

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

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CIVIL ACTION

No. 79-

and

IMAGE DE CALIFORNIA,  
3004 16th Street, Room 106  
San Francisco, California 94103  
(415) 863-8232

Plaintiffs

v.

ALAN CAMPBELL, Director,  
Office of Personnel Management,

Defendant.

CLASS COMPLAINT FOR DECLARATORY,  
INJUNCTIVE AND OTHER RELIEF  
(CIVIL RIGHTS)

I. JURISDICTION AND VENUE

1. This action is brought by the individual plaintiffs, on their own behalf and on behalf of the class they seek to represent, to enforce the provisions of § 717 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16, with respect to the Professional and Administrative Career Examination (PACE), the primary entry-level examination for more than a hundred different professional, administrative, and technical occupations in

a large number of federal agencies. This action is brought by the organization plaintiff on behalf of its members and on behalf of the class it seeks to represent, to enforce the same provision of law with respect to the same test. Injunctive and other appropriate equitable relief, including back pay, is sought. Jurisdiction is conferred upon this Court by §§ 706(f) (3) and 717(c) and-(d) of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-5(f) (3) and -16(c) and -(d). This is also a proceeding, pursuant to 28 U.S.C. § 2201, for a declaratory judgment as to the rights established under such provisions.

2. This is the district in which the unlawful employment practice was committed and in which employment records relevant to such practice are maintained.

The venue of this action is proper under § 706(f) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f).

## II. PARTIES

3. Plaintiff Angel Luevano is a Hispanic citizen of the United States. Plaintiff is a member of I.M.A.G.E. He is an applicant for Federal employment in a professional, administrative or technical job in the San Francisco area. In April 1978, Plaintiff Luevano was administered the PACE by the Civil Service Commission, the predecessor of the defendant Office of Personnel Management. In May 1978, the Civil Service Commission informed plaintiff that he failed to achieve a passing score on the April 1978 administration of the PACE. This has barred him from consideration for all entry-level positions for which the PACE examination is used, without regard to his qualifications to fill such positions.

4. Plaintiff, Melody A. Van is a black woman, and is a citizen of the United States. She is an applicant for Federal employment in a professional, technical or administrative job in the San Francisco area. In April 1978 Plaintiff Van was administered the PACE by the U.S. Civil Service Commission. In May 1978, the Civil Service Commission informed plaintiff that she failed to achieve a passing score on the April 1978 administration of the PACE. This has barred her from consideration for all entry-level positions for which the PACE examination is used, without regard to her qualifications to fill such positions.

5. Plaintiff Vicky L. Chapman is a black woman, and is a citizen of the United States. She is an applicant for Federal employment in a professional, technical or administrative job in the San Francisco area. In April 1978 Plaintiff Chapman was administered the PACE by the U.S. Civil Service Commission. In May 1978, the Civil Service Commission informed plaintiff that she failed to achieve a passing score on the April 1978 administration of the PACE. This has barred her from consideration for all entry-level positions for which the PACE examination is used, without regard to her qualifications to fill such positions.

6. Plaintiff I.M.A.G.E. De California (IMAGE) is an unincorporated association of Hispanic American Federal and State governmental employees organized solely to promote the employment of Hispanic Americans in government. In California,



there are fifteen chartered IMAGE chapters and three prospective chapters in various formative stages. Nationally, there are eighty IMAGE Chapters. IMAGE has approximately five hundred members in California and 3000 members nationwide. Approximately ninety-five percent of IMAGE members are employed by the Federal government. Plaintiff Angel Luevano is a member of IMAGE De California. Plaintiff IMAGE represents the interests of its members, and of other Hispanic persons who have been, are being or will be aggrieved by the discriminatory employment practices challenged herein.

7. The defendant is the Director of the U.S. Office of Personnel Management. Under the provisions of Reorganization Plan No. 2 of 1978 and of the Civil Service Reform Act of 1978, 92 Stat. 1111, the U.S. Office of Personnel Management is the successor of the U.S. Civil Service Commission with respect to the functions which are the subject of this action. The U.S. Civil Service Commission developed the PACE as a screening system for selecting trainees for over one hundred professional, administrative and technical occupational series throughout the Federal government, and has had the responsibility, to which the Office of Personnel Management has succeeded, of ensuring that the PACE not be used until it has been validated in accordance with the Uniform Guidelines on Employee Selection Procedures, 43 Fed. Reg. 38290 (1978), with the predecessor EEOC Guidelines on Employment Selection Procedures, 29 C.F.R. § 1607.1, or with the Federal Executive Agency Guidelines on Employee Selection Procedures, 28 C.F.R. § 50.14, and Title VII.

### III. CLASS ACTION ALLEGATIONS

8. This action is filed as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. The class includes all past, present and future Black and Hispanic applicants for professional, administrative or tech-

nical jobs for which the defendant administers the PACE examination in the San Francisco Civil Service Region (Region IX), who have taken the PACE within the period of limitations or who will take it hereafter, and who have been, are being, or may in the future be, denied equal employment or promotional opportunities as a result of defendant's use of the PACE as complained of herein.

