

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

MARK HASSAN,

Plaintiff,

-against-

Civ. Action No. 11-CV-6535

CITY OF ITHACA, NEW YORK, *et al.*,

Defendants.

DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

PLAINTIFF AND DEFENDANTS

1. Plaintiff, Mark Hassan, was born in California and has lived in the United States all his life. His parents were also born in the United States. His family came to the United States in 1903. Hassan Dep. at 20-21.
2. Defendant Brian Wilbur was hired by the Ithaca Fire Department in 1987, and was Chief of the IFD from 1993 until he retired on August 29, 2009. Wilbur Dep. at 7, 27.
3. Defendant Tom Dorman worked at the IFD for 22 years as Deputy Chief, becoming Acting Chief for a period of time after the retirement of Brian Wilbur in August 2009. Dorman Dep. at 7, 9.
4. Defendant Mike Schnurle has been with the IFD for 35 years as a firefighter and then a Lieutenant before being promoted to Assistant Chief in 2002. Schnurle Dep. at 5. There are four Assistant Chiefs (AC) with different spheres of operations. *Id.* at 6-7. Schnurle is a shift commander, supervising an operational shift of about 14. If an incident occurs, the Assistant Chief is the incident commander and coordinates emergency operations. *Id.* at 8-9.
5. Defendant Rob Covert was a student bunker in 1987, became a volunteer in 1989, and joined the IFD as a career firefighter in November 1992. He was promoted from firefighter to Lieutenant from in 2004. He was promoted to Assistant Chief in March 2015. Covert Dep. at 6.
6. Defendant Roy Trask was employed by the IFD for 24 $\frac{3}{4}$ years, retiring Dec. 18, 2014. Trask Dep. at 7. He was a firefighter for the first seventeen years and was promoted to Lieutenant in October of 2007. *Id.* at 10.

7. The Ithaca Professional Firefighters Association (“the Union”) represents all of the IFD firefighters, including lieutenants, and by a separate agreement, Assistant Chiefs. Schnurle Dep. at 40-41. Thus, the only IFD personnel who are not represented by the Union are the Chief and the Deputy Chief.

PLAINTIFF’S HISTORY IN THE ITHACA FIRE DEPARTMENT

8. After spending some time as a volunteer “bunker” for the Ithaca Fire Department, Plaintiff Mark Hassan began work as a career firefighter for IFD on February 19, 1996. Document Bates # H384 (hereinafter “H__”). When he was interviewing for the job, he suggested to Chief Wilbur and Deputy Chief Dorman that he could be considered a “minority hire” due to his participation in VESID (Vocational and Educational Services for Individuals with Disabilities). It wasn’t necessary to use that preference to reach him on the Civil Service list, however. Dorman Dep. at 13, 122-123; Wilbur Dep. at 11-12. Plaintiff did not raise the issue of his ethnicity. *Id.*
9. On March 19, 1997, Chief Wilbur sent Plaintiff a letter acknowledging his successful completion of his probationary period. “At this point in time, whether or not your career is rewarding, and whether or not your expectations are fulfilled, depends almost completely on the attitude and initiative that you bring to the job. I’m confident that you will have a very rewarding career and will contribute significantly to the profession.” H372.
10. On July 25, 1999, Plaintiff began working at the Fire Prevention Bureau, a specialized unit within the IFD that had technically existed but was not populated before Plaintiff, Patrick Sullivan and Bill Baker, under the direction of Assistant Chief Ray Wheaton,

began to operate the unit in July 1999. Wilbur Dep. at 51-52, 60, 63-64; Hassan Dep. at 239.

