

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

GERALD ALSTON,
Individually and on behalf of all others similarly
situated,
PRENTICE PILOT,
Individually and on behalf of all others similarly
situated,
ESTIFANOS ZERAI-MISGUN,
Individually and on behalf of all others similarly
situated,
JUANA BAEZ,
Individually and on behalf of all others similarly
situated,
ROGELIO RODAS,
Individually and on behalf of all others similarly
situated,
CRUZ SANABRIA,
Individually and on behalf of all others similarly
situated,
DEMETRIUS OVIEDO,
Individually and on behalf of all others similarly
situated,
DEON FINCHER,
Individually and on behalf of all others similarly
situated.

Plaintiffs

v.

TOWN OF BROOKLINE, MASSACHUSETTS,
BROOKLINE BOARD OF SELECTMEN,
BETSY DEWITT,
In her Individual and Official Capacities,
KENNETH GOLDSTEIN,
In his Individual and Official Capacities,
NANCY DALY,
In her Individual and Official Capacities,

CIVIL ACTION: 1:15-CV-13987-GAO

JESSE MERMELL,	}
In her Individual and Official Capacities,	}
NEIL WISHINSKY,	}
In his Individual and Official Capacities,	}
SANDRA DEBOW,	}
In her Individual and Official Capacities,	}
JOSLIN MURPHY,	}
In her Individual and Official Capacities,	}
STANLEY SPIEGEL,	}
LOCAL 950, INTERNATIONAL ASSOCIATION	}
OF FIREFIGHTERS	}
	}
	}
Defendants	}
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AMENDED COMPLAINT AND JURY DEMAND

1. Gerald Alston, Prentice Pilot, Estifanos Zerai-Misgun, Cruz Sanabria, Juana Baez, Rogelio Rodas, Demetrius Oviedo, and Deon Fincher bring this action against the Town of Brookline and others (collectively, “Brookline”) to vindicate their Fourteenth Amendment rights to equal protection and freedom from racial discrimination. They bring this claim on behalf of themselves and all others who have been damaged by Brookline’s longstanding and well-established policy, custom, and practice of opposing racial equality, enforcing racial subordination, engaging in affirmative action and favoritism towards white residents and employees, and retaliating against persons who protest racial discrimination. On January 5, 2016, the Brookline Selectmen’s hand-picked diversity commission admitted that the Selectmen had allowed a “culture of institutional racism to exist” and urged the Selectmen in the strongest possible terms to “stamp it out” immediately. Because the Selectmen have defied this counsel, because they have denied the rights of Black and Hispanic citizens for years, and because they

have persisted in defending and promoting a racist and unconstitutional policy, plaintiffs seek justice from this Court.

Gerald Alston

2. For most of his firefighting career, Mr. Alston worked on a team with Lt. Paul Pender, an Irish-Catholic with a long Brookline legacy. Mr. Alston, who is from Dorchester, participated in the METCO program, attending school in Natick, a predominantly white suburb, where he frequently had to address the ignorance of his white suburban classmates about Black people and about life in Boston. Mr. Alston prided himself in his ability to handle racial ignorance and educate his white classmates about racism and prejudice. When Mr. Alston joined the Brookline fire department in 2002, he was not naïve about the existence of racism in Brookline. As a young man, Mr. Alston was taught to avoid driving through Brookline, particularly at night, because the police were known to target Black drivers. Mr. Alston put Brookline's reputation to one side when he began working as a firefighter. He did the same thing when he began working with Lt. Pender, despite the fact that he had heard rumors that Lt. Pender was a racist. Mr. Alston dedicated himself to doing the job and soon came to love being a Brookline firefighter.

3. In 2010, Lt. Pender called Mr. Alston a "fucking nigger" on Mr. Alston's voicemail. Lt. Pender called Mr. Alston a "fucking nigger" because he was upset that Mr. Alston had gone out on an injury leave. Lt. Pender's deeply rooted prejudices against Black people led him to falsely believe, without any evidence or basis in fact, that Mr. Alston had faked an injury. In fact, Mr. Alston had suffered a serious, well-documented injury while on duty, which for good reason has never been challenged or questioned by Brookline. Unlike many white firefighters, Mr. Alston never faked an injury as a Brookline firefighter.

4. Lt. Pender's racist message and his failure to take accountability for it shattered Mr. Alston's trust in Lt. Pender. And Brookline's conduct in the aftermath slowly destroyed Mr. Alston's trust in Brookline.

5. After Mr. Alston reported the voicemail to the department's chief operating officer, Brookline took no action except to inform Lt. Pender that Mr. Alston had made a complaint. Lt. Pender contacted Mr. Alston and expressed no remorse for his actions. He told Mr. Alston two implausible stories to excuse his message, including claiming that it had been intended for a Black "gangbanger." When Mr. Alston did not accept his explanation, Lt. Pender became angry and told him that his complaint was "a joke because a lot of people use that word" and that making it was the "stupidest thing [Mr. Alston] could have ever done." Based on his knowledge of Brookline's longstanding policy, Lt. Pender knew that Brookline would protect him and punish Alston for reporting the racial slur.

6. Most public safety organizations in the United States would have fired Lt. Pender immediately for saying "fucking nigger" on a subordinate's voicemail. But Brookline's Board of Selectmen protected Lt. Pender from any adverse consequences pursuant to policy. It did not question Lt. Pender about the multiple lies he told to excuse and rationalize his racist message; it did not investigate his intimidating and retaliatory conduct towards Mr. Alston after learning of Mr. Alston's complaint; and it did not terminate his employment, demote him, or make him ineligible for promotion. It kept the facts of his racist conduct secret from other firefighters, the Town's civil rights commission, and the public, and within months of the slur arranged for him to travel to the White House to receive a medal of valor from Attorney General Eric Holder. Selectwoman Jesse Mermell tweeted out coverage of the medal ceremony. The purpose and

effect of the Selectmen's actions was to protect Mr. Pender from any stigma and to mark him with the Selectmen's corporate stamp of approval.

7. Pursuant to policy, Brookline not only protected Lt. Pender, it rewarded him. It promoted him to acting Captain just months after he left the racist message and only days after he allegedly served an outrageously lenient two-shift suspension. It made him the official trainer for all firefighters in Brookline, and the Selectmen promoted him permanently to Captain in 2013.

8. Since 2010, Brookline has punished Mr. Alston for complaining about Lt. Pender's racial slur. It ignored his complaints about Lt. Pender's promotion; it concealed the truth about Lt. Pender's conduct from other firefighters; it allowed false rumors to spread that Mr. Alston's complaint was meritless; it encouraged firefighters to shun and ostracize him; it conducted an ineffective and widely mocked anti-discrimination training; and it repeatedly conducted sham investigations to attack Mr. Alston's credibility and cover-up ongoing retaliation and harassment against Mr. Alston.

9. To take advantage of the 300-day statute of limitations for employment discrimination actions in Massachusetts, Brookline persuaded Mr. Alston to keep his complaints "in-house" for years by lying to him and cynically taking advantage of his loyalty to the fire department and his desire to be seen as a team player. It promised Mr. Alston that Lt. Pender would be ineligible for promotion, and then claimed that his promotion to Captain was temporary and would be rescinded. It promised to "take care of" the retaliation against him and prohibited him from obtaining relief from the Town's civil rights commission.

10. Brookline did not stop punishing Mr. Alston even after he complained to the Massachusetts Commission against Discrimination and filed a lawsuit in superior court.

11. In the fall of 2013, Brookline stepped up its efforts to discredit Mr. Alston because press coverage of Mr. Alston's lawsuit in the Boston Globe threatened to expose Brookline's illegal practices. Brookline attacked Mr. Alston publicly and behind closed doors; forced him out of the fire department on a pretext; and falsely and maliciously arranged for him to be deemed "unfit for duty" by a biased and incompetent psychiatrist. By early 2014, Brookline had placed Mr. Alston on an unpaid leave with the intent to terminate his employment.

12. Throughout Mr. Alston's ordeal, Brookline fought to prevent the civil rights commission charged with enforcing the Town's bylaw against racial discrimination from fulfilling its charge to investigate and resolve complaints of racial discrimination, including Mr. Alston's. The Selectmen refused to appoint commissioners, refused to comply with the commission's requests for information, and ultimately abolished the commission in the spring of 2014, replacing it with a toothless diversity commission. In the summer of 2014, after a clerk-magistrate dismissed Mr. Alston's discrimination lawsuit for failure to comply with procedural rules governing discovery, Mr. Alston lost his last protection against termination. Within months, Brookline stopped Mr. Alston's paycheck, and he soon became unable to afford basic needs, including insulin to manage his diabetes.

13. Mr. Alston maintained faith that if the Board of Selectmen reviewed his case and examined the facts, they would see the injustice and correct the situation. In the fall of 2014, he wrote to the Board outlining the many bad decisions that had been made by the Town's administrative staff and requested to be heard. When the Board ignored his letter, Mr. Alston

and several supporters appeared before the Board during its public comment session to request a full investigation and the restoration of Mr. Alston's job.

14. The Board of Selectmen did not deserve Mr. Alston's faith. Instead of action, the Board of Selectmen gave Mr. Alston more empty promises and retaliation. The Board did not restore Mr. Alston to duty, and assigned town counsel, who had been personally involved in the decision to force Mr. Alston out of the fire department, to oversee a meaningless and perfunctory third-party "review" of the Town's own reports regarding Mr. Alston. The Board ensured that the third-party reviewer would not interview Mr. Alston or any other witness and would not look underneath the Town's sham reports. Although the Board promised to conduct a racial climate review of all the Town's departments, as of the date of this filing, the review remains ongoing and no reforms have been implemented. Only a public protest against Brookline's treatment of Mr. Alston at the Town's annual Martin Luther King, Jr. celebration in early 2015 saved Mr. Alston's job. After the protest, the Board agreed to restore Mr. Alston to paid administrative leave and to hire a new psychiatrist to examine his fitness for duty.

15. The new Town psychiatrist found that Lt. Pender's racial slur called into question how Mr. Alston was perceived by other firefighters and raised concerns about whether they would have Mr. Alston's back in dangerous situations. She found that the Town's promotion of Lt. Pender to Captain had harmed Mr. Alston and that the Town needed to modify the work environment to reduce Mr. Alston's level of stress and restore Mr. Alston's trust in his fellow firefighters. At the direction of human resources and town counsel, however, she did not change the onerous conditions that had previously been placed on Mr. Alston's return. A psychiatrist retained by Mr. Alston found that Mr. Alston was fit for duty, but that that the racial environment in the Brookline fire department was too hostile for Mr. Alston to safely return to work.

16. Brookline knowingly destroyed Mr. Alston's career, health, and reputation to protect Lt. Pender and the Town. In doing so, Brookline carried out a deeply embedded policy of elevating white people and subordinating Black people. That policy embodies the tougher and truer law of Brookline than the dead words found in any Town bylaw or human resources binder.

Prentice Pilot and Estifanos Zerai-Misgun

17. Prentice Pilot and Estifanos Zerai-Misgun are members of the Brookline police department. Mr. Pilot is a 17 year veteran of the department and a Brookline resident. Mr. Zerai-Misgun has served on the force for three years and is a graduate of Brookline High. Both are Black. On the day he was sworn in as a police officer, Mr. Zerai-Misgun was called a "nigger" by the girlfriend of a fellow cadet. The cadet did not admonish his girlfriend and later told Mr. Zerai-Misgun that he could not believe a "Black guy" had outscored him on the civil service exam.

18. In 2014, Mr. Zerai-Misgun achieved the best record of arrests in the department. Despite this record, Mr. Zerai-Misgun only received a single commendation. Pursuant to policy, white officers and supervisors sought to denigrate and put him down as a Black man because of his exemplary performance. A Lieutenant, Paul Cullinane, who saw Mr. Zerai-Misgun in an unmarked police cruiser, stated in front of several others, "What the fuck? Who would put a black man behind one of these?" Another officer, Duane Danforth, told Mr. Zerai-Misgun as he was walking into the station, "I almost ran you over, I can't see you out here in the dark unless your eyes are open." Other police officers referred to him repeatedly as an FI, the police designation for a suspicious individual who should be stopped and questioned. The purpose of these remarks was to keep Mr. Zerai-Misgun in a subordinate position to white officers.

19. On December 23, 2014, Mr. Zerai-Misgun, Mr. Pilot, and a third Black officer met with Brookline Police Chief Daniel O’Leary to protest unequal and racist treatment in the department. Pursuant to policy, neither Chief O’Leary nor Human Resources conducted an investigation. Chief O’Leary promised that he would address the officers’ concerns. He did not. Although Chief O’Leary instructed the shift commanders to alert all officers that the department would not tolerate racial remarks, that direction led Sgt. Michael Raskin to identify Mr. Zerai-Misgun as the one who had protested the use of racist language and caused Mr. Zerai-Misgun to be ostracized within the department. Before the December meeting, the Chief had promised Mr. Zerai-Misgun the day shift anti-crime detective position. After the meeting, Chief O’Leary eliminated the position.

20. After the December 2014 meeting, pursuant to policy, the Town manipulated the racial climate review that had been ordered at Gerald Alston’s request to conceal the racial climate in the police and fire departments. The consultant only interviewed the chief and deputy chief of each department, which meant only white men were interviewed about the racial climate in the Town’s public safety departments. Chief O’Leary told the consultant that the racial climate in the police department was “excellent” and that the Town had made too big a deal out of the promotion of Lt. Pender and the subsequent complaint of Mr. Alston. The Town and Chief O’Leary knew, based on the three Black officers’ reports, that the racial climate in the police department was not excellent. By design, the consultant never interviewed the three officers.

21. On Friday, December 4, 2015, one year after the meeting with Chief O’Leary, Mr. Pilot rolled down the window of his marked police cruiser to speak to Sgt. Robert Lawlor, who was working a detail. Sgt. Lawlor knew that Mr. Pilot had put in for a transfer to an

investigator's position two days earlier. Sgt. Lawlor told Mr. Pilot to "drive up on the curb, get out, and give me some nigger jumping jacks and I'll put in a good word for you." Mr. Pilot did not respond. Sgt. Lawlor's racist comment was intended to put down and subordinate Mr. Pilot. Sgt. Lawlor has been disciplined at least three times, once for using his position to intimidate another officer over a non-work related matter, once for abusing the police detail system, and once for a domestic violence incident. Sgt. Lawlor has at least five relatives on the department. Sgt. Lawlor is white.

22. On Monday, December 7, Mr. Pilot told Chief O'Leary about Sgt. Lawlor's racist conduct in a meeting with the Chief and his second-in-command, Superintendent Mark Morgan. The Chief and Superintendent followed Town policy and began immediately to attempt to cover up the racist incident. The Superintendent suggested to Mr. Pilot that he might have misheard the remark and suggested that, in any event, Sgt. Lawlor was probably just joking around. Mr. Pilot rejected those suggestions as false. Chief O'Leary assigned Deputy Superintendent Andrew Lipson to conduct an investigation of the incident, for the purpose of protecting Sgt. Lawlor and the department. He placed Mr. Pilot on a temporary leave, which he classified as a "special assignment," in order to conceal the nature of Sgt. Lawlor's racist conduct and create additional time to concoct a defense.

