district chief exam again in 2009. He was ranked number 11 on the list and was not promoted before the list expired.

9. Ervin Young, Jr. is a Black male who commenced employment with JFRD in 2003. He sat for the engineer exam in 2003, 2008, and 2011. He passed the exam each time but failed to get promoted in 2003 and 2008 before the list expired. He is ranked 175th on the list following the 2011 exam.

10. Esley L. Baker, Jr. is a Black male who commenced employment with JFRD in 1989. He is presently an engineer and sat for the 2007 lieutenant's exam. He passed the exam but was not promoted before the list expired.

11. Gregory Neal, Sr. is a Black male who commenced employment with JFRD in 1988. He is presently an engineer. He sat for the 2005 engineer exam which he passed but he was not promoted off the eligibility before the list expired. He sat for the 2004 lieutenant's exam which he also passed, but again, he was not promoted off the list before it expired.

12. Howard Smothers, Jr. is a Black male who commenced employment with JFRD in 2005. He sat for the engineer exam in 2008 and 2011. He passed the exam both times but failed to be promoted in 2008 before the eligibility list expired and has not been promoted off the 2011 eligibility list to date.

13. King Roosevelt Davis, Jr. is a Black male who commenced employment with JFRD in 1991. He presently holds the rank of lieutenant with JFRD and sat for the 2008 captain exam. He passed the exam but had not been promoted as of the time the eligibility list expired.

14. Michael Harris is a Black male who commenced employment with JFRD in 2009. He sat for the 2011 engineer exam and failed to reach the cut-off score of 70.

15. Roosevelt Prier, Jr. is a Black male who commenced employment with JFRD in 1988. He is presently a captain with JFRD. He sat for the 2006 and 2009 District Chief exam. He passed both times but was not promoted off the eligibility lists before they expired.

16. Sharon Gould is a Black female who commenced employment with JFRD in 2005. She sat for the 2008 and 2011 Engineer exam and passed both times. She was not promoted in 2008 before the eligibility list expired and has not been promoted off the 2011 list.

17. A class of firefighters defined as all present or past Black candidates for promotion to Engineer, Lieutenant (Suppression), Captain (Suppression), and/or District Chief (Suppression) from July 30, 2006 to the present.

18. Defendant Jacksonville is a municipal government and political subdivision created pursuant to the laws of the State of Florida and is located in this judicial district.

19. Defendant Jacksonville is a person within the meaning of 42 U.S.C. § 2000e(a) and an employer within the meaning of 42 U.S.C. § 2000e(b).

20. Defendant Jacksonville maintains a fire department, Jacksonville Fire and Rescue Department (“JFRD”), which consists of six major divisions: Rescue, Operations/Suppression, Fire Prevention, Emergency Preparedness, Training, and Administrative Services, and which employs uniformed firefighters in classifications including District Chief, Captain, Lieutenant, and Engineer.

21. JFRD employs more than 1,200 uniformed firefighters in all ranks.

22. Defendant Jacksonville Association of Firefighters, Local 122, IAFF, an affiliated and/or chartered Local with the International Association of Firefighters (“Union”), represents the firefighters holding the ranks of District Chief (Suppression), Captain (Suppression), Lieutenant (Suppression), and Engineer employed by Defendant Jacksonville and is named as a party pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely because its joinder is necessary for complete relief.

23. Defendant Union is a person within the meaning of 42 U.S.C. § 2000e(a) and is a labor organization within the meaning of 42 U.S.C. §§ 2000e(d) and (e).

24. Defendant Union is the exclusive representative of the JFRD firefighters, including firefighters employed by Defendant Jacksonville who hold the ranks including District Chief (Suppression), Captain (Suppression), Lieutenant (Suppression), and Engineer for the purpose of bargaining collectively terms, conditions, and other practices which bear upon screening and promotion.

