

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**DAVID GROGAN, individually and** )  
**on behalf of a class of all other persons** )  
**similarly situated,** )  
 )  
**and JAMES BROOKS, Individually,** )  
 )  
 )  
**Plaintiffs,** )  
 )  
 )  
**v.** )  
 )  
 )  
**MICHAEL B. MUKASEY,** )  
**U.S. Attorney General,** )  
 )  
**Defendant.** )  
 )  
 )

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

**I. NATURE OF THE ACTION**

1. Plaintiff and Class Representative David Grogan (“Plaintiff Grogan” or “Mr. Grogan”) brings this class action against his employer, the United States Marshals Service (“USMS”), to redress racial discrimination in employment. Individual Plaintiff James Brooks (“Plaintiff Brooks” or “Mr. Brooks”) brings claims in his individual capacity against the USMS for race discrimination, hostile work environment, and retaliation.

2. Plaintiff Grogan brings this class action on behalf of himself and all other African-American Deputy U.S. Marshals, pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), *et seq.*, as amended (“Title VII”).

3. As Class Representative, Grogan seeks to represent African-American Deputy U.S. Marshals who have been subjected to the systematic disparate impact and pattern and practice of race discrimination described in this Complaint, which is based on: (a) specific discriminatory policies, practices, and/or procedures in promotions, promotional opportunities, assignments, training, discipline, and awards; and (b) differential terms and conditions of employment.

4. Plaintiff Grogan also seeks redress on behalf of himself for (a) the racially hostile work environment that exists at USMS; and (b) USMS’s retaliation against him in response to his filing of an EEO complaint alleging racial discrimination.

5. Grogan is seeking, on behalf of himself and the class he seeks to represent, declaratory and injunctive relief; back pay; front pay; compensatory, nominal, and punitive damages; and attorneys’ fees, costs and expenses, to redress USMS’s pervasive and discriminatory employment policies, practices and/ or procedures.

## **II. JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action is based on Title VII, which is a federal statute.

7. Pursuant to 42 U.S.C. § 2000e-5(f)(3), each United States district court shall have jurisdiction of actions brought under this subchapter. Moreover, personal jurisdiction is proper because the USMS maintains offices in Washington, D.C.

8. Venue is proper under 42 U.S.C. § 2000e-5(f)(3). Class Representative Grogan and Plaintiff Brooks are currently employed in the District of Columbia. The discriminatory employment practices challenged here occurred both while Plaintiff Grogan and Brooks were employed in Washington D.C. at their current place of employment and in the Washington D.C. Metropolitan Area, at the headquarters of the USMS in Arlington, VA. The USMS additionally maintains offices in Washington, D.C. The District of Columbia is therefore the most logical forum in which to litigate the claims of the Class Representative and the proposed class in this case.

### **III. PROCEDURAL HISTORY**

9. Class Representative Grogan administratively exhausted by timely seeking EEO Counseling and filing an EEO Complaint on December 1, 2007.

10. Plaintiff Grogan initially sought EEO counseling regarding his workplace's systemic racial discrimination on June 6, 2007. When the EEO failed to respond to his request, Grogan again requested counseling by telephone and he continued to email the EEO office on four separate occasions throughout June and July of 2007. On June 29, 2007, Plaintiff Grogan requested to raise class allegations in moving forward with a class action suit against the Marshals Service. Plaintiff Grogan continued to request counseling for the next three months, including several additional emails a written request and the submission of a written report outlining the claims he wished to raise with the EEO counselor. The EEO finally provided Plaintiff Grogan with counseling in October of 2007. By that time, Plaintiff Grogan and/or his attorney had requested counseling nine times in writing and several additional times by telephone.

11. On November 16, 2007, Grogan received his Notice of Right to File a Discrimination Complaint. He timely filed a Complaint, incorporating both class and individual claims, with the EEO on December 1, 2007.

12. On May 14, 2008, EEO Officer JoAnn Grady provided Grogan with written notice that she had accepted for investigation Grogan's claims of discrimination regarding the denials of promotions on May 16, 2007 and September 30, 2007, denials of lateral transfers, disparate treatment with regard to discipline, and disparate treatment in terms and conditions of employment.

13. However, Officer Grady indicated in her letter that she had rejected Mr. Grogan's claims regarding special assignments, training and awards. In a May 19, 2008 letter, Plaintiff's Counsel disputed Ms. Grady's basis for rejecting these claims and asserted that these claims should be accepted for investigation. Ms. Grady alleged that Mr. Grogan's awards, training and special assignments claims occurred more than 45 days before Mr. Grogan first sought EEO counseling. Contrary to this assertion, however, Mr. Grogan had already sought to pursue EEO counseling when these discriminatory acts occurred. After they occurred, he made further attempts to secure counseling throughout the months of September, October and November (see *supra* paragraph 10), and thus these discriminatory acts fell within the 45-day limitations period. Having exhausted his administrative remedies, Plaintiff Grogan is authorized to file this civil action pursuant to 29 C.F.R. § 1614.407(b).

14. Plaintiff Brooks is currently in the process of filing charges with the USMS EEO Office and perfecting his Right to Sue.

#### **IV. PARTIES**

##### **A. Class Representative David Grogan**

15. Class Representative David Grogan is an African-American citizen of the United States and a resident of Bowie, Maryland. Mr. Grogan has been employed by the United States Marshals Service from approximately early 1988 through the present. During that time, Mr. Grogan has served as a Cooperative Education student, Deputy United States Marshal, Inspector, Senior Inspector, and Supervisory Inspector. Most recently, from October 2007 through to the present, Mr. Grogan has served as Supervisory Deputy United States Marshal.

##### **B. Plaintiff James Brooks**

16. Plaintiff James Brooks is an African-American citizen of the United States and a resident of Brandywine, Maryland. Mr. Brooks has been employed by the United States Marshals Service from October of 1990 through the present. Throughout that time, Mr. Brooks has served as a Deputy United States Marshal, Inspector, Supervisory Inspector, and Branch Chief. Most recently, from June 2007 through the present, Chief Brooks has served as Chief Deputy Marshal for the District of Columbia Superior Court.

##### **B. Defendant**

17. Defendant United States Marshals Service is a United States federal agency and a sub-agency of the United States Department of Justice. According to its website, USMS is the “enforcement arm of the federal courts ... involved in virtually every federal law enforcement initiative.” Its major operations include judicial security, fugitive investigations, and prisoner services. While the Agency’s headquarters are

located in the Washington D.C. Metropolitan area in Arlington, Virginia, the USMS has offices throughout the United States including Washington D.C.

## **V. CLASS CLAIMS**

18. Plaintiff Grogan and the Class he seeks to represent have been subjected to a systemic pattern and practice of racial discrimination involving a battery of practices which have also had an unlawful disparate impact on them and their employment opportunities. USMS in effect bars African-American Deputy U.S. Marshals from positions that have been held by whites. The systematic means of accomplishing such racial stratification include, but are not limited to USMS training, evaluation, award, promotion and assignment policies, practices and/or procedures.

