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' MEMORANDUM OF LAW IN RESPONSE TO PLAINTIFF'S MEMORANDUM FURTHER SUPPORTING THE PLAINTIFFS-INTERVENORS' MOTION FOR SUMMARY JUDGMENT

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

Of Counsel: James M. Lemonedes
Tel: (212) 788-0881
Law Dept. No.: 2007-017441-LE

TABLE OF CONTENTS

Page

STATEMENT OF THE CASE 1

POINT I 1

DISPUTES OF MATERIAL FACT REQUIRES THAT SUMMARY JUDGMENT BE DENIED 1

POINT II 6

CONTRARY TO THE PLAINTIFFS' APPROACH THE SECOND CIRCUIT AND TEST DEVELOPMENT PROFESSIONALS RECOGNIZE THAT CREATION OF EMPLOYMENT SELECTION DEVICES AND THEIR LEGAL SCRUTINY DEMANDS A FLEXIBLE APPROACH 6

CONCLUSION 14

STATEMENT OF THE CASE

The memorandum of law submitted by the plaintiff, the U.S. Department of Justice (DOJ), in support of the motion for summary judgment made by the Plaintiffs-Intervenors' (the Vulcans) continues to reflect their rigid view of the law and contempt for any argument or fact that does not fit into their theory of test development and statistical analysis. While the plaintiff's memorandum of law does not add anything to the arguments made by the plaintiff-intervenors, characteristically, it seeks to preclude the admission of evidence which is clearly material to the issues before this Court because it harms plaintiff's case. The DOJ is resorting to misrepresentation of law and disingenuous assertions concerning facts and circumstances because it does not want the Court to hear all the relevant evidence. As set forth more fully below, defendants have shown that there exist material issues of fact in dispute with respect to whether the exams at issue were job-related and consistent with business necessity and, therefore, this case must go to trial.

POINT I

DISPUTES OF MATERIAL FACT REQUIRES THAT SUMMARY JUDGMENT BE DENIED

DOJ accuses the defendants of invoking the wrong burden in opposing the Vulcans' motion. DOJ asserts that defendants' opposition should not have argued the Vulcans' motion fails to establish that the exams are invalid. DOJ says that, instead, defendants needed to show that Exams 7029 and 2043 were job related and consistent with business necessity. However, to successfully defeat a summary judgment motion, defendants must only show that there are genuine issues of material fact as to whether the exams at issue are job-related and consistent with business necessity. Defendants produced an expert report that testifies to the job relatedness and business necessity of exams 7029 and 2043, as well as thousands of documents

relating to the development of those exams that further demonstrate that the exams are job-related and consistent with business necessity. Plaintiffs disagreement with the expert report and attempts to discredit its conclusions does not establish that the exams were invalid.

Summary judgment must be denied where there is any evidence in the record that could reasonably support a jury's verdict for the non-moving party. Lucente v. Int'l Bus. Machines Corp., 310 F.3d 243, 254 (2d Cir. 2002). As this Court explained in Disability Advocates, Inc. v. Paterson, 2009 U.S. Dist. LEXIS 13126 at *9-10 (E.D.N.Y. Feb. 19, 2009):

> In ruling on a motion for summary judgment, the court "is not to weigh the evidence but is instead required to view the evidence in the light most favorable to the party opposing summary judgment, to draw all reasonable inferences in favor of that party, and to eschew credibility assessments . . " Weyant v. Okst, 101 F.3d 845, 854 (2d Cir. 1996) (citations omitted). As such, the non-movant "will have [his or her] allegations taken as true, and will receive the benefit of the doubt when [his or her] assertions conflict with those of the movant." Samuels v. Mockry, 77 F.3d 34, 35 (2d Cir. 1996) (internal quotation marks and citation omitted). "Stated more succinctly, "[t]he evidence of the non-movant is to be believed." Lucente, 310 F.3d at 254 (citing Anderson, 477 U.S. at 255).

A large number of the Vulcans' purported statements of material facts are far from material. Indeed, the first five pages of the Vulcans' Rule 56.1 statement is characterized by the Vulcans themselves as being "background." The Vulcans' Rule 56.1 statement does not even begin to discuss the issue of the Exams' job relatedness until page 17. Further, some of the assertion in the Rule 56.1 statement are not of fact, but of law. A few are not supported by the materials to which the Vulcans cite. See e.g. paragraphs 75, 110, 121, 146 and 159 of the Vulcans' Rule 56.1 statement. Many of the assertion of fact are not facts which "might affect the outcome of the suit under the governing law will properly preclude the entry of summary

judgment." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, (1986). But once we come across statements that are in fact material we find disputes in abundance.