11. A pattern that recurred throughout Plaintiff's employment with IFD began while he was working at the FPB, to wit, AC Wheaton reported to Chief Wilbur that there were problems with Plaintiff's conduct. Wilbur Dep. at 41-44; Hassan Dep. at 208. He often shouted and ranted at AC Wheaton, calling him names and using foul language, and Wheaton overheard him berating Wheaton to the other firefighters in the office. Plaintiff was also disrespectful of others, including two civilian women who worked on the floor, speaking of them using foul language and sexual innuendo. Wheaton Decl. at ¶¶ 6-9.
12. An April 10, 2000, memorandum from Chief Wilbur to Plaintiff reflects a discussion among Wilbur, Wheaton and the Plaintiff regarding Plaintiff's deteriorating relationship between Plaintiff and the other code inspectors in the City, and included an admonishment that Plaintiff "would work hard to be very circumspect in your dealings with the aforementioned inspectors, and that you would deal with the facts of a situation only, leaving the emotional response out of it." H419. Plaintiff admits that this memorandum did not stem from ethnicity discrimination. Hassan Dep. at 205.
13. In September of 2000, Plaintiff requested to transfer out of the FPB. "If I were to summarize in one word the reason for my choice to return to the shift arena, the word would be 'stress'." H421.
14. Changes in assignments are normally made in October effective the first of the following year, and so shift transfers during the course of a year are not common occurrences. Wilbur Dep. at 55-56, 122-123; Covert Dep. at 19; Trask Dep. at 66.

15. On November 3, 2000, Chief Wilbur denied Plaintiff's request to transfer, citing the value that Chief Wilbur believed Plaintiff brought to the table: "I don't see the extreme circumstances in your situation that were envisioned when we wrote the item dealing with an appeal for transfer. In fact, I believe your continued presence will help insure that we do identify and address the various problems that exist which seem to be at the root of your request for transfer. As the 'Fire Prevention Bureau with staff' is still a fledgling operation, it will take continued effort to get it where we all agree that it should be. Your insight and passion for the work will be extremely valuable to us in that regard." H423. Plaintiff admits that the refusal to transfer him out of the FPB did not stem from ethnicity discrimination. Hassan Dep. at 217.
16. On December 12, 2001, Chief Wilbur issued a disciplinary charge against Plaintiff for failing to report to work and leaving the Fire Prevention Bureau short-staffed for two hours, while overtime was used to bring in an employee to cover the rest of the Plaintiff's shift. H348-349. As was his right, Plaintiff was represented by the Union on this matter, and based on a meeting among Chief Wilbur, Deputy Chief Dorman, and Union representatives Baker and Weinstein, the charge of misconduct was dismissed, and Plaintiff's "actions to make right the situation on 12 DEC 01 are acknowledged." H355.
17. Plaintiff was ultimately transferred out of the Fire Prevention Bureau effective December 31, 2001. H346.
18. Plaintiff was injured on the job on three occasions between January 1, 2002, and October 23, 2004. In the first incident in May of 2003, he apparently suffered injuries when he picked up one end of a burning log, which unexpectedly broke while he was exerting effort to lift it. H431-437. In June of 2004, debris reportedly flew into his eye when he

rolled down his window while riding in the fire engine. H445-446. On or about October 23, 2004, Plaintiff injured his back during a rescue training exercise. H449-450.

19. Following the injury to his back, Plaintiff did not obey his doctor's instructions, but returned to work while he was still experiencing pain from exertion. When he was in pain, he was not able to "hump the EMS bag." Hassan Dep. at 48-49. Plaintiff's doctor prescribed a pain relief drug that Plaintiff claimed disagreed with his stomach, and instead he started obtaining Oxycontin illegally. He kept it with him when he worked and took it when the job required physical exertion. *Id.* at 38-42. He did not tell the Lieutenant he was working with, Mahlon Irish, that he was taking Oxycontin, which he did secretly. *Id.* at 49-52.

20. Although Defendant Trask did not supervise the Plaintiff until 2009, he saw many instances of Plaintiff's ranting and yelling and engaging in loud, disruptive behavior. In one particular incident at the Central Fire Station in approximately 2005, he told Plaintiff he was sick of these kinds of loud and obnoxious rants and that he didn't want to hear it anymore and he asked Hassan to shut his mouth. Trask Dep. at 19-20, 22-23. He and Plaintiff later had a discussion and were okay with each other thereafter. Hassan Dep. at 93, 290. Brian Wilbur also personally observed Plaintiff sometimes behaving in irrational, loud, gesturing, seemingly out of control kind of behavior, though he could not recall the time frame of the incidents. Wilbur Dep. at 80-81.

