

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

-and-

THE VULCAN SOCIETY, INC., *for itself and on behalf of its members*, JAMEL NICHOLSON, and RUSEBELL WILSON, *individually and on behalf of a subclass of all other victims similarly situated seeking classwide injunctive relief*,

ROGER GREGG, MARCUS HAYWOOD, and KEVIN WALKER, *individually and on behalf of a subclass of all other non-hire victims similarly situated*; and

CANDIDO NUÑEZ and KEVIN SIMPKINS, *individually and on behalf of a subclass of all other delayed-hire victims similarly situated*,

Plaintiff-Intervenors,

-against-

THE CITY OF NEW YORK,

Defendant.  
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07-cv-2067 (NGG) (RLM)

**MONITOR’S THIRTIETH PERIODIC REPORT TO THE COURT**

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**I. Executive Summary**

This report summarizes activities relating to compliance by the City of New York (the “City”) with the Modified Remedial Order during the period from May 6, 2020, the date of the Monitor’s Twenty-Ninth Periodic Report (Dkt. # 1966), to August 3, 2020. The report also summarizes activities relating to the implementation of the Parties’ settlement of Plaintiffs-Intervenors’ disparate treatment claims (the “Disparate Treatment Settlement”), which the Parties agreed would fall within the Monitor’s authority as defined in the Modified Remedial Order. *See* Stipulation and Order dated June 5, 2015 (Dkt. # 1599); *see also* Memorandum & Order dated June 5, 2015 (Dkt. # 1598) at 10.

Consistent with events recounted in the last Periodic Report, the City’s work has continued to be slowed, suspended, or adjusted to different degrees in all areas subject to the Monitorship in recent weeks because of COVID-19. The FDNY hiring process has been suspended; firefighters previously assigned to roles in recruitment and candidate retention have continued to be assigned to emergency response duties; data-analysis personnel who had been working on several Monitorship projects, including climate survey analysis and retrospective assessments of the Exam 7001 recruitment campaign, have continued to be unavailable for these tasks because of COVID-19-related work; and other work has been unable to progress because necessary information is kept in paper files to which employees have not had access.

Nevertheless, the Monitor and the Parties have continued to make progress in most areas of activity under the Monitorship. Through the Law Department, the FDNY EEO Office and related personnel, and the FDNY’s Office of Recruitment and Retention, the City has continued to provide regular updates on its communications with candidates, the status of its attrition mitigation programs, its EEO messaging, and other activities. The Monitor and the City have

continued their correspondence and discussions regarding pending Monitor recommendations in several areas, including recruitment messaging and EEO practices. And the Monitor has continued to conduct regular conference calls with the Parties regarding an array of issues, notably including the FDNY's response to recent national events that have raised consciousness of racial justice issues and heightened the need for effective messaging on diversity and inclusion. To the extent possible, the Monitor has also continued to work independently to analyze data and issues in several areas in an effort to make progress that will speed the completion of projects once City data personnel are able to return to them. The Monitor has also requested data to conduct similar analyses in some additional areas, and those requests remain under discussion.

The Monitor appreciates the City's efforts to make further progress on Monitorship initiatives during the pandemic. The Monitor expects to remain in regular communication with the City and the other Parties regarding any necessary revisions to plans and timelines, and to continue working together for the City to fulfill its obligations under the Modified Remedial Order notwithstanding the delays and limitations associated with COVID-19. As noted in the Monitor's previous report, the goals of the Modified Remedial Order and the standards the City must meet to achieve compliance are unchanged. But the Monitor and the Parties have discussed that some adjustments may be required in the timing and details of specific projects.

Part II of the report summarizes activities during the reporting period relating to the FDNY recruitment and hiring process and to communications and attrition mitigation initiatives for candidates on the eligible list for Exam 7001 (the rank-ordered list from which candidates are called into the hiring process). As reported by the City, as of July 29, 2020, the FDNY firefighter force is now 9.9% African-American and 15.5% Hispanic. Since the Monitor's last

periodic report, further candidate processing from the Exam 7001 list has remained suspended. Accordingly, this section of the report focuses mainly on efforts by the FDNY Office of Recruitment and Retention (“ORR”) to communicate with candidates and maintain their engagement and preparation – both during the suspension and over the longer term. The City has provided the Monitor with frequent updates regarding its recent communications with candidates, which have included informational messages on the status of processing and a motivational video directed to non-traditional candidates. It also recently provided the Monitor with an updated iteration of its overall ORR communication plan. While the plan includes a number of worthwhile basic categories of communication (*e.g.*, notifications regarding appointments, events, and deadlines, along with a limited number of messages sharing motivational videos), like previous versions, it lacks essential details and fails to provide for messaging sufficiently tailored to differently situated groups of candidates, who will wait different lengths of time for further processing and (if appointed) eventual appointment as firefighters. Some of these deficiencies may be attributable to the uncertainties in scheduling and logistics associated with the COVID-19 crisis. But in any event, for the City to fulfill its obligations to combat attrition among non-traditional candidates, it remains essential for the City to develop a truly long-range and sufficiently detailed messaging plan. The Monitor intends to provide further recommendations and continue to work with the City toward that goal.

Part II also discusses the City’s attrition mitigation programs (as distinct from communications) such as the Mentor program and the Fitness Awareness Program. These programs have remained suspended since the Monitor’s last report; but the City has provided regular status reports, and it has begun to report on plans and initial steps to resume them as

circumstances permit. The Monitor and the Parties have also continued to discuss pending Monitor recommendations for improvements in the programs.

Part II also reports on the Monitor's continuing efforts to ensure that the City makes appropriate use of data in designing and adjusting its attrition mitigation efforts as Exam 7001 candidates are processed, and in its retrospective evaluation of the Exam 7001 recruitment campaign, which is expected to inform the FDNY's plans for the next campaign. As previously reported, in October 2019 the City provided the Monitor and the other Parties with updated and expanded versions of its After Action Report and its Cost Effective Report for the Exam 7001 campaign, which contained some informative analyses of different types of data but did not provide sufficient information or analysis to guide decisions about which recruitment initiatives should be the focus of the next recruitment campaign or how resources should be allocated.

Earlier this year, with expert assistance (and with input from the United States and the Vulcan Society and their respective experts), the Monitor had begun to develop further analyses that could be run on data in the City's possession to determine the effectiveness of specific recruitment activities and events in improving Black and Hispanic representation among candidates with adjusted final average scores<sup>1</sup> ("AFA") high enough to be called for post-exam processing. The City performed some of the requested analyses, but since mid-March, COVID-19 requirements have made the City data personnel usually tasked with running these types of queries unavailable to continue work on this project. The Monitor is continuing to review the initial results of the requested analyses that the City provided before the pandemic, to conduct further analyses of its own, and to seek additional information from the City. In addition, as

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<sup>1</sup> The adjusted final average score incorporates the candidate's score on the written exam and additional bonus points based on factors including, for example, New York City residency.

discussed in detail in Part II, at the Monitor's request, since the last report the City has made personnel from ORR, including Assistant Commissioner Nafeesah Noonan, available to answer questions from the Monitor and Parties about ORR's recruitment activities and data gathering.

With regard to the City's analyses of candidate processing and attrition for Exam 7001, further discussions and efforts to implement needed improvements have been on hold because of the increased demands that COVID-19 has placed on the City's data-management and analysis teams.

Part III reports on activities relating to the FDNY's EEO function. The period since the last periodic report has seen intense public attention on issues of race, and, consequently, increased focus on the FDNY's communications regarding these issues. Progress in some other areas has been substantially halted by COVID-19.

Perhaps most notably, the City's efforts to analyze data from its EEO workplace climate survey remain suspended because the City's data-analysis teams remain fully occupied with COVID-19-related projects. The City has not yet been able to provide an estimated time for renewed work on the analysis; but it has indicated that it hopes to be able to resume work – or, at a minimum, provide a schedule for doing so – before the Court conference scheduled for September 15, 2020.

The delay in the climate survey analysis has also caused a delay in another key area – the City's efforts to develop a long-range EEO messaging plan. Prior to the pandemic, the City had advised that it planned to develop a more extensive and robust plan only after it analyzed the results of the climate survey. While the Monitor agrees that analyses of the survey will hopefully yield information that can be incorporated in the City's EEO messaging, the Monitor (along with the other Parties) has encouraged the City, both before the pandemic and since its



onset, to work to develop a long-term EEO messaging plan before the survey analysis is completed.

Over the past several weeks, prompted by national events, the FDNY has issued a series of EEO communications – including statements from leadership reaffirming the Department’s commitment to diversity and several reminders and guidance documents emphasizing and explaining the FDNY’s social media policies and the proscription on harassing conduct. The FDNY’s Chief Diversity and Inclusion Officer (“CDIO”) has also hosted a series of discussions with FDNY personnel. The Monitor has provided suggestions to the City in an effort to help ensure that FDNY messaging provides appropriate support to firefighters of color and appropriate direction on EEO compliance.

In recent weeks, the FDNY has also been called upon to respond to potential violations of the Department’s EEO and/or social media policies. The Monitor has received regular updates regarding the progress of the FDNY’s investigations and response. During bi-weekly calls and in correspondence, the Monitor and Parties have also discussed the Vulcan Society’s desire to see the Department engage in additional outreach and communications to further promote an inclusive environment, offer support, and clarify to all members and the public that certain conduct is unacceptable to the FDNY.

In two other important areas, EEO investigations and officer performance evaluations, the Monitor and the City have continued to discuss a series of recommendations that the Monitor offered the City in an October 18, 2019 meeting and in follow-up communications memorializing the meeting. With regard to investigations, the City has agreed in general terms to implement several of the Monitor’s recommendations, which include targeted training for investigators on issues identified by the Monitor and additional guidance and forms for use in the

gathering and analysis of evidence. The Monitor has asked the City to produce new and updated training materials, guidance documents, and forms as they are created, and to provide further clarifications on specific steps taken to implement the Monitor's recommendations. Going forward, the Monitor also plans to continue to discuss the underlying rationale for suggested changes with the City in an effort to ensure that the goals of the recommendations are achieved, and to review materials from individual investigations to confirm that its recommendations have been effectively implemented.

With respect to the implementation of the EEO metric in officer performance reviews, the Monitor and the City have continued to discuss Monitor recommendations intended to ensure that reviews reflects all information relevant to officer performance in EEO. Those recommendations include suggestions regarding the EEO Office's role both in evaluating officers' EEO performance (*e.g.*, in connection with investigations and messaging initiatives) and in communicating its evaluations as input into the ratings process. The City has represented that the EEO Office gathers and passes on information in appropriate cases, but to date the Monitor has not been able to review records related to the 2019 cycle of officer reviews – the first cycle to include the EEO metric in reviews for all Captains and Lieutenants, and the first since the introduction of the metric to cover a full year of performance. The Monitor requested materials from the 2019 cycle several months ago and is awaiting production. But until very recently the City's efforts to compile and produce the materials were on hold because relevant FDNY personnel were not permitted to return to their offices and access the paper files in which the reviews are maintained.

Part IV reports on efforts to reduce disparate impact on Black and Hispanic candidates in the Medical Exam and to ensure that the FDNY's medical screening process is job-related and

otherwise compliant with applicable laws.

As recounted in previous reports, following allegations of disparate impact in the stairmill component of the FDNY medical examination, the City conducted a study to develop a new test, and considered input from the Monitor, the other Parties, and their experts. The Fire Department's Bureau of Health Services ("BHS") began using the new stairmill test on October 17, 2019; and the City has provided updates on candidate results from the new test, which will be analyzed for disparate impact. The City has also agreed to provide the opportunity for candidates to be tested using the new stairmill test if they were reserved or disqualified by the old stairmill test and not otherwise disqualified. The Monitor and the Parties are continuing to analyze data from this ongoing initiative.

Part IV also reports on candidate attrition and continuing disparate impact in the Medical Exam, based on the City's latest attrition report (dated December 27, 2019), which includes data for approximately 1,500 candidates who have taken the Exam 7001 Medical Exam or had been scheduled to do so before Medical Exams were suspended because of the pandemic. Part IV also recounts the City's work, in consultation with the Monitor and the other Parties, to update messaging related to the Medical Exam.

Part V reports on continuing efforts by the Monitor and the Parties to analyze the FDNY's character review process (conducted by the Candidate Investigation Division ("CID") and the Personnel Review Board ("PRB")) – including whether features of the process in addition to disqualifications (such as extended probation or delays associated with referral to the PRB) have a material disparate impact on Black and/or Hispanic candidates (which the City disputes), and whether further reforms in the process are required. Further discussions with the

City on these issues are currently on hold because the City's data teams have been devoting their full attention to COVID-19 projects.

