

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 SIXTEENTH PERIODIC REPORT TO THE COURT**

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**I. Executive Summary**

This report summarizes activities relevant to compliance by the City of New York (the “City”) with the Modified Remedial Order from March 15, 2016, when the Monitor’s Fifteenth Periodic Report (Dkt. # 1669) was filed, to June 12, 2016. This report also summarizes the Monitor’s activities relating to the implementation of the Parties’ settlement of Plaintiffs-Intervenors’ disparate treatment claims (the “Disparate Treatment Settlement”), which the Parties agreed would fall within the Monitor’s purview. *See* Stipulation and Order dated June 5, 2015 (Dkt. # 1599); *see also* Memorandum & Order dated June 5, 2015 (Dkt. # 1598) at 10.

Over the past 90 days, the Parties and the Monitor have continued work on initiatives and policy reforms intended to bring the City into compliance with the Modified Remedial Order and implement the Disparate Treatment Settlement. The City has continued to make progress. But in some areas, notably in the collection, validation, and analysis of data for candidates on the current hiring list, and in certain areas relating to EEO issues, progress has been slower than expected. Particularly in connection with the character review process, the ongoing lack of complete and reliable data has made it difficult for the Monitor and the other Parties to confirm the degree to which the City is in compliance with the Modified Remedial Order.

As reported in Part II, there has been progress in the area of recruitment, although significant challenges remain. The recruitment campaign for the next open competitive exam is now underway, and the City – working in cooperation with the other Parties and the Monitor – has made progress toward developing and carrying out a sound, comprehensive recruitment plan, and has established mechanisms for adjusting and adapting that plan as data from its recruiting efforts becomes available. However, it may be difficult to fully achieve the ambitious goals established by the Modified Remedial Order and the Disparate Treatment Settlement – and by

the City itself – for generating interest among qualified, motivated minority candidates. The City should continue to devote maximum effort to its recruiting campaign at this critical time, and to make the best possible use of every resource, including affinity groups and community contacts, in recruiting minority candidates.

Part III of this report provides an update on the City's continuing efforts to reform the data management systems and practices associated with the recruitment and hiring process. The City has continued to work on its long-term goal of establishing a comprehensive data management system that will gather and automatically update data obtained and generated in the course of the hiring process. The City reports that development of that system is on schedule and will be ready to receive and analyze data from the next rounds of promotional and open competitive exams. The City has also continued its efforts to compile and validate data from the hiring process for candidates on the current hiring lists, and to provide that data to the Monitor and the other Parties. The success of those efforts has been mixed: the City has succeeded in assembling data in a wide range of categories for thousands of candidates. But this project has shown that there are inconsistencies and anomalies that cast doubt on the reliability of data in some categories. In ongoing consultations with the Monitor and the other Parties, the City has made some progress in explaining and addressing those issues, but they have not yet been fully resolved. Until the City provides clear and definitive data showing the impact of the component steps in its hiring process on candidates in relevant demographic groups, the Monitor will not be in a position to confirm whether it is in compliance with the Modified Remedial Order.

As reported in Part IV, since the last Periodic Report the City has also made progress in initiatives intended to bring its EEO function into compliance with the Modified Remedial Order. The City produced revised drafts of the FDNY EEO Policy, new forms for

communications with EEO complainants, and a new EEO Investigations Manual in late March and again on June 13 – taking account of suggestions and comments from the other Parties and the Monitor. The City also circulated new draft training materials for officers on May 26. The new policy documents and forms reflect the FDNY’s adoption of important principles and best practices in many areas within the responsibility of the EEO Office. Nevertheless, in some areas significant work remains to be done. Uncertainties regarding the jurisdiction of the EEO Office have in some cases prevented the Office from taking a sufficiently active role in the investigation of complaints that present EEO issues. The City also still needs to establish mechanisms to make certain that its officers are not only trained on FDNY EEO policies, but also accountable for their enforcement and implementation. To fill this need, the Monitor has proposed and discussed with the City an array of initiatives – including incentives, oversight, training, and resources – intended to ensure that FDNY officers support diversity and inclusion within their commands and work with the EEO Office to appropriately address EEO issues. In the area of staffing, a new Chief Diversity and Inclusion Officer has been hired, and there have also been additions to the EEO Office investigative staff.

Part V reports on the City’s continued work, with the Monitor and the other Parties, on measures intended to ensure that the City’s medical screening for entry level candidates (the “Medical Exam”) does not have an unlawful disparate impact on black and Hispanic candidates. These include the City’s plans to validate the stairmill component of the Medical Exam and to implement a revised form of the stairmill test, which the City believes may mitigate any disparate impact resulting from this component of the Exam. This section also reports on the City’s progress in developing and producing improved communications with candidates and

informational materials relating to the Medical Exam. Part V also reports on discussions among the Parties regarding plans for re-testing of certain candidates previously disqualified.

Part VI discusses recent developments relating to the FDNY's character review process, including continuing efforts to identify and eliminate any unlawful disparate impact. In the past 90 days the Parties and the Monitor have substantially completed work on several changes in the substantive guidelines governing the process and on improved versions of the instructions and communications provided to candidates when they begin the character review process and if they are referred to the FDNY's Personnel Review Board ("PRB"). It is hoped that these changes, together with previous reforms required by the Modified Remedial Order, will eliminate any unlawful disparate impact from this phase of the hiring process. The Monitor will continue to work with the Parties to monitor and, if necessary, further refine the character review process based on further experience and data analysis. Toward that end, the City has provided a large amount of information regarding the stages of the character review process, but it has not yet produced complete and reliable data in all essential categories relating to PRB referrals. Without such data, neither the Monitor nor the Parties are in a position to confirm whether the character review process is fully compliant with the Modified Remedial Order. The City continues to work with the Monitor and the Parties to resolve this issue.

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

Part VIII provides updated statistics on FDNY hiring.

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

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

### **A. Development and Implementation of Recruitment Plans**

The FDNY began its recruitment campaign for the next open-competitive entry-level firefighter examination in March of this year. Over the past 90 days, the Parties and the Monitor have had several meetings and calls and engaged in extensive correspondence to learn about the City's plans to finalize and deploy a comprehensive, targeted, and data-driven plan for the campaign. The City has provided information to the Monitor and the other Parties about such plans, and has also provided information about the results of the first three months of the recruitment campaign for the next written examination. The City has also provided the Monitor with data about its progress in implementing its recruitment plans.

On March 29, 2016, the Monitor met with representatives from the City and the other Parties to further discuss the FDNY's plans for the recruitment campaign. During this meeting, the City provided the Monitor and the other Parties with an overall plan, which included general deadlines and benchmarks for the component steps and phases in the campaign. The City also outlined the initial messaging plan for the marketing, advertising, and social media components of the campaign; proposed events and initiatives; and described the data analytics components of the plan. The City also provided the Monitor and the other Parties with information regarding market research, which utilized census data to evaluate the demographics of individual community boards and their relationships with FDNY firehouses and EMS stations.

