

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

PLAINTIFF,

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

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

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

PLAINTIFFS-INTERVENORS

v.

CITY OF NEW YORK, ET AL.,

DEFENDANTS.

CIV. ACTION NOS. 07-CV-2067, 13-CV-3123
(NGG)(RLM)

[PROPOSED] ORDER

This Order governs: (A) the Court's preliminary fairness review of Plaintiffs-Intervenors' and Defendants' proposed resolution of Plaintiffs-Intervenors' intentional discrimination claims against the City of New York and Nicholas Scoppetta; (B) the scheduling of a Fairness Hearing regarding the settlement of the intentional discrimination claims; and (C) the distribution of the following to each member of Plaintiffs-Intervenors' subclasses, as defined below: (i) a Notice of Proposed Settlement, (ii) a copy of the proposed Stipulation and Order

resolving the intentional discrimination claims, and (iii) an objection form providing the opportunity to object to the proposed Stipulation and Order.

A. THE PROPOSED SETTLEMENT OF PLAINTIFFS-INTERVENORS' INTENTIONAL DISCRIMINATION CLAIMS

1. The Court has reviewed the settlement terms set forth in Plaintiffs-Intervenors' and Defendants' proposed Stipulation and Order for fairness in accordance with Federal Rule of Civil Procedure 23(e) and finds that the proposed Stipulation and Order meets the criteria for preliminary approval. Pending the resolution of any objections properly made prior to or at the time of the Fairness Hearing, the Court intends to grant approval of the settlement terms and entry of the proposed Stipulation and Order.

B. FAIRNESS HEARING REGARDING SETTLEMENT OF INTENTIONAL DISCRIMINATION CLAIMS

2. In accordance with Federal Rule of Civil Procedure 23(e) and Section 703(n) of Title VII, the Court will conduct a Fairness Hearing regarding the terms of the Plaintiffs-Intervenors' and Defendants' proposed Stipulation and Order settling the intentional discrimination claims. The purpose of the Fairness Hearing is to provide all individuals who may be affected by the terms of the proposed Stipulation and Order an opportunity to present objections prior to the entry of the Stipulation and Order. The Fairness Hearing shall be held on **July 31, 2014 at 10:00 a.m.**, at the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York in Courtroom number 4D.

C. NOTICE TO THE CLASS AND OBJECTIONS

3. The members of Plaintiffs-Intervenors' subclasses are all black firefighters and firefighter applicants who sat for either Written Exam 7029 or Written Exam 2043, were harmed by the City's pass/fail or rank-ordered use of one or more of those examinations for the selection

of entry-level firefighters, and have not opted out of class or subclass membership. The Court has already determined, in its prior Orders, the identities of black individuals who were harmed by the City's hiring practices and are therefore members of the Class entitled to receive the Notice of Proposed Settlement of the intentional discrimination claims. (See Docket Nos. 1106, 1112, 1135, 1144, 1182, 1190, 1251, 3/1/2013 Minute Order approving Docket Entry # 1061.)

4. At least eighty (80) days prior to the Fairness Hearing, the claims administrator will distribute to the members of Plaintiffs-Intervenors' subclasses, as defined in paragraph 3 above, the Notice of Proposed Settlement attached hereto as Attachment A via email and mail.

5. Individuals who wish to object to the terms of the proposed Stipulation and Order must submit a written objection, in accordance with the instructions set forth on the Objection Form that is included with the Notice of Proposed Settlement, within forty-five (45) days of the mailing of the Notice. Individuals who submit objections may attend the Fairness Hearing, but attendance at the Fairness Hearing is not required in order for the Court to consider an objection.

6. No later than fourteen (14) days after the deadline for submitting objections to the proposed Stipulation and Order, the claims administrator shall provide to the parties, and Plaintiffs-Intervenors shall file with the Court, all objections received.

7. No later than fourteen (14) days after their receipt of the objections from the claims administrator, Plaintiffs-Intervenors and Defendants may file responses to the objections, if any, with the Court.

SO ORDERED this _____ day of _____, 2014, in Brooklyn, New York.

