

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Robert Tomaszewski

(b) County of Residence of First Listed Plaintiff Philadelphia
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Caren N. Gurmankin, Esq.

Console Mattiacci Law

1525 Locust St., 9th Fl., Philadelphia, PA 19102 215-545-7676

DEFENDANTS

City of Philadelphia

County of Residence of First Listed Defendant Philadelphia
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. §2000e, et seq.; 42 U.S.C. §1981; 43 P.S. §951, et seq.; Phila. Code §9-1101, et seq.

Brief description of cause:

Plaintiff was discriminated against based on his race

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

in excess of \$75,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/19/2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Robert Tomaszewski,	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	
City of Philadelphia,	:	
Defendant	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

10/19/17

Date

215-545-7676

Telephone


Attorney-at-law

215-565-2853

FAX Number

Plaintiff, Robert Tomaszewski

Attorney for

gurmankin@consolelaw.com

E-Mail Address

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: Philadelphia, PA 19152

Address of Defendant: 1401 John F. Kennedy Boulevard; Philadelphia, PA 19102

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities? Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☒ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify) _____

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Caren N. Gurmankin, Esquire, counsel of record do hereby certify:

- ☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☒ Relief other than monetary damages is sought.

DATE: 10/19/17

Caren N. Gurmankin
Attorney-at-Law

205900

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 10/19/17

Caren N. Gurmankin
Attorney-at-Law

205900

Attorney I.D.#

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT TOMASZEWSKI
Philadelphia, PA 19152

Plaintiff,

v.

CITY OF PHILADELPHIA
1401 John F. Kennedy Boulevard
Philadelphia, PA 19102

Defendant.

CIVIL ACTION NO.

JURY TRIAL DEMANDED

COMPLAINT

I. INTRODUCTION

Plaintiff, Robert Tomaszewski, brings this action against his employer, the City of Philadelphia ("Defendant"). Plaintiff has over thirty two (32) years of experience working in Defendant's Department of Prisons, including over eleven (11) years of experience as a Deputy Commissioner, and an excellent record within the Department. Defendant passed him over for promotion into the open Commissioner position, and, instead, selected a less experienced, less qualified employee based on race and sex. After Plaintiff complained about Defendant's discriminatory conduct in failing to promote him, Defendant retaliated against him.

Defendant discriminated against Plaintiff based on his race, and retaliated against him based on his complaints about the same, in violation of Title VII of

the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, *et seq.* (“Title VII”), 42 U.S.C. §1981 (“Section 1981”), the Pennsylvania Human Relations Act, as amended, 43 P.S. §951, *et seq.* (“PHRA”); and the Philadelphia Fair Practices Ordinance, as amended, Phila. Code §9-1101, *et seq.* (“PFPO”). Defendant also discriminated against Plaintiff based on his sex, and retaliated against him based on his complaints about the same, in violation of Title VII, the PHRA, and the PFPO. Defendant’s conduct also deprived Plaintiff of his constitutional rights of the Equal Protection Clause of the Constitution in violation of 42 U.S.C. §1983 (“Section 1983”).

II. PARTIES

1. Plaintiff, Robert Tomaszewski, is an individual and a citizen of the Commonwealth of Pennsylvania.
2. Plaintiff is white.
3. Plaintiff is male.
4. Defendant, the City of Philadelphia, is a political subdivision of the Commonwealth of Pennsylvania, with its principal office located at 1401 John F. Kennedy Boulevard, Philadelphia, PA 19102.
5. Defendant is engaged in an industry affecting interstate commerce and regularly do business in the Commonwealth of Pennsylvania.
6. At all times material hereto, Defendant employed more than fifteen (15) employees.
7. Defendant has engaged in a pattern and practice of considering characteristics such as race and/or sex when making employment decisions.

8. At all times material hereto, Defendant instituted, acquiesced in, ratified and/or made employment decisions based on consideration of characteristics such as race and/or sex.

