

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, :

07-cv-2067 (NGG) (RLM)

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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MONITOR'S SEVENTH 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 Seventh Periodic Report concerning the status of the City's compliance with the Modified Remedial Order.

I. Executive Summary

This report summarizes activities relevant to the City's compliance with the Modified Remedial Order from December 6, 2013, when the Monitor's Sixth Periodic Report was filed, to March 7, 2014.

Part II provides an update on the City's evaluation and enhancement of its recruitment and EEO activities, describes a discovery dispute between the City and the Parties relating to documents concerning the creation of the City's Recruitment and EEO Reports, and sets forth the schedule for next steps.

Part III concerns allegations of retaliation against certain individuals who had allegedly complained of discrimination in the selection and hiring of entry-level firefighters, participated in the investigation or litigation of retaliation, and/or sought or obtained relief in this case. The City and the Parties have been engaged in discovery disputes regarding certain prior allegations of retaliation, and additional allegations have emerged in recent months. The City is investigating these allegations, and the Monitor is reviewing the investigation.

Parts IV and V discuss the status of the City's Attrition Mitigation Plan and top-to-bottom assessment of the process for selecting entry-level firefighters, respectively.

Part VI discusses ongoing developments relating to post-exam screening of candidates' qualifications by the Candidate Investigations Division ("CID") and Personnel Review Board ("PRB"), including the Monitor's attendance at PRB meetings, amendments to the guidelines under which the CID determines whether to refer candidates' files to the PRB for further consideration, and related issues.

Part VII outlines early steps being taken by the City, the Parties, and the Monitor towards creation and administration of the next written exam for entry-level firefighter candidates. The City anticipates administering the next exam in 2016, and is therefore considering when to open the application period.

Part VIII discusses additional issues, including the status of recent Academy classes, disputes and inquiries raised by the Parties and reviewed by the Monitor.

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

II. Recruitment and EEO

A. Overview

Paragraph 26 of 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. Paragraph 43 requires the City to submit a report concerning its EEO compliance activities 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 id.* ¶¶ 43, 46. The

City filed its final Recruitment Report and EEO Report (together, the “Reports”) on July 15, 2013.

The Monitor’s Fifth Periodic Report set forth the Monitor’s preliminary reactions to the Reports, and the Monitor’s Sixth Periodic Report included an update on the status of issues relating to the Reports. Among other things, the Monitor requested that the City provide updates and specific documents relating to the recommendations set forth in the Reports. The Monitor also noted that the EEO Report did not fully satisfy Paragraph 46 of the Modified Remedial Order, which requires the City to provide a specific plan and timeline for implementing the recommendations in the EEO Report. *See* Monitor’s Fifth Periodic Report at 4-5, 47; Monitor’s Sixth Periodic Report at 20, 46. Paragraph 29 establishes a similar requirement for implementation of the recommendations in the Recruitment Report, and the Monitor’s recent periodic reports have identified steps necessary to ensure the City complies with that provision. *See* Monitor’s Fifth Periodic Report at 14-35; Monitor’s Sixth Periodic Report at 32-44.

Subsequent to the Reports, the City provided additional information regarding the implementation of recommendations in its Recruitment and EEO Reports, including at in-depth meetings with the Parties and the Monitor on those subjects in October 2013. *See* Monitor’s Sixth Periodic Report at 31-32. The Monitor is aware that some important steps in this process have been on hold pending the City’s retention of expert consultants, *id.* at 48-49, the arrival of a new mayoral administration, and a period of transition. *Id.* at 35. However, the City has not yet provided most of the information or implemented (or indicated its reaction to) most of the recommendations put forward by the Monitor in response to the Reports.

The Monitor reiterated its requests in February 2014, and on March 4, 2014, the Monitor sent to the City and the Parties a summary of the requests in the Monitor’s Sixth Periodic Report,

with a revised schedule for fulfilling those requests. In brief, the City is required to respond to the Monitor's requests by March 18, 2014, and to provide the requested documents and information on a rolling basis between March 18, 2014 and April 15, 2014.

In accordance with the Modified Remedial Order, the Monitor expects to use the requested information to assess the status of the City's implementation of recommendations contained in the Recruitment and EEO Reports, to evaluate the sufficiency of those reports and of the City's top-to-bottom assessment, and to identify issues that may merit additional review by the Monitor pursuant to the Modified Remedial Order. *See* Modified Remedial Order ¶¶ 26, 30, 34, 43, 47, and 54.

