

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

-and-

VULCAN SOCIETY, INC., for itself and on behalf of its members; MARCUS HAYWOOD, CANDIDO NUNEZ, and ROGER GREGG, individually and on behalf of a class of all others similarly situated,

Plaintiffs-Intervenors,

-against-

CITY OF NEW YORK; THE FIRE DEPARTMENT OF THE CITY OF NEW YORK; NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES; MAYOR MICHAEL BLOOMBERG and NEW YORK CITY FIRE COMMISSIONER NICHOLAS SCOPPETTA, in their individual and official capacities,

Defendants.

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**DEFENDANTS' RESPONSE TO PLAINTIFF-INTERVENORS'
STATEMENT OF UNDISPUTED FACTS**

Pursuant to Local Rule 56.1 defendants submit the following response to Plaintiff-Intervenors' Statement of Undisputed Facts.

1. Deny the materiality of the assertions of paragraph "1" of plaintiffs-intervenors' 56.1 Statement, but admit that the reference exhibit contains the information recounted in paragraph "1" of plaintiffs-intervenors' 56.1 Statement.

2. Deny the materiality of the assertions of paragraph “2” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.¹

3. Deny the materiality of the assertions of paragraph “3” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

4. Deny the materiality of the assertions of paragraph “4” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

5. Deny the materiality of the assertions of paragraph “5” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

6. Deny the materiality of the assertions of paragraph “6” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

7. Deny the materiality of the assertions of paragraph “7” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

8. Deny the materiality of the assertions of paragraph “8” of plaintiffs-intervenors’ 56.1 Statement, and deny the conclusions contained in the paragraph but admit that

¹ Plaintiffs-Intervenors make frequent reference to this Court’s July 2009 ruling concerning disparate impact. Defendants, consistent with the law of the case doctrine, do not attempt to object, contravene, take exception or reargue their positions concerning matters addressed or raised in relation to the Court’s July 2009 holding, but respectfully reserve their rights to any appeal of that decision.

that the percentage of black firefighters in the FDNY has heretofore been approximately 3% of the uniformed force.

9. Paragraph "9" of plaintiffs-intervenors' 56.1 Statement fails to cite to materials in the record in support of its assertions and therefore no response is required, but defendants deny the assertions, but admit that since 1977, the City of New York has created and administered multiple examinations for entry level firefighter.

10. Deny the materiality of the assertions of paragraph "10" of plaintiffs-intervenors' 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

11. Deny the materiality of the assertions of paragraph "11" of plaintiffs-intervenors' 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

12. Deny the materiality of the assertions of paragraph "12" of plaintiffs-intervenors' 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

13. Deny the assertions, and the materiality of the assertions, of paragraph "13" of plaintiffs-intervenors' 56.1 Statement, and affirmatively state that the Eligible List based on the results of Exam 0084 was established on February 2, 1996 and expired four years thereafter, and for the remaining assertions of paragraph "13" of plaintiffs-intervenors' 56.1 Statement, respectfully refer the Court to documents cited therein for a true and complete recitation of their contents and to the Declaration of Martha G. Pierre.

14. Deny the materiality of the assertions of paragraph "14" of plaintiffs-intervenors' 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

15. Deny the materiality of the assertions of paragraph "15" of plaintiffs-intervenors' 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

16. Paragraph "16" of plaintiffs-intervenors' 56.1 Statement fails to cite to materials in the record in support of its assertions and therefore no response is required, but defendants deny the materiality of the assertions of paragraph "16".

17. Deny the materiality of the assertions of paragraph "17" of plaintiffs-intervenors' 56.1 Statement, moreover, as the testimony cited in support of paragraph "17" of plaintiffs-intervenors' 56.1 Statement, is inadmissible hearsay and cannot serve as a basis for and assertion of material fact and therefore no response is required.

18. Deny the materiality of the assertions of paragraph "18" of plaintiffs-intervenors' 56.1 Statement, moreover, as the testimony cited in support of paragraph "18" of plaintiffs-intervenors' 56.1 Statement, is inadmissible hearsay and cannot serve as a basis for and assertion of material fact and therefore no response is required, notwithstanding the forgoing defendants further affirmatively state that the cited document identifies Mr. Washington as a Fire Lieutenant and therefore he could not have sat for the examination and could not know its contents, moreover, the Eligible List based on that examination was not established until November 15, 2000, sixteen and a half months after Mr. Washington made his assertion. At the point Mr. Washington spoke to the New York Times he could not have known how black candidates had fared on the examination. See the Declaration of Martha G. Pierre.