21. On September 1, 2005, AC Guy Van Benschoten, the supervisor of the shift Plaintiff was working on, sent Plaintiff a memo documenting five points he discussed with Plaintiff with respect to his workplace behavior, including "yelling when there is no emergency reason to do so," and referencing "bullying behavior." H451.

22. Shortly thereafter, Plaintiff requested to return to the Fire Prevention Bureau to fill the unexpired term of another firefighter. Chief Wilbur denied his request in order to honor the same request made by another firefighter, though he did not discourage Plaintiff from applying for a similar position in the future. H452.
23. By November of 2005, it became apparent that the relationship between Plaintiff and AC Van Benschoten had deteriorated to the point that some action would have to be taken. Chief Wilbur met with Plaintiff, Union representatives Weinstein and Baker, and DC Dorman on November 9, 2005, to discuss the situation. Plaintiff stated that he was under “stress” from working with Van Benschoten, as he had been when working with AC Wheaton in the Fire Prevention Bureau. He also stated, “When the darkness comes, I just need to go home.” H457-458; Wilbur Dep. at 110-119.
24. On December 20, 2005, Chief Wilbur met with Van Benschoten, Union representatives Weinstein and Baker, and DC Dorman. At that meeting, Van Benschoten cited various examples of Plaintiff’s uncooperative behavior, expressed concern about the “hostile environment” that was being created, and agreed that a shift transfer would be best. H459-460; Wilbur Dep. at 119-125.
25. On December 21, 2005, Union representative Weinstein sent an email to Chief Wilbur stating that Van Benschoten did not want to work with Plaintiff anymore “as he fears for his personal mental health and physical well-being. Guy was fairly emotional when he explained this to me, and I do believe that he is, indeed, concerned. ... The above being said, you now have two people who say they cannot work with each other, both of whom have indicated a willingness to leave the shift if necessary.” H461.

26. On December 29, 2005, Chief Wilbur and DC Dorman met with the Plaintiff to discuss his request for a transfer. During that meeting, they discussed the conflict between Plaintiff and AC Van Benschoten and reviewed the City's Vision, Mission, and Values Statement, the City's Diversity Statement, and the City's Human Resource Manual section on Threats and Violence in the Workplace. H497-500. The Plaintiff did not assert in this meeting or at any other time before his April 2010 suspension and ultimate termination that he had ever been subjected to ethnic or racial epithets or harassment. Hassan Dep. at 95-98; Trask Dep. at 101; Dorman Dep. at 20-21, 89; Wilbur Dep. at 174-175.
27. Pursuant to that meeting, Plaintiff officially requested a voluntary transfer from the B Shift, "as we have discussed." H473. On January 4, 2006, Chief Wilbur approved the request and informed him that he would be moved to the C Shift. Chief Wilbur went on to say, "This voluntary transfer is a temporary solution to an apparent acute problem on the B Shift. It is not a long term solution to the root causes of the immediate situation." He also noted that the transfer was "non-precedent setting, specific to this situation only." H477. Plaintiff was transferred effective January 16, 2006, to the C Shift, under Assistant Chief Lee LaBuff. H475-476.
28. On February 10, 2006, Chief Wilbur followed up with another memo to the Plaintiff in which he discussed the December 29, 2005, meeting in more detail, and added, "Last, but not least, we talked about my expectations for professional conduct at all times, including mutually respectful behavior, with no hostile behaviors such as unreasonable teasing or offhand comments that are offensive or disrespectful." H497-500. Plaintiff does not

believe the issuance of this memorandum stemmed from ethnic discrimination. Hassan Dep. at 230.