B. Discovery Issues and Schedule for Responses to the Final Reports

Paragraphs 30 and 47 of the Modified Remedial Order require the Monitor to file responses to the City's Recruitment Report and EEO Reports, respectively, explaining whether the Monitor believes the City's Reports are sufficient and recommending any additional action the Monitor believes necessary to accomplish the purposes of the MRO. The United States and the Plaintiffs-Intervenors are permitted (but not required) to file responses to the Reports. All responses to the Reports are to be filed within 30 days of the City's filing thereof. All responses were originally due within 30 days of the City's final Reports.

The schedule for the Parties' responses to the Reports has been impacted by an ongoing discovery dispute relating to the work of experts who assisted in preparing the Reports. Pursuant to the original Remedial Order, those experts acted as independent consultants and were responsible for preparing the Recruitment and EEO Reports. *See* Remedial Order and Partial Judgment, Permanent Injunction, & Order Appointing Court Monitor (Dkt. # 765) ¶¶ 26, 47. The Modified Remedial Order reassigned preparation of the Reports to the City, which retained

the experts to work as its own consultants. The final Recruitment and EEO Reports relied upon work performed by the experts both before and after the stay.

After the Reports were filed, Plaintiffs-Intervenors submitted requests for discovery relating to the experts' work on recruitment and EEO issues. The City objected to the requests on privilege grounds. The Monitor encouraged the City and the Parties to narrow or resolve the issues in dispute to avoid further intervention by the Monitor and/or the Court, but to date the City has produced no documents responsive to Plaintiffs-Intervenors' requests. The Monitor filed a report and recommendation regarding this discovery dispute (the "Consultant Discovery Dispute") on February 7, 2014. (Dkt. #1274) On February 27, 2014, the Court granted the City's request (to which the Monitor and the other Parties did not object) to extend the time for filing objections to the Monitor's report and recommendation to March 14, 2014. (Dkt. # 1277)

Because the disputed discovery may be relevant to the Parties' responses to the City's Recruitment and EEO Reports (and to the Monitor's responses), the City, the Parties, and the Monitor agreed to adjourn the date for submitting those responses while the Consultant Discovery Dispute was pending. The Parties and the Monitor must submit their responses to the Reports within 60 days after the Court rules on the pending report and recommendation.

III. Retaliation

A. Overview

The Modified Remedial Order includes several provisions that require the City to take steps to detect, deter, and prevent retaliation against persons who have been affected by the litigation or the Court's relief in specified ways. The basic prohibition on retaliation appears in Paragraph 17 of the Modified Remedial Order, which states:

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.

Modified Remedial Order ¶ 17.

Paragraph 19 requires the City to “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.” *Id.* ¶ 19. Paragraph 43 requires the City to recommend ways 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.” *Id.* ¶ 43(g)-(h).

Paragraph 43 also discusses the City’s EEO function more generally and requires the City to recommend and adopt measures to ensure that the EEO Office functions effectively and prevent violations of relevant EEO laws and policies. *Id.* ¶ 43. The City described its progress toward these goals its EEO Report. (Dkt. # 1167) The Monitor’s preliminary views of the EEO Report and the City’s EEO compliance efforts were spelled out in the Monitor’s Fifth Periodic Report (at 13-35) and Sixth Periodic Report (at 45-56), and will receive further attention in the Monitor’s formal response to the City’s EEO Report. *See p. 6, supra.*

Finally, the Modified Remedial Order places a duty on the Monitor to monitor and report on the City’s compliance with the order, “proactively investigat[e]” matters related to the Court Monitor’s duties under the Order, and help the Court enforce the Modified Remedial Order. *Id.* ¶¶ 54(b), 54(d). In support of this mandate, the Modified Remedial Order grants the Monitor authority to interview City personnel, obtain documents necessary to carrying out the order, and gives the Monitor a role in attempting to resolve disputes arising from requests for discovery by

the Plaintiffs and recommending resolutions to such disputes for review by the Court. *Id.* ¶¶ 62, 64.

B. Discovery Disputes

In the period since the Monitor's Sixth Periodic Report, the Monitor has filed reports and recommendations with the Court concerning certain discovery disputes relating to specific instances of alleged retaliation against individuals who may be protected by the Modified Remedial Order. In addition to the Consultant Discovery Dispute addressed on pages 5-6, the City and the Parties have discussed Plaintiffs-Intervenors' request for certain documents related to the FDNY's procedures for investigating EEO complaints and the manner in which the FDNY investigated certain specific instances of alleged retaliation against individuals who may be protected by the MRO. On December 13, 2013, the Monitor issued a report and recommendation concerning this discovery dispute. (Dkt. # 1250) The Monitor recommended that the Court require the City to provide the requested discovery to Plaintiff-Intervenors, with the exception of attorney client or work product privileged materials, or materials determined to be entitled to a law enforcement privilege after *in camera* review by the Monitor. On December 27, 2013, the City filed objections to the Monitor's Recommendations, which are currently pending before the Court. (Dkt. # 1261). On January 28, 2014, Plaintiffs-Intervenors responded to the City's objections and reported another incident of alleged retaliation against a named plaintiff. (Dkt.# 1268).