In paragraph "100" of their 56.1 Statement the Vulcans blatantly assert "Defendants expert report, in the section on job relatedness and business necessity, *never mentions Written Exam 2043 at all.*" (Emphasis in the original.) Defendants dispute this assertion and specifically quoted a statement on page 27 report where defendants' experts stated: "we were also asked to comment on the issues of job relatedness and business necessity regarding exams #7029 and #2043. We do so briefly here...." The Vulcans' error is as blatant as their assertion. Because the Vulcans failed to prove this assertion, which they as movants claim to be material to resolution of the motion, the motion must be denied. Other disputes of material fact exist. A few examples of these disputed facts, any single one of which will defeat summary judgment, are set forth below.[1]

In paragraph 69 the Vulcans assert that candidates are "ranked based on differences that have no psychometric validity." Defendants denied this assertion citing to the Declaration of Dr. F. Mark Schemmer at ¶¶ 11-14 annexed to the Fraenkel Declaration as Exhibit 2 and to the Deposition of plaintiff's expert Dr. David Jones, 09/09/08 at 161:2-9, annexed to the Fraenkel Declaration as Exhibit 13. In paragraph 71 the Vulcans assert that comparing results obtained by a single individual on separate examinations can be used to evaluate the examinations. The Vulcans later use such a comparison to attempt to show the exams invalid. Defendants dispute the viability of the proposed analysis in paragraph 71 citing to the Declaration of Dr. F. Mark Schemmer at ¶ 10 and the Declaration of Dr. Catherine Cline at ¶ 5 annexed to the Fraenkel Declaration as Exhibits 2 and 3 respectively.

[1] The full complement of disputed alleged material facts is set forth in Defendants' Response to Plaintiffs-Intervenors' Local rule 56.1 Statement.

In paragraph 99 the Vulcans assert that there are flaws in how the tests were designed, particularly with regard to the "JAQ and the Linking Panel". Defendants dispute this assertion citing to the Declaration of Dr. Catherine Cline at ¶ 15 and to the Test Development Report for Exam 7029 annexed to the Fraenkel Declaration as Exhibits 3 and 4 respectively. In paragraph 102 the Vulcans assert that Exams 7029 and 2043 tested for too few abilities for the exams to be valid. Defendants dispute this citing to the Declaration of Dr. Catherine Cline at ¶¶ 7, 10, 11, 17 annexed to the Fraenkel Declaration as Exhibit 3.[2] Similarly, in paragraphs 108 and 109 the Vulcans make assertions concerning what abilities Dr. Cline tested for on Exam 6019 and what could have been tested for on Exams 7029 and 2043. Defendants disputed these assertions, citing to Dr Cline's declaration and the very deposition testimony of Dr. Cline which the Vulcans mischaracterize.

The list of allegedly material facts which defendants dispute, via admissible evidence continues, including but not limited to paragraphs 115, 119, 121, 127, 129 through 136, 148, 154, and 162. Defendants also dispute the contents of other paragraphs as being mischaracterizations of cited materials or testimony or for being non-material. Neither the Vulcans, despite requesting an increase in the page limitation on their reply memo of law, nor the DOJ, made any systematic effort to explain how there might not be a dispute as to facts in light of defendants opposition. The DOJ, through several lengthy footnotes attempts to explain why

---

[2] It should be noted that in attempting to prove this point, both the DOJ's experts and the Vulcans' expert make reference to the current examination for the firefighter position, Exam 6019. Exam 6019 was developed by Dr. Catherine Cline. Plaintiffs, despite attempting to prove their case by reference to Dr. Cline's work, are seeking to prevent the Court from considering Dr. Cline declaration testimony concerning her own work and its implications. Such action is neither fair nor does it further the truth finding process. As explained in defendants' memorandum of law in opposition to the Vulcans' motion to strike, the declarations of Drs. Schemmer and Cline are admissible and may be considered by the Court in deciding the motions for summary judgment.

deposition testimony of their own experts does not mean what is says. These footnotes also seek to prove that one portion of some of their expert's testimony should be disregarded in favor of another portion of that same expert's testimony. Plaintiffs' lengthy footnotes 'explaining' testimony is itself testimony of the factual dispute that must be decided and thereby precludes summary judgment.