23. Deputy Superintendent Lipson contacted Mr. Pilot the same day and suggested to Mr. Pilot that Sgt. Lawlor had said "nude jumping jacks" and not "nigger jumping jacks." Although Mr. Pilot had twice expressed complete certainty about Sgt. Lawlor's statement, once in the meeting with the Chief and Superintendent and again to Deputy Superintendent Lipson, Mr. Lipson told Mr. Pilot he wanted to speak with him on a daily basis. The purpose of the repeated suggestions and police contacts was to intimidate and bully Mr. Pilot into retracting his

complaint against Mr. Lawlor. This type of intimidation and bullying is Brookline standard operating procedure.

24. On December 14, Mr. Pilot and Mr. Zerai-Misgun requested their personnel files because they feared that the Town would place derogatory materials in their file in retaliation for reporting racist conduct in the department. As of December 14, neither Mr. Pilot nor Mr. Zerai-Misgun's personnel files contained any derogatory information.

25. Two days later, the Chief sent a lieutenant and a detective to Mr. Pilot's home to deliver a letter indicating that the police had made no findings against Mr. Lawlor and ordering Mr. Pilot to return to work. Mr. Pilot was not provided a copy of Deputy Superintendent Lipson's report. The purpose of sending two uniformed officers to personally deliver the letter was to intimidate Mr. Pilot. The Chief knew that Mr. Pilot had a flawless record and that Sgt. Lawlor had been previously sanctioned for dishonesty and for verbally abusing a subordinate. The Chief also knew that Sgt. Lawlor's claim that he had said "nude" rather than "nigger" was not credible. The words are grossly dissimilar and sound nothing alike. The letter said nothing about Mr. Pilot's safety concerns.

26. The Chief claimed that the Human Resources director was going to investigate Mr. Pilot's complaint, but the Human Resources director did not contact Mr. Pilot or otherwise initiate an investigation.

27. That evening, Mr. Pilot and Mr. Zerai-Misgun, along with Mr. Alston, attended a public meeting of the Town's diversity commission. Although the agenda called for Selectman and Police Commissioner Bernard Greene to report out the findings of a racial climate review of the police and fire department, a review that had been initiated at Mr. Alston's request a year

earlier, Mr. Greene refused to do so. Mr. Greene had already reviewed the report with the other members of the Board of Selectmen during an executive session. Pursuant to policy, the purpose of the climate review was to cover up racism in the public safety departments. It was not intended to be an honest, independent, and full appraisal of the racial climate in the police and fire departments.

28. Before Selectman Greene and the commission, Mr. Pilot and Mr. Zerai-Misgun shared their experiences with racial harassment and indicated that they were not safe in the police department. Mr. Pilot explained that he and Mr. Zerai-Misgun were in danger because they had crossed the “thin blue line.” He pointed out that Sgt. Lawlor, the man who had ordered him to do “nigger jumping jacks,” had five relatives on the police force and 30 to 40 friends. Mr. Pilot stated that he had withdrawn from the department’s SWAT team out of fear for his safety. Mr. Zerai-Misgun emphasized that he and Mr. Pilot’s experiences with racial harassment within the department had serious consequences for people of color living and passing through Brookline: “If they treat me this way, how do they treat the civilians?”

29. At the meeting, Commissioner Dwaigh Tyndal, a Black man, immediately connected the officers’ reports with his own experiences of racial harassment by the Brookline police. He reported to the commission and Mr. Greene that he had been harassed by the police on December 24, 2014 in Coolidge Corner. He reported that following that episode he had sought out Black men in Brookline and asked them about their experiences in Coolidge Corner with the police. He reported that he spoke to six Black men over the past twelve months and that all had reported stories of racial harassment by the Brookline police in Coolidge Corner. Mr. Tyndal urged immediate action and expressed concern that the police could shoot and kill someone in Brookline.

30. Neither Selectman Greene nor the commission took any action at the meeting to ensure the safety of Mr. Pilot and Mr. Zerai-Misgun or to address Commissioner Tyndal's report. One member of the commission challenged the notion that the Town could guarantee the officers' safety. He told Mr. Pilot that he could "pull out a gun out right now and shoot you." Although the commission and Mr. Greene assured the officers that they would be contacted within 48 hours, nobody from the Town contacted them. The lack of action from the commission and Mr. Greene caused Mr. Pilot and Mr. Zerai-Misgun to continue to fear for their safety.

31. Following the meeting, Selectman Bernard Greene met with the Police Chief and other town officials to formulate a plan to discredit the officers' allegations. Selectman Greene later executed that plan by sending a confidential e-mail to selected town residents.

32. On December 22, 2015, a week after reporting their concerns to Selectman Greene and the commission, Mr. Pilot and Mr. Zerai-Misgun went public because they had not been contacted by Mr. Greene or any other Town official regarding their complaints and related safety concerns. They spoke out about racism in the police department and in Brookline with two local television stations and attended a Selectmen's meeting with a group of concerned citizens.

33. At the outset of the Selectmen's meeting, the Selectmen refused to acknowledge the concerned citizens' request to be heard and took an extended recess rather than hear public comment. Mr. Pilot and Mr. Zerai-Misgun's supporters addressed the empty chairs, voicing their concerns about the officers' safety and the implications on public safety posed by the officers' fears.

34. Pursuant to policy, the next day, two days before Christmas, the Town retaliated against Mr. Zerai-Misgun and Mr. Pilot for publicly addressing racism in the department and in Brookline. The Chief sent an armed police officer to Mr. Zerai-Misgun's house with a letter revoking his paid leave and declaring him absent without leave and without pay. The officer repeatedly asked Mr. Zerai-Misgun's wife whether Mr. Zerai-Misgun was home even after she told him he was not. The Chief also sent an armed police officer to Mr. Pilot's home with a letter claiming that the Chief had only recently been informed that Mr. Pilot had expressed concerns for his safety. This was a lie. Mr. Pilot had personally informed the Chief about his safety concerns two weeks earlier, on December 7.

35. The Chief ordered Mr. Zerai-Misgun to report to work immediately. Mr. Zerai-Misgun called his supervisor and asked why his leave status had been revoked in contravention to ordinary procedure and was told that it came from "upstairs," meaning the Chief. The purpose of the letter and the visit was to silence Mr. Zerai-Misgun and to intimidate him into withdrawing his racial discrimination claim. On the same day, the Human Resources director informed Mr. Pilot in a letter that he should apply for unpaid leave because of his alleged "serious health condition." Mr. Pilot had never reported any serious health condition and the letter was intended to silence Mr. Pilot and intimidate him into withdrawing his racial discrimination claim.

36. Following the officers' public complaints regarding racism, the Town secretly used its police force to investigate Mr. Zerai-Misgun and Mr. Pilot. Among other things, the police department questioned a parking attendant at Trader Joe's about statements that Mr. Zerai-Misgun had made to him during a paid detail about his experiences on the job and also required a colleague of Mr. Pilot to write up a report about a recent conversation with Mr. Pilot. The

purpose of these investigations was to attempt to gather information that might be used to smear and discredit Mr. Pilot and Mr. Zerai-Misgun.

37. For the same purpose, Selectman Nancy Daly contacted the president of the Brookline police union and asked the union to appear before the Board of Selectmen and state that its membership was shocked and blindsided by the allegations of racism made by the officers. Selectman Daly made this call despite the fact that the Selectmen had yet to conduct an independent investigation of racism in the department.

38. Pursuant to policy, Selectman Bernard Greene also attempted to discredit the allegations of racism and suppress public support for the officers. On December 29, 2015, he told a Brookline resident, the member of a local activist group, in an e-mail that a small and unethical group had orchestrated the officers' allegations. He stated that Chief O'Leary had told him that the police sergeant who told Mr. Pilot to do "nigger jumping jacks" had said "nude jumping jacks." Selectman Greene intended for his e-mail to be confidentially distributed among a select group of politically active residents as part of a broader whispering campaign to discredit and smear the officers and their supporters. While Selectmen Greene reported on the details of the investigation behind the scenes, the Selectmen claimed publicly that they were bound by law and policy not to speak about the investigation. At one Selectmen's meeting, Selectman Daly told an impatient public that the Selectmen could not and would not comment about any aspect of the case of the officers because of ongoing investigations.

39. For three consecutive Selectmen's meetings, from mid-December to mid-January, hundreds of concerned Brookline citizens appeared before the Selectmen to protest the treatment of the officers, to demand that they be placed on paid leave pending an independent investigation, and to demand action on the broader issue of racism in town government. At the

January 5, 2016, meeting the Selectmen heard from thirty-three speakers, including several individuals who have since been named plaintiffs in this action, many of whom protested specific acts of racist conduct by the Brookline police. A week later, citizens delivered a petition to the Selectmen with over 1,500 signatures demanding paid administrative leave for the officers and prompt action to address institutional racism in Brookline.

40. The Selectmen were also placed on notice that Chief O’Leary, Selectman Daly, and Selectman Greene had retaliated against the officers for making their complaints about racism in Brookline public.

41. On January 5, 2016, the chairman of the Selectmen’s own appointed diversity commission, read the following statement, which had been unanimously approved by the commission, to the Selectmen:

The Board of Selectmen, as an institution of Town government, has allowed a culture of institutional racism to exist through its past hiring practices. As an example, in the history of the Town's existence there have been [only] two department heads who are people of color. In the past five years the Town has allowed a firefighter who, without dispute, used the N-word, to be promoted to a supervisory position. And the culture that such actions foster has led to situations which have brought us here today. The Commission for Diversity, Inclusion and Community Relations calls upon you, as the elected leaders of this Town, to exercise your responsibilities and duties, as commissioners of the police and fire departments, as the elected representatives of this Town, to stamp out this culture. There must not be a delay. You must act with expedience. There is a history in this Town of not taking actions on these matters in a timely manner. You must not repeat

this history. This is a matter of extreme urgency, which the Board of Selectmen needs to address with actions, not words, now

42. The Selectmen ignored the call to action from the public and its own diversity commission and continued to follow and enforce the Town's unconstitutional policy. In January, the Town threatened legal action against the website Blackstonian if it did not remove the audio of Paul Pender calling Gerald Alston a "fucking nigger," and the Town caused the Brookline High School newspaper, the Sagamore, to remove from its website a video package created by a student that used smartphone footage of the January 12, 2016 Selectmen's meeting. The video documented Chair Wishinsky stating falsely that Mr. Zerai-Misgun was receiving pay from the Town. It also documented Mr. Zerai-Misgun informing the Selectmen and the public about Selectman Daly's request to the police union president. In addition, it showed the Selectmen laughing and grinning during the proceedings.

43. On January 15, 2016, a month after Mr. Pilot and Mr. Zerai-Misgun pleaded their case to the diversity commission, the Selectmen engaged a political insider, retired community development professional, Reginald Nunnally, to attempt to cover up and control the growing unrest over racial injustice in Brookline. Mr. Nunnally is Black. Mr. Nunnally was referred to the board by a former Brookline town meeting member, who the Town had used to try to isolate and silence Mr. Alston.

44. Mr. Nunnally, who is not a lawyer or a licensed investigator, met with Mr. Pilot and Mr. Zerai-Misgun in mid-January. The Selectmen's charge to Mr. Nunnally included only four discrete allegations, and Mr. Nunnally was instructed to report regularly to the Human Resources director. The Selectmen deliberately failed to provide Mr. Nunnally the authority to conduct an independent investigation, and he was not qualified to conduct one in any event. The

officers' efforts to broaden the investigation to shine a light on the problem of institutional racism in Brookline government proved futile. The Selectmen had no intention of investigating their own misconduct. Deputy Superintendent Lipson had been assigned to prepare the officers implicated by Mr. Zerai-Misgun (Russell Lloyd, Duane Danforth, and Paul Cullinane) for the so-called independent investigation.

45. On January 19, 2016, a member of the police union appeared before the board and painted the officers as ungrateful malcontents who had unfairly painted the police department as racist. The union member's appearance was coordinated by Selectman Daly, who supplied him with facts about Mr. Zerai-Misgun that could only have been obtained through a review of Mr. Zerai-Misgun's confidential personnel file. Although the other Selectmen knew that Ms. Daly had asked the union to assist her in discrediting Mr. Pilot and Mr. Zerai-Misgun, they did not object. The Selectmen also took no action to censure Selectman Greene for attempting to discredit the officers behind the scenes in his December 29, 2015 e-mail.

46. The police department is not safe for Mr. Pilot and Mr. Zerai-Misgun; they have been retaliated against and harmed for challenging the Town's unequal and racist practices.

Cruz Sanabria, Juana Baez, Rogelio Rodas

47. Cruz Sanabria, Juana Baez, and Rogelio Rodas are all residents of Brookline. Mr. Sanabria's parents were from Puerto Rico, Ms. Baez was born in the Dominican Republic and became a citizen in 2008, and Mr. Rodas is a U.S. citizen of Guatemalan descent. The Town has harassed, intimidated, and retaliated against them because they are Hispanic and because they have protested racial harassment.

48. In 2013, Mr. Sanabria interviewed with the Selectmen to be on the Town's civil rights commission. He identified himself as a longtime Brookline resident, a father of three Brookline public school graduates, a Boston public school teacher, a veteran of the Vietnam War, and as a Puerto Rican. Mr. Sanabria told the Selectmen that he had experienced discrimination in Brookline and wanted to address discrimination, including against those who do not speak English, as a civil rights commissioner. The Selectmen challenged Mr. Sanabria for identifying himself as Puerto Rican and indicated that the Town had moved beyond identifying people by their ethnicity. The Selectmen interrogated Mr. Sanabria about the details of his experiences of discrimination and told Mr. Sanabria a particular incident of discrimination he described to them was not related to his race.

49. Throughout 2013 and 2014, Mr. Sanabria spoke out against discrimination at public meetings, including addressing Brookline's Town Meeting. The Selectmen and the police Chief were well aware of Mr. Sanabria's political activities.

50. Beginning in 2014, Mr. Sanabria's upstairs neighbors, two white women, began harassing him by calling the police for fabricated and trivial reasons. The police did nothing to prevent or deter these repeated and baseless calls. On one occasion, on March 28, 2014, Mr. Sanabria reported that his neighbor had pushed him and sworn at him. The police documented the assault but did nothing about it.

51. On August 27, 2014, Mr. Sanabria's neighbor falsely accused him of vandalizing her bicycle. The police documented that no crime had been committed but did not admonish the neighbor.

52. On November 17, 2014, the same neighbor falsely accused Mr. Sanabria of slamming a door in her face. The police officer who responded interviewed Mr. Sanabria and both neighbors. He found that the neighbor and her roommate were not rational and wanted him to arrest Mr. Sanabria. The officer did not arrest Mr. Sanabria or indicate that he was in trouble in any way because the officer knew that Mr. Sanabria had not committed a crime. Later in the evening, the officer called Mr. Sanabria and informed him that the neighbors were out to get him.

53. On December 7, 2014, his birthday, Mr. Sanabria received a summons ordering him to appear in Brookline District Court for a show cause hearing on an application by the Brookline police against him for the felony charge of assault with a dangerous weapon. The complaint stated that the door was the dangerous weapon and indicated a potential penalty of up to 5 years in state prison. The summons caused Mr. Sanabria severe emotional distress. He was deeply concerned that he might lose his job as a Boston school teacher because of it. The same month the Mayor of Boston had fired city workers for being arrested during a Black Lives Matter protest.

