

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF ORANGE

ORAL CLARKE, ROMANCE REED, GRACE PEREZ, PETER RAMON, ERNEST TIRADO, and DOROTHY FLOURNOY,

Plaintiffs,

-against-

TOWN OF NEWBURGH and TOWN BOARD OF THE TOWN OF NEWBURGH,

Defendants.

Index No. EF002460-2024

DEFENDANTS' RESPONSES TO PLAINTIFFS' STATEMENT OF MATERIAL FACTS AS TO WHICH THERE ARE NO GENUINE ISSUES TO BE TRIED

Defendants the Town of Newburgh and the Town Board of the Town of Newburgh (individually, the "Town" and the "Town Board," and collectively, "Defendants"), through their attorneys, Troutman Pepper Hamilton Sanders LLP, respectfully submit this Response to the Statement of Material Facts submitted by Plaintiffs Oral Clarke, Romance Reed, Grace Perez, Peter Ramon, Ernest Tirado, and Dorothy Flournoy (collectively, "Plaintiffs").¹

I. The Parties

1. Oral Clarke is an eligible voter registered to vote in the Town of Newburgh. Exhibit A (Clarke Written Deposition Responses) at 3.

RESPONSE: Defendants do not dispute only that Plaintiff Clarke so testified.

2. Plaintiff Clarke has previously voted in multiple Town elections. Exhibit A (Clarke Written Deposition Responses) at 3.

RESPONSE: Defendants do not dispute only that Plaintiff Clarke so testified.

¹ Defendants object to Plaintiffs' submission of a Statement Of Material Facts, which was improper under 22 NYCRR § 202.8-g(d), and respond to that submission without prejudice to Defendants' rights and legal positions. Defendants reserve all rights, including to object to the use of any and all of the statements asserted herein at trial as appropriate.

3. Plaintiff Clarke identifies as Black. Exhibit A (Clarke Written Deposition Responses) at 2-3.

RESPONSE: Defendants do not dispute only that Plaintiff Clarke so testified.

4. Peter Ramon is an eligible voter registered to vote in the Town of Newburgh. Exhibit B (Ramon Written Deposition Responses) at 3.

RESPONSE: Defendants do not dispute only that Plaintiff Ramon so testified.

5. Plaintiff Ramon has previously voted in multiple Town elections. Exhibit B (Ramon Written Deposition Responses) at 3.

RESPONSE: Defendants do not dispute only that Plaintiff Ramon so testified.

6. Plaintiff Ramon identifies as Hispanic. Exhibit B (Ramon Written Deposition Responses) at 2-3.

RESPONSE: Defendants do not dispute only that Plaintiff Ramon so testified.

7. Romance Reed is an eligible voter registered to vote in the Town of Newburgh. Exhibit C (Reed Written Deposition Responses) at 3.

RESPONSE: Defendants do not dispute only that Plaintiff Reed so testified.

8. Plaintiff Reed has previously voted in multiple Town elections. Exhibit C (Reed Written Deposition Responses) at 3.

RESPONSE: Defendants do not dispute only that Plaintiff Reed so testified.

9. Plaintiff Reed identifies as Black. Exhibit C (Reed Written Deposition Responses) at 2-3.

RESPONSE: Defendants do not dispute only that Plaintiff Reed so testified.

10. Dorothy Flournoy is an eligible voter registered to vote in the Town of Newburgh. Exhibit D (Flournoy Deposition) at 28:11-30:5.

RESPONSE: Defendants do not dispute only that Plaintiff Flournoy so testified.

11. Plaintiff Flournoy has previously voted in multiple Town elections. Exhibit D (Flournoy Deposition) at 28:11-30:5.

RESPONSE: Defendants do not dispute only that Plaintiff Flournoy so testified.

12. Plaintiff Flournoy identifies as Black. Exhibit D (Flournoy Deposition) at 28:17-28:19.

RESPONSE: Defendants do not dispute only that Plaintiff Flournoy so testified.

13. Grace Perez is an eligible voter registered to vote in the Town of Newburgh. Exhibit E (Perez Deposition) at 19:19-20:8.

RESPONSE: Defendants do not dispute only that Plaintiff Perez so testified.

14. Plaintiff Perez has previously voted in multiple Town elections. Exhibit E (Perez Deposition) at 19:19-20:18.

RESPONSE: Defendants do not dispute only that Plaintiff Perez so testified.

15. Plaintiff Perez identifies as Hispanic. Exhibit E (Perez Deposition) at 19:19-19:21.

RESPONSE: Defendants do not dispute only that Plaintiff Perez so testified.

16. Ernest Tirado is an eligible voter registered to vote in the Town of Newburgh. Exhibit F (Tirado Deposition) at 22:13-24:14.

RESPONSE: Defendants do not dispute only that Plaintiff Tirado so testified.

17. Plaintiff Tirado has previously voted in multiple Town elections. Exhibit F (Tirado Deposition) at 22:13-24:14.

RESPONSE: Defendants do not dispute only that Plaintiff Tirado so testified.

18. Plaintiff Tirado identifies as Hispanic. Exhibit F (Tirado Deposition) at 22:13-22:24.

RESPONSE: Defendants do not dispute only that Plaintiff Tirado so testified.

19. The Town of Newburgh (“the Town” or “Newburgh”) is a political subdivision of the State of New York. NYSCEF 58 (Piaquadio Affirmation) at ¶ 12.

RESPONSE: Undisputed.

20. The Town Board is comprised of five members: the Town Supervisor, and four other Board members. NYSCEF 58 (Piaquadio Affirmation) at ¶ 14.

RESPONSE: Undisputed.

21. Gilbert Piaquadio is currently the Town Supervisor. NYSCEF 58 (Piaquadio Affirmation) at ¶ 1.

RESPONSE: Undisputed.

22. The other current Town Board members are Paul Ruggiero, Scott Manley, and Anthony LoBiondo. NYSCEF 58 (Piaquadio Affirmation) at ¶ 15.

RESPONSE: Undisputed.

23. There is currently a vacancy on the Town Board that will be filled in a special election to be held on November 5, 2024. NYSCEF 58 (Piaquadio Affirmation) at ¶¶ 16, 20.

RESPONSE: Undisputed.

24. The Town Board members are elected through at-large elections. NYSCEF 58 (Piaquadio Affirmation) at ¶ 12; NYSCEF 61 (Town Deposition) at 49:24-50:5.

RESPONSE: Undisputed.

II. Plaintiffs NYVRA complaint and the Town’s initial response

25. According to the Bill Jacket accompanying the legislation, the purpose of the John R. Lewis New York Voting Rights Act is to “offer[] the most comprehensive state law protections for the right to vote in the United States.” Exhibit G (NYVRA Bill Jacket) at 9.

RESPONSE: Defendants dispute this statement, which is a legal conclusion and is not a fact as required by 22 NYCRR § 202.8-g(d). Additionally, the NYVRA states its purpose in N.Y. Elec. Law § 17-200, titled “Legislative Purpose and Statement of Public Policy,” which supersedes the referenced pre-enactment statement in the NYVRA Bill Jacket. While it is undisputed that the quoted language appears in the Bill Jacket to the NYVRA, Defendants respectfully refer the Court to the entire Bill Jacket for the full text, terms, and effect thereof.

26. The Bill Jacket explains that in passing the NYVRA, the Legislature intended to “build[] upon the demonstrated track record of success [of state voting rights acts] in California and Washington, as well as the historic success of the federal voting rights act.” Exhibit G (NYVRA Bill Jacket) at 8-9.

RESPONSE: Defendants dispute this statement, which is a legal conclusion and is not a fact as required by 22 NYCRR § 202.8-g(d). Additionally, the NYVRA states its purpose in N.Y. Elec. Law § 17-200, titled “Legislative Purpose and Statement of Public Policy,” which supersedes the referenced pre-enactment statement in the NYVRA Bill Jacket. While it is undisputed that the quoted language appears in the Bill Jacket to the NYVRA, Defendants respectfully refer the Court to the entire Bill Jacket for the full text, terms, and effect thereof.

27. On January 26, 2024, Plaintiffs sent a letter by certified mail to the Newburgh Town Clerk advising the Town that its at-large method of electing Town Board members violated the NYVRA. Exhibit H (Plaintiffs’ NYVRA Notice Letter).

RESPONSE: Defendants dispute this statement, which includes a legal conclusion that is not a fact as required by 22 NYCRR § 202.8-g(d). Defendants dispute Plaintiffs’ allegations that the Town’s at-large method of electing Town Board members violates the NYVRA. However, Defendants do not dispute that, on January 26, 2024, Plaintiffs sent a letter by certified mail to the

Newburgh Town Clerk alleging that the Town's at-large method of electing Town Board members violated the NYVRA. NYSCEF 74, Affirmation of Ruth Greenwood ("Greenwood Aff."), Exhibit H (Plaintiffs' NYVRA Notice Letter). Defendants respectfully refer the Court to the entire letter for the full text thereof.

28. On March 15, 2024, the Town of Newburgh held a Special Town Board Meeting to discuss the notice letter and determine if a violation of the John R. Lewis Voting Rights Act of New York may have occurred. Exhibit I (Minutes of March 15, 2024, Special Meeting).