19. USMS promotion policies, practices, and/or procedures have had a disparate impact on African-American Deputy U.S. Marshals as compared to their white counterparts. Such policies, practices and/or procedures are not valid, job-related, or justified by business necessity. There are alternate objective selection procedures available to Defendant that would not have a racially disparate impact.

20. USMS promotion, training, compensation, award and assignment policies, practices and/or procedures have had a disparate impact on Plaintiff and the class he seeks to represent. Upon information and belief, the specific policies and practices of racial discrimination include but are not limited to the following:

- a. Reliance upon subjective selection methods, judgments, procedures, and criteria which result in racial discrimination in making promotion, training, award, and assignment decisions;

- b. Systematically denying awards, special assignments, and training opportunities to African Americans despite their seniority and manifest qualifications, due in large part to the subjective decision-making process;
- c. Reliance on USMS's so-called "Merit Promotion System" of assigning promotions, which incorporates a number of features that impedes the promotion of African-American Deputy U.S. Marshals. These features include a scoring, grading and ranking system where criteria are subjectively evaluated; a number of Merit Promotion graders, who are predominantly white peers of the candidates, who favor white candidates for promotions; a merit promotion exam and essay test which favor white deputies and which are not justified by business necessity; subjective and biased scoring of assignments; scoring of awards, assignments, and trainings, which are discriminatorily denied to African Americans; and a discriminatory three-tier ranking system, which includes re-ranking by the Chief Deputy and US Marshals, the Career Board, and the Director and Deputy Director;
- d. Grooming favored white deputies for promotions by giving them career-enhancing assignments, transfers, training, and awards. The discriminatory systems of assigning awards, training, transfers, and assignments, enables white deputies to score higher in promotion packages. Additionally, the discriminatory denial of awards, assignments and training, which are required to obtain higher promotional package scores necessary for receiving promotions under the Merit Promotion

System, results in a disparate impact on African American Deputy U.S. Marshals who are otherwise equally or more qualified;

- e. Circumventing the merit promotion process by using such devices as: (1) canceling positions when white applicants do not receive a sufficiently high merit promotion ranking to qualify for the position; (2) giving white deputies “temporary” promotions that are later turned into permanent positions; and (3) using “selective placement factors” to select particular white deputies for promotions;
- f. Failure to provide all Deputy U.S. Marshals consistent, timely notice of job openings, promotional opportunities, transfers, trainings, assignments, awards and procedures for obtaining these opportunities. Because many African American deputies do not receive adequate notice regarding how to obtain these opportunities, they are denied an equal opportunity to apply for promotions and advancement;
- g. Hiring white candidates from outside of a region rather than advancing internal African American candidates to fill vacancies and promotional positions, resulting in a disparate impact on African American deputies.
- h. Choosing groomed white deputies over African-American applicants for promotions by using selective criteria in the competitive application process which advantage particular candidates;
- i. Allowing for the allocation of awards without regard for an employee's achievements, seniority and contributions to USMS. In this manner,



USMS can hand-pick white employees for awards as part of the “grooming” process;

- j. Providing “loopholes” in assignment procedures which permit assignments beginning in less than three days to be issued to any employee, regardless of his or her place on the waiting list, thereby compounding the subjectivity of the assignment process and enabling rampant racial discrimination;
- k. Using subjective and unclear procedures to govern the distribution of promotions, transfers, awards, special assignments and training, resulting in a disproportionate allotment of such benefits to white deputies and maintaining a workplace hierarchy defined by racial stratification rather than pure meritocracy.

21. USMS also engages in racially discriminatory policies, practices and/or procedures in determining its employees’ terms and conditions of employment. Upon information and belief, these policies, practices and/or procedures include, but are not limited to, the following:

- a. USMS employs a subjective and “ad hoc” approach to employee discipline, which advantages white deputies over their African-American counterparts. African-American deputies are consistently reprimanded and disciplined for trivial mistakes or problems beyond their control, whereas white deputies are not reprimanded or disciplined for similarly insignificant matters.

b. USMS has discriminated against African-Americans in the terms and conditions of employment by denying them equal working conditions, benefits, privileges, services, support, and flexibility in scheduling.

22. Because of the Defendant's systemic pattern and practice of racial discrimination, Plaintiff Grogan and the class he seeks to represent have been adversely affected and have experienced harm, including loss of compensation, wages, back pay, and employment benefits.

23. The Class Representative and class members have no plain, adequate, or complete remedy at law to redress the rampant and pervasive wrongs alleged herein; this suit is their only means of securing adequate relief. Additionally, the Class Representative and putative class are currently suffering injury from USMS's unlawful policies, practices and/or procedures as set forth herein, and will continue to suffer unless those policies, practices and/or procedures are enjoined by this Court.

## **VI. CLASS ACTION ALLEGATIONS**

### **A. Class Definition**

24. Class Representative Grogan seeks to maintain claims on his own behalf and on behalf of a class of current and former United States Marshals Service ("USMS") Deputy U.S. Marshals. Plaintiff Grogan is a member of the class.

25. The class consists of all African-American Deputy U.S. Marshals, including 1811 and 0082 deputies, who are, or have been, employed by USMS that have experienced race discrimination at any time during the applicable liability period. Upon information and belief, there are more than two hundred members of the proposed class.

**B. Efficiency of Class Prosecution of Common Claims**

26. Certification of a class of African-American Deputy U.S. Marshals, who are similarly situated to Plaintiff Grogan, is the most efficient and economical means of resolving the questions of law and fact common to the claims of Plaintiff and the proposed class. Plaintiff Grogan's individual claims require determination of whether USMS has engaged in systemic pattern and/or practice of racial discrimination against African-American deputies.

27. The Class Representative seeks remedies to eliminate the adverse effects of such discrimination in his own life, career and working conditions and in the lives, careers and working conditions of the proposed class members, and to prevent continued racial discrimination in the future. Class Representative has standing to seek such relief because of the adverse effect that such racial discrimination has had on him individually and on African-American USMS employees generally. In order to gain such relief for himself and the class members, Class Representative will establish the existence of systematic racial discrimination. Without class certification, the same evidence and issues would be subject to repeated litigation in a multitude of individual lawsuits, with an attendant risk of inconsistent adjudications and conflicting obligations.

28. Class Representative's individual and class claims are premised upon the traditional bifurcated method of proof and trial for disparate impact and systemic disparate treatment claims of the type at issue here. Such a bifurcated method of proof and trial is the most efficient method of resolving such common issues.

**C. Numerosity and Impracticability of Joinder**

29. The class that Class Representative seeks to represent is too numerous to make joinder practicable. The proposed class consists of hundreds of current, former and future USMS deputies during the liability period.

**D. Common Questions of Law and Fact**

30. Prosecution of Plaintiff's claims will require adjudication of numerous questions of law and fact common to both his individual claims and those of the proposed class. Common questions of law include, *inter alia*, whether USMS: (a) has engaged in unlawful, systemic racial discrimination against African-Americans in its promotion, advancement, and disciplinary policies, practices and/or procedures; (b) has unlawfully and systemically discriminated against African-Americans in the terms and conditions of their employment; and (c) whether USMS is liable for continuing systemic violations of Title VII.