54. The complaint application was baseless. The Town knew that Mr. Sanabria had not committed any crime. The purpose of the application was to subordinate Mr. Sanabria and to retaliate against him for protesting discrimination in Brookline. The Town did not call any witnesses at the hearing, the police prosecutor did not contest Mr. Sanabria's contention that the assault charge was baseless, and the clerk magistrate dismissed the complaint for lack of probable cause.

55. In the spring of 2015, after the Police Chief refused to acknowledge any wrongdoing in a private meeting, Mr. Sanabria made a citizen's complaint to the Chair of the Board of Selectmen, Neil Wishinsky.

56. Pursuant to policy, Chair Wishinsky and the Town retaliated against Mr. Sanabria for making the complaint and initiated a cover up.

57. Despite Mr. Sanabria's request to be heard by a neutral party, Chair Wishinsky instructed him to speak with the police internal affairs investigator. Chair Wishinsky ignored Mr. Sanabria's complaint that the police investigator had a record of bad judgment and bias. Specifically, Chair Wishinsky ignored Mr. Sanabria's complaint that the internal affairs investigator had recommended unfounded criminal charges—which were swiftly dropped--against a Black town meeting member in a case where the alleged victim was the police investigator's uncle.

58. Throughout 2015, the police covered up evidence supporting Mr. Sanabria and undermining the police, including audio tapes documenting calls to the police by the neighbors and Mr. Sanabria, which showed the biased way the police treated Mr. Sanabria and the deference they provided to his white neighbors.

59. In the early summer of 2015, pursuant to policy, the police published and circulated a report containing the false, malicious, and baseless claim that Mr. Sanabria had a "problem" with women. This false claim was reported to Mr. Sanabria by a Town employee, who said the story was circulating in town hall.

60. In response, counsel for Mr. Sanabria wrote to the Selectmen protesting the intimidation, cover up, and smears and demanding that the Selectmen refer the police cover up to

the attorney general. The letter asked the Selectmen not to refer the cover up of public records to Town Counsel because the keeper of records for the police department was Town Counsel's brother-in-law.

61. Despite notice of the conflict of interest, the Selectmen referred the investigation to Town Counsel, who took no steps to fulfill the outstanding public records requests.

62. The Town produced some of the withheld public records only after Mr. Sanabria complained personally to the office of the attorney general in the fall of 2015. But the Town continues to withhold audio calls documenting the neighbors' use of the police to harass Mr. Sanabria.

63. Despite multiple requests, and in contravention of their written policies and their duties as Police Commissioners, the Selectmen have refused to hold a hearing on Mr. Sanabria's complaint against the police.

Juana Baez

64. On August 15, 2015, the Brookline police harassed, intimidated, and falsely charged Juana Baez, a resident of Brookline for seven years, and the mother of three children, two of whom are students in the Brookline public schools, with disorderly conduct. Ms. Baez had just returned from the hospital because of complications following a cesarean section. Ms. Baez was home with her three week old infant son when she discovered that her car was being illegally towed. The father of her newborn son, Alberto Rodrigo-Torres, parked her car on the side of the driveway in the rear of Ms. Baez's apartment so that he could deliver some groceries for Ms. Baez. The driveway is not marked as a tow zone or a fire lane, and Ms. Baez had

obtained a permit to park on public housing property. A white tow truck driver immediately hooked up the car, however, as soon as Mr. Rodrigo-Torres went inside with the groceries.

65. The tow truck driver cursed and yelled when Mr. Rodrigo-Torres and Ms. Baez attempted to persuade him not to tow the car, leading Mr. Rodrigo-Torres to call the police. Mr. Rodrigo-Torres offered to pay the driver the drop fee to release the car, but the driver refused. Mr. Rodrigo-Torres stepped up into the bed of the tow truck to prevent the driver from leaving with Ms. Baez's only form of transportation. When Ms. Baez attempted to get the driver's attention by knocking on the door, while holding her three week infant in her arms, the driver opened and close the door violently, placing her in fear and almost hitting her.

66. The Brookline police arrived and immediately behaved aggressively towards Mr. Rodrigo-Torres and Ms. Baez and protectively towards the tow truck driver. The police handcuffed Mr. Rodrigo-Torres and ordered him not to speak Spanish. The police yelled at Ms. Baez, falsely accusing her of breaking the window of the tow truck. The police demanded that Ms. Baez produce a passport. When Ms. Baez indicated that her identification was upstairs in her apartment, the police escorted her to the apartment and questioned her aggressively about whether her identification was legitimate. The police refused to hear Ms. Baez and Mr. Rodrigo-Torres' side of the story and accepted everything the tow truck driver said without investigation or question. The police supervisor on the scene was Sgt. Michael Raskin.

67. As a result of false, uncorroborated, and uninvestigated claims made by the tow truck driver, the Brookline police charged Ms. Baez with disorderly conduct and Mr. Rodrigo-Torres with malicious destruction of property, a felony. An armed and uniformed police officer personally delivered the summons to appear on the charge to Ms. Baez at her apartment weeks later.

68. Although the police had not witnessed the alleged disorderly conduct reported by the tow truck driver, the Brookline police summonsed Ms. Baez for an arraignment rather than a clerk magistrate's hearing. As a result, the disorderly charge now appears on Ms. Baez's record, even though it was dismissed. The police also referred Ms. Baez to the department of children and family services.

69. Although the tow truck driver claimed that Mr. Rodrigo-Torres had scratched his truck with a key, the police did not examine Mr. Rodrigo-Torres' key for paint or take pictures of the alleged damage.

70. The police arrested Mr. Rodrigo-Torres and placed him in a police car on the scene while they continued to speak to Ms. Baez and the tow truck driver. The outside temperature was approximately 85 degrees and the temperature inside the car was at least 15 degrees hotter. The police did not turn on the air conditioning or open a window until Mr. Rodrigo-Torres rapped on the window to indicate he was suffocating. The police again left Mr. Rodrigo-Torres in the hot car when they reached the police station. Had a dog been left in a car in those temperature conditions, the police would have broken the window to provide the dog relief.

71. The charge against Ms. Baez was immediately dismissed, although Ms. Baez had to pay court costs of \$150, and the social worker closed the referral immediately, telling Ms. Baez that her problem with the Brookline police was the color of her skin. The charges against Mr. Rodrigo-Torres remain pending after multiple court appearances, although no evidence has yet been produced to support them. The prosecutor has been given a video of the alleged victim tow truck driver harassing a Black cab driver under similar circumstances as occurred with Ms. Baez and Mr. Rodrigo-Torres.

72. Ms. Baez suffered severe emotional distress as a result of her treatment by the police. She is now afraid to have any interactions with the police. Ms. Baez distress was caused by the Town's enforcement of its unconstitutional policy.

73. In November of 2015, Ms. Baez complained in writing to the Selectmen about the police misconduct. She specifically asked not to be contacted by the Town or the police, except through the members of the Brookline Justice League.

74. Despite this request, the Selectmen referred the matter to the Town Administrator, who wrote to Ms. Baez that the police would be contacting her, which placed her in fear. Pressed on why he had ignored Ms. Baez's requests and written to her directly, the Town Administrator responded, "Because that's the way we do it." The Town Administrator stated that the Town would not conduct an investigation without Ms. Baez's cooperation.

75. On January 20, 2015, two weeks after Ms. Baez spoke publicly at a Selectmen's meeting about her mistreatment by the police, the Brookline police requested that Ms. Baez agree to full a disclosure of all "public, private, or confidential records" to the police and sign a document releasing any person or agency who provided information about Ms. Baez from "any and all liability." The document states that the purpose of the authorization is to provide for "full and complete disclosure of any records, documents, investigative reports and information derived from" the August 15, 2015 incident. Neither Ms. Baez nor her representatives have been informed of any investigation by the police of that incident, despite the fact that the Town's own procedures require such a disclosure.

Rogelio Rodas

76. In the fall of 2015, Rogelio Rodas was returning to his home at 22 High Street in Brookline when he encountered a utility crew performing work by the entrance to the parking lot, which was blocked by orange construction cones. Mr. Rodas was traveling with a neighbor and his 12 years old son, a student in the Brookline public schools. A uniformed Brookline police officer, Jeffrey Hudnick, was working a paid detail at the site, and Mr. Rodas asked him how he could get into the parking lot. Officer Hudnick responded rudely, refusing to move the cones, and telling Mr. Rodas that he should drive over the cones if could not fit between them. Mr. Rodas drove into the parking lot over one of the cones and parked the car. Mr. Rodas then picked up the fallen cone, put it to one side on the sidewalk so that other residents could enter the parking lot, and returned to his car. Officer Hudnick was upset that Mr. Rodas moved the cone. He ran after Mr. Rodas, grabbed him by the shoulder, and dragged him back to the entrance of the parking lot. Mr. Rodas' son started to cry out of fear for his father's life. Officer Hudnick screamed at Mr. Rodas to "pick up the fucking cone." Officer Hudnick said that he could arrest Mr. Rodas for destroying property. He told Mr. Rodas that he would "shove the cone up [his] ass."

77. Mr. Rodas complained at the Brookline police department about Officer Hudnick's behavior, and Sgt. Tom Ferris, arranged a meeting. Mr. Rodas wanted Mr. Hudnick to apologize to his son. Mr. Rodas met with Sgt. Ferris and Officer Hudnick, but Officer Hudnick immediately accused Mr. Rodas of behaving rudely towards him and Mr. Rodas ended the meeting.

78. The area of the 22 High Street parking lot where Mr. Hudnick assaulted Mr. Rodas is under video surveillance, but the police did not share the video with Mr. Rodas. The police investigation of Mr. Rodas' complaint has not yet concluded.

Demetrius Oviedo

79. In 2012, Demetrius Oviedo, a longtime Brookline resident, took the civil service exam to become a Brookline firefighter. Mr. Oviedo passed the background test with the Brookline police and was getting fitted for his equipment when he sat for a psychological screening test with the Town's psychiatrist, Dr. Andrew Brown. The Town's screening program is overseen by the human resources department. Dr. Brown informed Mr. Oviedo he didn't see any reason why Mr. Oviedo could not serve as a Brookline firefighter. Soon after, the fire chief informed Mr. Oviedo that Dr. Brown had failed him, on the grounds that he would not be able to get along with co-workers. Mr. Oviedo requested a second opinion and was examined by a psychiatrist in Newton. The psychiatrist determined Mr. Oviedo did not have the resilience to be a Brookline firefighter because he had missed five days of class, in a course for HVAC mechanics, during a period that Mr. Oviedo was also working the overnight shift at Whole Foods. Mr. Oviedo had obtained permission to make-up the five days of class and had graduated from the HVAC program with a certificate.

80. Mr. Oviedo received a bypass letter from civil service, indicating that the Town of Brookline had selected an applicant with a lower score over him. The firefighter class that Mr. Oviedo was rejected from included the son of Brookline police officer, Phillip Harrington. Mr. Harrington's wife is a longtime employee of the Town's human resources department.

81. In 2015, Mr. Oviedo took the firefighter's exam again.

82. On November 8, 2015, after he took the exam, the Brookline police falsely arrested him for disorderly conduct, resisting arrest, and assault and battery on a police officer. Mr. Oviedo, his brother, and a friend were returning from a bar in Brighton, walking down

Commonwealth Avenue towards Mr. Oviedo's home on Egmont Street in Brookline, when a Brookline police officer, Sgt. Matthew McDonnell, confronted them and asked them to produce identification. Mr. Oviedo asked why the officer needed their identification and why they were being stopped. Sgt. McDonnell ignored these questions and called for back-up. Several police cars soon arrived on the scene. Mr. Oviedo continued to ask why they were being stopped. Mr. Oviedo's brother became upset and the police started to arrest him. Mr. Oviedo took a step forward to see what was happening with his brother and the police immediately took him to the ground, handcuffed him, and arrested him. The police claimed the reason for the stop was that Mr. Oviedo's friend had urinated in public, but the police did not arrest the friend. The police had no basis to arrest Mr. Oviedo for disorderly conduct, resisting arrest, or assault and battery on a police officer.

83. At the police station, Mr. Oviedo posted bail and was released from the holding cell. Mr. Oviedo asked the police why he needed to be fingerprinted. The woman conducting the fingerprinting told him to shut up and not ask questions. She arranged for him to be placed back into his cell, where he had to wait several more hours before being released.

84. The Chief of Police sent a message to Mr. Oviedo that his case could be dismissed if he wrote a letter of apology to the arresting police officers. Mr. Oviedo refused to write a letter of apology and his case was dismissed upon payment of \$600 in costs. Mr. Oviedo was informed that one police officer claimed to have injured their knee during the arrest and another officer was seeking restitution for damage to an expensive pair of glasses.

85. On another occasion, Mr. Oviedo was getting out of a car when Sgt. Michael Raskin pulled up to him quickly in a marked police car, alleging that he "fit the description" of a robbery suspect. Sgt. Raskin claimed that Mr. Oviedo was the same height and was wearing the

same clothing as the suspect. Sgt. Raskin backed off when he realized that Mr. Oviedo was in the company of an off-duty Brookline police officer.

86. Mr. Oviedo did not complain to Town officials about how his firefighter application was handled or about how he was treated by the police because he believed it would be futile.

Deon Fincher

87. Deon Fincher was hired by the Town of Brookline as a laborer in 2009, and assigned to the sanitation division of the department of public works. Mr. Fincher is Black. Mr. Fincher was the only Black worker in sanitation division.

88. The sanitation division collects trash with three to four garbage trucks, each of which is assigned a team of two workers. Mr. Fincher was the only Black member of a team. All the teams alternated between driving and collecting trash, except for one, Mr. Fincher's team. On the other teams, each member spent half the time driving and half the time throwing trash into the truck. On Mr. Fincher's team, Mr. Fincher threw trash full time.

89. Although the probationary period for employees is six months, the Town did not grant Mr. Fincher full employment status for nine months. White employees with less time on the job than Mr. Fincher were given valued overtime ahead of Mr. Fincher.

90. The Town never informed Mr. Fincher that the contract with sanitation workers provided for workers to throw trash for only half of their shifts and that both members of the team were required to have a commercial driver's license. Mr. Fincher was not informed of this information because his partner was an older man who could not physically handle throwing trash half of the time and was only capable of driving the truck.

91. Mr. Fincher threw approximately 16,000 pounds of trash into the garbage truck a day. In 2010, he injured his shoulder and required an operation. The operation was performed at the Baptist Hospital in Boston.

92. The Town of Brookline did not change Mr. Fincher's assignment to trash collection, and he returned to work without restrictions. In 2011, he again injured his shoulder and again underwent a surgery at the Baptist. Mr. Fincher complained that the repetitive throwing motion was damaging his shoulder and requested that the Town assign him to another job.

93. The Town's Human Resources director refused to assign Mr. Fincher another job despite overwhelming medical evidence that the job was damaging Mr. Fincher's shoulder. Mr. Fincher was given conditions that restricted the number of shifts he was required to collect trash, but those restrictions were ignored by his supervisors, and Mr. Fincher continued to have to throw trash multiple days in a row.