RESPONSE: Defendants dispute this statement because it is not supported by the evidence as required by 22 NYCRR § 202.8-g(d). The cited evidence states that, on March 15, 2024, the Town of Newburgh held a Special Town Board Meeting for "the sole purpose" of "[c]onsider[ing] a resolution pertaining to New York Election Law 17-206." Greenwood Aff., Exhibit I (Minutes of March 15, 2024, Special Meeting).

29. On March 15, 2025, the Town Board adopted a resolution in response to Plaintiffs' NYVRA allegations. Exhibit I (Minutes of March 15, 2024, Special Meeting).

RESPONSE: Undisputed.

30. On March 26, 2024, Plaintiffs served the Town of Newburgh with a summons and complaint in this lawsuit. NYSCEF 1 (Summons and Verified Complaint).

RESPONSE: Undisputed.

31. On April 16, 2024, the Town of Newburgh filed a motion to dismiss Plaintiffs' claims. NYSCEF 9 (Defendants' Memorandum of Law in Support of their Motion to Dismiss).

RESPONSE: Undisputed.

32. On May 17, 2024, the Court denied Defendants' motion to dismiss, explaining that Defendants' NYVRA resolution did not meet the requirements of the law's "safe harbor" provision

because it “lack[ed] the intention to enact and implement specific remedies, the steps to accomplish that process, and a timetable for implementation.” NYSCEF 31 (Order Denying Defendants Motion to Dismiss) at 1.

RESPONSE: Defendants dispute this statement, which includes a legal conclusion that is not a fact as required by 22 NYCRR § 202.8-g(d). Defendants do not otherwise dispute that this Court denied Defendants’ motion to dismiss on May 17, 2024, nor do they dispute that the quoted language appears in this Court’s decision denying Defendants’ motion to dismiss. Defendants respectfully refer the Court to the entire decision for the full text, terms, and effect thereof. NYSCEF 31 (Order Denying Defendants’ Motion to Dismiss).

III. Town demographics

33. When the Town of Newburgh was established in 1865, the population was almost exclusively white. This continued into the 20th century as property deeds contained covenants that barred Black people and other people of color from buying homes. Exhibit J (Sandoval-Strausz Report) at 19.

RESPONSE: Defendants dispute this statement because it is not supported by evidence as required under 22 NYCRR § 202.8-g(d). This statement is also an expert opinion and is not a fact as required under 22 NYCRR § 202.8-g(d). Plaintiffs provided no evidence that property deed covenants barred Black people and other people of color from buying homes within the Town. Affirmation of Bennet J. Moskowitz (“Moskowitz Aff.”), Exhibit K (Sandoval-Strausz Deposition) at 45:16–24 (Q: “Did you find any evidence of those covenants in any Newburgh property deeds?” A: “I did not have the opportunity due to, I guess, my circumstances and ability to travel to actually go and find the recorder of deeds or whichever land office in the town would have documents of that kind.”); *id.* at 48:16–18 (Q: “There’s nothing that you saw [with respect to restrictive covenants] specific to the Town of Newburgh, right?” A: “That is correct.”); *see*

NYSCEF 60 (Critchlow Report) at 6–12. However, Defendants do not dispute that the Town’s population was almost exclusively white in 1865.

34. The homogeneity of the Town changed during the civil rights era as Black families looked to move to neighborhoods that had better schools and services. Exhibit J (Sandoval-Strausz Report) at 20.

RESPONSE: Defendants dispute this statement because it is not supported by evidence as required under 22 NYCRR § 202.8-g(d). Specifically, the cited source addresses only “the Newburgh area” generally, and not the Town specifically, and does not cite any source that specifically supports the stated proposition. Greenwood Aff., Exhibit J (Sandoval-Strausz Report) at 20; *see* NYSCEF 60 (Critchlow Report) at 6–12. This statement is also an expert opinion and is not a fact as required under 22 NYCRR § 202.8-g(d).

35. When the census began categorizing the residents of the Town by race and ethnicity in 1980, Newburgh had an estimated population of 22,000 residents, with only 6.6% of the population identifying as non-Hispanic Black or of Spanish origin. Exhibit J (Sandoval-Strausz Report) at 21-22.

RESPONSE: Defendants dispute this statement because it is not supported by evidence as required under 22 NYCRR § 202.8-g(d). However, Defendants do not dispute that the cited material states that the Town in 1980 had an estimated population of 22,432 residents, 92.5% of whom identified as non-Hispanic white, 3.4% of whom identified as non-Hispanic Black, 3.2% of whom identified as “of Spanish origin,” and 0.6% of whom identified as “Asian, Pacific Islander, American Indian, Eskimo, Aleut.” Greenwood Aff., Exhibit J (Sandoval-Strausz Report) at 22.

36. By 1990, Newburgh's population grew to over 23,000 residents, with 9.5% identifying as non-Hispanic Black or Hispanic. Exhibit J (Sandoval-Strausz Report) at 22.

RESPONSE: Defendants do not dispute that the cited material states that the Town in 1990 had an estimated population of 23,832 residents, 88.9% of whom identified as non-Hispanic white, 4.0% of whom identified as non-Hispanic Black, 5.5% of whom identified as Hispanic, and 1.5% of whom identified as "Asian or Pacific Islander." Greenwood Aff., Exhibit J (Sandoval-Strausz Report) at 22.

37. In 2000, the town's population exceeded 27,000, with 6.7% identifying as non-Hispanic Black and 9.6% identifying as Hispanic. Exhibit J (Sandoval-Strausz Report) at 22.

RESPONSE: Defendants do not dispute that the cited material states that the Town in 2000 had an estimated population of 27,428 residents, 80% of whom identified as non-Hispanic white, 6.7% of whom identified as non-Hispanic Black, 9.6% of whom identified as Hispanic, and 2% of whom identified as Asian. Greenwood Aff., Exhibit J (Sandoval-Strausz Report) at 22.

38. By 2010, Newburgh's population reached nearly 30,000, with 11% identifying as non-Hispanic Black and 15.7% identifying as Hispanic. Exhibit J (Sandoval-Strausz Report) at 22.

RESPONSE: Defendants do not dispute that the cited material states that the Town in 2010 had an estimated population of 29,732 residents, 68.2% of whom identified as non-Hispanic white, 11% of whom identified as non-Hispanic Black, 15.7% of whom identified as "Hispanic or Latino," and 2.9% of whom identified as "Asian alone." Greenwood Aff., Exhibit J (Sandoval-Strausz Report) at 22.

39. In 2022, Newburgh's population increased to 31,000, with 15.4% identifying as non-Hispanic Black and 25.2% as Hispanic. Exhibit J (Sandoval-Strausz Report) at 22.

RESPONSE: Defendants do not dispute that the cited material states that the Town in 2022 had an estimated population of 31,808 residents, 61.6% of whom identified as “White alone,” 15.4% of whom identified as “Black or African American alone,” 25.2% of whom identified as “Hispanic or Latino,” and 3.1% of whom identified as “Asian alone.” Greenwood Aff., Exhibit J (Sandoval-Strausz Report) at 22.

IV. Town governance and the electoral process

40. The Town communicates information to its residents in English. Exhibit L (Defendants’ Responses to Interrogatories) at No. 9; Exhibit K (Piaquadio Deposition) at 71:19-23.

RESPONSE: Defendants do not dispute that the cited material states that the Town communicates information to its residents in English.

41. The only official communication the Town has ever published in Spanish is a notice regarding mosquito-borne illnesses, which was issued after this litigation commenced. NYSCEF 61 (Town Deposition) at 116:18-117:12, 128:10-17.

RESPONSE: Defendants dispute this statement because it is not material and is not supported by evidence as required under 22 NYCRR § 202.8-g(d). *See* NYSCEF 61 (Town Deposition) at 116:18-117:12, 128:10-17.

42. No Black or Hispanic person has ever served as Town Supervisor or a Town Board Member in Newburgh. Exhibit J (Sandoval-Strausz Report) at 24.

RESPONSE: Defendants dispute this statement because it is not supported by evidence as required under 22 NYCRR § 202.8-g(d). Plaintiffs’ expert was merely “unable to identify any evidence that a Black or Hispanic person has ever been elected to the town council or the position of supervisor.” Greenwood Aff., Exhibit J (Sandoval-Strausz Report) at 24. Moreover, James Manley was of Puerto Rican descent and served as a member of the Town Board from 2006 to 2017. Moskowitz Aff., Exhibit K (Sandoval-Strausz Deposition) at 78:17–23 (Q:

“Did you encounter anything about James Manley in your research of the elected officials in the Town of Newburgh?” A: “I did not, no.” Q: “He’s Puerto Rican, and he was on the town council.” A: “Oh.”); *see* Moskowitz Aff., Exhibit L (Defendants’ Supplemental Responses and Objections to Plaintiffs’ First Set of Interrogatories) at 4 (identifying James Manley as a member of the Town Board from 2006 to 2017).

43. The Town has no policy justification for maintaining an at-large method of elections besides its assertion that it “has relied on its at-large system since at least 1865.” NYSCEF 58 (Piaquadio Affirmation) at ¶ 13; NYSCEF 61 (Town Deposition) at 54:16-56:25; Exhibit L (Defendants’ Responses to Interrogatories) at No. 8.

RESPONSE: Defendants dispute this statement because it is not supported by evidence as required under 22 NYCRR § 202.8-g(d). The cited evidence does not state or show that the Town lacks a policy justification for its at-large election method. *See* NYSCEF 58 (Piaquadio Affirmation) at ¶ 13; NYSCEF 61 (Town Deposition) at 54:16-56:25; Greenwood Aff., Exhibit L (Defendants’ Responses to Interrogatories) at No. 8. Moreover, at-large elections are “valued for their presumed tendency to encourage elected officials to act in accord with the general interest of the entire community.” NYSCEF 60 (Critchlow Report) at 30.

