IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Case No. 11-cv-00256-MSK-KMT

MARIAN G. KERNER, and **JACOBO GONZALES,** on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

CITY and COUNTY of DENVER, a municipal corporation.

Defendant.

NOTICE OF CERTIFICATION OF CLASS ACTION
AGAINST DEFENDANT CITY AND COUNTY OF DENVER

If you are an African American/Black or Hispanic/Latino and applied for employment or promotion with the City and County of Denver and were denied employment or a promotion as a result of failing a pre-employment or qualifying test, called the AccuPlacer Test, from March 8, 2007 to the present, a class action lawsuit may affect your rights.

A Federal Court Authorized This Notice.
This Is Not A Solicitation From A Lawyer.

- Applicants for employment and current employees seeking advancement have sued the City and County of Denver alleging discrimination in using a screening test, the AccuPlacer Test, that was not validated, in other words it was not a valid indicator of job performance, and denied them the opportunity for employment or advancement.

- The court has authorized mailing of this notice to initial applicants for employment and employees seeking promotion who were denied the opportunity to proceed in the application process as a result of failing the unvalidated screening test.

- You have been identified as a person that may have been discriminated against by the City and County of Denver's use of this screening test.

- The Court has not decided whether the City and County of Denver did anything wrong. There is no money available now, and no guarantee there will be. However, your legal rights are affected and you have a choice to make now:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
DO NOTHING	By doing nothing, you are automatically a member of the class and you will have the possibility of getting money or benefits that may come from a trial or a settlement. But, you may give up any rights to sue the City and County of Denver separately about the same legal claims in this lawsuit.
ASK TO BE EXCLUDED	If you ask to be excluded and money or benefits are later awarded, you will not receive any money or benefits. But, you keep any right you may have to sue the City and County of Denver separately about the same legal claims in this lawsuit.

- Your options are explained in this Notice. To ask to be excluded you must act before May 19, 2014.

- Lawyers must prove the claims against the City and County of Denver at a trial to be set by the court. If money or benefits are obtained from the City and County of Denver, you will be notified about how to ask for a share.

- If you have any questions, continue reading this Notice and contact **Kenneth A. Padilla or Joaquin G. Padilla at Padilla & Padilla, PLLC, Telephone: 303.832.7145, e-mail: Kenneth@padillalawoffices.com or Joaquin@padillalawoffices.com**.

1. Why did I get this notice?

The City and County of Denver's records show that you applied for initial employment or a promotion with the City and County of Denver and were denied the opportunity for employment or promotion as a result of failing a screening test called the AccuPlacer Test. This test was not validated, in other words it was not a valid indicator of job performance. The Court has allowed or "certified" a class action lawsuit that may affect you. You have legal rights and options that you may exercise before the Court holds a trial. The trial is to decide whether the claims being made against the City and County of Denver, on your behalf, are correct. Judge Marcia S. Krieger of the United States District Court for the District of Colorado is overseeing this class action. The lawsuit is known as *Kerner, et al., v. The City and County of Denver*, Civil Action No. 11-cv-00256-MSK-KMT.

2. What is this lawsuit about?

In this lawsuit Plaintiffs claim that the City and County of Denver discriminated against African American/Blacks and Hispanic/Latinos based upon their race and national origin by using the AccuPlacer Test as a screening test for employment and promotions that was not a valid indicator for the jobs which they were applying and failed these minorities in numbers greater than other non-minority applicants.

3. What is a class action and who is involved?

In a class action lawsuit, one or more people called "Class Representatives" (in this case Marian G. Kerner on behalf of all African American/Blacks and Jacobo Gonzales on behalf of all Hispanic/Latinos) sue on behalf of other persons who have similar claims. Each of these similarly aggrieved persons are a "Class" or "Class Members" and are called the Plaintiffs. The City and County of Denver whom they sued is called the Defendant. One court resolves the issues for everyone in the Class—except for those people who choose to exclude themselves from the Class.