BACKGROUND

25. On July 30, 2008, the NAACP and JBOF filed charges with the U.S. Equal Employment Opportunity Commission (“the EEOC”) alleging discrimination in hiring, promotion, and terms and conditions of work by the Jacksonville Fire and Rescue Department (“JFRD”). On June 5, 2009, the EEOC issued a Letter of Determination finding that the JFRD engaged in the alleged discrimination and ordered the charge to the conciliation stage. On July 3, 2009, attorneys in another civil action before this Court, *Coffey v. Braddy*, Case No. 3:71-cv-00044, filed an emergency motion against the City of Jacksonville asking the Court to stay all hiring and promotion procedures within the JFRD. (Doc. No. 6) The Court denied the motion, but ordered the parties to enter into mediation before Senior United States District Judge Harvey E. Schlesinger. (Doc. No. 88) The NAACP, the JBOF¹, and the EEOC agreed to stay the EEOC conciliation process in order to participate in the mediation. The Department of Justice, Civil Rights Division (“DOJ”) also participated in the mediation sessions prior to initiating the present action.

26. The mediation efforts have continued for almost three years and the claims of discrimination have not been resolved. As a result of the failure to reach agreement on the promotion claims and based on its investigation of the City’s promotion practices, the DOJ filed the present action on April 23, 2012, alleging a pattern or practice of race

¹ The Lawyers’ Committee for Civil Rights Under Law, Dickstein Shapiro, LLC, and The Law Office of Kirsten Doolittle, P.A. ceased representation of JBOF because of a conflict of interest on approximately December 15, 2011. The conflict of interest has been resolved and Kirsten Doolittle and the Lawyers’ Committee for Civil rights Under Law have resumed representation of JBOF as of August 14, 2012.

discrimination in promotions in violation of Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 2000e. The allegations in the DOJ complaint are substantially the same allegations that were the subject of the 3 year mediation efforts in which Plaintiff Interveners' NAACP and JBOF participated.

CLASS DEFINITION

27. Plaintiff- Intervenor bring this case as a class action under Federal Rules of Civil Procedure 23 (a)(2) and (b)(2), on behalf of the following class:

All present and former Black candidates for promotion to Engineer, Lieutenant (Suppression), Captain (Suppression), and/or District Chief (Suppression) from July 30, 2006 to the present.

STATEMENT OF THE CLAIM

28. Defendant Jacksonville, through the JFRD, has maintained and continues to maintain selection procedures by which candidates for promotion to the positions of District Chief (Suppression), Captain (Suppression), Lieutenant (Suppression), and Engineer are screened for promotion.

29. As part of its promotion process for the positions of District Chief (Suppression), Captain (Suppression), Lieutenant (Suppression), and Engineer, Defendant, through the JRFD, had administered and continues to administer, either by itself or through a contractor, written examinations to JFRD candidates.

30. Defendant Jacksonville, through the JFRD, used and continues to use written examinations both to establish a minimum score to be eligible for promotion and to rank-order eligible candidates for selection for promotions.

31. Defendant Jacksonville, through the JFRD, used and continues to use examinations as a screening device pursuant to a collective bargaining agreement with Defendant Union. As such, only candidates who scored 70% or higher on the written examinations are eligible for consideration for promotion.

32. JFRD also used and continues to use the results of written examinations as the most important element of the score used in the rank order selection process for promotions. As such, JFRD places candidates who pass written promotional examinations for a particular rank within a division on eligibility lists in descending rank order based on their written examination scores, adjusted to reflect applicable additional seniority and veteran preference points.

33. When vacancies occur, JFRD candidates for a particular rank within a division are selected in strict rank order as their names appear on the eligibility lists. Because of the rank order processing, only those individuals who secured a high score on the written examinations are promoted.

34. Since 2004, Defendant Jacksonville, through the JFRD, has used competitive examination processes in the screening and selection of candidates for promotion to the ranks of District Chief (Suppression), Captain (Suppression), Lieutenant (Suppression), and Engineer. Each competitive process has involved the administration of written examinations to JFRD candidates.

35. In 2006 and 2009, Black candidates who passed the District Chief (Suppression) examination were ranked statistically significantly lower on the eligibility lists than white candidates.

36. The pass rate for Black candidates who took the 2004 and 2008 Captain (Suppression) examination was statistically significantly lower than the pass rates of white candidates.