19. Deny the materiality of the assertions of paragraph "19" of plaintiffs-intervenors' 56.1 Statement, moreover, as the testimony cited in support of paragraph "19" of plaintiffs-intervenors' 56.1 Statement, is inadmissible hearsay and cannot serve as a basis for and assertion of material fact and therefore no response is require.

20. Deny the materiality of the assertions of paragraph "20" of plaintiffs-intervenors' 56.1 Statement, moreover, as the testimony cited in support of paragraph "20" of plaintiffs-intervenors' 56.1 Statement, is inadmissible hearsay and cannot serve as a basis for and assertion of material fact and therefore no response is require.

21. Deny the materiality of the assertions of paragraph "21" of plaintiffs-intervenors' 56.1 Statement, moreover, as the testimony cited in support of paragraph "21" of plaintiffs-intervenors' 56.1 Statement, is inadmissible hearsay and cannot serve as a basis for and assertion of material fact and therefore no response is require.

22. Deny the materiality of the assertions of paragraph "22" of plaintiffs-intervenors' 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

23. Deny the materiality of the assertions of paragraph "23" of plaintiffs-intervenors' 56.1 Statement, moreover, as the testimony cited in support of paragraph "23" of plaintiffs-intervenors' 56.1 Statement, is inadmissible hearsay and cannot serve as a basis for and assertion of material fact and therefore no response is require.

24. Deny the materiality of the assertions of paragraph "24" of plaintiffs-intervenors' 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

25. Deny the materiality of the assertions of paragraph “25” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

26. Deny the materiality of the assertions of paragraph “26” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true, and complete recitation of their contents, and affirmatively state that individuals who were principally responsible for developing Examinations 7029 and 2043 attempted to develop the examination in accord with what they believed were appropriate and acceptable test development methods, but did not consult the Guardians decision. See Declarations of Matthew Morrongiello and Alberto Johnston.

27. Deny the materiality of the assertions of paragraph “27” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents individuals who were principally responsible for developing Examinations 7029 and 2043 attempted to develop the examination in accord with what they believed were appropriate and acceptable test development methods, but did not consult counsel or the Guardians decision. See Declarations of Matthew Morrongiello and Alberto Johnston.

28. Deny the materiality of the assertions of paragraph “28” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents and affirmatively state that for Exams 7029 and 2043 it was only feasible to test for nine abilities including Written Comprehension, Written Expression, memorization, Problem Sensitivity, Deductive Reasoning, Inductive Reasoning, Information Ordering, Spatial Orientation and Visualization. See Deposition of Matthew Morrongiello,

01/29/08 at 322:22 to 323:4 annexed to the Declaration of William S.J. Fraenkel, Esq., (“the Fraenkel Declaration”) as Exhibit 1.

29. Deny the materiality of the assertions of paragraph “29” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

30. Deny the materiality of the assertions of paragraph “30” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

31. Deny the materiality of the assertions of paragraph “31” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

32. Deny the materiality of the assertions of paragraph “32” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

33. Deny the materiality of the assertions of paragraph “33” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents, and note that although plaintiffs-intervenors refer to a survey of firefighters in paragraph “33” of plaintiffs-intervenors’ 56.1 Statement, plaintiffs-intervenors at page 25 of their memorandum of law criticize the use of firefighters in test development.

34. Deny the materiality of the assertions of paragraph “32” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

35. Deny the materiality of the assertions of paragraph “35” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents individuals who were principally responsible for developing Examinations 7029 and 2043 attempted to develop the examination in accord with what they believed were appropriate and acceptable test development methods, but did not consult counsel or the Guardians decision. See Declarations of Matthew Morrongiello and Alberto Johnston.

36. Deny the materiality of the assertions of paragraph “27” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents individuals who were principally responsible for developing Examinations 7029 and 2043 attempted to develop the examination in accord with what they believed were appropriate and acceptable test development methods, but did not consult counsel or the Guardians decision. See Declarations of Matthew Morrongiello and Alberto Johnston.