29. Rob Covert was a Lieutenant working as Plaintiff's supervisor on the C shift in 2006 after Plaintiff transferred in. Covert Dep. at 18. Soon after he transferred, there was an incident in which a rope system was needed for a gorge rescue. Covert asked Plaintiff to put together the rope system. Plaintiff deliberately refused to do the job efficiently, coming to Covert after each step and asking what to do next, when Covert knew that he knew what to do, because putting together a rope system is something firefighters need to learn to graduate from the fire academy. *Id.* at 24-25. Covert finally told him to "quit screwing around and get it done," and Plaintiff did so. *Id.* at 20-21.
30. On another occasion in 2006, a conversation was taking place in the ready room regarding department policies. Plaintiff was sitting in the back and was not engaged in the conversation, but suddenly became very agitated and began yelling very loudly his opinion and left the room. Covert waited a few minutes and went to find him and ask if he was okay, and then advised him to try to communicate differently, because he was very belligerent in the way he expressed his opinion. Covert Dep. at 28-31, 36. Plaintiff told Covert he was frustrated over moving to this shift and felt he was being treated unfairly. Covert sympathized and offered a fresh start on the new shift, and also mentioned the Employee Assistance Program (EAP) as an option to him to help control his feelings or be able to express them better. Plaintiff said he was aware of the EAP program. *Id.* at 37-39. After Jan. 1, 2007, the two no longer worked the same shift when Plaintiff was transferred to the A shift. *Id.* at 39. Plaintiff "had no problem" with Covert. Hassan Dep. at 189.

31. When Plaintiff first transferred to the A shift, the Assistant Chief in charge of the shift was Dan Tier. It was announced in October 2007 that Lee LaBuff would be the new AC on the shift beginning January 1, 2008 as a result of the annual reallocation of assignments. Plaintiff stated to Snell that there was a rumor going around Trumansburg that LaBuff beats his wife. Snell told him he had been friends with LaBuff for many years and had never seen evidence of that. Plaintiff appeared to react negatively to Snell's disputing what Plaintiff had said. Snell Decl. at ¶ 3.
32. Sometime in February of 2008, a fire alarm went off at 109 Dryden Road. Plaintiff drove the truck over to the alarm, but then stated that he did not want to get out of the truck to investigate the cause of the alarm. He told Snell that Lt. Irish and he had an agreement that Plaintiff would stay in the truck and Irish would go investigate. Snell went in first to try to determine the cause of the alarm, and was unable to do so. When AC LaBuff and Scott Eaton radioed to ask what he had found, he told them the status and they came in to assist him. They reset the system and afterwards, AC LaBuff asked Snell why Plaintiff stayed in the truck. Snell explained that he seemed to have an arrangement with Lt. Irish to that effect. Thereafter, AC LaBuff said he generally liked the way the shift was operating, but that he wanted there to be at least two firefighters investigating fire alarms, to which Eaton and Snell agreed. Thereafter, LaBuff said he was going to call a shift meeting to discuss what his expectations were for the shift. Snell Decl. at ¶ 4.
33. When Snell got back in the truck, Plaintiff asked him what LaBuff had been saying, and Snell told him. Plaintiff began screaming at Snell, complaining about the notion of a shift meeting and the prospect that he was going to be forced to get out of the truck to help investigate fire alarms. Snell Decl. at ¶ 5.

34. On February 12, 2008, Snell and Hassan received an EMS call for 210 Fall Creek Drive.

It took almost three minutes for Plaintiff even to get into the truck, prompting Snell to get out of the truck and start to look for him. Plaintiff finally got in the truck very slowly and then he drove extremely slowly all the way to the site of the call, so that it took a full eight minutes from the time of the call to their arrival at the scene. Both the Bangs Ambulance “fly car” and the ambulance itself beat IFD to the scene. Snell later compared notes with Scott Eaton, who acknowledged that Plaintiff did the same thing when Eaton was working with him. Snell Decl. at ¶ 6.

35. Snell asked Plaintiff to bring the gear in to the scene, which he did not do. Snell was forced to radio to him twice to let Plaintiff know he needed EMS gear and a stair chair, and finally had to yell down the stairs for him to come in. When Plaintiff finally came up to the scene, he came in empty-handed. He started looking through the paramedics’ equipment bags for oxygen because he had not brought any in. He then had an angry meltdown when he had difficulty getting the stair chair to operate. Snell found Plaintiff’s conduct throughout this incident to be unprofessional and embarrassing for the Department. Snell Decl. at ¶ 7.