Part VI discusses the Exam 7001 Technical Report produced by the City's testing experts, PSI Services LLC ("PSI"), which describes the development, administration, and analysis of the results of Exam 7001 (the open competitive exam given in September and October 2017). Part VI also discusses the City's re-administration of the Exam 7001 survey and the results circulated on February 28.

Part VII lists a range of additional issues addressed by the Monitor and the Parties during the period covered by this report.

## **II. Recruitment and Attrition Mitigation**

Since the last periodic report, while candidate processing has been suspended for COVID-19 reasons, the FDNY has continued efforts to maintain engagement with candidates during the crisis, and the Monitor and the Parties have continued to discuss and evaluate the Department's efforts to mitigate attrition among non-traditional candidates.

### **A. Candidate Processing**

#### **1. Candidate Processing to Date**

The City previously advised that, because of COVID-19 demands, it had suspended candidate processing and cancelled the Fire Academy class that had been scheduled to begin in April 2020. Monitor's Twenty-Ninth Periodic Report at 4. This suspension of candidate processing remains in place, and accordingly the City has generated no new candidate processing data since the data reported and analyzed in the Monitor's Twenty-Ninth Periodic Report. As reported by the City, as of July 29, 2020, the FDNY firefighter force is now 9.9% African-American and 15.5% Hispanic. Once candidate processing resumes, the Monitor expects that the

City will resume providing data on outcomes and candidate attrition from the several steps in the hiring process; and the Monitor will resume its analyses and reports. In the interim, the Monitor remains focused on the City's messaging to candidates and measures to ensure they are kept informed, motivated, and prepared for all stages of testing and screening.

2. CPAT Testing Dispute

The Monitor's November 20, 2019 Status Report Regarding CPAT Testing (Dkt. # 1940) (the "CPAT Testing Report") summarized the Parties' positions regarding the City's process of inviting Exam 7001 candidates to take the CPAT and found that the City had called candidates for the CPAT more quickly for Exam 7001 than for Exam 2000. CPAT Testing Report at 15-16. The CPAT Testing Report also made recommendations for communications and initiatives that the City could employ to address the implications of the accelerated testing.

Since the last periodic report, the Parties have briefed their respective positions regarding Plaintiffs-Intervenors' and the United States' requests for a finding that the City breached the Modified Remedial Order in connection with its scheduling of CPAT testing. The Monitor plans to issue a recommendation addressing the issues by August 24, 2020.

**B. Attrition Mitigation**

The Monitor has continued to work with the City on communications and initiatives to encourage non-traditional firefighter candidates to remain in the hiring process, to be better prepared for each step, and to be better informed about the overall hiring process. Since March, for reasons relating to the pandemic, the City has suspended several of its attrition mitigation programs and made extensive adjustments in its communication plans to reflect postponements in candidate processing. The Monitor has continued to receive updates and provide recommendations regarding the City's ongoing communications, and regarding its longer-term

plans for future communications and the resumption of candidate programs when circumstances improve.

1. Recent Communications and Outreach to Candidates

In the past, the FDNY's Office of Recruitment and Retention has communicated with candidates to remind them of upcoming appointments and deadlines via texts, emails, and phone calls. The FDNY has also offered in-person attrition mitigation programs, such as the Fitness Awareness Program. Since March, the City has faced a new challenge as it must encourage candidates to remain engaged with a process that has encountered unanticipated delays. The Monitor has encouraged the City to adjust its communications to address the fact that candidates may need to sustain fitness and otherwise remain prepared for longer than would have been necessary absent such delays. This issue merits attention because, as reflected in the Court's Findings of Fact, the hiring process can be lengthy even without such delays, and testimony at trial indicated that lengthy waits caused candidates – especially those without friend and family ties to the FDNY – to become discouraged about their prospects or to accept other opportunities before completing the hiring process. Findings of Fact (Dkt. # 741) at 4-7.

On May 7, 2020, the City provided the Monitor and the other Parties with a motivational video it had sent to Black and Hispanic candidates, in which an African-American FDNY Lieutenant urged candidates to remain committed to the hiring process and maintain physical fitness despite the challenges presented by the pandemic. ORR communications also have continued to include links to "Worth the Wait" videos and other content available via the JoinFDNY website.

As the restrictions associated with COVID-19 are relaxed and the hiring process and candidate programs resume, the City has indicated that it recognizes the vital importance of

ensuring that candidates are informed promptly and accurately of all developments; and the Monitor expects to receive frequent updates on relevant communications.

2. Long-Range Plans

The Monitor has continued to urge the City to develop a comprehensive and detailed long-range plan for candidate communications, with schedules of messaging appropriate to differently situated candidates, including candidates who have not yet taken the CPAT, candidates who have begun (or are about to begin) active post-CPAT processing (in such steps as character review and the Medical Exam), and candidates who may have many months to wait before such steps will begin. Completion of a sufficient long-term plan is an essential component of the City's attrition mitigation obligations under the Modified Remedial Order. In response to the Monitor's most recent series of requests, the City provided an updated version of its communications plan on June 24, 2020, which, like earlier versions, is neither long enough nor sufficiently detailed to satisfy the requirements outlined by the Monitor in numerous previous reports.

The Monitor has previously emphasized the need for communications "appropriately tailored to candidates who will begin processing at different times, pass through it on different schedules, and (if appointed) enter Academy classes at different times." Monitor's Twenty-Eighth Periodic Report (Dkt. # 1932) at 18. And in comments on the City's previous plans, the Monitor has noted that an appropriate plan must "include (and specify the content of) more frequent and more varied messaging specific to candidates at different levels on the list" – and that the City must provide enough information on planned content for the Monitor to "assess how messages change over time and fit into overall plans." *Id.* at 19. These requirements affect all candidates and are particularly critical with respect to a large number of candidates who have all passed the CPAT (the first step following the written examination) but whose wait times for

further processing and eventual appointment will vary by many months, depending on their positions on the eligible list. In discussions about this group, the City has cited the opportunity to engage more intensively with candidates after they pass the CPAT as a potential benefit of earlier CPAT testing. For that benefit to be realized, it is essential for the City to create a robust and appropriately targeted communications and attrition mitigation plan.

The latest list of communications provided by the City still does not constitute a sufficient plan for candidate communications. For example, for the group of candidates who have passed the CPAT described above, the updated Post-COVID section of the plan<sup>2</sup> lists no events or communications later than September of 2020<sup>3</sup> (even though many candidates in post-CPAT processing will not enter Academy classes until late 2021); it lists only twelve communications directed to the entire group of candidates who passed the CPAT in Round 2 of processing (more than 1,700 candidates identified by score bands from the written examination<sup>4</sup>); and within the Round 2 list of communications, the only items directed to a subgroup defined by list number or wait time (as the Monitor has recommended) are two communications with candidates projected to enter the next Academy class. More generally, the City's June 24 plan, like previous iterations, consists primarily of communications relating to specific events, deadlines, and candidate programs such as CPAT training, Mentoring, and the

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<sup>2</sup> The City's June 24 list is divided into a "Pre-COVID" section and a "Post-COVID" section. As the designations suggest, the Pre-COVID section is mainly retrospective – listing communications that had occurred before the COVID-19 emergency; but it also includes some entries for later events and communications originally scheduled for the latter half of this year. Most or all of those later items will necessarily have been rescheduled or cancelled because of the pandemic. And the later portions of the Pre-COVID section have presumably been superseded by the Post-COVID section.

<sup>3</sup> One item for this group, reminder calls for the Run, is listed as "TBD."

<sup>4</sup> Round 2 comprised candidates with AFA of 100 and 101.



Fitness Awareness Program. It also includes several communications directing candidates to “Worth the Wait” videos and other items accessible via JoinFDNY. But to the extent samples of messages have been provided to the Monitor, they do not appear to tailor content to candidates with different wait times. *See* Monitor’s Twenty-Ninth Periodic Report at 23-24.

The Monitor recognizes that uncertainties associated with COVID-19 have impeded the City’s ability to project precise wait times for specific groups of candidates defined by list number, or to generate a long-term timeline linked to exact dates for all the events and deadlines associated with different steps in the hiring process. Exact dates are not a requirement, however, to forecast the general sequence of typical events and plan guidance specific to different phases of the hiring process, including messaging directing candidates to resources already available on the JoinFDNY website or from other FDNY sources (which the Monitor recommended in its CPAT Testing Report (at 15-16) and in its Twenty-Ninth Periodic Report at 16, 24-25). For example, material such as the motivational and instructional videos available through JoinFDNY and the related YouTube channel could be posted in a format that clearly indicates which materials are likely to be most appealing, relevant, or helpful for which candidates depending on their respective positions in the process.

A sufficient long-term communication plan must also include communications with the next band of candidates expected to be called for CPAT testing – taking account of the additional burdens on candidates, and especially non-traditional candidates, associated with COVID-19.

In connection with discussions of ORR’s long-term plans and communication strategy, Plaintiffs-Intervenors asked the FDNY to consider employing a texting platform that the Vulcan Society has utilized, suggesting that it would facilitate the process of sending responsive texts to candidates who reply to ORR messages. After examining the platform, the City declined to

adopt it, preferring to adhere to an approach in which all such communications are managed and tracked by its ARCS system.

The Monitor will continue to work with the City on a suitable long-range plan, and it plans to work with its experts in the near term to develop recommendations for specific sample content tailored to different candidate groups.

### 3. Attrition Mitigation Programs

Since the last periodic report, the FDNY's principal attrition mitigation programs, including the Mentor Program and the Fitness Awareness Program ("FAP") have remained suspended or substantially curtailed because of COVID-19. During this period, the Monitor has continued to receive updates regarding the City's communications with participants and regarding its plans, and some initial steps, to revive the programs when feasible. As activities resume, the Monitor expects to continue to work with the City on the Monitor's outstanding recommendations for ways to improve or expand the programs.

Fitness Programs – The FAP is a six-session<sup>5</sup> fitness training program conducted over three months by instructors who vary the intensity of training based on each candidate's individual fitness. As originally implemented during Exam 2000 processing, the FAP was intended primarily to prepare candidates for the Academy, and each candidate took a single sequence of sessions concluding shortly before entering the Academy. For Exam 7001 candidates, the City has expanded the program to allow candidates to take multiple sequences.

In a May 4, 2020 update, the City provided a set of figures for participation in the FAP among candidates who had passed the CPAT and were still in processing: the participation rates

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<sup>5</sup> Candidates are asked to register for six-session sequences but may take as many sessions as they wish in each sequence.

(including candidates who were “scheduled” or “participated”) were 71.2% for Black candidates, 40.7% for white candidates, and 57.9% for Hispanic candidates.

Before COVID-19 compelled the City to suspend in-person FAP sessions, the Monitor had made several recommendations related to the FAP. *See* Monitor’s Twenty-Ninth Periodic Report at 26-28. As noted above, a large group of candidates has already passed the CPAT, and many of these candidates faced wait times of months or even in excess of a year before being called for further processing. Accordingly, the Monitor recommended that the City consider modifying the program content and messaging to reflect the different needs of candidates with different waiting periods and lead times before they begin the Academy, and to ensure that candidates who are inclined to take the FAP only once do not do so too early and risk losing fitness before the Academy begins. The Monitor had also endorsed a suggestion made by the City itself: to establish a permanent, training site in a location more readily accessible than its Randall’s Island facilities, which could be used both as a permanent fitness-maintenance resource for candidates preparing for the post-CPAT stages of processing (including the Run and the Medical Exam) and as an additional, alternate site for CPAT training. *Id.* at 26-27.

Regarding the Monitor’s recommendation for a permanent training site, before the Monitor’s last report, the City advised that its efforts to find a site have been suspended indefinitely because of fiscal constraints and that the City did not plan to establish a permanent alternate training site for the remainder of Exam 7001 processing – though a temporary site remained a possibility. The Monitor continues to recommend that the City reconsider this position and has continued to discuss the matter with the City and the other Parties. Given the demonstrated correlation between the FAP and success on the Medical Exam (especially for non-traditional candidates), and the correlation between attendance at multiple CPAT training

sessions and success on the CPAT (again especially among non-traditional candidates), the Monitor believes strongly that expanded access to fitness and training resources is likely to have a favorable effect on attrition among non-traditional candidates. *See* Monitor's Twenty-Ninth Periodic Report at 28; Monitor's Twenty-Sixth Periodic Report (Dkt. # 1896) at 21. Before the City suspended its efforts, the additional training site was intended as an important step to improve that access.

As the Monitor emphasized in the last report, if the City follows through on its expressed intention to abandon the training-site plan, it will be essential for it to identify equivalent means of providing candidates with access to fitness resources and training.