On April 13, 2016, the FDNY and its consultants, Hodes LLC and Vanguard, met with the Monitor and the Parties to provide a further update on marketing and advertisement concepts for the recruitment campaign. In large part, this meeting built on information provided prior to the recruitment campaign, which included details regarding focus groups conducted by the FDNY and its consultants to design the overall messaging for the campaign, as well as a list of

more than 200 recruitment events planned for March 2016. *See* Monitor's Fifteenth Periodic Report at 5. At the April 13, 2016 meeting, the FDNY and its consultants described what they had learned through their focus group and messaging analysis, and outlined a proposal for an overall messaging strategy for reaching and encouraging a diverse pool of potential applicants and candidates. The FDNY also presented early stage "demo" advertisements for illustrative purposes to show the direction it plans to pursue. The FDNY advised that it designed its initial strategy based on input from its third-party advertising resources as well as information from the focus groups. As the campaign progresses, the City has advised that it will be able to tailor and adjust its messaging based on candidate responses to the advertising approach. The FDNY also advised that its initial focus in the campaign will be on advertising via social media and the Internet, with the goal of initiating an advertisement campaign using radio and print advertisements in the summer and fall of 2016. The FDNY's consultants noted that the marketing and advertising campaign will evolve as data driven strategies are used to assess candidate responses to the messaging content and delivery methods at different stages of the campaign.

The Monitor held a meeting with the Parties and the FDNY's recruitment consultants on June 10, 2016 to further discuss the FDNY's recruitment efforts. Topics included (1) examples of advertisements for the recruitment campaign, as well as detailed deadlines and benchmarks for the development and dissemination of these and other advertisements; (2) an update from the FDNY regarding the recruitment events held thus far in the campaign; and (3) the data tracking and analysis from these events. The FDNY's recruitment consultants advised the Monitor and the Parties that, among other things, the FDNY has developed digital banner advertisements for the recruitment campaign, launched webpages to capture leads for interested potential applicants,

and begun testing its digital marketing campaign. Based on apparent interest as measured by early stage response to its online test advertisements, the FDNY's marketing consultants believe that their digital marketing campaign will be successful in attracting a diverse group of applicants to the FDNY. The FDNY also advised that it will be working on its outreach to potential applicants via social media in the next month, as well as finalizing its initial photographic and print advertisements.

The City reported that it had trained all 718 of its current recruiters, and further noted that 289 of these recruiters are black and 176 are Hispanic. In addition, according to the City, of the 66 senior recruiters, 47 are black and 10 are Hispanic. The City also reported that it has accepted as senior recruiters all the persons whom the Vulcan Society had suggested would be productive senior recruiters.

The City provided a list of firehouses where certain recruitment efforts will be targeted, and based this list on the minority population in surrounding neighborhoods. The City also agreed to take suggestions from the Vulcan Society and the United States regarding any potential additions to, or subtractions from, this list of firehouses.

Going forward, the Monitor and the Parties have developed weekly recruitment reports that will provide additional information regarding the FDNY's recruitment campaign. On a monthly basis, more detailed reports will be provided and in person meetings will be held to ensure the FDNY is on track to achieve the settlement goals. The Monitor will be focusing on these data-driven elements of the recruitment campaign over the coming weeks and months, as the gathering and analysis of recruitment data will be critical to the effectiveness of recruiting a diverse workforce to the FDNY.

The Monitor has also requested that the City compile and provide to the Monitor an account of the budgetary resources required for the current campaign, which the City may employ as guide or benchmark in determining the resources necessary for future campaigns.

**B. Working Group**

The Monitor has continued to facilitate meetings of the Working Group Committee – bringing together representatives from the City’s Departments of Law, Education and Citywide Administrative Services, along with representatives from the FDNY, the Vulcan Society, the United States and the City University of New York (“CUNY”). As discussed in the Monitor’s previous Periodic Reports, the Working Group was formed pursuant to the Disparate Treatment Settlement for the purpose of “creat[ing] educational and other opportunities that will enhance the ability of New York City students to pursue careers as New York City firefighters.” Monitor’s Twelfth Periodic Report (Dkt. # 1603) at 7-8 (citing Proposed Stipulation and Order (Dkt. # 1291-1) ¶ 1(e)).

The Working Group has continued to monitor and promote the proposal for “the creation of a Fire Cadet title or special credit for completion of job-related fire science courses,” as described in the Disparate Treatment Settlement, which the City submitted in September 2015 to the New York State Civil Service Commission (the “CSC”). *Id.* The program was developed by the FDNY in coordination with the Working Group to recruit, select, and mentor a diverse cadre of cadets who will progress to the firefighter position through the promotional examination process. *See* Monitor’s Fourteenth Periodic Report (Dkt. # 1651) at 13-14. The proposal, which described the selection process, job duties, and instructional curriculum for the Cadet Title, is expected to be the subject of a meeting between the City and the CSC on June 15, 2016. Since the proposal was submitted, the City has responded to the CSC’s requests for additional information regarding the purpose and scope of the Fire Cadet program, and it is preparing to

respond through the City's representatives to any additional questions or requests for supporting information from the CSC.

The Working Group also continues to develop additional initiatives to further the career enhancement objectives of the Disparate Treatment Settlement. These include measures intended to offset the advantages that the Court found benefitted many white candidates during the lengthy application and screening process – including the “friends and family” networks largely unavailable to minority candidates. *See, e.g.*, Findings of Fact (Dkt. # 741) at 13-14. For example, the Working Group is currently discussing the details of an expansion of the FDNY's High School Explorers program, which will provide instruction for obtaining EMT certification, job placement services, and extensive mentoring and physical training to City high school students – all with the goal of guiding them through the EMS promotional pathway into the fire service. This initiative builds on the efforts of Working Group representatives from the Vulcan Society, who proposed increased outreach to high school students to encourage them to pursue EMT career opportunities with promotional routes to a career in the fire service, as well as the efforts of the City, which had reported during the Working Group's discussions that it was in the process of internally developing a similar program with the same goals. The current plan contemplates staffing efforts for this expanded program to commence in the summer of 2016, with curriculum development and logistical implementation to continue over the next several months – with a view to recruiting and training a new class of EMS Explorers beginning in fall 2016.

The Working Group is also in the process of finalizing revisions to the Open Competitive hiring process intended to make it easier for applicants who have obtained their high school diplomas (or an equivalent certification) from New York City high schools to demonstrate

eligibility for bonus points awarded for New York City residency. The Monitor intends to focus the Working Group on college-oriented recruiting efforts over the next few months.

