

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
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.
----- X

CIVIL ACTION NO.

07 CV 2067 (NGG)(RLM)

DEFENDANTS' STATEMENT OF DISPUTED MATERIAL FACTS

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

1. The 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.

2. The individuals who were principally responsible for developing Examinations 7029 and 2043, did not, prior to developing the Examinations consult with

counsel or review the Guardians decision. See Declarations of Matthew Morrongiello and Alberto Johnston.

3. The individuals who were principally responsible for developing Examinations 7029 and 2043 did not intend to discriminate against any protected group. See Declarations of Matthew Morrongiello and Alberto Johnston.

4. The current administration has devoted increased manpower, funds, spending millions on advertising, and helping to develop the FDNY High School, in an effort to reach out to black communities and increase the number of blacks taking the entry level examination. See e.g., the testimony of FDNY Deputy Commissioner of Administration Douglas White before the City Council Committee on Fire and Criminal Justice of February 10, 2004 and March 30, 2005; the Testimony of FDNY Commissioner Nicholas Scoppetta before the City Council Committee on Fire and Criminal Justice of November 2, 2006; the deposition testimony of FDNY Deputy Commissioner of Administration Douglas White of February 7, 2008 at 175:15-21; the FDNY Strategic Plan 2004-2005; the FDNY Strategic Plan 2007-2008; and, FDNY Strategic Plan 2009-2010, annexed to declaration of William S.J. Fraenkel, as Exhibits 4, 5, 6, 8, 9 and 10.

5. The defendants have increased the frequency of the examination for promotion to firefighter which draws on larger minority pool of EMTs and paramedics. See e.g., the deposition testimony of FDNY Commissioner Nicholas Scoppetta of August 21, 2008

at 34:20-25, 40:3-21, annexed to declaration of William S.J. Fraenkel, as Exhibit 7.

Dated: New York, New York
December 1, 2009

Respectfully Submitted,

MICHAEL A. CARDOZO

Corporation Counsel of the City of New York

Attorney for Defendants


100 Church Street, Room 2-105

New York, New York 10007

(212) 788-1247

wfraenke@law.nyc.gov

By:



William S.J. Fraenkel
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' STATEMENT OF DISPUTED
MATERIAL FACTS**

MICHAEL A. CARDOZO

*Corporation Counsel of the City of New York
Attorney for Defendants
100 Church Street
New York, N.Y. 10007*

*Of Counsel: William S.J. Fraenkel
Tel: (212) 788-1247
Law Dept. No. 2007-017441-LE*

Due and timely service is hereby admitted.

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

Esq.

Attorney for.....