44. Historically, at-large voting systems have been used to minimize the political strength of Latinos, Black people, and other racial and ethnic minorities. Exhibit J (Sandoval-Strausz Report) at 25.

RESPONSE: Defendants dispute this statement because it is not material and is not supported by evidence as required under 22 NYCRR § 202.8-g(d). This statement is also an expert opinion and is not a fact as required under 22 NYCRR § 202.8-g(d). Additionally, Plaintiffs cite to Dr. Sandoval-Strausz’s expert report for this statement, but Dr. Sandoval Strausz cites no

specific sources in support of this proposition. *See* Greenwood Aff., Exhibit J (Sandoval-Strausz Report) at 25; NYSCEF 60 (Critchlow Report) at 29–30. Scholars have found that “most of these at-large voting systems were seen as progressive measures at the time designed to break up corrupt city machines that relied on ethnic district voting to win election.” NYSCEF 60 (Critchlow Report) at 30. Additionally, Dr. Sandoval-Strausz “did not find any evidence that the at-large voting system in Newburgh was created in order to discriminate against anyone.” Moskowitz Aff., Exhibit K (Sandoval-Strausz Deposition) at 30:9–13; NYSCEF 60 (Critchlow Report) at 30. In New York, “state law makes at-large election the prescribed process for choosing board members in towns, villages, and school districts,” and “[w]hile State law allows towns to adopt a ward system, most have not.” NYSCEF 60 (Critchlow Report) at 29–30.

45. At-large election systems were originally created by prosperous Anglo-Americans who believed that district-based elections gave too much power to urban political machines – especially those that represented voters who were working-class, ethnic, or both. Exhibit J (Sandoval-Strausz Report) at 25-26.

RESPONSE: Defendants dispute this statement because it is not material and is not supported by evidence as required under 22 NYCRR § 202.8-g(d). This statement is also an expert opinion and is not a fact as required under 22 NYCRR § 202.8-g(d). Additionally, Plaintiffs cite to Dr. Sandoval-Strausz’s expert report for this statement, but Dr. Sandoval Strausz cites no specific sources in support of this proposition. *See* Greenwood Aff., Exhibit J (Sandoval-Strausz Report) at 25; NYSCEF 60 (Critchlow Report) at 29–30. Scholars have found that “most of these at-large voting systems were seen as progressive measures at the time designed to break up corrupt city machines that relied on ethnic district voting to win election.” NYSCEF 60 (Critchlow Report) at 30. Additionally, Dr. Sandoval-Strausz “did not find any evidence that the at-large voting

system in Newburgh was created in order to discriminate against anyone.” Moskowitz Aff., Exhibit K (Sandoval-Strausz Deposition) at 30:9–13; NYSCEF 60 (Critchlow Report) at 30. In New York, “state law makes at-large election the prescribed process for choosing board members in towns, villages, and school districts,” and “[w]hile State law allows towns to adopt a ward system, most have not.” NYSCEF 60 (Critchlow Report) at 29–30.

46. At-large election systems were originally designed to reduce the influence of voters who were deemed as “inferior, whether socially, racially, or culturally.” Exhibit J (Sandoval-Strausz Report) at 25.

RESPONSE: Defendants dispute this statement because it is not material and is not supported by evidence as required under 22 NYCRR § 202.8-g(d). This statement is also an expert opinion and is not a fact as required under 22 NYCRR § 202.8-g(d). Additionally, Plaintiffs cite to Dr. Sandoval-Strausz’s expert report for this statement, but Dr. Sandoval Strausz cites no specific sources in support of this proposition. *See* Greenwood Aff., Exhibit J (Sandoval-Strausz Report) at 25; NYSCEF 60 (Critchlow Report) at 29–30. Scholars have found that “most of these at-large voting systems were seen as progressive measures at the time designed to break up corrupt city machines that relied on ethnic district voting to win election.” NYSCEF 60 (Critchlow Report) at 30. Additionally, Dr. Sandoval-Strausz “did not find any evidence that the at-large voting system in Newburgh was created in order to discriminate against anyone.” Moskowitz Aff., Exhibit K (Sandoval-Strausz Deposition) at 30:9–13; NYSCEF 60 (Critchlow Report) at 30. In New York, “state law makes at-large election the prescribed process for choosing board members in towns, villages, and school districts,” and “[w]hile State law allows towns to adopt a ward system, most have not.” NYSCEF 60 (Critchlow Report) at 29–30.

47. Shifting away from at-large electoral systems in other jurisdictions has led to the election of more Latino and Black-preferred city councilmembers and to greater responsiveness to Latino and Black constituencies from municipal governments that had previously neglected these communities. Exhibit J (Sandoval-Strausz Report) at 26-27.

RESPONSE: Defendants dispute this statement because it is not material and is not supported by evidence as required under 22 NYCRR § 202.8-g(d). This statement is also an expert opinion and is not a fact as required under 22 NYCRR § 202.8-g(d). Additionally, Plaintiffs' expert cannot identify any specific examples from New York jurisdictions where the switch from at-large to single-member districts "increase[d] the presence of black and Latino people on town councils or city councils." Moskowitz Aff., Exhibit K (Sandoval-Strausz Deposition) at 79:25–80:16; *see* NYSCEF 60 (Critchlow Report) at 13–19.

V. The pattern of racially polarized voting in Newburgh

48. Plaintiffs retained Dr. Matt Barreto, a Professor of Political Science and Chicana/o Studies at the University of California, Los Angeles, to assess voting patterns in the Town of Newburgh. Dr. Barreto became a tenured professor at UCLA in 2015. Prior to UCLA, he was a tenured professor of political science at the University of Washington from 2005 to 2014. Exhibit M (Barreto Report) at 2.

RESPONSE: Defendants dispute this statement as the qualifications of Plaintiffs' purported experts are not statements of material facts required by 22 NYCRR § 202.8(g)(d).

49. Dr. Barreto is the faculty director of the Voting Rights Project in the Luskin School of Public Affairs and teaches a year-long course on the Voting Rights Act of 1965, focusing on social science statistical analysis, demographics and voting patterns, and mapping analysis that are relevant to voting rights cases. Exhibit M (Barreto Report) at 2.

RESPONSE: Defendants dispute this statement as the qualifications of Plaintiffs' purported experts are not statements of material facts required by 22 NYCRR § 202.8(g)(d).

50. Dr. Barreto has written expert reports and been qualified as an expert witness more than four dozen times in federal and state voting rights and civil rights cases, including in the state of New York. He has also submitted dozens of expert reports in federal and state courts, and numerous courts have relied on his testimony as credible. Additionally, he has been retained as an expert consultant by cities and counties across the county to advise them on racial voting patterns as they relate to VRA compliance during redistricting. Exhibit M (Barreto Report) at 2.

RESPONSE: Defendants dispute this statement as the qualifications of Plaintiffs' purported experts are not statements of material facts required by 22 NYCRR § 202.8(g)(d). Defendants further dispute this statement because it is not supported by evidence as required under 22 NYCRR § 202.8-g(d). The cited evidence states that while "mostly judges have been accepting of what [Dr. Barreto has] said" as an expert, there have been instances where courts have given his "testimony less weight than others," including in "the challenge to the Pennsylvania voter ID law." Greenwood Aff., Exhibit N (Barreto Deposition) at 43:24–45:21. Additionally, Defendants also dispute this statement because it contains a legal conclusion, which is not a fact as required by 22 NYCRR § 202.8-g(d).

51. Dr. Barreto has published peer-reviewed social science articles about minority voting patterns and racially polarized voting and has co-authored a software package (eiCompare) for use in analyzing racial voting patterns in voting rights cases. Exhibit M (Barreto Report) at 2.

RESPONSE: Defendants dispute this statement as the qualifications of Plaintiffs' purported experts are not statements of material facts required by 22 NYCRR § 202.8-g(d).

Defendants further dispute this statement as one subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d).

52. Dr. Barreto analyzed racial polarization in 34 elections in Newburgh across nine election cycles from 2011 to 2022 using two standard statistical techniques: King's Ecological Inference and Ecological Inference RxC. Exhibit M (Barreto Report) at 8-10.

RESPONSE: Defendants dispute this statement as one subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d).

53. Dr. Barreto relied on official election results and voter file data provided by the Orange County Board of Elections, New York. For each election, he used the voter file of registered voters at the time of the election to estimate the race and ethnicity of voters consolidated to each voting precinct in the town of Newburgh. This information was merged with precinct level election results to be used in an ecological inference (EI) analysis. Exhibit M (Barreto Report) at 6.

RESPONSE: Defendants dispute this statement as one subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d).

54. Dr. Barreto used the Bayesian Improved Surname Geocoding (BISG) method to assess the racial makeup of voters in Newburgh. Exhibit M (Barreto Report) at 6.

RESPONSE: Defendants dispute this statement as one subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d).