C. Recent and Ongoing Retaliation Issues

Plaintiffs-Intervenors recently informed the Monitor and the City of two instances of alleged retaliation against individuals who had previously complained of retaliation in violation of the Modified Remedial Order and filed a claim with the FDNY EEO Office. The City is also

presently investigating an allegation that data regarding a named plaintiff and claimant was leaked to the press, with citation to unnamed FDNY sources.

The Monitor views retaliation, if proven, as extremely serious. Enforcement of the anti-retaliation provisions of the Modified Remedial is among the Monitor's core responsibilities, and the Court has granted the Monitor authority to investigate alleged retaliation and monitor the City's response to such allegations. Accordingly, the Monitor has requested that the City report to the Monitor regarding its investigation of the allegations of retaliation discussed above. The Monitor has also requested that the City inform the Monitor and the other Parties of other planned responses, including communications from senior FDNY leadership and within the firehouse.

The Monitor has also encouraged the City to consider ways to enhance or strengthen its policies and procedures for responding to alleged instances of discrimination, harassment, and retaliation. *See, e.g.*, Monitor's Fifth Periodic Report at 42-44. Based on input from its own consultants, its review of relevant research, and the City's own EEO Report, the Monitor believes that a strong, visible, and fair response to such acts can not only ensure that specific acts result in an appropriate investigation and, where necessary, disciplinary action, but also deter future discrimination and retaliation.

IV. Attrition Mitigation

Paragraph 31 of the Modified Remedial Order provides that "[t]he 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." Modified Remedial Order ¶ 31. The Modified Remedial Order further allows the Monitor and the other Parties to propose amendments to the draft plan and directs the City, the Parties, and the Monitor to discuss revisions to and

implementation of the plan on a schedule set by the Monitor. *Id.* The City, the Parties, and the Monitor agreed that the plan would continue to evolve over time as the City incorporated lessons from prior attrition mitigation efforts into its ongoing practices and policies.

As noted in the Monitor's previous periodic reports, the City submitted an initial draft attrition mitigation plan on December 1, 2011, and the Parties and the Monitor provided their initial comments regarding the City's draft attrition mitigation plan. *See, e.g.*, Monitor's First Periodic Report (Dkt. # 823) at 14-15; Monitor's Fourth Periodic Report (Dkt. # 1022) at 9. On June 12, 2013, the City presented an updated attrition mitigation plan in a meeting with the Parties and the Monitor. *See* Monitor's Fifth Periodic Report (Dkt. # 1198) at 7-8. The City provided further updates, including a discussion of the role of the FDNY's new analytics unit in reviewing data relating to attrition mitigation, at an October 24, 2013 meeting with the Parties and Monitor principally devoted to recruitment issues.

As the FDNY prepares to conduct a new recruitment campaign to attract candidates for the position of entry-level firefighter and concurrently continues its processing of existing candidates through post-exam screening and the Fire Academy, the Monitor believes that renewed attention to the City's attrition mitigation plan is needed. Accordingly, the Monitor has requested that the City submit an updated attrition mitigation plan that will include, among other things, analysis of the data accumulated by the City regarding attrition with respect to the January 2014 Class. The Monitor has also requested a meeting with the Parties and FDNY Assistant Commissioner Michele Maglione of the Office of Recruitment and Diversity ("ORD") regarding ORD's ongoing attrition mitigation efforts and the continued development of the City's attrition mitigation plan. The Monitor will continue to review the attrition mitigation plan

and its implementation with the City and the Parties on an ongoing basis as the City's ability to collect and evaluate data improves and the attrition mitigation plan evolves.

V. Top-to-Bottom Assessment

A. Description of Requirements

Paragraph 32 of the Modified Remedial Order requires the City, in consultation with the Parties and the Monitor, to conduct:

a comprehensive top-to-bottom assessment of all steps in [the City's] 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.