Mentor Program – As previously reported, in an April 6, 2020 message, the City advised that the Mentor program had been suspended for reasons related to COVID-19. Since that time the City has updated the Monitor on its efforts to maintain contact with participants and plans to resume the program. As a temporary measure, mentees were advised to submit queries to a dedicated email address at ORR, and a single Mentoring coordinator was assigned to handle communications with mentees. The City has recently advised the Monitor that it is finalizing plans for resuming the program; and it reports that, with few exceptions, mentees will be reassigned to their original Mentors. (The only exceptions will be those mentees who had been assigned to Captains, who are no longer eligible to participate as Mentors.)

Recruitment Coordinators – Prior to March, ORR had continued its use of Recruitment Coordinators, including a team of six African-American Coordinators, to engage with non-traditional candidates. Since the onset of the pandemic crisis, the Coordinators (all firefighters detailed to ORR) have been required to return to front-line emergency-response duties. On a July 9, 2020 conference call, the City advised that a Lieutenant and two light-duty firefighters

had been made available to assist in ORR activities; but the Coordinators have not yet been able to return. The Coordinators play an important role in maintaining candidate engagement, and their work is all the more important given the volume of candidates currently in processing and the uncertainties surrounding the resumption of the hiring process. As active candidate screening resumes – including intake, Medical Exams, and character review – it will be essential for non-traditional candidates to remain informed and to have the type of personal contact with ORR that the Coordinators are intended to provide.

The City previously confirmed that Coordinator activities (which had previously been recorded on paper) are now tracked in the same ARCS database that ORR uses to track and manage its more broad-based communications with candidates; and on July 13, 2020, in response to the Monitor's request, the City produced a set of data based on those records, which the Monitor is currently reviewing.

#### 4. Use of Data in Attrition Mitigation Initiatives

The Monitor has long emphasized the need for the City to effectively analyze data on candidate attrition from the several stages of the hiring process, along with data reflecting the effectiveness of its attrition mitigation initiatives – and to use its analyses in designing, modifying, and deploying its initiatives and communications. *See, e.g.*, Monitor's Twenty-Fifth Periodic Report (Dkt. # 1877) at 22-23. In a series of communications over approximately the past year, the Monitor has engaged with the City and the other Parties regarding potential improvements in the City's analyses of the hiring process. Monitor's Twenty-Ninth Periodic Report at 30-31. Since the onset of COVID-19, further progress on those improvements and the related discussions has been largely suspended, as the City has reported that its data-analysis teams have been required to turn substantially all their attention to projects relating to the public health crisis. But the City has indicated in recent weeks that it may be possible, at a minimum, to

provide an update by the next status conference on when relevant personnel can resume work on assessments of the FDNY hiring process. If at all possible, and if work has not already proceeded, the Monitor urges the City to present a plan for the resumption of work in advance of the conference.

As set forth in detail in prior reports, the Monitor previously provided the City with several recommendations for the City's analyses of candidate outcomes from Exam 7001 processing and for its analyses of correlations between outcomes and the City's attrition mitigation initiatives. Monitor's Twenty-Seventh Periodic Report (Dkt. # 1910) at 16-17; Monitor's Twenty-Ninth Periodic Report at 31. (The Monitor provided an initial set of recommendations for the Exam 7001 analyses on May 14, 2019 and several follow-up recommendations on April 27, 2020, in the Monitor's reply to the City's February 13, 2020 responses to the initial set.)

In its February 13, 2020 response to the Monitor's recommendations, the City accepted most of the Monitor's recommendations in principle. However, as of the start of the COVID-19 emergency, which effectively suspended any further action on the Monitor's recommendations, many of the analyses remained to be performed – or, at least, had not yet been provided to the Monitor, either in the City's two main reports on Exam 7001 processing<sup>7</sup> or in any supplementary communications. Monitor's Twenty-Ninth Periodic Report at 32-33 (listing recommended analyses omitted from the City's reports to date).

As discussed in the Monitor's previous report, the City has advised that many of the Monitor's recommended analyses can be conducted using the data dashboard or "tracker" that

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<sup>7</sup> Reports dated June 17, 2019 and December 27, 2019

ORR personnel employ to monitor data from the hiring process. *See* Monitor's Twenty-Ninth Periodic Report at 33. However, again, as of the point when the health crisis suspended all non-COVID-19-related data analyses, the City had not reported any results to the Monitor beyond those included in its December 27, 2019 report. In addition, as demonstrated to the Monitor (in a December 9, 2019 meeting with the Parties), the tracker did not display or include in its calculations several important categories of information – including data from the separate components of the Medical Exam, and data from the Mentor program, the FAP, the candidate portal, and other attrition mitigation programs and initiatives. The City has represented that more categories of data would be added; but it recently advised that these additions have been delayed by the pandemic. In addition, in part because of limitations imposed by COVID-19, the Monitor has not yet been provided a further demonstration of the tracker or reports reflecting its analytical capabilities.<sup>8</sup>

Once work can resume, the Monitor will continue to work with the City on the Monitor's pending recommendations, arrange for a further demonstration of the ORR tracker, and more generally continue working with the City to ensure it possesses sufficient systems to support data-driven attrition mitigation initiatives and that it makes use of relevant data in its decisions.

As part of its effort to assist the City in developing effective analyses, on June 4, 2020, the Monitor asked the City to provide an export of data from City databases (in spreadsheet form) in a number of selected categories relating to candidate processing and attrition mitigation programs. The Monitor plans to use the requested data, which were designed to be retrievable

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<sup>8</sup> The United States also produced a set of recommendations for further analyses and commentary regarding the Exam 7001 attrition metrics documents on July 10, to which the City has not yet been able to respond.

using the names of “fields” in existing databases, to perform analyses the City is unable to execute during the pandemic; to validate analyses the City has performed; and to examine other potential relationships between candidate outcomes, demographics, and attrition mitigation initiatives. The City responded to the Monitor’s request on June 10, stating that for one data category the Monitor had equivalent data in a different form, and as to the rest that it could not fulfill the request without the assistance of data-management personnel who are fully occupied with COVID-related projects. (The City also asked the Monitor to withdraw requests related to one area of the hiring process based on the City’s position that no further work should be necessary.) The Monitor plans to discuss the request further with the City.

**C. Analyses of the Exam 7001 Recruitment Campaign**

A central goal of the Modified Remedial Order and the Monitorship is for the City to establish a sustainable process for recruiting and retaining Black and Hispanic firefighter candidates. *See* Modified Remedial Order ¶¶ 31-36.<sup>9</sup> For the City to accomplish that goal, it must conduct effective, informative analyses of its recruitment campaigns to determine the most productive and cost-effective means of attracting non-traditional candidates likely to achieve reachable scores on the firefighter examination and ultimately be appointed as firefighters. To that end, the Monitor has consistently emphasized the need for the City to perform an effective after action analysis of its recruitment activities, and to retain the necessary data (including data on candidates, on communications, and on budgets and resource allocation) that would allow it to perform such an analysis. For the City’s recruitment campaigns to be truly effective on a

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<sup>9</sup> The Court specifically found that a policy or practice that “fails to adequately recruit black persons to become firefighter candidates serves to maintain and perpetuate the effects of the City’s discrimination against black firefighter candidates.” Findings of Fact at 33.



continuing basis, it must be able to assess and modify its activities based on well designed analyses of past efforts that produce actionable conclusions. But the retrospective reports on the Exam 7001 campaign produced by the City to date do not provide actionable insight into a number of important topics, such as cost-effectiveness and (in some areas) the effectiveness of the campaign in attracting successful candidates in particular demographics; and the City must now work intensively, in close consultation with the Monitor, to produce analyses capable of informing its strategies and tactics for the next recruitment campaign.

As described in the Monitor's previous reports, the City provided the Monitor and the other Parties with an initial "After Action Report" in November 2018. The Report contained a large volume of informative data and some analyses of the FDNY's recruitment activities; but it omitted critical components necessary for an actionable analysis, including, among other things, useful data about the City's budgeting, a breakout of reachable from not reachable candidates, and an assessment of the City's digital and traditional-media advertising campaigns. *See* Monitor's Twenty-Sixth Periodic Report at 22-24. The Monitor provided the City with its comments on this first After Action Report on May 1, 2019; and the City advised that it would take account of those comments, along with comments from the Parties (circulated April 30, 2019), in an expanded and revised report on its recruitment campaign. *See* Monitor's Twenty-Seventh Periodic Report at 18-19; Monitor's Twenty-Eighth Periodic Report at 23-24. The City provided the Monitor and the Parties with its updated After Action Report (dated September 27, 2019) on October 2, 2019, and on October 23, 2019 it provided the Monitor and the Parties with its Cost Effective Analysis for Exam 7001 Recruitment Campaign (the "Cost Effective Analysis"). Plaintiffs-Intervenors communicated their comments on the Cost Effective Analysis

and the After Action Report on November 20 and 22, 2019, respectively; the United States added its comments on November 26, 2019.

As described in the Monitor's Twenty-Ninth Periodic Report, both the other Parties and the Monitor identified numerous weaknesses and omissions in the City's reports; and the Monitor began working closely with all concerned, in consultation with its experts and experts retained by Plaintiffs-Intervenors and the United States, to oversee the City's efforts to address their concerns and generate useful analyses. Although the City's availability has been limited by COVID-19 efforts, the Monitor and other Parties continue to work with their experts to conduct analyses and develop further questions and requests that the City will address when it is able.

1. After Action Report

As described in previous reports, the City's revised After Action Report includes a broad range of analyses correlating recruitment contacts, applications, test-takers, and reachable scores with factors such as geography, race, and the type and location of initial recruiting contact. It expands upon the analyses in the initial report, articulates a number of findings, and offers some more detailed analyses – responding in part to the Monitor's recommendations. However, the report continues to exhibit a number of deficiencies. Most importantly, the After Action Report lacks information that is critical to the core purpose of the analysis: determining and comparing the effectiveness of different recruitment activities, events, and types of communication in the targeted recruitment of non-traditional candidates who achieved reachable scores on Exam 7001. In order to provide useful guidance for the next campaign, the City's analysis must measure effectiveness by this key criterion – identifying the events and activities that produce the largest groups of reachable candidates in which Black and Hispanic candidates are most heavily represented.

The Monitor expects that the City may be able to remedy this omission with further appropriately focused analyses. Prior to shutdown, the City had begun to perform a number of analyses requested by the Monitor; and the Monitor expects the City to resume those efforts as soon as it can make personnel available. In the meantime, the Monitor expects to continue efforts to move analyses forward using the Monitor's own experts.

2. Cost Effective Analysis

As described in the Monitor's Twenty-Ninth Periodic Report (at 37-38), the City's Cost Effective Analysis also suffers from serious flaws – among them the City's failure to collect data that would allow it to attribute internal FDNY expenditures to specific recruitment activities and events. The Cost Effective Analysis itself describes two critical limitations: (1) that cost information for FDNY events is limited to overtime expenditures for firefighter and fire officer personnel and (2) that linking expenditures (namely firefighter and fire officer overtime expenses) to specific FDNY events “was not always possible.” As the City further explains, “[t]his issue of not being able to directly link overtime expenditures to specific events means that the cost effective analysis is unable to be event-based.” Because of this limitation, the City's analyses did not draw any conclusions based upon the cost effectiveness of any particular event or type of event for the entire recruitment campaign for Exam 7001. The City has performed analyses showing its costs for each month of the campaign. But it states that it “do[es] not know in any given month specifically which FDNY event or combination of events was most cost effective,” and instead knows only “*which month(s)* produced the most cost effective outputs.” (emphasis in original).

As previously noted, the Monitor is deeply concerned by the City's failure to track its costs in sufficient detail, especially given the Monitor's consistent, longstanding focus on the importance of budgeting as an essential component of the after action analysis, which the City

has acknowledged. *See, e.g.*, Monitor’s Eighteenth Periodic Report (Dkt. # 1734) at 3, 15-16.

The Monitor and the other Parties have made further inquiries to determine whether more precise data is available, whether more useful analyses can be performed with existing data, and whether gaps in the available data can be bridged with inferences or informed estimates. Both Plaintiffs-Intervenors and the United States have identified experts to facilitate their participation in these discussions.

As previously reported, the Cost Effective Analysis also includes assessments of activities conducted by Hodes, the vendor engaged by the City for its digital, radio, and outdoor advertising campaigns. Monitor’s Twenty-Ninth Periodic Report at 38. Although Hodes’s tracking of cost data appears to have been more detailed, and permits a more precise attribution of costs to specific activities, the utility of its analyses is diminished by the fact that only a minority of initial contacts or “lead captures” in the digital campaign chose to disclose demographic information. *Id.* at 39.

3. Further Recruitment Analyses Requested by the Monitor

As reported in the Monitor’s Twenty-Ninth Periodic Report, the Parties and the Monitor participated in an initial discussion of possible further analyses at a meeting on December 9, 2019. In mid-January 2020, the Monitor began work with its subject-matter experts to develop data searches and analyses for the City to conduct in order to determine the effectiveness and cost effectiveness of the various recruitment initiatives undertaken during the Exam 7001 campaign. At a February 14, 2020 meeting with the City, the Monitor outlined a first set of specific data queries for the City to perform to determine which events (defined by type, timing, and location) and which advertising methods were most successful both in attracting numbers of reachable non-traditional candidates and in increasing the percentage of non-traditional

candidates in the overall pool of reachable candidates.<sup>10</sup> The City agreed to perform the Monitor's suggested queries and provide results on a rolling basis.

