

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X	
UNITED STATES OF AMERICA,	:
	:
Plaintiff,	:
	:
-and-	:
	:
THE VULCAN SOCIETY, INC., <i>for itself and on</i>	:
<i>behalf of its members</i> , JAMEL NICHOLSON, and	:
RUSEBELL WILSON, <i>individually and on behalf of a</i>	:
<i>subclass of all other victims similarly situated seeking</i>	:
<i>classwide injunctive relief</i> ,	:
	:
	07-cv-2067 (NGG) (RLM)
ROGER GREGG, MARCUS HAYWOOD, and	:
KEVIN WALKER, <i>individually and on behalf of a</i>	:
<i>subclass of all other non-hire victims similarly</i>	:
<i>situated</i> ; and	:
	:
CANDIDO NUÑEZ and KEVIN SIMPKINS,	:
<i>individually and on behalf of a subclass of all other</i>	:
<i>delayed-hire victims similarly situated</i> ,	:
	:
Plaintiff-Intervenors,	:
	:
-against-	:
	:
THE CITY OF NEW YORK,	:
	:
Defendant.	:
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MONITOR'S SEVENTEENTH PERIODIC REPORT TO THE COURT

TABLE OF CONTENTS

I.	Executive Summary	1
II.	Recruitment and Attrition Mitigation	5
A.	The Disparate Treatment Settlement and the FDNY’s Recruitment Goals	5
B.	Implementation and Ongoing Evaluation of Recruitment Plans	6
1.	Advertising, Marketing, and Other Recruitment Activities.....	6
2.	Progress toward Recruitment Goals.....	7
C.	Working Group	11
III.	Data Collection and Analysis.....	13
A.	Comprehensive Recruitment Database	13
B.	End-to-End Hiring Database	14
C.	CTS	16
IV.	EEO Compliance and Retaliation Investigations.....	17
A.	Overview	17
B.	EEO Policy and Investigations Manual	18
C.	Diversity and EEO Training	19
D.	Personnel and Staffing	20
E.	EEO Data Collection and Analysis.....	21
F.	EEO Investigations and Discipline	21
G.	Officer Accountability	23
1.	Performance Reviews	23
2.	Other Initiatives	24
V.	Medical Exam-Related Issues.....	25
A.	The Stairmill Test	25

1.	Current Stairmill Test Protocol.....	26
2.	Validation.....	26
B.	Information for Candidates	27
C.	Retesting Some Previously Disqualified Candidates.....	28
D.	Tracking and Analyzing Data from the Medical Exam	28
VI.	Character Screening by the CID and PRB	29
A.	Enhancements in the Character Review Process	29
B.	Analysis of Potential Disparate Impact.....	31
VII.	Next Open-Competitive Firefighter Exam.....	32
A.	Current Status.....	32
B.	Next Steps	33
VIII.	Additional Issues.....	34

I. Executive Summary

This report summarizes activities relevant to compliance by the City of New York (the “City”) with the Modified Remedial Order from June 13, 2016, when the Monitor’s Sixteenth Periodic Report (Dkt. # 1694) was filed, to September 11, 2016. This report also summarizes the Monitor’s 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 purview. *See* Stipulation and Order dated June 5, 2015 (Dkt. # 1599); *see also* Memorandum & Order dated June 5, 2015 (Dkt. # 1598) at 10.

Over the past 90 days, the Parties and the Monitor have continued to make progress on reforms and initiatives to bring the City into compliance with the Modified Remedial Order and the Disparate Treatment Settlement. The City has made advances on a number of important tasks, but progress in other areas has been slower.

Part II of this report presents a detailed update on the City’s recruitment efforts. The FDNY’s current recruiting campaign was launched in March 2016 and will continue through the application period for the next open-competitive examination in April 2017. The campaign is a critical component of the FDNY’s efforts to diversify its ranks. Under the Disparate Treatment Settlement, the City agreed to use its “best efforts to recruit black test-takers in proportions closely approximating the representation of age eligible blacks in the New York City labor market, plus an additional 3%.” And prior to the campaign, the Parties agreed to use certain benchmarks to evaluate the City’s success in recruitment and in meeting the City’s obligation under the Disparate Treatment Settlement. The City developed a marketing plan with its advertising vendors that commenced in late August. For the first five months of the campaign, recruitment efforts consisted principally of live presentations at public areas such as malls and

subway stations as well as public events. Results reported by the City through the end of August fell short of the numerical targets for “Expressions of Interest” (“EOIs”), and the City has recently provided revised figures (including EOIs collected in connection with the previous recruiting campaign, which the City had excluded from previous reports). The City contends the revised figures show that it has met its EOI targets and that it is on pace to meet its recruitment goals; and it has assured the Monitor and the other Parties that its campaign will ultimately attract the percentage of minority candidates called for by the Disparate Treatment Settlement (as a percentage of all test-takers for the next open-competitive examination). The City has also agreed to provide detailed explanations of its figures to the other Parties along with a description of its strategy. But it remains to be seen whether the assumptions underlying the City’s optimism are justified. The Monitor has urged the City to maximize its efforts in all stages and components of its recruitment campaign, and to employ any and all means reasonably calculated to draw interest from potential candidates in key demographic groups.

Part III of this report provides an update on the City’s continuing work to expand, improve, and update the systems it uses to manage and analyze data from its recruitment and hiring process. The City reports that its development of a comprehensive data management system for data from all phases of the recruitment and hiring process is on schedule to be operational in time to receive data from the next promotional examination (scheduled for December 2016) – and subsequently from the next open-competitive exam. As noted in previous Periodic Reports, no similar system has been available to track results of the recruiting and hiring process for any previous examinations (including the process for candidates on the current hiring list). In an effort to remedy this deficiency, at the Monitor’s request, the City has provided information in a Candidate Tracking Spreadsheet (“CTS”) for candidates on the current hiring

lists. The City unfortunately has not been able to generate the CTS on a real time basis in the past, so that the Monitor had to wait several months to see results for each candidate at the various steps in the hiring process and address data inconsistencies that continued to plague the CTS. While questions remain regarding data in some categories, it appears that the City has made progress in resolving many of the gaps, anomalies, and ambiguities, and in expediting its ability to provide updated versions of the CTS.

Part IV reports on the status of efforts to bring the FDNY's EEO function into compliance with the Modified Remedial Order. Since the last Periodic Report, the City has made progress in updating and strengthening its EEO policies, and in staffing its EEO Office. With input from the Monitor and the other Parties, the FDNY has nearly finalized a new EEO Policy and an EEO Investigations Manual, both of which will clarify and reinforce the Department's commitment to EEO compliance and provide for improved procedures and practices in handling EEO complaints. The Monitor expects that the new Policy and Manual will be issued this month. The FDNY has also developed a new EEO performance metric to be used in officer performance evaluations. The Parties and the Monitor have also continued to discuss and refine the FDNY's EEO training materials; and the Monitor expects these to be finalized soon.