94. When Mr. Fincher's uncle died, Mr. Fincher was required to produce an obituary in order to get leave to attend the funeral. When Mr. Fincher called in sick, he was required to have a doctor's note. White employees were not subjected to the same conditions. White employees of the department of public works were permitted to call in sick when they were still drunk from the night before.

95. When a white employee injured himself falling of the garbage truck, the Town ensured that he received a generous retirement benefit. Mr. Fincher, by contrast, was forced to live off 60% of his salary under workers compensation when he complained about his shoulder.

96. The head of the division, Kevin Johnson, was hostile to Mr. Fincher when he attempted to assert his contractual rights. Mr. Johnson yelled at Mr. Fincher for requesting a union representative. White employees did not receive the same hostility. An employee of the department of public works drove to work drunk. The Brookline police escorted him out of the workplace, but he was not arrested and his commercial driver's license was not suspended. The employee was able to get his job back simply by apologizing for his behavior.

97. Mr. Fincher's direct supervisor, Richard Stewart, also treated Mr. Fincher differently than white employees. On one occasion, Mr. Fincher left work early to check on his father, who had been hospitalized after slipping and falling on his head. Mr. Stewart called Mr. Fincher and forced Mr. Fincher to return to work to retrieve some administrative paperwork. Mr. Fincher explained that he had returned home on the train and that it would be burdensome for him to come back in. Mr. Stewart did not care.

98. Mr. Fincher was harassed by the police on multiple occasion while passing through Brookline.

99. On one occasion, Mr. Fincher was visiting Dean Park in Brookline with his dog. The park was filled with dogs off the leash. Mr. Fincher was the only Black man with a dog in the park. A Brookline police officer confronted Mr. Fincher and demanded to see his dog's tags. The officer did not request to see the tags of the other dog owners. The officer told Mr. Fincher that because his dog was not registered in Brookline he would have to leave the park. The officer relented only when a work colleague drove by and told the officer that Mr. Fincher worked for the Town.

100. On another occasion, Mr. Fincher was buying dog shampoo in Coolidge Corner. He parked in a lot behind the store and started to enter through the rear entrance. A Brookline police officer confronted Mr. Fincher and questioned why he was leaving his dog in the car. The officer also told Mr. Fincher that he could not park in the back lot. Several police cars arrived on the scene while the officer was questioning Mr. Fincher. The officer stopped harassing Mr. Fincher only after he showed his work identification.

101. In 2012, Mr. Fincher injured his shoulder again and is collecting workers compensation of only \$200 a week. Because of the pay cut, Mr. Fincher lost his apartment and was briefly homeless. Mr. Fincher has four children and is now living in a one-bedroom apartment with his mother.

PARTIES

102. Plaintiff Gerald Alston joined the Brookline Fire Department in 2002. He earned the highest score on the civil service exam in his entering class. Mr. Alston grew up in Boston and graduated from Natick High where he participated in the METCO program. Before becoming a Brookline firefighter, Mr. Alston performed in the R&B group “Classic Example,” which produced several albums and a Billboard 100 hit. He has been a dues paying member of the Brookline firefighter’s union, Local 950, International Association of Firefighters since joining the department. Mr. Alston resides in Boston.

103. Plaintiff Estifanos Zerai-Misgun graduated from Brookline High in 2007, and joined the Brookline police force in 2012. He participated in Brookline’s Steps to Success program for children living in public housing.

104. Plaintiff Prentice Pilot is a 17 year veteran of the Brookline police department. He is a Brookline resident. For much of his career, he was assigned to the schools where he worked closely with students on bullying prevention, drug education, and other issues.

105. Plaintiff Cruz Sanabria is a resident of Brookline.

106. Plaintiff Juana Baez is a resident of Brookline.

107. Plaintiff Rogelio Rodas is a resident of Brookline.

108. Plaintiff Demetrius Oviedo is a resident of Brookline.

109. Plaintiff Deon Fincher joined the Brookline department of public works as a laborer in 2009.

110. Defendant Town of Brookline is a duly organized town in the Commonwealth of Massachusetts. Brookline has a town form of government, headed by an elected five-member Board of Selectmen and a representative town meeting. An elected moderator presides over the town meeting and appoints the Town's advisory (finance) committee. Brookline has a population of approximately 59,000, which is approximately 3% Black, 76% white, 16% Asian-American, and 5% Hispanic or Latino.

111. Defendant Brookline Board of Selectmen are the chief elected and executive officers of the Town of Brookline, with overall responsibility for supervising Town affairs. Brookline operates under a so-called "weak chief" charter, and the Selectmen serve as the Police Commissioners and Fire Commissioners for the Town. They are the ultimate decision-makers with respect to the hiring, firing, promotion, demotion, and discipline (Selectmen must approve suspensions longer than 5 days) of Brookline police officers and firefighters. The Selectmen

have the authority to hire and fire the town administrator, the town counsel, the director of human resources, the police chief, the fire chief, and other department heads. The Selectmen appoint members of Town boards and commissions, including the Town's civil rights/diversity commission. The Selectmen are responsible for adopting and overseeing town administrative policies and representing the Town of Brookline in lawsuits, as plaintiff and defendant. The Chair of the Brookline Board of Selectmen sets the agenda for the Board and communicates regularly with the administrative staff, including the town counsel, human resources director, and the town administrator. The Selectmen frequently appoint and serve on ad-hoc committees to address Town issues.

112. Defendant Betsy DeWitt served on the Board of Selectmen between 2006 and 2015, serving as Chair from 2008 to 2014. In 2011, she established an ad-hoc Diversity Committee composed of herself and Selectwoman Jesse Mermell. Ms. DeWitt is white. Ms. DeWitt resides in Brookline, Massachusetts.

113. Defendant Jesse Mermell served on the Board of Selectmen between 2010 and 2013. She was elected with 82% of the vote against a largely unknown opponent. Selectwoman Mermell served on an ad-hoc Diversity Committee with Ms. DeWitt from 2011 to 2013. Selectwoman Mermell chaired the Town's Martin Luther King Day celebration committee between 2010 and 2012. Ms. Mermell is white. Ms. Mermell resides in Brookline, Massachusetts.

114. Defendant Kenneth Goldstein served on the Board of Selectmen between 2009 and 2015. He was elected in 2009 without any opposition. He served as Chair of the Brookline Selectmen from 2014 to 2015. Mr. Goldstein chaired the Town's Martin Luther King Day

celebration committee in 2013 and 2015. Mr. Goldstein is white. Mr. Goldstein resides in Brookline, Massachusetts.

115. Defendant Neil Wishinsky is the Chair of the Board of Selectmen. He was elected to the Board in 2013. He ran unopposed for the seat vacated by Selectwoman Jesse Mermell, who unexpectedly left the Board in January of 2013 to become the communications director for Massachusetts Governor Deval Patrick. Mr. Wishinsky's first official act as a Brookline Selectman was to vote for Paul Pender's promotion from Lieutenant to Captain. He was elected Chair in 2015. Mr. Wishinsky is white. Mr. Wishinsky resides in Brookline, Massachusetts.

116. Defendant Nancy Daly is a Brookline Selectwoman since 2005. She served as the Chair of the Board's ad-hoc Diversity Committee, beginning in 2013. Ms. Daly is white. Ms. Daly resides in Brookline, Massachusetts.

117. Defendant Stanley Spiegel is an elected town meeting member and an appointed member of the advisory committee. Mr. Spiegel has frequent contact with the Board of Selectmen, both formally and informally. The advisory committee must vote to approve any financial settlement the Town makes of a legal claim against it, including any claim for racial discrimination. Mr. Spiegel is white. Mr. Spiegel resides in Brookline, Massachusetts.

118. Local 950, International Association of Firefighters, is the Brookline firefighter's union. The officers of the Union are white.

119. Defendant Sandra DeBow is the Town's director of human resources. She was appointed by the Board of Selectmen in 2006. Before becoming director she had no experience as a human resources manager. She left her position in the Boston Police labor department under

a cloud. A hearing officer found that she had unreasonably obstructed the union’s request for information, a finding which was confirmed by the Commonwealth’s Employment Relations Board. She left Boston and joined Brookline’s team after testifying at the hearing, but before the decision questioning her conduct issued. Ms. DeBow told the local newspaper in 2016 that the first step the Human Resources department took in any workplace investigation was to “investigate the person making the allegation.” Ms. DeBow is white. Ms. DeBow resides in Boston, Massachusetts.

120. Defendant Joslin Murphy is the town counsel. The town counsel is responsible for advising and making decisions on behalf of all elements of the Town government, including but not limited to, the schools, town meeting, and the town moderator. Ms. Murphy was appointed by the Board of Selectmen in 2013 despite multiple conflicts of interest. She worked as a Brookline police officer for nine years and is related by marriage to two Brookline police officers, including the deputy superintendent. She is also related by marriage to an employee of the department of public works. At the time of the events covered by this lawsuit, her husband was a sergeant in the police department. The Selectmen nonetheless routinely rely on Ms. Murphy to provide advice regarding citizen complaints against the police. The office of town counsel, which Ms. Murphy heads, is representing the Town in this lawsuit despite the clear conflict of interest posed by Ms. Murphy’s status as an individual defendant. Ms. Murphy is white. Ms. Murphy resides in Brookline, Massachusetts.

JURISDICTION

121. This action is brought pursuant to 42 U.S.C. §§ 1981, 1983 and 1988 and the First and Fourteenth Amendment of the United States Constitution. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343, and supplemental jurisdiction under 28 U.S.C. § 1367.

122. Venue is proper in this Court under 28 U.S.C. § 1391(b), because the events giving rise to the claims occurred in this district.

ALLEGATIONS

The Unconstitutional Policy

123. The Town of Brookline has a longstanding and well-established policy, custom, and practice of opposing racial equality, promoting racial subordination, retaliating against persons who complain about racial discrimination, and engaging in favoritism and affirmative action towards white residents and employees.

124. The Town of Brookline's policy of disregarding the Fourteenth Amendment is enforced by the Brookline Board of Selectmen through their agents in the Town administration, including but not limited to the office of town counsel, the town administrator, the department of human resources and other town department heads. The Town of Brookline's policy is also enforced by the town moderator, town meeting, the school committee, and the superintendent.

125. The Town of Brookline's unconstitutional policy, practice, and custom violated the Plaintiffs constitutional rights and caused them damages.

126. The Town of Brookline's unconstitutional policy, practice, and custom violated and continues to violate on an ongoing basis the rights of numerous other individuals in Brookline.

127. The Town of Brookline opposes racial equality and enforces racial subordination as a matter of longstanding and deeply rooted policy, practice, and custom:

a. The Town of Brookline requires Black and Hispanic people to be deferential, compliant, and obedient to white people, particularly on issues involving race and racism.

b. The Town of Brookline opposes efforts by citizens and employees to enforce the Town of Brookline's written policies and bylaws regarding anti-discrimination.

c. The Town of Brookline routinely and habitually denies well founded claims of racial discrimination and retaliation and forces individuals to sue to vindicate their rights. The Town of Brookline has never sustained a claim of racial bias by a citizen against a Brookline police officer. The Town of Brookline has never sustained a claim of racial bias by an employee against another employee.

d. The Town of Brookline conceals and covers up incidents of racial discrimination and retaliation by conducting sham investigations and reviews, by issuing false and misleading reports, and by forcing individuals with claims to sign gag orders prohibiting them from revealing the Town's misconduct.

e. The Town of Brookline defames the character of persons who oppose racial discrimination. The Town of Brookline leaks confidential information about employees who protest unfair treatment in order to discredit them.

f. The Town of Brookline retaliates against individuals who oppose racial discrimination by threatening to reveal confidential information, threatening criminal prosecution, and by employing the police to intimidate them.

g. The Town of Brookline uses its diversity department as window dressing to maintain the sham of equal opportunity.

h. The Town of Brookline opposes affordable housing production plans and fair housing testing.

i. The Town of Brookline disfavors Black and Hispanic employees in its hiring, promotion, and disciplinary practices.

j. The Town of Brookline's police department harasses Black and Latino citizens by (i) stopping and questioning them without reasonable suspicion and on pretexts, (ii) charging, arresting, and applying for complaints against them without probable cause, (iii) verbally and physically harassing them, and (iv) following and surveilling them without cause and based on pretexts.

128. The Town of Brookline engages in favoritism and affirmative action towards white residents and employees.

a. The Town of Brookline privileges white people over other racial and ethnic groups.

b. The Town of Brookline ignores, minimizes, and covers up misconduct by white people.

c. The Town of Brookline hires, promotes, and retains white people who have committed serious misconduct.

d. The Town of Brookline treats violations of law and policy committed by white people leniently.

e. The Town of Brookline favors white people for employment positions and for positions on appointed boards and commissions whose qualifications are worse than those of other applicants.

f. The Town of Brookline reserves its 25 department head positions for white people, with the exception of the diversity department, which is the only department in the history of Brookline ever to be led by a Black person. The Town of Brookline also reserves the position of superintendent of schools and the position of headmaster of Brookline High School for white people. Those positions have never been held by anyone other than a white person in the history of Brookline.

g. The Town of Brookline defends white people against any challenge to the regime of racial subordination.

h. The Town of Brookline gives warnings to white people for traffic violations for which people of color receive fines.

i. The Town of Brookline releases white motorists for driving without a license violations that it arrests people of color for.

j. The Town of Brookline allows white people to avoid prosecution for criminal acts.

129. The Town of Brookline's opposition to racial equality and support of racial subordination has deep roots. Up until the late 18th century, Brookline residents held Black people in slavery, and the Town of Brookline itself owned at least one enslaved Black person, who was left to the Town by Edward Devotion in his will. The Town named a school in Mr. Devotion's honor. The Town of Brookline and its white majority supported the practice of

slavery and claimed it was morally justified by the false doctrine of white supremacy. The practice was ultimately discontinued, but not because of any official act of the Town of Brookline. It stopped only because Black people throughout Massachusetts successfully sued for their freedom in a series of lawsuits. Although the practice ended, the Town of Brookline continued to maintain that it was morally unobjectionable. As late as the 1930s, one historian wrote that a “deep mutual regard” existed between Brookline slave-owners and the Black people they owned. He wrote that “only an exceptionally acute conscience could have been bothered by this sort of slavery.” And recently Brookline public schools taught Black and white children that slave-owners were public servants who acted in the best interests of the whole community. A Brookline textbook sent home with children last year explained that “slaves were treated well or cruelly depending on their owners” and that some “planters took pride in being fair and kind to their slaves.”

130. The Town of Brookline’s unconstitutional policy has kept free Black people out of Brookline for centuries. By design, Black people make up a much smaller percentage of the population and the municipal workforce than they do in neighboring Boston. In Brookline, Black people make up 3% of the population and 5% of the municipal workforce. In Boston, by contrast, 25% of the population and 26% of the city’s workforce is Black. In 1969, Brookline studied the impact of race on fair housing and determined that a pattern of racial discrimination operated to keep Black people out of Brookline. Brookline found that over a twelve-month period, between 1968 and 1969, 122 Roxbury families who qualified financially to live in Brookline had attempted to find housing in Brookline, but that only two were able to obtain housing. Brookline found that a fear of Black people moving into white neighborhoods was at the root of this pattern of discrimination.

131. In 2013, Brookline found that it was likely that racial discrimination was occurring in Brookline's for sale and rental housing markets. Despite this finding, as a matter of policy, the Town of Brookline does not conduct fair housing testing or otherwise enforce its fair housing bylaw.