31. Common questions of fact include, *inter alia*, whether USMS has, through its policies, practices and/or procedures: (a) denied or delayed promotions for African-American deputies; (b) relied on a promotion system that results in a pattern and practice of discrimination against African American deputies; (c) uses devices to circumvent the Merit Promotion System to promote white deputies; (d) used subjective practices and selective criteria to give white deputies an advantage over African-American deputies in applying for promotions; (e) filled job openings with candidates from outside the region to avoid promoting internal African-American deputies; (f) denied career-enhancing assignments, awards, and training to African-American deputies while granting them to white deputies to groom them for promotions; (g) disciplined African-American deputies more harshly than white deputies; (h) denied African-American deputies working

conditions equal to those of similarly situated white deputies; and (i) subjected African-American deputies to acts of racial bias from white deputies.

32. USMS's employment policies, practices and/or procedures affecting Plaintiff and the proposed class are set at the agency level and apply universally to all class members. These policies, practices and/or procedures are not unique or limited to any particular USMS department, but instead concern all departments and therefore adversely affect Plaintiff and proposed class members no matter the USMS division or position in which they work. A pattern and practice of discrimination against African-Americans – in promotion and advancement, work environment and terms and conditions of employment – occurs throughout all levels and divisions of USMS.

**E. Typicality of Claims and Relief Sought**

33. Class Representative's claims are typical of the proposed class. Plaintiff asserts claims in each of the categories of claims he asserts on behalf of the proposed class. The relief Plaintiff seeks for racial discrimination complained of herein is also typical of the relief sought on behalf of the proposed class.

34. Class Representative, like members of the proposed class, is an African-American employee who has worked for USMS during the liability period. Discrimination occurs as a pattern and practice across all levels and departments of USMS. African-American deputies of USMS are denied opportunities for advancement and promotions given to white deputies. Because of their race, African-American deputies are also subject to hostile work environments and disparate terms and conditions of employment. Such discrimination affects Class Representative and the proposed class members in similar ways.

35. The relief necessary to remedy Class Representative's claims is the same relief necessary to remedy the claims of the proposed class members. Class Representative seeks the following relief for his individual claims and for those of the proposed class: (a) declaratory judgment that USMS has engaged in systemic racial discrimination against African-American deputies by limiting their ability to be promoted within the agency, limiting their opportunities to obtain training, awards and assignments, and subjecting them to disparate terms and conditions of employment; (b) a permanent injunction against such continuing discriminatory conduct; (c) restructuring of USMS's promotion, transfer, award, training, performance evaluation, work environment and discipline policies, practices and/or procedures so that African-American deputies will be able in the future to compete fairly for promotions, transfers and assignments to better and higher-paying positions within the agency, with terms and conditions of employment traditionally employed by white deputies; (d) restructuring the USMS workforce so that African-American deputies are assigned to the positions and classifications they would have held now in the absence of USMS's past racial discrimination; (e) damages, back pay, and other equitable remedies necessary to make African-American deputies whole from USMS's past discrimination.

**F. Adequacy of Representation**

36. Class Representative's interests are co-extensive with those of the members of the class he seeks to represent in this case. He seeks to remedy USMS's discriminatory employment policies, practices and/or procedures so that African-American deputies: (1) will no longer be prevented from advancement and promotion within the agency; (2) will not be subject to disparate terms and conditions of

employment because of their race; and (3) will not be subject to harsher discipline than non-African-American deputies. Class Representative is willing and able to represent the class fairly and vigorously as he pursues his individual claims in this action.

37. Class Representative has retained counsel who are qualified, experienced, able to conduct this litigation and able to meet the time and fiscal demands of litigating an employment-discrimination class action of this size and complexity. The combined interests, experience and resources of Class Representative and his counsel to litigate competently the individual and class claims at issue clearly satisfy the adequacy of representation requirement of Fed. R. Civ. P. 23(a)(4).

**G. Requirements of Rule 23(b)(2)**

38. USMS has acted on grounds generally applicable to Class Representative and the proposed class by adopting and following systemic policies, practices and/or procedures that are discriminatory on the basis of race. Race discrimination is the agency's standard operating procedure rather than a sporadic occurrence. USMS has refused to act on grounds generally applicable to the class by, *inter alia*, refusing to adopt and apply promotion, advancement, transfer and disciplinary policies, practices and/or procedures that do not discriminate against African-American deputies; and conditions of employment for African-American deputies. USMS's systemic discrimination and refusal to act on grounds that are not discriminatory make appropriate the requested final injunctive and declaratory relief with respect to the class as a whole.

39. Injunctive and declaratory relief are the predominant forms of relief sought in this action because they are the culmination of the proof of USMS's individual and class-wide liability at the end of Stage I of a bifurcated trial. In addition, injunctive and

declaratory relief are the essential predicate for Class Representative's and class members' entitlement to monetary and non-monetary remedies at Stage II of such a trial. Declaratory and injunctive relief flow directly from proof of the common questions of law and fact regarding the existence of systemic racial discrimination against African-American deputies at USMS. Declaratory and injunctive relief are the factual and legal predicates for Class Representative's and the class members' entitlement to monetary and non-monetary remedies for individual losses caused by, and for exemplary purposes necessitated by, such systemic discrimination.

#### **H. Requirements of Rule 23(b)(3)**

40. The common issues of law and fact affecting the claims of Class Representative and proposed class members, including, but not limited to, the common issues identified in Subsection D above, predominate over any issues affecting only individual claims.

41. A class action is superior to other available means for the fair and efficient adjudication of the claims of Class Representative and members of the proposed class. The cost of proving USMS's pattern and practice of discrimination makes it impracticable for Class Representative and members of the proposed class to pursue their claims individually.

### **VI. ALLEGATIONS OF THE TITLE VII CLASS REPRESENTATIVE**

#### **Background**

42. **Class Representative David Grogan** first joined USMS as a Cooperative Education Student in 1988, and subsequently became a Deputy United States Marshal in 1990. During his time as a Deputy, he rose quickly to the level of GS-5 under the 15-



level General Schedule grading system for white-collar federal employees. In 1992, he became an Inspector, a position he held for 13 years until his position was upgraded to Senior Inspector (a GS-13 position) in the fall of 2005 because of Congressional allocation of funds to upgrade the particular Inspector position. In the summer of 2007, after being passed over for a promotion, Mr. Grogan voluntarily transferred to a position as a general operations Supervisory Inspector position in an attempt to escape a racially hostile work environment. He remained a Supervisory Inspector until he transferred to the District of Columbia Superior Court as a Supervisory Deputy United States Marshal in October of 2007. Mr. Grogan transferred out of the division he was working at as a Supervisory Inspector (“Division”), in large part because of the discriminatory practices and the racially hostile work environment he encountered at the Division.