Despite these advances, however, considerable challenges remain in communicating and enforcing EEO policy and in ensuring that those who fail to abide by the policies are appropriately held accountable. To address these challenges, the Monitor has continued to seek the City's cooperation in developing and implementing measures to ensure that all members of the FDNY, particularly its officers, are held accountable for EEO violations, that the Department effectively monitors the EEO climate within its ranks, and that it consistently fosters an

environment of diversity and inclusiveness. In July the Monitor requested meetings with FDNY uniform personnel with responsibility over firehouse climate and officer conduct and accountability, and awaits dates from the City for those meetings.

Part V reports on the City's continued work, with the Monitor and the other Parties, on measures intended to ensure that the City's medical screening for entry-level candidates (the "Medical Exam") does not have an unlawful disparate impact on black and Hispanic candidates. These include the City's plans to validate the stairmill component of the Medical Exam and the implementation of a revised form of the stairmill test, which the City believes may mitigate any disparate impact that may be caused by this component of the Medical Exam. This section also reports on the City's progress in developing and producing improved communications with candidates and informational materials relating to the Medical Exam. Part V also reports on progress in the retesting of certain candidates previously disqualified.

Part VI discusses recent developments relating to the FDNY's character review process. In the past 90 days, the Parties and the Monitor finalized new provisional guidelines for the FDNY's Candidate Investigation Division ("CID") and Personnel Review Board ("PRB"), along with revised forms and instructions. It is hoped that these new materials, which include new substantive standards for character review and clearer guidance for candidates, will reduce the risk of unnecessary disqualifications and thereby eliminate any unlawful disparate impact caused by the character review process. The Monitor has also continued to obtain and analyze data from the City showing the progress of candidates through the character review process. Previously, much of the data obtained from the City was insufficiently reliable to support a meaningful analysis. But in the most recent updated and revised Candidate Tracking Spreadsheet, the City appears to have remedied a number of the issues that called into question the validity of previous

data relating to the character review process. The Monitor plans to proceed with a detailed analysis of this data to determine whether the character review process is a source of unlawful disparate impact and (if it is) how that impact might best be remedied.

Part VII discusses issues related to the next computer-based exam for prospective firefighter candidates.

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

II. Recruitment and Attrition Mitigation

A. The Disparate Treatment Settlement and the FDNY's Recruitment Goals

Under the Disparate Treatment Settlement, the City is required to “use its best efforts to recruit black test-takers for open-competitive firefighter entrance exams in proportions closely approximating the representation of age eligible blacks in the New York City labor market, plus an additional 3% to remedy a history of underrepresentation of blacks in the New York City firefighter ranks.” The FDNY's recruitment campaign began in March of this year, and will continue through the end of the application period for the next open-competitive exam, which runs from April 5, 2017 to April 25, 2017.¹ In advance of the current campaign, the Parties agreed upon a series of targets and metrics that would be used to assess the City's progress toward the goal established by the Disparate Treatment Settlement. Using labor market statistics and data from the previous recruitment campaign the Parties (1) estimated the total number of test-takers for the upcoming exam, (2) calculated the corresponding target numbers for minority test-takers, and (3) estimated the number of expressions of interest (“EOIs”) that the City would

¹ The application period may be extended if necessary until May 23, 2017.

need to collect to yield those target numbers.² That total EOI target was then divided into monthly targets to be used as benchmarks to assess the progress of the campaign toward its goal.

B. Implementation and Ongoing Evaluation of Recruitment Plans

Following up on plans described to the Court at the June 20, 2016 status conference and in previous Periodic Reports, over the past 90 days the FDNY has moved forward with several aspects of the campaign, including numerous recruiting events and the rollout of its online and social media marketing campaigns. The Monitor and the other Parties have received updates on recruiting activities, the status of the campaign, and its progress toward goals set forth in the Disparate Treatment Settlement. Among other things, the Parties and the Monitor have held two in-person meetings devoted to recruitment (July 20 and August 17, 2016); the City has provided updates on recruiting data; and recruitment issues have been discussed on weekly calls with all Parties. The Parties continue to discuss proposed additions to, and modifications in, the FDNY's recruitment efforts, including several proposed by Plaintiffs-Intervenors.

1. Advertising, Marketing, and Other Recruitment Activities

As described by the FDNY and its consultants, Hodes LLC (most recently at the August 17 meeting), the FDNY recruitment campaign incorporates online advertising, social media outreach, conventional outdoor advertising, and in-person field recruitment events.

The online phase of the campaign, which is intended to establish and maintain contact with prospective candidates from key demographic groups, includes the use of web-based banner advertisements, with each banner ad targeting a specific group and linking to a web page that presents profiles of current members of the FDNY from that group. The online campaign also

² "Expressions of interest" are forms (both paper and electronic) on which the FDNY collects information from potential candidates, both online and at in-person field recruiting events. Data from Exam 2000 demonstrate that slightly more than half of all EOIs resulted in applications and approximately one in five EOIs resulted in a test-taker.

employs social media, incorporating posts by the FDNY itself and by a group of 56 “influencers” – current members of the FDNY – posting recruiting messages via their own accounts. (These “influencers” also play a role in and coordinate with conventional field recruiting efforts.) The online and social media campaigns appear appropriately targeted.

The conventional advertising component of the campaign uses banner advertisements displayed at firehouses, and the FDNY also plans to have outdoor advertising on buses and in public spaces. The FDNY intends to formulate detailed plans for this type of advertising and purchase ad space based in part on data from the ongoing phases of the overall recruitment campaign.

In its field recruiting efforts, over the course of the past several months, the FDNY has participated in hundreds of recruitment events, including block party events, open houses at firehouses throughout the city, and outreach events through community organizations. The FDNY’s participation in and staffing of these events is determined in advance by its recruitment office based on a number of factors, including the diversity of potential candidates associated with the event, the location of the event, the potential yield of EOIs from the event, and the FDNY’s past experiences with the event.

As these components of the campaign have been developed and implemented, the Monitor and the Parties have continued to discuss suggestions proposed by Plaintiffs-Intervenors concerning the visual and textual content of both the online and the conventional advertising.

2. Progress toward Recruitment Goals

As noted above, the Disparate Treatment Settlement requires the City to use its “best efforts to recruit black test-takers in proportions closely approximating the representation of age eligible blacks in the New York City labor market, plus an additional 3%,” and the Parties previously developed a series of EOI benchmarks to measure the City’s progress toward that

goal. Over the past 90 days, the FDNY has continued to provide the Monitor and the Parties with weekly and monthly statistics on its success in obtaining EOIs from candidates of color through its recruitment efforts. Based on reports provided by the City through the month of August, which included EOIs collected during the current campaign and excluded EOIs held over from the campaign for the previous exam, the number of EOIs collected fell short of the periodic recruitment targets that the City previously agreed would serve as benchmarks to measure the FDNY's progress toward the minority recruitment goals established as part of the Disparate Treatment Settlement. The implications of this divergence from the EOI goals were discussed at the meetings among the Monitor and the Parties on July 20 and August 17, 2016, and on several conference calls in recent weeks.

