

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 EIGHTH PERIODIC REPORT TO THE COURT

Pursuant to paragraph 55 of this Court’s Modified Remedial Order and Partial Judgment, Permanent Injunction, and Order Appointing Court Monitor, as modified following appeal, dated June 6, 2013 (the “Modified Remedial Order”) (Docket #1143), Mark S. Cohen, in his capacity as Court Monitor (the “Monitor”) in the above-captioned matter, respectfully submits the Monitor’s Eighth Periodic Report to the Court.

I. Executive Summary

This report summarizes activities relevant to the City of New York’s (“City”) compliance with the Modified Remedial Order from March 10, 2014, when the Monitor’s Seventh Periodic Report was filed, to June 10, 2014.

Part II discusses the recent agreement to settle the disparate treatment claims brought by the Vulcan Society as Plaintiffs-Intervenors, with an emphasis on aspects of the proposed settlement that may affect the Monitor’s duties.

Part III discusses the graduation on June 3, 2014 of a class of probationary firefighters from the Fire Academy. Members of this class (the “January 2014 Class”) were sworn into the Academy on January 27, 2014, and included probationary firefighters who took Open Competitive Exam 2000, which was developed in the course of this litigation. Among other things, Part III reviews statistics regarding various aspects of the January 2014 Class.

Part IV reviews progress made by the City, in consultation with the other Parties and the Monitor, toward creation of a comprehensive data management system. The ultimate goal is to create a database capable of collecting and tracking information from all stages of the New York City Fire Department’s (“FDNY”) recruitment and hiring process. The City has made important progress towards that goal, and the Monitor anticipates that work on this project will continue.

Part V discusses developments relating to the Modified Remedial Order's provisions on recruitment, including ongoing monitoring of the City's compliance efforts and upcoming meetings and reports that will assess the status of those efforts.

Part VI contains a similar discussion with respect to the City's EEO programs. Part VI also discusses issues relating to alleged retaliation against firefighters who participated in or benefited from this litigation. Among other things, this section discusses the Monitor's ongoing assessment of the FDNY's investigation of several specific instances of alleged retaliation in firehouses and at the Academy, as well as steps taken by the City to disseminate clear and consistent anti-retaliation and anti-hazing messages throughout the FDNY. Finally, Section VI discusses recent modifications to the materials used in EEO training of FDNY personnel.

Part VII provides an update on the screening of candidates' background and qualifications by the Candidate Investigations Division ("CID") and Personnel Review Board ("PRB").

Part VIII summarizes additional issues addressed by the Monitor and the Parties in the course of regular conference calls and ongoing correspondence.

Appendix A to this Report contains an updated chart setting forth the substantive requirements of the Modified Remedial Order, the steps necessary to fulfilling these requirements, and the status of efforts by the City, the Parties, and the Monitor to complete those steps.

II. Settlement of Disparate Treatment Claims

During the period covered by this report, the Plaintiffs-Intervenors and the City entered into an agreement to settle the intentional discrimination claims brought against the City by Plaintiffs-Intervenors. The proposed settlement, which was announced on March 18, 2014 and

set forth in several filings (*see* Dkt. #1291, Dkt. #1316), received preliminary approval from the Court on April 28, 2014.¹ (Dkt. #1293) The Court will conduct a fairness hearing and other proceedings to finalize and implement the settlements.

Under the proposed terms of the settlement, the City will agree to, among other things:

- Use its best efforts to recruit African American test-takers for the firefighter civil service exam in proportions closely approximating the representation of age-eligible African American New Yorkers in the city's labor market, plus 3 percent;
- Create an executive staff position of Chief Diversity and Inclusion Officer, who will report directly to the Fire Commissioner;
- Create a Diversity Advocate position to be filled by a uniformed firefighter who will be empowered to raise concerns relating to fairness, transparency, and respect for firefighter candidates during the process and through the Fire Academy²; and
- Engage with the New York City Department of Education and colleges located in New York City to create educational and other opportunities to enhance the ability of minorities to pursue careers in firefighting. The Monitor is specifically tasked under the proposed settlement agreement with oversight of the Parties' proposals for enhancing opportunities for New York City high school and college students to join the FDNY.

¹ After remand from the Second Circuit, the liability phase of the disparate treatment proceedings was assigned to Judge Raymond Dearie of the Eastern District of New York. At the parties' request, Judge Dearie transferred oversight of the settlement of the disparate treatment claims to Judge Garaufis on March 18, 2014. (No. 13-CV-3123 (Dkt. #21).

² Lt. Michael Marshall, whom the Monitor has previously met with on several occasions, will serve as the inaugural Diversity Advocate. Going forward, the Fire Commissioner and Chief Diversity and Inclusion Officer will appoint the Diversity Advocate from among candidates screened by a panel comprised of representatives from underrepresented groups in the FDNY. *See* Dkt. #1291-1 at 3-4.

(See Proposed Order and Stipulation (Dkt. #1291-1) at 9-11.

As described by Plaintiffs-Intervenors and the City, most of these measures “will be encompassed within areas that are under Court Monitor Cohen’s supervision.” (Dkt. #1281) The Monitor has already begun to discuss with the Parties how to incorporate implementation of the disparate impact settlement within the Monitor’s existing role in monitoring the FDNY’s policies and procedures for hiring entry-level firefighters pursuant to the Modified Remedial Order. The Monitor plans to meet with relevant FDNY personnel as well as the Diversity Advocate and counsel for the Parties on June 23 and June 24, 2014. Further, the Monitor will seek to meet with the Chief Diversity and Inclusion Officer, once appointed, consistent with the Monitor’s role under the Modified Remedial Order. The Monitor also plans to meet again with leaders of the Vulcan Society.

III. Graduation of the January 2014 Academy Class

A. Overview

The January 2014 Class graduated from the Fire Academy on June 3, 2014. This is the second class to include candidates who took the entry-level firefighter examination referred to as Open Competitive Exam 2000. The Court approved the rank-order use of Exam 2000 in September 2012 to create an eligible hire list. (Dkt. #986.)

In remarks at the graduation ceremony for the January 2014 Class, City and FDNY officials emphasized the benefits to be gained from the class’s diversity. Mayor de Blasio stated that “[t]his is a class that absolutely looks like New York City, and that is a beautiful thing.” He characterized the class as “another step towards a stronger FDNY; an FDNY that recruits the very best from all of our neighborhoods, from all walks of life.” Mayor de Blasio also stressed

the “extraordinarily rigorous training” provided to this group of probationary firefighters, and said that “the talent that comes of classes in the past is going to come out of this class too.”

Then-Commissioner Cassano stated that the January 2014 Class “raised the bar, and it’s this diversity that makes this department stronger than ever.” Chief of Department Edward Kilduff said it was “the best probie class in years.”

B. Composition of the January 2014 Class and Other Data

At the Monitor’s request, the City provided the Monitor and the Parties with data on the composition of the January 2014 Class. In addition, the City provided the Monitor and the parties on a weekly basis with data regarding probationary firefighters who were terminated or resigned from the Academy, including the reasons for the termination or resignation. On weekly status calls, the Monitor and the Parties discussed these statistics as well as issues relating to specific probationary firefighters and groups of probationary firefighters in an effort to ensure that all candidates were given a meaningful opportunity to succeed.

The graduating class contained a total of 286 probationary firefighters. As shown in Table 1, below, almost 16.8% were black; 25.2% were Hispanic; 3% were Asian; and 54.9% were white.

| Table 1: January 2014 Class | | |
|------------------------------------|------------|-------------|
| Race | No. | Pct. |
| Black | 48 | 16.8% |
| Hispanic | 72 | 25.2% |
| Asian | 9 | 3.1% |
| White | 157 | 54.9% |
| Total | 286 | 100% |

The January 2014 Class included three subgroups: (i) priority hires, meaning black and Hispanic candidates who took one of the past exams that the Court found had an unlawful disparate impact and who also successfully completed the same entry-level firefighter selection

process as all other applicants, including taking and passing Exam 2000 as required by this Court's Final Relief Order (Dkt. #1012 at 12); (ii) EMS promotional candidates, meaning those who took and passed Exam 2500; and (iii) open competitive candidates who took and passed Exam 2000. Priority hires made up 15% of the January 2014 Class, promotional candidates made up 6.9%, and open competitive candidates made up 78.1%.³ Notably, blacks and Hispanics together made up nearly one-third of all open competitive candidates.