132. Since the late 19th century, the Town of Brookline has operated the municipal workforce as a job trust for white residents and their families and friends. Many current white employees of the Town have multi-generational legacies of employment, and large kinship networks exist across the municipal workforce. By way of example, the Town of Brookline appointed a white woman with multiple relationships within the workforce, Defendant Joslin Murphy, as the town's chief legal counsel last year. A former Brookline police officer, she is related by marriage to a lieutenant in the police department, a deputy superintendent in the police department, and an employee of the department of public works. Her husband, a recently retired police sergeant, served as president of the police union for many years. His father was also a Brookline police sergeant. These interlocking relationships between white employees across town departments are pervasive.

133. The Town of Brookline maintains its racist and unconstitutional policies by providing the administration wide latitude to covertly implement and enforce them.

134. To conceal its opposition to racial equality and to maintain the façade of compliance with civil rights laws, the Town of Brookline from time to time establishes committees, working groups and commissions whose nominal charge is to investigate racial inequality, prepare reports, and propose action. The Town of Brookline uses these bodies to suppress racial equality and enforce racial subordination.

Brookline Community Relations Committee (1953): Suppressed any meaningful action to integrate Brookline public schools and housing in the wake of nationwide legal challenges to segregation, culminating in the Supreme Court's landmark *Brown v. Board of Education* decision.

Brookline Civil Rights Committee (1964): Worked to prevent integration of Brookline public schools with Boston public schools in the wake of NAACP lawsuits seeking two-way busing remedies across school districts. Promoted one-way busing (the METCO program) of Black children from Boston to shield Brookline from remedies requiring white students to enroll in schools in which Black students were the majority.

Brookline Committee on Urban Responsibilities (1969): Suppressed any changes to the Town's policy of racial subordination in housing, education, and employment in the wake of widespread protests by Black people in Boston and in cities across the country.

Human Relations Commission (1971): Suppressed and discouraged racial equality in Brookline housing, employment, and education between 1972 and 2012. The commission's first director, a prominent social psychologist chosen from a field of 100 applicants, left Brookline within a year, protesting that his appointment was "just tokenism." Forty-two years later, the first woman of color to chair the commission resigned, protesting that the Selectmen had blocked the commission from working to address the Town's disparate treatment of people of color.

Selectmen's Subcommittee on Police and Community Relations (1987):

Concealed racial harassment and profiling by the Brookline police and discouraged citizen complaints against the police in the wake of widespread complaints of racial harassment and profiling.

Citizen Complaint Review Committee (2008): Covered up actions by white town officials and the Brookline police to intimidate and silence outspoken Black town meeting member. Discouraged citizen complaints against the police by Black people.

Inclusion and Diversity Working Group (2010): Concealed racially unequal hiring, promotion, and disciplinary practices. Concealed racial discrimination complaints made in multiple Town departments.

Selectmen's Subcommittee on Diversity and Inclusion (2011): Concealed ongoing racial harassment and retaliation against firefighter Gerald Alston for opposing racism in the fire department and in the Town administration. Concealed the Town of Brookline's decision to promote Paul Pender to Captain shortly after he called Mr. Alston a "fucking nigger" on a recorded voicemail. Opposed citizen efforts to enforce the Town bylaw against racial discrimination.

Selectmen's Committee on Diversity, Equal Employment Opportunities, and Affirmative Action (2013):

Concealed unconstitutional policy and suppressed citizen efforts to investigate, expose, and dismantle Town of Brookline policy of racial subordination. Publicized defamatory letter about Gerald Alston.

Diversity, Inclusion, and Community Relations Commission (2014):

Delayed racial climate review ordered in 2014. Ignored obligation to enforce housing discrimination bylaw.

The Policy is Widespread

135. The named plaintiffs' cases and the additional cases below are representative of how the Town executes the policy. Based on the cloak of secrecy the Town operates under and the gag orders it imposes on victims with whom it enters into settlement agreements, there are many more examples that have not yet come to light.

136. In 2005, a white employee in the department of public works was convicted of assault with a dangerous weapon and intimidation of a witness and sentenced to 60 days of incarceration. The employee informed his supervisor of his convictions. The Town did not take any adverse action against the employee. In 2011, the Town promoted the employee. He resigned in 2014 after he challenged the Town's failure to promote him a second time. The Town did not assert the white employee's felony convictions as a grounds for not promoting him.

137. In 2007, the Town of Brookline promoted a white employee to a senior administrator position over a Black employee with superior qualifications. The Black employee had a master's degree in the relevant field and more experience in the Town of Brookline workforce. The white employee did not have an advanced degree and had a shorter tenure in the department. A town meeting member raised questions about the hiring decision to the Board of Selectmen. In response, a member of the Board of Selectmen met privately with the town meeting member and disparaged the competency of the Black employee. To support his claims, the Selectmen referred to negative comments in the employee's personnel file. The Black

employee's supervisor had secretly placed disparaging comments in the file, without giving the employee the opportunity to rebut them.

138. In late 2007, the Town of Brookline hired a Black woman as the director of the Town's early childhood education center, which is run by the recreation department. The Town intended to shield itself from charges of racism after two Black employees filed racial discrimination complaints with the Massachusetts Commission against Discrimination in 2006. Parents and staff objected to having a Black director and objected to the director's efforts to make the center's programming more multicultural and racially inclusive. Parents and staff asked the head of the recreation department to terminate the director or force her to resign. The department head did not support the director, and town counsel began to investigate pretexts on which to fire her. In early 2008, the department head convened a meeting for parents and staff to voice their complaints about the center's director. The purpose of the meeting was to persuade the director to resign. The day after the meeting, someone left a bomb threat in the director's work mailbox at the center that read, "Got you Nigger, Boom." In response, town counsel coordinated a sham investigation with the police department which did not produce any official suspects. The Town then fired the director for a pre-textual reason that it had been aware of before the bomb threat but had taken no action on. To avoid potential liability for discrimination, the Town hired another Black woman director to head the center. The new director left a year later because of the hostile racial climate at the center. The Town did nothing to address the racial climate at the center.

139. A parent with children at the center asked the Board of Selectmen to investigate the unexplained departures of the two Black directors. The Selectmen did not conduct any investigation.

140. Between 2006 and 2009, a Black employee in the parks department was racially harassed by supervisors and fellow employees. He was told, among other things, that he was doing “nigger work,” that he could live like a king in his native Haiti on the money he was making with the Town, and asked “how did you get a white man’s job?” The human resources director conducted a sham investigation into his complaint and denied it. The employee complained to the Massachusetts Commission against Discrimination. In 2009, the MCAD found probable cause that the Town had fostered a racially hostile environment. The Town did nothing to address the racial climate.

141. In 2007, the Brookline police brought a criminal assault charge against a Black town meeting member and town counsel banned him from town hall because he objected to a white town official’s rudeness to a senior citizen following a public meeting. The officer who recommended the criminal charge was the nephew of the white town official. The charges and the town hall ban were quickly dropped, but the Town did not sanction the police, the town official, or town counsel for their misconduct. The chief of police subsequently promoted the police officer who recommended the assault charge and appointed him to head the internal affairs department charged with investigating citizen complaints against the police. The Town’s actions defamed the Black town meeting member by creating the innuendo that he had done something criminal, inappropriate, or otherwise out of bounds. The Selectmen appointed an ad-hoc committee to review the matter but instructed the committee to make no findings about the incident.

142. In 2008, the Town hired a white woman as a police officer over a Black woman with a higher score on the civil service exam. The white woman was a Brookline High School graduate, a Brookline resident, and the daughter of a Brookline firefighter and a parks and

recreation commissioner. The Black woman was also a Brookline High School graduate and a resident of Brookline. Like virtually all Black applicants to Brookline municipal jobs, the Black woman had no relatives on the town payroll. To justify hiring the white woman over the Black woman despite the Black woman's higher score on the civil service exam, the Town manufactured a pretext. The Town claimed that the Black applicant was bypassed because she had an inconsistent work history and because she stated in her application that she had no history of drug use but admitted in her job interview that she had smoked marijuana as a teenager. She explained to the Town interviewers that she understood the question on the application to apply to her history of drug use as an adult.

143. In response to inquiries by the Black applicant in 2013, the director of the town's human relations department, the chief of police, and the town counsel discouraged the woman from examining her application file by falsely suggesting it contained damaging information about her. Town counsel also falsely claimed that the woman had scored lower on the exam than the white woman hired.

144. In 2008, a white employee of the department of public works, a truck driver, was arrested for possession of heroin. The employee used heroin and drank frequently while on the job. The Town did not terminate the employee, take any disciplinary measures against him, require him to enroll in any substance abuse program, or subject him to drug or alcohol testing. The employee was fired by his previous employer after he was arrested for armed robbery while masked in 2000. The Town of Brookline hired him in 2003 shortly after he completed a 2 ½ year sentence in the house of correction. This white employee's misconduct was an open secret among Town employees.

145. In 2010, a citizen brought a criminal complaint against four white Brookline police officers for assault and battery with a dangerous weapon. Although the victim had to be taken to the hospital in an ambulance with broken ribs, no officer was fired. The officers received two-day suspensions and wrote letters to the Chief for exercising poor judgment.

146. On January 27, 2011, Rogelio Rodas' 11 year old son was assaulted by a white man on Garrison Road in Brookline. Mr. Rodas was able to identify the man several days later and reported the incident to the police. The police submitted an application for a criminal complaint to the clerk-magistrate, but deliberately did not notify Mr. Rodas of the hearing. No witnesses were called to support the complaint and the magistrate dismissed it.

147. In 2011, the Town hired a white woman to be the headmaster of the high school over a Black man with a seventeen year tenure at the high school as a highly regarded teacher and administrator. Among other things, the Black man had developed a calculus project for African-American scholars that had significantly improved their participation and performance in advanced math classes. The job posting provided that a doctorate was preferred. Although the white woman did not have the preferred credential, the Town hired her over the Black man, who possessed a Ph.D. The Town rejected the Black man's candidacy because Brookline was "not ready" for a Black headmaster, according to a member of the search committee. The Town authorized a financial settlement to protect itself from a finding of racial discrimination, and the Black administrator subsequently left the high school. Twenty-three years earlier, the Town rejected another Black man's candidacy for headmaster for a less qualified white candidate. In that case, the Black candidate had been a successful principal within the Brookline schools, and had increased the racial diversity of Brookline teachers by recruiting Black teachers from North Carolina.

148. In 2011, a white member of the town's advisory committee told a white woman administrator in the town's planning department that his uncle would shoot her if he had the chance. The woman complained to the Town's human resources office. The human resources director did not contact the police because the advisory committee member who made the threatening statement was a white man. She conducted a sham investigation instead, which she refused to produce to the media. The Chair of the Board of Selectmen, Nancy Daly, defended the advisory committee member publicly and said that his statement was intended as a joke. The Town did not censor or discipline the advisory committee member in any way, and the woman who reported the matter subsequently resigned.

149. In 2012, six white Brookline police officers, two of whom were supervisors, were lightly disciplined for falsifying records relating to paid details. The Town covered up the extent of the scheme by only reviewing approximately three months of records, despite the fact that the scheme had persisted for years. One of the employees implicated in the scheme was Sgt. Robert Lawlor, who was also protected from termination by the Town after he told plaintiff Prentice Pilot to do "nigger jumping jacks." Another was Lt. Paul Cullinane, who was protected from termination after he made a racist remark to plaintiff Zerai-Misgun.

150. On November 4, 2012, Sgt. Robert Murphy, the husband of Town Counsel, released a white man from the Brookline police station who had been arrested for driving under the influence of alcohol. Sgt. Murphy called up the tow company, had the man's car towed back to the station, and then allowed the man to drive away. Sgt. Murphy ordered the arresting officer to throw out the six empty bottles of Mike's Hard Lemonade and one can of Foster's Beer that the arresting officer had collected at the scene as evidence. After learning of the incident, the Chief disciplined Sgt. Murphy with a written reprimand. Several years earlier, Mr. Murphy

received no consequences for not reporting, and concealing with the help of his sister, another Brookline police officer, that his department issued firearm had gone missing.

151. In 2013, the Town convened a search committee to identify candidates for a new head of the planning department. The planning department is responsible for serving Brookline's low-income residents by administering Brookline's community development block grant funds. The Town selected only white people to serve on the six person search committee and did not highlight the need for a candidate with expertise in working with and for low income residents. The most qualified applicant for the department head was a Black man with a master's degree from Harvard, but the Town did not offer him the job because it had identified a preferable, although less qualified, white woman candidate with connections to the Town's former town administrator.

152. On August 26, 2014, a white Brookline firefighter was arrested for allegedly driving 114 miles an hour while drunk. The Town protected the white firefighter by refusing to confirm his employment as a Brookline firefighter. The same white Brookline firefighter was arrested in 2009 for assault and battery and in 2012 for driving under the influence of alcohol. Despite these arrests, he was protected by the Town.

153. On May 20, 2015, a prominent Brookline businessman of Indian descent complained in writing to the Selectmen about an incident with the police that had occurred the day before. The complaint letter outlined in detail a series of events that led the businessman to conclude that his rights had been violated and that the Brookline police had tried to provoke an incident that would justify his arrest. The supervising officer was Sgt. Michael Raskin. The Selectmen have refused to hold a hearing on the complaint in contravention of their own policies and duties as police commissioners. The businessman has experienced discrimination from the

Brookline police on two prior occasions. Once, while crossing Beacon Street in Coolidge Corner, he alerted a detail officer to a dangerous situation. The detail officer refused to assist and told him, “go back to where you came from,” referring to his country of origin. On another occasion, a police officer followed his car for several blocks, positioning the police car right up against his rear bumper. When he complained to the police department, the supervisor told him that his license plate was one digit off from a car that had been reported stolen.

154. On the day the Charlestown church shootings were announced in the spring of 2015, white students at Brookline high displayed a slide in class that included the words “motherfucking nigger.” The class included six Black students. The administration did not call the police to report a hate crime. The administration waited several days before informing the parents of the Black students that white students had displayed a racial slur to the class. The administration conducted a sham investigation, and did not suspend the white students who displayed the slide. The administration and town counsel classified the racist message as a technology violation rather than hate speech or racial harassment to protect the record of the white students and the Town.

155. In the fall of 2015, the Town terminated an Asian-American teacher because he challenged the Town’s policy of racial subordination by teaching students to question conventional histories of the United States. The Town claimed in the notice of termination that the teacher was being terminated for saying “bullshit” in front of two high school students. The Town served the teacher with a no trespass order/gag order that prohibited the teacher from speaking to any public school parent about the incident. Under the direction of town counsel, the no trespass order/gag order falsely threatened the teacher with arrest and imprisonment by improperly citing Massachusetts criminal trespass statute. The Town used the order to intimidate

the teacher into not speaking publicly about his unjust dismissal. Although the illegality of the no trespass order/gag order was raised publicly, the Selectmen took no steps to investigate or discipline town counsel.

156. In the fall of 2015, a white firefighter was arrested for assault and battery with a dangerous weapon. The initial report by the Town to the media described him only as a Dorchester man and omitted the fact that he was a Brookline firefighter. After the media reported that he was a Brookline firefighter, the Town terminated him. The assault and battery with a dangerous weapon was captured on video. The Union filed a grievance on his behalf pursuant to its practice of filing grievances on behalf of white employees regardless of the evidence.