Modified Remedial Order ¶ 32.¹ In addition to evaluating the current selection process, the City is required to identify, develop, and evaluate potential alternative selection processes that may solve the problems the City identifies in its current selection process, as well as barriers to the implementation of such alternative selection processes. *Id.*

The scope of the top-to-bottom assessment is subject to the Monitor's approval, and the City is required to keep the Parties and the Court Monitor informed on the progress of this work. *Id.* ¶ 33. The Monitor may request written reports on the process, if necessary. *Id.*

The Modified Remedial Order also requires the Fire Commissioner to file a final report on the top-to-bottom assessment that must:

(i) Recommend which specific actions on the adoption of alternative selection processes or the modification of the City's current selection processes [the Fire Commissioner] will carry out immediately, (ii) provide a specific timetable for those

¹ The term "process for the selection of entry-level firefighters" is defined as "any and all steps taken by the City ... to hire entry-level firefighters," including, among other things, developing and administering written or computer-based exams, recruitment campaigns, assessing candidates' physical fitness, screening candidates on the basis of background and certain eligibility criteria, determining whether candidates are medically or psychologically fit to be hired, and deciding whether to offer to hire candidates as entry-level firefighters." *Id.* ¶ 11.

recommendations that cannot be carried out immediately, and (iii) help explain the steps required in implementing each recommendation.

Id. ¶ 35.

Before the Fire Commissioner may file the final report, the Monitor must certify that the City carried out its assessment of the current process and evaluated alternative processes “in good faith and with reasonable diligence.” *Id.* ¶ 34. After the final report is filed, the Court Monitor and any Party may file a response to the final report within 30 days addressing the sufficiency of the final report and discussing whether additional action is needed to accomplish the remedial purposes of the Modified Remedial Order. *Id.* ¶ 36.

Under the original Remedial Order, the top-to-bottom assessment and the City’s final report were to be completed by December 2, 2012, at an early stage of the remedial process. *See* Remedial Order ¶ 35. After consulting with the Monitor and with the Monitor’s consent, the City asked the Court to adjourn the deadline until August 16, 2013. (Dkt. # 2018) To ensure that the City’s assessment continued to move forward during the adjournment, the Monitor requested that the City submit interim reports on specific topics. The City submitted the first of these – an analysis of demographic data regarding the candidates at various stages of the post-exam selection process – on January 28, 2013. A second subject-specific interim report was scheduled for early 2013, but was put on hold after the Second Circuit issued a stay of the Remedial Order on February 7, 2013.

After the stay was lifted, the City, the Parties, and the Monitor resumed discussions regarding the scope of the City’s top-to-bottom assessment and the timing of its final report. The Modified Remedial Order required the Fire Commissioner to file the City’s report by October 16, 2013, with the Monitor’s and Parties’ responses due within 30 days after the City’s filing.

As discussed above, however, the City and the Parties are currently engaged in ongoing discovery disputes that may result in the production of additional material of relevance to the evaluation of and responses to the City's top-to-bottom assessment by the Parties and the Monitor. *See supra* at 5-6, 8. For this and other reasons, the Monitor, with the Parties' consent, sought and obtained the Court's approval to modify the schedule for responses to the Interim Top-to-Bottom Assessment, as described below. (Dkt. # 1273)

To ensure that the City's top-to-bottom assessment was ongoing and provide a basis on which to decide whether to certify that assessment pursuant to Paragraph 34, the Monitor requested that the City submit an interim report outlining the steps taken to date. On December 18, 2013, the City filed its Interim Report on its Top to Bottom Assessment of the Steps in the Selection Process for Entry Level Firefighters (the "Interim Top-to-Bottom Assessment"). (Dkt. # 1143)

B. Next Steps

The Monitor has begun its evaluation of the Interim-Top-to-Bottom Assessment and will continue its review with the assistance of its expert consultant, Manitou, Inc. Pursuant to the schedule discussed immediately below, the Monitor will file a formal response to the Interim Top-to-Bottom Assessment after the current discovery disputes are resolved. Among other things, the Monitor's response will include the Monitor's decision whether to certify that the City conducted its assessment in good faith and with reasonable diligence, as required by Paragraph 34 of the Modified Remedial Order. The United States and Plaintiffs-Intervenors are also entitled to submit responses to the Interim Top-to-Bottom Assessment.

The deadline for these filings has been adjusted to take into account the possibility that the ongoing discovery disputes will result in the production by the City of additional documents relevant to the top-to-bottom assessment. The schedule is as follows:

[T]he date by which the Monitor must, and the Parties may, file responses to the City's Interim Top-to-Bottom Assessment be extended to the later of (i) thirty (30) days following the date on which the Court issues a decision regarding the Monitor's recommendations on the issues set forth above; or (ii) if the Court directs the City to produce additional documents responsive to one or more disputed discovery requests, thirty (30) days following the City's production of documents in accordance with the Court's order.