As this Court stated in Disability Advocates, Inc. v. Paterson, 2009 U.S. Dist. LEXIS 13126 at *9-10, (E.D.N.Y. Feb. 19, 2009), on summary judgment the non-movant's evidence is to be believed, being viewed in the most favorable light to, and with all reasonable inferences drawn in favor of, the non-movant. On summary judgment it is through this rubric that the case is to be examined and summary judgment is to be denied if there is any evidence in the record that could reasonably support a verdict for defendants. Consequently, in this matter summary judgment is precluded by the presence of manifold disputes concerning facts that the plaintiffs-intervenors claim to be material.

POINT II

CONTRARY TO THE PLAINTIFFS' APPROACH THE SECOND CIRCUIT AND TEST DEVELOPMENT PROFESSIONALS RECOGNIZE THAT CREATION OF EMPLOYMENT SELECTION DEVICES AND THEIR LEGAL SCRUTINY DEMANDS A FLEXIBLE APPROACH

The plaintiffs in this case like to assert absolutes and take things for granted. Plaintiffs take for granted that disparate impact will be examined via statistical significance testing and declare that the Court must reject use of the 80% Rule. Plaintiffs, however, do not point to case law saying the Court *must* reject the 80% Rule. Moreover, plaintiffs ignore the case law which reflects the discretion this Court posses to choose *either* the 80% Rule or statistical significance testing in deciding Title VII claims.[3] In fact, the plaintiffs even fail to acknowledge that the Second Circuit in Guardians used an 80% Rule analysis as well as a statistical significance analysis. Guardians Assoc. of New York City Police Dept., Inc. v. Civil Service Com., 630 F.2d 79, 87 (2d Cir. 1980) cert. denied 452 U.S. 940, 101 S. Ct. 3083 (1981).[4] The latter is not surprising. Plaintiffs' rigid, and less than forthright, approach to what tests this Court may use to determine the existence of disparate impact is characteristic of the rigid and unreasonable approach plaintiffs have taken throughout this litigation. Indeed, the plaintiffs' insistence on a test that turns real candidates into samples of a hypothetical population to evaluate a null hypothesis is complimentary to plaintiffs' unrealistic and unreasonable approach to test development.

---

[3] See Smith v. Xerox Corp., 196 F.3d 358, 365-66 (2d Cir. 1999); Waisome v. Port Authority of New York & New Jersey, 948 F.2d 1370, 1376 (2d Cir. 1991); Bushey v. New York State Civil Serv. Comm'n, 733 F.2d 220, 225-26 (2d Cir. 1984). See also, Watson v. Fort Worth Bank & Trust, 487 U.S. 977, 996 n.3 (1988).

[4] The examination at issue in Guardians failed both tests.

Plaintiffs' give this Court only the most jaundiced presentation of the Guardians case. Plaintiffs' invocation of the Guardians decision gives the impression that this matter is to be examined via an almost strict liability standard. Plaintiffs also attempt to paint this case as an instant replay of the Guardians case. Neither view is correct.

The Guardians case begins with a rejection of the very approach plaintiffs advocate. The Circuit explains that "there is no test that can be considered completely valid to select candidates for any but the most rudimentary tasks." The Circuit goes on to note that "[c]learly, Congress did not intend that the standard used in interpreting Title VII would reject every test with a disparate racial impact." Guardians, 630 F.2d at 89-90. The Court of Appeals, therefore, cautioned against exactly the same position that plaintiffs present in this case:"[t]he danger of too rigid an application of technical testing principles" which would then result in a situation where "tests for all but the most mundane tasks would lack sufficient validity to permit their use." Id. at 90. The Circuit explained that "[m]ost jobs involve tasks whose performance can be evaluated only in the more subjective light of judgment." Id. The record reflects that even plaintiffs' experts understand that test development requires subjective decisions. Plaintiffs themselves, however, take a more rigid and unrealistic approach --an approach that is not supported by Guardians. Indeed, the Appeals Court in Guardians noted that even though the job analysis was "somewhat flawed," itt did not reject the job analysis on that basis. Id. at 95.