9. At all times material hereto, Defendant acted by and through its authorized agents, servants, workmen, and/or employees acting within the course and scope of their employment with Defendant and in furtherance of Defendant's business.

10. At all times material hereto, Defendant acted as an employer within the meaning of the statutes which form the basis of this matter.

11. At all times material hereto, Plaintiff was an employee of Defendant within the meaning of the statutes which form the basis of this matter.

12. At all times material hereto, Defendant acted under color of state law.

III. JURISDICTION AND VENUE

13. The causes of action which form the basis of this matter arise under Title VII, Section 1981, Section 1983, the PHRA, and the PFPO.

14. The District Court has jurisdiction over Count I (Title VII) pursuant to 42 U.S.C. §2000e-5 and 28 U.S.C. §1331.

15. The District Court has jurisdiction over Count II (Section 1981) pursuant to 28 U.S.C. §1331.

16. The District Court has jurisdiction over Count III (Section 1983) pursuant to 28 U.S.C. §1331.

17. The District Court has supplemental jurisdiction over Count IV

(PHRA) pursuant to 28 U.S.C. §1367.

18. The District Court has supplemental jurisdiction over Count V (PFPO) pursuant to 28 U.S.C. §1367.

19. Venue is proper in the District Court under 28 U.S.C. §1391(b) and 42 U.S.C. §2000(e)-5(f).

20. On or about July 5, 2016, Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC"), complaining of acts of discrimination alleged herein. This Charge was cross-filed with the Pennsylvania Human Relations Commission ("PHRC"). Attached hereto, incorporated herein and marked as Exhibit "1" is a true and correct copy of the EEOC Charge of Discrimination (with personal identifying information redacted).

21. On or about July 25, 2017, the EEOC issued to Plaintiff a Notice of Right to Sue for Charge of Discrimination. Attached hereto, incorporated herein and marked as Exhibit "2" is a true and correct copy of the notice with personal identifying information redacted.

22. Plaintiff has fully complied with all administrative prerequisites for the commencement of this action.

IV. FACTUAL ALLEGATIONS

23. Plaintiff was hired by Defendant in or around 1984 as a Correctional Officer in the Department of Prisons.

24. Plaintiff has consistently demonstrated excellent performance throughout his employment with Defendant. He was promoted multiple times, including, just about two (2) years after he started working at Defendant, into the

position of Correctional Sergeant. He was subsequently promoted into the position of Lieutenant, and then Captain, Deputy Warden, and then Warden.

25. In or about 2005, Plaintiff was promoted into the position of Deputy Commissioner for Administration.

26. In or around late 2015, Defendant's Commissioner of Prisons announced that he would be retiring effective January 2016. As a result, Defendant posted the position of Commissioner and created a panel to interview potential candidates for the position.

27. Plaintiff applied for the Commissioner position, as he was qualified for the same. He was interviewed by Defendant's search panel in or around December 2015.

28. On or about January 8, 2016, Defendant announced that it was appointing an employee from outside of the Department of Prisons as Acting Commissioner for a six (6) month period so that it could continue searching for a permanent Commissioner. Around that time, Defendant contacted Plaintiff and told him only that it was going in a different direction regarding the Commissioner position.

29. In or around April 2016, the Acting Commissioner also told Plaintiff that Mayor Kenney's administration agreed that, per pressure from the Philadelphia Chapter of the National Association for the Advancement of Colored People, Defendant would appoint a black female as the next Commissioner.

30. Around that time, the Acting Commissioner informed Plaintiff that he had a discussion with First Deputy Managing Director of Defendant who was

also a member of Defendant's search panel for the Commissioner position. In that discussion, the Acting Commissioner told the First Deputy that he was aware that Defendant was searching for a black female to fill the Commissioner position. The Acting Commissioner also told the Deputy that, based on what Defendant was looking for, it should interview a black female Deputy Commissioner within the Department of Prisons, Blanche Carney.