(Dkt. # 1273) The City will have 30 days after the Monitor and the Parties respond to the Interim Top-to-Bottom Assessment to file its final report on the top-to-bottom assessment. *Id.* The Monitor must, and the Parties may, file a response to the final report within 30 days. *Id.*

VI. Post-Screening Evaluation by the CID and PRB

A. Overview

The Modified Remedial Order establishes a series of measures relating to the review of candidates' backgrounds by the CID and PRB.² *See* Modified Remedial Order ¶¶ 37-42. As detailed in previous reports by the Monitor, these include the following:

- Requiring the creation and adoption of written policies and procedures for the operation of the CID and PRB, which the City, the Parties, and the Monitor completed in October 2012, *id.* ¶¶ 37-38, *see* Monitor's First Interim Report (Dkt. # 1023);
- Authorizing the Monitor to attend meetings of the PRB, *id.* ¶ 39;

² As the Monitor has described in previous reports, the CID reviews the backgrounds and qualifications of all firefighter candidates to determine if they may proceed to the next phase of the hiring process or, alternatively, whether information in a candidate's file either disqualifies the candidate from consideration outright or requires further review by the PRB. The PRB reviews candidate files referred by the CID and decides whether the candidates should move forward in the hiring process (sometimes subject to a stipulation such as drug screening or an extended probationary period), or whether their appointment should be declined. *See generally* Monitor's First Interim Report (Dkt. # 1023).

- Requiring the Monitor, “after such time as the Monitor believes it has had sufficient time to make ... observations” of the PRB meetings, to file a report “critiquing the performance of the PRB and the information provided to it by CID,” and recommending any changes the Monitor believes are necessary to ensure thorough and fair consideration of necessary information, *id.* ¶ 40; and
- Requiring the City to consider the Monitor’s recommendations and file a response to the Monitor’s report indicating which recommendations it plans to carry out, and mandating that the Monitor (and, on an optional basis, the other Parties) reply to the City’s response. *Id.* ¶¶ 41-42.

B. Amendment to CID Guidelines

As described in the Monitor’s Sixth Periodic Report, in late November 2013 the City expressed concern that the CID Guidelines drafted by the Parties and the Monitor and approved for use in October 2012 were resulting in the referral to the PRB of too many candidates whose backgrounds were acceptable for appointment. *See* Monitor’s Sixth Periodic Report at 26-28. Accordingly, the City proposed certain revisions to Section 5.1 of the CID Guidelines, which the Monitor summarized in the Sixth Periodic Report. *See id.* at 27-28.

The City, the Parties, and the Monitor discussed these proposed revisions in conference calls in early December 2013, and, with no objection from the Parties, the Monitor approved the revisions for use on December 12, 2013.

The candidate screening process for the next Academy classes was underway at this time, and the FDNY immediately began applying the revised CID Guidelines. This resulted in the removal of 20 candidate files from the collection of files to be reviewed by the PRB at its next two meetings, scheduled for December 18-19, 2013. The Monitor reviewed these files and

confirmed that their removal from the PRB's docket was in conformity with the newly revised CID Guidelines.

C. The Monitor's Attendance at PRB Meetings and Forthcoming Report

In accordance with Paragraph 39 of the Modified Remedial Order, the Monitor has attended, as observers, the PRB meetings that have taken place since the Second Circuit lifted the stay on the original Remedial Order in May 2013. As such, the Monitor has attended PRB meetings relating to the two most recent Academy classes. On March 7, 2014, the PRB held its first meeting to consider candidates for the July 2014 Academy class.

The Monitor also continues to collect, compile, and analyze data on CID and PRB activities and to evaluate whether the current PRB process is consistent with the Modified Remedial Order. Based on this analysis, the Monitor intends to file a report on the PRB pursuant to and in compliance with Paragraph 40.

VII. Future Exams

A. Background

On July 22, 2009, the Court granted summary judgment on the United States' and Plaintiff-Intervenors' claim that certain written examinations previously used to screen and select entry-level firefighters (Exam 7029 and Exam 2043) had a disparate impact on black and Hispanic candidates. *See United States v. City of New York*, 637 F. Supp. at 2d 77 (E.D.N.Y. 2009). As part of the remedial scheme put in place following that decision, the Court appointed a Special Master to facilitate development of a new exam and to monitor and report on the City's compliance with discovery obligations relating to the Court's ongoing review of a separate written exam (Exam 6019), which was in use by the City at the time of the Court's disparate impact ruling with respect to Exam 7029 and Exam 2043. *See Memorandum and Order*

Appointing Special Master (Dkt. # 441). The Court appointed Mary Jo White as Special Master on June 1, 2010. *See* Order Appointing Special Master (Dkt. # 448).