Plaintiffs, particularly the DOJ, have a simple, if not simplistic, view of this case. Plaintiffs demand testing perfection. Plaintiffs, who are not responsible for developing tests or fielding firefighters to protect over eight million people, wish to have defendants evaluated by an impossible standard, a standard that the Circuit does not endorse. For plaintiffs, if the test development does not meet *their* standards, which seems to be near perfection, if the job analysis

does not have every 'i' dotted and every 'tee' crossed then it is unacceptable. The Circuit, however, does not require this and is more concerned with actual effect. As stated in Guardians "[t]he real issue in this case, therefore, is whether the defendants have rebutted the plaintiffs' prima facie case by proving that its test was job-related: that the test accurately selected applicants who would be better [candidates]." Guardians, 630 F.2d at 88.

Plaintiffs do not seem that concerned about the real issue. Significantly, plaintiffs never put Exams 7029 and 2043, the exams at issue in this case, before the Court. Only Defendants have provided the Court with copies of the exams, which plaintiffs are challenging. See Exhibit 31 annexed to the Fraenkel Declaration. Plaintiffs choose to hide other things, as well, from the Court.

As defendants explain in their reply papers, the EEOC Guidelines, upon which the Circuit relied in Guardians, allow employers to set the passing score (the "cut score") higher than the minimal proficiency score if candidates scoring below that score "have little or no chance of being selected for employment..." See Section 5H, Uniform Guidelines on Employee Selection Procedures (1978). The DOJ, however, continues to insist that the cut score may not be higher than minimal proficiency. But, plaintiffs know that even when the cut-score for Exam 7029 was set at 84.705 over 747 candidates were left on the list when it expired. More than 5,000 remained on the list generated from Exam 2043 which had a cut score of 70.[5] With more than 700, people left on the list when it expired, those persons who did not make the list, because their score was lower than 84.705, certainly did not have any chance of being selected for employment. As such, by the very Guidelines adopted by the DOJ, published in the Code of

[5] This information is known to plaintiffs as it is reflected in an e-mail bearing the bate stamp number DCAS-E-000024775, previously produced to plaintiffs. For the convenience of the Court a copy of this e-mail is attached hereto appendix 1.

Federal Regulations, and upon which the Second Circuit relied in Guardians, the use of cut scores above the level of minimal proficiency is permissible. But plaintiffs persist in the argument. A lower cut score would not have any practical effect. Practicality, however, does not seems to be plaintiffs' concern.

Plaintiffs' rejection of the practical, or the real, in preference to the hypothetical or theoretical opinions is reflected in their position concerning ranking. In opposition to plaintiffs' motion defendants pointed out that not only does psychometrics tell us that rank ordering is a valid means of selection but actual experience provides the same teaching. Defendants cited the testimony of rank-in-file members of the FDNY and the former FDNY Commissioner reflecting their beliefs that people higher on the list are likely to perform better than those ranked lower down.[6] Plaintiffs, however, now suggest, in footnote 14, that the deposition testimony of these firefighters, who were deposed by plaintiffs, is somehow inadmissible. Plaintiffs do not explain why these firefighters' deposition testimony is inadmissible. Plaintiffs simply declare that the Court should not hear the opinions of those who actually do the job of fighting fires.

Plaintiffs take a similar approach concerning Dr. Schemmer's opinions. Dr. Schemmer states Exams 7029 and 2043, are in content and substance very representative of entry level firefighter selection exams which used more rigorous development methods and which were thoroughly documented. See the Schemmer Declaration at ¶¶ 3, 11, annexed to the Fraenkel Declaration as Exhibit 2. In this instance plaintiffs' rejection of the practical takes two forms.

---

[6] See Deposition of Michael Carlin, March 21, 2008, at 107:23 to 108:19, annexed to the Fraenkel Declaration as Exhibit 27; and Deposition of Thomas Von Essen at 71:21 to 72:17 annexed to the Fraenkel Declaration as Exhibit 28; Deposition of Daniel A. Nigro, January 30, 2008, at 63:25 to 64:15 annexed to the Fraenkel Declaration as Exhibit 29.