The City has offered a number of explanations for the shortfall in EOIs reflected in its reports through August, and why it believes it will meet the ultimate recruiting goals of the Disparate Treatment Settlement notwithstanding the discrepancy between the agreed upon targets and EOI collections in the campaign thus far. *First*, based on revised figures it circulated for the first time on September 2, 2016, the City contends that if *all* EOIs that could lead to applications for the upcoming exam are counted (including EOIs held over from the previous campaign), the FDNY has in fact met the goals for total EOIs collected in relevant demographic categories for this point in the campaign. The City contends that including all such EOIs is appropriate because all EOIs from the previous campaign were included in the calculations that produced the agreed upon benchmarks for the current campaign. *Second*, the FDNY has explained that it expects to obtain EOIs from prospective minority candidates at a faster rate as the various components of its campaign (including online advertising, social media, and traditional media) are rolled out. *Third*, the FDNY has told the Monitor and the other Parties that

it expects a marked increase in all EOIs (and ultimately in applications) near the deadline for applications. *Finally*, the City has suggested that the EOIs collected so far in the current campaign are more likely to produce applications and test-takers than those collected in the previous campaign (on which the Parties' agreed upon EOI targets were based).³ The City has begun providing data and information concerning these points, and has stated that it will address all of them more fully at a scheduled September 20 meeting with the Monitor and the other Parties regarding recruitment.

The Monitor remains concerned that the FDNY may be falling behind its recruiting goals. Even assuming, as the City contends, that EOIs held over from the previous campaign should be counted in measuring the progress of this campaign, counting all such EOIs against benchmarks for the first 24 weeks of the campaign may give an overly favorable impression of the progress of the campaign to date – because, by definition, no additional holdover EOIs will be collected as the campaign proceeds. The City's revised figures make it appear that it is ahead of its monthly goals at this stage of the campaign, but the advantage derived from counting holdover EOIs at the start of the campaign (such as it is) will dissipate as the campaign proceeds. In addition, as the City acknowledges, the holdover EOIs are in fact far less likely to produce actual applicants than the EOIs collected in the current campaign – which is why the City excluded them from previous reports.

In addition, given the deficiencies in data from previous campaigns, the City's optimistic assumptions about a predicted acceleration in the EOI rate, and about the rate at which EOIs will produce test-takers, are necessarily speculative. If those assumptions prove to be incorrect over

³ It should be noted that this argument presumably does not apply to the EOIs held over from the previous campaign.

the course of the application period in April 2017, it will be too late for the City to take the necessary steps to generate more EOIs and applications from minority candidates.

Given the uncertainties surrounding the prospects of the campaign and the City's contractual commitment to use its "best efforts" to achieve the goals of the Disparate Treatment Settlement, the Monitor believes it is essential for the City to take all steps reasonably calculated to maximize its collection of EOIs and the conversion of EOIs into actual applications and test-takers. And the Monitor has asked the City to confirm that it is taking all reasonable steps in this regard. Plaintiffs-Intervenors have urged the City to increase the number of recruitment events, deploy more recruiters, make more use of its most productive recruiters, identify and utilize creative rewards for the most productive recruiters, consider contracting with external paid campaign staff to solicit additional EOI's, and consider beginning its media and outdoor advertising sooner than initially planned. The City asserts that it is making the best possible use of its resources, and that it has consulted with affinity organizations, including the Vulcan Society, on a regular basis in an effort to ensure that is the case. To ensure that all reasonable options are explored, the Monitor plans to convene a short, focused meeting in the near future with a small number of key FDNY personnel and representatives from the other Parties to consider any specific steps the FDNY may be able to take to expand its force of active recruiters and augment its schedule of recruiting events.

In addition, the Monitor has asked the City to produce a revised, detailed plan, incorporating new benchmarks, explaining how they were developed, and showing how it expects to achieve the goals of the Disparate Treatment Settlement. The new plan should specify the rate at which the FDNY believes it needs to collect new EOIs going forward; and, especially if that rate exceeds the rate at which new EOIs have been collected to date, the steps that the

FDNY intends to take to collect EOIs at the necessary rate. The FDNY should also outline contingency plans that it can implement quickly if the rate of new EOI collection falls short of the new plan's periodic goals, or if the recruitment campaign otherwise seems in danger of failing to achieve the goals of the Disparate Treatment Settlement.

As the recruitment campaign progresses, the Monitor and the Parties will continue to meet monthly and as needed to evaluate the recruitment data provided by the FDNY regarding its campaign. The Monitor expects that the City will promptly implement any adjustments in its recruitment strategies that may be necessary based on continuing analysis. The Monitor will focus particularly on the data-driven elements of the recruitment campaign over the coming weeks, including whether the FDNY has been using its best efforts and resources toward the goal of recruiting a diverse workforce to the FDNY.

C. Working Group

The Monitor has continued to facilitate meetings of the Working Group, which was formed in accordance with the Disparate Treatment Settlement to develop initiatives “creat[ing] educational and other opportunities that will enhance the ability of New York City students to pursue careers as New York City firefighters.” Monitor’s Twelfth Periodic Report (Dkt. # 1603) at 7-8 (citing Stipulation and Order ¶ 1(e)).

One of the initiatives specifically described in the Disparate Treatment Settlement was “the creation of a Fire Cadet title or special credit for completion of job-related fire science courses.” *Id.* The City submitted a proposal for the Fire Cadet title to the New York State Civil Service Commission (the “CSC”) in September 2015, outlining a program developed by the FDNY and the Working Group to recruit, select, and mentor a diverse cadre of cadets who will progress to the firefighter position through the promotional examination process. *See* Monitor’s Fourteenth Periodic Report (Dkt. # 1651) at 13-14. The proposal, which described the selection

process, job duties, and instructional curriculum for the Fire Cadet title, was discussed and approved by the CSC in a public hearing held on June 16, 2016. At a meeting of the Working Group on July 21, the FDNY presented plans for the practical implementation of the Fire Cadet program, and the Working Group continues to discuss the details and timing of those plans.