Over the following two years, Special Master White oversaw the extensive work of the City and the other parties (each assisted by an expert consultant) to complete six phases or milestones in the development and administration of a new exam, known as 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); (iii) test administration; (iv) analysis and scoring; (v) computation of the final test results; and (vi) preparation of the final technical report. The final technical report was filed on September 26, 2012. (Dkt. # 976-1)

The Court approved the use of Exam 2000 to create an eligible hire list on September 28, 2012. (Dkt. # 986) The Court did so despite noting that Exam 2000 created a “statistically significant discrepancy in the pass-fail rates of minority candidates.” *Id.* at 6. The City and Plaintiffs-Intervenors argued that this discrepancy would have no “practical adverse impact” because it arose only among test takers whose scores were too low to place them on the eligibility list. *Id.* (emphasis in original). Although the Court found this argument to be legally unsupported, it accepted the City’s alternative argument that despite the adverse impact, the test was “job-related” based on a criterion study of incumbents showing a correlation between performance on the exam and performance in the job itself. *Id.* at 7-9.

The Modified Remedial Order continues the Court’s prohibition on the use of Exam 7029, Exam 2043, or Exam 6019, and precludes the City from using any other examination as part of any entry-level firefighter selection process that has a disparate impact upon black or Hispanic applicants that is not job-related and consistent with business necessity, or does not

otherwise meet the relevant legal requirements. *See id.* ¶¶ 14, 15. The order also requires the City to obtain the Monitor’s approval before taking “any step in any process for the selection of entry-level firefighters, or use any examination as part of such process....” *Id.* ¶16.³

B. Recent and Upcoming Activities

Special Master White’s oversight of the exam process ended with the filing of the technical report. *See* Modified Remedial Order ¶ 7. Pursuant to the Modified Remedial Order, the Monitor now has “oversight over the FDNY’s continued use of Exam 2000 and over the development of subsequent exams to screen entry-level firefighter candidates.” *Id.* Consistent with these responsibilities, the Monitor has initiated an analysis of issues relating to the next examination and engaged in initial discussions with the City on those issues.

The City recently advised the Monitor that to meet the FDNY’s future hiring needs, the Department of Citywide Administrative Services will need to administer the next open competitive and promotional written exams for entry-level firefighters in 2016. The City has stated that it intends to continue to use the results of Exam 2000 until late June 2017. In conjunction with the prior administration of Exam 2000, PSI developed a number of equivalent test forms, all of which conformed to the technical specifications of the prototype of Exam 2000 that was validated and ultimately approved by the Court. Some of these forms were not administered and remain available for future exam cycles. The City stated that it plans to develop additional equivalent forms for potential administration in 2016. Accordingly, the City

³ Paragraph 16 creates an exception for “steps set out in Paragraph 7 [of the Modified Remedial Order],” which relates to the development, administration, and oversight of Exam 2000 by Special Master White. As noted, however, Paragraph 7 states that Special Master White’s oversight duties ended upon filing of the final technical report and that the Monitor thereafter assumed those duties.

asked the Monitor on February 19, 2014 to authorize it to begin the procurement process to enter a contract with PSI to develop these forms.

Plaintiffs-Intervenors have informed the Monitor and the City that they are in the process of assessing the continued viability of Exam 2000. They note that Exam 2000 still results in a disparate impact on black and Hispanic candidates, although the Court has found that the use of the exam is job-related and consistent with business necessity. *See* Memorandum and Order dated Sept. 28, 2012 (Dkt. # 986) at 7-10.) Plaintiffs-Intervenors also wish to review data concerning the recent administration of the Candidate Physical Abilities Test (“CPAT”) in considering their position regarding whether and how the written exam and CPAT should be considered together. The City, the other Parties, and the Monitor discussed these issues during conference calls on February 27, 2014 and March 6, 2014. The City will provide the CPAT data as soon as practicable, and, after receiving the data, Plaintiffs-Intervenors will provide a timetable for submitting their views on whether they wish to object to the City’s request for authorization to initiate the procurement process necessary to create additional equivalent forms of Exam 2000 for use in 2016.

VIII. General Activities

In addition to the specific goals and projects discussed above, the Modified Remedial Order requires the Monitor more generally to “monitor[] and report[] on the City’s compliance with its obligations under this Order” and “facilitat[e] the Parties’ resolution of any disputes concerning compliance with their obligations under this Order.” Modified Remedial Order ¶¶ 54(b), 54(c). In accordance with this authority, the Monitor engages with the City and the Parties on a variety of compliance-related issues and disputes on an ongoing basis, including through weekly conference calls with the Parties. This section highlights certain issues that have arisen in this manner since the Monitor’s Sixth Periodic Report.