HON. NICHOLAS G. GARAUFIS
UNITED STATES DISTRICT JUDGE

ATTACHMENT A

U.S. & Vulcan Society, et al. v. City of New York, et al.,
Case Nos. 07-CV-2067, 13-CV-3123 (E.D.N.Y.) (NGG) (RLM)

Notice of Proposed Settlement of Intentional Discrimination Claims

Why am I receiving this notice?

You are receiving this notice because you are a member of a class of black firefighters or firefighter applicants who brought claims of intentional race discrimination against the City of New York and former Fire Commissioner Nicholas Scoppetta.

This notice informs you that the class representatives and class counsel propose to settle the class's intentional discrimination claims against the defendants. The full text of the proposed settlement is set out in the proposed Stipulation & Order, which is enclosed as Attachment 1.

This notice does NOT relate to the settlement of backpay or lost medical benefits claims. You will receive separate notice of that settlement and a separate opportunity to object to it. This also does not relate to any compensatory damages claim you may have.

What are the terms of the proposed settlement?

The full agreement between the class and the defendants is contained in the enclosed proposed Stipulation & Order. However, the terms of the proposed settlement are summarized below.

In exchange for the class withdrawing its claims of intentional discrimination, the City agrees to:

- Use its best efforts to recruit African American test-takers for the civil service exam in proportions closely approximating the representation of age-eligible African American New Yorkers in the city's labor market, plus 3 percent.
- Create an executive staff position of Chief Diversity and Inclusion Officer (CDIO) for the FDNY, who will report directly to the Fire Commissioner and who will have responsibility, among other things, for promoting diversity in the FDNY and expanding awareness of the value of full inclusion of firefighters from all racial and ethnic groups.
- Create a Diversity Advocate position to be filled by a uniformed firefighter who will be empowered to raise concerns relating to fairness, transparency, and respect for firefighter candidates during the hiring process and probationary firefighters in the Fire Academy.
- Increase transparency regarding the FDNY's medical standards and components of the medical exam applicable to firefighter candidates.

- Give New York City residents who graduate from the Fire Academy first priority for placement into a fire company within the division in which they live, to the extent reasonable, practical and consistent with operational needs.
- Engage with the NYC Department of Education and NYC colleges to create educational and other opportunities to enhance the ability of minorities and women to pursue careers as firefighters.

These proposed terms are in addition to, and do not replace, the provisions of the Court's June 6, 2013 Modified Remedial Order (Docket No. 1143) and the October 26, 2012 Final Relief Order (Docket No. 1012), which remain in full force and effect.

Can I object to the proposed settlement?

Yes, you may object to the proposed settlement by completing and returning the Objection Form that is enclosed here as Attachment 2, no later than **[June 26, 2014]**. Please follow the instructions on the Objection Form. The Court will review all objections that are submitted by **[June 26, 2014]** and will also hold a "Fairness Hearing" for objectors who wish to voice their objections to the proposed Stipulation & Order.

What is a Fairness Hearing?

A Fairness Hearing gives anyone whose interests may be affected by the proposed settlement the chance to make or submit a statement objecting to or supporting the proposed Stipulation & Order. You do not need to attend the Fairness Hearing in order for your objection to be considered by the Court.

If you wish to attend the Fairness Hearing and state your objection, please check "Yes" at the bottom of the enclosed Objection Form and follow the instructions for returning the Objection Form. The Judge will tell you when to speak and how much time you have to speak.

When is the Fairness Hearing? Where is it?

The Fairness Hearing will be held on **[July 31, 2014]** at 10:00 a.m. at the United States Courthouse for the Eastern District of New York, 225 Cadman Plaza East, Courtroom 4D.

ATTACHMENT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA,

PLAINTIFF,

-AND-

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

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

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

PLAINTIFFS-INTERVENORS,

V.

CITY OF NEW YORK, ET AL.,

DEFENDANTS.
----- X

**PROPOSED
STIPULATION AND
ORDER**

07 CV 2067
13 CV 3123

(NGG)(RLM)

WHEREAS, The Vulcan Society, Inc., et al. ("Plaintiffs-Intervenors"), intervened in this action to enforce the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq., as amended ("Title VII"), 42 U.S.C. §1981, 42 U.S.C. §1983, New York Executive Law §§ 290 and 296, and N.Y. City Admin. Code §§8-101et seq.; and