55. BISG has been developed by demographic experts and has been widely published and applied in the domain of political science to understand voting trends by race and ethnicity. It has been used by experts in Section 2 voting rights trials and found reliable by a federal district court. *NAACP v. E. Ramapo Cent. Sch. Dist.*, 462 F. Supp. 3d 368 (S.D.N.Y. 2020). It has also

been found reliable by the Second Circuit Court of Appeals. *Clerveaux v. E. Ramapo Cent. Sch. Dist.*, 984 F.3d 213 (2d Cir. 2021). It has been published in peer-reviewed political science, social science methodology, and law review journals as an appropriate technique for understanding voter race or ethnicity. Exhibit M (Barreto Report) at 6.

RESPONSE: Defendants dispute this statement because it is not material and is not supported by evidence as required under 22 NYCRR § 202.8-g(d). This statement also includes legal conclusions which are not facts under 22 NYCRR § 202.8-g(d). Additionally, the BISG methodology “is by no means 100% accurate.” Greenwood Aff., Exhibit O (Lockerbie Report) at 6; Greenwood Aff., Exhibit N (Barreto Deposition) at 94:18–96:24. The BISG methodology has an overall error rate of 13.2%. Greenwood Aff., Exhibit O (Lockerbie Report) at 7. For Whites, the false negative rate is 8.71% and the false positive rate is 23%. Greenwood Aff., Exhibit O (Lockerbie Report) at 7. For Blacks, the false negative rate is 22.70% and the false positive rate is 8.06%. Greenwood Aff., Exhibit O (Lockerbie Report) at 7. For Hispanics, the false negative rate is 24.06% and the false positive rate is 2.15%. Greenwood Aff., Exhibit O (Lockerbie Report) at 7. For Asians, the false negative rate is 41.44% and the false positive rate is .46%. Greenwood Aff., Exhibit O (Lockerbie Report) at 7. And if an individual employing the BISG methodology only uses surnames, the overall error rate is 16.70%. Greenwood Aff., Exhibit O (Lockerbie Report) at 7. Some researchers have raised questions concerning the reliability of the BISG method, and several scholars propose using the fBISG methodology instead of the BISG methodology to correct BISG methodology errors. Greenwood Aff., Exhibit N (Barreto Deposition) at 95:7–11; Greenwood Aff., Exhibit O (Lockerbie Report) at 6–7. Moreover, Dr. Barreto was not able to confirm the accuracy of his estimations under the BISG method because

the Town does not have race on the voter file. Greenwood Aff., Exhibit N (Barreto Deposition) at 100:20–101:5.

56. Dr. Barreto used the voter file provided by Orange County, along with the software package WRU, to perform BISG to estimate voters by race across each precinct and then feed this information into eiCompare to run racially polarized voting analysis. Exhibit M (Barreto Report) at 8.

RESPONSE: Defendants dispute statement as one subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d). Moreover, Dr. Barreto was not able to confirm the accuracy of his estimations under the BISG method because the Town does not have race on the voter file. Greenwood Aff., Exhibit N (Barreto Deposition) at 100:20–101:5; *see* Greenwood Aff., Exhibit O (Lockerbie Report) at 2–7.

57. These statistical methodologies are routinely accepted by courts for analyzing voting patterns by race. Exhibit M (Barreto Report) at 6.

RESPONSE: Defendants dispute this statement because it is not material and is not supported by evidence as required under 22 NYCRR § 202.8-g(d). This statement also includes legal conclusions which are not facts under 22 NYCRR § 202.8-g(d). Additionally, the BISG methodology “is by no means 100% accurate.” Greenwood Aff., Exhibit O (Lockerbie Report) at 6; Greenwood Aff., Exhibit N (Barreto Deposition) at 94:18–96:24. The BISG methodology has an overall error rate of 13.2%. Greenwood Aff., Exhibit O (Lockerbie Report) at 7. For Whites, the false negative rate is 8.71% and the false positive rate is 23%. Greenwood Aff., Exhibit O (Lockerbie Report) at 7. For Blacks, the false negative rate is 22.70% and the false positive rate is 8.06%. Greenwood Aff., Exhibit O (Lockerbie Report) at 7. For Hispanics, the false negative rate is 24.06% and the false positive rate is 2.15%. Greenwood Aff., Exhibit O

(Lockerbie Report) at 7. For Asians, the false negative rate is 41.44% and the false positive rate is .46%. Greenwood Aff., Exhibit O (Lockerbie Report) at 7. And if an individual employing the BISG methodology only uses surnames, the overall error rate is 16.70%. Greenwood Aff., Exhibit O (Lockerbie Report) at 7. Some researchers have raised questions concerning the reliability of the BISG method, and several scholars propose using the fBISG methodology instead of the BISG methodology to correct BISG methodology errors. Greenwood Aff., Exhibit N (Barreto Deposition) at 95:7–11; Greenwood Aff., Exhibit O (Lockerbie Report) at 6–7. Moreover, Dr. Barreto was not able to confirm the accuracy of his estimations under the BISG method because the Town does not have race on the voter file. Greenwood Aff., Exhibit N (Barreto Deposition) at 100:20–101:5.

58. Dr. Barreto's analysis included every contested Town Board election since 2011, including contested Town elections in 2011, 2013, 2019, 2020, and 2021. Exhibit M (Barreto Report) at 10-15.

RESPONSE: Defendants dispute this statement as one subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d).

59. Dr. Barreto derived two sets of estimates: one of white, Black, and Latino voter support for each candidate for office based on the iterative EI methodology, and one of white, lack, and Latino voter support for each candidate for office based on EI Rows by Columns (ExC) methodology. Exhibit M (Barreto Report) at 12-15.

RESPONSE: Defendants dispute this statement as one subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d). Moreover, Dr. Barreto was not able to confirm the accuracy of his estimations under the BISG method because the Town does not have

race on the voter file. Greenwood Aff., Exhibit N (Barreto Deposition) at 100:20–101:5; Greenwood Aff., Exhibit O (Lockerbie Report) at 6–7.

60. In Town elections, Latino and Black voters are cohesive and exhibit a clear and unified candidate preference. Exhibit M (Barreto Report) at 8.

RESPONSE: Defendants dispute this statement as one subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d). Moreover, Dr. Barreto was not able to confirm the accuracy of his estimations under the BISG method because the Town does not have race on the voter file. Greenwood Aff., Exhibit N (Barreto Deposition) at 100:20–101:5; Greenwood Aff., Exhibit O (Lockerbie Report) at 6–7.

61. In Town elections, white voters regularly vote as a bloc for candidates running against the candidates preferred by Latino and Black voters. Exhibit M (Barreto Report) at 8, 16.

RESPONSE: Defendants dispute this statement as one subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d). Moreover, Dr. Barreto was not able to confirm the accuracy of his estimations under the BISG method because the Town does not have race on the voter file. Greenwood Aff., Exhibit N (Barreto Deposition) at 100:20–101:5; Greenwood Aff., Exhibit O (Lockerbie Report) at 6–7.

62. In Town elections, the candidates preferred by white voters usually prevails over the candidate preferred by Latino and Black voters. Exhibit M (Barreto Report) at 3, 8.

RESPONSE: Defendants dispute this statement as one subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d). Additionally, whether the candidate preferred by white voters usually prevails over the candidate preferred by Latino and Black voters depends upon whether the election is held in an odd- or even-numbered year. Greenwood Aff., Exhibit O (Lockerbie Report) at 3–6. Moreover, Dr. Barreto was not able to confirm the accuracy

of his estimations under the BISG method because the Town does not have race on the voter file. Greenwood Aff., Exhibit N (Barreto Deposition) at 100:20–101:5; Greenwood Aff., Exhibit O (Lockerbie Report) at 6–7.

63. No Latino- and Black-preferred candidate has ever prevailed over the white-preferred candidate in a contested Town election. Exhibit N (Barreto Deposition) at 116:20–117:10; Exhibit D (Flournoy Deposition) at 100:17–102:9; Exhibit P (Lockerbie Deposition) at 98:5109:8; Exhibit F (Tirado Deposition) at 75:7–75:19.

RESPONSE: Defendants dispute this statement as one subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d). Additionally, whether the candidate preferred by white voters usually prevails over the candidate preferred by Latino and Black voters depends upon whether the election is held in an odd- or even-numbered year. Greenwood Aff., Exhibit O (Lockerbie Report) at 3–6. Moreover, Dr. Barreto was not able to confirm the accuracy of his estimations under the BISG method because the Town does not have race on the voter file. Greenwood Aff., Exhibit N (Barreto Deposition) at 100:20–101:5; Greenwood Aff., Exhibit O (Lockerbie Report) at 6–7.

64. Dr. Barreto found a “clear, consistent, and statistically significant finding of racially polarized voting in the Town of Newburgh.” Specifically, he found that “Latino and Black voters are cohesive in local elections for Town Council,” but that these candidates “typically receive very low rates of support from white voters, who effectively block [them] from winning office.” Exhibit M (Barreto Report) at 3, 8; Exhibit N (Barreto Deposition) at 111:24–112:10.