9(a) The class is so numerous that joinder of all members is impracticable. In just one administration of the PACE in the San Francisco Civil Service Region, in early 1977, a total of 183 persons were race-identified as Black or Hispanic. Even allowing for some class members taking the examination on more than one occasion within the period of limitations, the class should include at least a thousand members.

(b) There are questions of law or fact common to the class. These include the questions (1) whether the PACE has a disproportionately adverse effect on Blacks and Hispanics so as to shift to the defendant the burden of proving that the test is valid for the occupations for which it is used; and (2) whether the defendant's efforts to validate the PACE for these occupations have met the requirements of the Uniform Guidelines or of their predecessors. Where, as here, a test is administered simultaneously to large numbers of people, questions as to its disparate racial effect and as to its validity are ideally suited for class treatment.

(c) The claims of the plaintiffs are typical of the claims of the class. The individual plaintiffs have all been affected by the same practice that has affected the class members. They did not all apply for just one specific job, but were interested in a broad range of jobs subject to the PACE requirement. The members of IMAGE have been affected by these

practices in the same way that members of the proposed class have been affected.

(d) The plaintiffs will fairly and adequately protect the interests of the class. They have been affected by all of the practices challenged herein, and can prevail personally in this action only by prevailing on the class issues of disparate impact and of lack of a proper validation of the test. They therefore have no interests in conflict with those of the class. The plaintiffs are represented by counsel who are experienced in the litigation of large-scale class actions challenging discrimination in employment.

(e) By engaging in the practices described in paragraph 11, the defendant and his predecessors have both acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

#### IV. STATEMENT OF CLAIMS

10. The PACE is a written examination which is supposedly a test of cognitive abilities. It has been developed and used by the U.S. Civil Service Commission and by its successor agency to select persons for entry-level positions in over one hundred nonclerical professional, administrative and technical occupational series in the executive branch of the federal government. Employees selected by the PACE are frequently placed in "career ladder" positions and subsequently promoted to higher, non-supervisory levels without competition. Thus, failure to obtain employment through the PACE severely restricts opportunities in professional, administrative and technical positions in the Federal government. Competition is extremely intense for the jobs which are filled almost exclusively through the PACE register. Nationally, there are approximately two hundred thousand (200,000) PACE testees vying



for the approximately eight thousand (8,000) jobs filled from the PACE register.

11. As a general rule, applicants are placed on the defendant's PACE register in rank order based solely upon their scores on the PACE written test. This means that, in most cases, the order in which interested applicants are considered for openings in the target occupations is based entirely on the score achieved on a single written test. Other abilities which may be relevant to the job are simply ignored.

12. Because of the intense competition for the jobs filled from the PACE register, most PACE testees must score at least 90, although the passing score for the PACE is 70, to be considered for PACE-filled positions. Minute, statistically insignificant differences in PACE scores are often the determining factor as to which applicant is hired for such positions.

13. The adverse impact of the PACE on plaintiffs and their class is so severe that it threatens to segregate the middle and upper levels of the executive branch of the Federal government. In the early 1977 administration of the PACE in San Francisco Civil Service Region, for example, 25.2% of the white applicants scored at or above 90 and were thus eligible for referrals to Federal agencies with jobs subject to the PACE available. Only 1.1% of blacks scored 90 or higher, and no Hispanics or Filipinos scored 90 or higher.

14. Despite the disproportionately adverse effect of the PACE on Blacks and Hispanics, neither the defendant nor his predecessors has ever validated the PACE according to any of the Guidelines described in paragraph 8, all of which have been in effect at some time during the development or use of the PACE.

15. The actions and omissions alleged above were

and are in violation of § 717(a) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16(a).

V. EXHAUSTION

16(a). Plaintiff Luevano within 15 days of having been informed by the Civil Service Commission of his failure to achieve a passing score on the PACE, pursuant to 5 C.F.R. § 300.104 and 5 C.F.R. 713.601 et seq., filed a personal and class charge of discrimination on the basis of race with the Civil Service Commission. The Civil Service Commission separated the 5 C.F.R. Part 300 aspect of the charge from the 5 C.F.R. Part 713 aspect of the charge. No action has been taken on the 5 C.F.R. Part 300 aspect, and more than 180 days have passed since the filing of this charge.

(b) The Civil Service Commission rejected the 5 C.F.R. Part 713 aspect of his charge. Plaintiff timely appealed that decision of the Civil Service Commission to the Civil Service Commission's Appeals Review Board (ARB). The ARB referred plaintiff's appeal to the Civil Service Commission's Internal Equal Employment Opportunity Office (EEOO). The EEOO notified plaintiff, by letter to his attorney dated June 7, 1978, that his class complaint had been rejected. Plaintiff timely filed an appeal with the ARB. On December 22, 1978 ARB issued a decision affirming the decision of the EEOO and informing plaintiff of his right to file an action in federal district court within 30 days of receipt of the decision (a copy is attached hereto as Exhibit A). The decision was received on December 30, 1978; therefore this action has been filed within 30 days of that date.