37. The promotion rates for Black candidates who took the 2004 and 2008 Captain (Suppression) examinations were statistically significantly lower than the promotion rate of white candidates.

38. Black candidates who passed the Captain (Suppression) examination in 2004 or 2008 were ranked statistically significantly lower on the eligibility list than white candidates.

39. The pass rate for Black candidates who took the 2004, 2007, and 2011 Lieutenant (Suppression) examination was statistically significantly lower than the pass rate of white candidates.

40. The promotion rates for Black candidates who took the 2004 and 2007 Lieutenant (Suppression) examinations were statistically significantly lower than the promotion rate of white candidates.

41. Black candidates who passed the Lieutenant (Suppression) examination in 2004, 2007, or 2011 were ranked statistically significantly lower on the eligibility list than white candidates.

42. The pass rate for Black candidates who took the 2005, 2008, or 2011 Engineer examination was statistically significantly lower than the pass rates of white candidates.

43. The promotion rates for Black candidates who took the 2005, 2008, or 2011 Engineer examination were statistically significantly lower than the promotion rate of white candidates.

44. Among those candidates who passed either the 2005, 2008, or 2011 Engineer examination, Black candidates ranked statistically significantly lower than white candidates on the eligibility list.

CLASS ACTION ALLEGATIONS

45. The Class includes all Black candidates for promotion to Engineer, Lieutenant (Suppression), Captain (Suppression), and/or District Chief (Suppression) from July 30, 2006 to the present. The individual Plaintiff-Interveners are all members of the Class, and both the JBOF and NAACP's memberships include members of the Class.

46. The members of the Class are so numerous that joinder of all of them is impracticable.

47. There are questions of law and fact common to the Class and these questions predominate over any questions affecting only individual members. Common questions include but are not limited to: (1) whether JFRD's policy and practice of using written examinations, with cut-off scores of 70%, to establish eligibility for promotion to Engineer, Lieutenant (Suppression), Captain (Suppression), and/or District Chief (Suppression) had and continues to have a disparate impact on Black firefighters; (2) whether JFRD's use of rank order promotion to Engineer, Lieutenant (Suppression), Captain (Suppression), and/or District Chief (Suppression) from an eligibility list had and continues to have a disparate impact on Black firefighters; (3) whether less

discriminatory policies exist that would meet Defendant's legitimate needs; and (4) what equitable and injunctive relief for the Class is warranted.

48. Plaintiff-Intervenors' claims are typical of the claims of the Class. Each of the individual named Plaintiff-Intervenors have taken one or more of the challenged exams and each has either been screened out of consideration for promotion as a result of the examination or has failed to be promoted because they ranked lower on the eligibility list than white candidates. All of these claims are shared by members of the class.

49. The JBOF and the NAACP include within their membership Black firefighters who have taken one or more written examinations for promotion to Engineer, Lieutenant (Suppression), Captain (Suppression), and/or District Chief (Suppression), and have either been screened out of consideration for promotion as a result of the examination or have been ranked lower on the eligibility list than white candidates. All of these claims are shared by members of the class.

50. Plaintiff-Intervenors will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff-Intervenors have no conflict with one another or any class member. Plaintiff-Intervenors are committed to the goal of having the JFRD revise its promotion policies and practices to eliminate the discrimination these policies and practices have on Black applicants for promotion.

51. Plaintiff-Intervenors have retained counsel competent and experienced in complex class actions and employment discrimination litigation.

52. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because Defendants have acted and/or refused to act on grounds generally applicable to

the Class, making appropriate declaratory and injunctive relief with respect to Plaintiff-Intervenors and the Class as a whole. The Class members are entitled to injunctive relief to end Defendants' common, uniform, unfair, and discriminatory policies and practices.