### **III. Data Collection and Analysis**

For the City to achieve compliance with the Modified Remedial Order, and for it to demonstrate such compliance once achieved, it is crucial for the FDNY to implement effective tools for preserving, tracking, and analyzing data regarding both recruitment activities and all key phases of the process for hiring entry-level firefighters. To target its recruiting efforts effectively and efficiently and measure the success of those efforts, and to assess the impact of the various stages of the hiring process on candidates from different demographic groups, the FDNY must have a comprehensive and reliable system for gathering and managing data on every candidate throughout the recruitment and hiring process. The Monitor has emphasized the vital importance of data throughout the Monitorship. *See, e.g.*, Monitor's Recruitment Report (Dkt. # 1464) at 40-48; *id.* at 3-7 (summarizing the Court's findings of fact regarding recruitment and the Modified Remedial Order); Monitor's Thirteenth Periodic Report (Dkt. # 1636) at 7.

To fulfill these requirements, the FDNY must put into place technology that allows comprehensive and, where possible, automated data collection and reporting. As detailed in the Monitor's Fifteenth Periodic Report, the FDNY is attempting to address its needs in this area. *See* Monitor's Fifteenth Periodic Report at 6-10. Its efforts consist of three major data projects, each addressing different data sets and analytical needs.

*First*, with the assistance of its consultant, the City has put in place a comprehensive recruitment database (already operational) to track candidates through the recruitment process – from initial expressions of interest through the written exam. This system retains and manages data from the City's current recruitment campaign for the next open competitive examination.

*Second*, the City is in the process of developing an end-to-end hiring database (projected to be available in 2017) to track candidates' progress through the multiple stages of recruitment and hiring – from initial expressions of interest through the end of the entire hiring process (including all components of candidate screening and testing). The end-to-end database is intended to be a central repository drawing data automatically from the various individual systems (including the recruiting database) that manage data relating to the different phases or components of recruitment and hiring (such as medical screening and character review). It is intended for use with data generated by the current recruitment campaign, and ultimately by the hiring process for candidates on the next hiring list. The City does not intend to employ the end-to-end database to manage data relating to candidates on the current list.

*Third*, to manage data for candidates on the current hiring lists, the City, in consultation with the Monitor and the other Parties, has created a Candidate Tracking Spreadsheet (“CTS”) containing data from each phase of the current hiring process for those candidates. In 2014, lacking data to assist in evaluating the hiring process, the Monitor requested that the City supply data on numerous aspects of the hiring process, specifying many specific data points. The City began supplying such data in the form of the CTS, an Excel spreadsheet, compiled by the Law Department. Unfortunately, in several areas, the data in the CTS is incomplete, internally inconsistent, or unclear. And although the City has recently made progress in explaining or remedying these deficiencies, they have not yet been fully resolved. The City has advised that it is working on an automated candidate tracking system as a repository of hiring process data (from examination forward) for all candidates on the current eligible lists.

**A. Comprehensive Recruitment Database**

The City has continued to work with its consultant Vanguard Communications over the past 90 days to develop a new recruitment data system. The database is designed to track

prospective applicants and candidates for the position of entry-level firefighter from the point of first contact through the written examination. The City has made progress in the development of the recruitment database and is currently using the technology to gather data on the ongoing campaign. The Monitor, the Plaintiffs-Intervenors, and the United States have worked collaboratively with the City to determine what data should be collected; and the City continues to report to the Monitor and other Parties periodically on these matters. As detailed in the Monitor's Fifteenth Periodic Report, the database captures demographic data, which will allow FDNY leadership and the Office of Recruitment to analyze the effectiveness of its recruitment of various target populations. Monitor's Fifteenth Periodic Report at 6-10. The Office of Recruitment will do cost-benefit analysis in near real time and make adjustments, identifying the recruitment methods that have been most successful in attracting candidates of color and then allocating resources accordingly.

The FDNY is currently using the system to collect data regarding ongoing recruiting events, the Expression of Interest Forms ("EOIs") collected at those events, and any follow-up communication with the prospective applicants. The City provided reports generated by the data system containing data collected regarding recruitment events in March. The Monitor and the other Parties are analyzing the reports and the system's functionality and will continue to collaborate with the FDNY going forward. The City has communicated its intention to make adjustments going forward to improve the system.

The Monitor and the Parties discussed this subject further at a meeting devoted to recruitment and data issues on June 10, 2016 and will continue to do so at similar meetings to be held periodically throughout the campaign. At the June 10 meeting, the FDNY described continuing efforts to resolve technical issues with its electronic EOI system and increase use of

the system, which is intended to enable potential applicants to enter EOIs on tablets at recruitment events. According to the FDNY, most of the EOIs collected to date have been in paper form, which have then been manually entered into the FDNY's recruitment system. The FDNY's process for obtaining, entering, and analyzing these EOIs will be a focus of the Monitor and the Parties at their next periodic recruitment meeting, as data capture and analysis remain vital tools for the recruitment campaign going forward.

**B. End-to-End Hiring Database**

The Monitor has emphasized the need for the FDNY to develop and utilize an end-to-end database that will track candidates through, and permit analysis of, each stage of the recruitment and selection process. *See, e.g.*, Monitor's First Periodic Report (Dkt. # 823) at 20; Monitor's Ninth Periodic Report (Dkt. # 1462) at 13; Monitor's Twelfth Periodic Report at 4, 6-7; Monitor's Fourteenth Periodic Report at 11-13; Monitor's Fifteenth Periodic Report at 7-8. The City has advised the Monitor that the end-to-end database is being developed and will be fully functional and ready to receive data input for upcoming exams, starting with data from the promotional exam in April 2017. The Monitor and the other Parties met with the City and FDNY data and technology personnel on May 25, 2016, and the FDNY provided a detailed update on its progress. While the FDNY's data team has made strides in the development of the database, it has made more progress in some areas than in others. For example, progress has been made in establishing a coordinated process for data transfer from the Department of Citywide Administrative Services ("DCAS"), and for the automatic transfer of medical data from the FDNY Bureau of Health Services ("BHS"). But similar progress has not yet been made with respect to the collection and transfer of data from the Candidate Investigation Division ("CID") and PRB. In addition, the City has not yet automated the transfer of data from the Vanguard recruitment database to the end-to-end database. However, the City has advised that these

processes will be in place by the time candidates in the recruiting database begin the hiring process. The Monitor will continue to request regular updates regarding the FDNY's progress going forward.