The Working Group also continues to develop additional initiatives to further the objectives of the Disparate Treatment Settlement. These include an expansion of the FDNY's High School Explorers program, which will provide instruction for obtaining EMT certification, job placement services, and extensive mentoring and physical training to City high school students – with the goal of providing enhanced information and support for those who wish to promote from EMS into the firefighter title. This initiative combines aspects of a proposal by the Working Group representatives from the Vulcan Society with an initiative developed by the City to expand its existing Explorers program. The City initially presented plans to begin hiring staff for this expanded program by the end of summer or early fall of 2016, with curriculum development and logistical implementation to continue over the next several months. The Parties continue to review and discuss plans to expand the program, with the goal of commencing efforts to recruit and train a new class of EMS Explorers in the fall of 2016.

The Working Group has also finalized suggested revisions to the open-competitive hiring process intended to make it easier for applicants with New York City high school diplomas (or an equivalent certification) to demonstrate eligibility for bonus points awarded for New York City residency. The City will submit a draft revised Notice of Examination for the other Parties and the Monitor to review. Finally, the Working Group continues to explore initiatives to leverage the EMT recruitment and training programs currently provided by the FDNY, CUNY and New York City area community colleges.

III. Data Collection and Analysis

Over the past 90 days, the Monitor has continued to receive updates and provide comments and guidance on the FDNY's ongoing efforts to establish mechanisms for gathering and analyzing data regarding its recruitment activities and regarding the numerous additional steps in the firefighter screening and hiring process. As the Monitor has emphasized throughout the remediation process, the City must collect and make effective use of data to evaluate and improve each phase of the recruitment and hiring process to attract and retain black and Hispanic firefighter candidates. *See, e.g.*, Monitor's Recruitment Report (Dkt. # 1464) at 40-48; *id.* at 3-7 (summarizing the Court's findings of fact regarding recruitment and the Modified Remedial Order); Monitor's Thirteenth Periodic Report (Dkt. # 1636) at 7; Monitor's Sixteenth Periodic Report at 10-16. As previously detailed, the City is currently pursuing three data projects aimed at addressing its data needs: (1) a comprehensive recruitment database; (2) an end-to-end database that tracks candidates throughout the hiring process; and (3) a Candidate Tracking Spreadsheet ("CTS"), which will allow the Monitor and the Parties to analyze available data regarding candidates who took Exams 2000, 2000-1 and 2500. Each of these areas has experienced some delays from projected original and interim dates but has progressed since the last Periodic Report.

A. Comprehensive Recruitment Database

The Monitor has emphasized the importance of a comprehensive, data-driven approach to recruitment for several years, and urged the City to take the necessary steps in advance of the current recruitment campaign. That campaign has been underway for several months, but the City did not finalize and deploy a comprehensive recruitment database until earlier this month.

The City has planned to use a comprehensive recruitment database to track candidates through the recruitment process from initial EOIs through the written exam. *See* Monitor's

Fifteenth Periodic Report at 6-10. The database, constructed by the City's consultant Vanguard Communications in consultation with the FDNY technology unit, is designed to track prospective applicants and candidates for the position of entry-level firefighter from the point of first contact through the written examination. *Id.* The database also includes demographic data, which will allow FDNY leadership to assess the effectiveness of its recruitment activities in attracting target populations. *Id.*

The City continued to work with Vanguard over the past 90 days to develop the new recruitment data system. The Monitor and the Parties discussed the status of the new recruitment database at monthly meetings devoted to recruitment and data issues on July 20, 2016 and August 17, 2016 and will continue to do so at these regularly scheduled meetings throughout the recruitment campaign.

At the June 20, 2016 Status Conference, the City informed the Court that the FDNY was already using the Vanguard system. The City had previously provided the same information to the Monitor regarding its use of the Vanguard system. *See* Monitor's Sixteenth Periodic Report at 10. In fact, as the City later advised, the system was not fully operational at that time. However, the City has now definitively confirmed that as of September 6, 2016, the Vanguard system is being used to track and manage its recruitment activities. (Before the transition to the Vanguard recruitment database, the City stored the bulk of its EOI and potential candidate information in the database previously used for recruiting data, known as RTDS.)

The effective use of the new recruitment database will continue to be a focus of the Monitor and the Parties over the next 90 days.

B. End-to-End Hiring Database

The City is also in the process of developing an end-to-end hiring database to track candidates' progress through all stages of recruitment and the FDNY's selection process, from

initial contact with prospective applicants through appointment. As previously explained, the end-to-end database will incorporate some of the data collected in the new recruitment database, along with information regarding candidates' examination results and their progress through the post-examination phases of the hiring process, such as character screening and medical testing. *See, e.g.*, Monitor's Sixteenth Periodic Report at 11-13. The end-to-end database will be a high-level repository that automatically captures data from various individual systems and databases (such as the recruitment database and the CID database). *Id.* The City has committed to completing work on the end-to-end database no later than April 2017, to receive data from the next promotional exam, scheduled for December 2016; and it will track candidates who appear on the next open-competitive and promotional civil service lists; it is not intended that the end-to-end database will contain data for candidates on the current lists (those who took Exams 2000 and 2500). *Id.*

The Monitor and the Parties met with the FDNY's data and technology personnel on July 20, 2016 and received an update on the FDNY's progress in constructing the end-to-end database. The FDNY's technology team had begun to make progress in the collection and transfer of data from the CID database, and planned to continue to focus on those areas over approximately the next two months. As part of this project, the technology team is also improving department-specific databases, and the Monitor and other Parties are collaborating with the City to determine what categories of data should be included in those databases. For example, the Plaintiffs-Intervenors and the United States have requested that more detailed PRB data be kept in the CID database for candidates referred to the PRB by CID. FDNY technology personnel reported at the July 20 meeting that they were working to accommodate those requests by automating more CID data entry and making changes to the CID database. While these

department-specific database improvements are important, the Monitor has made it clear that they should not be implemented if doing so delays completion of the end-to-end database.

While progress is being made, key components of the end-to-end system, including mechanisms for obtaining and updating data from the various contributing systems within the FDNY, remain to be implemented. For example, as reported in the Monitor's Sixteenth Periodic Report, the City has not yet automated the transfer of data from the Vanguard recruitment database to the end-to-end database. However, the City has advised that all essential processes will be in place by the time candidates currently being recruited to take the next open-competitive and promotional examinations begin the hiring process. Specifically, the City has advised the Monitor that the end-to-end database will be fully functional by the time data from the next promotional exam (in December 2016) becomes available for input. *See* Monitor's Sixteenth Periodic Report at 13. The Monitor will continue to pursue regular progress reports from the City and the FDNY's technology personnel regarding the development of the end-to-end database.

C. CTS

The City's CTS contains available data from each phase of the hiring process for candidates on the current hiring lists. As previously described in detail, the CTS was created to allow the Monitor and the Parties to track and analyze data for candidates who took Exams 2000 and 2500, given that the end-to-end hiring database was not available during the recruitment and hiring of these candidates. *See* Monitor's Sixteenth Periodic Report at 11, 14-15. But the data in prior versions of the CTS was incomplete, internally inconsistent, or unclear in several areas. *Id.* The City had previously projected that issues affecting the CTS data would be resolved by June of 2016, but at the status conference June 20, 2016, it notified the Court that the CTS data would

not be fully reliable until the end of the year. The City stated, however, that it planned to provide sufficient data for “top-line” analyses by September 2016.