WHEREAS, Plaintiffs-Intervenors allege, *inter alia*, that the pass/fail and rank-ordered use of Written Exam 7029 and Written Exam 2043 constituted intentional discrimination against black applicants for the New York City firefighter job; and

WHEREAS, defendants deny any and all liability for intentional discrimination

arising out of the allegations in the Plaintiffs-Intervenors' complaint and admit no liability and specifically deny that defendants engaged in intentional discrimination against black applicants; and

WHEREAS, the Defendants and Plaintiffs-Intervenors (the "Parties") have the mutual goals of ensuring equal employment opportunity within the FDNY and of settling this action to avoid additional protracted and expensive litigation; and

WHEREAS, Plaintiffs-Intervenors believe that a resolution of their intentional discrimination claims, as set forth herein, accomplishes the goals reasonably achievable through litigation of the claims; and

WHEREAS, Defendants and Plaintiffs-Intervenors agree to the entry of this Stipulation and Order to resolve all claims of intentional discrimination that were or could have been raised by Plaintiffs-Intervenors, individually or as members of a subclass, arising out of the allegations in the Plaintiffs-Intervenors' complaint;

NOW, THEREFORE, in resolution of the Plaintiffs-Intervenors' claims of intentional discrimination and with the agreement of all parties, it is hereby **ORDERED, ADJUDGED AND DECREED**, as follows:

1. To resolve the intentional discrimination claims, defendants agree to the following, in addition to the other provisions of this Stipulation and Order:

(a) Recruitment

The City will use its best efforts to recruit black test-takers for open-competitive firefighter entrance exams in proportions closely approximating the representation of age-eligible blacks in the New York City labor market, plus an additional 3% to remedy a history of underrepresentation of blacks in the New York City firefighter ranks.

(b) Diversity and Inclusion

(i.) The FDNY will create an executive staff position of Chief Diversity and Inclusion Officer (“CDIO”) who reports directly to the Fire Commissioner. The CDIO shall be appointed by the Fire Commissioner in consultation with the Mayor. In making this appointment, the Commissioner and Mayor will consider recommendations from underrepresented groups in the FDNY. The CDIO will have responsibility, *inter alia*, for promoting diversity in the FDNY and expanding awareness of the value of full inclusion of firefighters from all racial and ethnic groups.

(ii.) The Fire Commissioner and CDIO will appoint a full-time Diversity Advocate from the uniformed force. The Diversity Advocate will be responsible for raising concerns relating to fairness, transparency and respect for firefighter candidates during the hiring process and during probationary firefighter school.

(iii.) The Diversity Advocate will have ready access to individuals going through the hiring process and the Academy and to information relating to his/her task. S/he will have offices at FDNY headquarters and at the Fire Academy. The Diversity Advocate will identify issues of concern to the appropriate officials and departments within the FDNY, or elsewhere if necessary, and will have meetings no less frequently than quarterly with the Fire Commissioner to bring to his/her attention the concerns of and conditions affecting applicants and probationary firefighters from underrepresented groups.

(iv.) Lieutenant Michael Marshall shall serve as the inaugural Diversity Advocate for a 2-year term after which a panel comprised of representatives from underrepresented groups in the FDNY will screen candidates for the position of Diversity Advocate and

make nominations for appointment of the Diversity Advocate. Selection of the Diversity Advocate shall be made from among the nominations of the panel.

(c) Candidate Medical Screening

The City will provide firefighter candidates complete information in their intake packets regarding the components of the medical exam and the standards that must be met to pass each component of the medical exam. In addition, candidates will be able to view their heart rates on the stairmill test while the test is being administered.

(d) Fire Company Assignments

The FDNY will give New York City residents who graduate from the Fire Academy first priority for placement into a fire company within the Division in which they live, to the extent reasonable, practicable and consistent with operational needs.

(e) Enhancing Opportunities for New York City High School and College Students to Join the FDNY

The City shall engage with the New York City Department of Education, colleges in New York City, including the CUNY system, and other city agencies to create educational and other opportunities that will enhance the ability of New York City students to pursue careers as New York City firefighters. This may include, among other things, the creation of a Fire Cadet title or special credit for completion of job-related fire science courses. Within 90 days of the execution of this Stipulation and Order, the Parties will create an initial plan for this initiative. The Parties' proposals will be submitted to the Court Monitor appointed by this Court on November 9, 2011 (Dkt No. 758).