43. Mr. Grogan was denied recognition and promotions despite his demonstrably excellent job performance. Mr. Grogan is a highly decorated United States Marshal who has received letters of recognition and appreciation from the U.S. Department of Justice, U.S. Attorney’s Office, Deputy Attorney General, Undersecretary of Homeland Security, several judges, and many area colleges and high schools that have invited him to speak about his career. During his long tenure as an Inspector, Mr. Grogan successfully maintained a Top Secret Clearance for over 15 years and was responsible for Top Secret Background investigations to determine employment suitability as part of the hiring process for support staff and Deputy U.S. Marshals. He also established himself as a highly effective investigator, capable of eliciting information from a broad range of individuals, and was instrumental in the development of Standard Operational Procedures for Dignitary Protective Services assignments.

44. Mr. Grogan's exemplary professional achievements demonstrate that the hostility, difficulty and denial of promotions he has faced at USMS are in fact the result of racial discrimination.

### **Denials of Promotion**

45. On May 16, 2007, Mr. Grogan was denied promotions to several vacant GS-14 positions. Ultimately, one of these positions, a Senior Management position, was given to S.C., a white employee who had demonstrated severe managerial difficulties while employed in a Case Management position at USMS headquarters. S.C. was laterally transferred away from her headquarters position and essentially promoted to the position of Supervisory Inspector, bypassing the Merit Promotions System and making her eligible for a Senior Management position. In fact, S.C. was promoted to a Senior Management Position in May 2007, denying Mr. Grogan the position despite his strong qualifications and his much more promising managerial history.

46. During this same round of promotions, Mr. Grogan was also denied promotions to the Dignitary Protection Unit – despite being one of the originators of the unit – and to positions within the Human Resources department. All of these promotional opportunities were given to considerably less qualified white males.

47. In September of 2007, Mr. Grogan was again denied promotions to several vacant Senior Management positions. One such position was instead given to a much less experienced and less qualified white male, J.P., who had been groomed for the position by being placed in it during the interim period. At the time of his promotion, J.P. had no field experience of any kind, and less than five years of administrative Case Management experience. In contrast, Mr. Grogan at that point had fifteen years of

distinguished experience in the relevant field and had gathered the experience, knowledge, skills and abilities to serve in Senior Management in the particular field. Nonetheless, despite Mr. Grogan's clearly superior qualifications for the Senior Management position, he was passed over in favor of J.P.

48. On April 4, 2008, Mr. Grogan was discriminatorily denied a promotion to a GS-14 position as an Assistant Chief for the Eastern District of Virginia, which is in the Washington Metropolitan Area. Despite Mr. Grogan's higher level of qualifications, skills and experience for the position, the promotion was given to a white male who was given a government-paid transfer from Oklahoma to assume the position.

**Denial of Career-Enhancing Awards, Special Assignments and Training**

49. In September through November of 2007, Mr. Grogan was discriminated against in the issuing of employee awards. As discussed *supra*, paragraph 43, Mr. Grogan has earned accolades from numerous other agencies in recognition of his outstanding achievements as a Deputy United States Marshal. However, due to USMS's subjective procedure for issuing awards, Mr. Grogan has never received any recognition from USMS itself.

50. Specifically, Mr. Grogan has never received the USMS Director's "Fit Award," an award in recognition of outstanding physical fitness that comes with a cash bonus and several points on USMS's promotional package. Mr. Grogan has never received the award even though a) he is the most physically fit Operational Employee in the USMS; b) he has represented the USMS in several sporting events against the best athletes in law enforcement and firefighting in the world; c) he has been recognized as a Gold Medalist; and d) he was once featured in the USMS Monitor – a national quarterly

publication – for his outstanding physical fitness accomplishments. Because of his clearly impressive credentials in this area, Mr. Grogan suggested to one of his supervisors in the fall of 2007 that he be considered as a candidate for the USMS Director’s Fit Award. Instead, it was given to a much less qualified white male.

51. Mr. Grogan has been discriminated against in the distribution of special assignments. For example, in September of 2007, he was denied a long-term special assignment to become a member of the Critical Incident Response Team, despite his ample qualifications for the assignment.

52. Finally, Mr. Grogan has been discriminated against in the distribution of career-advancing training opportunities. During May through September of 2007, Mr. Grogan was denied Supervisory Leadership Development training, Contracting Officer training, and Spanish training, despite his eligibility for and interest in each of these opportunities.

53. These discriminatory practices in the distribution of special assignments, awards and training are rampant throughout USMS. Additionally, because assignments, awards and training are often precursors to promotion, the racial discrimination pervading the distribution of these benefits reinforces USMS’s discriminatory practices in awarding promotions.

#### **Discrimination in Terms and Conditions of Employment**

54. Mr. Grogan has also been subjected to USMS’s policy and practice of discriminating on the basis of race in setting terms and conditions of employment. This policy and practice manifests itself in employee discipline practices, scheduling flexibility, and access to basic employee benefits.

55. Upon information and belief, Mr. Grogan was subjected to hostile and excessive reprimands not visited upon his white coworkers. For example, in June of 2007, a glitch in a computer program caused inaccuracies on Mr. Grogan's time and attendance forms. Chief M.G. called Mr. Grogan into his office, where he subjected Mr. Grogan to a violent tantrum of screaming and yelling, questioned Mr. Grogan's proficiency and competence, and generally acted enraged at Mr. Grogan – all because of a minor incident beyond Mr. Grogan's control. In contrast, when R.S., a white Supervisory Inspector, experienced the same problem with his computer system, Chief M.G. calmly asked R.S. to correct the numbers manually. During Chief M.G.'s frequent fits of rage and anger, he often reminded Mr. Grogan that he was keeping a file on all of Mr. Grogan's actions. These threatening reminders began two weeks after Mr. Grogan was placed under Chief M.G.'s command.

56. Mr. Grogan's superiors have also subjected him to numerous reprimands on the basis of false and frivolous allegations made against him by his white co-workers and even subordinates. See *infra* paragraphs 60 through 64.

57. Additionally, Mr. Grogan is effectively denied such basic employee benefits as access to the gym. USMS policy entitles all Deputies to three hours a week of gym time. However, Mr. Grogan's attempts to use the gym consistently resulted in harassment from his white colleagues, to the extent that he was effectively unable to use the gym during the final months of his employment at the Division where he worked.

58. For example, in August of 2007, Mr. Grogan attempted to use the USMS gym while Chief M.G. was also using the gym. An exchange then ensued during which Chief M.G. taunted, insulted and harassed Mr. Grogan, stating that he "set a bad

example” because he spent too much time exercising and did not take his job seriously. This was self-evidently a spurious accusation, given that Chief M.G. himself was using the gym at that time, and frequently used the gym at the same time as Mr. Grogan. In this way, Chief M.G. and several of his white friends attempted to use Mr. Grogan’s physical fitness to reinforce their racial stereotypes of Mr. Grogan as lazy. Their harassment constructively denied Mr. Grogan the basic employee benefit of access to the gym.