At the same meeting, the Monitor also suggested methods for preparing an informed estimate of the cost of event types – including, for example, surveying FDNY recruitment event planners to identify a range of event costs and obtaining a more detailed understanding of ORR budgeting for recruitment events in the Exam 7001 campaign. And the City indicated that it would seek such alternate methods for determining costs. The Monitor also suggested that, if it can be obtained, additional data from Hodes showing the effectiveness of various media types and touchpoints with recruitment contacts should be included in the analysis. Finally, the Monitor suggested that the City conduct a small number of focus groups of non-traditional Exam 7001 firefighters to learn which, if any, recruitment initiatives had influenced their decision to take Exam 7001.

On February 28 and March 5, 2020 the City provided the Monitor with its first and second sets of responses to the Monitor's first set of data search requests. On March 6, the Monitor and all Parties met to discuss next steps in recruitment analysis, including the establishment of weekly meetings to work through recruitment analyses and to provide insight and advice for the next campaign. The United States and Plaintiffs-Intervenors had hired their own experts, and plans were made for weekly discussions. Unfortunately, as previously reported, the Monitor and Parties were unable to conduct any calls after the March 6 meeting

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<sup>10</sup> The most successful events and techniques achieve both goals: attracting large numbers of reachable non-traditional candidates and attracting groups of reachable candidates containing a high percentage of non-traditional candidates.

before the City advised that it needed to suspend work on recruitment data-analysis planning because of the pandemic.

Although the bulk of the City's recruitment work is suspended while its data personnel devote their time and efforts to COVID-19 tasks, the Monitor and the other Parties have continued to analyze the data received from the City and to seek ways to estimate the City's past recruitment costs. While the Monitor and other Parties understand that the City may not be able to respond immediately, all agree that there is a pressing need to create a data-driven strategic plan before the next recruitment campaign, and the City has agreed that the Monitor and other Parties should continue to work together and to send requests to the City, even if the City is unable to respond at once. With that understanding, the United States and Plaintiffs-Intervenors sent requests to the City on March 20 and April 28, 2020 respectively, and the Monitor sent a second set of requests on March 25.

On May 15, the Monitor and Parties participated in a conference call during which Assistant Commissioner Nafeesah Noonan and other ORR personnel answered questions from the Monitor and the other Parties about various recruitment activities and processes. Topics included descriptions of the various recruitment event types referred to in the After Action Report; advertising for these events; how the number, timing, and location of events, and recruiter staffing decisions are determined; what event information is tracked (*e.g.*, event duration, number of recruiters, and their race/ethnicity and experience); where the data is entered; who has access to the data; and database coding and query capabilities.

On June 4, 2020 the Monitor sent the City a request for data for the Monitor's data experts to use to begin critical analyses that need to be performed before the next recruitment cycle begins. The Monitor's understanding, based on data dictionaries, database descriptions,

and representations made by the City, is that most if not all of the requested data can be pulled on a near-automatic basis. The City responded on June 10 and objected to the request on the grounds that its data-analysis resources continue to be devoted exclusively to COVID-19 issues, and that the data pull, if not performed by MAP (the City's data-analysis team), may be inaccurate and would have to be duplicated when MAP resumes recruitment analyses. The Monitor will continue to work with the City with respect to this request.

**D. Assignment Issues**

As discussed in detail in the Monitor's previous periodic reports, Plaintiffs-Intervenors have raised issues regarding the City's compliance with Paragraph 1(d) of the Disparate Treatment Settlement, which requires the City to give "New York City residents who graduate from the Fire Academy first priority for placement into a fire company within the Division in which they live, to the extent reasonable, practicable, and consistent with operational needs"; and the Monitor has conducted an investigation of Plaintiffs-Intervenors' concerns. Monitor's Twenty-Fourth Periodic Report (Dkt. # 1861) at 18. Following a protracted series of communications with the City, the Monitor was unable to confirm whether all assignments in the relevant Academy classes complied with the Intent Settlement: where the City had denied requests for home-division assignments, it had invoked operational reasons or needs of the Department in general terms; but because of the way records were maintained at the relevant time, it could not identify for the Monitor the specific operational justification that the City deemed sufficient in each case. Monitor's Twenty-Ninth Periodic Report at 41-42.

In connection with these inquiries, the Monitor directed the City to establish systems that would reliably memorialize the specific reasons for denying home-division requests from New York City residents; and the City prepared revised and expanded guidelines for probationary firefighter appointments. *See* Monitor's Twenty-Seventh Periodic Report at 20. The draft

guidelines have undergone a series of revisions based on comments from the Monitor, Plaintiffs-Intervenors, and the United States. *See* Monitor's Twenty-Ninth Periodic Report at 42-43. Most recently, on February 13, 2020, the Monitor offered a small number of additional changes intended to eliminate any ambiguities regarding the implementation of the home-division requirement and ensure that the City conducts appropriate analyses of firefighter assignments – to confirm compliance with both the home-division requirement and applicable law. The City initially declined to implement the Monitor's latest proposed revisions, asserting that the proposed changes did not justify re-opening the approval process for an additional round of review by FDNY leadership. But on an April 30, 2020 conference call with the Monitor and the other Parties, the City advised that it would give further consideration to the Monitor's proposed revisions, and the FDNY's internal review is in progress.

As previously reported, Plaintiffs-Intervenors have also raised additional concerns relating to firefighter assignments, including assignments to engine and ladder companies and to busier fire companies – allegations which Plaintiffs-Intervenors contend demonstrate potential unlawful discrimination or retaliation under the Modified Remedial Order, and which are also relevant to the Order's focus on the importance of an effective EEO office within the FDNY. *See* Monitor's Twenty-Fourth Periodic Report at 18-19. On July 16, 2018, the Monitor remanded the issues to the FDNY EEO Office based on the City's assertions that the EEO Office should handle such an investigation, with instructions to complete an investigation within 90 days (including certain topics specified by the Monitor) and to report to the Monitor on the outcome of the investigation within 120 days. After protracted delays, the City provided the Monitor with the report of its investigation on May 24, 2019. Monitor's Twenty-Eighth Periodic Report at 25-26. The City's memorandum stated its findings and conclusions on one set of



issues (whether objective factors support the view that some fire company assignments identified by Plaintiffs-Intervenors are preferable to others), but did not describe any investigation or findings regarding the Plaintiff-Intervenors' claims of discriminatory disparities in assignments. *Id.* (The City assumed, for the purposes of the report, that the asserted disparity existed.) On August 29, 2019, the City also provided a one-paragraph summary of its investigation of the company-assignment issue to the Plaintiffs-Intervenors and the United States. *Id.*

In an October 3, 2019 letter identifying disputed issues, Plaintiffs-Intervenors asserted that the City's investigation regarding fire company assignments failed to demonstrate its ability to conduct adverse impact analyses and "take steps to remedy adverse impact that may be identified," and they asserted that Priority Hire candidates who were assigned to engine companies and less busy companies are entitled to relief. The City disagreed, and on a November 21, 2019 call convened by the Monitor, given the apparent impasse in discussions between the Parties, it was agreed that the Parties would set a briefing schedule to formally present the issues to the Monitor for its recommendations.<sup>12</sup> However, in subsequent communications, the City and Plaintiffs-Intervenors advised the Monitor that they had engaged in further discussions and exchanges of information in an effort to resolve the dispute, and they postponed setting a briefing schedule pending those discussions. Monitor's Twenty-Ninth Periodic Report at 45. Since the last periodic report, Plaintiffs-Intervenors and the City have

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<sup>12</sup> The City's October 11, 2019 response to Plaintiffs-Intervenors included disparate impact analyses of fire company assignments pursuant to its recently adopted assignment criteria (in use for Exam 7001 candidates), but it has not conducted such an analysis for the assignments that were the subject of Plaintiffs-Intervenors' original challenge. The City has represented that it will conduct disparate impact analyses "as a matter of course" under the new guidelines; and on an April 6, 2020 conference call, the City advised the Monitor and the other Parties that it had conducted disparate impact analyses of assignments for the class that most recently graduated from the Fire Academy.

advised the Monitor that they continue to work together to review firehouse assignments in an effort to resolve the dispute amicably.

The City's assignment guidelines require that reasons relied upon in denying home-division requests must be specifically recorded, and the Monitor plans to request and review those records as assignments proceed for Exam 7001 Academy classes, in order to confirm that the reasons invoked by the City are consistent with the Intent Settlement. On an April 16, 2020 conference call, the City confirmed that it had conducted assignments for the most recent Academy class in accordance with its current guidelines, and that it had reviewed the assignments for compliance with the home-division requirement. The City has also represented to the Monitor and the other Parties that it conducted disparate impact analyses of assignments to identify any disparities in assignments to the types of companies that Plaintiffs-Intervenors had alleged to be preferable. Following up on the City's representations, on June 10, 2020 the Monitor asked the City to produce (1) its records and analyses relating to home-division requests and assignments for the most recent Academy class, and (2) its analyses of data from the same class to identify any disparate impact in assignments to different categories of fire company.

**E. Working Group**

The Monitor has continued to provide oversight for the City's work on initiatives relating to the Working Group established under the Disparate Treatment Settlement. The Working Group Committee was established with the goal of "creat[ing] educational and other opportunities that will enhance the ability of New York City students to pursue careers as New York City firefighters." Proposed Stipulation and Order (Dkt. # 1291-1) ¶ 1(e). As discussed in the Monitor's previous reports, the City's initiatives under the Working Group Committee have primarily consisted of the FDNY Fire Cadet program and the FDNY Explorers program.

As previously reported, in an April 6, 2020 message, the City advised the Monitor and the other Parties that the Cadet Program has been delayed until at least July 2022 because of the COVID-19 emergency. Monitor's Twenty-Ninth Periodic Report at 45-46. The City confirmed that it remains committed to holding the program in conjunction with the next promotional examination, and the Monitor expects the City to continue work on the program once the emergency subsides; but the timeline for further steps in establishing the program is now uncertain.

In an update provided before the current public health emergency, the City confirmed that it had continued its FDNY Explorers program initiative over the previous several months.<sup>13</sup> As of December 27, 2019, the City reported that there were 179 Explorers and 45 active Post Advisors; and the City reports that those numbers had not changed substantially as of the issuance of emergency rules associated with the pandemic. Program activities continue to be suspended because of the COVID-19 pandemic.

### **III. EEO**

#### **A. EEO Staffing**

On July 30, 2020, the City reported that the FDNY EEO Office currently includes 13 attorneys (including the Assistant Commissioner, two Deputy Directors, Investigative Attorneys and contract attorneys) and six non-attorney staff. The City reported that the EEO Office attorney staff had experienced some attrition in recent months, and its current team of 13

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<sup>13</sup> As discussed in prior reports, the Explorers program provides training and mentoring at posts associated with New York City high schools in diverse neighborhoods. See Monitor's Nineteenth Periodic Report (Dkt. # 1761) at 17-18.

attorneys is three short of the 16 attorneys it fielded when fully staffed. *See* Monitor's Twenty-Ninth Periodic Report at 47; Monitor's Twenty-Eighth Periodic Report at 28.

The Monitor urges the City to proceed as expeditiously as possible to bring the staff of EEO Office attorneys back up to its full 16-attorney strength. The City brought the number of EEO Office attorneys up to 16 for the first time in the latter half of 2019, when it filled the last of several new attorney positions created in 2018. *See* Monitor's Twenty-Fourth Periodic Report at 27 (referencing efforts to fill new positions); Monitor's Twenty-Eighth Periodic Report at 28 (noting that the last position had been filled). As recounted in detail in previous reports, this increase in EEO Office attorney staffing is a major, essential component of the City's efforts to establish effective mechanisms of EEO compliance and ensure that EEO matters are investigated promptly and effectively. *See, e.g.*, Monitor's Twenty-Fourth Periodic Report at 36 (noting the expectation that increased staffing will reduce the duration of EEO investigations); Monitor's Twenty-Eight Periodic Report at 45 (noting some improvement in the duration of cases following the 2018 staffing increase). As reported by the City, EEO Office attorneys also perform vital EEO functions beyond investigations, including inspections and EEO training. Given their critical role in the City's efforts to ensure compliance with the Modified Remedial Order and applicable law, the City must ensure that the ranks of its FDNY EEO attorneys are replenished as soon as possible. The Monitor is also concerned that it learned about this decline in key EEO Office staffing (which the City indicates took place over the past few months) for the first time in a brief comment by the City on a draft of this report. For developments of this magnitude, which substantially impact key Monitorship initiatives, the Monitor urges the City to keep the Monitor informed as they occur.