36. In April 2008, the IFD received reports of a fire alarm at Sage Hall on the Cornell campus. Cornell’s first responders were already on site, and reported that there was no emergency, they were simply looking for an activated device. For no legitimate reason, Plaintiff was driving very aggressively and laying on the air horn. He nosed right up to a motorist who was trying to exit onto another street, laid on the air horn for five seconds and screamed at her to get out of his way. There were a number of pedestrians in the

area, and Snell believes Plaintiff's behavior potentially created a dangerous situation. Snell Decl. at ¶ 9.

37. After attending a hockey game in Binghamton with Lt. Irish, Snell spoke with him about Plaintiff's conduct and his concerns about Plaintiff's slow responses and overuse of the horn. Thereafter, Plaintiff went out of his way, in Snell's opinion, to drive dangerously fast through heavily populated areas of the city and avoid using the siren even when it was called for. Snell was concerned in a number of cases that Plaintiff would be unable to react in time to avoid hitting a pedestrian. Snell Decl. at ¶ 10.

38. On April 7, 2008, the shift went to an alarm at 140 Thurston Avenue. AC LaBuff had told everyone months prior at a shift meeting that firefighters responding to a call from the station (as opposed to already on the road) were to be fully dressed in their gear before responding to a call, per department policy. Contrary to instructions, Plaintiff did not put on his gear before getting into the truck. Snell investigated the source of the alarm while Plaintiff put on his gear in the street. Snell found the source of the alarm, reset it, and was told by the occupants that there were new keys to put in the "Knox box", a box in which IFD keeps keys to the buildings. So Snell waited for the keys. Snell Decl. at ¶ 11.

39. Meanwhile, Plaintiff tried to turn the vehicle around by himself, against department policy. When a driver tried to go around him, he laid on the horn again. AC LaBuff called over the radio asking whether Plaintiff and Snell had been in the station or on the road when the call came in, and Snell told him that they had been in the station. Plaintiff reacted very violently to this, presumably because he had been caught out not putting on his gear prior to getting in the truck to respond to the call, and shouted at Snell, "Fuck

you, fuck Lee, fuck Rich, fuck Carl, fuck you, fuck all those guys downtown, Mahlon and I have our own thing going up here.” Snell Decl. at ¶ 12.

40. Sometime in 2008, a defensive driver training class was offered to the shift that was also open to other City employees. Three African-Americans attended the training class, and sat in front of the Plaintiff, who turned around and said, “not one, not two, but three of them, and they’re right in front of me.” After the session was over, he went over to Snell and said, “I ain’t eatin’ with those niggers.” Snell asked AC LaBuff if Plaintiff could be allowed to leave for lunch, but LaBuff said he wanted to keep the squad together and everyone ended up eating at the station. Snell did not tell AC LaBuff what Plaintiff had said. Snell Decl. ¶ 14.

41. Snell came in on a day off for an emergency call in May 2008, and was assigned to Engine 909. When Plaintiff learned that Snell would be assigned to the same apparatus as he, he told the acting Lieutenant he was going home sick. On the way to the East Hill station, the truck was called to respond to another call, and Plaintiff got out of the truck on the way rather than ride to the call. Snell regarded it as highly unprofessional for a firefighter to be dropped off on the sidewalk when the engine has its lights flashing on the way to a potential emergency. Snell Decl. at ¶ 15.

42. In June, Snell was partnered on Engine 906 with another firefighter at the training center for some “master stream” training. Lt. Irish was running the training, and the participants were using the equipment from Engine 909. After the training was over, the participants picked up all the equipment, and Snell was getting ready to get back into Engine 906 to depart while Lt. Irish walked ahead to the gate so that he could close it and secure it once both engines had left. Plaintiff drove Engine 909 dangerously close to Snell as he was

standing next to Engine 906. When he saw Engine 909 approaching, Snell opened the door of Engine 906 and stood behind the open door. Plaintiff missed the door by inches and then stopped the truck. Snell perceived Plaintiff sitting in the truck and smiling in the side-view mirror. There was no operational reason for Plaintiff to move Engine 909 ahead of Engine 906, since Lt. Irish was his partner and Lt. Irish was waiting at the gate to close it after both engines had left. Snell Decl. at ¶ 16.