59. Mr. Grogan was also subjected to discriminatory terms and conditions of employment in the area of scheduling flexibility. Because the USMS facility where Mr. Grogan worked was operational twenty-four hours a day, seven days a week, most senior employees enjoyed flexible scheduling options. However, in the spring of 2007, when Mr. Grogan first came under the supervision of Chief M.G., he met with Chief M.G. to discuss his shift times. At that point, he indicated that he wished to work from 9 a.m. to 5 p.m. Chief M.G., however, requested that he work a later shift, and Mr. Grogan agreed under pressure to work from 10 a.m. to 6 p.m. The following day, Chief M.G. emailed Mr. Grogan to inform him that his shift would be from 11 a.m. to 7 p.m. – an hour later than the agreed-upon shift and two hours later than the shift Mr. Grogan had initially requested. Mr. Grogan is unaware of white employees who have been subjected to similar unfavorable treatment in setting their schedules.

## **VII. INDIVIDUAL ALLEGATIONS OF THE PLAINTIFFS**

### **A. David Grogan**

60. In addition to being subjected to Defendant USMS’ discriminatory policies and practices, Plaintiff David Grogan has also been subjected to a racially hostile work

environment. Furthermore, USMS has unlawfully retaliated against him for reporting racial workplace discrimination to the EEO.

### **Racially Hostile Work Environment**

61. From the spring of 2007 to the end of his affiliation with his assigned Division in October of 2007, Mr. Grogan endured a hostile work environment. The hostile environment included: a) supervisor Chief M.G.'s regular, consistent verbal abuse and hostile conduct towards Mr. Grogan, despite Mr. Grogan's high integrity and exemplary job performance; b) white co-workers' constant leveling of false, frivolous and racist accusations against Mr. Grogan, intended to portray him as lazy and incompetent, and consistently credited by Chief M.G. despite their falsity; and c) white co-workers' frequent use of racial insinuations and insulting remarks towards Mr. Grogan.

62. Virtually from the moment that Mr. Grogan came under his supervision, Chief M.G. subjected Mr. Grogan to racial hostility and treated him markedly differently from his white counterparts. One example of this is the occurrence described *supra*, paragraph 55, in which Chief M.G. overreacted and blamed Mr. Grogan for a minor computer glitch beyond his control. Similarly, in mid-September of 2007, Chief M.G. became enraged and directed a violent tirade at Mr. Grogan simply because Mr. Grogan had asked a routine policy question pertaining to work travel on holidays. On information and belief, Chief M.G. did not subject white employees to similar demeaning and unprofessional treatment.

63. Chief M.G. also colluded with a "good old boys" network of his white friends in maintaining a hostile work environment for Mr. Grogan, and in reinforcing false racial

stereotypes of Mr. Grogan as lazy and incompetent. For example, in May of 2007, white employee D.T. emailed Mr. Grogan and copied Mr. Grogan's then-supervisor about a small, routine matter. D.T.'s email was highly patronizing and evinced an assumption that Mr. Grogan was incompetent as a Supervisory Inspector. Chief M.G. agreed with and reinforced D.T.'s racially motivated criticisms of Mr. Grogan even though they were patently unfounded.

64. In a similar incident in September of 2007, Mr. Grogan received an email from D.T., expressing concern that Mr. Grogan had assigned missions to Inspectors who were already oversubscribed and indicating that those missions had been re-assigned. Although this was an insignificant matter that did not require further attention, D.T. upbraided Mr. Grogan and admonished him that he "didn't have time to clean this up." Program Manager T.W., another member of the "good old boys" network, subsequently added his own email reprimanding Mr. Grogan for this insignificant mistake. Both of these emails were copied to Chief M.G. and represented an ongoing effort within that network to promote a false image of Mr. Grogan as a deficient employee. The incidents described in this and the previous paragraph did not stem from sincere concerns about Mr. Grogan's performance, which was consistently meritorious. Instead, they reflected Chief M.G.'s desire to maintain a workplace racial hierarchy through the maintenance of his "good old boys" network, and his consistent practice of evaluating Mr. Grogan based on racial stereotypes rather than actual job performance.

65. In another incident, during a meeting called by Chief M.G., John Ludwig – a white employee and another member of Chief M.G.'s "good old boys" network – told Chief M.G. that, "Dave Grogan doesn't take his job seriously because he works out at



0600.” Without hesitation, Chief M.G. adamantly agreed with Mr. Ludwig, despite the fact that Chief M.G. would also work out in the morning. Mr. Ludwig was actually the one who did not take his job seriously because after reporting to work at 0600 he would sleep on the job. Although deputies are entitled to work out at the gym a limited number of hours, they are never allowed to sleep on the job. Chief M.G. was fully aware that Mr. Ludwig would sleep on the job every morning, and yet he chose to favor Mr. Ludwig and supported Mr. Ludwig’s unfounded accusations against Plaintiff Grogan.

66. Chief M.G.’s eagerness to credit the allegations of Mr. Ludwig – who has since been convicted of shooting and murdering his wife – again reflects the existence of a racially stratified workplace, and a “good old boys” network composed of Chief M.G.’s white friends.

67. In addition to his pattern of verbally attacking Mr. Grogan and crediting false accusations against him, Chief M.G. also subjected Mr. Grogan to derogatory statements about African Americans in general. For example, in June 2007, Mr. Grogan emailed Chief M.G. and another superior about the possibility of appointing a Deputy to act as a liaison between USMS and the Metropolitan Police Department. Chief M.G. initially approved of this idea. However, when Chief James Brooks appointed an African-American female to the position, Chief M.G. became enraged and withdrew his support for the idea, stating that his USMS Division would not support her appointment.

68. In connection with the same incident, Chief M.G. stated, “I don’t know why we are getting involved with these clowns anyway,” referring to the predominantly black Metropolitan Police Department. Chief M.G. also accused Mr. Grogan of being “tight” with Assistant Director Sylvester Jones, an African American who occupies a Senior

Executive Service (SES) managerial position in USMS, and has said that he knows Mr. Jones “shoots from the hip” but that Mr. Grogan must always listen to Chief M.G. Mr. Grogan reasonably interpreted these remarks to be hostile and derogatory toward African Americans in general.

69. In the fall of 2007, the hostile environment created by Chief M.G. and his “good old boys” network forced Mr. Grogan to see a psychiatrist. After consulting with Mr. Grogan regarding all of his horrific experiences during his tenure in his USMS Division, the psychiatrist diagnosed Mr. Grogan with work-related stress and anxiety. He suggested that Mr. Grogan take 80 hours of sick leave to cope with his condition and eventually recommended that Mr. Grogan never return to his position within the Division under Chief M.G.

70. These incidents are representative of a continual campaign – which persisted from 2004 through the end of Mr. Grogan’s tenure within the Division under Chief M.G. in 2008 – to tarnish Mr. Grogan’s professional reputation and discredit his considerable achievements as a Deputy United States Marshal/Inspector, all in the service of racial stratification.

71. All other sections of this Complaint are incorporated by reference in this section. Paragraphs 54 through 59, *supra*, also provide examples of the workplace racial hostility to which Mr. Grogan was subjected.