**C. Candidate Tracking Spreadsheet**

The City's timeline for completion of the end-to-end database projects that it will become fully operational in mid-2017 – only once it is populated with data from the next round of exams. Accordingly, based on the City's current plans, the end-to-end database will have no practical role in the management or analysis of data for candidates on the current hiring lists.

In the meantime, in order to track candidates currently in the selection process, the City is planning to improve department-specific databases, such as the BHS database and the CID database, and to collect the available data in the CTS for analysis. *See* Monitor's Fourteenth Periodic Report at 11-13; *see also* Monitor's Fifteenth Periodic Report at 7-8. As has been the case throughout, the CTS is the only source of data available to the City, as well as the Monitor and the other Parties, for adverse impact, attrition, and other analyses related to reforms in the recruitment and hiring process. Lack of accurate, current data hampers the Monitor's ability to home in on trouble spots within the overall hiring process and to drill down on the specific aspects of a given part of the process that may be yielding undesired consequences. Access to such information would greatly assist in developing tailored solutions and assessing the effectiveness of possible changes.

In January, the City circulated a CTS containing candidate data as of December 29, 2015 (and recently circulated a version incorporating some revisions based on follow-up inquiries as of March 14, 2016), and it has provided the other Parties and the Monitor with a "Data Dictionary" that defines the data fields and values in the spreadsheet. The Monitor and the other Parties have sent the City several questions and suggested changes and identified a number of

inconsistencies in the most recent CTS data over the last few months. As noted, the Monitor and the other Parties met with the City and FDNY data personnel on May 25, 2016 to discuss and resolve outstanding data issues with the CTS.<sup>1</sup> The City provided written responses to several follow-up questions June 7, and the Monitor and the Parties conducted a further conference call June 8. The FDNY has provided explanations for a number of the data inconsistencies identified by the Monitor and the Parties. But some outstanding questions remain regarding the interpretation and reliability of CTS data fields, and it remains to be determined whether and when the City will be able to provide a complete set of useful data on attrition rates at the various stages of the hiring process.

The Monitor remains concerned about the pace of the City's progress with respect to the need for candidate data. The City advised the Court at the last status conference that the data in the CTS would support reliable data analyses by the end of June 2016, almost four years into the Monitorship. It is crucial that the outstanding issues are resolved so that the Monitor and the other Parties can determine whether and where disparate impact continues to occur in the City's hiring process for entry level firefighters, and whether and where reforms are needed.

#### **IV. EEO Compliance and Retaliation Investigations**

Over the past 90 days, the City has continued to work with the Monitor and the other Parties on several key initiatives to fulfill the FDNY's EEO compliance obligations, including hiring additional senior EEO staff; further revising and updating the FDNY's EEO policies and investigation manual; reviewing the FDNY's process for investigating EEO complaints; continuing steps toward implementation of a database to track and monitor investigations of

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<sup>1</sup> The May 25 meeting was the latest in a series of meetings with the City's data team regarding the development of the end-to-end database and the CTS – including most recently meetings on June 18, 2015 and February 4, 2016 – at which the Monitor has requested comprehensive and reliable candidate data.

possible violations of EEO law; implementing additional diversity and EEO training programs; and working on additional initiatives aimed at substantially improving the overall EEO climate within the FDNY. Progress has been made in the last nine months in addressing several persistent issues that have concerned the Monitor throughout the Monitorship, including in particular the development of an EEO data tracking system, the drafting of an updated and expanded EEO Policy and EEO Investigations Manual, and increasing staff resources. The Monitor's focus in the coming months will be on the process of using these resources to foster a climate that promotes diversity and inclusion; to effectively investigate claims of discrimination, retaliation and other violations of City, State, and Federal equal opportunity laws; and to hold accountable not only individuals who engage in misconduct but also managers who fail to appropriately discharge their responsibilities to ensure compliance with law. The Monitor anticipates that the City will continue its efforts to improve these EEO compliance efforts in response to issues and concerns raised by the Monitor or the other Parties, and the City is in discussions with its unions on evaluations.

**A. EEO Policy**

The Monitor and the Parties have continued to work with Assistant Commissioner Nguyen to finalize a new EEO Policy for the FDNY. Following the continued exchange of comments communicated during regularly scheduled discussions and in written revisions, the City circulated a revised draft of the EEO Policy at the end of March in an effort to address the Monitor's and the other Parties' comments. The Monitor and the other Parties submitted additional comments on the revised draft circulated by the City, and the City circulated a further revised draft in response to these additional comments June 13. The Monitor anticipates that the EEO Policy will be finalized within the next month.

The revised Policy addresses a number of areas that have been identified by the Monitor, its experts, and the Parties as requiring clarification or enhancement, including the following:

- jurisdiction of the EEO Office
- substantive standards applicable to EEO complaints
- responsibility for EEO issues within the firehouse
- mandatory reporting
- communications with complainants
- resolution of complaints where the offender cannot be identified
- alternative dispute resolution

The Parties have also continued to discuss other means of making EEO resources more accessible to FDNY personnel, including reviving the FDNY's "EEO Liaison" program to train certain firefighters to assist complainants with utilizing the FDNY's EEO complaint and investigation processes.

**B. Officer Accountability**

In discussions with the City and the other Parties, the Monitor has continued to emphasize the critical role of officers in ensuring compliance with EEO Policy, supporting diversity and inclusiveness within their commands, and working cooperatively with the EEO Office to resolve specific EEO issues. Over the past 90 days, the Monitor has discussed with the City a series of specific initiatives intended to provide FDNY managers with the training, resources and incentives that will ensure they fulfill their EEO responsibilities. As discussed in the Monitor's previous Periodic Report, these initiatives include (1) delivering enhanced training for officers regarding EEO obligations and mandatory reporting; (2) reinforcing existing rules requiring commanders to investigate incidents, impose command discipline, and report violations

such as gear tampering and hazing; (3) revising performance review criteria to include EEO metrics; and (4) considering EEO performance in promotions. Monitor's Fifteenth Periodic Report at 15-16.

The City has developed a new training module for officers, which it circulated to the Monitor and the Parties May 26, 2016. The other Parties have provided comments on the new module, and the Monitor will do so within the next few days. The Monitor anticipates that proposed additions or revisions will be discussed and finalized soon. The City has also discussed with the Monitor and its experts plans for climate surveys to assess the EEO environment within the FDNY.

**C. Complaint Intake and Investigation Processes**

The City, the Monitor and the other Parties have also continued to finalize an Investigations Manual in parallel with the completion of the EEO Policy, and have also continued to evaluate and discuss additional issues regarding the City's handling of EEO complaints. The City distributed to the Monitor and the other Parties a revised Investigations Manual at the end of March simultaneously with the revised EEO Policy. As discussed in the Monitor's Fifteenth Periodic Report, the draft Investigations Manual includes provisions concerning (1) the intake process for EEO complaints; (2) the facilitation of discussions among complainants and commanding officers; (3) alternative dispute resolution; (4) investigative practices; (5) analysis of evidence and investigative findings; and (6) communications with complainants. *See* Monitor's Fifteenth Periodic Report at 14. The Monitor and the other Parties have submitted additional comments to the City on the revised draft of the Investigation Manual, and the City circulated a revised draft in response to these additional comments June 13. The Monitor also anticipates that the new Manual will be finalized within the next month.