It appears that the reduction in EEO staffing may have already contributed to an increase in the caseload for attorney investigators. On a July 9, 2020 conference call, the City advised the Monitor and the other Parties that the current caseload for each investigator is approximately 10 to 15 cases – more than the 5 to 10 cases per investigator reported in September 2019, though still fewer than the 15 to 20 cases in the latter half of 2018.<sup>14</sup> *See* Monitor’s Twenty-Eighth Periodic Report at 29. This development is concerning, as increased caseloads necessarily make it more difficult for investigators to conduct thorough and expeditious investigations. The Monitor will continue to follow developments in this area closely.

As previously reported, the work of the EEO Office staff is also supplemented by the activities of EEO Counselors – firefighters and officers who act as liaisons between the firefighter force and the EEO Office, as part of a program initiated in 2018. *See* Monitor’s Twenty-Ninth Periodic Report at 47. Before the Monitor’s last periodic report, the City reported that, after some delays, it had completed selection and training for a new group of Counselors, bringing the total number of Counselors to 35 (of whom 22 are white, 11 Black, 1 Asian, and 1 Hispanic). Twelve of the 35 current Counselors are firefighters, and the rest are officers. *Id.*

#### **B. Policies, Messaging, and Training**

EEO messaging remains an area of considerable concern for the Monitor. Although the FDNY has issued several EEO-related messages via a number of channels in recent weeks (partly in response to recent national events that sharpened awareness of racial issues), the Department still has not produced a long-range strategic plan for EEO communications, and its

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<sup>14</sup> During the COVID-19 period, the EEO Office has continued to field and address complaints and inquiries, although in-person interviews and visits to workplaces have been limited by the restrictions imposed to combat the virus.

efforts to develop such a plan based on the climate survey have been temporarily halted, as the analysis of survey data has been suspended since the onset of the COVID-19 emergency.

1. Recent EEO Messaging

The period since the Monitor's last periodic report has seen increased activity in EEO messaging, as the need for clear and appropriate communications on issues of race, inclusion, professionalism, and EEO compliance has been greatly heightened by the death of George Floyd and the ensuing protests, which have raised awareness and intensified discussions of racial issues both within the Department and among the public at large. In particular, recent events have made it more important than ever for the FDNY to ensure that members understand and adhere to its policies barring disparagement and harassment in social media and other online communications, as well as in the physical workplace. As discussed below in Part III.D (regarding investigations), in recent weeks the FDNY has become aware of several potential violations of these policies relating to George Floyd's death and the public response, which are currently under investigation.

The Department has taken several steps in recognition of recent developments. On June 5, 2020, the FDNY issued a Department Order containing a statement by the Commissioner concerning George Floyd's death and emphasizing the FDNY's commitment to diversity and inclusion.<sup>15</sup> On June 6 it issued a further Order containing an EEO compliance statement<sup>16</sup> – focusing on several types of misconduct for which the risk may have been heightened in the current environment:

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<sup>15</sup> Department Order No. 42, [http://www.nyc.gov/html/fdny/insider/resources/do/2020/042\\_2020\\_eoe.pdf](http://www.nyc.gov/html/fdny/insider/resources/do/2020/042_2020_eoe.pdf)

<sup>16</sup> Department Order No. 43, [http://www.nyc.gov/html/fdny/insider/resources/do/2020/043\\_2020\\_eoe.pdf](http://www.nyc.gov/html/fdny/insider/resources/do/2020/043_2020_eoe.pdf)

- Dehumanizing others through the use of statements or imagery;
- Using or posting racist symbols, gestures, or imagery,
- Advocating or condoning violence,
- Posting photographs or memes on social media glorifying the use of violence,
- Making broad generalizations about entire groups of people,
- Excluding other members because they support protests against discrimination,
- Harassing other members because they criticize racial injustice in law enforcement,
- Retaliating against other members because they oppose any form of discrimination.

As reported by the City, over the past several weeks, the CDIO has also conducted a series of “Courageous Conversations” with FDNY employees – virtual discussion groups on diversity-related topics in the context of recent events. And the CDIO has also included diversity messaging in a newsletters published during the pandemic.

Since the beginning of June, with the assistance of its experts, the Monitor has consulted intensively with the City on the FDNY’s messaging relating to recent national events and FDNY policy – receiving weekly updates on the Department’s statements and planned communications, and offering recommendations for further messaging. In addition to the communications above, to reinforce the messages, the Monitor has recommended that the City follow up with further statements by leadership emphasizing the value of diversity and inclusion to the mission of the Department and its zero tolerance for violations of EEO policy. The Monitor has also recommended that the Department consider external messaging highlighting its commitment to diversity and its role in providing an essential service to diverse communities.

In another component of its response to recent events, in accordance with recommendations from the Monitor, the Department has also issued or re-issued guidance reminding members of its social media policy, which prohibits racially disparaging or harassing conduct in group chats and other online platforms. Earlier this year, pursuant to the limited EEO communication plan that it had previously circulated to the Monitor and the other Parties, the

FDNY had distributed a set of materials to members on the Department's social media policy, including posters and FAQs. In response to recent events, it has re-issued the FAQs and prepared a slide deck with audio narration for training on the policy. The City provided the Monitor with a draft of the presentation on June 23; the Monitor offered comments on June 26, which the City accepted; and the City advised that it expected to post the presentation on the FDNY's online training platform this week.<sup>17</sup> Employees will be required to view the presentation; and the City reports that the training platform will verify that each employee has done so – confirming that all employees are informed of the policy (and that all are on notice of the policy for the purposes of any disciplinary proceedings). Consistent with the Monitor's recommendations, the presentation makes clear that the policy applies to conduct on and off duty, and to statements made under assumed online identities. It also makes clear that First Amendment protections for speech by public employees do not extend to race-based harassment or disparagement that damages the reputation of the Department and compromises its ability to fulfill its mission. The guidance also reminds members that the consequences for violations can include termination. In discussions with the City, the Monitor has emphasized the importance of publicizing individual instances of discipline where violations are found to have occurred, as

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<sup>17</sup> The social media presentation (which has not yet been shared with the other Parties) is the first EEO presentation to appear on the new training platform, which was launched in February following a series of delays, discussed in detail in previous reports. *See* Monitor's Twenty-Ninth Periodic Report at 52. Although it addresses a topic of particular importance in light of recent events, it was not initially prompted by George Floyd's death or by the public response: the new training module has been in development at least since February of this year, and was previously projected to be completed in April, *id.*; but work on the module was impeded by COVID-19. As noted in previous reports, the Monitor has requested a demonstration of the new training platform. *See, e.g.,* Monitor's Twenty-Seventh Periodic Report at 27; Monitor's Twenty-Ninth Periodic Report at 52.



such case-specific messaging offers some of the most powerful possible confirmation of a zero-tolerance policy for misconduct.

The Monitor and the other Parties have previously recommended that the City treat racially charged incidents and allegations within the Department as opportunities to reaffirm messages of inclusion and remind members of key policies. *See, e.g.*, Monitor's Twenty-Fifth Periodic Report at 38-39. Recent national events present a similar opportunity and similar challenges, as issues of race have been brought into sharper relief both within the Department and in public discourse generally. Citing concerns regarding civil service law and collective bargaining issues, the City has indicated that it is unwilling to comment on matters that remain under investigation, even on a general or anonymous basis (*e.g.*, by stating that the Department is aware that violations are alleged to have occurred and condemns such conduct). The FDNY has stated, however, that it is consistent with Department policy to announce the discipline imposed – if any – once an investigation has concluded and the Commissioner has provided the necessary sign-off.

After a delay caused by the public health emergency, the FDNY has also moved forward with plans for Deputy Chiefs to deliver in-person messages regarding the social media policy to Department workplaces. Such firehouse visits by Deputy Chiefs were included in the FDNY's previously circulated EEO messaging plan in response to a longstanding recommendation from the Monitor. *See, e.g.*, Monitor's Twenty-Fifth Periodic Report at 33.

In addition to leadership statements on EEO policy and guidance on social media conduct, in recent weeks the Monitor has also worked with the City on the FDNY's internal guidance regarding interactions with the public during operations in conditions of civil unrest. Plaintiffs-Intervenors have raised a number of concerns regarding the need for comprehensive

guidance in this area to prevent conduct that could escalate tensions and/or damage the Department's relations with communities of color or its own employees – such as the use of hoses or other equipment against civilians. Responding to these concerns, in a June 16, 2020 Department Order, the FDNY issued guidance stating that the use of hoses to protect equipment is limited to protection against sabotage (*i.e.* to extinguishing Molotov cocktails) and that “[i]t has been the Department’s longstanding practice that hoselines should not be used in any offensive or defensive manner against people.”<sup>18</sup> On July 31, 2020, following further discussions with Plaintiffs-Intervenors regarding more comprehensive guidance, the FDNY issued a further Department Order expressly prohibiting “the use of water streams from hoselines, deck guns or any other type of water application device for crowd control or disbursement purposes.”<sup>19</sup> The FDNY has also advised that it is currently working on a new video statement by senior leadership combining messaging on safe operations and interactions with the public with a reaffirmation of the Department’s commitment to inclusiveness and serving diverse communities.

The Monitor has encouraged the City to consult with the Vulcan Society in developing messaging and gathering feedback on the ways in which its messages are interpreted and received; and FDNY senior leadership has met recently with Vulcan Society leadership to discuss current issues relating to EEO policy, messaging, and climate.

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<sup>18</sup> Department Order No. 48, [http://www.nyc.gov/html/fdny/insider/resources/do/2020/048\\_2020\\_eoe.pdf](http://www.nyc.gov/html/fdny/insider/resources/do/2020/048_2020_eoe.pdf)

<sup>19</sup> Department Order No. 66, [http://www.nyc.gov/html/fdny/insider/resources/do/2020/066\\_2020\\_eoe.pdf](http://www.nyc.gov/html/fdny/insider/resources/do/2020/066_2020_eoe.pdf)

## 2. EEO Communication Plans and Other EEO Messaging

Pursuant to its longstanding recommendation, the Monitor (along with the other Parties) has continued to encourage the City to develop a comprehensive, long-term EEO messaging plan with specific provisions for communicating a variety of EEO messaging through a full range of channels. The Monitor has urged the City to create such an integrated plan, and the City has recognized the need to do so, since at least mid-2017. *See* Monitor's Twenty-First Periodic Report (Dkt. # 1803) at 29-30. However, as discussed in detail in previous reports, the City's most recent outline of communications, provided to the Monitor in August 2019, was too brief and insufficiently detailed to constitute a sufficient plan (even as supplemented by a later statement of EEO messaging strategy). *See* Monitor's Twenty-Ninth Periodic Report at 48-49; Monitor's Twenty-Eighth Periodic Report at 30. Also as previously reported, before the pandemic, the City had committed to developing a longer-range plan with more specific messages and targeting using the results of the climate survey. However, as discussed in Part III.C.3, work on the climate survey analysis has been suspended since the onset of COVID-19, and any communication plan based on the findings of that analysis will not be completed for several more months.

As noted above, in recent weeks, the FDNY has proceeded with the first round of messaging contemplated in its brief August 2019 outline, which comprised a series of communications on the social media policy, including in-person messaging by Deputy Chiefs<sup>20</sup>; and the Department has also issued statements from leadership prompted by recent events. The

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<sup>20</sup> The FDNY had issued materials on the social media policy in February 2020, but the first round of in-person communications by officers, scheduled for April 2020, had been delayed because of the COVID-19 emergency. In recent weeks the materials have been re-issued, and the Deputy Chiefs have begun to deliver messages personally to specific workplaces.

Monitor has urged the City to follow up with further messaging initiatives that may bridge the gap between these communications and the development of a plan based on the climate survey.

The City previously indicated that its second round of messaging under the EEO communication plan would focus on the role of the EEO Office and the resources it provides. The Monitor agrees that this topic would be appropriate for the next round of messaging, especially in light of recent events, and has encouraged the City to move forward with it expeditiously. In addition to information on EEO Office functions and the availability of EEO resources, the Monitor has recommended that this round of messaging incorporate general reports on the activities of the office – including, for example, information on the number of complaints investigated within specified periods, and general information on outcomes including findings and disciplinary action.

The Monitor also expects the City to move forward with other EEO messaging and training initiatives, including its program of “voice announcement messaging,” which was inaugurated in September 2018 with a video message from the Commissioner in support of the EEO Policy, but which has generated no additional content since it was first launched. *See* Monitor’s Twenty-Ninth Periodic Report at 51. As discussed above, the FDNY is currently developing a video from leadership combining safety themes with diversity and inclusion messaging. At least in substance, this video appears to represent a revival of the “voice announcement messaging” initiative. The Monitor encourages the City to follow through with additional, periodic video messaging from senior operational leadership on key topics.