### **Retaliation**

72. In 2005, after a different episode in which Mr. Grogan had endured a racially hostile work environment while working in the Division for white supervisor Chief M.G., Mr. Grogan filed an EEO complaint. In the EEO Complaint, Mr. Grogan asserted that

Chief M.G. had repeatedly subjected him to racial harassment by ratifying the unfounded, false and defamatory allegations raised against him by other members of the white “good old boys” network. Given that these white members of the “good old boys” network had attacked him based on frivolous allegations in a pernicious effort to deny his advancement, Mr. Grogan suffered severe emotional distress on the job because he could no longer trust that that his white colleagues would protect him in the line of duty. Mr. Grogan further alleged in his EEO Complaint that Supervisor Chief M.G. had persistently discriminated against him based on his race by three-times denying him a career-enhancing position as Acting Supervisor.

73. Mr. Grogan’s white supervisor, Chief M.G. and the white “good old boys” network within USMS retaliated against Mr. Grogan for the filing of this complaint. This retaliation took the form of: (a) consistent denials of promotions for which Mr. Grogan was qualified, in favor of white employees; (b) exaggeration of Mr. Grogan’s minor mistakes; (b) Chief M.G.’s compilation of a “record” falsely enumerating and/or exaggerating Mr. Grogan’s insignificant and trivial errors; (c) unreasonably harsh discipline directed at Mr. Grogan; (d) alteration of Mr. Grogan’s work conditions; (e) violent and highly unprofessional tantrums of rage against Mr. Grogan.

74. All other sections of this Complaint are incorporated by reference in this Section.

**B. Plaintiff James Brooks**

**Background**

75. Individual Plaintiff James Brooks (“Mr. Brooks”) was hired by USMS in October 1990 as a Deputy United States Marshal. Mr. Brooks became an Inspector in

2000, a Supervisory Inspector in 2002, and a Branch Chief in 2004. In June 2007, Mr. Brooks assumed the Chief Deputy Marshal position at the District of Columbia Superior Court, a position he currently holds.

76. Mr. Brooks has been subjected to the discriminatory policies and practices of the Marshals Service. In particular, since assuming the Chief Deputy position he has been denied promotions and special assignments on the basis of his race. He has also been subjected to a hostile work environment, in the form of a slew of defamatory and degrading actions by white employees intended to malign his professional and personal conduct, generate Internal Affairs investigations against him, and thereby undermine his authority and prevent his advancement. Mr. Brooks has also been subjected to less favorable terms and conditions of employment as compared to white employees, and has been retaliated against because of his efforts to bring about equal employment opportunities to racial minority groups at the Marshal Service.

#### **Discriminatory Denials of Promotion**

77. Mr. Brooks has been discriminatorily denied the following promotions, promotional opportunities, and special assignments based on his African-American race.

78. In May of 2007, Mr. Brooks was denied promotion to a position as Recruiting Officer/Program Manager for Recruiting (GS 15). This was a GS 15 position at the national level, and would have provided a career-enhancing opportunity for Mr. Brooks to advance to the Senior Executive level. Upon information and belief, Mr. Brooks was not selected based on his race. Instead, a white male employee with minimal supervisory experience was selected for the position.

79. On July 22, 2008, Mr. Brooks was denied a transfer to the position of Chief of Staff/GS1811-15, Merit Promotion Announcement No. 08-127, in favor of a lesser qualified white employee, Sean Fahey. At the time of his application, Mr. Brooks was a GS 15 with more than 5 years experience managing USMS employees. By contrast, Mr. Fahey was a GS 14 whose supervisory experience was limited to the supervision of less than 10 people for under a year.

80. On August 5, 2008 Mr. Brooks was denied promotion to a position as Assistant Director, Senior Executive Service, Announcement No. SES-1811-2008. Four white employees, T. Michael Earp, Michael J. Prout, William D. Snelson, and Candra S. Symonds, were selected instead. Mr. Brooks was equally or more qualified for the position, but was not selected due to his race. Under Director John Clark, only white employees have been promoted to senior management positions; in this instance, when the Director was asked at the National Organization of Black Law Enforcement (NOBLE) conference on or about July 2008 why no black employees had been selected for Assistant Director, he claimed that no black employees had applied. This was plainly false, as Mr. Brooks had applied and been listed as a qualified applicant for the position.

81. On August 7, 2008 Mr. Brooks was denied a promotion to the position of Acting US Marshal for the D.C. Superior Court. Upon the departure of the US Marshal in a given district, USMS practice is to appoint the Chief Deputy U.S. Marshal of that district Acting US Marshal. However, when the US Marshal for the DC Superior Court, Steve Conboy, submitted his resignation, Mr. Brooks was not informed. On August 7, 2008, Benjamin Kates, Chief Deputy for Minnesota, was appointed Acting US Marshal for the DC Superior Court, in contravention of USMS practice and despite the fact that

Kates' had never worked in Superior Court. Upon information and belief, USMS flouted standard operating procedure and did not appoint Mr. Brooks Acting Marshal because of his race.

82. On August 15, 2008, David Harlow, a white employee, was appointed to a newly created GS – 1811-15 position as Chief for the Sex Offender Investigations Branch. This position was never announced through the Merit Promotions System, effectively denying Mr. Brooks, a qualified black employee, the opportunity for such a promotion.

### **Discriminatory Denial of Special Assignments**

83. On August 28, 2008, Mr. Brooks was discriminatorily denied appointment to the Merit Promotion Structured Interview Panel, a position in which he would conduct interviews of applicants for GS 14 and GS 15 positions. This assignment would have allowed Mr. Brooks to have some input and bring equality and fairness to the Merit Promotion System. Upon information and belief, Mr. Brooks was discriminatorily denied the position based on his African American race. Moreover, Mr. Brooks was told that he could not be selected because of the current Internal Affairs investigations against him. Thus the discriminatory allegations and rumors spread by Mr. Brooks' white co-workers, which prompted the investigation, persist in impeding his advancement and deny him the ability to participate in, and bring more equal opportunity to, the Merit Promotion System

### **Racially Hostile Work Environment**

84. Mr. Brooks has been subjected to a hostile work environment since his assumption of the Chief Deputy position at the District of Columbia Superior Court.

Prior to his taking the position, two white employees, Assistant Chief Gregory Petchel and former Supervisor Robert Brandt, shared the responsibilities of Chief Deputy. These white employees colluded with another Assistant chief, Stirling Murray to create a “good old boys” network, wherein they would write each other highly favorable performance reviews and thereby groom themselves and other white employees for promotion, while defaming and discriminating against African Americans with respect to their conduct and job performance, and thus blocking the advancement of African Americans in the Marshals Service. Upon learning that Mr. Brooks was to assume the Chief Deputy position, these three white employees feared their racially discriminatory practices were threatened, and immediately initiated a campaign to portray Mr. Brooks as an ineffective leader. These white employees have since persisted in perpetuating false rumors about Mr. Brooks’ professional leadership and personal conduct in order to undermine his authority.

85. Upon information and belief, beginning in May of 2007, when it was rumored that Mr. Brooks would be appointed Chief Deputy, white employees Stirling Murray, Robert Brandt, and Gregory Petchel began a campaign to suggest that Mr. Brooks had harassed a female employee, Sno Rush, in order to portray him as guilty of misconduct and generate an Internal Affairs investigation against him. These men attempted to coerce Ms. Rush to corroborate these rumors, but she refused to do so.