43. Plaintiff engaged in various other threatening behaviors against Snell. Once when Snell was present in the ready room, Plaintiff loudly asked another firefighter in the ready room where to buy an AR-15, and when he was asked why, he said “For when the revolution comes.” Sometime around this time, former firefighter Dave Reynolds went out of his way to tell Snell that Plaintiff had done this on another occasion and specifically talked about Snell thereafter. Reynolds told Snell to “watch his back” around Plaintiff. Snell Decl. at ¶ 8.

44. On April 13, 2008, at the scene of a fire alarm activation at 428 N. Aurora Street, Plaintiff made a shooting motion at Snell with an imaginary rifle while he sat in the truck and Snell walked in front of it. Snell Decl. at ¶ 13.

45. Early in August 2008, Plaintiff told Bill Baker, VP of the Union, in Snell’s presence that he had an old coin-operated soda machine that he was going to “bury that guy that got this whole things started in”, referring to Snell, then made noises like a shotgun racking and said, “that’s the noise it makes.” Snell got up and walked away. Snell Decl. at ¶ 17.

46. On August 13, 2008, Snell had a conversation with AC LaBuff about his desire to transfer to another shift, describing Plaintiff’s behavior towards him, and also telling LaBuff for the first time about Plaintiff’s assertion of the rumor that LaBuff beats his

wife. LaBuff was shocked and upset that Mark would spread such a false rumor. Shortly thereafter, Snell told LaBuff that he would be asking to be transferred to a different shift, and LaBuff recommended that he speak with Chief Wilbur. Snell Decl. ¶¶ 18-19. On or about October 7, 2008, Snell did meet with Chief Wilbur to request a transfer due to harassment and intimidation by Hassan. Snell Decl. at ¶ 20. Chief Wilbur told him he would investigate the matter, but did not ultimately transfer him, and did not believe that Snell had requested any other action. Wilbur Dep. at 74-75.

47. During a hazardous materials training and shift briefing on March 7, 2009, Plaintiff engaged in yelling and disrupting and threatening behavior. On March 8, AC LaBuff sent an email to Chief Wilbur asking for Plaintiff's immediate removal from the A shift as a result of his behavior at the March 7 meeting. "I hope you know I have worked very hard to meet Mark halfway, he offers no flexibility, ... he works very hard to undermine me as well as many other officers. I am concerned for my safety, and I am worried that I will be apprehensive in decision making as I operate during emergency incidents with him under my command. ... Therefore, I am requesting immediate removal of FF Hassan from the A shift." H640.

48. On March 9, 2009, Chief Wilbur sent Plaintiff a letter referencing the March 7 incident, invoking Article 72 of the New York State Civil Service Law and placing Plaintiff on involuntary leave pending a medical examination under NYSCSL 72.1 to determine whether he was fit for duty. H83-84.

49. Chief Wilbur met with the Union to discuss the Plaintiff's situation, and the Union grieved Chief Wilbur's use of the Article 72 provisions, but he retained the belief that it was necessary to go forward with the Article 72 examination. "My continued research

into the overall situation that gave rise to the grievance indicates to me the original course of action remains the most appropriate in this case. As I gather information about all of this, the need to confirm or deny a medical basis for the behavior is critical. ... The relatively new NYS Labor Department Workplace violence regulation and City of Ithaca Workplace Violence Policy makes it incumbent on me to conduct a thorough investigation and act affirmatively where indicated. As we have discussed, should a determination be made there is no medical basis for the behavior, then back pay and leave time will be restored and I will pursue it as a disciplinary matter, according to the provisions in the collective bargaining agreement.” H119-120.

50. For the same reason, he denied the Union’s request to allow Plaintiff to attend an upcoming Union meeting. “As some of the people that FF Hassan’s behaviors have been aimed at may also be in attendance at this meeting, I cannot allow the potential for another situation to occur which may put someone at risk for some level of workplace violence. This would make the current problem worse.” H123.

51. On April 16, 2009, Chief Wilbur sent a letter to the Plaintiff explaining his basis for requiring an Article 72 examination, including “conflicts that could not be resolved between you and the shift commander, or others on the shift. Significant components of this situation are allegations of harassment or intimidation of other fire fighters. As compared with your peers, this behavior is unusual in our environment.” Chief Wilbur went on in five single-spaced pages to list numerous actions and statements by the Plaintiff that gave rise to Chief Wilbur’s concerns, including Plaintiff’s references to being “off his medications,” his repeatedly taking sick time when his favored lieutenant

was not working, his slow responses to EMS calls, his lack of cooperation with others, etc. H130-136.