31. The Acting Commissioner told Plaintiff that the First Deputy did not deny that Defendant was looking to fill the Commissioner position with a black female.

32. To the best of Plaintiff's knowledge, Carney had not applied for the Commissioner position.

33. In around April 2016, Defendant interviewed Carney for the Commissioner position.

34. To the best of Plaintiff's knowledge, since January 2016, Defendant had interviewed only black female candidates for the Commissioner position.

35. On or about April 23, 2016, Defendant announced that it had selected Carney for the Commissioner position.

36. Carney was less qualified than Plaintiff for the Commissioner position. By way of example only, Plaintiff had substantially greater tenure in Defendant's Department of Prisons than Carney, and Plaintiff had over eleven (11) years as a Deputy Commissioner at the time that Defendant selected Carney, while she had approximately one (1) year of experience as a Deputy Commissioner.

37. Upon Carney becoming Commissioner effective on or about May 23, 2016, Plaintiff reported directly to her.

38. Defendant did not provide Plaintiff with a reason as to why it failed to promote him into the position of Commissioner.

39. On or about July 5, 2016, Plaintiff filed his Charge of Discrimination with the EEOC regarding the race and sex discriminatory to which Defendant subjected him by not selecting him for the Commissioner position. He advised Defendant, including Carney, of the same.

40. In or around August 2016, Defendant conducted an audit of one (1) of the funds in the Department that was administered by Plaintiff's office. As part of the audit, the Department's Chief of Staff noticed some perceived irregularities regarding withdrawals, and reported the same to Carney. As the Chief of Staff subsequently told Plaintiff, Carney said that she wanted him to send the matter to Defendant's Office of Inspector General ("OIG") to conduct an investigation as she was annoyed by the fact that Plaintiff had filed an EEOC Charge.

41. At the conclusion of the OIG's investigation, in or around February 2017, Plaintiff was informed that it concluded that there were no irregularities regarding the fund and no improprieties regarding the administration of the fund.

42. To date, Defendant has not informed Plaintiff of remedial and/or corrective action that it has taken regarding his complaints of discrimination.

43. Defendant's conduct demonstrates that it has a pattern and practice of considering characteristics such as race and/or sex when making employment decisions. Aside from that which is set forth above, evidence of the

same includes, but is not limited to, the following:

(a) In a meeting with Carney and the Chief of Staff for the Department of Prisons, Plaintiff was told that he could not fill a particular position because the candidate who was selected was of Indian descent and, according to Carney, there were “too many Indians” in that particular unit of the Department;

(b) Carney told Plaintiff that Defendant’s First Deputy Managing Director instructed her to fill an open position with a Hispanic female candidate;

(c) Carney also told Plaintiff that he had been pressured to recommend a Hispanic candidate for the open position because there were not enough high-ranking employees of Hispanic origin within the prison system; and,

(d) During the hiring process for a particular position within the Department, the First Deputy Managing Director stated that, “too many white women are applying for this position.”

44. Plaintiff’s race was a motivating and/or determinative factor in Defendant’s discriminatory treatment of Plaintiff, including its failure to promote him into the Commissioner position.

45. Plaintiff’s sex was a motivating and/or determinative factor in Defendant’s discriminatory treatment of Plaintiff, including its failure to promote him into the Commissioner position.

46. Plaintiff’s complaining of sex discrimination was a motivating and/or determinative factor in Defendants’ retaliatory treatment of Plaintiff, including falsely accusing him of engaging in improper conduct and subjecting him to an

investigation regarding the same.

47. Defendant failed to prevent or address the discriminatory and retaliatory conduct referred to herein and further failed to take corrective and remedial measures to make the workplace free of discriminatory and retaliatory conduct.

48. The retaliatory action taken against Plaintiff after he complained of discriminatory conduct would have discouraged a reasonable employee from complaining of discrimination.