A. Academy Classes and Recent Graduates

The FDNY's most diverse class ever graduated from the Fire Academy on December 5, 2013, with 62 percent of the graduating firefighters being people of color. Former Mayor Bloomberg and FDNY Commissioner Salvatore Cassano spoke at the graduation, and emphasized the benefits of diversity for the FDNY. "The number of minority firefighters has nearly doubled over the past 12 years," said Mayor Bloomberg. "The members of this graduating class come from a wide range of backgrounds and represent the very best of our city – and our country." Although the recent progress should be viewed in context of overall percentages (the proportion of minority firefighters increased from approximately 2.76 percent to 4.2 percent, based on Vulcan Society calculations), this progress is a positive step.

"This new class of 'probies' is the most diverse in FDNY history and moves us closer to our long-stated goal of a department that better reflects the city we serve," said Commissioner Cassano. "Through their hard work and many weeks of training at the Fire Academy, this class has earned the right to be called New York City Firefighters."

Following the graduation, the City provided information to the Monitor and the other Parties regarding the placement of the recent graduates at particular firehouses and other assignments.

A new class of 319 probationary firefighters began at the FDNY Fire Academy on January 27, 2014. According to the FDNY, the January 27 class is the second most diverse in FDNY history, including 15 percent African American and 26 percent Hispanic probationary firefighters. Commissioner Cassano welcomed the new firefighters and remarked on how the Academy has increased in length and difficulty over the years, comparing his own six-week training to the 18 weeks currently required for graduation and noting that the FDNY has added many components to the training in the intervening years.

As indicated by past Periodic Reports, Academy classes historically experience some attrition as firefighters progress through the rigorous Academy academic and practical skills curriculum. For both the class that graduated in December 2013 and the current class, the City provides weekly reports to the Monitor and other Parties about the number of resignations and the general reasons cited for resigning.

In addition, the City provided the Monitor with responses to a “climate survey” designed by the City, which was administered to resigning members of the class that commenced in July 2013.⁴ The City has also recently agreed to provide the Monitor and Parties with responses to the survey that were completed by probationary firefighters who graduated from the Academy in December 2013. The survey asks about various aspects of probationary firefighters’ Academy experience, and the results are provided on an anonymous basis.

The City, the other Parties, and the Monitor regularly confer about the causes of attrition and other issues relating to the Academy, including ways to detect and prevent retaliation and specific concerns and specific incidents that could potentially develop into issues requiring the Monitor’s attention. For example, Plaintiffs-Intervenors reported that certain entry-level firefighters who had been priority hire candidates had reported they were not receiving the full benefits of retroactive seniority to which they were entitled under the Court’s remedial orders. Plaintiffs-Intervenors also raised the concern that the FDNY was distributing inaccurate information to newly hired priority hire candidates regarding their salaries and retroactive seniority benefits. Following discussion of this issue among the City, the other Parties, and the Monitor on several conference calls and an investigation by the City, the City is preparing a

⁴ The City based its use of “climate surveys” on a similar program used by the U.S. Army, which came to the City’s attention during the review of EEO “best practices” required by Paragraph 43(e) of the Modified Remedial Order. *See* EEO Report at 50, 61.

mailing to be sent to priority hires who have been appointed as entry-level firefighters informing them of their retroactive seniority benefits.

B. Post-Exam Screening and Attrition Issues

In the weekly calls and ongoing correspondence, the City, the Parties, and the Monitor also encounter a range of issues relating to the post-exam screening process. These have included a dispute regarding whether certain Priority Hire candidates received notification of the dates on which they were scheduled to take the CPAT or informed of their ability to reschedule those dates. After discussions between the City, the other Parties, and the Monitor, this issue was resolved without the need for a formal recommendation from the Monitor to the Court.

Other examples of issues relating to post-exam screening and candidate attrition include the City's plans, at the Parties' request, to audit the application of the residency credit criteria to candidates who took Exam 2000 and Exam 2500 and requested such a credit, ongoing monitoring of the City's communications with candidates during the post-exam screening process, including its distribution of certain notices, review of information regarding candidates who fail to appear for certain steps in the screening process, the status of candidates who previously declined appointment as entry-level firefighters and may wish to restore their position on the eligible hire list, and efforts by the Vulcan society to welcome and support black candidates during the screening process.

C. Data Collection and Analysis

The Monitor has consistently emphasized the importance of collecting and analyzing data regarding the City's recruitment, attrition mitigation, and EEO activities. *See, e.g.*, Monitor's Fifth Periodic Report at 9-13; Monitor's Sixth Periodic Report at 18-19. A thorough understanding of empirical data will allow the City, the Parties, and the Monitor to evaluate

existing recruitment, attrition mitigation, and EEO programs and the City's efforts to plan and implement effective reforms, in accordance with the Modified Remedial Order.