**D. EEO Data Collection and Analysis**

The City has continued to update the Monitor on the development of a database to track EEO complaints and other EEO-related personnel data. The City has previously confirmed that the database is operational for tracking current complaints and investigations conducted by the EEO Office, and the Monitor hopes to see actual use of the database in the coming months for tracking and analysis of all EEO data. The Monitor expects such analysis to include EEO matters investigated or otherwise addressed by the FDNY's Bureau of Investigations and Trials ("BITS") or other City agencies – in accordance with the Monitor's request that EEO investigations handled in part or whole by BITS should be tracked generally along the same lines as other EEO matters. The Monitor also looks forward to further updates from the City on additional modifications to the database based on the practical experience of EEO personnel using the database.

**E. Diversity and EEO Training**

Over the past 90 days, the Parties have continued to discuss the expansion of the EEO and diversity training programs for the uniformed fire force and for personnel within the EEO office. This expansion follows the launch of a program developed by Kaleidoscope, a diversity consulting company engaged by the FDNY. As noted above, on May 26, 2016 the City circulated a newly drafted training module for FDNY officers covering their EEO responsibilities toward firefighters under their command and providing information about assistance available from the EEO Office in addressing EEO issues. The City also previously circulated revised materials to be used in training FDNY employees on EEO issues, rights, and responsibilities; and the Monitor and the other Parties have reviewed these materials in connection with their review of the EEO Policy and Investigation Manual. The Monitor expects

the Parties will continue to make improvements to the materials as feedback and additional information become available and as training sessions proceed.

**F. Chief Diversity Officer**

On April 7, 2016, Cecilia Loving was sworn in as the FDNY's new Chief Diversity and Inclusion Officer ("CDIO"), a post established as part of the Disparate Treatment Settlement. The position had been held on an interim basis by First Deputy Commissioner Robert Turner following the reassignment of the previous CDIO. Ms. Loving was previously a director in the FDNY's general law unit; before that, she worked as an attorney with the City's Commission on Human Rights. The City has reported that Ms. Loving has already met with members of several affinity groups and is engaged in efforts to continue the FDNY's expansion of its diversity and inclusion training programs.

**G. Personnel and Staffing**

Following the permanent appointment of Don Nguyen as Assistant Commissioner for EEO (after he served as Deputy Director and then as Acting Assistant Commissioner), the EEO Office has continued to fill several senior staff vacancies. These hires include a Deputy Director for EEO and two additional attorneys for the EEO Office. As these vacancies are filled, the City continues to post additional open positions in order to bring the staff up to full strength. In filling these vacancies the City continues to address one of the key deficiencies that the Court and the Monitor have found prevented the FDNY from fulfilling its EEO compliance obligations under applicable laws – a lack of resources and sufficient personnel. Until recently, many of these positions have been filled on an interim basis by the City's allocation of temporary staff from other departments within the FDNY to support the EEO Office. As discussed in previous Periodic Reports, the hiring and retention of EEO personnel is a prerequisite to the proper and sustained performance of the FDNY's EEO compliance activities. *See* Monitor's Fifteenth

Periodic Report at 11-12. The Monitor expects that the FDNY will continue with these efforts and hopes that the City will report a fully-staffed EEO office within the next 90 days.

#### **H. EEO Retaliation Investigations and Discipline**

Over the past 90 days, the City has continued to inform the Monitor and the other Parties of the status of ongoing EEO retaliation investigations, including those being conducted primarily by BITs. While the Monitor does not oppose the FDNY involving BITs in addition to the EEO Office where appropriate in matters that touch on EEO considerations, the current draft EEO Policy makes clear that matters involving colorable allegations of EEO violations should be investigated in every instance by the EEO Office, to utilize the EEO-specific expertise that the EEO Office could bring to the investigation. Investigation by the EEO Office also provides the protections set forth in the EEO Policy and Investigations Manual – including mandatory communications with complainants, reporting of findings to the Commissioner, and (presumptively) completion of the investigation within 90 days.

In addition, in some instances, allegations and investigations of retaliatory conduct highlight the need for training and other remedial action to foster a favorable EEO climate within firehouses – even where an investigation does not determine individual responsibility for an EEO violation, or substantiate a specifically retaliatory or discriminatory motive. To address this need, the Monitor has consulted with the City regarding various initiatives intended to ensure that FDNY officers are fully trained on and attuned to EEO issues, and are prepared to be held equally accountable for conduct that affects the EEO climate within their commands, just as they are for other aspects of their management roles.

#### **V. Medical Exam Related Issues**

Pursuant to the Modified Remedial Order, the Monitor has continued to address allegations that certain steps in the Medical Exam have disparate impact on black and/or

Hispanic candidates. *See, e.g.*, Monitor's Fifteenth Periodic Report at 17-23; Monitor's Thirteenth Periodic Report at 11-17 (citing Modified Remedial Order ¶¶ 15, 19). As previously reported, Plaintiffs-Intervenors have expressed concerns that the Medical Exam has an unfavorable disparate impact on black candidates, and the United States has raised the same concerns with respect to both black and Hispanic candidates. *See, e.g.*, Monitor's Eleventh Periodic Report (Dkt. # 1575) at 13-14. The Monitor continues to request and receive relevant data from the City to help address these concerns, and the Parties and the Monitor have agreed upon a series of adjustments to certain steps in the Medical Exam in an effort to minimize the potential for disparate impact while maintaining the FDNY's rigorous hiring standards. *See, e.g.*, Monitor's Fifteenth Periodic Report at 23.

Among the data the Monitor had requested from the City was a comprehensive set of full medical files relating to medical disqualifications. The Monitor set a deadline for the City to complete its production of these materials, some of which had been outstanding in excess of six months. Since receiving the materials at the end of April 2016, the Monitor – with the help of its expert, Dr. Denise Smith – has begun to undertake new analyses to try to determine which specific sub-parts of the Medical Exam may contribute to racial imbalances in the numbers of medically-qualified candidates, and to conduct further inquiry as needed based on the outcome of those analyses. Efforts to pursue more detailed medical exam-related analyses have been hampered by the ongoing unavailability of data in electronic form. Nevertheless, the Monitor and the Parties continue to work with the available information to investigate the various points at which candidates may be medically disqualified and at which racial imbalances may be occurring and to attempt to make the process easier for candidates to navigate. The status of those initiatives is discussed below in Subsection A.