49. As a direct and proximate result of the discriminatory and retaliatory conduct of Defendant, Plaintiff has in the past incurred, and may in the future incur, a loss of earnings and/or earning capacity, loss of benefits, pain and suffering, embarrassment, humiliation, loss of self-esteem, mental anguish, and loss of life's pleasures, the full extent of which is not known at this time.

50. Defendant acted with malice, reckless indifference, and/or deliberate indifference to Plaintiff's protected rights.

COUNT I - Title VII

51. Plaintiff incorporates herein by reference paragraphs 1 through 50 above, as if set forth herein in their entirety.

52. By committing the foregoing acts of discrimination and retaliation against Plaintiff, Defendant has violated Title VII.

53. Said violations were done with malice and/or reckless indifference.

54. As a direct and proximate result of Defendant's violation of Title VII, Plaintiff has suffered the damages and losses set forth herein and has incurred attorneys' fees and costs.

55. Plaintiff is now suffering and will continue to suffer irreparable injury and monetary damages as a result of Defendant's discriminatory and retaliatory acts unless and until this Court grants the relief requested herein.

56. No previous application has been made for the relief requested herein.

COUNT II – Section 1981

57. Plaintiff incorporates herein by reference paragraphs 1 through 56 above, as if set forth herein in their entirety.

58. By committing the foregoing acts of discrimination and retaliation, Defendant has violated Section 1981.

59. Said violations were done with malice and/or reckless indifference.

60. As a direct and proximate result of Defendant's violation of Section 1981, Plaintiff has suffered the damages and losses set forth herein and has incurred attorneys' fees and costs.

61. Plaintiff is now suffering and will continue to suffer irreparable injury and monetary damages as a result of Defendant's discriminatory and retaliatory acts unless and until this Court grants the relief requested herein.

62. No previous application has been made for the relief requested herein.

COUNT III – Section 1983

63. Plaintiff incorporates herein by reference paragraphs 1 through 62 above, as if set forth herein in their entirety.

64. Defendant's discriminatory and retaliatory conduct, as set forth herein, deprived Plaintiff of equal protection under the law as guaranteed by the Fourteenth Amendment of the United States Constitution.

65. Defendant's violation of the constitution included policies, practices, and/or customs to treat white employees less favorably than non-white employees, which was committed, directed, implemented, and/or ratified by officials of Defendant in supervisory capacities with policymaking and decision-making authority.

66. As a direct and proximate result of Defendant's acts and conduct which caused and continue to cause Plaintiff to be denied equal protection under the law, Plaintiff has suffered and will suffer those injuries, damages, and losses alleged herein and has incurred and will incur attorneys' fees.

67. The wrongful acts and conduct of Defendant were done with deliberate indifference to the statutory and constitutional rights of Plaintiff.

COUNT IV - PHRA

68. Plaintiff incorporates herein by reference paragraphs 1 through 67 above, as if set forth herein in their entirety.

69. Defendant, by the above improper and discriminatory and retaliatory acts, has violated the PHRA.

70. Said violations were intentional and willful.

71. As a direct and proximate result of Defendant's violation of the PHRA, Plaintiff has sustained the injuries, damages, and losses set forth herein and has incurred attorney's fees and costs.

72. Plaintiff is now suffering and will continue to suffer irreparable injuries and monetary damages as a result of Defendant's discriminatory and retaliatory acts unless and until the Court grants the relief requested herein.

73. No previous application has been made for the relief requested herein.

COUNT V - PFPO

74. Plaintiff incorporates herein by reference paragraphs 1 through 73 above, as if set forth herein in their entirety.

75. Defendant, by the above improper and discriminatory and retaliatory acts, has violated the PFPO.

76. Said violations were intentional and willful.

77. As a direct and proximate result of Defendant's violation of the PFPO, Plaintiff has sustained the injuries, damages, and losses set forth herein and has incurred attorney's fees and costs.

78. Plaintiff is now suffering and will continue to suffer irreparable injuries and monetary damages as a result of Defendant's discriminatory and retaliatory acts unless and until the Court grants the relief requested herein.