General Provisions

2. Nothing contained herein shall be deemed to be an admission by any of the defendants that they have in any manner engaged in intentional discrimination against any

member of the Plaintiffs-Intervenors' subclasses, or of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules, regulations or bylaws of any department or subdivision of the City of New York.

3. Plaintiffs-Intervenors' claims of intentional discrimination shall be withdrawn upon final approval of this Settlement.

4. Nothing contained herein shall be deemed to be a withdrawal or compromise of any relief or request for relief based on the Plaintiffs' and Plaintiffs-Intervenors' disparate impact claims, nor shall it in any way alter the provisions of the Modified Remedial Order entered by the Court on June 6, 2013 (Dkt No. 1143) except to expand the authority of the Court and the Court Monitor to administer and enforce the provisions of this Stipulation and Order, per paragraph 15 of this Stipulation and Order. This Stipulation and Order contains all the terms and conditions agreed upon by the Parties hereto relating to the resolution of the intentional discrimination claims, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding the intentional discrimination claims shall be deemed to exist, or to bind the Parties hereto, or to vary the terms and conditions contained herein.

5. Any amendments or modifications to this Stipulation and Order shall be in writing and signed by Defendants' counsel and Class Counsel on behalf of their respective clients.

6. Counsel for the Parties agree that they will take all reasonable steps to ensure that this Stipulation and Order is approved by the Court and becomes effective. Specifically, the Parties will request that the Court preliminarily approve the settlement, schedule

a Fairness Hearing, and provide notice to the Class of the proposed Stipulation and Order and their opportunity to object thereto, after which the Parties shall move the Court for final approval of this Stipulation and Order.

7. If any collateral challenge to the settlement or this Stipulation and Order arises in a court, the Parties are obligated to inform one another of such a challenge and defend each and every term. The representatives of the Class, Class Counsel, the Defendants and the Office of the Corporation Counsel each agree that they shall use their best efforts to defend this settlement and Stipulation and Order from any legal challenge, whether by objection, appeal or collateral attack.

8. Only Class Counsel may bring a motion to enforce any provision of this Stipulation and Order, including a motion alleging a violation of the Stipulation and Order for contempt.

9. The Parties shall attempt to resolve informally any dispute, concerns, or perceived violations that may arise under this Stipulation and Order. To that end, Class Counsel will notify Defendants' Counsel in writing of any perceived instances of non-compliance by the FDNY or the City with the Stipulation and Order's terms. The Parties also agree to meet and confer in good faith to discuss such matters and try to resolve them with the assistance of the Court Monitor prior to any party seeking Court intervention.

10. If Class Counsel has reason to believe that Defendants have violated the terms of this Stipulation and Order, it shall notify counsel for Defendants, in writing, thirty (30) days prior to raising the issue with the Court Monitor or bringing any motion to enforce the Stipulation and Order including a motion for contempt, provided however, it may give less notice if it demonstrates to the Court that an emergency need prevented it from giving the thirty

(30) days notice and that the amount of notice it did give was warranted under the circumstances.

11. Any application to the Court in connection with this Stipulation and Order shall be on notice to Defendants and Class Counsel.

12. The Parties agree that this Stipulation and Order is subject to Rule 108 of the Federal Rules of Evidence. It is therefore the Parties' understanding that the Stipulation and Order is not admissible to prove Defendants' liability for any of the individual or Class Claims that allege that Defendants engaged in intentional discrimination against members of the Class.

13. The terms and conditions contained herein do not constitute an official policy or practice of the City of New York for purposes other than enforcement of this Stipulation and Order.

Attorneys' Fees

14. The Parties agree that upon Plaintiffs-Intervenors' submission of an interim fee application for work performed on all aspects of the litigation up to the date of the entry of this Stipulation and Order by this Court, the Parties will negotiate in good faith to agree upon a payment of attorneys' fees. If the Parties are unable to agree upon the issue of attorneys' fees within thirty (30) days of such application, the dispute will be submitted to the Court for resolution. Payment of attorneys' fees will be made by the City within thirty (30) days of any agreement by the Parties or Court Order regarding attorneys' fees.