On August 5, 2016, the City circulated a new and updated version of the CTS, along with an updated “data dictionary” defining the fields in the spreadsheet; and based on the Monitor’s review thus far, the City appears to have made progress in explaining or remedying many of the deficiencies previously identified. The Monitor and the other Parties have reviewed the CTS data and plan to meet with the City and the FDNY’s Data Analytics team later this month to discuss the data provided.

It is crucial that the outstanding issues relating to CTS data be resolved as soon as possible, and in any event no later than the City’s promised target of year-end, so that the Monitor and the other Parties can determine whether and where disparate impact continues to occur in the City’s hiring process for entry-level firefighters, and whether and where reforms are needed.

IV. EEO Compliance and Retaliation Investigations

A. Overview

Over the past 90 days, the City has continued to work with the other Parties and the Monitor (assisted by the Monitor’s expert on EEO matters, Gary Richardson), on several key initiatives to fulfill the FDNY’s EEO compliance obligations, including completing efforts to fully staff the EEO office; finalizing revisions and updates to the FDNY’s EEO Policy and Investigation Manual; reviewing the FDNY’s process for investigating EEO complaints; reviewing the implementation of the database to track investigations of possible EEO violations; reviewing the FDNY’s diversity and EEO training programs; and continuing to focus on ways to substantially improve the overall EEO climate within the FDNY.

The City has continued to make progress in many of these areas, and has now put in place many of the resources – including policies, systems, and staff – needed to effectively fulfill its EEO obligations. The FDNY must now use these new resources to effect real change in the culture and climate of the FDNY – clearly communicating a message of diversity and inclusion, implementing a zero-tolerance policy for discriminatory conduct and hazing (which can target protected class characteristics as a focus of hazing), effectively monitoring the EEO climate within the FDNY, and holding all personnel (officers and rank-and-file) accountable for EEO responsibilities, as well as for violations. Considerable work remains to be done in all these areas. Plaintiffs-Intervenors continue to express concern regarding the FDNY’s ability to respond effectively to incidents of discrimination, retaliation, or harassment. If firefighters are to have confidence in the FDNY’s commitment to diversity – and in its ability to prevent, investigate, and remedy EEO violations, as well as prevent retaliation – it will be critical for it to enlist the full support of its uniformed leadership and establish a real track record of zero-tolerance for discrimination.

B. EEO Policy and Investigations Manual

The Monitor expects that the FDNY’s updated EEO Policy and Investigations Manual will be finalized and issued before the end of September. Over the past 90 days, the United States, Plaintiffs-Intervenors, and the Monitor provided comments on the EEO Policy and the Manual in early August, and all concerned met in person on August 18, 2016, to discuss the comments and resolve outstanding issues. The City circulated revised versions of the documents on August 25, 2016, incorporating changes discussed at the meeting. The Monitor and the other Parties have offered a small number of additional comments, and it is expected that any further changes will be completed shortly. The new documents clarify and provide for improvements in a number of key aspects of the EEO function – including, without limitation, mandatory

reporting obligations, communications with complainants, alternative dispute resolution, and command responsibility for EEO issues. For example, the new EEO Policy includes a provision devoted to mandatory reporting, making it clear that all “supervisors, managers, or human resources personnel who receive EEO complaints, or otherwise become aware of [any potential EEO violations] must notify the EEO Office immediately.” It also includes a section providing that “[m]anagers, supervisors and officers must make every effort to maintain a work environment that fosters sensitivity and respect for the diversity of all individuals” – and listing specific EEO-related responsibilities that officers must fulfill to pursue that goal.

Plaintiffs-Intervenors have noted that the issuance of the new EEO Policy provides an opportunity to re-emphasize the FDNY’s commitment to EEO compliance and introduce the Chief Diversity and Inclusion Officer (“CDIO”), Cecilia Loving, and new EEO personnel. The FDNY plans to publicize the launch of the new EEO Policy within the Department, and use the launch to raise awareness of EEO issues and the revived, fully staffed EEO Office.

C. Diversity and EEO Training

The City has continued to work with the other Parties and the Monitor to develop and revise the FDNY’s EEO training materials. The City circulated the most recent drafts of two EEO training modules (one solely for officers and one for regular EEO training) on July 19, 2016, addressing comments previously provided by the Monitor and the other Parties. The Monitor, the United States, and Plaintiffs-Intervenors have all offered additional comments; and the Monitor expects that the City will circulate further revised (and likely final) versions of the training materials soon. The Monitor expects that the training materials will also undergo further changes in the future based on direct feedback from participants in these programs, which should be used to continuously evaluate their efficacy and develop potential improvements. The Monitor is also working with the City and the other Parties to ensure that EEO officer training is

integrated into a larger set of initiatives to ensure that officers maintain appropriate discipline within their commands, foster an inclusive environment, and address EEO issues effectively in cooperation with the EEO Office.

In an effort to improve the communication of diversity and EEO messages within the FDNY, the Office of Diversity and Inclusion has distributed a newsletter, which incorporates an EEO section and the diversity and inclusion mission statement authored by the CDIO. This is a positive step. But for the FDNY to drive home a message of inclusiveness effectively, it will be most important for its officers to deliver that message consistently on a day-to-day basis.

D. Personnel and Staffing

The FDNY has largely completed its efforts to hire new personnel, including attorney EEO investigators, to fully staff the EEO Office. These efforts to bring the EEO Office up to full strength directly address the lack of resources and sufficient personnel previously identified as a significant impediment to the proper and sustained performance of the FDNY's EEO compliance activities. *See* Monitor's Fourteenth Periodic Report at 16. Including the Assistant Commissioner and Deputy Director, the EEO Office includes 7 attorneys plus staff. At last report, all the positions but one had been filled and an offer was outstanding for the one remaining attorney investigator position. The most recent hires are awaiting processing by human resources and the determination of their start dates. The Monitor expects that the FDNY will confirm that the EEO office is fully staffed within the next few weeks.

In a related area, the FDNY also reported to the Court at the June 20 status conference that it is moving forward with plans for an EEO counselor program – establishing a contingent of counselors to act as liaisons with EEO Office and facilitate communications with FDNY personnel. The City recently informed the Monitor and the other Parties that it has begun efforts to staff counselor positions.