RESPONSE: Defendants dispute this statement because it is not supported by evidence as required under 22 NYCRR § 202.8-g(d). Specifically, Dr. Barreto testified that “every election is different,” which is why he “tr[ies] to not cast overarching generalities.” Greenwood

Aff., Exhibit N (Barreto Deposition) at 145:14–146:6. “The white vote does go back and forth,” and the “degree of crossover voting varies “depending on the candidate, candidate quality, the incumbency of the candidate, how long they’ve been a household name, and their reputation in the community.” Greenwood Aff., Exhibit N (Barreto Deposition) at 145:8–146:6. Additionally, Democrats (the minority-favored candidates) tend to do better in even-numbered years due to the turnout generated by statewide and national races. *See* Greenwood Aff., Exhibit O (Lockerbie Report) at 3–6. Moreover, Dr. Barreto was not able to confirm the accuracy of his estimations under the BISG method because the Town does not have race on the voter file. Greenwood Aff., Exhibit N (Barreto Deposition) at 100:20–101:5; Greenwood Aff., Exhibit O (Lockerbie Report) at 6–7. Defendants respectfully refer the Court to the cited materials for the full text, terms, and effect thereof.

65. Dr. Barreto’s analysis of the Town’s voting patterns is consistent with the Plaintiffs’ own observations and experiences. Exhibit F (Tirado Deposition) at 74:16-75:11; Exhibit D (Flournoy Deposition) at 100:17-102:9.

RESPONSE: Defendants dispute this statement as one subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d). Defendants further dispute this statement because it is not supported by evidence under 22 NYCRR § 202.8-g(d), *see* Greenwood Aff., Exhibit O (Lockerbie Report) at 3–7, and because it is vague and ambiguous to the extent it refers to unspecified “analysis” and “observations and experiences.”

66. The Town has no independent knowledge of whether Black and Latino voters and white voters in Newburgh exhibit patterns of racially polarized voting in Town elections. NYSCEF 61 (Town Deposition) at 65:4-66:21.

RESPONSE: Defendants dispute this statement because it is not supported by evidence as required under 22 NYCRR § 202.8-g(d). The cited materials indicate that the Town is not aware of any public or non-privileged information regarding whether Black and Latino voters and white voters in Newburgh exhibit patterns of racially polarized voting in Town elections. NYSCEF 61 (Town Deposition) at 65:4-66:21.

67. The Town's expert, Professor Brad Lockerbie, did not analyze whether there is racially polarized voting in Town elections and reached no independent conclusions regarding this topic. Exhibit O (Lockerbie Report) at 6-7; Exhibit P (Lockerbie Deposition) at 65:17-25.

RESPONSE: Defendants dispute this statement as one subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d).

68. Professor Lockerbie did not analyze voting patterns in primaries or contested Town elections. Exhibit P (Lockerbie Deposition) at 84:24-86:11.

RESPONSE: Defendants dispute this statement because it is not supported by evidence as required under 22 NYCRR § 202.8-g(d). *See* Greenwood Aff., Exhibit O (Lockerbie Report) at 2. Defendants also dispute this statement as one subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d).

69. Professor Lockerbie did not review Dr. Barreto's underlying analysis of racially polarized voting in the Town and instead "assume[d] that [Dr. Barreto's] calculations are accurate." Exhibit P (Lockerbie Deposition) at 65:17-25.

RESPONSE: Defendants dispute this statement as one subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d).

70. Professor Lockerbie “did not dispute Dr. Barreto’s characterization” regarding the presence of racially polarized voting in the Town of Newburgh. Exhibit P (Lockerbie Deposition) at 129:6-11.

RESPONSE: Defendants dispute this statement as one subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d).

71. The success rate for minority-preferred candidates is lower in odd-year elections than it is in even-year elections. Exhibit P (Lockerbie Deposition) at 111:18-23.

RESPONSE: Defendants dispute this statement as one subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d).

72. “The odds are not good” that minority-preferred candidates would have a reasonable opportunity to be elected in Town elections in 2025 or 2027. Exhibit P (Lockerbie Deposition) at 115:20-116:5.

RESPONSE: Defendants dispute this statement as one subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d).

73. One of the Town’s proffered experts, Professor Donald Critchlow, did not analyze whether there is racially polarized voting in Town elections and reached no conclusions regarding this topic. *See generally* NYSCEF 60 (Critchlow Report); Exhibit Q (Critchlow Deposition) at 186:2-16.

RESPONSE: Defendants dispute this statement as one subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d).

VI. The availability of alternative electoral systems

74. Dr. Barreto estimated the impact of switching from the Town’s current at-large system to three different alternative electoral systems: single-member districts, proportional

ranked choice voting, cumulative voting. Exhibit M (Barreto Report) at 16-18; Exhibit N (Barreto Deposition) at 161:6-17.

RESPONSE: Defendants dispute this statement. As explained in more detail in Defendants' pending motion in limine, NYSCEF 126, and their contemporaneously filed reply in support of summary judgment, Dr. Barreto's June 28, 2024, expert report does not estimate the impact of switching from the Town's current at-large system to three different alternative electoral systems, and instead merely describes these different electoral systems generally. Greenwood Aff., Exhibit M (Barreto Report) at 16–18. Although Plaintiffs later attempted to serve an untimely second expert report to provide this evidence and then attempted to question Dr. Barreto on this expert report at his deposition, that untimely expert report and testimony are not properly part of this case. *See* Greenwood Aff., Exhibit R (Barreto Addendum); Greenwood Aff., Exhibit N (Barreto Deposition) at 9:21–10:5; 159:21–170:20. Additionally, this statement is an expert opinion rather than a fact, and is not supported by evidence as required under 22 NYCRR § 202.8-g(d). Specifically, the cited material does not “estimate[] the impact of switching from the Town's current at-large system to three different alternative electoral systems.” *See* Greenwood Aff., Exhibit M (Barreto Report) at 16-18; Greenwood Aff., Exhibit N (Barreto Deposition) at 161:6-17.

75. Dr. Barreto analyzed the potential implications of shifting from the existing at-large system to a system of single-member districts by creating four hypothetical districting plans. Two of these demonstrative districting plans contained four districts, while another two of these demonstrative districting plans contained five districts. Exhibit R (Barreto Addendum) at 1; Exhibit N (Barreto Deposition) at 169:14-19.

RESPONSE: Defendants dispute this statement. As explained in more detail in Defendants' pending motion in limine, NYSCEF 126, and their contemporaneously filed reply in support of summary judgment, Dr. Barreto's June 28, 2024, expert report does not estimate the impact of switching from the Town's current at-large system to three different alternative electoral systems, and instead merely describes these different electoral systems generally. Greenwood Aff., Exhibit M (Barreto Report) at 16–18. Although Plaintiffs later attempted to serve an untimely second expert report to provide this evidence and then attempted to question Dr. Barreto on this expert report at his deposition, that untimely expert report and testimony are not properly part of this case. *See* Greenwood Aff., Exhibit R (Barreto Addendum); Greenwood Aff., Exhibit N (Barreto Deposition) at 9:21–10:5; 159:21–170:20. Additionally, this statement is an expert opinion and not a fact, and is not supported by evidence as required under 22 NYCRR § 202.8-g(d).

76. In each of Dr. Barreto's four potential district-based plans, his analysis indicates that one or two (of four) or two or three (of five) districts will provide an opportunity for the Black and Latino community to elect a candidate of their choice in Town Council elections. Specifically, Dr. Barreto concluded "that a district-based scheme would be effective to remedy vote dilution and allow Black and Latino voters . . . to elect candidates of their choice in at least some districts."

Exhibit R (Barreto Addendum), Appendix A.

RESPONSE: Defendants dispute this statement. As explained in more detail in Defendants' pending motion in limine, NYSCEF 60, and their contemporaneously filed reply in support of summary judgment, Dr. Barreto's June 28, 2024, expert report does not estimate the impact of switching from the Town's current at-large system to three different alternative electoral systems, and instead merely describes these different electoral systems generally. Greenwood

Aff., Exhibit M (Barreto Report) at 16–18. Although Plaintiffs later attempted to serve an untimely second expert report to provide this evidence and then attempted to question Dr. Barreto on this expert report at his deposition, that untimely expert report and testimony are not properly part of this case. *See* Greenwood Aff., Exhibit R (Barreto Addendum); Greenwood Aff., Exhibit N (Barreto Deposition) at 9:21–10:5; 159:21–170:20. Additionally, this statement is an expert opinion and not a fact, and is not supported by evidence as required under 22 NYCRR § 202.8-g(d).

77. It is possible to implement a four or five single-member district plan for the Newburgh Town Council that would allow Black and Latino voters an opportunity to elect their candidates of choice. Exhibit M (Barreto Report) at 16; Exhibit N (Barreto Deposition) at 159:15-24; Exhibit R (Barreto Addendum).

RESPONSE: Defendants dispute this statement. As explained in more detail in Defendants’ pending motion in limine, NYSCEF 126, and their contemporaneously filed reply in support of summary judgment, Dr. Barreto’s June 28, 2024, expert report does not estimate the impact of switching from the Town’s current at-large system to three different alternative electoral systems, and instead merely describes these different electoral systems generally. Greenwood Aff., Exhibit M (Barreto Report) at 16–18. Although Plaintiffs later attempted to serve an untimely second expert report to provide this evidence and then attempted to question Dr. Barreto on this expert report at his deposition, that untimely expert report and testimony are not properly part of this case. *See* Greenwood Aff., Exhibit R (Barreto Addendum); Greenwood Aff., Exhibit N (Barreto Deposition) at 9:21–10:5; 159:21–170:20. Additionally, this statement is an expert opinion and not a fact, and is not supported by evidence as required under 22 NYCRR § 202.8-g(d). Specifically, the cited materials do not show that it is “possible to implement a four or five

single-member district plan for the Newburgh Town Council that would allow Black and Latino voters an opportunity to elect their candidates of choice.” *See* Greenwood Aff., Exhibit M (Barreto Report) at 16; Greenwood Aff., Exhibit N (Barreto Deposition) at 159:15-24.