Court's Jurisdiction

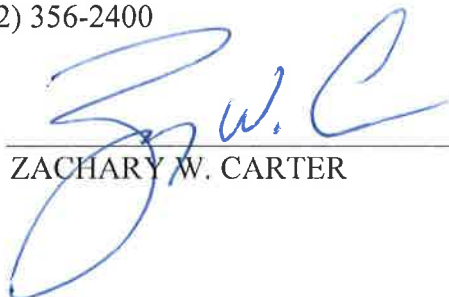
15. The Court shall retain jurisdiction over the Parties to enforce and administer the terms of this Stipulation and Order for the same period and under the same conditions as set forth in the Modified Remedial Order entered by the Court (Dkt. No. 1143).

Dated: New York, New York
April __, 2014

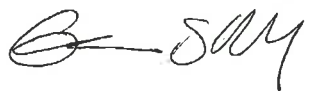
LEVY RATNER, P.C.
80 Eighth Avenue, Floor 8
New York, NY 10011
(212) 627-8100

By: 
RICHARD A. LEVY


ZACHARY W. CARTER
Corporation Counsel of the
City of New York
Attorney for Defendants
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(212) 356-2400

By: 
ZACHARY W. CARTER

THE CENTER FOR CONSTITUTIONAL
RIGHTS
666 Broadway, 7th Floor
New York, NY 10012-2399
(212) 614-6438


By: _____
GHITA SCHWARZ

SCOTT + SCOTT, LLP
405 Lexington Avenue Floor 40
New York, NY 10174
(212) 223-6444

By: 
JUDITH S. SCOLNICK
Attorneys for Plaintiffs-Intervenors

SO ORDERED:

U.S.D.J.

ATTACHMENT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

PLAINTIFF,

THE VULCAN SOCIETY, ET AL.,

PLAINTIFFS-INTERVENORS

V.

CITY OF NEW YORK, ET AL.,

DEFENDANTS.

CIV. ACTION NOS. 07-CV-2067, 13-CV-3123
(NGG)(RLM)

**INSTRUCTIONS FOR OBJECTING
TO THE PROPOSED STIPULATION & ORDER**

You may object to the proposed Stipulation & Order regarding the terms of Defendants' and Plaintiffs-Intervenors' proposed settlement of the claims of intentional discrimination. Objections are voluntary and are not required. However, if you do not object at this time, you will not, absent good cause, be able to oppose the Stipulation & Order in the future.

To object, complete and send in the objection form on the reverse side of this piece of paper *no later than* **[June 26, 2014]**. You may attach additional pages to explain the basis of your objection. Any objections sent after **[June 26, 2014]** may not be considered.

Objections can be submitted in three ways (choose one):

- 1) Upload the completed objection form to your claimant portal at www.fdnylitigation.com.
- 2) Email the form to questions@FDNYlitigation.com.
- 3) Mail the form to: United States v. City of New York
FDNY Discrimination Case
P.O. Box 9000 # 6541
Merrick, N.Y. 11566-9000

The Court will hold a Fairness Hearing on **[July 31, 2014]** to hear from objectors who wish to speak. You do not have to attend or speak at the Fairness Hearing to have your objection considered, but you may attend if you wish. If you would like assistance to submit an objection, you may consult with an attorney of your choosing at your own expense.

U.S. & Vulcan Society, et al. v. City of New York, et al.,
Case Nos. 07-CV-2067, 13-CV-3123 (E.D.N.Y.) (NGG) (RLM)

FDNY Discrimination Case
Claims Administrator c/o GCG
PO Box 9000 #6541
Merrick, NY 11566-9000
(Toll-free Number) 1 (866) 297-7120
CNY0123456789



Charlie Claimant
123 Smith Street
Smithtown, NY 12345

Mailing Date: April , 2014
Claimant No: 123456

OBJECTION TO PROPOSED STIPLUATION & ORDER

I object to entry of the proposed Stipulation & Order setting forth the terms upon which Defendants and Plaintiffs-Intervenors seek to resolve the intentional discrimination claims in this case.

Name: _____

Address: _____

Telephone: _____

Email address: _____

Basis of my objection (attach additional pages if needed): _____

Attorney name and firm (if any): _____

Attorney address: _____

Attorney telephone: _____

Attorney email address: _____

Will you (or your attorney) state your objection in person at the Fairness Hearing? [] Yes [] No