The Monitor’s in-depth analysis of the Medical Exam is ongoing; these efforts are described in Subsection B.

**A. Implementation of Agreed Initiatives Regarding the Medical Exam**

Since the Parties worked with the Monitor to develop, agree upon, and begin to implement measures to mitigate possible causes of disparate impact over a year ago, they have made progress toward carrying out these agreements, including the following:

- Conduct a validation study of the stairmill portion of the Medical Exam;
- Provide candidates with more information about the Medical Exam;
- Pay for additional testing that may be necessary following a second failure on the stairmill test;
- Fund other diagnostic testing;
- Allow the Diversity Advocate to observe the stairmill exam;
- Track and record specific data regarding the Medical Exam; and
- Retest some candidates, in appropriate circumstances.

Monitor’s Fifteenth Periodic Report at 18; Monitor’s Fourteenth Periodic Report at 20-21;

Monitor’s Thirteenth Periodic Report at 13; Monitor’s Twelfth Periodic Report at 13-14.

Over the past 90 days, the Monitor and the Parties have worked to further the FDNY’s implementation of these initiatives. Some of these initiatives are now completed, and others are well underway. The following table summarizes the current status of each initiative.

**Status of Medical Exam Initiatives**

<b>Initiative</b>	<b>Status</b>
Conduct a validation study of the stairmill test	The Monitor’s Fifteenth Periodic Report noted that, in lieu of conducting a validation study of the stairmill test currently administered by BHS, the City was proposing to re-administer the version of the stairmill test that is part of the Candidate Physical Ability Test (“CPAT”). The City has since concluded that, in the context of a

Initiative	Status
	<p>medical examination, it would not be appropriate to administer a stairmill test without heart rate measurement. The CPAT stairmill is performed without a heart rate monitor. The City has thus resumed its plan to conduct a validity study, and hopes to validate its current stairmill protocol, as well as a variant on that protocol, described below.</p> <p>Under the current BHS stairmill protocol, if a candidate’s heart rate goes above the FDNY limit (90% of age-predicted maximum heart rate) during either the unweighted or the weighted vest phase of the test, the candidate fails but can return for a second attempt at a later date. On the candidate’s second attempt, if the candidate’s heart rate exceeds the limit during either the unweighted or the weighted phase of the test, the candidate can opt (with BHS discretion) to stay on the stairmill during the weighted phase of the test for an extra 2 minutes and 48 seconds and pass the test (the “Modified Test”).</p> <p>The City’s newest stairmill proposal is to bring the Modified Test forward to the first stairmill attempt if a candidate’s heart rate exceeds the limit during the weighted phase, possibly obviating the need for a second attempt for many candidates who otherwise would have to return to BHS on a separate occasion.</p> <p>The City is now planning a study to validate both its current stairmill protocol and the new protocol that brings forward the option for the Modified Test. The City and the Monitor are in close communication about the validation study and the City will soon provide a timeline for its development, implementation, and analysis.</p> <p>Plaintiff and Plaintiffs-Intervenors have indicated certain areas of overall disagreement with the City’s approach but have reserved their objections pending the outcome</p>

Initiative	Status
	of the revised stairmill test.
Provide candidates with more information	<p>The Monitor and the Parties have worked cooperatively to develop a number of ways to provide candidates with more information about preparing for the Medical Exam. These include the following:</p> <ol style="list-style-type: none"> <li>1. The “BHS Guidance for Firefighting Candidates Concerning Medical Assessment,” a document prepared pursuant to the Disparate Treatment Settlement, which includes a description of (1) the forms and the various tests involved, (2) how best to prepare for them, and (3) post-exam follow-up steps. The City has posted this guidance document with Fire Academy materials on the FDNY website, and it will also be included in the FDNY hiring process introductory materials. The guidance document will be amended shortly to reflect the revised stairmill protocol.</li> <li>2. A set of frequently asked questions (“FAQs”) that provides similar information to that contained in the guidance document, presented in question and answer format. This document has also been posted on the FDNY website and will also be included in FDNY hiring materials. It, too, will be amended to reflect the new stairmill protocol.</li> <li>3. Three informational videos: one providing an overview of preparation for the Medical Exam and the various steps it includes, and two additional videos for specific components of the Medical Exam – one for the stairmill test and one for the pulmonary function test (“PFT”) – providing more detailed instructions and demonstrations for those two components. The script for the overview video had been agreed to by the Parties and the Monitor, but the City recently produced a video that shortened and otherwise altered the agreed-to script. Nevertheless, the other Parties and the Monitor have reviewed the</li> </ol>

Initiative	Status
	<p>video and do not object to its use. The PFT video script has been drafted, and the City says it will begin production soon; the City says it will take approximately four weeks to complete the PFT video. The stairmill test video script will be amended to reflect the new stairmill test protocol and will be produced after the PFT video. When each video is finalized, it will be made available for viewing on the FDNY website.<sup>2</sup></p> <p>The Monitor and Parties continue to discuss the most effective ways to transmit these various informational items to the largest possible number of candidates. The City has reported that it plans to overhaul its website and that the informational documents and videos will be part of the new website.</p>
Pay for follow-up diagnostic testing	<p>For various reasons – including cost – some candidates may have been deterred from complying with BHS requests for follow-up testing. To address these issues, the FDNY has undertaken two parallel initiatives. The FDNY has begun providing certain required follow-up blood tests to candidates free of charge at BHS. The FDNY has also begun subsidizing other kinds of follow-up diagnostic testing that must be conducted by outside providers. The FDNY has identified providers for this outside testing, and it has been scheduling appointments with outside providers, making payments to them, and tracking results from the tests they perform.</p>
Allow certain FDNY personnel to observe the stairmill exam	<p>With the agreement of all Parties, the Diversity Advocate was designated to observe the administration of the stairmill portion of the Medical Exam periodically, on a random basis. This initiative is underway.</p>
Track and record specific data	<p>As discussed in prior reports, lack of data regarding the</p>

<sup>2</sup> The Monitor expects the FAQs and the videos to work in tandem with the BHS guidance document to provide enhanced information about the Medical Exam to all candidates.