37. Deny the materiality of the assertions of paragraph “37” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

38. Deny the materiality of the assertions of paragraph “38” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

39. Deny the materiality of the assertions of paragraph “39” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

40. Deny the materiality of the assertions of paragraph "40" of plaintiffs-intervenors' 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

41. Deny the materiality of the assertions of paragraph "41" of plaintiffs-intervenors' 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

42. Deny the materiality of the assertions of paragraph "42" of plaintiffs-intervenors' 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

43. Deny the materiality of the assertions of paragraph "43" of plaintiffs-intervenors' 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

44. Deny the materiality of the assertions of paragraph "44" of plaintiffs-intervenors' 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

45. Deny the materiality of the assertions of paragraph "45" of plaintiffs-intervenors' 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

46. Deny the materiality of the assertions of paragraph "46" of plaintiffs-intervenors' 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

47. Deny the materiality of the assertions of paragraph "47" of plaintiffs-intervenors' 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

48. Deny the materiality of the assertions of paragraph "48" of plaintiffs-intervenors' 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

49. Deny the materiality of the assertions of paragraph "49" of plaintiffs-intervenors' 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

50. Deny the materiality of the assertions of paragraph "50" of plaintiffs-intervenors' 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

51. Respectfully refer the Court to the deposition of Mayor Bloomberg cited in paragraph "51" of plaintiffs-intervenors' 56.1 Statement, for the complete recitation of the Mayor's statement.

52. Deny the materiality of the assertions of paragraph "52" of plaintiffs-intervenors' 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

53. Deny the materiality of the assertions of paragraph "53" of plaintiffs-intervenors' 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

54. Deny the materiality of the assertions of paragraph "54" of plaintiffs-intervenors' 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

55. Deny the materiality of the assertions of paragraph "55" of plaintiffs-intervenors' 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

56. Deny the materiality of the assertions of paragraph "56" of plaintiffs-intervenors' 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

57. Deny the materiality of the assertions of paragraph "57" of plaintiffs-intervenors' 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

58. Deny the materiality of the assertions of paragraph "58" of plaintiffs-intervenors' 56.1 Statement, moreover, as the testimony cited in support of paragraph "58" of plaintiffs-intervenors' 56.1 Statement, is inadmissible hearsay and cannot serve as a basis for and assertion of material fact and therefore no response is required.

59. To the extent that paragraph "59" of plaintiffs-intervenors' 56.1 Statement contains assertions of law, no response is required and defendants respectfully refer the Court to the guidelines cited in paragraph "59" of plaintiffs-intervenors' 56.1 Statement for a full and accurate statement of its contents.

60. To the extent that paragraph "60" of plaintiffs-intervenors' 56.1 Statement contains assertions of law, no response is required and defendants respectfully refer the Court to

the guidelines cited in paragraph “60” of plaintiffs-intervenors’ 56.1 Statement for a full and accurate statement of its contents.

61. Deny the materiality of the assertions of paragraph “61” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

62. To the extent that paragraph “62” of plaintiffs-intervenors’ 56.1 Statement contains assertions of law, no response is required and defendants respectfully refer the Court to the guidelines cited in paragraph “62” of plaintiffs-intervenors’ 56.1 Statement for a full and accurate statement of its contents.

63. Defendants repeat and reassert each and every one of their responses to paragraphs “31” through “32” of plaintiffs-intervenors’ 56.1 Statement, as if set forth fully hereat, and further deny the assertions of paragraph “63” of plaintiffs-intervenors’ 56.1 Statement, and affirmatively state that individuals who were principally responsible for developing Examinations 7029 and 2043 attempted to develop the examination in accord with what they believed were appropriate and acceptable test development methods. See Declarations of Matthew Morrongiello and Alberto Johnston.

64. Deny the materiality of the assertions of paragraph “64” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to Chapter 36 of the New York City Charter for a true and complete recitation of the duties of the Equal Employment Practices Commission.

65. Deny the materiality of the assertions of paragraph “65” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to Chapter 36 of the New York City

Charter for a true and complete recitation of the duties of the Equal Employment Practices Commission.