157. In November 2015, a white employee of the department of public works threatened to shoot people in the department. The Town posted police protection at the department and conducted an investigation. Because the employee was white, however, the Town concluded that the threat was a misunderstanding.

158. In December 2014, a member of the diversity commission was confronted by a police officer in Coolidge Corner. As a result of this interaction, over a twelve month period, the commissioner conducted an investigation of other Black men's experiences with the police in Coolidge Corner. He discovered that all six Black men that he spoke with had experienced racial harassment by the Brookline police.

The Board of Selectmen Fight to Protect & Conceal the Policy

159. The Board of Selectmen have repeatedly blocked citizens from exposing and changing the Town's unconstitutional policy.

160. In 2010, just days before Lt. Pender left his racist message on Mr. Alston's voicemail, Town Meeting passed a resolution calling for the Town to improve its diversity practices by (1) issuing an annual diversity report, (2) appointing a committee to examine and improve the Town's diversity practices, and (3) holding an annual Dr. Martin Luther King, Jr. celebration. The Selectmen lent their support only to the symbolic step of holding an MLK, Jr. celebration. During discussions of the resolution, Selectwoman Nancy Daly cautioned that the author of the resolution should not expect Brookline "to look like Boston." The Selectmen assigned one of its own members, Jesse Mermell, to chair the Martin Luther King, Jr. celebration committee. Ms. Mermell prevented the committee from examining the Town's diversity practices. The Selectmen instead assigned the human resources director to write non-substantive annual reports regarding the racial composition of the workforce and the town's diversity practices. The Selectmen discontinued the annual reports after three years.

161. During debate on the resolution, the Selectmen claimed that a new committee to examine diversity issues was not necessary because the Town already had a human relations commission. But the Selectmen knew that the Commission and its director did not investigate discrimination and were not involved in monitoring the Town's hiring, promotion, or disciplinary practices.

162. In 2011, town meeting members and citizens again asked the Selectmen to take action to address the Town's treatment of people of color in the workforce. The Selectmen were provided with specific concerns that had been raised by employees of color concerning unfair treatment in the workplace. The Chair of the Selectmen, Betsy DeWitt, responded by falsely and angrily claiming that the Town had recently adopted an affirmative action policy. When this falsehood was exposed, the Selectmen announced publicly that Selectwoman Jesse Mermell was

going to chair an ad-hoc committee to examine the Town's workforce diversity policies. But Ms. Mermell never appointed anyone to the committee.

163. The Selectmen instead formed a secret ad hoc Diversity committee of two Selectwomen, Betsy DeWitt and Jesse Mermell, to shield the Town's practices, including its treatment of Mr. Alston and Lt. Pender, from public scrutiny. The committee conferred with the office of town counsel, the human resources department, and the human relations department that the Town did not follow any equal opportunity, affirmative action, or other workforce diversity policy. The committee also confirmed that the Town had discontinued a 1994 affirmative action policy that required the Town to monitor its hiring and employment practices. The subcommittee concealed this research from concerned citizens.

164. In 2012, for the first time in its 40-year existence, the Town's human relations commission, also described as the Town's civil rights agency, began investigating the Town's unconstitutional practices. The Town's bylaw charged the commission with enforcing the Town's nominal policy against discrimination. Section 3.14.3(g) of the Town's bylaw empowered the commission to:

Initiate, receive, secure the investigation of and seek the satisfactory adjustment of complaints charging discrimination, or failure to take or delay in taking appropriate action or abuse of authority in connection therewith by any town official or employee which may be brought to the commission's attention.

And Section 3.14.5 provided the Commission broad access to information:

All departments and agencies in the Town shall cooperate fully with the Commission. They shall comply with its requests for information concerning practices inconsistent with the Town policy of non-discrimination, equal opportunity and affirmative action. Upon receipt of recommendations in writing from the Commission for giving effect to that policy, each department or agency shall submit a reply within a reasonable time, indicating the disposition of and action taken with regard to such recommendations.

165. The commission disclosed publicly that the Town did not follow any written equal opportunity, affirmative action, or workforce diversity policy; the commission questioned why the Town had not had a Black department head or any person of color serve as a department head in 40 years; the commission questioned the chief of police about the department's promotional practices upon discovering that all of the force above the patrol officer level were white; and the commission heard testimony from a Black woman that she had been passed over for a position on the Brookline police force in favor of a white woman.

166. Pursuant to the Town's bylaws, the commission drafted, voted on, and recommended a new affirmative action and equal opportunity policy to the Selectmen that required department heads to report quarterly regarding their recruiting, hiring, promotion, and disciplinary practices. The policy was modeled on an executive order issued by Governor Deval Patrick.

167. In 2013, the Selectmen blocked the commission from further investigating and exposing the Town's unconstitutional practices:

- The Selectmen appointed a white man, a corporate lawyer with no experience in civil rights matters, to the commission to sabotage, block and obstruct efforts to uncover the Town's hiring, disciplinary, and promotional practices.
- The Selectmen intentionally deprived the commission of a quorum by refusing to appoint two Black men and a Latino man with civil rights experience to seats vacated by resignations.
- The Selectmen opposed a resolution in town meeting requesting that the Selectmen lift the moratorium on appointments and appoint the three applicants of color.

- The Selectmen appointed an ad-hoc Committee on Diversity, Equal Employment Opportunities, and Affirmative Action to develop a warrant article to abolish the commission and eviscerate the Town’s anti-discrimination bylaw.
- The Selectmen named Selectwoman Nancy Daly as chair of the committee and excluded diversity advocates from the committee, including members of the human relations commission and town meeting members who had advocated for stronger anti-discrimination measures.
- The Selectmen denied the commission access to reports of discrimination and to town employees, including the fire chief.

168. The Selectmen feared that the commission would uncover the Town’s treatment of Gerald Alston and Paul Pender, among many other cases.

169. The Selectmen lied about the reason they refused to appoint two Black men and a Latino man to the commission. In response to charges that the Selectmen had discriminated by refusing to appoint commissioners of color, the Selectmen claimed they stopped making appointments as soon as they determined that the commission’s charge was likely to change. But the local newspaper reported that the Selectmen had openly discussed changes to the commission’s charge a week before they appointed a white man to the commission.

170. Selectman Kenneth Goldstein told one of the Black applicants to the commission that his application had been denied because he had implied at a public hearing that a Black member of the Selectmen’s handpicked ad-hoc diversity committee was a “house servant.” At the hearing, the diversity committee member in question said that the commission would benefit from having more “Uncle Remuses” as members.

171. Before the town meeting debate on the resolution regarding the composition of the commission, the town moderator instructed the same Black applicant that he was prohibited from calling the Selectmen or any other Town body racist at town meeting. The moderator further instructed the applicant that he was forbidden from stating that the Selectmen's opposition to seating applicants of color on the commission was motivated by racism.

172. In 2014, the Selectmen's committee successfully passed an article in Town Meeting abolishing the human relations commission and creating a new diversity commission. The Selectmen's committee deliberately stripped the new commission of any jurisdiction over the Town's workforce and provided it no authority to investigate racial discrimination.

173. The Selectmen abolished the commission to preserve the Town's unconstitutional and racist policy and discourage further challenges to it. The new bylaw is Article 3.14 of the Town's bylaws.

The Policy Damaged Gerald Alston & Others

174. The Town's unconstitutional and racist policy is the moving force causing Mr. Alston and the other named plaintiffs harm.

175. On May 28, 2010, Mr. Alston broke his coccyx while on duty at the firehouse. He was treated at the hospital and sent home to recover. In the days following, Mr. Alston received a number of get well messages from his fellow firefighters at home. Mr. Alston heard rumors that his supervising officer, Lt. Paul Pender, was claiming that he was faking his injury to obtain leave going into the summer season. In fact, Mr. Alston's medical record confirmed the legitimacy of his injury and it was never challenged by the Town.

176. The Town privileges and protects Mr. Pender because he is white and because of his family's history in Brookline. Mr. Pender grew up in Brookline and attended Brookline High School. His father, Paul Pender, Sr., also grew up in Brookline. He was a firefighter and an accomplished middle weight boxer. In 2010, the Town named a rotary in Paul Pender, Sr's honor.

177. On May 30, a call came into Mr. Alston's cell phone from Mr. Pender. Mr. Alston did not pick up the phone in time to receive the call. Mr. Alston's wife picked up the phone and saw from the caller ID that the call had come from Mr. Pender. She played the message and told Mr. Alston that he should listen to it himself.

178. Mr. Pender says "fat fuck" and the other voice replies "what?" Mr. Pender then says "fucking nigger" and the call ends. Mr. Pender was calling Mr. Alston a "fat fuck" and a "fucking nigger" without realizing that his call had not been disconnected and was being recorded. Lt. Pender left the message because he concluded, without any investigation, that Mr. Alston had faked his injury. In fact, Mr. Alston's injury was well-established, corroborated by multiple medical sources, and never challenged or questioned by the Town. Unlike many white firefighters, Mr. Alston had never faked an injury in his eight year career as a Brookline firefighter.

179. Mr. Alston attempted to resolve the matter confidentially by reporting the message to the second-in-command at the fire department, the chief operating officer Michael O'Neill.

180. Pursuant to well-settled Town of Brookline policy, Mr. O'Neill took no steps to investigate the complaint or discipline Mr. Pender. Mr. O'Neill informed Mr. Alston that the

Town of Brookline did not prohibit the use of racial slurs and that Mr. Alston would have to resolve the matter himself. Mr. O'Neill then informed Mr. Pender about the complaint.

181. After learning that Mr. Alston had complained about the message, Mr. Pender attempted to intimidate Mr. Alston into dropping the complaint. He told Mr. Alston that he had not intended the slur for him. He told Mr. Alston that he was calling a “gangbanger” a “fucking nigger” at the precise time he left the message for Mr. Alston. Mr. Pender later changed his story and claimed the slur was directed at an 18-wheel truck that cut him off in traffic. When Mr. Alston challenged Mr. Pender for his changing stories and lack of remorse, Mr. Pender was defiant. He told Mr. Alston that complaining about the racist message was the “stupidest thing” Mr. Alston could have done. He said he considered the situation a joke because a lot of people use the word “nigger.” He accused Mr. Alston of having a vendetta against him and trying to take his job.

182. After months of no action by the Town, on July 27, 2010, Mr. Alston filed a written complaint against Mr. Pender with the chief of the fire department, and a few days later the fire chief, town counsel, and human resources convened a meeting to discuss the complaint. Mr. Alston played the message and town counsel immediately said “we have a problem.” The fire chief stated that he was going to fire Mr. Pender. Mr. Alston knew that if Mr. Pender was fired he would be retaliated against by his fellow firefighters and he asked the fire chief not to fire Mr. Pender. The fire chief told Mr. Alston that he was going to make Mr. Pender ineligible for promotion.

183. The Town knew that Mr. Pender’s conduct violated the law. Just a year earlier, the Massachusetts Appeals Court had forcefully condemned the use of the n-word in the workplace:

We think that a supervisor who calls a Black subordinate a “fucking nigger” has engaged in conduct so powerfully offensive that the MCAD can properly base liability on a single instance. That term inflicts cruel injury by its very utterance. It is degrading, it is humiliating, and it is freighted with a long and shameful history of humiliation, the ugly effects of which continue to haunt us all. The words have no legitimate place in the working environment — indeed, they have no legitimate place — and there is no conceivable justification for their use by a workplace supervisor.

184. Pursuant to policy, the Town took no action to discipline Mr. Pender and transferred him out of Mr. Alston’s firehouse pending an investigation. The Chair of the Board of Selectmen, Betsy DeWitt, was notified of the complaint and the investigation.

185. Mr. Pender’s transfer led to speculation in the firehouses about what had happened between Mr. Alston and Mr. Pender. Local 950 spread rumors that Mr. Alston had made a false allegation of racism against Mr. Pender. While the investigation was ongoing, the Town pressured Mr. Alston to agree to drop his complaint against Mr. Pender. The director of human resources participated in conversation with Mr. Alston and the Union. She asked him how long he wanted Mr. Pender to suffer. Mr. Alston was uncomfortable being held accountable for Mr. Pender’s discipline, particularly in the presence of the Union given that Mr. Pender was also a Union member. Mr. Alston told the director that he wanted the Town to follow its policies. The human resources director called Mr. Alston an “asshole” and hung up on him. Mr. Alston did not know that:

- The only anti-discrimination policy adopted by the Town was defunct because the Board did not allow the human relations commission to hear complaints of discrimination.
- The Town’s practice was to discourage racial discrimination complaints and cover them up.

- He had a right to bring his complaint to the MCAD within 300 days.

186. By mid-August 2010, the Board of Selectmen knew that Mr. Pender had left a racist voicemail for Mr. Alston and that nothing had been done to address it by the fire department after Mr. Alston complained. The Board of Selectmen also knew that Mr. Pender had attempted to intimidate Mr. Alston into dropping the matter and had changed his story several times about the circumstances of the message. The Board did not fire, demote, or make Mr. Pender ineligible for promotion for his gross misconduct.

187. The Board gave Mr. Pender an extremely short suspension to enforce its policy of racial subordination of black people and favoritism toward white people. There is no evidence that Mr. Pender lost any pay as a result of this suspension. The Board did not make a public statement about the matter or communicate with the fire department or Mr. Alston about the incident. The Board handed down a short suspension after a purposefully slow and long investigation to leave the impression that Mr. Alston's claims against Mr. Pender lacked merit.

188. After Mr. Pender's complaint, the Board of Selectmen adopted an allegedly "zero tolerance" anti-discrimination policy. The policy is window dressing, and the Board does not enforce it. The human resources director told the Selectmen that the policy would not change the Town's "tried and true" process of investigating discrimination complaints. The Selectmen knew that this tried and true process meant enforcing the Town's unconstitutional and racist policy.

189. The Board ordered Mr. Pender to attend a mediation with Mr. Alston. Mr. Pender was openly hostile towards Mr. Alston at the mediation, even refusing to shake Mr. Alston's

hand, but the Town did nothing to address it. Mr. Pender never apologized to Mr. Alston for his conduct or showed any remorse.

190. The Town promoted Mr. Pender from Lieutenant to Acting Captain a few days after his suspension was handed down. The Town posted the promotion on a bulletin board in every firehouse in Brookline. The Town promoted Mr. Pender to send the message that Mr. Pender had done nothing wrong and to discourage any further protest against racial discrimination by Mr. Alston and by other Black Town employees and citizens. The Town arranged for Mr. Pender and his family to fly to Washington, D.C. to attend a medal ceremony at the White House. The ceremony related to Mr. Pender's performance at a fire two years earlier. The Board kept Mr. Pender's suspension secret to protect the Town's reputation and to avoid an embarrassing conversation with the White House, which was occupied for the first time by a Black president.

191. The Town and Local 950 retaliated against Mr. Alston because he protested the Town's policy of racial subordination of black people and racial favoritism toward white people.