Finally, the FDNY has recently appointed a new Diversity Advocate, Lieutenant David Obiesie, succeeding Lieutenant Michael Marshall, who has retired from the FDNY. The Diversity Advocate position was created by the Disparate Treatment Settlement – with responsibilities that include raising concerns relating to fairness, transparency, and respect for firefighter candidates from the commencement of the hiring process through their training in the Fire Academy. Lieutenant Obiesie is a sixteen-year veteran of the FDNY – joining the Department as an EMT in 2000 and becoming a firefighter in 2002. He has served as a Mentor in the FDNY’s mentorship program since 2007, providing counseling and assistance to candidates throughout the stages of the FDNY hiring process. The Monitor and the Parties are scheduled to have an introductory meeting with Lieutenant Obiesie on October 6, 2016.

E. EEO Data Collection and Analysis

The City has previously confirmed that the EEO Office database for tracking current complaints and investigations is operational. At the August 18, 2016 meeting, the City also confirmed that the database includes essential identifying data (*e.g.* Complainant, Respondent, nature of complaint, location) for investigations of EEO matters by other FDNY agencies, including the Bureau of Investigations and Trials (“BITS”). The Monitor has requested a live demonstration of the database, which has not yet been scheduled. The Monitor also plans to work with the City to discuss and develop ways in which the EEO database may be used to identify emerging EEO issues, including patterns of complaints and inquiries, and generally to evaluate the EEO climate within the FDNY.

F. EEO Investigations and Discipline

The Monitor continues to have serious concerns regarding the conduct of EEO investigations and the effect that slow or ineffective investigations have on the overall EEO climate among FDNY personnel. Recent investigations of potential EEO violations, in particular

those conducted by BITS, have taken far more time to complete than the 90 days that the EEO Policy presumptively provides for EEO Office investigations. And the Monitor remains concerned that investigations by BITS or other FDNY bureaus are not subject to the same requirements that govern EEO Office investigations (including but not limited to the 90-day time-frame), and may not be conducted with the same EEO-specific expertise that the EEO Office possesses.

The draft EEO Investigations Manual includes a provision specifying that the EEO Office must conduct its own investigation, in accordance with all the requirements applicable to EEO Office investigations, and issue its own report regarding any colorable allegation of an EEO violation – even where those allegations are also investigated by another FDNY bureau. The Monitor expects this requirement will help to ensure that all EEO complaints are addressed in a consistent and timely fashion, by investigators appropriately attuned to EEO issues. At the August 18, 2016 meeting, City representatives also briefed the Monitor and the other Parties on the roles played by the EEO Office, BITS, and the FDNY General Law Unit in investigations of EEO matters, and confirmed that, in accordance with the new Investigations Manual, the EEO Office would pursue its own investigations and make its own findings even where investigations were conducted jointly with BITS, in those instances where EEO-related issues are raised or uncovered in a BITS investigation.

The Monitor and the Parties have also discussed, most recently at the August 18, 2016 meeting, the need for measures that may be employed to prevent or discourage EEO violations – even where no formal finding of an EEO violation by a specific individual has been made. The new EEO Policy provides that such measures may include counseling, training, monitoring, the implementation of workplace rules or restrictions, or disciplinary action against officers in whose

commands violations occur. The Parties and the Monitor are continuing to discuss specific steps, within these general categories, that the FDNY may take in appropriate cases. While the City has identified a number of challenges to the implementation of some of the specific measures proposed by the Monitor, the Monitor believes it is essential for the FDNY to use such tools as part of a proactive and flexible approach to ensuring EEO compliance.

As part of this effort to develop a proactive approach to EEO compliance, the Monitor has also advised the City to re-emphasize and vigorously enforce its existing anti-hazing policy, as hazing incidents have a corrosive effect on the EEO climate within the FDNY. The Monitor will be working with the City and the other Parties in the coming weeks to strengthen the City's messaging and enforcement in this important area.

G. Officer Accountability

In discussions with the City over the past 90 days, the Monitor has continued to emphasize the role of officers in ensuring EEO compliance. The Monitor previously proposed a series of specific initiatives, including (1) delivering enhanced training for officers regarding EEO obligations and mandatory reporting; (2) reinforcing existing rules requiring commanders to investigate incidents, impose command discipline, and report violations such as gear tampering and hazing; (3) revising performance review criteria to include EEO metrics; and (4) considering EEO performance in promotions. *See* Monitor's Fifteenth Periodic Report at 15-16.

1. Performance Reviews

Addressing one of the most important needs in this area, the City has developed, in cooperation with the officers' union (the United Fire Officers Association), an EEO metric for the performance review criteria applicable to officers. The new EEO evaluation metric, which incorporates an array of EEO criteria, and which calls for EEO Office involvement in officer evaluations, was circulated to the Monitor and the other Parties August 30, 2016. The metric

requires officers to “demonstrate adherence to FDNY EEO Policy” based on a number of factors including “ensur[ing] that members are treated consistently per the FDNY EEO Policy,” consultation with the EEO Office and cooperation in EEO investigations, “[e]nforce[ment] of the prohibition of retaliation,” and any history of substantiated complaints. Under the new metric, officers will also “be acknowledged for exceptional EEO-related performance, such as proactively exercising leadership in creating a climate that is inclusive and welcomes diversity; creating an atmosphere promoting EEO; and demonstrating a consistent history of responding sensibly and sensitively to EEO issues should they arise.” The Monitor plans to continue to work with the City to ensure that the performance review criteria are employed effectively to enhance EEO compliance, and coordinated with other initiatives relating to office training and reforms in EEO policies.

2. Other Initiatives

The new officer training materials (discussed above), developed by the FDNY with input from the Monitor and the other Parties, provide guidance on officers’ EEO responsibilities, including mandatory reporting, supporting diversity and inclusiveness within their commands, and working cooperatively with the EEO Office to resolve EEO issues.

In an effort to refine and successfully implement initiatives that support officer accountability, the Monitor also plans to meet with members of the senior uniformed leadership of the FDNY – so as to benefit from their input and ensure that they are committed to any initiatives that the City agrees to undertake. The Monitor also plans to work with the City to ensure that it employs effective climate surveys to assess the effectiveness of its EEO policies, compliance, and enforcement.

V. Medical Exam-Related Issues

Pursuant to the Modified Remedial Order, the Monitor continues to address allegations that certain steps in the Medical Exam have a disparate impact on black and/or Hispanic candidates. *See, e.g.*, Monitor's Fifteenth Periodic Report at 17-23; Monitor's Thirteenth Periodic Report at 11-17 (citing Modified Remedial Order ¶¶ 15, 19). As previously reported, Plaintiffs-Intervenors have expressed concerns that the Medical Exam has an unfavorable disparate impact on black candidates, and the United States has raised the same concerns with respect to both black and Hispanic candidates. *See, e.g.*, Monitor's Eleventh Periodic Report (Dkt. # 1575) at 13-14.