In addition to messaging generated by the EEO Office, the FDNY has also continued to update the Monitor on current and planned messaging and training activities by the CDIO; and on July 7, 2020, the City forwarded a list of recent CDIO activities to the Monitor and the other

Parties.<sup>21</sup> Along with the recent series of “Courageous Conversations”<sup>22</sup> and CDIO newsletters discussed above, the list includes planned trainings and presentations on topics such as “authentic trust,” racial justice, micro-aggressions, and inclusive leadership – with projected launch dates later this year. It also references plans for a “We Are FDNY” messaging campaign including posters and other materials. Some of the listed items address important topics; but most are in the planning or development stage, and their final content and eventual launch timing accordingly remain to be determined. In a follow-up message on July 13, the City provided a package of supporting materials to the Monitor,<sup>23</sup> including a “We are FDNY” poster and a series of screen savers depicting racially diverse members of the Department (including fire operations, EMS, and civilian personnel), copies of recent diversity newsletters, and some themes and draft sample pages relating to the planned training modules and presentations. With respect to most of the training-related materials, it is not immediately clear to what the extent the various items are intended to be included in final presentations or to be used as themes or background ideas (drawn from relevant research) for further development. Some of the materials directly address issues of demographic diversity, while others focus on general concepts of personal growth and leadership with no specific reference to inter-group diversity and inclusion.

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<sup>21</sup> On July 30, 2020 (in comments on a draft of this report), the City also provided a retrospective list of various CDIO activities since her appointment in 2016, including meetings with officers, Academy visits, oversight of implicit bias training, newsletters, and diversity-themed events. Many of the activities in the City’s compilation have been discussed in prior reports. *See, e.g.*, Monitor’s Twenty-Eighth Periodic Report at 33-35; Monitor’s Twenty-Ninth Periodic Report at 50. To the extent that the list may include items not previously reported, the Monitor intends to follow up with the City and obtain additional details and clarifications regarding the CDIO’s role.

<sup>22</sup> In its July 30, 2020 communication, the City advised that training for uniformed and non-uniformed members who would lead “Courageous Conversations” had begun in 2019 – indicating that these events were contemplated before recent events intensified public attention to issues of diversity and inclusion.

<sup>23</sup> These additional supporting materials have not yet been provided to the other Parties.

One presentation in the City's production that appears to have been provided in nearly final form is a video on "authentic trust" that links diversity themes to the trust between firefighters (and EMTs) that is essential to the FDNY's mission.

The Monitor expects to discuss the materials further with the City and has asked the City to continue to provide updated or expanded draft materials as they become available. Some of the CDIO's planned communications touch upon worthwhile messages (such as the link between diversity and operational effectiveness) that the Monitor has long recommended, and that the CDIO appears to recognize as important. But those messages have not yet appeared with any consistency or prominence in the Department's overall messaging to its workforce as a whole, even though the CDIO has held her position since April of 2016.<sup>24</sup> The Department must now move forward expeditiously to execute its planned messaging on these themes. In addition, as the EEO Office moves forward with further messaging and (ultimately) develops a long-range, strategic EEO messaging plan based on the climate survey, the City must ensure that the activities of the CDIO and the EEO Office are effectively coordinated in order to complement one another and avoid duplication and unintended repetition.

Based on the City's brief description in its list of CDIO activities, the planned training on "inclusive leadership" could potentially respond to a need that the Monitor had previously identified in FDNY Officer training. As noted in the Monitor's previous report, while the current training materials appear to provide appropriate guidance on several aspects of officers' EEO-related responsibilities, including the duty to recognize and report potential violations, the

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<sup>24</sup> A previous effort to build a messaging strategy around such themes, based on the military's "CAPE" initiative, was discussed at length in 2017 and 2018 (*see* Monitor's Twentieth Periodic Report (Dkt # 1784) at 28; Monitor's Twenty-First Periodic Report at 29-30; Monitor's Twenty-Second Periodic Report (Dkt. # 1821) at 29). But it produced no messaging content.

Monitor believes it may be appropriate for the FDNY to supplement the materials with a separate training module providing guidance on the management of diverse workplaces. *See* Monitor's Twenty-Ninth Periodic Report at 53. The CDIO's planned training could potentially make a contribution in this area. However, from the materials provided to date, it is not clear how the CDIO training will be structured or what content it will emphasize. The Monitor intends to make further inquiries on the extent to which the CDIO's planned training provides appropriate guidance, and more generally how it can be integrated into officer training.

**C. Compliance and Accountability**

1. Officer Performance Evaluations

The Monitor has continued discussions with the City regarding the implementation of the EEO metric added to officers' performance reviews in 2018<sup>25</sup> – continuing to focus particularly on the need for the EEO Office to be an active participant in the performance review process and to provide input wherever it has access to information relevant to an officer's EEO performance (including his or her communication of EEO messages, relevant information from firehouse inspections, failures to report violations or potential violations, failures to cooperate with the EEO Office, or negligent oversight and supervision of firefighters within his or her command). *See* Monitor's Twenty-Sixth Periodic Report at 33; Monitor's Twenty-Seventh Periodic Report at 29; Monitor's Twenty-Eighth Periodic Report at 35. The Monitor and the Parties have continued to communicate regarding several Monitor recommendations and requests for information. But the Monitor's efforts to confirm that the system is producing fully informed

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<sup>25</sup> The metric was first introduced for Lieutenants' reviews in February 2018, and later in 2018 as a component of performance reviews for Captains. Monitor's Twenty-Fourth Periodic Report at 32; Monitor's Twenty-Third Periodic Report (Dkt. # 1844) at 29.

evaluations of EEO performance have been largely suspended as it awaits production of data from the 2019 cycle of performance reviews. That production was repeatedly postponed before the COVID-19 crisis, and since the onset of the pandemic, it has been delayed because the necessary materials are stored in paper form and relevant City employees have been unable to access them because of a combination of COVID-19-related travel restrictions and restrictions on access to physical files in office storage.<sup>26</sup>

As previously reported, the Monitor's assessment to date has encompassed a review of several categories of relevant materials, including a compilation of EEO rating data from performance evaluations conducted in 2018, a set of sample evaluations, and the instructions given to raters. Monitor's Twenty-Seventh Periodic Report at 29-30.<sup>27</sup> In connection with its assessment, the Monitor has also considered information produced by the City regarding EEO investigative matters – cross-referencing the investigative data with officer evaluations to assess whether and how information obtained in EEO investigations was reflected in officer ratings.

For reasons discussed in detail in previous reports (including the mistaken use of obsolete review forms for 500 of the 2018 reviews), the 2019 cycle of evaluations was the first to cover a full year of performance from all Lieutenants and Captains in the Department. *See* Monitor's Twenty-Ninth Periodic Report at 53. Accordingly, data from the 2019 cycle (covering performance in 2018) will provide the Monitor with its first opportunity to examine and cross-reference a full year's worth of data from both evaluations and investigations, along with any documentation of EEO Office input into the review process.

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<sup>26</sup> In a July 23, 2020 conference call, the City advised that it had begun a process of scanning the relevant files so that employees working remotely can review them and compile the requested information.

<sup>27</sup> The materials included no personal identifying information and were not shared with the other Parties.



Since the last periodic report, the Monitor has continued to follow up with the City regarding a series of inquiries and recommendations regarding the EEO metric, which were discussed at the Monitor's October 18, 2019 meeting with the City and memorialized in a December 11, 2019 memorandum to the City. *See* Monitor's Twenty-Ninth Periodic Report at 54-56.<sup>28</sup>

As previously reported, the Monitor's recommendations, developed in consultation with its experts and based on a review of best practices, included (1) a suggestion that the EEO Office incorporate reviews of management supervisory practices relevant to EEO compliance in its investigations of alleged or potential EEO and hazing violations – using investigations as opportunities to evaluate officer practices and to identify either superior performance or areas for improvement, and (2) a suggestion that the FDNY consider providing additional, detailed guidance on the distinction between satisfactory and superior reviews under the EEO metric. Monitor's Twenty-Ninth Periodic Report at 55. The City responded to several of the Monitor's recommendations in a February 13, 2020 email, *id.* at 55-56, and the Monitor and the City have exchanged further correspondence since then: the Monitor communicated several follow-up queries in an April 27, 2020 message; the City responded on June 11; and the Monitor requested further clarifications and supporting materials in a July 27 message.<sup>29</sup>

In response to the Monitor's recommendation that the EEO Office include reviews of management practices in EEO investigations, the City indicated in its February 13 message that such reviews would be incorporated in EEO investigations "in situations where some specific

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<sup>28</sup> That memorandum was subsequently provided to the other Parties on January 24, 2020.

<sup>29</sup> This work and these communications have not included the other Parties because of the confidential nature of the underlying evaluation materials.

indication of a failure of a supervisory function or role is indicated.” In its April 27 follow-up, the Monitor asked the City to specify the criteria used to determine whether investigations of management practices are indicated – for example, whether such reviews would be conducted in all cases where the nature, severity, number, and/or circumstances of alleged violations indicate that supervisors should have been aware of the alleged conduct or that they did not take appropriate steps to ensure compliance. The City provided no further clarification in its June 11 response, and the Monitor’s most recent message renews its request for the specific criteria. The Monitor has also requested that the City produce EEO Office communications with raters as part of its production relating to 2019 reviews, which will permit the Monitor to assess EEO Office input regarding the evaluations.<sup>30</sup>

Responding to the Monitor’s suggestion for precision and consistency in the distinction between “satisfactory” and “superior” ratings, the City confirmed in its June 11 message that raters had been provided with the more specific criteria defining the different ratings in the City’s agreement with the UFOA on the implementation of the EEO metric. The Monitor expects to assess the application of these criteria as part of its review of the 2019 data once it is received.

As previously reported, the Monitor has worked with the Parties to address disagreements regarding the categories of performance review data that the City should collect and provide to the Monitor: the City has confirmed that it will collect demographic data and years of service for all rated officers, in addition to overall performance ratings, ratings under the EEO metric, and

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<sup>30</sup> The Monitor has also renewed a request, first communicated in an October 14, 2019 email, for information relating to the 2018 reviews for officers in particular workplaces associated with EEO complaints and inquiries.

data showing the operational units of rated officers. Monitor's Twenty-Ninth Periodic Report at 55. However, some disagreement persists regarding the form in which the City will share performance review data and related analyses with the other Parties. As an interim step, the Parties had agreed that the City would share a set of statistical analyses without disclosing information on individual reviews, and that the other Parties would consider whether additional analyses are needed and whether and to what extent they wish to pursue a request for more granular data. *Id.* The City produced a statistical summary on January 2, 2020. The United States responded with a series of follow-up queries on April 15, 2020, requesting additional analyses correlating factors such as race and years of service with ratings, and requesting additional information relevant to EEO Office input in the evaluations. The City responded on July 2, rejecting the United States's requests. The Monitor will continue to work with the Parties to determine the appropriate categories of information for the City to disclose to the other Parties.

2. "Workplace Professionalism" Reporting

The Monitor has continued to follow up on inquiries and requests for production relating to the City's workplace professionalism reporting program, in which officers meet regularly with their superiors to discuss issues (including EEO issues) affecting workplace professionalism. Monitor's Twenty-Seventh Periodic Report at 30-31. Before the Monitor's last periodic report, following a series of clarifications and follow-up inquiries, the City had confirmed that as of the end of 2019, the reporting system had not generated any reports within the scope of the Monitor's request for all Workplace Professionalism records reflecting EEO or hazing concerns. Monitor's Twenty-Ninth Periodic Report at 57-58. The Monitor intends to request a further update shortly.

3. Climate Survey

In October 2019, following discussions in which the Parties and the Monitor either resolved or set aside disagreements regarding target response rates and other issues, the City launched its long-pending workplace climate survey of all FDNY firefighters. The survey was administered in four overlapping stages, from October 18 to November 15, 2019, to four groups of battalions, with firefighters in each group given eight days to complete the survey. The survey was supported by a messaging campaign including an announcement from the Fire Commissioner; video announcements from senior management; posters and handouts; and messages delivered personally by officers within the firehouses and via the FDNY's internal electronic platform. Monitor's Twenty-Eighth Periodic Report at 40. Communications also included outreach by the Vulcan Society to its membership.

Throughout the administration period, the City circulated regular updates on response rates to the Monitor and the other Parties pursuant to plans agreed upon before the launch – plans which provided for supplementary messaging and other measures in the event that response rates fell below expectations. In fact, response rates met or exceeded expectations for each of the administration groups and for the survey overall. As previously reported, the survey was administered with a commercially available survey tool, but the City is using its own resources (including resources from the Mayor's Office of Data Analytics ("MODA")) to analyze the results, with the FDNY not receiving access to raw data. Monitor's Twenty-Sixth Periodic Report at 34.