Resignations and Terminations During the Academy. When the January 2014 Class was sworn in, it contained 322 probationary firefighters. Ten of those who entered the Academy went on medical leave during training, 25 resigned for various reasons, and 1 was terminated. Of the 26 probationary firefighters who resigned or were terminated, 16 were priority hires, 6 were open competitive candidates, and were promotional hire candidates. Table 2 compares resignations and terminations from the July 2013 Class and January 2014 Class according to category of candidate.

| Table 2: Academy Resignations and Terminations: July 2013 and January 2014 Classes Compared by Category | | | | | | | |
|--|-----------------------|-------------|-------------------------------|-------------|------------------------------------|-------------|--------------|
| | Priority Hires | | Promotional Candidates | | Open Competitive Candidates | | Total |
| | No. | Pct. | No. | Pct. | No. | Pct. | No. |
| July '13 | 34 | 54% | 27 | 43% | 2 | 3% | 63 |
| Jan. '14 | 16 | 62% | 4 | 15% | 6 | 23% | 26 |
| Total | 50 | 56% | 31 | 35% | 8 | 9% | 89 |

Additionally, 3 of those who resigned or were terminated were black, 14 were Hispanic, and 9 were white. Table 3 shows the racial breakdown of probationary candidates who resigned or were terminated in the July 2013 Class and the January 2014 Class.

³ As would be expected, the proportion of priority hires and promotional candidates in the January 2014 Class is substantially lower than in the July 2013 Class, of which 38% were priority hires and 56% were promotional candidates.

| Table 3: Academy Resignations and Terminations: July 2013 and January 2014 Classes Compared by Race | | | | | | | | | |
|--|--------------|-------------|-----------------|-------------|-------------------------------|-------------|--------------|-------------|--------------|
| | Black | | Hispanic | | Asian / Native Am. | | White | | Total |
| | No. | Pct. | No. | Pct. | No. | Pct. | No. | Pct. | No. |
| July '13 | 22 | 35% | 26 | 41% | 4 | 6% | 11 | 17% | 63 |
| Jan. '14 | 3 | 12% | 14 | 54% | 0 | 0% | 9 | 35% | 26 |
| Total | 25 | 28% | 40 | 45% | 4 | 4% | 20 | 22% | 89 |

Status of Civil Service Lists. A total of 25 priority hires are still eligible for consideration. Of these 25 candidates, 11 are black and 14 are Hispanic. Fifty-six black priority hire candidates and 73 Hispanic priority hire candidates have been appointed.

A total of 41 promotional hire candidates remain eligible for consideration, and a total of 38,695 open competitive candidates who took Exam 2000 remain eligible for consideration.

July 2014 Class. The FDNY is currently finalizing the roster for the July 2014 Academy class. As with the two prior Academy classes, the Monitor is evaluating that selection process as part of its overall review of the hiring and selection process as set forth in the Modified Remedial Order.

IV. Data Collection and Analysis

A continued theme in the Monitor's periodic reports and communications with the City has been the importance of collecting and analyzing data regarding the FDNY's recruitment, attrition mitigation, hiring, and EEO activities. *See, e.g.,* First Periodic Report (Dkt. #823) at 20; Second Periodic Report (Dkt. #892) at 20; Fifth Periodic Report (Dkt. #1198) at 9-13; Sixth Periodic Report (Dkt. #1249) at 18-19. The Monitor has recommended that the City create an end-to-end database that would allow the FDNY to track prospective candidates from the first time they express interest in applying to be entry-level firefighters through the exam, candidate screening process, and Academy. *See* Fifth Periodic Report (Dkt. #1198) at 9-13, 35, 46-47; Sixth Periodic Report (Dkt. #1249) at 18-19, 32-34, 54-55; Seventh Periodic Report (Dkt.

#1280) at 22-24. Such a database would facilitate efforts to identify which recruitment activities are most effective and most cost-efficient in attracting successful minority candidates and the points at which attrition of minority candidates is highest. Ideally, these findings could be incorporated in the design of future recruitment and hiring programs.

Creating such a database requires changing numerous practices and eliminating certain existing inefficiencies. To begin with, much of the data was previously collected, if at all, in ways that make analysis difficult. For example, the FDNY's Office of Recruitment and Diversity's ("ORD") prior practice at recruitment events was to collect information through paper Expression of Interest ("EOI") cards, which prospective applicants complete by hand. Such data can be sorted and reviewed only after being manually entered. In addition, certain data that already exists in electronic form is maintained by different agencies and offices in often incompatible formats. To assist the Monitor and the Parties in assessing the effectiveness of the FDNY's recruitment activities and screening process, the City has had to collect data from the Department of Citywide Administrative Services ("DCAS") and several FDNY divisions, including ORD, the Candidate Investigation Division ("CID"), the Bureau of Health Services ("BHS"), and the Bureau of Training. *See* Fifth Periodic Report (Dkt. #1183) at 10-13; *see also* Sixth Periodic Report (Dkt. #1249) at 33-34.

Over the past several months, the City, the other Parties, and the Monitor have worked together to design a spreadsheet that will capture information from these various sources in a single place. *See* Seventh Periodic Report (Dkt. #1280) at 23. Based on these efforts, the City has created a template for the spreadsheet and begun to populate it with data from the January 2014 Class. The Monitor anticipates continuing to work with the City and the other Parties to ensure that the spreadsheet is fully populated and consistently maintained, that additional sources

of data, such as EOI information and other recruitment data, are properly developed and incorporated, and that the City makes full use of this resource. The assistance of the City's recently created data analytics group will be central to the success of this effort. *See* Sixth Periodic Report (Dkt. #1249) at 19, 32-34; Seventh Periodic Report (Dkt. #1280) at 23.

The Monitor views the launch of the spreadsheet as an important milestone towards goals recommended in prior periodic reports and discussed with the City. In particular, the Monitor encourages the City to continue work towards the development of a fully integrated database that would allow each candidate's progress to be tracked from the first contact during the recruitment process through all stages of the hiring process and the Academy.

V. Recruitment

A. Monitoring of Efforts to Enhance and Reform Recruitment Practices

1. The City's Recruitment Report

The Modified Remedial Order requires the City to submit a report that, among other things, describes and evaluates the FDNY's existing strategies and programs for recruiting black and Hispanic firefighters, identifies best recruitment practices, and recommends changes and additional tactics. *See* Modified Remedial Order ¶ 26. The City filed its final Recruitment Report (Dkt. #1166) (the "Recruitment Report") on July 15, 2013. The report recommended a series of enhancements to the FDNY's recruitment activities, including creating a "Strategic Diversity and Inclusion Plan," increasing the use of "[d]ata-driven decision making," establishing "measurable short-term and long-term goals," expanding outreach efforts to high schools and other community institutions, and building on prior enhancements to recruitment and filing-day events. City's Recruitment Report (Dkt. #1166) at 9-21, 52-61. The Recruitment Report also assessed existing efforts to prepare prospective candidates for the written exam and

minimize the attrition of minority candidates in the post-exam screening process and recommended various improvements to such efforts. *See id.* at 24-27.

2. Implementation of Recommended Changes

The Monitor's Fifth and Sixth Periodic Reports set forth the Monitor's preliminary views regarding the City's Recruitment Report. *See* Fifth Periodic Report (Dkt. #1198) at 13-35; Sixth Periodic Report (Dkt. #1249) at 32-45. In those reports and elsewhere, the Monitor has noted the City's progress in the area of recruitment in prior reports, including an increase in the proportion of black and Hispanic applicants who took Exam 2000 as compared to prior exams.

a. *Execution of Remedial Steps.*

At the same time, the Monitor has noted the importance of complete and prompt execution of initiatives set forth in the Recruitment Report and required by the Modified Remedial Order. *See* Sixth Periodic Report at 19-21. The City has made progress on these initiatives. However, the City has not yet implemented all of the recommendations contained in its Recruitment Report. For example, the Recruitment Report described plans to increase the use of technology and social media in the recruitment process; to use an outside firm to help design the next advertising campaign; to analyze data from past recruitment activities, such as outreach events and filing-day activities, in an effort to improve future campaigns; and to implement or consider various improvements to its pre-exam and pre-Academy training efforts. *See* City's Recruitment Report (Dkt. #1166) at 52-61. The Monitor also recommended that the City formulate more concrete plans and establish (and disclose to the Monitor) the necessary budget to ensure those plans are implemented. *See* Fifth Periodic Report (Dkt. #1198) at 14-22; Sixth Periodic Report (Dkt. #1280) at 32-36. The City has advised that it is in the process of implementing these plans; at this point they are not complete.