The Monitor continues to work with the City and the other Parties – as well as with its expert, Dr. Denise Smith – to analyze whether and where this disparate impact is occurring and to implement a series of adjustments and enhancements to the Medical Exam in an effort to minimize the potential for disparate impact while maintaining the FDNY's rigorous hiring standards. *See, e.g.*, Monitor's Fifteenth Periodic Report at 23. Those measures include, for example, random observation of testing by the Diversity Advocate; making heart rate visible to candidates; providing better guidance through written and video materials; and administering a modified, alternate version of the stairmill test on candidates' first attempts (where previously candidates could take the modified test only on second, separate occasion after failing their first test).

The current status of certain of these initiatives is discussed below.

A. The Stairmill Test

Plaintiffs-Intervenors and the United States have expressed concern that the stairmill portion of the Medical Exam has a disparate impact on black and Hispanic candidates. As discussed in previous Periodic Reports and below, the City has already implemented or is close

to implementing a number of measures to mitigate possible disparate impact caused by the stairmill test.

1. Current Stairmill Test Protocol

Under the prior Bureau of Health Services (“BHS”) stairmill protocol, if a candidate’s heart rate went above the FDNY limit (90% of age-predicted maximum heart rate) during either the unweighted or the weighted vest phase of the test, the candidate failed but could return for a second attempt at a later date. On the second attempt, if the candidate’s heart rate exceeded the limit during either the unweighted or the weighted phase of the test, he or she could opt to stay on the stairmill during the weighted phase of the test for an extra 2 minutes and 48 seconds and pass the test (the “Modified Test”), provided only that the BHS physician monitoring did not observe signs of physical distress.

The City has now revised its protocol: if, during a candidate’s first attempt at the stairmill, his or her heart rate exceeds the limit during the weighted vest phase, BHS will – again, at its discretion as outlined above – permit the candidate to attempt the Modified Test immediately, rather than requiring the candidate to come back to do so during a second attempt. BHS believes this modification may obviate the need for a second attempt for many candidates who otherwise would have to return to BHS on a separate occasion. This more expedited approach eliminates any possibility that candidates may drop out of the process between first and second attempts.

2. Validation

The City has proposed certain methods to validate the stairmill component of the Medical Exam, as to which the United States and Plaintiffs-Intervenors indicated certain areas of disagreement with the City’s approach but also stated they did not object to the City proceeding with the proposed validation approach. The City is currently evaluating data that it considers

relevant to the stairmill and is exploring other validation methods in addition to those previously proposed. The City has advised the Monitor that it expects to have an update on these efforts in October.

B. Information for Candidates

The Monitor and the Parties have worked cooperatively to develop a number of ways to provide candidates with more information about preparing for the Medical Exam. These include two documents and three videos that are already available or will soon be made available on the FDNY website.

The BHS Guidance for Firefighting Candidates Concerning Medical Assessment (“BHS Guidance”) is a document prepared pursuant to the Disparate Treatment Settlement, which includes a description of (1) the forms and various tests involved, (2) how best to prepare for the tests, and (3) post-exam follow-up steps. The City has posted this guidance document with Fire Academy materials on the FDNY website. The City has also posted a set of frequently asked questions (“FAQs”) that provide, in question and answer format, information similar to that contained in the BHS Guidance. These documents will be included in the FDNY hiring process introductory materials. Both the BHS Guidance and the FAQs now reflect the new BHS stairmill protocol.

The City will also make three informational videos available on its website. The first, which has already been posted, provides an overview of the Medical Exam and how best to prepare for it. The second, which has been filmed and shared with the Monitor and the other Parties, is an in-depth description and demonstration of the pulmonary function test (“PFT”). The Monitor very recently gave the City permission to begin using this video, and the City intends to do so shortly. The third, the script for which has been finalized, will give detailed instructions and demonstrations for taking the stairmill test.

C. Retesting Some Previously Disqualified Candidates

The Parties and the Monitor continue to collaborate on identifying candidates eligible for retesting and notifying them of this retesting opportunity. So far, 184 candidates have been invited to retest. Of these, roughly one third are white, one third black, and one third Hispanic. In addition, of the 184 candidates who have been invited to retest, one sixth are priority hires, one sixth are promotional hires, and two-thirds are open-competitive candidates. Candidates eligible for retesting who also require diagnostic testing will be offered the option to take advantage of the new no-cost diagnostic testing program now being offered to candidates in connection with the Medical Exam. As of September 6, 2016, 43 candidates had been scheduled for retesting and were in various stages of processing.

D. Tracking and Analyzing Data from the Medical Exam

As described in previous Periodic Reports, limitations in the City's prior record-keeping practices with respect to disqualified candidates – including the fact that reasons for disqualification have not always been clearly tracked – have made it difficult for the Monitor to identify and analyze root causes of medical disqualification for black and Hispanic candidates as compared to white candidates, as well as to analyze disparities in rates of disqualification among the groups. *See* Monitor's Fifteenth Periodic Report at 23; Monitor's Thirteenth Periodic Report at 16-17; Monitor's Twelfth Periodic Report at 17-18. Accordingly, the Monitor has requested, and the City is continuing to provide, information regarding gaps or inconsistencies in the medical files that the City has produced to the Monitor for candidates disqualified by the Medical Exam. The Monitor, with the assistance of experts led by Dr. Smith, is continuing to derive and analyze data from these documents.

The City's most recently circulated Candidate Tracking Spreadsheet contains more – and apparently more accurate – information than previous drafts, which will help with these efforts;

the Monitor and Parties can begin to develop a general sense of the percentages of white, black, and Hispanic candidates who have passed or failed the Medical Exam. The medical files previously provided by the City will then help identify particular points of failure on sub-tests within the Medical Exam. The data is still not susceptible to full formal analysis, however, because there is not a direct correlation between the CTS and the files produced. The CTS tracks the medical qualification status of all candidates; the documents produced relate only to a set of medical disqualification notices issued by BHS between February 2013 and November 2015. Although the data sets do not map directly onto one another, instructive preliminary analyses can be performed using the data received to date, and those analyses can be refined as more data is entered into the CTS and as more documents are produced to the Monitor. The Monitor is continuing in these efforts.

VI. Character Screening by the CID and PRB

Since the last Periodic Report, the Parties and the Monitor (with the assistance of its expert consultants, Manitou, Inc.) have continued to implement new standards and procedures for the character review process administered by the CID and PRB, to develop and introduce new materials for use in the process, to coordinate regarding the reconsideration of some previously disqualified candidates, and to compile and analyze data reflecting the impact of the character review process on FDNY hiring.