79. No previous application has been made for the relief requested herein.

RELIEF

WHEREFORE, Plaintiff seeks damages and legal and equitable relief in connection with Defendant's improper conduct, and specifically prays that the Court grant the following relief to the Plaintiff by:

(a) declaring the acts and practices complained of herein to be in violation of Title VII;

(b) declaring the acts and practices complained of herein to be in violation of Section 1981;

(c) declaring the acts and practices complained of herein to be in violation of Section 1983;

(d) declaring the acts and practices complained of herein to be in violation of the PHRA;

(e) declaring the acts and practices complained of herein to be in violation of the PFPO;

(f) enjoining and permanently restraining the violations alleged herein;

(g) entering judgment against the Defendant and in favor of the Plaintiff in an amount to be determined;

(h) awarding compensatory damages to make the Plaintiff whole for all lost earnings, earning capacity and benefits, past and future, which Plaintiff has suffered or may suffer as a result of Defendant's improper conduct;

(i) awarding compensatory damages to Plaintiff for past and future pain and suffering, emotional upset, mental anguish, humiliation, and loss

of life's pleasures, which Plaintiff has suffered or may suffer as a result of Defendant's improper conduct;

(j) awarding Plaintiff such other damages as are appropriate under Title VII, Section 1981, Section 1983, the PHRA, and the PFPO;

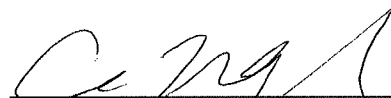
(k) awarding Plaintiff the costs of suit, expert fees and other disbursements, and reasonable attorney's fees; and,

(l) granting such other and further relief as this Court may deem just, proper, or equitable including other equitable and injunctive relief providing restitution for past violations and preventing future violations.

CONSOLE MATTIACCI LAW, LLC

Dated: October 19, 2017


BY:



Stephen G. Console (36656)
Caren N. Gurmankin (205900)
1525 Locust St., 9th Floor
Philadelphia, PA 19102
(215) 545-7676

Attorneys for Plaintiff,
Robert Tomaszewski

Exhibit 1

CHARGE OF DISCRIMINATION		AGENCY x FEPA x EEOC	CHARGE NUMBER 530 2016 03481
This form is affected by the Privacy Act of 1974; See privacy statement before consolidating this form.			
STATE OR LOCAL AGENCY: Pennsylvania Human Relations Commission; Philadelphia Commission on Human Relations			
NAME (Indicate Mr., Ms., Mrs.) Robert Tomaszewski	TELEPHONE NUMBER (Include Area Code) [REDACTED]		
STREET ADDRESS [REDACTED]	CITY, STATE AND ZIP Philadelphia, PA 19152	DATE OF BIRTH [REDACTED]	
NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP, COMMITTEE, STATE OF LOCAL GOVERNMENT WHO DISCRIMINATED AGAINST ME (If more than one than list below)			
NAME City of Philadelphia	NUMBER OF EMPLOYEES Over 500	TELEPHONE (Include Area Code)	
STREET ADDRESS 1401 John F. Kennedy Boulevard	CITY, STATE AND ZIP Philadelphia, PA 19107	COUNTY Philadelphia	
CAUSE OF DISCRIMINATION (Check appropriate box(es)) XX Race Color XX Sex Religion National Origin Retaliation Age Disability Other (Specify)		DATE DISCRIMINATION TOOK PLACE Earliest Latest April 23, 2016	
THE PARTICULARS ARE:			
<p>A. 1. Relevant Work History</p> <p>In or about 1984, I was hired as a Correctional Officer at Respondent's Department of Prisons.¹ In 1986, I was promoted to Correctional Sergeant. In 1993, I was promoted to Lieutenant. In 1996, I was promoted to Captain. In 1999, I was promoted to Deputy Warden. In 2003, I was promoted to Warden. In 2005, I was promoted to Deputy Commissioner for Administration, which is the position that I currently hold.</p> <p>Throughout my over thirty-two (32) years of employment at Respondent's Department of Prisons and my over eleven (11) years as Deputy Commissioner there, I have been a dedicated and hardworking employee, performed my job duties in an excellent manner, and consistently received positive performance feedback.</p>			
<input checked="" type="checkbox"/> I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY (when necessary for State and Local Requirements) I swear or affirm that I have read the above charge and that it is true to the best of my knowledge information and belief.	
I declare under penalty of perjury that the foregoing is true and correct.			
x  Date: 7/4/16 Charging Party (Signature)		SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day-Month, and year)	