The Monitor has previously noted the progress made on this issue, including the creation of a new analytics unit within the FDNY. *See, e.g.*, Sixth Periodic Report at 19, 32-34. Recent events include additional positive steps. During the post-examination screening processes and Fire Academy training programs for July 2013 and January 2014 Academy classes, the City collected and provided data to the other parties and the Monitor regarding the progress of entry-level firefighter candidates through the various steps in the screening process including promotional, priority hire, and open-competitive candidates. This data was tracked in a format developed by the City to compile data gathered by various City agencies and FDNY departments involved in the screening and training processes, including ORD, CID, PRB, and the Bureau of Health Services. As noted elsewhere, the City continues to provide real-time updates regarding the status of the January 2014 class, and is beginning to do the same for candidates currently being processed for the July 2014 class.

Over the past two months, the City, the Parties, and the Monitor worked together to develop a format for an end-to-end database to compile certain information on the steps in the entry-level firefighter selection process and beyond, from recruitment through to firehouse assignment. The Monitor proposed a format to which the City and the Parties have made multiple comments and suggestions, and the City has followed up with the various departments involved in the hiring process to establish specific data formats for each data field in the proposed overall database. The City anticipates implementing this new database format for tracking the post-candidate screening process for the July 2014 class and all subsequent classes.

The Monitor will continue to engage with the City and the Parties on data-related issues going forward.

D. Document Retention and Preservation

Paragraph 48 of the Modified Remedial Order directs the Monitor, in consultation with the City and the Parties, to prepare and file a Document Retention and Preservation Order directing the City to retain and preserve specific broad categories of documents relevant to evaluating the City's compliance with the Court's Order. The Monitor and the Parties worked together to draft an order that was entered by the Court on September 10, 2012. (Dkt. # 965)

Paragraph 49 requires the City, after the Court issues the Document Retention and Preservation Order, to issue a Document Retention and Preservation Notice to affected personnel. The City issued the required notice in September 2012. The Monitor recently confirmed with counsel for the City that it has complied with its obligation to send reminders to personnel subject to the Document Retention and Preservation Order. The most recent reminder was circulated in September 2013.

Paragraph 49 also requires to City to periodically audit the effectiveness of the City's document preservation and retention practices. The Monitor and counsel for the City recently initiated the audit process and are in the process of confirming the parameters and procedures for the audit. The Monitor and the Parties are also drafting a minor amendment to the Document Retention and Preservation Order, which refers to the relevant provisions of the Court's original Remedial Order rather than the Modified Remedial Order.⁵ See Remedial Order ¶¶ 52-53. The

⁵ The Second Circuit upheld the relevant provisions of the Remedial Order. See *U.S. v. City of New York*, 717 F.3d 72, 97-98 (2d Cir. 2013).

corresponding provisions in the Modified Remedial Order are identical to those in the original Remedial Order. *See* Modified Remedial Order ¶¶ 48-49.

Dated: March 10, 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.
<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
¶ 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		
<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 2/19/14, the City requested the Monitor's approval to begin the contracting and appropriations process for development of the next written examination (which will be based on Exam 2000). The Monitor has asked the other Parties to respond to that request.
¶ 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.
¶ 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 these exams had an unlawful disparate impact on black or Hispanic applicants.

MRO Provision		Status
¶¶ 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	<p>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.</p>	<p>Next civil service list anticipated in 2016 or 2017. See Seventh Periodic Report at 18-19.</p>

RECRUITMENT		
<i>Optional Survey</i>		
¶ 25	<p>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.</p>	Complete
<i>Recruitment Report</i>		
¶ 26	The City shall submit a report that:	

MRO Provision		Status
¶ 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
¶ 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

MRO Provision		Status
¶ 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> 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> 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> 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</i> Seventh Periodic Report at 5-6.
<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.
¶ 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

MRO Provision		Status
¶ 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		
¶ 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.	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.
¶ 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.
¶ 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.

MRO Provision		Status
¶ 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.
¶ 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		
¶ 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.

MRO Provision		Status
¶ 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 after May 4, 2013. Attendance is ongoing. <i>See</i> Seventh Periodic Report at 16. City has provided relevant materials for each meeting.
¶ 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. <i>See</i> Seventh Periodic Report at 14-15. Monitor's CID and PRB Report to come. <i>Id.</i> at 16.

MRO Provision		Status
¶ 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.

EEO COMPLIANCE REFORM

EEO Report

¶ 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). See 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

MRO Provision		Status
¶ 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
¶ 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

MRO Provision		Status
¶ 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
¶ 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> 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> Seventh Periodic Report at 4-5; Sixth Periodic Report at 36-47; Fifth Periodic Report at 45-56.

MRO Provision		Status
¶ 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.	To come <i>See</i> Seventh Periodic Report at 5-6.
¶ 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.	To come <i>See</i> Seventh Periodic Report at 5-6.

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.

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