Plaintiffs assert that Dr. Schemmer's opinion is insufficient for a finding that "reasonable competence" was used in creating the exam. First, if "reasonable competence" had not been used to create the exams, it would be unlikely that the exams would be "in content and substance very representative of entry level firefighter selection exams which used more rigorous methods and which were thoroughly documented." It should also be recalled that although the test development process in Guardians did not have as strong a foundation as the process in this case, the test development process in Guardians, was deemed acceptable.[7] It becomes apparent that plaintiffs' do not seek "reasonable competence," they seek unreasonable perfection. Moreover, plaintiffs ignore what the Second Circuit explained was the "real issue" whether the exams were job-related such that they aided in accurately selecting applicants who would be better candidates. Guardians, 630 F.2d at 88. Second, plaintiffs' demand that Dr. Schemmer's opinion be rejected remains unexplained. Plaintiffs' call it a bare opinion. But, Dr. Schemmer's opinion is rooted in having been involved in developing and validating more than 15 employment tests for firefighter positions and a career-long intimate involvement in developing and validating of several hundred employment tests. Practical experience means nothing to plaintiffs.

Much of the remainder of the DOJ's memo of law is simply a rearticulation of the tried and tired arguments appearing in the Vulcans' reply papers. The DOJ, however, does include some additional, and unbecoming, mischaracterizations or misstatements. For example, Dr. Landy's report for Exam 0084, was used as a basis for the exams at issue in this case. Defendants do not, as plaintiffs claim, assert that Dr. Landy's reputation proves that his report for Exam 0084 isreliable and thorough. The report in and of itself demonstrates thoroughness

[7] In Guardians, the difficulty was the practical application of the exam results.

and reliability. Recognizing that Dr. Landy's report constitutes significant evidence to support the validity of the exams at issue, DOJ returns to it's fall-back position, seeking to exclude any evidence that supports the validity of the exams,[8] asks that the report, an obvious business record, be excluded. Moreover, Dr. Landy's report, which was provided to the DOJ during the investigation stage of this matter, has not been shown to have substantial defects. Dr. Landy's stature in the field, not to mention his employment on occasion by the DOJ, is just another item that disarms any attempt to attack his work but is not meant on its own to prove the report's competency.

Another misdirection is plaintiffs' assertion that defendants did not respond to Dr. Siskin's "correlation" analysis. A "correlation" analysis is simply a less structured version of a factor analysis. Indeed, the DOJ's expert himself in paragraph 11 of his report, after giving his "correlation" analysis, describes factor analysis as the "more formalized approach to inspecting the patterns of relationships between items relative to the test plan..." Plaintiffs neither mention this to the Court nor do plaintiffs mention that defendants in their opposition papers responded and refuted the factor analysis. As defendants explained in their opposition papers, cognitive measures are highly intercorrelated. See page 9 of Defendants Memorandum of Law in Opposition to Plainitff-Intervenors' Motion for Summary Judgment. Consequently, when a factor analysis is conducted the analysis should generally yield only one factor not the eight different cognitive measures plaintiffs seek. Plaintiffs' factor analysis does not dispute the validity of Exams 7029 and 2043[9] and as such, neither does the so called "correlation analysis."

---

[8] The same tactic used to attack Dr. Schemmer's and Dr. Cline's Declaratons, as well as the testimony of Firefighters who provided information that was contrary to DOJ's rigid, unreasonable position.

[9] See Declaration of Dr. Catherine Cline at ¶ 13 annexed to the Fraenkel Declaration as Exhibit 3.

Perhaps the DOJ's most extreme mischaracterization, or misdirection, is the attempt to characterize this case as a replay of Guardians. In fact, the reality of the significant differences between the exams in question in this lawsuit (Exams 7029 and 2043) and the exam in questioned in Guardians demonstrate exactly the opposite of what DOJ represents. One criticism leveled against the Guardians exam was that it was developed without the assistance of outside test professionals. Given the Circuit's criticism in Guardians, when the City of New York decided to develop a new test for entry level firefighter in the early 1990s, the City through an agency now known as DCAS, hired Dr. Frank Landy.

Dr. Landy was retained to worked with the DCAS staff to develop a new test, Exam 0084, for the position of entry level firefighter, the written portion of which was ultimately administered on May 9, 1992. Far from attempting to create a new firefighter test on its own the City turned to a respected professional in the field. The City heeded the Circuit's instructions when it implemented Exam 0084. Perhaps as a result, Exam 0084 was never challenged by the Vulcan Society. Exam 0084 was also never challenged by the DOJ. The validity of Exam 0084 has never been called into question.