66. Deny the materiality of the assertions of paragraph “66” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to Chapter 36 of the New York City Charter for a true and complete recitation of the duties of the Equal Employment Practices Commission.

67. Deny the materiality of the assertions of paragraph “67” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents and respectfully refer the Court to Chapter 36 of the New York City Charter for a true and complete recitation of the duties of the Equal Employment Practices Commission.

68. Deny the materiality of the assertions of paragraph “68” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents and deny the assertions of paragraph “68” of plaintiffs-intervenors’ 56.1 Statement, to the extent it overstates the authority of the Equal Employment Practices Commission and understates the discretion of the Mayor and respectfully refer the Court to section 832 (c) of Chapter 36 of the New York City Charter which vests with the mayor “after reviewing the commission's findings and the agency's response, if any,” the authority to order such action as the mayor “deems appropriate” and does not limit the mayor’s discretion to merely adopting the recommendations of the Equal Employment Practices Commission.

69. Deny the materiality of the assertions of paragraph “69” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

70. Deny the materiality of the assertions of paragraph “70” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

71. Deny the materiality of the assertions of paragraph “71” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

72. Deny the materiality of the assertions of paragraph “72” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents, and deny the characterization of the EEPC’s statements concerning the FDNY’s recruitment efforts and respectfully refer the Court to Exhibits K and L to the Levy Declaration for a true and complete recitation of the EEPC’s findings.

73. Deny the materiality of the assertions of paragraph “73” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

74. Deny the materiality of the assertions of paragraph “74” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

75. Deny the materiality of the assertions of paragraph “75” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

76. Deny the materiality of the assertions of paragraph “76” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

77. Deny the materiality of the assertions of paragraph “77” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

78. Deny the materiality of the assertions of paragraph “78” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

79. Deny the materiality of the assertions of paragraph “79” of plaintiffs-intervenors’ 56.1 Statement, and deny the characterization of the testimony cited in paragraph “79” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to documents cited therein for a true and complete recitation of the testimony.

80. Deny the materiality of the assertions of paragraph “80” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

81. Deny the materiality of the assertions of paragraph “81” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

82. Deny the materiality of the assertions of paragraph “82” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

83. Deny the materiality of the assertions of paragraph “83” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

84. Deny the materiality of the assertions of paragraph “84” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

85. Deny the materiality of the assertions of paragraph “85” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

86. Deny the materiality of the assertions of paragraph “86” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

87. Deny the materiality of the assertions of paragraph “87” of plaintiffs-intervenors’ 56.1 Statement, and deny the characterization of the testimony cited in paragraph “87” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to documents cited therein for a true and complete recitation of the testimony.

88. Deny the materiality of the assertions of paragraph “88” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

89. Deny the materiality of the assertions of paragraph “89” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

90. Deny the materiality of the assertions of paragraph “90” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

91. Deny the materiality of the assertions of paragraph “91” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents, and deny the assertions by plaintiffs-intervenors and/ or the EEPC’s as to the authority of the EEPC instruct agencies as to “require actions” as opposed to making recommendations to agencies and respectfully refer the Court to Chapter 36 of the New York City Charter for a true and complete recitation of the duties and powers of the Equal Employment Practices Commission.

92. Deny the materiality of the assertions of paragraph “92” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

93. Deny the materiality of the assertions of paragraph “93” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

94. Deny the materiality of the assertions of paragraph “94” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

95. Deny the materiality of the assertions of paragraph “95” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

96. Deny the materiality of the assertions of paragraph “96” of plaintiffs-intervenors’ 56.1 Statement, and deny the characterization of the testimony cited in paragraph “96” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to documents cited therein for a true and complete recitation of the testimony.

97. Deny the materiality of the assertions of paragraph “97” of plaintiffs-intervenors’ 56.1 Statement, and deny the characterization of the testimony cited in paragraph “97” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to documents cited therein for a true and complete recitation of the testimony.

98. Deny the assertions and materiality of paragraph “98” of plaintiffs-intervenors’ 56.1 Statement, and affirmatively state that the EEPC report concerning ACS, Plaintiffs-Intervenors’ Exhibit X to the Levy Declaration, does not reflect that ACS failed to comply EEPC recommendations under Commissioner Scoppetta but shows instead that disagreements between ACS and the EEPC arose in 2002, after Commissioner Scoppetta became Fire Commissioner and respectfully refer the Court to page 3 of Exhibit X to Levy Declaration.