192. On the day of the White House medal ceremony, an anonymous poster to an online message board frequented by firefighters questioned why a "racist" was receiving a medal at the White House. Mr. Alston did not post the message, but the president of Local 950 targeted him for retaliation anyway, posting this message on the Local 950's Facebook page:

To the faceless coward who for no good reason, except of course his own self intrest [sic] leaked to the media about one our BROTHER's alleged acts of misconduct on what should have been the proudest day of their professional lives is _____, I honestly can't even find an appropriate word for it. I have been around this job a long time and seen and heard a lot, but this even exceeds my wildest expectations of someone having a personal agenda to destroy another. This union went through this type of personal, meritless attacks before and it almost destroyed us, don't let this ever happened again, for all our sakes!

193. The Union damaged Mr. Alston's reputation in the fire department by falsely claiming that Mr. Alston's complaint against Mr. Pender was meritless and self-interested.

194. Mr. Alston protested Mr. Pender's promotion to human resources but the Town did nothing address it. The Board of Selectmen arranged for the fire chief to retire early despite the fact that he had recently signed a new three year contract. The purpose of arranging the fire chief's retirement was to avoid accountability for the fire chief's promise not to promote Mr. Pender.

195. Mr. Alston protested the Union's retaliation against him but the Town did nothing to address it.

196. Pursuant to policy, the Board of the Selectmen and the Town created a retaliatory and hostile work environment for Mr. Alston after he complained about racial discrimination. Their actions were intended to create an atmosphere of distrust around Mr. Alston by creating the false perception that he had made a meritless claim against a fellow firefighter for personal gain.

197. The Town used the new anti-discrimination policy to harass and retaliate against Mr. Alston. The Town trained supervisors to secretly report workplace friction involving Mr. Alston so that human resources could create reports portraying Mr. Alston as a problem employee. On multiple occasions, the human resources department prepared reports to the Board purporting to investigate incidents involving Mr. Alston. In every case, the reports falsely painted Mr. Alston as being disruptive and overly-sensitive. The reports were intended to leave the false impression that Mr. Alston was either imagining or fabricating complaints of harassment and retaliation.

198. The Town's harassment and retaliation against Mr. Alston caused him to be hospitalized for stress. Mr. Alston's medical doctor recommended that Mr. Alston be placed on a leave of absence because of the stress caused by the Town's treatment of him. The Town refused to grant Mr. Alston a paid leave and informed him that he would need to use his sick time if he wanted to take a leave. The Town denied the possibility that Mr. Alston might be entitled to injured on duty status under Massachusetts law. Mr. Alston could not afford to take an unpaid leave and did not take a leave at this time. Several years later, however, based on public pressure, the Town relented and placed Mr. Alston on a paid administrative leave. That paid leave has now extended for nine months and constitutes an acknowledgment by the Town that the Town's racially hostile environment is the fundamental obstacle to his safe return to work.

199. Mr. Alston attempted to stop the harassment and retaliation by filing a formal complaint with MCAD and then the superior court of Massachusetts. These formal complaints led to more harassment and retaliation by the Town. The Town continued to ignore Mr. Alston's complaint that it had promoted Mr. Pender in violation of the fire chief's agreement and Mr. Alston's complaint that the Union had retaliated against him. The Town also ignored Mr. Pender's continuing retaliation against Mr. Alston. Mr. Pender told Mr. Alston that Mr. Alston had a personal vendetta against him and if he didn't he would "not be suing for money." Mr. Pender blamed Mr. Alston for people "looking at me like I am a racist."

200. The Town conducted a sham investigation into only some of the MCAD allegations and prepared a report that left the false impression that Mr. Alston had invented his complaints. Although the report purported to reflect the opinions of all of Mr. Alston's

supervisors, the Town deliberately avoided interviewing Alston's direct supervisor, Lt. Ronald Cronin, who would have corroborated Mr. Alston's claims.

201. The Town encouraged supervisors to deny that Mr. Alston had been subjected to any ostracism. The second-in-command in the department, Mike O'Neill, refused to go along with the scheme and retired under questionable circumstances.

202. The Town and Local 950 continued to conceal from the fire department rank and file the true facts about Mr. Pender's conduct.

203. In the spring of 2013, the Board of Selectmen voted to permanently promote Mr. Pender to Captain. The Board knew that Mr. Alston's racial discrimination and retaliation complaint was pending before the MCAD. The Board knew that Mr. Pender had said "fucking nigger" on Mr. Alston's voice mail and told conflicting stories about it to Mr. Alston and the Town. The Board knew that Mr. Pender had attempted to intimidate Mr. Alston into dropping his complaint. The Board nonetheless voted to promote Mr. Pender pursuant to the Town's unconstitutional policies. The intent and effect of the vote was to solidify the message to the fire department that Mr. Pender had done nothing wrong and to cast doubt on Mr. Alston's credibility and character.

204. Both before and after the Selectmen promoted Mr. Pender to Captain, the Town retaliated against Mr. Alston by denying him promotions to Acting Lieutenant. The practice is for the senior man on the fire truck to serve as Acting Lieutenant when the officer assigned to the truck is not available. Although Mr. Alston was entitled to Acting Lieutenant promotions in April and May of 2013 because he was the senior man on the truck, the Town refused to promote him. The Town assigned Lieutenants from other fire stations to his truck to avoid promoting

him. Although Mr. Alston protested the failures to promote, the Town did not conduct an investigation.

205. Mr. Alston removed his case from the MCAD and filed a discrimination lawsuit in state court, which was dismissed a year later by a clerk-magistrate for procedural reasons. The Boston Globe reported the claims in the lawsuit in the fall of 2013.

206. The Boston Globe story publicly exposed the Town's failure to address Mr. Pender's conduct for the first time. Pursuant to policy, the Board of Selectmen moved to contain the damage by spreading lies and innuendo about Mr. Alston. In response to an inquiry by Town Meeting members, the Chair of the Board, Betsy DeWitt, falsely stated that Mr. Alston's complaint had been investigated pursuant to the Town's anti-discrimination policy. Ms. DeWitt knew that the anti-discrimination policy had been enacted after Mr. Alston's complaint. Ms. DeWitt also knew that she had concealed Mr. Alston's complaint from the human relations commission, the Town body specifically charged under the Town's bylaws at the time with investigating racial discrimination complaints.

207. The chair of the Selectmen's diversity committee, Nancy Daly, distributed a letter to the editor of the local Brookline newspaper to the public at a meeting of the committee, prior to its publication. Ms. Daly said that the letter gave "another side of the story." The letter attacked Mr. Alston's courage and credibility. It suggested through innuendo that he lacked courage as a firefighter and that his lawsuit against the Town was "ignorant, fraudulent, and deceitful." The letter was solicited from a retired Black firefighter for the purpose of retaliating against Mr. Alston. The firefighter who purportedly wrote the letter had retired in 2007, three years before the incident, and Ms. Daly provided no evidence that he had any information about

what had happened between Mr. Pender and Mr. Alston. The letter Ms. Daly distributed was more derogatory than the version of the letter ultimately published in the local paper.

208. The next day, Stanley Spiegel, a town meeting and advisory committee member, distributed the published version of the letter to town meeting members for the stated purpose of providing “diversity” of opinion regarding the lawsuit.

209. The Board of Selectmen blocked the human relations commission from intervening to protect Mr. Alston. The Board refused to release the Town’s investigatory reports and clarify public uncertainty over whether Mr. Alston had in fact been subjected to a racial slur by Mr. Pender. The Chair of the Board, Betsy DeWitt, refused to meet with the human relations commission to discuss Mr. Alston’s complaint. And Ms. DeWitt authorized town counsel to prevent the fire chief from discussing the workplace culture in the fire department with the commission.

210. In mid-December 2013, an unidentified firefighter wrote the word “Leave” on the door behind Mr. Alston’s jacket. The message was intended to retaliate against Mr. Alston and force him from the fire department. Mr. Alston photographed the message and said to the firefighters present that “this is the kind of thing that makes people go postal.” Mr. Alston said that he was not like that though. He said that he was going to make the Town pay legally. The Union reported the incident but did not discuss it with Mr. Alston. The incident was reported up the chain of command to the fire chief, who reported it to the director of human resources and the town counsel the next day. But no immediate effort was made by the Town to speak with Mr. Alston about the message, and the Town did not immediately initiate an investigation to determine whether the message violated the Town’s anti-discrimination and retaliation policy.

211. The shift commander ordered the word to be washed off of the door without making any efforts to preserve it for forensic analysis. The Town did not immediately ask the firefighters who were on duty when the incident occurred whether they had written the “Leave” message or knew who had. Much later, the Town began yet another sham investigation, which failed to identify the perpetrator. In a report delivered to Kenneth Goldstein, the new Chair of the Selectmen, five months after the incident, the Town claimed that Mr. Alston could have written the message or it could have been written by a member of the MIT fraternity across the street.

212. The Board of Selectmen knew that the “Leave” message was intended to retaliate against Mr. Alston for filing a racial discrimination lawsuit against the Town.

213. The Town intended to find that Mr. Alston had not been discriminated against or retaliated against before it even began its investigation into the “Leave” message. The human resources director did not call Mr. Alston for an interview until three months after the incident. When Mr. Alston asked that the interview be set up through his counsel, the human resources director informed him in a letter that his racial discrimination claims against the Town were outside the scope of the “Leave” investigation. She instructed him that he needed to speak with her directly, without a lawyer present.

214. Mr. Alston returned to the firehouse for his next shift three days after receiving the harassing message. Nobody from the Town had contacted him to discuss the message or express concern for his safety or wellbeing. At the beginning of the shift, Mr. Alston addressed the “Leave” incident. Although no firefighter complained about feeling threatened by Mr. Alston and the supervisors present agreed no action was required, the Town began a sham

investigation of Mr. Alston under the Town's workplace safety policy and ordered Mr. Alston to submit to a fitness for duty examination with the Town's psychiatrist.

215. The Town also issued Mr. Alston a stay away order under Massachusetts criminal trespass law, which required Mr. Alston to stay away from the Town's firehouses on threat of arrest and prosecution.

216. The Town issued the stay away order to communicate the false impression that Mr. Alston was dangerous. The Town claimed falsely that Mr. Alston had threatened to shoot people in the firehouse, and the Union attempted to bolster the Town's claims against Mr. Alston by asking for police officers to be posted at all of the Town's fire stations days after the alleged threats. The fire chief refused to honor the Union's request because he knew that Mr. Alston was not a threat to workplace safety. The Town's psychiatrist agreed, concluding on January 6, 2014 that Mr. Alston did not pose a threat to workforce safety.

217. The Town used the workplace safety policy to retaliate against Mr. Alston for suing the Town. In May of 2014, five months after Mr. Alston complained about the "Leave" message on his door, the Town falsely determined that Mr. Alston had violated the workplace safety policy. The Town knew the elements of a violation had not been met because Mr. Alston did not intend to place anyone in fear with his comments and no firefighter was placed in fear by them.

218. Local 950 did not object to the finding of a violation, did not attempt to negotiate on behalf of Mr. Alston, and did not seek injured on duty status for Mr. Alston. The Town informed Mr. Alston that he had been determined to be unfit for duty and placed him on unpaid

administrative leave. Local 950 did not object to this employment action and did not file a grievance on Mr. Alston's behalf.

219. As a condition of returning to duty, the Town directed Mr. Alston to submit to abusive and onerous conditions designed to protect it in litigation and to leave the impression that Mr. Alston was to blame for hostility he encountered in the fire house. The Town conditioned Mr. Alston's return on a further fitness for duty examination and intended Mr. Alston to be found unfit for duty in any subsequent examination.

220. Through discovery in Mr. Alston's superior court matter, the Town obtained Mr. Alston's medical records. They showed that Mr. Alston had tested positive for cocaine once in 2010, on the same day he was hospitalized for stress. The records showed that Mr. Alston had reported some cocaine use in the months prior to December 2011. Mr. Alston's medical providers did not find he was an addict or an abuser of drugs. They determined his isolated drug use had resulted from severe workplace stress.

221. The Town did not discipline Mr. Alston after obtaining his medical records. Instead, the Town used the information to try to discredit Mr. Alston and impugn his character. At the time the Town obtained the records, the Town psychiatrist had already examined Mr. Alston and issued two reports. The Town instructed the Town psychiatrist to conduct an additional exam so that his report would include Mr. Alston's positive test. The purpose of providing this three and four year old information was to discredit Mr. Alston in his claims against the Town. The Town psychiatrist had not independently sought to obtain the records.

222. The Town also leaked the information in Mr. Alston's file to Defendant Stanley Spiegel and others in an effort to smear Mr. Alston and undermine his support in the community.

223. The Town has no written substance abuse policy governing the use of drugs or alcohol by Town employees. Mr. Alston's positive test was four years old and there was no contemporaneous evidence that Mr. Alston was using or abusing drugs. The human resources director nevertheless directed that Mr. Alston undergo two years of random testing upon his return to duty. The condition was retaliatory and not consistent with how white employees are treated by the Town.

224. In October 2014, Mr. Alston used up his remaining sick and leave time and received his last paycheck from the Town. Neither Local 950 nor the Town contacted him to check on his health or wellbeing.

225. The human resources director intentionally waited until Mr. Alston was no longer receiving a paycheck to request a meeting with him to discuss his status. At the beginning of November, after Mr. Alston had gone a month without a paycheck, she scheduled a reasonable accommodation meeting for the purpose of terminating Mr. Alston. The Town intended to terminate Mr. Alston by falsely claiming that he was disabled and that no reasonable accommodation could be made for him within the fire department. The human resources director had used this strategy to pressure at least one other firefighter to take early retirement.

226. Through counsel, Mr. Alston attempted to obtain a meeting with the Chair of the Board of Selectmen, Kenneth Goldstein, to discuss a resolution. Mr. Alston mistakenly believed that the Town's administration was not providing a full accounting of his situation to the Board. The Chair agreed to meet with Mr. Alston. Days before the meeting, assistant town counsel sent an e-mail that implied that counsel's representation of Mr. Alston could form the basis for a felony charge carrying state prison time. The implication was baseless and intended to

intimidate. When Mr. Alston's counsel did not drop the engagement, the Chair cancelled the meeting.

227. At the end of November, Mr. Alston filed a letter with the Board of Selectmen outlining the mistakes made by the administration in handling his case, asking the Board of Selectmen to take responsibility, and requesting a hearing under the Town's anti-discrimination policy. Mr. Alston believed in good faith that the Selectmen would right the wrong against him if they examined the facts.

- Mr. Alston asked the Board to conduct an independent investigation to find the facts and grant him a hearing to address his appeal of multiple decisions made by the administration concerning his case.
- Mr. Alston pointed out that the human resources office and town counsel were attempting to scapegoat him for their mistakes.
- Mr. Alston asked the Selectmen to investigate a recent MCAD finding of probable cause against the fire chief and the human resources director involving a Jewish firefighter and to investigate anti-Semitism in the department.
- Mr. Alston asked the Selectmen to investigate whether the Town had misled MCAD regarding anti-discrimination trainings that MCAD had conducted at the Town's request in 2010 and 2011. Mr. Alston pointed out that the Town had led MCAD to believe that the trainings were proactive when, in fact, they had been prompted by Mr. Pender's racist conduct.
- Mr. Alston asked for a racial climate review of the entire department.

228. The Selectmen ignored Mr. Alston's letter.

229. In early December of 2014, Mr. Alston and several supporters addressed the Board of Selectmen during the public comment period. Mr. Alston asked the Board to conduct a third-party investigation into how his case had been handled and place him back on paid administrative leave.