A. Enhancements in the Character Review Process

As of the Monitor's previous Periodic Report, the Parties and the Monitor had substantially agreed on a series of reforms in a number of key areas, including (1) criteria for referral to the PRB; (2) information and instructions provided to candidates; and (3) procedures and criteria for PRB determinations. *See* Monitor's Sixteenth Periodic Report at 29-31. The

reforms included a revised set of provisional CID and PRB guidelines, the latest in a series of revisions since the first set of formal, written CID guidelines was issued in October 2012.⁴ *Id.* (citing Findings of Fact (Dkt. # 741) at 44-54; Monitor's Eleventh Periodic Report at 18). The new guidelines incorporated, among other things, revised criteria for referral to the PRB. *Id.* The Monitor and the Parties had also agreed on changes in several forms and standard communications with candidates, developed to complement the new guidelines. *Id.* Since the last Periodic Report, the Monitor and the Parties have agreed on a number of additional forms, including a revised version of the form on which criminal histories are presented to the PRB (approved by the Monitor on July 5, 2016). The City has begun using the new forms in processing candidates.

The Monitor and the Parties have also moved forward with plans for candidates previously disqualified by the character review process to be reconsidered using the revised standards and procedures. On July 6, 2016, the Monitor approved a notice (agreed upon by the Parties) that has since been sent to such previously disqualified candidates, advising them of the opportunity to be reconsidered. Candidates who choose to take advantage of the opportunity are encouraged to submit new explanations for any adverse events in their histories using the new forms and instructions developed by the Parties and the Monitor. (On August 23, the Monitor approved a notice to be sent to candidates with the new explanation form.) The Parties are cooperating in efforts to ensure that all affected candidates are informed of the opportunity for reconsideration and encouraged to avail themselves of it. According to the most recent data provided by the City (in the Candidate Tracking Spreadsheet), 92 candidates are eligible for

⁴As previously noted, the latest revised provisional guidelines may be subject to additional changes based on further analysis. The Parties and the Monitor agreed to reserve certain disputed issues for further discussion, without prejudice to any party's position.

reconsideration. Of those, approximately 80 candidates have accepted the invitation to be reconsidered.

B. Analysis of Potential Disparate Impact

As previously reported, the Monitor's analysis of data through the end of 2014 indicated that minority candidates were referred to the PRB at a higher rate than white candidates, and that among candidates referred to the PRB, a higher percentage of minority candidates than white candidates were disqualified by the PRB. *See, e.g.*, Monitor's Thirteenth Periodic Report at 20-21. Also as previously recounted, following that initial analysis, the Monitor has sought additional, updated data from the City on PRB referrals and outcomes, and has also compiled its own data based on an independent review of PRB case files. *See* Monitor's Sixteenth Periodic Report at 31-32. As of the Monitor's most recent Periodic Report, the City had not yet provided sufficient reliable data to support a comprehensive, fully updated analysis of PRB referrals and outcomes. Although the CTS provided by the City included many of the categories of data that would be needed for such an analysis, various gaps, inconsistencies, and ambiguities in the data made it impossible to generate a meaningful analysis using the CTS data.

The City had previously undertaken to resolve the issues affecting the CTS data by June of this year, but at the status conference June 20, 2016, it advised the Court that the problems with the CTS would not be fully resolved until the end of this year, although it planned to provide sufficient data for "top-line" analyses by September. On August 5, 2016, the City circulated a revised and updated Candidate Tracking Spreadsheet. The new CTS does appear to resolve many of the anomalies that the Parties and the Monitor noted in previous iterations. And it also includes some additional fields that the United States and Plaintiffs-Intervenors had requested in recent discussions among the Monitor and the Parties. The Monitor plans to meet with the Parties later this month to discuss remaining questions and the features of the new

version of the CTS. Based on the Monitor's initial review, subject to confirmation at the upcoming meeting, the data in the most recent CTS appears reliable enough to enable an updated analysis of the character review process. Using the CTS data, and the data generated by its own review of PRB files, the Monitor now plans to move forward with a detailed, updated assessment of PRB referrals and outcomes, of any potential disparate impact produced by the process, and of further possible revisions in the criteria for PRB referrals and character-related disqualifications.

The Monitor anticipates further adjustments and reforms to the CID and PRB policies and procedures to the extent justified by the ongoing analysis by the Monitor and the Parties. The United States has retained an expert to assist in its review of the data and its understanding of what, if any, disparate impact remains as part of the character review process. Plaintiffs-Intervenors and the City have sought the Monitor's assistance in resolving a fee dispute regarding Plaintiffs-Intervenors' use of an expert to assist them in similar analysis. The issue is now fully submitted and before the Monitor for recommendation.

VII. Next Open-Competitive Firefighter Exam

A. Current Status

Pursuant to Paragraph 7 of the Modified Remedial Order, the Monitor is responsible for oversight of the next computer-based test ("CBT") to be given to applicants for the position of entry-level firefighter. Consistent with the provisions of the Modified Remedial Order, the City and its testing consultant, PSI Services LLC ("PSI"), have continued to work in coordination with the Monitor and the other Parties on the development of the next examination. Likewise, the Monitor continues to be assisted by its testing expert, Dr. Shane Pittman of The Pittman McLenagan Group, L.C.

As reported to the Monitor by the City and discussed in prior reports, the City has scheduled the next promotional examination for firefighters for December 2016, with probationary firefighters from the resulting promotional list to be appointed to a class in December 2017 or January 2018. *See* Monitor's Sixteenth Periodic Report at 33. The City has also advised the Monitor that it plans to administer the next open-competitive examination for entry-level firefighters in September 2017 and to appoint the first Academy class from the next open-competitive list in December 2018.

PSI is developing forms for the CBT that, based on data analysis, are "equivalent" to one another and to the previously validated CBT used for Exam 2000. By confirming that the different forms of the CBT are equivalent, the City and PSI will ensure that the new forms of the test retain all the material attributes of the validated Exam 2000. PSI has completed the testing phase of the equivalency study: more than 400 test-takers (with an appropriate mix of race, ethnicity, gender, and educational background characteristics) sat for various portions of the four new exam forms. PSI shared the results of these examinations with the United States' testing expert, Dr. David Jones. PSI also recently circulated a summary of its analysis of the equivalency study data for review by the Monitor and the United States and their respective experts.

B. Next Steps

The experts reviewed and discussed the equivalency study data through the month of August, and PSI presented a summary of the study and a description of the resulting equivalent forms at a meeting of all the Parties and Monitor, held on September 8, 2016. PSI will now proceed to the next milestones in the plan, which provide for edits and adjustments to be made to the questions, videos, graphics, and training guides, and for the finalized exams to be loaded into the CBT system.

VIII. Additional Issues

On an ongoing basis, the Parties and the Monitor consider a range of issues relating to enforcement of the Modified Remedial Order. During the period covered by this report, these issues 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;
- The development of forms for various standard communications with candidates by the FDNY;
- Addressing questions and disagreements among the Parties regarding the status of specific Priority Hire 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: September 12, 2016

New York, New York

/s/

Mark S. Cohen