The City has indicated that it believes it has sufficient time to complete these initiatives in advance of the next recruitment cycle, which will take place beginning in 2015, with the next exam to be administered in 2016. Several of these measures, however, may well take time to complete. These include planning and executing a social media strategy, procuring the hardware and developing the software necessary to automate the EOI process and aspects of the filing process, and using data from previous recruitment campaigns to create more targeted and effective tactics for the next campaign. The Monitor recommends that the City move promptly toward completing these tasks.

b. The Monitor's Requests for Information on Remedial Steps

In prior reports, the Monitor noted that the City's Recruitment Report does not provide certain information required by the Modified Remedial Order or recommend steps towards completing tasks assigned by the Modified Remedial Order. *See, e.g.*, Sixth Periodic Report (Dkt. #1249) at 31-45. For example, Paragraph 26 of the Modified Remedial Order requires the City to conduct a cost-benefit analysis of its recruitment activities and to identify specific budget requirements for carrying out the recommendations of the Recruitment Report. Similarly, Paragraph 29 of the Modified Remedial Order requires the City to "specifically indicate how it plans to carry out the recommendations in the report, providing a specific timetable for those recommendations that cannot be carried out immediately." In addition, the Monitor has consistently asked the City to provide updates on the status of initiatives described in the Recruitment Report, recommended that the City consider additional steps, and requested a range of information. *See* Monitor's Fifth Periodic Report (Dkt. #1198) at 13-35; Sixth Periodic Report (Dkt. #1249) at 31-45; Seventh Periodic Report (Dkt. #1280) at 3-6.

The City's responses to these requests have included a meeting with the Parties and representatives of ORD on October 24, 2013 and subsequent written updates on its recruitment

activities. *See* Seventh Periodic Report (Dkt. #1280) at 4. Several of the disclosure obligations relate to ongoing projects and are continuing in nature. Nevertheless, the City has not yet provided all of the information required by the Modified Remedial Order or requested by the Monitor. The Monitor understands that the City continues to work toward fulfilling these disclosure obligations, and the Monitor will work with the City and the Parties to ensure compliance with the Modified Remedial Order. Among other things, as discussed below, the Monitor will host meetings with key FDNY personnel as well as counsel for the Parties on June 23 and June 24, 2014, with the goal of gathering information on the status of remedial efforts and discussing plans for finalizing those efforts. The Monitor will provide the City with specific questions in advance of those meetings, and will continue to follow up to ensure the City provides complete information on an ongoing basis.

B. Next Steps

The City has informed the Monitor that the next civil service hiring list for the position of firefighter must be available in June 2017. Meeting that deadline will require the City to initiate a new recruitment campaign as early as the spring of 2015, with planning beginning as early as the summer of 2014. Toward that end, the Monitor will continue to assess the City's efforts to enhance its recruitment activities.

1. Responses to the City's Recruitment Report

Under Paragraph 30 of the Modified Remedial Order, the Monitor is required, and the other Parties are permitted, to file a response to the City's Recruitment Report. The Monitor's response must "explain whether the Monitor believes the City's final report is sufficient, and shall recommend to the court any additional action the Monitor believes is necessary to accomplish the remedial purposes of this Order." Modified Remedial Order ¶ 30.

As discussed in the Monitor's Seventh Periodic Report, the timing of those responses will be governed by the resolution of an ongoing dispute concerning disclosure of information relating to both the Recruitment Report and the EEO Report (the "Consultant Discovery Dispute"). *See* Seventh Periodic Report (Dkt. #1280) at 6-7. In brief, Plaintiffs-Intervenors have requested certain documents prepared by experts whose research and analysis the City relied upon in preparing the final Recruitment and EEO Reports. *See* Sixth Periodic Report (Dkt. #1249) at 56-57; Seventh Periodic Report (Dkt. #1280) at 5-6. The Parties, with the Monitor's assistance, have tried to resolve the Consultant Discovery Dispute without the need for involvement by the Court.

In light of these ongoing discussions, the Court on May 2, 2014 granted the Monitor's request (which was joined by the City and the other Parties) to hold the Monitor's recommendations in abeyance pending resolution of the Consultant Discovery Dispute. (Dkt. #1326). The City has provided certain information to the Parties, and discussions regarding final resolution of the dispute are continuing. The City has also provided the Monitor with certain additional material relating to the work of the consultants. The Monitor has reviewed the materials provided by the City and is hopeful that it can use this information to facilitate a final resolution of the Consultant Discovery Dispute in the near future. The City will provide additional information regarding its compliance with the provisions of the Modified Remedial Order relating to the Recruitment and EEO Reports in meetings planned for June 23 and June 24, 2014 (which are discussed immediately below). The Monitor intends to set a schedule for the Parties' and the Monitor's formal responses to the Recruitment Report following the June 23 and 24, 2014 meetings, subject to the Court's approval.

2. Meetings with Parties and Recruitment Personnel

The recruitment portions of the meetings to be hosted by the Monitor on June 23-24, 2014 will be attended by counsel for all Parties, Assistant Commissioner Michele Maglione of the Office of Recruitment and Diversity, representatives of the FDNY Analytics Unit, and Lt. Marshall, the FDNY's recently appointed Diversity Advocate. The purpose of the meeting will be to assess the City's progress towards its goals and toward compliance with the Court's orders. A similar meeting held in October 2013 offered a useful way to assess the City's progress towards its stated goals and toward full compliance with the Court's orders. *See* Sixth Periodic Report (Dkt. #1249) at 31-32. The Monitor expects the June 23-24 meetings to be similarly productive.

VI. EEO and Retaliation

A. Assessing and Enhancing EEO Compliance Programs

1. The City's EEO Report

Paragraph 43 of the Modified Remedial Order requires the City to submit a report that, among other things, identifies and evaluates the FDNY's existing EEO policies and practices, recommends improvements in various areas, identifies budgetary and other barriers to implementing these recommendations, and provides a specific timetable for implementation. *See* Modified Remedial Order ¶¶ 43, 46. The City filed its final EEO Report (the "EEO Report") (Dkt. #1167) on July 15, 2013, together with the Recruitment Report. The EEO Report recommended a series of enhancements to the FDNY's EEO programs, including more frequent EEO training, standardization of the EEO Office's investigative procedures, periodic internal and external reviews of data regarding EEO compliance, and measures designed to hold firehouse leaders more directly accountable for EEO violations.

2. Monitoring the Implementation of Recommended Changes

The Monitor's Fifth and Sixth Periodic Reports set forth the Monitor's preliminary reactions to the City's EEO Report. In those reports and in other communications with the City, the Monitor requested that the City provide updates on the status of initiatives described in its EEO Report, recommended that the City consider additional steps, and requested certain information. *See* Fifth Periodic Report (Dkt. #1198) at 13-35; Sixth Periodic Report (Dkt. #1249) at 45-56. The Monitor reiterated those requests in February 2014 and March 2014. *See* Seventh Periodic Report (Dkt. #1280) at 4-5. In addition, ¶ 46 of the Modified Remedial Order requires the City to "specifically indicate how it plans to carry out the recommendations in the [EEO Report], providing a specific timetable for those recommendations that cannot be carried out immediately."

The City has been providing information required by the Modified Remedial Order and requested by the Monitor on an ongoing basis, including in a meeting among counsel for the Parties, the Monitor, and Assistant Commissioner for EEO, Margo Ferrandino on October 29, 2013. The City has also provided written responses to specific questions and requests from the Monitor. As with information regarding recruitment, however, the City has not yet fulfilled all of its disclosure requirements. The Monitor hopes to receive additional information regarding the status of the City's recommended changes to its EEO activities, and anticipates working with the City and the other Parties to implement those changes. Among other things, these include:

- Measures to increase accountability of officers for EEO violations and EEO climates within their units, *see* EEO Report (Dkt. #1167) at 45-46; Sixth Periodic Report (Dkt. #1249) at 55-56;

- Formalized policies and procedures for the investigation of EEO complaints by the EEO Office and the FDNY's Bureau of Investigations and Trials ("BITS"), as well as more comprehensive data and analysis regarding past investigative activities, *see* EEO Report (Dkt. #1167) at 55-57; Fifth Periodic Report (Dkt. #1198) at 37-39, 44-45, Sixth Periodic Report (Dkt. #1249) at 49-56;
- EEO trainings of BITS, EEO and legal staff by consultants from Cornell University, *see* Sixth Periodic Report (Dkt. #1249) at 47-49; and
- Efforts to ensure the EEO office plans for and receives the resources necessary to comply with the Modified Remedial Order. *See* EEO Report (Dkt. #1167 at 36-37; Sixth Periodic Report (Dkt. #1249) at 46-47.