86. In June of 2007, around the time Mr. Brooks assumed the Chief Deputy position, this smear campaign was continued. The same three white employees Stirling Murray, Robert Brandt and Gregory Petchel put together a pamphlet that was false and terribly disrespectful, degrading and defamatory of Mr. Brooks, his leadership, and his

personal conduct. This pamphlet stated that “[Mr. Brooks’] diminutive presence was felt everywhere,” portrayed him as a coarse and ineffective leader, and disrespectfully described him as “the short, bald man.” The white employees whom Chief Brooks replaced, Robert Brandt and Gregory Petchel, refer to their previous leadership in the pamphlet and state, “We staffed courts just fine [a few years ago] without holding people back.” This pamphlet was disseminated throughout the DC Superior Court just as Mr. Brooks was beginning his position as Chief Deputy. When Mr. Brooks discussed the pamphlet and its false, degrading and defamatory allegations with Internal Affairs, he was told by then-Chief of Internal Affairs William Snelson, who is a member of the “good old boys network” and a personal friend of Robert Brandt, that there was no misconduct in the production and dissemination of the pamphlet.

87. In September 2007, pursuant to his ethical and managerial responsibilities, Mr. Brooks reported Robert Brandt to Internal Affairs for violating USMS policy on the use of USMS vehicles. Shortly thereafter, Mr. Brandt contacted Sno Rush in an attempt to once again convince her to claim that Mr. Brooks had harassed her. This was part of the ongoing effort by Mr. Brandt and his network of “good old boys” to generate Internal Affairs investigations against Mr. Brooks.

88. Since October 2007, Mr. Brooks has been investigated by Internal Affairs for harassment of Ms. Rush, an investigation which was promptly dropped when Ms. Rush stated that the allegations were untrue. Mr. Brooks has also been investigated for allegations that he had made comments against whites at the NOBLE conference in July 2007 and at a party four years ago. That investigation was closed in July 2008 and forwarded to Employee Relations (E.R.) for adjudication. Upon information and belief,



these investigations were prompted by false allegations made by the aforementioned group of white employees and the “good old boys network” who seek to defame Mr. Brooks personally, undermine his authority, and prevent his advancement in USMS on the basis of his African American race.

### **Discrimination in Terms and Conditions of Employment**

89. Mr. Brooks has been subjected by his superiors to less favorable terms and conditions of employment than white employees. In December 2007, Mr. Brooks filed a complaint with the Human Resources Division (HRD), Alternate Dispute Resolution (ADR) against both the assistant chiefs Murray and Petchel, supervisor Brandt, the Office of Internal Investigations (O.I.I.) and the HRD for the ongoing hostility and defamation to which they had subjected him. After several failures by ARD to respond to his complaint in a timely fashion, Mr. Brooks was ultimately told by Steve Conboy that his complaint was being held in abeyance due to the fact that he was under an Internal Affairs investigation at the time, an investigation brought on by the efforts of Petchel, Brandt, and Murray to undermine Mr. Brooks’ authority. Since being told his complaint would not go forward, Mr. Brooks has sought documents stating the policy or procedure that would allow his complaint to be held in abeyance due to an Internal Affairs investigation, but no justification has ever been offered. Upon information and belief, he has been subjected to this disparate treatment on the basis of his race.

### **Retaliation**

90. Upon information and belief, Mr. Brooks has been the victim of retaliation for his efforts to address the discrimination against racial minority groups at the USMS. Through Mr. Brooks’ position as Chief of the Superior Court for the District of

Columbia, he has worked to create equal opportunities for racial minorities in the Marshals Service. Mr. Brooks' efforts to create a more equal and fair workplace for racial minorities have motivated and intensified the campaign by white co-workers to promote false rumors and internal affairs investigations against him, in order to undermine his leadership and hinder his ability to advance and take a role in changing the discriminatory practices inherent in the Merit Promotion System. As a result of Mr. Brooks' work to create equal opportunities for racial minorities, who fall under a legally protected category, he has been discriminatorily denied promotions, promotional opportunities, and special assignments and, additionally, has been subjected to harassment.

**COUNT I**  
**VIOLATIONS OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964,**  
**42 U.S.C. § 2000, et seq., AS AMENDED**  
**RACE DISCRIMINATION**  
**(On Behalf of Class Representative David Grogan and the Putative Class)**

91. Class Representative re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

92. USMS has discriminated against Class Representative and all members of the proposed class by treating them differently from and less preferably than similarly situated white employees, and by subjecting them to discriminatory denials of promotions to higher paying positions, discriminatory denials of training opportunities, discriminatory denials of awards and assignments, discriminatory disciplinary action,

disparate terms and conditions of employment, and other forms of discrimination in violation of Title VII.

93. As a direct and proximate result of USMS's conduct, Class Representative and the members of the proposed class have suffered economic harm – including loss of compensation and other employment benefits – as well as emotional harm, anguish and humiliation.

94. USMS's policies, practices and/or procedures have produced a disparate impact against Class Representative and the members of the proposed class with respect to the terms and conditions of their employment.

95. Because USMS's discriminatory conduct has been continuous and persistent throughout the employment of Class Representative and the proposed class members, they are entitled to application of the continuing violation doctrine to all violations alleged herein.

96. Because of the discrimination they have suffered at USMS, Class Representative and the members of the proposed class are entitled to all legal and equitable remedies available under Title VII.

**COUNT II**  
**VIOLATIONS OF TITLE VII OF THE CIVIL RIGHTS ACTS OF 1964**  
**42 U.S.C. § 2000E-2**  
**HOSTILE WORK ENVIRONMENT**  
**(On Behalf of Plaintiff David Grogan)**

97. Mr. Grogan re-alleges and incorporates by reference each allegation in the previous paragraphs of this Complaint.

98. Mr. Grogan endured a racially hostile work environment and was thereby subjected to an ongoing pattern and practice of discrimination by his managers. Defendant USMS failed to take action to prevent such discrimination.

99. USMS's actions were intentional, deliberate, willful, malicious, reckless, and conducted in callous disregard of causing harm to Mr. Grogan.

100. As a direct and proximate result of USMS's conduct, Mr. Grogan suffered the loss of employment benefits, economic losses, mental and emotional harm, anguish, and humiliation.

101. Because USMS's discriminatory conduct has been continuous and persistent throughout the employment of Plaintiff Grogan, he is entitled to application of the continuing violation doctrine to all violations alleged herein.

102. By reason of the hostile environment he suffered at USMS, Mr. Grogan is entitled to all legal and equitable remedies available under Title VII § 2000E-2.

**COUNT III**  
**VIOLATIONS OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**  
**42 U.S.C. § 2000E-3**  
**RETALIATION**  
**(On Behalf of Plaintiff David Grogan)**

103. Mr. Grogan re-alleges and incorporates by reference each allegation in the previous paragraphs of this Complaint.

104. USMS retaliated against Mr. Grogan because he insisted upon a workplace free of racial discrimination and because he filed an EEO complaint alleging racial discrimination. USMS subjected Mr. Grogan to adverse employment actions, including denials of promotion and disparate terms and conditions of employment as compared with his white counterparts.