¹ All dates set forth herein are approximate.

RECEIVED
16 JUL -5 PM 2:52
EEO PHILADELPHIA
DISTRICT OFFICE

EEOC Charge of Discrimination
Page 2 of 3
Robert Tomaszewski v. City of Philadelphia

2. Summary of Harm

Respondent discriminated against me based on my race (white) and sex (male) in connection with its failure to hire or promote me into a position for which I applied and was the most qualified candidate. Evidence of Respondent's discrimination includes, but is not limited to, the following:

- a. In late 2015, the Commissioner of Prisons, Louis Giorla, announced that he intended to retire in January 2016.
- b. In or about December 2015, Respondent had a search panel begin interviewing for candidates to fill the soon-to-be vacant position of Commissioner of Prisons ("Commissioner") position.
- c. On December 9, 2015, I applied and interviewed for the Commissioner position.
- d. I was one (1) of six (6) candidates who interviewed for the Commissioner position during December 2015.
- e. Of the six (6) candidates who interviewed for the Commission position in December 2015, only one (1) candidate was African American and none were female.
- f. One (1) of the candidates who applied for the Commissioner position in December 2015 was Michael Resnick (white, male). Prior to applying for the Commissioner position, Mr. Resnick was Director of Public Safety at Respondent. In Mr. Resnick's prior role as Director of Public Safety, one (1) of his direct reports was the Commissioner. However, in January 2016, Mr. Resnick's Director of Public Safety position was eliminated.
- g. On January 8, 2016, Respondent announced that Mr. Resnick would temporarily assume the role of Acting Commissioner for a period of up to six (6) months so that the Respondent's search panel could continue searching for a new candidate to fill the Commissioner position on a permanent basis.
- h. From that time, Respondent specifically sought out female, African American candidates for the Commissioner position.
- i. Between January and March 2016, all of the candidates that Respondent interviewed for the Commissioner position were female and African American.
- j. In early April 2016, Mr. Resnick told Brian Abernathy – First Deputy Managing Director of Respondent and one (1) of the members of Respondent's search panel – that he was aware that Respondent was searching for a female, African American candidate to fill the Commissioner position and suggested that Respondent consider interviewing one (1) of the deputy commissioners in Respondent's Department of Prisons, Blanche Carney, who was female and African American.
- k. Mr. Abernathy did not deny that Respondent was searching for a female, African American candidate to fill the Commissioner position.
- l. In April 2016, Respondent interviewed Ms. Carney for the Commissioner position.

EEOC Charge of Discrimination
Page 3 of 3
Robert Tomaszewski v. City of Philadelphia

- m. On April 23, 2016, Respondent announced that it had selected Ms. Carney for the Commissioner position.
- n. I was the most qualified candidate for the Commissioner position and was considerably more qualified and experienced than Ms. Carney.
- o. By way of example only, and without limitation, Ms. Carney had only had approximately one (1) year of experience as a deputy commissioner, whereas I had over eleven (11) years of experience as a deputy commissioner and over thirty-two (32) years of experience in Respondent's Department of Prisons.
- p. Respondent has a pattern and practice of considering race and sex when making employment decisions, including, but not limited to, decisions relating to hiring and promotions.
- q. By way of example only, and without limitation, in April 2016, Ms. Carney informed me that Mr. Abernathy told her to fill her prior deputy commissioner position with a female, Hispanic candidate.
- r. On May 23, 2016, Ms. Carney assumed the Commissioner position.
- s. At that time, Mr. Resnick was demoted into a deputy commissioner position.