3. Responses to the EEO Report

Under ¶ 47 of the Modified Remedial Order, the Monitor is required, and the other Parties are permitted, to file a response to the City's EEO Report. The Monitor's response must "explain whether the Monitor believes the City's final report is sufficient, and shall recommend to the court any additional action the Monitor believes is necessary to accomplish the remedial purposes of this Order." Modified Remedial Order ¶ 47. As discussed above, the responses will be filed on a schedule to be determined after the resolution of the Consultant Discovery Dispute and subject to the Court's approval. *See* Part V.B, *supra*.

B. Retaliation Issues

1. Overview

A central component of the Modified Remedial Order is the requirement that the City take steps to detect, deter, and prevent retaliation against persons who have been affected by the litigation or the Court's relief. Specifically, the Modified Remedial Order includes a basic prohibition on retaliation, *see* Modified Remedial Order ¶ 17, and a requirement that the City

recommend and implement measures to “deter and prevent acts of retaliation or discrimination against any current and future City of New York employee because of their involvement with this litigation.” *See id.* ¶¶ 43(g)-(h), 47. More generally, the Modified Remedial Order requires the City to assess and enhance the FDNY’s EEO function and to eliminate policies and procedures that “perpetuate the effects” of hiring procedures that have had a disparate impact on black and Hispanic firefighter candidates. *See id.* ¶¶ 19, 43.

In light of these mandates, the Monitor believes allegations of retaliation must be taken very seriously. Toward that end, it is important to fully implement an investigative and disciplinary process that is (and is perceived to be) fair and effective, and which results in real consequences for those found to be involved in retaliation and other EEO violations. Additionally, an effective anti-retaliation effort must do more than respond to such allegations after they arise. It is essential that appropriate anti-retaliation, anti-harassment, and anti-hazing messages are communicated from and to leadership at every level, from the Fire Commissioner to the battalion chief to the firehouse level. *See also, e.g.,* Sixth Periodic Report (Dkt. #1249) at 10-18. An EEO training program is also important in this respect, as are measures to hold captains, battalion chiefs, and others accountable for acts of retaliation and other EEO violations in their firehouses. The City has planned and begun to implement steps that will advance many of these goals. *See* Part VI.A.2, *supra*; Part VI B.3, Part VI.C, *infra*. The Monitor anticipates continuing to work with the City and the Parties on all of these steps in compliance with the provisions of the Modified Remedial Order.

2. Investigations of Specific Allegations of Retaliation

The Parties have previously brought to the Monitor’s attention several instances of alleged retaliation against individuals who participated in the underlying litigation or who were eligible for relief under the Court’s orders. The Monitor has previously issued reports and

recommendations relating to Plaintiffs-Intervenors' request for certain documents relating to the FDNY's investigation of these complaints. *See, e.g.*, Seventh Periodic Report (Dkt. #1280) at 8.

At the request of Plaintiffs-Intervenors and the United States, the Monitor has assessed the FDNY's investigation of specific allegations of retaliation on a contemporaneous basis. The investigations are being conducted by both the EEO Office and BITS. The Monitor has spoken with the investigators on these matters several times and reviewed certain documents and other relevant material as part of its oversight of these investigations. In addition, the City has provided weekly updates on the progress of these investigations to the Monitor and the Parties. The Monitor has also reviewed the City's response to allegations of retaliation or other discriminatory treatment of probationary firefighters at the Academy. EEO and BITS are actively investigating one of these incidents, and the City provides regular updates to the Monitor and the Parties.

3. Anti-Retaliation Messages from Department Leadership

The Monitor and the Parties have also requested that the City disseminate clear and consistent anti-retaliation, anti-hazing, and anti-discrimination messages throughout the department. In March 2014, the City advised the Monitor and the other Parties that the FDNY will re-issue its anti-retaliation and anti-hazing policies to all FDNY personnel on a quarterly basis. In addition, the FDNY, in consultation with the Monitor and the other Parties, has established a protocol for delivering messages at all levels of department leadership. Beginning in April 2014, then-Commissioner Cassano and the Chief of Department began to issue anti-discrimination and anti-hazing messages at meetings with citywide tour commanders and other staff chiefs. Those who attend the meetings are required to pass these statements down to the next tier of leadership, which includes borough and division commanders, and instruct those officers to communicate the messages to division commanders and battalion chiefs. Staff chiefs

are required to certify in writing to the Chief of Department that they have carried out these instructions. The City has also advised that battalion chiefs have issued and will continue to issue anti-retaliation and anti-hazing messages to captains and lieutenants at the firehouse level, with instructions that the communications be passed on to line-level firefighters.

In addition, Mayor de Blasio and senior department leaders have issued a series of strongly pro-diversity statements in recent months. As discussed, the Mayor, then-Commissioner Cassano, and Chief of Department Kilduff applauded the diversity of the January 2014 Class and the positive impact of diversity on the FDNY at the June 3, 2014 graduation ceremony. On May 9, 2014, Mayor Bill de Blasio announced the appointment of Daniel Nigro to serve as Fire Commissioner of the FDNY. Mr. Nigro is a 32-year veteran of the FDNY and served as Chief of Department after September 11, 2001. In announcing the appointment, Mayor de Blasio stated that “[o]ur administration is committed to building on this department’s impressive record, increasing diversity in the ranks, and improving response time—and I know Daniel has what it takes to lead the FDNY forward.” Mr. Nigro stated that “[t]he Mayor has outlined a strong vision for the future of this department—one that provides for all our residents equally and reflects our city’s diverse communities—and I look forward to making this vision a reality.” Mr. Nigro was sworn in as Fire Commissioner on June 9, 2014.

C. EEO Training

Another recent step taken by the EEO Office was the redesign of aspects of its standard EEO training program to enhance the focus on retaliation issues. As previously discussed, the EEO Office has substantially changed its EEO training program in recent years, both in response to the Modified Remedial Order and on its own initiative under the leadership of Assistant Commissioner Ferrandino. *See, e.g.*, Sixth Periodic Report (Dkt. #1249) at 47-49. The EEO Office currently provides such training to, among others, all probationary firefighters at the

Academy, to officers at the time of their promotion, and to all firefighters on an annual basis.

Assistant Commissioner Ferrandino initiated revisions to the training curriculum shortly after her appointment in 2011, and additional revisions were made based on input from the EEO consultant, Rossein Associates. In addition, as noted, the FDNY is in the process of retaining consultants from Cornell University to provide training and assistance to EEO, BITS and legal staff.

The most recent changes principally involved the addition of training modules relating to retaliation. The City has provided the current set of slides used in the training to the Monitor and the Parties, and the Monitor is in the process of reviewing the material with the assistance of its expert consultant, Manitou, Inc. The Monitor will provide feedback to the City in the coming weeks, and the other Parties have indicated they will do the same.

VII. Background Screening by the CID and PRB

A. Overview

The Modified Remedial Order prescribes a number of measures regarding the candidate screening process performed by the CID and PRB. *See* Modified Remedial Order ¶¶ 37-42. As detailed in previous reports by the Monitor, the CID gathers and reviews information on each candidate's background and determines if the candidate meets the basic qualifications set forth in the Notice of Examination. *See generally* Monitor's First Interim Report (Dkt. #1023). If the background investigation reveals certain negative information, the CID forwards a summary of the candidate's background to the PRB for a second level of evaluation. *Id.* The PRB reviews the file and determines whether the candidate should be approved to progress to the next stage of the hiring process, be deemed not qualified for one of several reasons, or be approved subject to either an extended probationary period or a stipulation requiring more frequent drug and alcohol

testing. *Id.* Candidates who are not referred to the PRB advance to the next step in the hiring process.