The City worked closely with the Monitor and the other Parties, through multiple calls and drafts circulated within a small working group, to create an Analytics Plan and a schedule for MODA's analysis of the survey data. On February 20, the City circulated an updated version of a prior Analytics Plan developed through these discussions, which divided the analysis into

ten phases with completion deadlines for the successive phases between February 7 and June 19, 2020.<sup>31</sup>

As provided in the Analytics Plan, the City circulated MODA's Phase 2 Data Review Summary Report on February 21. MODA reported that there were 4,562 complete and partial responses to the survey and that all 49 FDNY numbered battalions and Special Operations Command ("SOC") units and all demographic groups are represented in the survey data. MODA also reported that there did not appear to be significant survey response anomalies. The Monitor and the other Parties circulated comments on February 27, and these were discussed on a working group call on February 28. MODA was to circulate additional analyses and other information requested during the call so that the group could make informed decisions about some threshold issues, but this work was suspended because of a relocation of the MODA office and the subsequent COVID-19 pandemic.

As reported in the Monitor's Twenty-Ninth Periodic Report, although the plan was for a final survey report to be completed by June 19, the exigencies of the pandemic have put the climate survey analysis schedule on hold. On May 21, the City informed the Monitor and other Parties that MODA was continuing to devote its resources almost entirely to the COVID-19 response but that it will endeavor either to resume work on the climate survey analysis before the September conference with the Court or, at the least, to provide by that time a date on which it will resume work. The Monitor anticipates that, once work resumes, a further 18 to 20 weeks of work will be needed to complete all the analyses and reports contemplated by the plan.

Following the completion of the analytical phase, the City's next crucial task will be to develop a

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<sup>31</sup> As discussed below, these deadlines could not be met because City resources had to be diverted to COVID-19 efforts.

plan of action based on the results, including (but not limited to) a comprehensive, strategically coherent plan of EEO messaging, as discussed above.

**D. Investigations**

1. Review and Recommendations Regarding Investigations

The Monitor has continued to review and prepare comments on intake documents and closing memoranda from EEO investigations that the City has identified as requiring substantial investigative activity in fire suppression matters.<sup>32</sup> The goal of the review is to comment on the FDNY EEO Office's investigative process, as the Modified Remedial Order does not provide for Monitor relief in individual EEO cases.

As noted in previous reports, in a June 6, 2017 set of recommendations, the Monitor identified a number of deficiencies in the FDNY's EEO investigative practices, based on a historical review of complete investigative files. *See, e.g.*, Monitor's Twenty-Second Periodic Report at 32-33. And although more recent EEO case materials reflect some improvements in the diligence and thoroughness of investigations, the Monitor has continued to observe some of the same deficiencies in recent cases and discuss them with the City. Monitor's Twenty-Seventh Periodic Report at 39-40; Monitor's Twenty-Eighth Periodic Report at 44; Monitor's Twenty-Ninth Periodic Report at 64-65.

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<sup>32</sup> In an initial, retrospective production of multiple cases, provided in 2017, and more recently in response to a December 12, 2018 request and an April 8, 2020 reminder, the City has also provided the Monitor with some full investigative files in addition to intake and closing documents. A summary of the City's productions of EEO case materials appeared in the Monitor's Twenty-Seventh Periodic Report at 39-41. As previously noted, the Monitor's comments and suggestions on draft memoranda are intended to provide the EEO Office with guidance in adhering consistently to investigative best practices; and the Monitor does not dictate results in particular cases or require the City to obtain Monitor approval before issuing findings. *See* Monitor's Twenty-Third Periodic Report at 31. However, in some instances, the City has conducted additional investigation based on comments made by the Monitor. Monitor's Twenty-Fifth Periodic Report at 49.

Most recently, the Monitor has continued to follow up with the City regarding recommendations it offered at its October 18, 2019 meeting with the City on EEO topics.<sup>33</sup> The recommendations addressed recurring issues the Monitor had identified in EEO investigative practices, including the need for consistent and rigorous analysis of motive in mixed-motive cases, for more systematic analyses of witness credibility, and for greater consistency and thoroughness in identifying potential violations and sources of evidence. Monitor's Twenty-Ninth Periodic Report at 65. As noted in detail in the Monitor's previous report, the Monitor proposed that specific discussions of these issues be included in updated investigator training materials (which the City had reported it was then developing) and in the regular updates on legal and practice issues that investigators receive from the Assistant Commissioner. *Id.* The Monitor also suggested that the City adopt forms and procedures to regularize the process of gathering and analyzing evidence and the preparation of investigative memoranda. *Id.*

The City responded to the Monitor's recommendations in a February 13, 2020 email; the Monitor replied in an April 27 message (renewing some inquiries, reaffirming some recommendations, and requesting clarifications); the City responded further on June 11; and the Monitor followed up with further requests for clarification and materials on July 27.<sup>34</sup>

The City has agreed to incorporate the issues identified by the Monitor in new training modules for EEO investigators and has confirmed that those issues have been emphasized in recent discussions with investigators. The Monitor has asked the City to provide copies of the training modules and any other supporting materials as soon as they become available. (In its

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<sup>33</sup> The Monitor memorialized its recommendations in a memorandum to the City on December 11, 2019.

<sup>34</sup> The other Parties have not been included in these communications.

June 11 message, the City projected that the modules would be completed by July 10, but they have not yet been produced.) In addition to these issue-specific modules, the Monitor has also asked the City to provide the current materials used as comprehensive introductory or refresher training for investigators. After initially objecting to the Monitor's recommendation for forms and checklists to aid in the gathering and analysis of evidence, the City has also agreed to utilize new or revised forms for investigative plans, credibility analyses, and investigative memoranda; and the Monitor has also asked the City to provide those forms for review as soon as possible. Going forward, the Monitor will continue to review investigative materials to track the effect of these changes.<sup>35</sup>

In addition to the topics addressed in the Monitor's October 18, 2019 recommendations, recent events involving potential violations of FDNY policies via social media (discussed above), have also highlighted the importance of effective investigations of social-media-based violations – which the Monitor has previously emphasized. Monitor's Twenty-Third Periodic Report at 27; Monitor's Twenty-Second Periodic Report at 26-28 and n.10. Such violations present unique challenges (including the anonymity of potential violators) and pose a particularly acute threat to workplace climate and the reputation of the Department (given the scope of the potential audience), and the Monitor has previously urged that the FDNY take appropriate steps to identify and discipline violators. Notably, for example, in response to inquiries from the Monitor, the City has previously confirmed (in a November 27, 2019 email) that it requires employees to produce social media postings and information that have a sufficient nexus with the

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<sup>35</sup> During the COVID-19 emergency, the Monitor suspended the process of contacting a selection of complainants to gather information regarding their experiences with the EEO Office, as discussed in previous reports. See Monitor's Twenty-Fourth Periodic Report at 37.



workplace, impact it negatively, and implicate the EEO Policy, and that it is prepared to draw adverse inferences against parties and witnesses in EEO matters who fail to cooperate with investigations of social-media-based violations.

2. Monitor Report on EEO Investigations

The Monitor has continued work on its report on FDNY EEO investigations, pursuant to the Court's order.<sup>36</sup> As stated in the Monitor's previous report, in consultation with the Court, the Monitor has postponed filing the report to observe and account for the effect of increased staffing and revised practices on the conduct and duration of EEO investigations – requesting and receiving a series of updated data sets from the City, and providing a series of drafts of the report (including recommendations) to the City and the other Parties. Since the last periodic report, on May 21, 2020, the City provided the Monitor with a set of updated and supplemented responses to a series of requests for information relevant to the report, which the Monitor plans to account for in the final report.

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<sup>36</sup> Pursuant to the Court's November 17, 2017 Order, the report covers the FDNY EEO Office, its staffing, its investigative procedures, and its performance in the completion of EEO investigations – with a particular focus on the duration of investigations as measured against the presumptive 90-day time limit for investigations set forth in the City's EEO guidelines and the FDNY's own EEO Policy. In relevant part, the Court's Order stated as follows:

The court monitor is respectfully DIRECTED to provide the court with a report on the New York City Fire Department's Equal Employment Opportunity ("EEO") Office. This report should address, in particular, (1) how the EEO Office investigates and resolves complaints; (2) how the staffing of the office has changed over time; and (3) the speed with which the office investigates and resolves complaints.

In addition to the topics specified in the Court's November 17, 2017 Order, the report includes a discussion of data produced by the City, in response to the Court's direction at the March 13, 2018 status conference, showing the rate at which complainants and respondents in EEO investigations have been reassigned to desk duty, and the duration of those assignments.

### 3. EEO Database

The Monitor, in consultation with its experts, has continued to communicate with the City regarding proposed modifications recommended by the Monitor in the FDNY's EEO case management database. As noted in the Monitor's previous reports, while changes introduced after the initial launch of the database in 2016 have improved its capabilities as a scheduling, planning, and supervisory tool, it still lacks some important features needed to facilitate the management and analysis of EEO matters, especially the analysis of patterns and trends across cases.<sup>37</sup>

As previously noted, while the database includes standard terms for the general subject-matter categories of EEO complaints (*e.g.*, race, gender, religion, retaliation), it does not include standard searchable fields for specific types of alleged conduct (*e.g.*, food tampering, gear tampering, verbal harassment). Monitor's Twenty-Ninth Periodic Report at 62. The City has also declined to include data from firehouse inspections and officers' performance reviews in the EEO database, Monitor's Twenty-Eighth Periodic Report at 43; and although the database records whether the EEO Office has referred a case to BITs,<sup>38</sup> it does not track the activities of BITs in referred cases.<sup>39</sup> As of the Monitor's previous report, the database also did not include

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<sup>37</sup> Detailed accounts of the development of the database, previous modifications, and related communications appear in previous reports. *See, e.g.*, Monitor's Twenty-Ninth Periodic Report at 62-64; Monitor's Twenty-Seventh Periodic Report at 36-38; Monitor's Twenty-Sixth Periodic Report at 40; Monitor's Twenty-Fourth Periodic Report at 36-37.

<sup>38</sup> The Bureau of Investigations and Trials, the Department's disciplinary unit, prepares charges, conducts investigations, and prosecutes disciplinary cases for violations of Department policy including hazing and workplace violence. It also imposes discipline in EEO cases investigated by the EEO Office and thus cooperates with the EEO Office in enforcing EEO policies within the Department.

<sup>39</sup> The City has confirmed that the activities of EEO investigators in joint investigations with BITs are recorded. But the activities of BITs investigators are not. Nor are the activities, findings, or disciplinary

dedicated fields for interim remedial measures such as counseling or targeted messaging, or for instances where complainants or respondents are detailed or reassigned. Monitor's Twenty-Ninth Periodic Report at 62; Monitor's Twenty-Seventh Periodic Report at 36-38. On a July 24, 2020 conference call, the City advised the Monitor that some modifications are nearly complete that would allow the database to track interim actions and details; and on July 30 the City reported that other modifications are also in process, including fields to track key allegations and disciplinary outcomes. But the Monitor has not yet had the opportunity to examine those modifications in detail.

As discussed in the Monitor's previous report, even if the additional categories of information recommended by the Monitor are not tracked in the database, the City nevertheless must show that it maintains them in a way that facilitates easy and reliable cross-referencing of all information relevant to EEO matters. Monitor's Twenty-Ninth Periodic Report at 63. In particular, the City must be able to connect all the findings and remedial actions associated with a given matter, including those generated by BITs and other units in addition to the EEO Office; and it should also ensure that it has appropriate mechanisms for tracking EEO Office input in performance evaluations, and for cross-referencing inspections and evaluations with other EEO activities (such as targeted messaging and training) in a given workplace. *Id.* at 63-64.

In a May 5, 2020 message to the Monitor, and in a May 7 follow-up, the City has contended that the EEO database was consistent with best practices, and that no further modifications are needed for the system to comply with the Modified Remedial Order. But as the Monitor noted in a May 7 response to the City's initial message, several of the proposed

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outcomes associated with BITs's handling of cases referred by the EEO Office where it has substantiated a violation.

improvements, which the Monitor has repeatedly and consistently recommended, are standard features of comparable military systems; and although one recommended improvement – a feature that would provide EEO personnel with information on investigative steps by BITs in referred cases – is specific to the FDNY’s unique investigative and disciplinary practices, and thus could have no precedent in non-FDNY sources, common sense dictates that tracking all investigative actions arising from a single set of allegations in a properly integrated system is consistent with best practice and with an interest in thorough data collection. Similarly, given the sensitivity and importance of interim actions such as the detailing and reassignment of complainants and respondents (in which the Court has shown particular interest), the Monitor believes it is essential for the EEO Office to demonstrate that it has an effective way to track and analyze interim actions. The Monitor looks forward to reviewing the City’s recent modifications in the database to determine whether they meet at least some of these needs.