78. It is possible to implement a proportional ranked choice voting plan that would provide Black and Latino voters with an opportunity to elect candidates of choice in Town Council elections. Exhibit M (Barreto Report) at 17; Exhibit N (Barreto Deposition) at 161:617.

RESPONSE: Defendants dispute this statement. As explained in more detail in Defendants’ pending motion in limine, NYSCEF 126, and their contemporaneously filed reply in support of summary judgment, Dr. Barreto’s June 28, 2024, expert report does not estimate the impact of switching from the Town’s current at-large system to three different alternative electoral systems, and instead merely describes these different electoral systems generally. Greenwood Aff., Exhibit M (Barreto Report) at 16–18. Although Plaintiffs later attempted to serve an untimely second expert report to provide this evidence and then attempted to question Dr. Barreto on this expert report at his deposition, that untimely expert report and testimony are not properly part of this case. *See* Greenwood Aff., Exhibit R (Barreto Addendum); Greenwood Aff., Exhibit N (Barreto Deposition) at 9:21–10:5; 159:21–170:20. Additionally, this statement is an expert opinion and not a fact, and is not supported by evidence as required under 22 NYCRR § 202.8-g(d). Specifically, the cited materials do not show that it “is possible to implement a proportional ranked choice voting plan that would provide Black and Latino voters with an opportunity to elect candidates of choice in Town Council elections.” *See* Greenwood Aff., Exhibit M (Barreto Report) at 17; Greenwood Aff., Exhibit N (Barreto Deposition) at 161:6-17.

79. It is possible to implement a cumulative voting plan to that would allow Black and Latino voters an opportunity to elect their candidates of choice. Exhibit M (Barreto Report) at 17; Exhibit N (Barreto Deposition) at 165:14-166:5.

RESPONSE: Defendants dispute this statement. As explained in more detail in Defendants' pending motion in limine, NYSCEF 126, and their contemporaneously filed reply in support of summary judgment, Dr. Barreto's June 28, 2024, expert report does not estimate the impact of switching from the Town's current at-large system to three different alternative electoral systems, and instead merely describes these different electoral systems generally. Greenwood Aff., Exhibit M (Barreto Report) at 16–18. Although Plaintiffs later attempted to serve an untimely second expert report to provide this evidence and then attempted to question Dr. Barreto on this expert report at his deposition, that untimely expert report and testimony are not properly part of this case. *See* Greenwood Aff., Exhibit R (Barreto Addendum); Greenwood Aff., Exhibit N (Barreto Deposition) at 9:21–10:5; 159:21–170:20. Additionally, this statement is an expert opinion and not a fact, and is not supported by evidence as required under 22 NYCRR § 202.8-g(d). Specifically, the cited evidence does not show that it “is possible to implement a cumulative voting plan to that would allow Black and Latino voters an opportunity to elect their candidates of choice.” *See* Greenwood Aff., Exhibit M (Barreto Report) at 17; Greenwood Aff., Exhibit N (Barreto Deposition) at 165:14-166:5.

VII. Discrimination and socioeconomic disparities in Newburgh

80. There is an extensive history of discrimination in against Black and Latino residents of New York, including in voting through mechanisms like the English-language literacy test, manipulation of candidate slates, threats and intimidation, dilutive redistricting practices, and the failure to provide Spanish-language translation. Exhibit J (Sandoval-Strausz Report) at 13-16.

RESPONSE: Defendants dispute this statement because it is not material and not supported by evidence as required under 22 NYCRR § 202.8-g(d). Additionally, this proposed statement ignores the “active anti-slavery mobilization in the State of New York and the Hudson Valley, as well as Black [*sic*] and minority civic rights activism, and legislative progress, in the 20th century.” NYSCEF 60 (Critchlow Report) at 6–8; *id.* at 10–11 (addressing literacy tests); *id.* at 14 (noting “Orange County’s efforts to ensure Spanish speakers have access to voting and educational resources and to encourage civic participation and access”).

81. There is an extensive history of discrimination against Black and Latino residents of Orange County, including in voting. Exhibit J (Sandoval-Strausz Report) at 16-19.

RESPONSE: Defendants dispute this statement because it is not material and not supported by evidence as required under 22 NYCRR § 202.8-g(d). *See* NYSCEF 60 (Critchlow Report) at 6–11, 13–19. Additionally, this proposed statement ignores the “vigorous programs” that Orange County has in place today to “encourage civil participation and access.” NYSCEF 60 (Critchlow Report) at 10–11.

82. The Town of Newburgh emerged as a white-flight suburb of the City of Newburgh in the 1960s, in the aftermath of a highly racialized controversy over welfare policy in the City of Newburgh. Exhibit J (Sandoval-Strausz Report) at 19-22.

RESPONSE: Defendants dispute this statement because it is not supported by evidence as required under 22 NYCRR § 202.8-g(d). *See* Greenwood Aff., Exhibit J (Sandoval-Strausz Report) at 19-22; NYSCEF 60 (Critchlow Report) at 11–13.

83. In September 1992, around 100 members of the Ku Klux Klan and neo-Nazi groups congregated in Newburgh. Rally attendees brought swastikas and Confederate flags. There was a counterprotest in the neighboring City of Newburgh but no reported response in or by the Town.

Exhibit J (Sandoval-Strausz Report) at 23; Exhibit S (New York Times Article: “Hands Join in Newburgh to Protest Klan Picnic”).

RESPONSE: Defendants dispute this statement because it is not material as required by 22 NYCRR § 202.8g(d). Defendants further dispute this statement as one subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d). *See* Greenwood Aff., Exhibit J (Sandoval-Strausz Report) at 23; NYSCEF 60 (Critchlow Report) at 9–10.

84. There are few, if any, people of color employed by the Town of Newburgh. Exhibit E (Perez Deposition) at 69:17-25.

RESPONSE: Defendants dispute this statement because it is not supported by evidence as required under 22 NYCRR § 202.8-g(d). The cited materials state only that Plaintiff Perez has perceived “a lack of employees of color” at “Town offices, departments.” Greenwood Aff., Exhibit E (Perez Deposition) at 69:17-25.

85. Of the Town’s 220 employees, only three speak Spanish. Exhibit L (Defendants’ Responses to Interrogatories) at No. 12.

RESPONSE: Defendants dispute this statement because it is not supported by evidence as required under 22 NYCRR § 202.8-g(d). The cited materials state only that there are three “town employees whose primary work location is Newburgh Town Hall who speak[] Spanish.” Greenwood Aff., Exhibit L (Defendants’ Responses to Interrogatories) at No. 12.

86. The Town has made no efforts to recruit additional Black and Latino employees. Exhibit K (Piaquadio Deposition) at 72:13-74:21.

RESPONSE: Defendants dispute this statement because it is not supported by evidence as required under 22 NYCRR § 202.8-g(d). The cited materials indicate that the Town is not aware of any public or non-privileged information regarding the Town’s efforts to recruit

additional Black and Latino employees. Greenwood Aff., Exhibit K (Piaquadio Deposition) at 72:13-74:21.

87. In October 2012, a Town employee filed a lawsuit accusing the supervisor in the Town Water Department, along with the Assistant Highway Superintendent, of racist behavior and using racial slurs in the workplace, including the N-word. Exhibit T (Gray v. Elliott Complaint) at 2-9.

RESPONSE: Defendants dispute this statement because it is not material as required by 22 NYCRR § 202.8g(d). Defendants further dispute this statement as one subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d). Defendants respectfully refer the Court to the cited complaint for the full text, terms, and effect thereof. *See* Greenwood Aff., Exhibit T (Gray v. Elliott Complaint) at 2-9.

88. According to the complaint, The Town hired an independent investigator who concluded that “[t]here is sufficient evidence that [the defendant] subjected [the plaintiff] to a hostile work environment on the basis of his race.” Exhibit T (Gray v. Elliott Complaint) at 7.

RESPONSE: Defendants dispute this statement because it is not material as required by 22 NYCRR § 202.8g(d). Defendants further dispute this statement as subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d). However, Defendants do not dispute that the quoted language appears in the cited complaint, and respectfully refer the Court to that complaint for the full text, terms, and effect thereof. *See* Greenwood Aff., Exhibit T (Gray v. Elliott Complaint) at 7.

89. The plaintiff received a monetary payout as part of a settlement executed by the parties. Exhibit U (Gray v. Elliott Notice of Settlement); Exhibit V (Hudson Valley Press Article: “Racism Within Highway Department Must End”).

RESPONSE: Defendants dispute this statement because it is not material as required by 22 NYCRR § 202.8g(d). Defendants further dispute this statement because it is not supported by evidence as required under 22 NYCRR § 202.8-g(d). Defendants respectfully refer the Court to the cited materials for the full text, terms, and effect thereof. *See* Greenwood Aff., Exhibit U (Gray v. Elliott Notice of Settlement); Exhibit V (Hudson Valley Press Article: “Racism Within Highway Department Must End”).

90. In 2016, the Assistant Highway Superintendent named in the 2012 complaint – who was then serving as the Town’s Highway Superintendent – was again accused of using racial slurs and contributing to a racially abusive work environment. Exhibit V (Hudson Valley Press Article: “Racism Within Highway Department Must End”).