The CID and PRB review process is governed by policies and procedures developed by the Parties and the Monitor pursuant to Paragraphs 37-38 of the Modified Remedial Order. *See id.* As described in detail in the Monitor's Sixth and Seventh Periodic Reports, the CID Guidelines were revised in December 2013 in response to the City's concern that too many candidates whose backgrounds should not disqualify them from the hiring process were being referred to the PRB. *See* Sixth Periodic Report (Dkt. #1249) at 26-28; Seventh Periodic Report (Dkt. #1280) at 14-16. The FDNY began applying the revised CID Guidelines upon approval by the Monitor in December of 2013.

B. Recent Developments and Ongoing Issues

1. Appointment Subject to Stipulation

The PRB has the authority to appoint a candidate (*i.e.*, allow the candidate to progress to the next stage of the hiring process), disqualify the candidate based on his or her background, or appoint the candidate subject either to a substance testing stipulation and/or an extended probationary period. A substance testing stipulation requires more frequent drug and alcohol testing than that administered to other firefighters, and an extended probationary period lengthens the normal probationary period for entry-level firefighters from 18 months to up to 30 months.⁵

The United States and Plaintiffs-Intervenors requested that the PRB be given more specific guidance regarding when and how such measures should be administered. In

⁵ It should be noted that priority hires are subject to a 12-month probationary period, rather than an 18-month probationary period, in accordance with the policies in place for the entry-level exams they originally took. Accordingly, priority hires who are subjected to a 30-month probationary period have their periods of probation extended by 18 months, while non-priority hires subject to the same stipulation only suffer a 12-month extension of their probationary periods.

consultation with the Monitor and the other Parties, the City has proposed language for inclusion in the PRB Guidelines.⁶ The Monitor anticipates continuing to work with the Parties to decide whether such a change should be adopted and, if so, to finalize the language.

In addition, the Parties and the Monitor agreed upon language for a notice to be provided to candidates who are appointed subject to a substance testing stipulation or extended probation.

2. Notice Provided to Parties Deemed Not Qualified

The Parties and the Monitor have also discussed the procedure by which candidates who are declined appointment by the PRB are notified of the PRB's decision and what information they are given. The Parties and the Monitor ultimately worked together on a revised version of the Notice of Proposed Disqualification form, which will provide a brief description of the reason for the disqualification, details on how the candidate may appeal the decision, and other information.

3. The Monitor's Attendance at PRB Meetings

In accordance with Paragraph 39 of the Modified Remedial Order, the Monitor has attended the PRB meetings that have taken place since the Second Circuit lifted the stay on the original Remedial Order in May 2013. Since the Monitor filed his Seventh Periodic Report, he has attended all PRB meetings held to consider candidates for the July 2014 Academy class.

Paragraph 40 of the Modified Remedial Order states that, "after such time as the Monitor believes it has had sufficient time to [make observations of PRB meetings]," the Monitor shall file a report "critiquing the performance of the PRB and the information provided to it by CID,"

⁶ The City has proposed a section titled "Appointment by Stipulation" be added as Section VII(J) to the PRB Guidelines with the following language: "After reviewing a candidate's background, the PRB may determine that the candidate is not suitable for appointment but that the concerns preventing appointment can be adequately addressed by an extended probationary period not to exceed 30 additional months or by requiring substance abuse testing. If the PRB makes such a determination, the candidate may be offered appointment subject to stipulating to the modifications recommended by the PRB."

and recommending any changes the Monitor believes are necessary to ensure thorough and fair consideration of necessary information. The Monitor has now observed substantially all PRB meetings relating to candidates for the July 2013, January 2014, and July 2014 Academy classes, and has also collected CID and PRB data for those classes. The Monitor is in the process of analyzing that data and formalizing its observations of the process in order to prepare the report required by Paragraph 40.

VIII. Additional Issues

On weekly calls and in correspondence, the Parties and the Monitor consider a range of issues relating to enforcement of the Modified Remedial Order. In nearly all instances, these discussions allow the parties to resolve disputes and exchange information without the need for a formal report and recommendation from the Monitor to the Court. During the period covered by this report, these issues have included the following:

- the City's production of data relating to candidate attendance at training sessions for the Candidate Physical Abilities Test ("CPAT") and at appointments to take the CPAT itself, *see* Monitor's Sixth Periodic Report (Dkt. #1249) at 39-40; Monitor's Fifth Periodic Report (Dkt. #1198) at 7-8, 10, 25-26;
- the Plaintiffs-Intervenors' request for information regarding climate surveys administered to recent Academy classes, *see* Seventh Periodic Report (Dkt. #1280) at 21;
- the contents of a communication to be distributed to successful priority hire candidates explaining their retroactive seniority benefits;
- the contents of Notices of Proposed Disqualification to be provided to candidates who were disqualified from the hiring process for medical reasons;

- the City's response to the United States' request for information on the procedures and criteria used in reviewing candidates' medical fitness, *see* Sixth Periodic Report (Dkt. #1249) at 59;
- the United States' request for information relating to disciplinary actions against claimants that might implicate EEO concerns as well as EEO complaints filed by claimants against the FDNY; and
- the Monitor's approval of the City's proposal to retain PSI Services, LLC as its expert consultant to develop the next written examination. *See* Monitor's Seventh Periodic Report (Dkt. #1280) at 18-19.

Dated: June 11, 2014
New York, New York

/s/
Mark S. Cohen

APPENDIX A

**MODIFIED REMEDIAL ORDER
STATUS CHART**

| MRO Provision | | Status |
|---|---|---|
| GENERAL TERMS | | |
| <i>Approval of Steps in the Selection Process</i> | | |
| ¶ 16 | The City of New York shall not take any step in any process for the selection of entry level firefighters, or use any examination as part of such process, without first obtaining the approval of the Court Monitor (the “Monitor”) through the processes specified by the Monitor | Ongoing |
| ¶ 22 | The Court Monitor shall adopt a schedule which requires the City of New York to notify the Monitor and the Parties in writing before commencing any step in a process for the selection of entry-level firefighters.... | Revised schedule in process |
| ¶ 23 | The Court Monitor may require the City to disclose any information relating to any step in any process for the selection of entry-level firefighters before allowing the City to proceed to any step in the process. The Court Monitor may require the City to establish that it has satisfied conditions specified by the Monitor.... | Ongoing |
| <i>Retaliation</i> | | |
| ¶ 17 | The City of New York shall not retaliate against or in any way adversely affect the terms or conditions of employment of any person because he or she has complained of discrimination against blacks or Hispanics on the basis of their race or national origin in the selection and hiring of entry-level firefighters, or has participated in the investigation or litigation of any claim or allegation of such discrimination, or has sought or obtained relief from the court in this case. | Ongoing. <i>See</i> Seventh Periodic Report, Part II; Eighth Periodic Report Part VI.B. |
| <i>Non-discrimination</i> | | |
| ¶ 18 | The City of New York shall not discriminate on the basis of race or national origin against black or Hispanic firefighter candidates in the development or implementation of any process for the selection of entry-level firefighters. | Ongoing |

| MRO Provision | | Status |
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| ¶ 19 | The City of New York shall, with reasonable diligence, take all steps necessary to eliminate all policies and procedures that are not job related or required by business necessity and either have a disparate impact on black and Hispanic firefighter candidates or perpetuate the effects of said disparate impact. | Ongoing |

| TEST DEVELOPMENT AND ADMINISTRATION | | |
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| <i>Written Exam</i> | | |
| ¶ 7 | Stating that after filing of final technical report for Exam 2000 (September 29, 2012), “[t]he Monitor ... shall have oversight over the FDNY’s use of Exam 2000 as well as over “the development of subsequent examinations to screen entry-level firefighter candidates.” Monitor's responsibilities include "monitoring the Parties’ progress in connection with the following six phases or milestones in the development and administration of Exam 2000: (i) job analysis; (ii) test development, which encompasses test design, development of exam content, content validation and pilot testing, criterion-related and construct validation, and development of various test forms and equivalency studies; (iii) test administration; (iv) analysis and scoring; (v) computation of the final test results; and (vi) preparation of the final technical report. ...” | On April 24, 2014, the Monitor approved the City's request to begin the contracting and appropriations process for development of the next written examination (which will be based on Exam 2000). . |
| ¶ 14 | The City of New York shall not use, in any way, Firefighter Exam 7029, Firefighter Exam 2043, or Firefighter Exam 6019 as part of any process for the selection of entry-level firefighters. | City has not used Exams 7029, 2043, or 6019. |