CLAIM FOR RELIEF

53. Plaintiff-Intervenors reallege Paragraphs 1 through 52 *supra*, as if fully set forth herein.

54. Defendant Jacksonville has pursued employment practices that result in a disparate impact on Black candidates, are not job related for the positions in question and are not consistent with business necessity, and otherwise do not meet the requirements of Title VII, 42 U.S.C. § 2000e-et.seq. Defendant Jacksonville's discriminatory practices include but are not limited to:

- a. using minimum cut-off scores on written examinations as screening devices in the screening and selection of candidates for appointment to the ranks of District Chief (Suppression), Captain (Suppression), Lieutenant (Suppression), and Engineer, where such use of the written examinations results in a disparate impact on Black candidates, is not job related for the positions in question or consistent with business necessity and does not otherwise meet the requirements of Section 703(k) of Title VII, 42 U.S.C. § 2000e-2(k); and
- b. rank-order processing of candidates, in the screening and selection of candidates for appointment to the ranks of District Chief (Suppression), Captain (Suppression), Lieutenant (Suppression), and Engineer, through

its competitive examination process, which results in a disparate impact on Blacks, is not job related for the positions in question and consistent with business necessity and does not otherwise meet the requirements of Section 703(k) of Title VII, 42 U.S.C § 2000e-2(k).

55. Defendant Jacksonville has pursued a pattern and practice of discrimination against Blacks with respect to promotion, compensation, terms, or conditions, or privileges of employment, because of their race, in violation of Section 703 of Title VII, 42 U.S.C. § 2000e. Defendant Jacksonville has implemented these employment practices, among other ways, by:

- a. failing or refusing to appoint Black candidates to the ranks of District Chief (Suppression), Captain (Suppression), Lieutenant (Suppression), and Engineer on the same basis as white candidates;
- b. failing or refusing to take appropriate action to correct the present effects of its discriminatory employment practices; and
- c. failing or refusing to “make whole” those Black candidates for promotion to the ranks of Captain (Suppression), Lieutenant (Suppression), and Engineer who have been harmed by its unlawful use of its written examinations.

56. The practices of Defendant Jacksonville described in paragraphs 1 through 52, *supra*, constitute employment practices that discriminate against Blacks with respect to promotion, compensation, terms, or conditions, or privileges of employment, because of their race; and deprive or tend to deprive Blacks of employment opportunities because

of their race, in violation of Section 703 of Title VII, 42 U.S.C. § 2000e. These practices are of such a nature as to deny the full exercise of the rights secured by Title VII. Unless restrained by order of this Court, Defendant Jacksonville will continue to pursue practices that are the same or similar to those alleged in this Complaint.

Wherefore, Plaintiff-Intervenors pray for an order enjoining Defendant Jacksonville, its officers, agents, employees, successors and all persons in active concert or participation with them, from engaging in discriminatory employment practices against Blacks on the basis of race, and specifically from:

- a. failing or refusing to appoint Black candidates to the ranks of District Chief (Suppression), Captain (Suppression), Lieutenant (Suppression), and Engineer on the same basis as white candidates;
- b. using minimum cut-off scores on written examinations as screening devices in the screening and selection of candidates for appointment to the ranks of District Chief (Suppression), Captain (Suppression), Lieutenant (Suppression), and Engineer, where such use of the written examinations results in disparate impact upon Blacks, is not job related for the position in question and consistent with business necessity and does not otherwise meet the requirements of Section 703(k) of Title VII, § 2000e-2(k);
- c. rank-order processing of candidates, in the screening and selection of candidates for appointment to the ranks of District Chief (Suppression), Captain (Suppression), Lieutenant (Suppression), and Engineer through its examination process, based on the candidates' written examination scores,

adjusted for seniority and veterans' preference, where such use of candidates' written examination scores results in disparate impact upon Blacks, is not job-related for the positions in question and consistent with business necessity and does not otherwise meet the requirements of Section 703(k) of Title VII, § 2000e-2(k);

- d. failing or refusing to take appropriate action to correct the present effects of its discriminatory practices;
- e. failing or refusing to "make whole" those Black candidates for promotion to the ranks of Captain (Suppression), Lieutenant (Suppression), and Engineer, including the named Plaintiff-Intervenors who have been harmed by the unlawful use of its written examinations including, but not limited to, failing or refusing to provide promotions, back pay, and retroactive seniority;
- g. failing or refusing to take other appropriate non-discriminatory measures to overcome the effects of its discriminatory practices.

Plaintiff-Intervenors pray for such additional relief as justice may require,
together with its costs and disbursements in this action.

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