99. Deny the assertions and materiality of paragraph “99” of plaintiffs-intervenors’ 56.1 Statement, and affirmatively state that the EEPC report concerning ACS, Plaintiffs-Intervenors’ Exhibit X to the Levy Declaration, does not reflect that ACS failed to comply EEPC recommendations under Commissioner Scoppetta but shows instead that disagreements between ACS and the EEPC arose in 2002, after Commissioner Scoppetta became Fire Commissioner and respectfully refer the Court to page 3 of Exhibit X to Levy Declaration.

100. Deny the materiality of the assertions of paragraph “100” of plaintiffs-intervenors’ 56.1 Statement, and deny the characterization of the contents of the documents cited in paragraph “100” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

101. Deny the materiality of the assertions of paragraph “101” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

102. Deny the materiality of the assertions of paragraph “102” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

103. Deny the assumptions plaintiffs-intervenors make concerning the motivations for the analysis referenced paragraph “103” of plaintiffs-intervenors’ 56.1 Statement, as there is no evidence supporting those assumptions and assertions and respectfully refer the Court to documents cited therein for a true and complete recitation of the contents analysis referenced paragraph “103” of plaintiffs-intervenors’ 56.1 Statement.

104. Deny the assertions and materiality of paragraph “104” of plaintiffs-intervenors’ 56.1 Statement, as the testimony cited does not support the assertions that there was discussion “about the adverse impact” and respectfully refer the Court to testimony cited for a true and complete recitation of that testimony.

105. Deny the materiality of the assertions of paragraph “105” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents and affirmatively state that the pass mark was selected based on the anticipates hiring needs of the FDNY. See deposition testimony of Carol Wachter at 74:17 to 75:14 annexed to the Fraenkel Declaration as Exhibit 2.

106. Deny the materiality of the assertions of paragraph “106” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

107. Deny the materiality of the assertions of paragraph “107” of plaintiffs-intervenors’ 56.1 Statement, and deny the assertions of paragraph “107” of plaintiffs-intervenors’ 56.1 Statement as it selectively cites the testimony of Carol Wachter by failing to reference the

remainder of her answer in which she states that her understanding for the requested educational requirement was not an invidious motive but because “the Commissioner's position was that he wanted to see a better educated force the way the Police Department had increased its education requirements for entry-level as well as for the promotion levels. And the Fire Department did bring in education requirements gradually for the higher officer positions as well.” See deposition testimony of Carol Wachter at 151:19 to 152:2 annexed to the Levy declaration as Exhibit P.

108. Deny the materiality of the assertions of paragraph “108” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

109. Paragraph “109” of plaintiffs-intervenors’ 56.1 Statement fails to cite to materials in the record in support of its assertions and therefore no response is required, moreover defendants deny the materiality of the assertions of the paragraph.

110. Deny the materiality of the assertions of paragraph “110” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

111. Deny the assertions and materiality of the assertions of paragraph “111” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to the Report of Drs. Bobko and Schemmer at P. 25-26, annexed to the Fraenkel Declaration as Exhibit 3.

112. To the extent that paragraph “112” of plaintiffs-intervenors’ 56.1 Statement purports to contain assertions of law, no response is required and defendants respectfully refer the Court to the guidelines cited in paragraph “112” of plaintiffs-intervenors’ 56.1 Statement for a full and accurate statement of their contents.

113. Deny the materiality of the assertions of paragraph “113” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

114. Deny the materiality of the assertions of paragraph “114” of plaintiffs-intervenors’ 56.1 Statement, and deny the characterization of the testimony cited in paragraph “114” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to documents cited therein for a true and complete recitation of the testimony.

115. Deny the materiality of the assertions of paragraph “115” of plaintiffs-intervenors’ 56.1 Statement, and deny the characterization of the testimony cited in paragraph “115” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to documents cited therein for a true and complete recitation of the testimony.