4. Why is this lawsuit a class action?

The Court decided that this lawsuit can be a class action and move towards a trial because it meets the requirements of Federal Rule of Civil Procedure 23, which governs class actions in federal courts. Specifically, the Court found that:

- There are presumptively 920 African American/Black or Hispanic/Latino applicants for employment or promotion who were denied the opportunity for employment or advancement with the City and County of Denver as a result of failing the pre-screening test utilized by the City and County of Denver called the AccuPlacer Test;
- There are legal questions and facts that are common to each of them;

- Marian G. Kerner's and Jacobo Gonzales' claims are typical of the claims of the rest of the Class;
- Marian G. Kerner and Jacobo Gonzales, and the lawyers representing the Class will fairly and adequately represent the Class' interests;
- That common legal questions and facts predominate over questions that affect only individuals; and
- This class action will be more efficient than having many individual lawsuits.

5. What does this lawsuit complain about?

In this lawsuit, the Plaintiffs claim that they were discriminated against based upon their race and ethnic background as African American/Black or Hispanic/Latino in the use of an unvalidated screening test, in other words it was not a valid indicator of job performance, thus denying them the opportunity for employment or promotion.

6. How does the City and County of Denver answer?

The City and County of Denver denies that it discriminated against the Plaintiffs or members of the class and further denies that the AccuPlacer screening test has an adverse impact on the Plaintiffs or members of the class. The City and County of Denver denies that Plaintiffs would have been hired even if they passed the test because of the limited number of vacancies and the large number of applicants for those positions.

7. Has the Court decided who is right?

The Court has not decided whether the City and County of Denver or the Plaintiffs are correct. By establishing the Class and issuing this Notice, the Court is not suggesting that the Plaintiffs will win or lose this case. The Plaintiffs must prove their claims at a trial.

8. What are the Plaintiffs asking for?

The Plaintiffs are asking that they and members of the Class be compensated for lost wages and money for emotional distress for having been denied the opportunity for employment or promotion with the City and County of Denver.

9. Is there any money available now?

No money or benefits are available now because the Court has not yet decided whether the City and County of Denver did anything wrong, and the two sides have not settled the case. There is no guarantee that money or benefits ever will be obtained. If they are, you will be notified about how to ask for a share.

10. Who is included in the Class and am I part of this Class?

Judge Krieger decided that all African American/Black and Hispanic/Latino applicants for employment or promotion with the City and County of Denver who were denied employment or promotion upon failing the AccuPlacer Test between March 8, 2007and the present are Class members. If you fit this description you are a member of the Class. Judge Krieger also specified that employees who voluntarily took the AccuPlacer Test at the Career Counseling Center are not part of the Class.

11. I'm still not sure if I am included.

If you are still not sure whether you are included, you can get help by calling or writing to the Plaintiffs' lawyers in this case, at the phone number and address listed in question 22. You have to decide whether to stay in the Class or ask to be excluded by May 19, 2014.

12. What happens if I do nothing at all?

You don't have to do anything now if you want to keep the possibility of getting money or benefits from this lawsuit. By doing nothing you are staying in the Class. If you stay in and the Plaintiffs obtain money or benefits, either as a result of the trial or a settlement, you will be notified about how to apply for a share (or how to ask to be excluded from any settlement). Keep in mind that if you do nothing now, regardless of whether the Plaintiffs win or lose the trial, you will not be able to sue, or continue to sue, the City and County of Denver—as part of any other lawsuit—about the same legal claims that are the subject of this lawsuit. You will also be legally bound by all of the Orders the Court issues and judgments the Court makes in this class action. If you remain a member of the Class, you will receive notices of, and may participate in, any relief obtained on behalf of the Class. For this reason, you should notify Class Counsel, in writing at the address provided in question 22 of this Notice, of any corrections to, or changes in, your name, address, telephone number and e-mail address.