B. Respondent's Stated Reasons

- a. Respondent has failed to provide me with any legitimate, non-discriminatory reason for failing to hire me for a position for which I applied and was the most qualified candidate.

C. Statutes and Basis for Allegations

Respondent discriminated against me based on my race (white) and sex (male) in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., the Pennsylvania Human Relations Act, 43 Pa.C.S. § 951 et seq., and the Philadelphia Fair Practices Ordinance, Phila. Code § 9-1100 et seq.

D. CLASS CHARGE

I bring this charge of discrimination on behalf of all employees of Respondent who have been subjected to adverse employment actions because of race and sex, including, but not limited to, failures to hire or promote and demotions.

INFORMATION FOR COMPLAINANTS & ELECTION OPTION
TO DUAL FILE WITH THE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

Robert Tomaszewski v. City of Philadelphia

RECEIVED

16 JUL -5 PM 2:53

EEOC PHILADELPHIA
DISTRICT OFFICE

EEOC No. _____

You have the right to file this charge of discrimination with the Pennsylvania Human Relations Commission (PHRC) under the Pennsylvania Human Relations Act. Filing your charge with PHRC protects your state rights, especially since there may be circumstances in which state and federal laws and procedures vary in a manner which would affect the outcome of your case.

Complaints filed with the PHRC must be filed within 180 days of the act(s) which you believe are unlawful discrimination. If PHRC determines that your PHRC complaint is untimely, it will be dismissed.

If you want your charge filed with the PHRC, including this form as part of your EEOC charge, with your signature under the verification below, will constitute filing with the PHRC. You have chosen EEOC to investigate your complaint, so PHRC will not investigate it and, in most cases, will accept EEOC's finding. If you disagree with PHRC's adoption of EEOC's finding, you will have the chance to file a request for preliminary hearing with PHRC.

Since you have chosen to file your charge first with EEOC, making it the primary investigatory agency, the Respondent will not be required to file an answer with PHRC, and no other action with PHRC is required by either party, unless/until otherwise notified by PHRC.

If your case is still pending with PHRC after one year from filing with PHRC, you have the right to file your complaint in state court. PHRC will inform you of these rights and obligations at that time.

[Sign and date appropriate request below]

X I want my charge filed with PHRC. I hereby incorporate this form and the verification below into the attached EEOC complaint form and file it as my PHRC complaint. I request EEOC to transmit it to PHRC.

X I understand that false statements in this complaint are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

X

[Signature]
Signature and Date

7/4/16

____ I do not want my charge dual filed with PHRC

Signature and Date

Exhibit 2

EEOC Form 181-B (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Robert Tomaszewski
 Philadelphia, PA 19152

From: Philadelphia District Office
 801 Market Street
 Suite 1300
 Philadelphia, PA 19107

☐

On behalf of person(s) aggrieved whose identity is
 CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

530-2016-03481

Legal Unit,
 Legal Technician

(215) 440-2828

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice;** or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

☒

More than 180 days have passed since the filing of this charge.

☐

Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.

☒

The EEOC is terminating its processing of this charge.

☐

The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

☐

The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice.** Otherwise, your right to sue based on the above-numbered charge will be lost.

☐

The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Spencer H. Lewis, Jr.,
 District Director

Enclosures(s)

07/25/2017
 (Date Mailed)

cc:

Linda Busillo, Sr. Legal Asst. Supervisor
 CITY OF PHILADELPHIA
 Philadelphia Law Department, Labor & Employment Unit
 1515 Arch Street 16th Floor
 Philadelphia, PA 19102

Nicholas Romeu, Esq.
 CONSOLE LAW OFFICES
 1525 Locust Street
 9th Floor
 Philadelphia, PA 19102