Initiative	Status
regarding the Medical Exam	<p>Medical Exam and the particular stages and tests at which candidates opt not to continue or are disqualified has made it difficult to analyze possible causes of disparate impact in this area. As part of its response to the Monitor's long-standing request for end-to-end data, the City elected to create a separate database to track Medical Exam results. Last year, the City told the Monitor that the database would be up and running by September 30, 2015, but this deadline was not met. The Monitor reported to the Court in the Fifteenth Periodic Report that the Monitor expected the database to be materially complete and in substantially complete use by the time of this Periodic Report, but work on the database is still not complete. The Monitor continues to request data and information about the database. Historical data regarding the medical exam has not been computerized; the Monitor is currently reviewing hard copies of medical files to assemble data, but a substantial portion of these files were provided only recently, so this effort remains ongoing.</p>
Retest some candidates	<p>The Parties have continued detailed discussions about criteria to determine which previously-disqualified candidates are eligible for medical retesting. Although the Parties have not yet arrived at a complete agreement on all these criteria, almost all disputes have been resolved.</p> <p>The Parties and the Monitor collaborated on the drafting of notices to be sent to candidates, informing them of their eligibility to be retested. The City has sent such notices to previously-disqualified priority hire candidates, and they have been given three months to prepare for their medical retesting. The Parties and Monitor have also approved a notice drafted by the City to make previously-disqualified open competitive candidates aware that they may be eligible for retesting – depending on the current status of their claimed residency credits.</p>

Initiative	Status
	Candidates eligible for retesting who also require diagnostic testing will be offered the option to take advantage of the no-cost diagnostic testing program being offered to new candidates, as described above.

The Monitor continues to work with the Parties to begin or continue the implementation of these initiatives.

**B. Continuing Analysis**

The Monitor has continued to compile and evaluate data relevant to possible disparate impact produced by the Medical Exam. *See* Monitor’s Thirteenth Periodic Report at 16-17; Monitor’s Twelfth Periodic Report at 17-18; Monitor’s Eleventh Periodic Report at 14; Monitor’s Tenth Periodic Report (Dkt. # 1533) at 14. Specifically, the Monitor has continued to gather and analyze data in the files of candidates who were disqualified because they failed the Medical Exam. As described in previous Periodic Reports, limitations in the City’s prior record-keeping practices with respect to these disqualified candidates – including the fact that reasons for disqualification have not always been clearly tracked – have made it difficult for the Monitor to identify and analyze root causes of disparate rates of medical disqualification for black and Hispanic candidates as compared to white candidates. *See* Monitor’s Fifteenth Periodic Report at 23; Monitor’s Thirteenth Periodic Report at 16-17; Monitor’s Twelfth Periodic Report at 17-18. Accordingly, the Monitor has requested, and the City is continuing to provide, information regarding gaps or inconsistencies in the Notices of Final Medical Disqualification (“NOFD”) and in the full medical files that the City has produced to the Monitor for candidates disqualified by the Medical Exam. The Monitor, with the assistance of experts led by Dr. Smith, is continuing to derive and analyze data from these documents.

## **VI. Character Screening by the CID and PRB**

Since the last Periodic Report, the Parties and the Monitor (with the assistance of its expert consultants, Manitou, Inc.) have continued to develop new standards, procedures, and materials for the character review process administered by the CID and PRB.

### **A. Enhancements in the Character Review Process**

Based on ongoing work among the Parties and the Monitor, the City has begun to implement further changes in PRB standards and procedures consistent with the goals of the Modified Remedial Order. Following up on proposals and discussions recounted in prior Periodic Reports, the Monitor and the Parties have substantially agreed on a series of reforms in a number of key areas, including (1) criteria for referral to the PRB; (2) information and instructions provided to candidates; and (3) procedures and criteria for PRB determinations. *See* Monitor's Fourteenth Periodic Report at 26-27; Monitor's Fifteenth Periodic Report at 24-27.

On May 13, 2016, the Monitor approved a set of revised provisional guidelines for the CID and PRB.<sup>3</sup> Pursuant to the Modified Remedial Order, the City had issued initial sets of interim guidelines for the CID and PRB, formulated in consultation with the Monitor and the other Parties, in October 2012. Before those guidelines were issued, the character review process had been conducted without formal written guidelines. *See* Findings of Fact at 44-54. Prior to the most recent revisions, the interim guidelines also underwent revisions in December 2013 and in November 2014. *See* Monitor's Eleventh Periodic Report at 18.

The most recent revisions include changes to the criteria for referral by the CID to the PRB and other revisions to the interim guidelines. The changes to referral criteria include

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<sup>3</sup>The latest revised provisional guidelines may be subject to additional changes based on further analysis. By agreement of the Parties, these guidelines are to be put in use for the upcoming rounds of CID referral and PRB review, and will continue to be used pending further revisions. The Parties and the Monitor also agreed to reserve certain disputed issues for further discussion, without prejudice to any party's position.

limited “look-back periods” for arrests that do not lead to convictions, such that misdemeanor arrests that occurred more than 3 years before a candidate signs the Comprehensive Personnel Document (“CPD”) and felony arrests that occurred more than 5 years before a candidate signs the CPD are no longer grounds for referral. The revised guidelines also specify that a candidate will be referred to the PRB for two or more misdemeanor arrests within the look-back period (rather than one). The new provisional guidelines also clarify limits on referrals based on employment history and school discipline. The Parties have advised the Monitor that, in the interest of implementing these changes as soon as possible, they have agreed to reserve certain further disputes regarding the character investigation process and referral criteria for continued discussion.

The Monitor and the Parties have also agreed on measures intended to provide candidates with clear and complete information regarding the character review process, reserving outstanding differences for later discussion. Intake packets provided by CID to candidates now include a revised version of the form known as “Appendix M,” which candidates may use to explain background information gathered by CID and, when relevant, provided to the PRB. The new form provides candidates with clearer and more detailed guidance on the types of information that may be included in their explanations, and on relevant procedures governing PRB review. The City circulated the current revised version of Appendix M to the Monitor, Plaintiffs-Intervenors, and the United States on April 7, and it has since been approved by the Monitor and the other Parties. In addition, the Parties and Monitor approved a new Intake Letter in late March, which provides candidates with detailed guidance consistent with the new Appendix M. The FDNY will begin using the new Intake Letter when it begins the intake process for the next class.

In addition to agreeing on new provisional guidelines and forms, the Monitor and the Parties have also agreed that candidates previously disqualified by the character review process should be given the opportunity to undergo a new review employing the revised standards and procedures. On June 2, 2016, the City circulated a draft notice it intends to send to these candidates; the other Parties have provided comments, and discussions regarding the notice are proceeding. It is expected that an agreed upon notice will be ready for distribution to candidates soon.

A total of forty priority hire candidates are eligible for reconsideration as part of this agreement and the United States and Plaintiffs-Intervenors have already reached out to all of these individuals to let them know of this upcoming opportunity and to encourage them to prepare.