17(a) Plaintiff Van within 15 days of having been informed by the Civil Service Commission of her failure to achieve a passing score on the PACE, pursuant to 5 C.F.R. § 300.104 and 5 C.F.R. 713.601 et seq., filed a personal and class charge of discrimination on the basis of race with the Civil Service Commission. No action has been taken on the 5 C.F.R. Part 300 aspect, and more than 180 days have passed since the filing of this charge.



(b) The Civil Service Commission rejected the 5 C.F.R. Part 713 aspect of her charge. Plaintiff timely appealed that decision of the Civil Service Commission to the Civil Service Commission's Appeals Review Board (ARB). The ARB referred plaintiff's appeal to the Civil Service Commission's Internal Equal Employment Opportunity Office (EEOO). On September 18, 1978, the EEOO notified plaintiff, by letter to her attorney, that her class complaint had been rejected. Plaintiff timely filed an appeal with the ARB. No response has been received from the ARB. Plaintiff Van will take appropriate action to amend and supplement this Complaint when exhaustion is complete as to the 5 C.F.R. Part 713 aspect of her charge.

18(a) Plaintiff Chapman within 15 days of having been informed by the Civil Service Commission of her failure to achieve a passing score on the PACE, pursuant to 5 C.F.R. § 300.104 and 5 C.F.R. 713.601 et seq., filed a personal and chall charge of discrimination on the basis of race with the Civil Service Commission. No action has been taken on the 5 C.F.R. Part 300 aspect, and more than 180 days have passed since the filing of this charge.

(b) The Civil Service Commission rejected the 5 C.F.R. Part 713 aspect of her charge. Plaintiff timely appealed that decision of the Civil Service Commission to the Civil Service Commission's Appeals Review Board (ARB). The ARB referred plaintiff's appeal to the Civil Service Commission's Internal Equal Employment Opportunity Office (EEOO). On September 18, 1978, the EEOO notified plaintiff, by letter to her attorney, that her class complaint had been rejected. Plaintiff timely filed an appeal with the ARB. No response has been received from the ARB. Plaintiff Chapman will take appropriate action to amend and supplement this Complaint when exhaustion is complete as to the 5 C.F.R. Part 713 aspect of her charge.

19. On May 19, 1978, within 15 days of having been informed by certain of its members of their failure to obtain a passing score on the PACE, plaintiff IMAGE timely filed on behalf of its members who have been, are being, or may be adversely affected by the discriminatory practices of the Civil Service Com-

mission, complained of herein, formal complaints pursuant to 5 C.F.R. § 713.601, 5 C.F.R. § 300.104 and Title VII of the Civil Rights Act of 1964, as amended. The complaints stated, inter alia, that the PACE as administered by the Civil Service Commission to IMAGE members violated Title VII of the Civil Rights Act of 1964, as amended. The complaints further stated that the PACE, as administered in April, 1978 to IMAGE members, was racially discriminatory, had a severe adverse impact on members of said class, had not been validated according to either the EEOC Guidelines on Employment Selection Procedures, 29 C.F.R. § 1607.1, or according to the Federal Executive Agency Guidelines on Employment Selection Procedures, 29 C.F.R. § 50.14, or according to the then proposed new Uniform Guidelines. In June, 1978, the Civil Service Commission informed plaintiff that it could not file a complaint as an organization. Plaintiff timely requested the Civil Service Commission for an opportunity to consult an Equal Employment Office Counselor pursuant to 5 C.F.R. § 713.602. No response has been received from the Civil Service Commission and more than 180 days have passed since the filing of plaintiff's initial complaint.

#### VI. PRAYER FOR RELIEF

22. Plaintiffs and the class they represent are entitled to back pay to compensate them for losses suffered as a result of defendant's illegal acts, policies and practices complained of herein. Plaintiffs and the class they represent have no plain, adequate or complete remedy at law to redress the wrongs alleged herein and this suit for a declaratory judgment and injunctive relief is their only means of securing adequate redress from defendant's unlawful practices. Plaintiffs and the class they represent, are now suffering and will continue to suffer, irreparable injury from defendant's acts, policies and practices set forth herein.

WHEREFORE, plaintiffs respectfully pray that this Court

enter judgment granting plaintiffs:

1. A declaratory judgment that defendant's acts, policies and practices complained of herein, violate the rights of plaintiffs and the class they represent secured by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e) et seq.;

2. An injunction enjoining defendant, his agents, employees, and those acting in concert with them and at their direction from continuing to use the PACE;

3. An injunction enjoining defendant, his agents, employees, and those acting in concert with them and at their direction from continuing or maintaining any policy, practice or custom of denying, abridging, withholding, conditioning, limiting, or otherwise interfering with the rights of plaintiffs and the members of the class they represent to enjoy equal employment opportunities as secured by Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000(e) et seq.;

4. An award of back pay, in an amount to be proved, to plaintiffs for their losses caused by defendant's discriminatory acts, practices and policies complained of herein.

5. Plaintiffs' costs of suit, including reasonable attorneys' fees.

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

Respectfully submitted,

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