105. USMS's actions were intentional, deliberate, willful, malicious, reckless, and conducted in callous disregard of causing harm to Mr. Grogan.

106. As a direct result of USMS's retaliatory actions, Mr. Grogan suffered economic losses, mental and emotional harm, anguish, and humiliation.

107. By reason of the retaliation suffered at USMS, Mr. Grogan is entitled to all legal and equitable remedies available under Title VII § 2000E-3.

**COUNT IV**  
**VIOLATIONS OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964,**  
**42 U.S.C. § 2000, et seq., AS AMENDED**  
**RACE DISCRIMINATION**  
**(On behalf of Plaintiff James Brooks)**

108. Plaintiff Brooks re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

109. USMS has discriminated against Plaintiff Brooks by treating him differently from and less preferably than similarly situated white employees, and by subjecting him to discriminatory denials of promotions to higher paying positions, as well as denials of assignments.

110. As a direct result and proximate result of USMS's conduct, Plaintiff Brooks has suffered economic harm – including loss of compensation and other employment benefits – as well as emotional harm, anguish and humiliation.

111. Because of the discrimination he has suffered at USMS, Plaintiff Brooks is entitled to all legal and equitable remedies available under Title VII.

**COUNT V**  
**VIOLATIONS OF TITLE VII OF THE CIVIL RIGHTS ACTS OF 1964**  
**42 U.S.C. § 2000E-2**  
**HOSTILE WORK ENVIRONMENT**  
**(On Behalf of Plaintiff James Brooks)**

112. Mr. Brooks re-alleges and incorporates by reference each allegation in the previous paragraphs of this Complaint.

113. Mr. Brooks endured a racially hostile work environment and was thereby subjected to an ongoing pattern and practice of discrimination. Defendant USMS failed to take action to prevent such discrimination.

114. USMS's actions were intentional, deliberate, willful, malicious, reckless, and conducted in callous disregard of causing harm to Mr. Brooks.

115. As a direct and proximate result of USMS' conduct, Mr. Brooks suffered the loss of employment benefits, economic losses, mental and emotional harm, anguish, and humiliation.

116. By reason of the hostile environment he suffered at USMS, Mr. Brooks is entitled to all legal and equitable remedies available under Title VII § 2000E-2.

**COUNT VI**  
**VIOLATIONS OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**  
**42 U.S.C. § 2000E-3**  
**RETALIATION**  
**(On Behalf of Plaintiff James Brooks)**

117. Mr. Brooks re-alleges and incorporates by reference each allegation in the previous paragraphs of this Complaint.

118. USMS retaliated against Mr. Brooks because he insisted upon a workplace free of racial discrimination. USMS subjected Mr. Brooks to adverse employment

actions, including denials of promotions, denials of assignments, and disparate terms and conditions of employment as compared with his white counterparts.

119. USMS's actions were intentional, deliberate, willful, malicious, reckless, and conducted in callous disregard of causing harm to Mr. Brooks.

120. As a direct result of USMS's retaliatory actions, Mr. Brooks suffered economic losses, mental and emotional harm, anguish, and humiliation.

121. By reason of the retaliation suffered at USMS, Mr. Brooks is entitled to all legal and equitable remedies available under Title VII § 2000E-3.

### **PRAYER FOR RELIEF**

WHEREFORE, Class Representative Grogan, on behalf of himself and the members of the class he seeks to represent, and Plaintiff Brooks request the following relief:

A. Certification of the case as a class action maintainable under Federal Rules of Civil Procedure Rule 23(a), (b)(2) and/or (b)(3), on behalf of the proposed plaintiff class, and designation of Plaintiff Grogan as representative of this class and his counsel of record as class counsel;

B. Declaratory judgment that USMS's employment policies, practices and/or procedures challenged herein are illegal and in violation of Title VII;

C. A permanent injunction against USMS and its agents, employees and/or representatives, and any and all persons acting in concert with them, from engaging in any further unlawful practices, policies, customs, usages and race discrimination by the Defendant as set forth herein;

D. An Order requiring USMS to initiate and implement programs that (1) will provide equal employment opportunities for African-American deputies; (2) will remedy the effects of USMS' past and present unlawful employment policies, practices and/or procedures; and (3) will eliminate the continuing effects of the discriminatory practices described above;

E. An Order requiring USMS to initiate and implement systems of assigning, training, transferring, awarding, compensating and promoting African-American deputies in a non-discriminatory manner;

F. An Order establishing a task force on equality and fairness to determine the effectiveness of the programs described in (D) and (E) above, which would provide for (1) monitoring, reporting and retaining of jurisdiction to ensure equal employment opportunity; (2) the assurance that injunctive relief is properly implemented; and (3) a quarterly report setting forth information relevant to the determination of the effectiveness of the programs described in (D) and (E) above;

G. An Order placing or restoring Plaintiff Grogan, Plaintiff Brooks, and the class members into those jobs they would now be occupying but for USMS' discriminatory policies, practices and/or procedures;

H. An Order directing USMS to adjust the wage rates and benefits for Plaintiff Grogan, Plaintiff Brooks, and the class members to the level they would be enjoying but for the Defendant's discriminatory policies, practices and/or procedures;

I. An award of back pay, front pay, lost benefits, preferential rights to jobs and other damages for lost compensation and job benefits suffered by Plaintiff Grogan, Plaintiff Brooks, and the class members to be determined at trial;



J. Any other equitable relief to which Plaintiff Grogan, the proposed class members, and Plaintiff Brooks are entitled;

K. An award of compensatory damages to Class Representative and the class in an amount not less than 300 million dollars;

L. An award of compensatory damages to Plaintiff Brooks;

M. An award of litigation costs and expenses, including reasonable attorneys' fees, to Plaintiff Grogan, Plaintiff Brooks, and class members;

N. Pre-judgment and post-judgment interests;

O. Such other and further relief as the Court may deem just and proper; and

P. Retention of jurisdiction by the Court until such time as the Court is satisfied that the Defendant has remedied the practices, policies and/or procedures complained of herein and is determined to be in full compliance with the law.

#### **DEMAND FOR JURY**

Plaintiff demands trial by jury of all issues triable of right to a jury.

Respectfully submitted this 15 day of October, 2008:

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David Sanford, D.C. Bar No. 457933  
Christine Dunn, D.C. Bar No. 468401  
**SANFORD, WITTELS & HEISLER, LLP**  
1666 Connecticut Avenue, N.W.,  
Suite 310  
Washington, D.C. 20009  
Telephone: (202) 742-7777  
Facsimile: (202) 742-7776

Grant Morris, D.C. Bar No. 926253  
**LAW OFFICES OF GRANT E. MORRIS**

1666 Connecticut Avenue, N.W.  
Suite 310  
Washington, D.C. 20009  
Telephone: (202) 742-7777  
Facsimile: (202) 742-7776