| MRO Provision | | Status |
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| ¶ 15 | The City of New York shall not use as part of any entry-level firefighter selection process, any examination that in any way results in a disparate impact upon black or Hispanic applicants and is not job related for the position of entry-level firefighter and consistent with business necessity, or does not otherwise meet the requirements of federal, state, and City EEO laws. | The Monitor has been presented with no allegations or evidence that rank use of Exam 2000 or Exam 2500 have had an unlawful disparate impact on black or Hispanic applicants among test takers whose scores made them likely to be selected for the civil service lists. |
| ¶¶ 22, 11 | <p>¶ 22: City to provide written notification before taking any step in the selection of entry-level firefighters, excluding steps relating to written exams.</p> <p>¶ 11: Defining "process for the selection of entry-level firefighters" to include "developing or validating a written or computer based examination"</p> | Same |
| <i>Establishment of Civil Service List</i> | | |
| ¶ 24 | At least 90 days prior to the establishment of any new eligible civil service list for the entry-level firefighter position, the City shall notify the Court Monitor, the United States, and the Injunctive Relief Subclass in writing that it intends to establish a new eligible list and shall provide to the Monitor, the United States, and the Injunctive Relief Subclass a detailed description of each step in the selection process from which the list was developed and of the manner in which the City intends to use the eligible list to make appointments. In addition, the City shall state in writing, separately by race (White, Black, Hispanic, American Indian/Alaskan Native, or Asian/Pacific Islander), the number of applicants who were eligible to proceed to each step in the process leading up to the establishment of the eligible list, the number of applicants to whom each step was administered, and the number of applicants who passed the step or were eligible to continue in the selection process. | Next civil service list anticipated in 2016 or 2017. See Seventh Periodic Report at 18-19. |

| MRO Provision | | Status |
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| RECRUITMENT | | |
| <i>Optional Survey</i> | | |
| ¶ 25 | ORD and DCAS, shall, in consultation with the Court Monitor, the United States, and the Injunctive Relief Subclass, design an optional survey which the City of New York shall administer to all individuals who take Exam 2000 at the time they take Exam 2000. | Complete |
| <i>Recruitment Report</i> | | |
| ¶ 26 | The City shall submit a report that: | |
| ¶ 26(a) | identifies and evaluates the effectiveness of ORD's various recruitment activities at recruiting black and Hispanic firefighter candidates against the costs of those activities | Report filed 7/15/13; complete (pending Monitor's response). See Seventh Periodic Report at 3-6; Sixth Periodic Report at 32-45; Fifth Periodic Report at 13-35. |
| ¶ 26(b) | identifies best practices for the recruitment of black and Hispanic employees generally and firefighter candidates in particular, both nationally and in New York City in particular | Same |
| ¶ 26(c) | recommends tactics ORD can use to improve the effectiveness and efficiency with which it recruits black and Hispanic firefighter candidates | Same |
| ¶ 26(d) | recommends changes to ORD's long-term black and Hispanic firefighter candidate recruitment strategy and intensive pre-exam recruitment strategy | Same |
| ¶ 26(e) | recommends measureable short-term and long-term goals for the recruitment of black and Hispanic entry-level firefighter candidates | Same |
| ¶ 26(f) | identifies the resources needed by ORD to meet its goals, and recommends minimum and ideal budgets for ORD for those fiscal years in which no firefighter examination will be administered and separate minimum and ideal budgets for ORD for fiscal years in which the City of New York will administer a firefighter examination. | Same |

| MRO Provision | | Status |
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| ¶ 27 | The City and the Court Monitor shall cooperatively develop a plan for the City's research subject to the approval of the Court Monitor.... | Complete |
| ¶ 27 | The City shall regularly update the Court Monitor on the scope and progress of its research in a written report or other format to be determined by the Court Monitor and shall inform the Court Monitor, on a schedule to be set by the Court Monitor, if the City has any difficulties acquiring information needed to complete the assigned tasks. | Complete |
| ¶ 27 | The Court Monitor may, in the Monitor's discretion, use the Monitor's authority to obtain access to individuals, documents, places, or things relating to the report. If the Monitor believes the City is not carrying out its duties he may apply to the Court for appointment of an outside consultant. | Ongoing. <i>See</i> Eighth Periodic Report, Parts V.A.2, V.B; Seventh Periodic Report at 4-5; Sixth Periodic Report at 32-44; Fifth Periodic Report at 14-35. |
| ¶ 28 | The City's final report shall be filed with the court and submitted to the Parties and Court Monitor no later than July 15, 2013. | Complete |
| ¶ 29 | The City's final report shall specifically indicate how it plans to carry out the recommendations in the report, providing a specific timetable for those recommendations that cannot be carried out immediately. | Underway. <i>See</i> Eighth Periodic Report Part V.A.2; Seventh Periodic Report at 4-5; Sixth Periodic Report at 32-44; Fifth Periodic Report at 14-35. |
| ¶ 30 | The Court Monitor shall file a response with the court 30 days after the City of New York files its report. The Monitor's response shall explain whether the Monitor believes the City's final report is sufficient, and shall recommend to the court any additional action the Monitor believes is necessary to accomplish the remedial purposes of this Order. | To come. <i>See</i> Eighth Periodic Report Part V.B.2; Seventh Periodic Report at 5-6. |
| ¶ 30 | The United States and the Injunctive Relief Subclass may also file responses with the court no later than 30 days after the City files its report. | To come. <i>See Eighth Periodic Report Part V.B.2; Seventh Periodic Report at 5-6.</i> |

| MRO Provision | | Status |
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| <i>Attrition Mitigation Plan</i> | | |
| ¶ 31 | The City, in consultation with the Court Monitor and the Parties, shall draft and implement a written plan to mitigate and diminish rates of voluntary candidate attrition between different steps of the City’s process for the selection of entry-level firefighters. The written attrition mitigation plan shall focus particularly on the steps needed to prevent “voluntary” (as that term is used currently by the FDNY) candidate attrition from disproportionately affecting the retention rates for black and Hispanic firefighter candidates during the firefighter hiring process for Exam 2000. | Ongoing. <i>See</i> Seventh Periodic Report at 9-10. City to file updated attrition mitigation following Monitor's meetings with the Parties and relevant FDNY personnel on June 23- June 24, 2014. |
| ¶ 31 | The City shall submit its first draft written attrition mitigation plan to the Parties by January 7, 2012. After the City submits its first draft written attrition mitigation plan, the Court Monitor or the Parties may propose amendments to the City’s draft plan. | Complete |
| ¶ 31 | The Parties and the Court Monitor shall subsequently discuss revisions to and implementation of the attrition mitigation plan as directed by the Court Monitor, on a schedule to be set by the Court Monitor. | Ongoing (<i>see</i> Seventh Periodic Report at 9-10). |
| ¶ 31 | The Court Monitor shall make a recommendation to the court as to whether the attrition mitigation plan, either as drafted by the City or including amendments the Court Monitor or the Parties may propose, should be adopted by the City in the Exam 2000 firefighter selection process. | To come |

| TOP TO BOTTOM ASSESSMENT | | |
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| ¶ 32 | The City of New York, in consultation with the Parties and the Court Monitor, shall conduct a comprehensive top-to-bottom assessment of all steps in its process for the selection of entry-level firefighters that evaluates the strengths and weaknesses of the City’s current selection process as a whole and of individual steps in that process. | <ol style="list-style-type: none"> 1. Some consultation took place during assessment; City's interim report will provide forum for dialogue and feedback. 2. Interim report filed December 18, 2013. <i>See</i> Seventh Periodic Report at 12-14. |