13. Why would I ask to be excluded?

If you already have your own race or national origin discrimination lawsuit against the City and County of Denver for being denied employment or promotion in connection with the use of the AccuPlacer Test by the City and County of Denver and want to continue with it, you need to ask to be excluded from the Class. If you exclude yourself from the Class—which also means to remove yourself from the Class, and is sometimes called "opting-out" of the Class—you will not get any money or benefits from this lawsuit, even if the Plaintiffs obtain them as a result of the trial or from any settlement (that may or may not be reached) between the City and County of Denver and the Plaintiffs. If you exclude yourself, you will not be legally bound by the Court's judgments in this class action. If you are able to start your own lawsuit against the City and County of Denver after you exclude yourself, you will have to hire and pay for your own lawyer

for that lawsuit, and you will have to prove your claims. If you do exclude yourself so you can start or continue your own lawsuit against the City and County of Denver, you should talk to your own lawyer soon, because your claims may be subject to a statute of limitations.

14. How do I ask the Court to exclude me from the Class?

To ask to be excluded, you must send an "Exclusion Request" in the form of a letter sent by mail, stating that you want to be excluded from Kerner and Gonzales v. City and County of Denver Lawsuit, **ATTN**: **Kenneth A. Padilla or Joaquin G. Padilla, Padilla & Padilla, PLLC, 1753 Lafayette Street, Denver, CO 80218. Fax No. (303) 832-7147.** Be sure to include your name and address, and sign the letter. You must mail your Exclusion Request postmarked no later than May 19, 2014.

15. Do I have a lawyer in this case?

The Court decided that the law firm of Padilla & Padilla, PLLC of Denver, Colorado are qualified to represent you and all Class Members and are called "Class Counsel." They are experienced in handling similar cases. More information about Padilla & Padilla, PLLC and their law office is available at www.padillalawoffices.com.

16. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. But, if you want your own lawyer, you will have to pay that lawyer. For example, you can ask him or her to appear in Court for you if you want someone other than Class Counsel to speak for you.

17. How will the lawyers be paid?

If Class Counsel obtains money or benefits for the Class, they may ask the Court for fees and expenses. You will not have to pay these fees and expenses. If the Court grants Class Counsels' request, the fees and expenses would be either deducted from any money obtained for the Class or paid separately by the City and County of Denver.

18. How and when will the Court decide who is right?

As long as the case is not resolved by a settlement or otherwise, Class Counsel will have to prove the Plaintiffs' claims at a trial. The trial will be set by the Court to take place in the United States District Court for the District of Colorado, in Denver, Colorado. During the trial, a Jury or the Judge will hear all of the evidence to help them reach a decision about whether the Plaintiffs or Defendant are right about the claims in the lawsuit. There is no guarantee that the Plaintiffs will win, or that they will receive any money for the Class.

19. Do I have to come to the trial?

You do not need to attend the trial. Class Counsel will represent you and present the case for the Plaintiffs, and the City and County of Denver will present the defenses. You or your own lawyer are welcome to come at your own expense.

20. Will I get money after the trial?

If the Plaintiffs obtain money or benefits as a result of the trial or a settlement, you will be notified about how to participate. We do not know how long this will take.

21. Can I be retaliated against for being part of the Class action lawsuit?

Federal law prohibits the City and County of Denver from retaliating against you or taking any adverse actions against persons because they exercise their right under the Federal Civil Rights Act, and Title VII, 42 U.S.C. § 2000e, et. seq., as amended, to participate in this lawsuit. You would be entitled to additional damages should a Court determine that the City and County of Denver took any action against you for your participation as a Class member in this lawsuit.

22. Are more details available?

If you have any questions you can **contact Kenneth A. Padilla or Joaquin G. Padilla, Padilla & Padilla, PLLC, 1753 Lafayette Street, Denver, CO 80218. Telephone number: (303) 832-7145. E-mail: Kenneth@padillalawoffices.com or Joaquin@padillalawoffices.com**. In any written correspondence to Class Counsel it is important that the envelope and correspondence contain the following case name and identifying numbers for the lawsuit: *Kerner, et al., v. The City and County of Denver*, Civil Action No. 11-cv-00256-MSK-KMT. In addition you should include your full name, address, telephone number, and your e-mail address.

PLEASE DO NOT CONTACT THE COURT
OR THE COURT CLERK REGARDING THIS MATTER