**B. Analysis of Potential Disparate Impact**

As previously reported, the Monitor's analysis of data through the end of 2014 for referrals to the PRB and PRB outcomes indicated that minority candidates were referred to the PRB at a higher rate than white candidates, and that among candidates referred to the PRB, a higher percentage of minority candidates than white candidates were disqualified by the PRB. *See, e.g.,* Monitor's Thirteenth Periodic Report at 20-21. In December 2015, the City provided the Monitor with additional data showing the status and results of PRB reviews for candidates referred to the PRB through June of 2015 – including data for candidates referred to the PRB since the implementation of the most recent revised set of the PRB Guidelines in November 2014. On March 24, 2016, the Monitor circulated to the Parties a detailed set of data derived from its own review of PRB case files (covering PRB meetings from December 2012 through June 2015). The Monitor's data includes PRB outcomes; the race, gender, and examination categories of candidates; and codes reflecting the reasons for PRB referral and (where

applicable) disqualifications. The data generated by the Monitor's review will contribute to further statistical analyses, by the Monitor and the Parties, intended to determine the impact of specific factors (demographic factors and specific events in candidates' histories) on the character review process.

The Monitor has long planned to update its analysis of data relating to CID referrals and PRB outcomes to assess whether and to what extent the two phases of the character review process, separately and in combination, have continued to produce the type of disproportionate outcomes seen in the Monitor's original analysis. As previously reported, and as discussed in Part III, the City has provided the Monitor and the other Parties with an updated Candidate Tracking Spreadsheet, which includes categories of data relating to candidate referrals to the PRB. (The City provided the most recent update May 12, 2016.) Unfortunately, continuing uncertainty about the accuracy and interpretation of key data fields in the CTS continues to prevent the Monitor and the Parties from performing a comprehensive, reliable analysis of the process.

At the February 29, 2016 status conference, the City represented that the remaining issues with the CTS would be resolved sufficiently to enable the Parties and the Monitor to perform reliable disparate impact analyses within the first half of this year, and discussions among the Monitor and the Parties have continued in an effort to achieve that goal. As reported in Part III, the Monitor and the Parties held a meeting on May 25, 2016 and a conference call June 8, 2016 to address a number of outstanding questions and concerns regarding CTS data fields. But some key questions about data relating to CID referrals remain unresolved. The City has represented that it will soon be able to perform at least some analyses of disparate impact and attrition rates regarding various phases of the hiring process. However, at least with respect to the character

review process, the City has not made it clear how it (or the Monitor) could perform such an analysis with the data the City has provided. For example, it is not apparent whether or how the data provided by the City shows the number of candidates considered for referral to PRB. The Monitor plans to continue discussions with the City to understand and remedy the remaining issues affecting the relevant data.

## **VII. Next Open-Competitive Firefighter Exam**

### **A. Current Status**

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

As reported to the Monitor by the City and discussed in prior reports, the City has scheduled the next promotional examination for firefighters for December 2016, with probationary firefighters from the resulting promotional list to be appointed to a class in December 2017 or January 2018. *See, e.g.*, Monitor’s Fifteenth Periodic Report at 27; Monitor’s Thirteenth Periodic Report at 25. The City has also advised the Monitor that it plans to administer the next open competitive examination for entry-level firefighters in September 2017 and to appoint the first Academy class from the next open competitive list in December 2018.

For the most part, the City and PSI have been adhering closely to the City’s project plan for developing the new examination. However, the most recent step in the project plan –

conducting and reviewing an equivalency study – has taken longer than planned, largely because of challenges in enrolling an appropriate mix of test-takers, based on race, ethnicity, gender, and educational background. In the equivalency study, the City and PSI are seeking to develop forms for the computer-based test (“CBT”) that, based on data analysis, are “equivalent” to one another and to the previously validated test form used for Exam 2000. By confirming that the different forms of the CBT are “equivalent,” the City and PSI will ensure that the new forms of the test retain all the attributes of the validated Exam 2000. The City reports that this step will take approximately one month longer than originally planned, but this will not impact the projected dates for completing or administering the upcoming open competitive exams.

**B. Next Steps**

The Monitor, in conjunction with its consultant, will continue to provide oversight of the examination process. Over the next several weeks and months, the Monitor anticipates that the City and PSI will conclude the equivalency study for the CBT and review the results and summary data with the Monitor’s expert (with input from the United States’ testing expert, Dr. David Jones), with the overarching goal of approving the new forms of the CBT so that any necessary edits may be made and the approved forms can be loaded into the CBT delivery system. The Monitor expects that, consistent with its past practice, the City and PSI will keep the Monitor apprised of any additional delays that may arise in the examination development process.

**VIII. Data Regarding Recent and Upcoming Hiring**

Fire Academy Graduates – The City has provided the following statistics regarding the most recent Fire Academy class: 310 total candidates graduated from the Fire Academy and became probationary firefighters on May 23, 2016, 17% of whom are black, 20% of whom are

Hispanic, and two of whom were Priority Hire candidates. The table below shows the proportion of black and Hispanic Academy graduates as well as the number of Priority Hire candidates in each of the recent Academy classes. With the addition of these recent graduates, 1,549 FDNY firefighters, representing 19.25% of the force, are now black or Hispanic.

	Black		Hispanic		Priority Hire		Total #
	#	%	#	%	#	%	
<b>July 2013</b>	58	24.0%	87	36.0%	77	31.8%	242
<b>Jan. 2014</b>	48	16.8%	72	25.2%	31	10.8%	286
<b>July 2014</b>	41	14.6%	56	20.0%	7	2.5%	280
<b>Dec. 2014</b>	50	16.4%	70	23.0%	9	3.0%	305
<b>June 2015</b>	52	17.6%	58	19.7%	4	1.4%	295
<b>Dec 2015</b>	53	17.0%	62	20.0%	2	0.7%	310

June 2016 Class – The FDNY is currently processing candidates to develop the roster for the next class, which is scheduled to begin at the Fire Academy on June 27, 2016. The Monitor and the Parties are evaluating that process on an ongoing basis as part of the overall review of the hiring process as set forth in the Modified Remedial Order.

#### **IX. Additional Issues**

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

- Record-keeping and communications with specific Priority Hire candidates or groups of candidates regarding their status as candidates or as probationary

firefighters; retroactive seniority benefits; compensation, leave, and vacation time; and other issues;

- Other discussions regarding individual candidates who are entitled to relief under the Court's Orders, including their interactions with the FDNY, documents they have received, and their rights and remedies;
- The development of forms for various standard communications with candidates by the FDNY;
- Addressing questions and disagreements among the Parties regarding the status of specific Priority Hire candidates and other issues that are not addressed elsewhere in this report and that fall within the Modified Remedial Order or Disparate Treatment Settlement; and
- Frequent calls, meetings, and correspondence with the Parties regarding the full range of issues related to implementation of and compliance with the Modified Remedial Order.