| MRO Provision | | Status |
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| ¶ 33 | The scope of the City’s review of its current entry-level firefighter selection process, and its plan to research alternative selection processes shall be subject to the approval of the Court Monitor. | Pending. <i>See</i> Seventh Periodic Report at 13-14. Monitor will resume analysis following June 23-24 meetings with Parties and counsel. |
| ¶ 33 | The City shall keep the Court Monitor and the Parties informed as to the progress of its research in regular meetings and, if the Court Monitor deems it necessary, provide written reports to the Parties and the Court Monitor, on a schedule to be set by the Court Monitor. | Progress report submitted on 1/28/13. <i>See</i> Seventh Periodic Report at 12. Interim Report filed December 18, 2013. <i>Id.</i> at 12-14. |
| ¶ 34 | Before the Fire Commissioner may file the final report on the City’s comprehensive top-to-bottom assessment, the Court Monitor must certify that the City carried out its assessment of its current entry-level firefighter selection process and researched and evaluated alternative selection processes in good faith and with reasonable diligence. | Monitor to issue decision on certification in response to Interim Report. <i>See</i> Seventh Periodic Report at 12-14. |
| ¶ 35 | By October 16, 2013, the Fire Commissioner shall file with the court the City’s final report. In the final report, the Fire Commissioner shall (i) recommend which specific actions on the adoption of alternative selection processes or the modification of the City’s current selection processes he or she will carry out immediately, (ii) provide a specific timetable for those recommendations that cannot be carried out immediately, and (iii) explain the steps required in implementing each recommendation. The final report required by this paragraph shall be signed and certified by the Fire Commissioner. | Adjourned pending resolution of discovery disputes. <i>See</i> Seventh Periodic Report at 13-14. |
| ¶ 36 | The Court Monitor ... may file a response to the Fire Commissioner’s final report with the court 30 days after the Fire Commissioner files his or her final report. Any response filed with the court shall explain whether the Monitor or Party believes the Fire Commissioner’s final report is sufficient, and shall recommend to the court any additional action the Monitor or Party believes is necessary to accomplish the remedial purposes of this Order. | Court Monitor's Response to be filed 30 days after City files Final Report. <i>See</i> Seventh Periodic Report at 13-14. |

| MRO Provision | | Status |
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| ¶ 36 | Any Party may file a response to the Fire Commissioner’s final report with the court 30 days after the Fire Commissioner files his or her final report. | Responses (if any) due 30 days after City files Final Report. |

| POST-EXAM SCREENING; CID AND PRB | | |
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| ¶ 37 | Before CID begins the process of investigating the background of any firefighter candidate, including any firefighter candidate under consideration after taking Exam 2000, the FDNY shall create and adopt written policies and procedures for CID’s operations, subject to the approval of the Court Monitor. | Complete. <i>See</i> Monitor's First Interim Report. Subject to ongoing monitoring and review by Monitor and all Parties. <i>See</i> Seventh Periodic Report at 14-15. |
| ¶ 38 | Before the PRB meets to discuss, consider, or review any firefighter candidate, including any firefighter candidate under consideration after taking Exam 2000, the FDNY shall create and adopt written policies and procedures for the operation of the PRB, subject to the approval of the Court Monitor. | Complete. <i>See</i> Monitor's First Interim Report. Subject to ongoing monitoring and review by Monitor and all Parties. |
| ¶ 39 | The Court Monitor may attend any meeting of the PRB—in person, as a nonparticipating observer—that is held to consider any person who is a candidate to be hired as an entry-level firefighter off the eligible civil service list certified using the results of Exam 2000. The FDNY shall provide the Court Monitor with copies of all materials submitted for consideration of the PRB no fewer than seven days before any meeting of the PRB. | Monitor attended substantially all PRB meetings for selection of July 2013, January 2014, and July 2014 Academy Classes. <i>See</i> Eighth Periodic Report Part VII. City has provided relevant materials for each meeting. |

| MRO Provision | | Status |
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| ¶ 40 | [A]fter such time as the Monitor believes it has had sufficient time to make such observations, the Monitor shall file a report critiquing the performance of the PRB and the information provided to it by CID, and recommending the adoption of any policies, practices, or procedures the Monitor believes are necessary to ensure that the CID adequately informs the PRB of necessary information, and that the PRB fairly considers all firefighter candidates consistent with the requirements of all applicable equal employment opportunity laws and policies. ... | New CID and PRB guidelines have been in place for two hiring cycles (July 2013 Academy class and January 2014 Academy class), and Monitor has observed PRB meetings for both cycles. Report will follow. <i>See</i> Eighth Periodic Report Part VII; Seventh Periodic Report at 14-15. Monitor's CID and PRB Report to come. <i>Id.</i> at 16. |
| ¶ 41 | The City of New York shall consider the recommendations in the Court Monitor's report on the PRB and CID, and shall file a response with the court 90 days after the Monitor's report is filed with the court. In its response, the City shall specifically indicate which of the recommendations it will carry out and how it plans to do so, providing a specific timetable for those recommendations that cannot be carried out immediately. For those recommendations the City declines to carry out, the City shall explain why it declines to carry them out, and shall identify any alternative steps it intends to take to achieve the purposes of the recommendations. | Due 90 days after Monitor's CID and PRB Report. |
| ¶ 42 | The Court Monitor shall file a reply with the court 30 days after the City of New York files its response. The Monitor's reply shall explain whether the Monitor believes the City's response to the Monitor's report is sufficient, and shall recommend to the court any additional action the Monitor believes is necessary to accomplish the remedial purposes of this Order. | Due 30 days after City's response to CID and PRB Report. |
| ¶ 42 | The United States and the Injunctive Relief Subclass may also file replies with the court no later than 30 days after the City files its response. | Due 30 days after City's response to CID and PRB Report. |

| MRO Provision | | Status |
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| EEO COMPLIANCE REFORM | | |
| <i>EEO Report</i> | | |
| ¶ 43 | The FDNY's EEO Office shall submit a final report that: | |
| ¶ 43(a) | identifies all equal employment opportunity law compliance activities currently performed by all FDNY offices, bureaus, divisions, boards, or other subdivisions, including without limitation the EEO Office, ORD, BITS, CID, and the PRB; | Report filed 7/15/13; complete (pending Monitor's response). <i>See</i> Seventh Periodic Report at 3-6; Sixth Periodic Report at 45-56; Fifth Periodic Report at 35-47. |
| ¶ 43(b) | evaluates the effectiveness of the equal employment opportunity law compliance activities currently performed by each FDNY office, bureau, division, or other subdivisions; | Same |
| ¶ 43(c) | identifies all tasks the FDNY's EEO Office ought to be performing under the City's EEO Policy; | Same |
| ¶ 43(d) | identifies all tasks the EEO Office should be performing to ensure the FDNY's compliance with applicable equal employment opportunity laws and policies in light of the violations of the equal employment opportunity laws identified by the court in its Disparate Impact Opinion (Docket Entry # 294), Disparate Treatment Opinion (Docket Entry # 385), and Exam 6019 Validity Opinion (Docket Entry # 505), and in light of the deficiencies in the FDNY's EEO compliance program identified in the court's Findings of Fact as to the Need for and Scope of Injunctive Relief (Docket Entry # 740) | Same |
| ¶ 43(e) | identifies best practices used by other offices responsible for ensuring a comparable municipal department's compliance with applicable equal employment opportunity laws and policies, and particularly, best practices used by EEO offices in other fire departments nationally | Same |
| ¶ 43(f) | recommends a detailed compliance program to be carried out by the EEO Office including specific compliance activities, and which references specific metrics and goals to be used to evaluate the EEO Office's performance in carrying out each activity | Same |

| MRO Provision | | Status |
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| ¶ 43(g) | identifies methods of detecting, deterring, and preventing acts of retaliation and discrimination against current and future City of New York employees involved with this litigation in any way ² because of their involvement with this litigation | Same |
| ¶ 43(h) | recommends specific actions for the EEO Office, and any other relevant agency of the City of New York, to take to deter and prevent acts of retaliation or discrimination against any current and future City of New York employees because of their involvement with this litigation | Same |
| ¶ 43(i) | in light of these findings and recommendations, identifies the staff and other resources needed by the EEO Office to carry out the compliance program and retaliation deterrence program recommended by the consultant, and recommends a minimum and an ideal budget for the EEO Office to successfully meet expectations under the recommended compliance program and retaliation deterrence program | Same |
| ¶ 43(j) | evaluates the FDNY's policies, procedures, and actual practices for disciplining employees found to be responsible for substantiated equal employment opportunity law and policy violations | Same |
| ¶ 43(k) | identifies procedural, organizational, cultural, logistical, resource, policy, political and other barriers to the EEO Office's ability to ensure the FDNY's compliance with applicable federal, state, and City equal employment opportunity laws and policies | Same |
| ¶ 43(l) | recommends process, organizational, and policy changes within the EEO Office to eliminate barriers to the EEO Office's ability to ensure the FDNY's compliance with applicable federal, state, and City equal employment opportunity laws and policies | Same |
| ¶ 43(m) | recommends process, organizational, and policy changes within the FDNY as a whole to eliminate barriers to the EEO Office's ability to ensure the FDNY's compliance with applicable federal, state, and City equal employment opportunity laws and policies | Same |
| ¶ 43(n) | recommends process, organizational, and policy changes within the City of New York as a whole, including DCAS and any other relevant agency, to eliminate barriers to the EEO Office's ability to ensure the FDNY's compliance with applicable federal, state, and City equal employment opportunity laws and policies. | Same |
| ¶ 44 | The City and the Court Monitor shall cooperatively develop a plan for the EEO Office's research subject to the approval of the Court Monitor. ... | Completed |