#### **IV. Medical Exam-Related Issues**

As noted in the Monitor’s Twenty-Eighth Periodic Report, the City has reported that the Medical Exam, administered by the City’s Bureau of Health Services (“BHS”), was the hiring step with the highest Exam 2000 disqualification rate. *Id.* at 46. The Medical Exam also had a disparate impact adverse to Black and Hispanic Exam 2000 candidates. *Id.* at 45-46.

##### **A. Stairmill Test**

The stairmill test component of the Medical Exam is meant to ensure that candidates possess adequate cardiopulmonary fitness to perform safely as firefighters. Because the stairmill test had not been validated and statistical analyses indicated that it had a disparate impact, the City hired the vendor PSI to evaluate the test. After conducting a study developed with input from the Monitor’s and the other Parties’ experts, the City selected a stairmill test protocol to

screen candidates that is substantially the same as the stairmill test protocol historically used by BHS. BHS has been using the new stairmill test since October 17, 2019. The Stairmill Technical Report regarding PSI's study has been reviewed by the Monitor and all Parties, and comments have been provided to PSI. While there continue to be differences of opinion among the experts with respect to some issues, these will not prevent PSI from finalizing its Technical Report, which the Monitor understands PSI expects to do soon.

As noted in earlier reports, the City has also provided the opportunity for certain candidates to be tested again using the new stairmill test. Some of that testing took place before the pandemic, and testing will continue once candidates can again be seen at BHS. Candidates who may avail themselves of this retesting option are those who were reserved by the old stairmill test, including those who failed to return after being reserved, and those who were disqualified by the old stairmill test and were not otherwise disqualified. As described in detail in the Monitor's Twenty-Ninth Periodic Report (at 67-68), the City reported on the interim results of its retesting progress on April 2, 2020. As of that time, approximately one third of those retested had passed the new stairmill test, and the rest were in other status categories, including (*inter alia*) some who were being tested, some who were waiting to be tested, some who had not responded to the offer to retest, and some who were disqualified for reasons not related to the stairmill test. The Monitor and Parties have continued discussions about retesting for candidates who did not pass the old stairmill test, including those who subsequently declined appointment (removing themselves temporarily from the hiring process) without having taken the new test.

The Parties have recommended that the City communicate with all candidates still eligible to retest, including those who have declined from the medical process, to advise them (1)

that, if they return to or continue in the firefighter selection process, they will be tested with the new stairmill protocol implemented since they last took the test, (2) that the new test does not include heart rate as a passing criterion, and (3) that there are FAQs and a new video about taking the new stairmill test.

In addition, the Monitor and the Parties will continue to review stairmill qualification data to determine whether there is continuing disparate impact in this component of the Medical Exam.

**B. Medical Exam Attrition Metrics**

As reported in the Monitor's Twenty-Ninth Periodic Report (at 69), in its December 27, 2019 "Fire Department of New York City: Metrics to Assess Applicant Attrition From the Hiring Process For Exam 7001" (the "December 2019 Report"), the City provided medical testing data for the first groups of Exam 7001 candidates, as of November 12, 2019. The December 2019 Report provided data for the Medical Exam overall and separately for the physical component and the psychological component. Monitor's Twenty-Ninth Periodic Report at 70.

The disparate impact analyses included in the December 2019 Report reveal that, as of November 12, 2019, there was statistically significant disparate impact in the Medical Exam adverse to both Black and Hispanic candidates. The overall Medical Exam qualification rate reflected disparate impact against both Black and Hispanic candidates (the physical portion of the Medical Exam had a disparate impact against Black candidates, and the psychological portion had a disparate impact against Hispanic candidates). Monitor's Twenty-Ninth Periodic Report at 70-72. As of November 12, 2019, the voluntary attrition rate continued to be higher for Black candidates than for white candidates, and the rate at which candidates remained pending – *i.e.*, without a final medical result – was higher for Black and Hispanic candidates than

for white candidates (45%, 41.8%, and 35%, respectively). *Id.* at 71. As previously reported, had the City not removed pending candidates from its calculation of the four-fifths rule, the analysis would have shown that, as of November 12, 2019, Black candidates were qualified at only 79% of the rate at which white candidates had been qualified, and Hispanic candidates were qualified at 84% of the white rate. *Id.*

The City has not provided data showing which component(s) of the Medical Exam was/were responsible for the disparate impact the City reported as of November 12, 2019, though the EMR (medical) database developed as a part of the Monitorship would permit such an analysis. But the City has indicated its belief that the new stairmill test implemented in October will reduce such disparate impact. An analysis by component must be undertaken as soon as the City's analytic resources are no longer devoted exclusively to the COVID-19 crisis, and should be included in all future attrition analyses. It is also crucial that the City continue its efforts to focus its attention on reducing voluntary attrition from the Medical Exam and on helping Black and Hispanic candidates move from pending status to qualified status. Tailored mitigation strategies will need to be implemented to reduce any negative impact the Medical Exam continues to have on Black and Hispanic representation in Academy classes.

### **C. Medical Exam Messaging**

The City, in consultation with the Monitor and the other Parties, has been updating Medical Exam messaging over the last several months.

As previously reported, the City updated the instructional stairmill video and posted it to the FDNY's YouTube channel. Monitor's Twenty-Ninth Periodic Report at 72-73. Since the last periodic report, the City has also posted the Medical Exam FAQs. The Monitor and Parties also reviewed updated scripts for two further Medical Exam instructional videos (one for the Pulmonary Function Test and one for the Medical Exam overall).

The City has confirmed that, as in the past, candidates who do not pass the Medical Exam within one year of beginning it must take the entire exam again. This policy has always been part of the medical exam process but will likely affect more candidates from this list than usual, because of the pandemic. The City continues to remind candidates in post-CPAT messaging about the physical requirements evaluated during the Medical Exam, to help ensure that candidates understand the need to maintain their physical fitness, even after they pass the CPAT.

**V. Character Screening by the CID and PRB**

The Parties and the Monitor, with their expert consultants, have continued to consider the character review portion of the FDNY's hiring process, its impact on hiring from different demographic groups, and whether further reforms may be required to address disparities in outcomes.<sup>40</sup>

As noted in previous reports, the Monitor has made it clear that if analyses of Exam 7001 hiring show that the character review process has an adverse disparate impact on Black or Hispanic candidates, the City will be required either to make further changes in the process (and show they are effective in eliminating disparate impact) or to validate the process as job-related. *See, e.g.*, Monitor's Twenty-Sixth Periodic Report at 56. As discussed in previous reports, the City contends that disqualifications are the only cognizable form of adverse impact produced by

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<sup>40</sup> As previously reported in detail, beginning in 2012, in consultation with the Monitor and the other Parties, the City issued a series of guidelines for the CID and PRB; additional modifications to the guidelines were issued in mid-2016. Monitor's Sixteenth Periodic Report (Dkt. # 1694) at 29-31; Monitor's Seventeenth Periodic Report (Dkt. # 1714) at 29-30. As noted in prior periodic reports, the revisions were agreed upon by the Parties with the understanding that they might be subject to additional changes based on further analysis. *Id.* at 30. The City has implemented some procedural changes in the character review process since the 2016 revisions, along with minor changes in the criteria for PRB referral, Monitor's Twenty-Ninth Periodic Report at 74, 78; but it has declined to make further changes recommended by the Monitor. *Id.* at 78.



the character review process. Monitor's Twenty-Ninth Periodic Report at 77. More recently, the City has asserted that absent such disparate impact, there is no further need for work on the character review process, other than continued analyses to detect disparities in rates of disqualification.

As recounted in detail in previous reports, the Monitor's analysis of Exam 2000 data pursuant to the Modified Remedial Order, which requires analysis of all FDNY hiring policies and practices that have disparate impact or perpetuate the effects of such impact, showed significant disparities between groups in outcomes and effects other than disqualification (including extended probation), *see* Monitor's Twenty-Ninth Periodic Report at 74-75; and results to date for Exam 7001 candidates continue to reflect significant disparities between groups in referrals.<sup>41</sup> Also as discussed in previous reports, the Monitor's analysis of the relevant portion of the Exam 2000 data showed disparities in disqualifications for Black and Hispanic candidates compared to white candidates, though the sample size of candidates in the relevant period of processing was too small to support a definitive conclusion on this point. *See* Monitor's Twenty-Fifth Periodic Report at 59-60. Although the City's reports to date from Exam 7001 processing have not identified a statistically significant disparity in disqualifications between groups, the City has acknowledged that continuing analysis is needed to detect any disparities that may emerge. Further, in addition to adverse effects produced directly by referrals to the PRB and PRB decisions, the Monitor and the Parties must also determine (to the extent possible) whether the character review process in its current form contributes to disparities in voluntary attrition – for example by imposing administrative burdens on candidates or by

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<sup>41</sup> The City's reports to date have not reported extended probation as a separate outcome.

detering or discouraging candidates from staying in the hiring process. Recent discussions have also focused on possible methods of identifying voluntary attrition attributable to the character review process.

The details of the prior correspondence among the Monitor and the Parties on these issues are recounted in the Monitor's last report, along with the results of the City's analysis of candidate processing to date. Monitor's Twenty-Ninth Periodic Report at 76-77. Before the current public health emergency, the Monitor had planned a meeting with all Parties to address unresolved issues and had circulated a list of outstanding issues and follow-up queries for the Parties. Since the last report, the Monitor has received all Parties' responses to those queries (following some delay associated with COVID-19). The Monitor is currently analyzing the responses, and it plans to prepare and circulate a revised agenda for further, hopefully conclusive, discussions regarding analyses of the character review process.

## **VI. Firefighter Exam**

Pursuant to Paragraph 7 of the Modified Remedial Order, the Monitor is charged with overseeing the computer-based test ("CBT") for the position of entry-level firefighter. Consistent with the provisions of the Modified Remedial Order, the City and its testing consultant PSI have continued to work in coordination with the Monitor, the other Parties, and their respective experts to analyze and report on the examination process. The Monitor continues to be assisted by its testing expert, Dr. Shane Pittman.

The Exam 7001 scores were released on June 13, 2018. The City established the Exam 7001 list on February 27, 2019, and the first class drawn from the list entered the Academy on May 13, 2019.

**A. Current Milestone: Technical Report**

As reported in the Monitor's Twenty-Ninth Periodic Report, in December 2019, PSI finalized its FDNY Firefighter Test Development and Validation Report (the "Technical Report"), which documents all the steps taken in the development, administration, scoring, and analysis of Exam 7001. *Id.* at. At the time it was finalized, the Technical Report indicated that the City would need to call approximately 7,000 Exam 7001 open competitive candidates to fill the combined 2,576 seats in the eight classes projected to be drawn from the Exam 7001 list. Based on these projections, PSI determined that the City would be processing candidates with an adjusted final average score of 99 when the list expires.

**B. Optional Survey Administered to Exam 7001 Candidates**

As previously reported, an optional survey was administered to Exam 7001 test-takers at the time of testing. Their responses have been aggregated and analyzed and have already been used by the City, including in its After Action Report. Because the survey was performed on a confidential and anonymous basis, however, specific answers could not be tied back to specific individuals or to their exam results or hiring outcomes. The City determined that this more specific information would be useful in informing attrition mitigation efforts and future recruitment. The City re-administered the survey (with some changes) to test-takers via email between October 29 and December 13, 2019 and reported that it collected 13,362 valid responses, with candidate consent to connect responses to hiring outcomes. The City circulated a report of results on February 28, 2020, stating that it plans to use the collected data in statistical models to predict, mitigate, and explain candidate outcomes and attrition (both voluntary and involuntary) throughout the hiring process. The United States and Plaintiffs-Intervenors circulated feedback to the report on May 18 and May 26, respectively. The Monitor is reviewing the report and expects to follow up soon.

**VII. Additional Issues**

On an ongoing basis, the Parties and the Monitor consider a range of issues and perform an array of additional tasks relating to enforcement of the Modified Remedial Order. During the period covered by this report, these activities have included the following:

- Discussions regarding individual candidates who are or claim to be entitled to relief under the Court's Orders, including their interactions with the FDNY, documents they have received, and their rights and remedies;
- Addressing questions and disagreements among the Parties regarding the status of specific candidates and other issues that are not addressed elsewhere in this report and that fall within the Modified Remedial Order or Disparate Treatment Settlement;
- Frequent calls, meetings, and correspondence with the Parties regarding the full range of issues related to implementation of and compliance with the Modified Remedial Order; and
- Performing the remaining duties of the Special Master appointed by the Court in its Order filed May 22, 2012 (Dkt. # 883). The Court assigned these duties to the Monitor in an order dated August 17, 2016.

Dated: August 4, 2020  
New York, New York

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/s/  
Mark S. Cohen