RESPONSE: Defendants dispute this statement because it is not material as required by 22 NYCRR § 202.8g(d). Defendants further dispute this statement as one subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d). Defendants respectfully refers the Court to the cited materials for the full text, terms, and effect thereof. *See* Greenwood Aff., Exhibit V (Hudson Valley Press Article: “Racism Within Highway Department Must End”).

91. Black and Latino residents of Newburgh as a group experience worse outcomes in income, housing, and education as compared to non-Hispanic white residents. Exhibit J (Sandoval-Strausz Report) at 34.

RESPONSE: Defendants dispute this statement because it is not supported by evidence as required under 22 NYCRR § 202.8-g(d). NYSCEF 60 (Critchlow Report) at 20–27. This statement is also an expert opinion and is not a fact as required under 22 NYCRR § 202.8-g(d).

92. White residents in Newburgh earn an average of \$50,839 per year, while Black and Hispanic residents earn significantly less, averaging \$33,870 and \$35,022 per year, respectively. Exhibit J (Sandoval-Strausz Report) at 34.

RESPONSE: Defendants dispute this statement because it is not supported by evidence as required under 22 NYCRR § 202.8-g(d). This statement is also an expert opinion and is not a fact as required under 22 NYCRR § 202.8-g(d). Additionally, the cited materials do not identify any specific source for the proposed fact. *See* Greenwood Aff., Exhibit J (Sandoval-Strausz Report) at 34; NYSCEF 60 (Critchlow Report) at 20–27.

93. In the Town, 5.9% of Latinos and 5.4% of Black residents are unemployed, as compared to 3.1% of white residents. Exhibit J (Sandoval-Strausz Report) at 34.

RESPONSE: Defendants dispute this statement because it is not supported by evidence as required under 22 NYCRR § 202.8-g(d). This statement is also an expert opinion and is not a fact as required under 22 NYCRR § 202.8-g(d). Additionally, the cited materials do not identify any specific source for the proposed fact. *See* Greenwood Aff., Exhibit J (Sandoval-Strausz Report) at 34; NYSCEF 60 (Critchlow Report) at 20–27.

94. Black residents in the Town are more than 50% more likely to have received food stamps or to be enrolled in the Supplemental Nutrition Assistance Program as compared to white residents. Exhibit J (Sandoval-Strausz Report) at 34-35.

RESPONSE: Defendants dispute this statement because it is not supported by evidence as required under 22 NYCRR § 202.8-g(d). This statement is also an expert opinion and is not a fact as required under 22 NYCRR § 202.8-g(d). Additionally, the cited materials state that 6.1% of Black residents had received food stamps or were enrolled in the Supplemental Nutrition Assistance Program as compared to 3.9% of white residents and 3.6% of Latino residents.

Greenwood Aff., Exhibit J (Sandoval-Strausz Report) at 34-35. Further, the cited materials do not identify any specific source for this statement. *See* Greenwood Aff., Exhibit J (Sandoval-Strausz Report) at 34; NYSCEF 60 (Critchlow Report) at 20–27.

95. In the Town, 14.7% of white residents rent their homes, as compared to 25.7% of Latino and 24.9% of Black residents. Exhibit J (Sandoval-Strausz Report) at 35.

RESPONSE: Defendants dispute this statement because it is not supported by evidence as required under 22 NYCRR § 202.8-g(d). This statement is also an expert opinion and is not a fact as required under 22 NYCRR § 202.8-g(d). Additionally, the cited materials do not identify any specific source for this statement. *See* Greenwood Aff., Exhibit J (Sandoval-Strausz Report) at 35; NYSCEF 60 (Critchlow Report) at 20–27.

96. The high school dropout rate in Town is 2.1% for white men, 3.4% for Black men, and 10.6% for Latino men. Exhibit J (Sandoval-Strausz Report) at 35-36.

RESPONSE: Defendants dispute this statement because it is not supported by evidence as required under 22 NYCRR § 202.8-g(d). This statement is also an expert opinion and is not a fact as required under 22 NYCRR § 202.8-g(d). Additionally, the cited materials do not identify any specific source for this statement. *See* Greenwood Aff., Exhibit J (Sandoval-Strausz Report) at 35–36; NYSCEF 60 (Critchlow Report) at 20–27.

VIII. The Town's responsiveness to the needs of the Black or Hispanic community

97. The Town identified alleged actions it has taken to address disparities between Black and Hispanic residents and white residents of Newburgh. Exhibit L (Defendants' Responses to Interrogatories) at No. 7; NYSCEF 61 (Town Deposition) at 114:17-115:16.

RESPONSE: It is undisputed that the Town has taken actions to address disparities between Black and Hispanic residents and white residents of Newburgh. NYSCEF 60 (Critchlow

Report) at 12–15; Greenwood Aff., Exhibit L (Defendants’ Responses to Interrogatories) at No. 7; NYSCEF 61 (Town Deposition) at 114:17-115:16.

98. The Town is required by law to provide court interpretive services. Exhibit W (Rule 217.1: Obligation to Appoint Interpreter in Court Proceedings in the Trial Courts).

RESPONSE: Defendants dispute this statement, which is a legal conclusion and is not a fact as required by 22 NYCRR § 202.8-g(d). Defendants respectfully refer the Court to Rule 217:1 for the full text, terms, and effect thereof. Greenwood Aff., Exhibit W (Rule 217.1: Obligation to Appoint Interpreter in Court Proceedings in the Trial Courts).

99. The Town has no information regarding how taking the April 2009 *Tri-County Affordable Housing Study* into consideration in zoning decisions benefits Black and Hispanic residents. NYSCEF 61 (Town Deposition) at 107:17-108:15.

RESPONSE: Defendants dispute this statement because it is not material and not supported by evidence as required under 22 NYCRR § 202.8-g(d). The cited materials indicate that the Town is not aware of any public or non-privileged information regarding the relation between the April 2009 *Tri-County Affordable Housing Study* and disparities in the Town of Newburgh. NYSCEF 61 (Town Deposition) at 107:17-108:15.

100. The Town cannot identify a single project on which it proactively sought the participation of minority-owned business contractors. NYSCEF 61 (Town Deposition) at 109:2-111:24.

RESPONSE: Defendants dispute this statement because it is not material and not supported by evidence as required under 22 NYCRR § 202.8-g(d). The cited materials indicate that the Town is not aware of any public or non-privileged information regarding construction

projects on which the Town sought the participation of minority-owned business contractors. NYSCEF 61 (Town Deposition) at 109:2–111:24.

101. The Town has no information regarding the racial or ethnic demographics of the areas in which it provides water and sewer services. NYSCEF 61 (Town Deposition) at 111:25-114:16.

RESPONSE: Defendants dispute this statement because it is not material and not supported by evidence as required under 22 NYCRR § 202.8-g(d). The cited materials indicate that the Town is not aware of any public or non-privileged information regarding the racial or ethnic demographics of the areas in which it provides water and sewer services. NYSCEF 61 (Town Deposition) at 111:25-114:16.

102. The Town cannot identify a single instance in which the affordable housing bonus incentive contained in the Town's Zoning Code has ever been utilized. Exhibit K (Piaquadio Deposition) at 70:5-19.

RESPONSE: Defendants dispute this statement because it is not material and not supported by evidence as required under 22 NYCRR § 202.8-g(d). The cited materials indicate that the Town is not aware of any public or non-privileged information concerning instances in which the affordable housing bonus incentive contained in the Town's Zoning Code has ever been utilized. Greenwood Aff., Exhibit K (Piaquadio Deposition) at 70:5-19.

103. The Town Council does not intend to address socioeconomic disparities between Black and Hispanic residents and white residents in the future. NYSCEF 61 (Town Deposition) at 61:6-18.

RESPONSE: Defendants dispute this statement because it is not supported by evidence as required under 22 NYCRR § 202.8-g(d). The cited materials do not address the Town

Council's intent to address socioeconomic disparities between Black and Hispanic residents and white residents. *See* NYSCEF 61 (Town Deposition) at 61:6-18. Rather, the cited materials indicate that the Town is not aware of any public or non-privileged information concerning whether the "the town council has goals for the Town of Newburgh." NYSCEF 61 (Town Deposition) at 61:6-18.

104. The Town is aware that there are residents in the Town that do not speak English but has not considered creating materials in languages other than English and has no plans to do so in the future. NYSCEF 61 at 118:21-119:17; Exhibit K (Piaquadio Deposition) at 72:5-12.

RESPONSE: Defendants dispute this statement because it is not supported by evidence as required under 22 NYCRR § 202.8-g(d). The cited materials indicate that the Town is not aware of any public or non-privileged information concerning whether the Town has considered creating materials in languages other than English, and does not speak at all to whether the Town has plans to create materials in languages other than English in the future. *See* NYSCEF 61 (Town Deposition) at 118:21-119:17; Greenwood Aff., Exhibit K (Piaquadio Deposition) at 72:5-12. However, it is undisputed that the Town is aware that there are residents in the Town that do not speak English. NYSCEF 61 (Town Deposition) at 118:21-24.

105. Town residents whose primary language is Spanish struggle to access services at Town Hall. Exhibit E (Perez Deposition) at 52:12-55:7.