| MRO Provision | | Status |
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| ¶ 44 | The City shall regularly update the Court Monitor, on a schedule to be set by the Court Monitor, on the scope and progress of the research and shall inform the Court Monitor if the EEO Office has any difficulties acquiring information needed to complete its assigned tasks. | City provided draft report on 6/15/13; Monitor (and Parties) provided feedback on Draft EEO Report on 7/1/13. |
| ¶ 44 | The Court Monitor may, in the Monitor's discretion, use the Monitor's authority to obtain access to individuals, documents, places, or things relating to the report. If the Monitor believes the FDNY's EEO Office is not carrying out its duties he may apply to the Court for appointment of an outside consultant. | Ongoing. <i>See</i> Eighth Periodic Report Part VI.A; Seventh Periodic Report at 4-5; Sixth Periodic Report at 32-44; Fifth Periodic Report at 14-35. |
| ¶ 45 | The City's final report shall be filed with the court and submitted to the Parties and Court Monitor no later than July 15, 2013. | Completed |
| ¶ 46 | The City's final report shall specifically indicate how it plans to carry out the recommendations in the report, providing a specific timetable for those recommendations that cannot be carried out immediately. | Underway. <i>See</i> Eight Periodic Report Part VI.A; Seventh Periodic Report at 4-5; Sixth Periodic Report at 36-47; Fifth Periodic Report at 45-56. |
| ¶ 47 | The Court Monitor shall file a response with the court 30 days after the City files its report. The Monitor's response shall explain whether the Monitor believes the City's final report is sufficient, and shall recommend to the court any additional action the Monitor believes is necessary to accomplish the remedial purposes of this Order. | Monitor continues to gather information from City. Response to be filed following June 23-24, 2014 meetings. <i>See</i> Eighth Periodic Report Part VI.A.3. |
| ¶ 47 | The United States and the Injunctive Relief Subclass may also file responses with the court no later than 30 days after the City files its report. | <i>See</i> Eighth Periodic Report Part VI.A. |

| MRO Provision | | Status |
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| DOCUMENT RETENTION AND PRESERVATION | | |
| ¶ 48 | The Court Monitor, in consultation with the Parties, shall prepare and file a Document Retention and Preservation Order, for approval by the court, directing the City of New York to retain, preserve, and maintain specified broad categories of documents that are relevant to evaluating the City's compliance with this Order, including documents currently in existence and any documents which will be created in the future. | Completed |
| ¶ 48 | The Court Monitor may amend or supplement the Document Retention and Preservation Order at any time. | Technical amendments forthcoming. <i>See</i> Seventh Periodic Report at 24. |
| ¶ 49 | Following the court's issuance of the Document Retention and Preservation Order, counsel for the City of New York shall immediately issue a Document Retention and Preservation Notice advising all individuals currently subject to the Document Retention and Preservation Order of their continuing obligations under the order, and shall promptly issue a Document Retention and Preservation Notice to any individual who may subsequently become subject to the duties and obligations created by the order. | Completed |
| ¶ 49 | At least every 6 months, counsel for the City of New York shall remind individuals subject to the Document Retention and Preservation Order of their continuing obligations under the Court Monitor's order. | Ongoing. <i>See</i> Seventh Periodic Report at 24. |
| ¶ 49 | In consultation with the Court Monitor, the City of New York shall periodically audit the effectiveness of the document retention and preservation practices and procedures followed by individuals subject to the document retention and preservation duties created by the Court Monitor's order. | Ongoing. <i>See</i> Seventh Periodic Report at 24. |

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| DISCOVERY BY PARTIES | | |
| ¶ 50 | No later than 30 days after the United States or the Injunctive Relief Subclass so requests in writing, the City shall make available to the United States and the Injunctive Relief Subclass any records maintained in accordance with Paragraphs 48 and 49 and any non-privileged documents relating to any dispute arising under this Order. | Ongoing. <i>See</i> Seventh Periodic Report at 5-6, 8. |

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| ¶ 51 | No later than thirty 30 days after the United States or the Injunctive Relief Subclass so requests in writing, the City shall make available for interview or deposition (at the option of the United States or the Injunctive Relief Subclass) any agent, employee, or official of the City who has knowledge of information necessary to verify the City's compliance with the terms of this Order or to resolve a dispute arising under this Order. | Ongoing. <i>See</i> Seventh Periodic Report at 5-6. |
| ¶¶ 50, 51 | In the event of a dispute among the Parties arising under [¶¶ 50 or 51], the Court Monitor shall file on the docket a recommendation for resolution of the dispute. | Ongoing. <i>See</i> Seventh Periodic Report at 5-6, 8. |

| SANCTIONS | | |
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| ¶ 52 | A violation of the terms of this remedial order, including but not limited to violations of the document retention, preservation, and discovery provisions, by any party, or any failure to timely comply with any of the deadlines imposed by this remedial order, may be punished by court-ordered sanction if another party or the Court Monitor moves for such sanction. | No sanctions motions made to date. |

| GENERAL DUTIES OF COURT MONITOR | | |
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| <i>Key Responsibilities</i> | | |
| ¶ 54(a) | The Monitor's duties include "[c]arrying out all responsibilities and tasks specifically assigned to the Monitor in this Order" | Ongoing |
| <i>Monitoring and Reporting on City's Compliance</i> | | |
| ¶ 54(b) | The Monitor's duties include "[m]onitoring and reporting on the City's compliance with its obligations under this Order" | Ongoing |

| MRO Provision | | Status |
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| ¶ 60 | Before a Party seeks relief from the court for alleged noncompliance with any court order that is based upon the Court Monitor’s report or recommendations, the Party shall: (i) promptly notify the other Parties and the Court Monitor in writing; (ii) permit the Party who is alleged to be in noncompliance five business days to provide the Court Monitor and the other parties with a written response to the notice, which either shows that the party is in compliance, or proposes a plan to cure the noncompliance. Following that procedure, the Court Monitor shall review its report and/or recommendations and present any necessary revisions for review by the court as expeditiously as possible. | No motions for relief filed to date. |
| <i>Dispute Resolution</i> | | |
| ¶ 54(c) | The Monitor’s duties include “[f]acilitating the Parties’ resolution of any disputes concerning compliance with their obligations under this Order, and recommending appropriate action by the court in the event an issue cannot be resolved by the Parties with the Court Monitor’s assistance” | Ongoing |
| <i>Investigation and Access to Information</i> | | |
| ¶ 54(d) | The Monitor’s duties include “[p]roactively investigating any matters related to the Court Monitor’s duties, and assisting the court to enforce any orders related to the matters set forth in this Order. | Ongoing |
| ¶ 62 | The Court Monitor shall have access, on reasonable notice, to individuals, information, documents, materials, programs, services, facilities and premises under the control of the City of New York that the Monitor requires to perform his or her duties under this Order. | Ongoing |
| ¶ 63 | Within 30 days from execution of this Order, the City of New York shall designate persons responsible for handling inquiries by the Court Monitor, including without limitation persons responsible for the areas of document retention, CID, ORD, and PRB, which persons’ duties shall include taking calls from the Court Monitor and promptly responding to the Court Monitor’s communications. | Completed |

| MRO Provision | | Status |
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| ¶ 64 | The Court Monitor may compel the City of New York to make available, on reasonable notice, any elected or appointed officials, managers, employees, volunteers, paid or unpaid interns, independent contractors, or other agents of the City of New York, any person or entity over which any of the foregoing exercise direct or indirect control because of their affiliation with the City of New York, or any person or entity acting in concert or participation with any of the foregoing, to be interviewed or deposed at the discretion of the Court Monitor. | Ongoing |
| <i>Periodic Reporting</i> | | |
| ¶ 55 | The Court Monitor shall provide periodic reports to the court and to the Parties concerning the status of the Parties' compliance with this Order and other orders of the court or the Court Monitor, including their progress, any barriers to compliance, and potential areas of noncompliance. The Court Monitor shall file a report with the court under this provision at least once every 90 days. | Monitor has filed eight periodic reports and two interim reports. |