116. Paragraph “116” of plaintiffs-intervenors’ 56.1 Statement is an argument rather than an assertion of fact and fails to cite to materials in the record and therefore no response is required, moreover defendants deny the materiality of the assertions of the paragraph.

117. Deny the materiality of the assertions of paragraph “117” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

118. Deny the materiality of the assertions of paragraph “118” of plaintiffs-intervenors’ 56.1 Statement, and deny the assertions of the paragraph as the cited material does not support the conclusion concerning the FDNY’s knowledge of the actions DCAS was taking or contemplating.

119. Deny the materiality of the assertions of paragraph “119” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

120. Deny the materiality of the assertions of paragraph “120” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

121. Deny the materiality and the assertions of paragraph “121” of plaintiffs-intervenors’ 56.1 Statement as plaintiffs-intervenors mischaracterize the Equal Employment Opportunity Commission’s (“EEOC”) probable cause finding issued on June 24, 2004, which found disparate impact from Written Examination 2043, not 7029, and also concluded that the City’s Development Report did not include the necessary elements of a validation study as those elements are set forth in the EEOC’s guidelines and thus, the EEOC concluded that test was not “validated according to professional standards...” and respectfully refer the Court to the EEOC probable cause finding for a true and complete recitation of its contents.

122. Deny the materiality of the assertions of paragraph “122” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

123. Deny the materiality of the assertions of paragraph “123” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

124. Deny the materiality of the assertions of paragraph “124” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

125. Admit the assertions of paragraph “124” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

126. Deny the characterization of the testimony cited in paragraph “126” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to documents cited therein for a true and complete recitation of the testimony.

127. Admit the assertions of paragraph “127” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

128. Deny the materiality of the assertions of paragraph “128” of plaintiffs-intervenors’ 56.1 Statement, and the characterization of the testimony cited in paragraph “128” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to documents cited therein for a true and complete recitation of the testimony.

129. Admit the assertions of paragraph “129” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

130. Admit the assertions of paragraph “130” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

131. Admit the assertions of paragraph “131” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

132. Deny the characterization of the testimony cited in paragraph “132” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to documents cited therein for a true and complete recitation of the testimony.

133. Deny the materiality of the assertions of paragraph “133” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

134. Deny the materiality of the assertions of paragraph “134” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

135. Deny the materiality of the assertions of paragraph “135” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

136. Deny the materiality of the assertions of paragraph “136” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

137. Admit the assertions of paragraph “137” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

138. Deny the assertions of paragraph “138” of plaintiffs-intervenors’ 56.1 Statement as the cited materials do not support the assertions.

139. Deny the characterization of the testimony cited in paragraph “139” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to documents cited therein for a true and complete recitation of the testimony.

140. Deny the characterization of the testimony cited in paragraph “140” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to documents cited therein for a true and complete recitation of the testimony.

141. Deny the characterization of the testimony cited and the interrogatory responses in paragraph “141” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to documents cited therein for a true and complete recitation of the testimony.

142. Deny the characterization of the testimony cited in paragraph “142” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to documents cited therein for a true and complete recitation of the testimony.

143. Deny the materiality of the assertions of paragraph “143” of plaintiffs-intervenors’ 56.1 Statement, and deny the characterization of the document cited paragraph “143” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

144. Deny the materiality of the assertions of paragraph “144” of plaintiffs-intervenors’ 56.1 Statement, as defendants deny the characterization of the document cited paragraph “143” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited in paragraphs “143” and “144” of plaintiffs-intervenors’ 56.1 Statement, for a true and complete recitation of their contents, and deny the implications of paragraph “144” of plaintiffs-intervenors’ 56.1 Statement, in understating the discretion of the Mayor concerning EEPCC reports and respectfully refer the Court to section 832 (c) of Chapter 36 of the New York City Charter which vests with the mayor “after reviewing the commission's findings and the agency's response, if any,” the authority to order such action as the mayor “deems appropriate” and does not limit the mayor’s discretion to merely adopting the recommendations of the EEPCC.

145. Deny the materiality of the assertions of paragraph “145” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

146. Deny the materiality of the assertions of paragraph “146” of plaintiffs-intervenors’ 56.1 Statement, and deny the characterization of the interrogatory response partially quoted in cited paragraph “146” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to documents cited therein for a true and complete recitation of their contents wherein it was further stated that the mayor concluded “[a]fter talking with the Fire Commissioner, it seemed best to spend public resources to move forward with new exams and new recruitment strategies rather than spending scarce public money to study past exams.”