RESPONSE: Defendants dispute this statement because it is not supported by evidence as required under 22 NYCRR § 202.8-g(d). *See* Greenwood Aff., Exhibit E (Perez Deposition) at 52:12-55:24 (describing instances where Plaintiff Perez assisted Town residents with translation services to successful outcomes, and noting that Plaintiff Perez does not "know of

anybody” who has “raised th[e] issue” of “the Town’s purported failure to employ enough Spanish speaking employees with members of the Town Board”).

106. The Town of Newburgh does not acknowledge or celebrate holidays honoring Hispanic or Black heritage. Exhibit C (Reed Written Deposition Responses) at 4.

RESPONSE: Defendants dispute this statement because it is not material and not supported by evidence as required under 22 NYCRR § 202.8-g(d). The cited materials state that, to Plaintiff Romance Reed’s knowledge, “the Town government does not appear to recognize or promote events of importance to the Black and Hispanic communities” and does not “formally recognize Juneteenth, a significant day for the Black community.” Greenwood Aff., Exhibit C (Reed Written Deposition Responses) at 4; *see* NYSCEF 60 (Critchlow Report) at 24–25 (noting the “attention paid to Black History in the school district,” as well as multiculturalism and inclusion).

107. Town Supervisor Piaquadio supported a proposed expansion of the Danskammer Power Plant in Newburgh. Exhibit K (Piaquadio Deposition) at 59:4-23.

RESPONSE: Defendants dispute this statement because it is not material as required under 22 NYCRR § 202.8-g(d), but do not otherwise dispute this statement.

108. Community members and racial justice groups opposed the proposed expansion on the grounds that it would exacerbate the disproportionate impact of pollution on Black and Hispanic residents in the Town of Newburgh. Exhibit J (Sandoval-Strausz Report) at 37-39; Exhibit F (Tirado Deposition) at 89:11-93:7; Exhibit E (Perez Deposition) at 37:2-15.

RESPONSE: Defendants dispute this statement because it is not material and not supported by evidence as required under 22 NYCRR § 202.8-g(d). *See* NYSCEF 60 (Critchlow Report) at 25–27 (“proponents of the Danskammer project are concerned about affordable energy

costs for low-income households”); Greenwood Aff., Exhibit J (Sandoval-Strausz Report) at 37-39; Greenwood Aff., Exhibit F (Tirado Deposition) at 89:11-93:7; Greenwood Aff., Exhibit E (Perez Deposition) at 37:2-15; NYSCEF 60 (Critchlow Report) at 5 (“It is far from clear that Blacks and Latinos are against the power plant, as the plant could provide more jobs and New York electrical utility prices are in the top ten highest states in the nation, and that high utility prices especially hurt low-income households.”).

109. The Town did not consider the impact of the proposed expansion on Black and Hispanic communities in Newburgh. NYSCEF 61 (Town Deposition) 104:25-106:2; Exhibit K (Piaquadio Deposition) at 61:2-61:11.

RESPONSE: Defendants dispute this statement because it is not material and not supported by evidence as required under 22 NYCRR § 202.8-g(d). *See* NYSCEF 60 (Critchlow Report) at 25–27. The cited materials indicate that there is no public or non-privileged information concerning whether the Town considered the impact of the proposed expansion on Black and Hispanic communities in Newburgh. NYSCEF 61 (Town Deposition) 104:25-106:2; Greenwood Aff., Exhibit K (Piaquadio Deposition) at 61:2-61:11.

110. The Town did not elicit input from Black or Hispanic residents of Newburgh on the proposed power plant expansion. NYSCEF 61 (Town Deposition) at 105:12-106:2; Exhibit K (Piaquadio Deposition) at 64:2-16.

RESPONSE: Defendants dispute this statement because it is not material and not supported by evidence as required under 22 NYCRR § 202.8-g(d). *See* NYSCEF 60 (Critchlow Report) at 25–27. The cited materials indicate that there is no public or non-privileged information concerning whether the Town elicited input from Black or Hispanic residents of Newburgh on the proposed power plant expansion. NYSCEF 61 (Town Deposition) at 105:12-106:2; Greenwood

Aff., Exhibit K (Piaquadio Deposition) at 64:2-16; *see* NYSCEF 60 (Critchlow Report) at 5 (“It is far from clear that Blacks and Latinos are against the power plant, as the plant could provide more jobs and New York electrical utility prices are in the top ten highest states in the nation, and that high utility prices especially hurt low-income households.”).

IX. Racial appeals in Town politics

111. On May 9, 2023, the Town issued a press release – signed by Town Supervisor Piaquadio – which stated that “that the borders [of the United States] are not adequately managed as they had been with many of our ancestors.” Exhibit X (Press Release – Asylum Seekers).

RESPONSE: Defendants dispute this statement because it is not material as required under 22 NYCRR § 202.8-g(d), but do not otherwise dispute that the quoted language appears in a May 9, 2023 press release signed by Town Supervisor Piaquadio; the Town respectfully refers the Court to the entire press release for the full text, terms, and effect thereof. *See* Greenwood Aff., Exhibit X (Press Release – Asylum Seekers).

112. Two days later, New York City bussed 60 asylum seekers to the Town of Newburgh. Exhibit Y (Crossroads Hotel Litigation - Piaquadio Affidavit) at 4.

RESPONSE: Defendants dispute this statement because it is not material as required under 22 NYCRR § 202.8-g(d). Defendants respectfully refer the Court to the cited material for the full text, terms, and effect thereof. Greenwood Aff., Exhibit Y (Crossroads Hotel Litigation - Piaquadio Affidavit) at 2–4.

113. On May 12, 2023, the New York Post published a story alleging that homeless veterans had been displaced from the Crossroads Hotel in the Town of Newburgh by the migrants. Exhibit J (Sandoval-Strausz Report) at 40-42.

RESPONSE: Defendants dispute this statement because it is not material and not supported by evidence as required under 22 NYCRR § 202.8-g(d). The cited material indicates

that, on May 12, 2023, the New York Post published an article that later turned out to be false reporting that homeless veterans had been displaced from the Crossroads Hotel in the Town of Newburgh by the asylum seekers, based on a woman named Sharon Toney-Finch's scam to raise funds for a fraudulent foundation. Greenwood Aff., Exhibit J (Sandoval-Strausz Report) at 40–42; NYSCEF 60 (Critchlow Report) at 31–32; Moskowitz Aff., Exhibit K (Sandoval-Strausz Deposition) at 137:6–19.

114. On the same day as the New York Post article, the Town sued the Crossroads Hotel for alleged zoning violations in connection with hosting the asylum seekers. Exhibit J (Sandoval-Strausz Report) at 42; Exhibit Z (Press Release - Legal Action Against Crossroads Hotel).

RESPONSE: Defendants dispute this statement because it is not material and not supported by evidence as required under 22 NYCRR § 202.8-g(d). Defendants further dispute this statement as one subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d). Additionally, this statement includes legal conclusions that are not facts as required by 22 NYCRR § 202.8-g(d). Defendants respectfully refer the Court to the Town's complaint for the full text, terms, and effect thereof. *See* Greenwood Aff., Exhibit AA (Crossroads Hotel Litigation – Complaint); *see* NYSCEF 60 (Critchlow Report) at 31–35.

115. The Town did not elicit any input from residents prior to initiating the lawsuit against the Crossroads Hotel. Exhibit K (Piaquadio Deposition) at 54:14-55:3.

RESPONSE: Defendants dispute this statement because it is not material and not supported by evidence as required under 22 NYCRR § 202.8-g(d). The cited materials indicate that there is no public or non-privileged information concerning whether the Town elicited input from residents prior to initiating the lawsuit against the Crossroads Hotel. Greenwood Aff., Exhibit K (Piaquadio Deposition) at 54:14-55:3; *see* NYSCEF 60 (Critchlow Report) at 31–35.

116. In the lawsuit – which alleged that the Crossroads Hotel had violated Town zoning rules – the Town emphasized that housing “single male asylum seekers from the City of New York will result in potential disaster.” Exhibit AA (Crossroads Hotel Litigation - Complaint).

RESPONSE: Defendants dispute this statement because it is not material as required under 22 NYCRR § 202.8-g(d). Defendants respectfully refer the Court to the entire cited complaint for the full text, terms, and effect thereof. Greenwood Aff., Exhibit AA (Crossroads Hotel Litigation – Complaint); *see* NYSCEF 60 (Critchlow Report) at 31–35.

117. The allegation that asylum seekers had displaced homeless veterans at the Crossroads Hotel attracted national attention, in part because local politicians amplified the story. Exhibit J (Sandoval-Strausz Report) at 40-45.

RESPONSE: Defendants dispute this statement because it is not material and not supported by evidence as required under 22 NYCRR § 202.8-g(d). Defendants further dispute this statement as one subject to characterization, and so not a fact as required by 22 NYCRR § 202.8-g(d). *See* NYSCEF 60 (Critchlow Report) at 31–35.

118. The allegation that asylum seekers had displaced homeless veterans at the Crossroads Hotel was a complete fabrication, as the hotel manager quickly confirmed. Exhibit J (Sandoval-Strausz Report) at 44.

RESPONSE: Defendants dispute this statement because it is not material and not supported by evidence as required under 22 NYCRR § 202.8-g(d). While Defendants dispute that this proposed fact is material to the substantive issues in this case, it is undisputed that the allegation that asylum seekers had displaced homeless veterans at the Crossroads Hotel was fabricated; however, the Town disputes that the hotel manager quickly confirmed this. NYSCEF 60 (Critchlow Report) at 31–32.

Dated: New York, New York
October 17, 2024

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