230. The Town retaliated against Mr. Alston for publicly protesting his treatment, including by providing town meeting and advisory committee member, Stanley Spiegel with access to Mr. Alston's personnel file. A week after Mr. Alston's appearance before the Selectmen, Mr. Spiegel told several witnesses that he had access to Mr. Alston's personnel file in his capacity as a town meeting member. He told a supporter wearing an "I support Gerald Alston" sticker that she would not support Mr. Alston if she knew the "real story" contained in Mr. Alston's personnel file. He said that she was not entitled to access to it, but that he and the Selectmen were. He represented to the supporter that he was speaking on behalf of the Town. Mr. Spiegel also falsely claimed in front of several witnesses that two Black firefighters had volunteered to him that they did not support Mr. Alston. In a subsequent investigation, Mr. Spiegel failed to identify the names of these firefighters. His claim lacked foundation and was intended to smear Mr. Alston in the eyes of the public and discourage Mr. Alston and others from continuing to speak out publicly about the Town's discriminatory conduct.

231. The supporter complained about Mr. Spiegel's conduct to Kenneth Goldstein, the Chair of the Board of Selectmen, and Mr. Alston's lawyer separately complained to town counsel after learning about the breach of confidentiality. The next day town counsel wrote a sham report concluding that Mr. Spiegel had not engaged in any misconduct. Town counsel conceded in the report that she had not spoken to the supporter who had made the complaint and had reached her conclusion based on speaking to Mr. Spiegel and a witness. The witness, a town

meeting member, corroborated the supporter's account, but town counsel credited Mr. Spiegel's denial. Mr. Alston appealed the ruling of town counsel to the Board of Selectmen under the Town's anti-discrimination policy, but the Board refused to grant Mr. Alston a hearing.

232. Concerned about the integrity and the contents of his personnel file, Mr. Alston and his lawyer made an appointment to review it in a conference room at Town Hall. Mr. Alston and his lawyer were met in the conference room by an armed police detective, who had taken custody of Mr. Alston's personnel file. The police detective indicated he had been instructed by town counsel to watch Mr. Alston and his lawyer as they reviewed the personnel file. The police detective did not know why he had been asked to hold the file and remain in the room. He admitted it was not a common practice. Mr. Alston's lawyer called the Chair of the Board of Selectmen, Kenneth Goldstein, and complained about the police detective's presence. The Chair could not explain why a police detective had been provided Mr. Alston's file and told to remain in the room. Mr. Alston's lawyer complained that it was meant to intimidate Mr. Alston. The Chair spoke with town counsel and called Mr. Alston's lawyer back and explained that the police detective would be removed from the room. The Selectmen took no action to discipline town counsel for her improper conduct.

233. Mr. Alston discovered his personnel file was incomplete and brought the problem to the attention of human resources. The human resources specialist then reviewed the file with the police detective to identify missing pages. Mr. Alston was upset to see the police officer joining in the review of his personnel file. A missing page was supplied with redactions that appeared to have been made that day by the human resources director. Mr. Alston subsequently discovered at least two letters relevant to his case had been removed from the file.

234. In January 2015, Mr. Alston and his lawyer met with the Chair of the Board of Selectmen, Kenneth Goldstein, and town counsel, Joslin Murphy, to discuss Mr. Alston's case. In the course of that meeting, the Chair admitted that he had doubts about Paul Pender's story but that it would be going too far to impose consequences on Town employees who lie. The Chair also stated that he did not agree with the fire chief's decision to promote Paul Pender to Acting Captain shortly after the incident but claimed not to have known about it. With respect to the statements made by Stanley Spiegel, the Chair said that Mr. Spiegel was free to smear Mr. Alston and the Town could not do anything about it.

235. During the meeting town counsel attempted to bait Mr. Alston into a reaction by superfluously repeating the phrase "fucking nigger" in Mr. Alston's letter of appeal to the Selectmen.

236. The meeting terminated because the Chair falsely and outrageously claimed that Mr. Alston had threatened his family. Towards the end of the meeting, Mr. Alston explained to the Chair that he had a family to support and had asked the Chair whether he had a family in an effort to make a connection. Mr. Alston had been without pay for three months at this point. The Chair reacted defensively and abruptly. He told Mr. Alston that Mr. Alston was threatening his family, got up from his seat, took his coat, and left Mr. Alston and his counsel alone in the room with town counsel. Mr. Alston left the room and asked the Chair to justify his claim that Mr. Alston had threatened his family. The Chair refused to engage with Mr. Alston, except to threaten to go to the police station and file charges against Mr. Alston. The Chair resigned from the Board of Selectmen three weeks later, and Neil Wishinsky was elected Chair.

237. Although no charges were filed against Mr. Alston, the Town retaliated against Mr. Alston by distributing a flyer to the police that falsely stated that Mr. Alston had made

threats against Selectmen Goldstein and was possibly armed. The flyer included a picture of Mr. Alston and his car. The Town's unjustified distribution of the flyer placed Mr. Alston in serious jeopardy for his life. It meant that a simple traffic stop could escalate quickly into an excuse for Brookline police to use deadly force against Mr. Alston.

238. In February, Mr. Alston sat for another fitness for duty exam because the Town agreed to restore him to paid administrative leave and retain a different psychiatrist. The new psychiatrist concluded that Mr. Alston could return to work only if he complied with onerous and restrictive conditions, including meeting with a therapist weekly and a psychiatrist monthly and releasing them to discuss his treatment with the Town. The conditions falsely implied that Mr. Alston's complaints of retaliation and harassment were in his head and that he was a problem worker. The Selectmen endorsed the conditions to retaliate against Mr. Alston.

239. Mr. Alston refused to submit to the conditions imposed by the Town and demanded that the Town correct the unsafe racial climate. Mr. Alston repeatedly asked the Selectmen for a meeting to discuss his case, but the Selectmen refused to meet with him. Mr. Alston reiterated his request for a hearing before the Selectmen, but the Selectmen refused to hold one. Mr. Alston appealed personally and directly to Chairman Neil Wishinsky, but Mr. Wishinsky refused to meet with him. Mr. Alston also requested a meeting with the leadership of Local 950 but they declined to meet with him either.

240. The conditions imposed by the Town are punitive and lack a legitimate basis. Mr. Alston has obtained a review from a psychiatrist that establishes that the only obstacle to his return to duty is the racially hostile environment fostered by the Town of Brookline. The psychiatrist opines that Mr. Alston's problems with the environment in the firehouse are not in his head and therefore cannot be resolved through psychiatric treatment and monitoring.

241. The Town's policy has impacted every aspect of Mr. Alston's life. He has suffered financially, psychologically, and physically. His marriage has ended, his debts have increased, his health has deteriorated, and he struggles daily with the loss of the job that he loved to do and excelled at.

The Selectmen Use Window Dressing and Tokenism to Conceal the Policy

242. The Selectmen ordered a racial climate review of the entire Town workforce in December of 2014 to create the illusion of action on Mr. Alston's complaint. But after almost a year, the Town had not fully completed the review and had not taken any substantive actions to change the racial climate.

243. For public relations purposes, the Selectmen ordered a sham review of Mr. Alston's matter by a Latino board member of the Lawyers Committee for Civil Rights, a lawyer whose office turned out to be a post office box at a UPS store. Through town counsel, the Selectmen directed the reviewer not to interview any witnesses or seek to discover any documents. The Selectmen directed the reviewer to base his findings entirely on biased reports that had already been provided to the Selectmen by the human resources director and town counsel.

244. In order to preserve and continue the Town's unconstitutional policy, the Selectmen groomed Black employees and citizens for token positions.

245. In 2014, the Selectmen appointed a Black man director of the Town's newly constituted diversity commission. The Selectmen chose him because he proved that he would uphold the Town's policy of opposing racial equality, enforcing racial subordination, and engaging in affirmative action and favoritism towards white residents and employees.

- He was a longtime employee of the Town and had never objected to the Town's discriminatory policies. He had no experience or expertise in civil rights enforcement. He worked as a mid-level staffer in the health department, focusing on treatment for addiction.
- He served as the only Black member of the Inclusion and Diversity Working Group in 2010. The working group formed to purportedly examine the town's diversity practices and make recommendations to the Selectmen. But, in fact, the working group concealed the Town's racially unequal hiring, promotion, and disciplinary practices and concealed racial discrimination complaints made in multiple Town departments.
- He served as the staff member for the human relations commission in 2013. In this role, he concealed information about racial discrimination complaints from the commission, including but not limited to Mr. Alston's complaint. He specifically concealed the "Leave" incident from the commission.
- He participated in retaliating against Mr. Alston by signing off on the retaliatory fitness for duty order after Mr. Alston complained about the "Leave" message.
- He took no action to respond to complaints of discrimination against the police department.
- He took no action to respond to complaints about the town's hiring practices, including complaints that a well-qualified Black woman lawyer's application for a position in the town counsel's office had been purposely ignored on multiple occasions.

246. In 2015, the Selectmen recruited a Black man to run for an open seat on the Board of Selectmen. He was endorsed by all sitting members of the Board and several former Selectmen and was elected in the spring of 2015. He too had proven that he would uphold the Town's policy of opposing racial equality, enforcing racial subordination, engaging in affirmative action and favoritism towards white residents and employees, and retaliating against persons who protest racial discrimination:

- The Selectmen appointed him to the search committee for a new town administrator and he did not object to a search process that produced no Black candidates.
- The Selectmen appointed him to the Citizen Complaint Review Committee and he voted to make it more difficult for a citizen to obtain a finding against a police officer. He did not object to the Selectmen's use of the Committee to conceal the facts about the Town's discrimination against a Black town meeting member.
- The Moderator appointed him to the advisory committee. On the advisory committee, he opposed a warrant article seeking to empower the human relations commission and a warrant article seeking to appoint three applicants of color to the commission.
- The Selectmen appointed him to the Selectmen's Committee on Diversity, Equal Employment Opportunities, and Affirmative Action. He voted to abolish the human relations commission. He did not object to the Selectmen's transparent effort to prevent the commission from uncovering the Town's racially discriminatory policies and practices, including as they applied

specifically to Mr. Alston. He did not object to the Chair’s circulation of a letter calling Mr. Alston’s complaint “fraudulent, ignorant, and deceitful.”

And he stated at a public hearing that the human relations commission would benefit from more “Uncle Remuses.”

CLASS ALLEGATIONS

247. The class of Black and Hispanic people who have been harmed by the Town’s unconstitutional policy is so numerous that joinder of all members is impracticable.

248. The existence and operation of the Town’s unconstitutional policy poses a question of law and fact common to the class.

249. The claims of the named Plaintiffs are typical, and the named Plaintiffs will fairly and adequately represent and protect the interests of the class. The Plaintiffs represent a cross-section of the people who have been harmed by the Town’s unconstitutional policy.

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

COUNT I

(Town Defendants: Town of Brookline, Board of Selectmen, Town Counsel,
Human Resources Director)

251. Plaintiff repeats and incorporates the above allegations.

252. The Town Defendants violated the Fourteenth Amendment guarantee of equal protection and freedom from racial discrimination by executing a policy, practice, and custom of

opposing racial equality, enforcing racial subordination, engaging in affirmative action and favoritism towards white residents and employees, and retaliating against persons who protest racial discrimination.

253. The Town Defendants sought through the execution of the policy to deter Plaintiffs and others in Brookline from enjoying their First Amendment rights to freedom of speech and to petition the government for redress of grievances.

254. The Town Defendants' unconstitutional policy, practice, and custom caused Plaintiffs to suffer damages compensable pursuant to 42 U.S.C. § 1981 and § 1983.

255. The Town Defendants are policymakers for the Town of Brookline and their decisions caused Plaintiffs to suffer damages compensable pursuant to 42 U.S.C. § 1981 and § 1983.

256. The Town Defendants' unconstitutional policy, practice, and custom violates the rights of all Black and Hispanic employees, students, and residents of the Town of Brookline.

COUNT II

(Individual Defendants: Betsy DeWitt, Kenneth Goldstein, Neil Wishinsky, Nancy Daly, Jesse Mermell, Sandra DeBow, Joslin Murphy, Stanley Spiegel)

257. Plaintiffs repeats and incorporates the above allegations.

258. The Individual Defendants violated 42 U.S.C. § 1981, § 1983, and § 1985 by enforcing the Town's unconstitutional policy, practice, and custom.

259. The Individual Defendants sought through the execution of the policy to deter the Plaintiffs and others in Brookline from enjoying their First Amendment rights to freedom of speech and to petition the government for redress of grievances.

260. The Individual Defendants violated 42 U.S.C. § 1981, § 1983, and § 1985 by retaliating against Plaintiffs for opposing the Town's unconstitutional and racist policy.

261. The Individual Defendants violated 42 U.S.C. § 1981, § 1983, and § 1985 by discriminating against Plaintiffs on the basis of race.

262. The Individual Defendants acted under the color of law.

263. The Individual Defendants' conduct violated clearly established law.

264. The Individual Defendants' conduct caused the Plaintiffs damages.

COUNT III

(Local 950)

265. Plaintiff repeats and incorporates the above allegations.

266. Local 950 violated 42 U.S.C. § 1981 and § 1983 by retaliating against Gerald Alston because he protested Paul Pender's racist conduct.

267. Local 950 violated 42 U.S.C. § 1981 and § 1983 by failing to file grievances on behalf of Gerald Alston that it would have filed on behalf of a white union member.

268. Local 950 violated 42 U.S.C. § 1981 and § 1983 by failing to fairly represent Gerald Alston in the same way it represents white union members.

269. Local 950 violated 42 U.S.C. § 1981, § 1983, and § 1985 by enforcing the Town's unconstitutional policy against Mr. Alston.

270. Local 950's conduct caused Gerald Alston damages.

RELIEF REQUESTED

WHEREFORE, Plaintiffs requests judgment against Defendants as follows:

- A. Declare that the Defendants violated the First and Fourteenth Amendments to the United States Constitution;
- B. Enter Judgment for the Plaintiffs and against the Defendants on all Counts;
- C. Enjoin the Town of Brookline from enforcing its unconstitutional policy;
- D. Strike down Article 3.14 of the Town's bylaws as unconstitutional;
- E. Award damages sufficient to compensate Plaintiffs, in an amount to be proven at trial;
- F. Award punitive damages;
- G. Certify the class harmed by the policy pursuant to Fed. R. Civ. P. 23, certify Plaintiffs as representative of the class, and designate Plaintiffs' counsel as counsel for the class;
- H. Establish a reparations fund for persons harmed by the Town's policy;
- I. Award costs and attorney's fees pursuant to 42 U.S.C. § 1988;
- J. Award such other and further relief as this Court deems just and proper.

JURY DEMAND

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

Respectfully submitted,

GERALD ALSTON, PRENTICE PILOT,
ESTIFANOS ZERAI-MISGUN, JUANA
BAEZ, ROGELIO RODAS, CRUZ
SANABRIA, DEMETRIUS OVIEDO, and
DEON FINCHER

By their attorney,

/s Brooks A. Ames

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Dated: January 26, 2016

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document filed through the ECF system on January 26, 2016 will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be served on those indicated as non-registered participants.

/s Brooks A. Ames