From the time Dr. Landy developed Exam 0084 through the development of Exam 2043 in 2002, not much change in connection with the entry level position of New York City Firefighter.[10] Because the job of entry level firefighter did not change it was sufficient for the City to update, rather than reinvent, the firefighter examination. It was reasonable for DCAS both to rely on Dr. Landy's study and to not conduct a new job analysis for the development of

[10] See Hough Deposition at 118:11-19, annexed to the Fraenkel Declaration as Exhibit 17; the Deposition of Thomas Patitucci at 183:21 to 184:9 annexed to the Fraenkel Declaration as Exhibit 10 and see the Declaration of Dr. Catherine Cline at ¶ 14 annexed to the Fraenkel Declaration as Exhibit 3.

Exams 7029 and 2043.[11] Exam 7029 was developed in 1999 and was based on the work done by the outside consultant Dr. Landy.[12] Exam 2043, which was developed in 2002, was in turn based on Exam 7029.

Unlike the police exam in Guardians, the exams in this case are firmly rooted in the product of a well respected outside expert whose job analysis for exam 0084 was verified by DCAS staff as still being reflective of current firefighting activities. Plaintiffs wish exclude this information. Plaintiffs do not want the Court to consider the Landy Report. Plaintiffs do not wish the Court to consider the depositions of actual firefighters. Plaintiffs do not want the Court to consider the declarations of Dr. Schemmer or Dr. Cline. Plaintiffs do not want the Court to see the actual exams at issue. Plaintiffs do not want the Court to consider deciding disparate impact under a method inquiring about what actually happened, as opposed to a method using what actually happened as a sample, what can we learn about a larger ypothetical group seeking perfect parity?' Contrary to plaintiffs position which ignores the realities and speculates about hypotheticals, the Circuit is concerned with reality and what actually occurred. Those who work with the entry level firefighters of the FDNY are concerned about the reality of actually selecting candidates that would be better firefighters. Those who are protected by the entry level firefighters of the FDNY are concerned about the real world and having better qualified firefighters. Indeed, plaintiffs are the only ones not concerned with the real world and the real disputes of fact in this case. Plaintiffs' attempts to simply ignore these factual disputes or assert that anything which contradicts their theories is somehow inadmissible does not reflect reality.

---

[11] See the Declaration of Dr. Catherine Cline at ¶ 14 annexed to the Fraenkel Declaration as Exhibit 3 and the Patitucci Deposition at 208:8 to 209:2, annexed to the Fraenkel Declaration as Exhibit 10.

[12] See Deposition of Matthew Morrongiello at 478:14 to 479:23 annexed to the Fraenkel Declaration as Exhibit 22.

CONCLUSION

For the foregoing reasons defendants respectfully request that plaintiffs and plaintiffs-intervenors' motions for summary judgment be denied.

Dated: New York, New York
March 16, 2009

Respectfully Submitted,

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for the Defendants
100 Church Street – Rm 2-172
New York, New York 10007
(212) 788-0881
jlemoned@law.nyc.gov

By: _____
JAMES M. LEMONEDES
Assistant Corporation Counsel

James M. Lemonedes,
William S.J. Fraenkel,
Of Counsel.

APPENDIX 1

--

From: Joseph DeMarco
Sent: Thursday, April 06, 2006 5:24 PM
To: Martha Hirst
Subject: Firefighter list information

Exam. No. 7029- Established on 11/15/00 and terminated on 11/15/04.

There were 6458 eligibles on the list and 3275 were appointed.

The entire list was canvassed.

6366 was the highest list number appointed.

747 eligibles remained on the list when it died.

Exam. No. 2043- Established on 5/5/04 and will run until 5/5/08.

There are 7471 eligibles on the list.

To date there have been 1015 appointments.

The last list number appointed was 1,832.

There are approximately 5600 left on this list

Of the 5600 remaining names, there will probably be 500 to 1,000 names that will fall off for investigations, medicals, etc.

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' MEMORANDUM OF LAW IN RESPONSE TO PLAINTIFF'S MEMORANDUM FURTHER SUPPORTING THE PLAINTIFFS-INTERVENORS' MOTION FOR SUMMARY JUDGMENT

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

Of Counsel: James M. Lemonedes
Tel: (212) 788-0881
Law Dept. No. 2007-017441-LE

Due and timely service is hereby admitted.

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

..... *Esq.*

Attorney for .....