147. Admit the assertions of paragraph “147” of plaintiffs-intervenors’ 56.1 Statement, and respectfully refer the Court to documents cited therein for a true and complete recitation of the testimony.

148. Paragraph “148” of plaintiffs-intervenors’ 56.1 Statement is an argument rather than an assertion of fact and fails to cite to materials in the record and therefore no response is required, moreover defendants deny the materiality of the assertions of the paragraph and further state the Exam 2043 was not the subject of the EEPC report and recommendation for a study but rather the 1999 examination number 7029 was the subject of the EEPC report, moreover examination 2043 was not considered a “new” examination as it had been administered in the preceding year.

149. Deny the materiality of the assertions of paragraph “149” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

150. Deny the materiality of the assertions of paragraph “150” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

151. Deny the materiality of the assertions of paragraph “151” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

152. As the testimony cited in support of paragraph “152” of plaintiffs-intervenors’ 56.1 Statement, is inadmissible hearsay and cannot serve as a basis for and assertion of material fact and therefore no response is required.

153. Deny the materiality of the assertions of paragraph “153” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

154. Deny the materiality of the assertions of paragraph “154” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

155. Deny the materiality of the assertions of paragraph “155” of plaintiffs-intervenors’ 56.1 Statement, and the characterization of the testimony cited in support of paragraph “155” of plaintiffs-intervenors’ 56.1 Statement, respectfully refer the Court to documents cited therein for a true and complete recitation of their contents. Moreover, defendants note that the testimony cited in support of paragraph “155” of plaintiffs-intervenors’ 56.1 Statement, is inadmissible hearsay and cannot serve as a basis for and assertion of material fact.

156. Deny the materiality of the assertions of paragraph “156” of plaintiffs-intervenors’ 56.1 Statement and the characterization of the statistics set forth in paragraph “156” of plaintiffs-intervenors’ 56.1 Statement, and affirmatively state that the statistics set forth in paragraph “156” of plaintiffs-intervenors’ 56.1 Statement, indicate consistent increase during the Bloomberg administration of the number and percentage of black firefighters and that during the Bloomberg administrations, the number and percentage of black firefighters has been restored to the levels of 1996/1997.

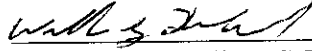
157. Deny the materiality of the assertions of paragraph “157” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents, and affirmatively state that the statistics set forth in paragraph “156” of plaintiffs-intervenors’ 56.1 Statement, indicate consistent increase during the Bloomberg administration of the number and percentage of black firefighters and that during the Bloomberg administrations, the number and percentage of black firefighters has been restored to the levels of 1996/1997.

158. Deny the materiality of the assertions of paragraph “153” of plaintiffs-intervenors’ 56.1 Statement, but respectfully refer the Court to documents cited therein for a true and complete recitation of their contents.

Dated: New York, New York
December 1, 2009

Respectfully Submitted,

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By: 

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Assistant Corporation Counsel

Civil Action No. 07 CV 2067 (NGG) (RLM)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-and-

VULCAN SOCIETY, INC., for itself and on behalf of its members;
MARCUS HAYWOOD, CANDIDO NUNEZ, and ROGER
GREGG, individually and on behalf of a class of all others similarly
situated,

Plaintiffs-Intervenors,

-against-

CITY OF NEW YORK; THE FIRE DEPARTMENT OF THE CITY
OF NEW YORK; NEW YORK CITY DEPARTMENT OF
CITYWIDE ADMINISTRATIVE SERVICES; MAYOR MICHAEL
BLOOMBERG and NEW YORK CITY FIRE COMMISSIONER
NICHOLAS SCOPPETTA, in their individual and official capacities,

Defendants

**DEFENDANTS' RESPONSE TO
PLAINTIFF-INTERVENORS'
STATEMENT OF UNDISPUTED FACTS**

MICHAEL A. CARDOZO

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Law Dept. No. 2007-017441-LE*

Due and timely service is hereby admitted.

New York, N.Y., 200...

Esq.

Attorney for