52. The Union grieved Chief Wilbur's invocation of Article 72, and after the grievance was denied by the Mayor, demanded arbitration on the matter on April 28, 2009. H186.

53. Meanwhile, the Plaintiff underwent an Independent Medical Examination by Dr. John Bezirgianian, M.D. According to the report, H210-214, Plaintiff admitted having "issues" with the code enforcement supervisor (AC Wheaton), attributing this to "the supervisor being old-fashioned and to Mr. Hassan being passionate about doing a good job." The report also reflects that Plaintiff said he uses Vicodin prescribed by his doctor "very rarely" when he had severe shoulder or back pain and that he "denied a history of substance misuse," though Plaintiff admitted at his deposition both that he and his first wife abused alcohol, cocaine and marijuana in the 1980s and that he did not use the drug that his doctor prescribed after his work injury, but instead obtained Oxycontin illegally. Hassan Dep. at 35-36, 38-42.

54. The report also reflects that he said, "in his house growing up people would habitually speak louder to be heard," but contains no indication that Plaintiff attributed this trait to his ethnicity. Plaintiff recited incidents to Dr. Bezirgianian in which he was "quite opinionated" and "would even speak quite loudly", but again the report reflects no reference to Plaintiff's ethnicity, but only to Plaintiff "wanting to [] get his point across." Dr. Bezirgianian's report reflects no complaint by Plaintiff regarding any racial or ethnic harassment within the IFD. H210-214.

55. Dr. Bezirgianian concluded that Plaintiff was "psychiatrically able to perform his duties as a firefighter. Mr. Hassan does not pose a risk to the safety of others due to a psychiatric

condition; he may choose to bully others as a personal choice, but he is capable of controlling such actions if he wishes. No accommodations are required to enable Mr. Hassan to perform his work from a psychiatric standpoint. Mr. Hassan has a low tolerance for weakness, inconsistency, or incompetence. Unnecessary accommodations would worsen the work situation; he would be best served by treating him as he is (i.e., someone who is capable of controlling his actions) and applying the same job or legal sanctions to him as one would to any worker who is perceived as violating work or legal rules.” H210-214 at 214.

56. Pursuant to the report from Dr. Bezirgianian, Deputy Chief Tom Parsons sent Plaintiff a letter indicating that Plaintiff’s medical leave was being terminated and ordering him to return to duty on June 22, though he was to be ineligible for special duty assignments and overtime assignments on the A shift, “while you are being re-acclimated to the work environment.” H220. On June 23, Chief Wilbur sent Plaintiff a letter setting forth his expectations for Plaintiff’s work behavior and performance, referencing his letter of February 10, 2006 (H497-500), and enclosing a copy of the City’s Workplace Violence Prevention Policy. H222-223.

57. Chief Wilbur then issued a Notice of Discipline to the Plaintiff on June 24, citing many of the same incidents that he cited in ordering the Article 72 examination. The penalties sought were a two-month suspension, denial of the right to handle special duty or act as Acting Lieutenant, and the reservation to Chief Wilbur the right to assign Hassan to shifts, stations, and overtime as he saw fit. H240-243.

58. The Union grieved both the restrictions placed on Plaintiff’s ability to work overtime and his preclusion from special duty assignments, and demanded arbitration with respect to

the June 24 Notice of Discipline. H256-257. Chief Wilbur denied the grievance and defended his actions. H265-266.

59. On or about July 20, 2009, Plaintiff was transferred to the B shift supervised by AC Schnurle in the central fire house. Plaintiff was assigned to Engine 901, under the direct supervision of Lieutenant Trask. Schnurle Dep. at 17-18; Trask Dep. at 18. They sat Plaintiff down and discussed with him the situation, indicating that he was starting with a clean slate as far as they were concerned and encouraging him to just get on with his job and make the best of the situation. Schnurle Dep. 19-20, Trask Dep. 142-143.
60. Chief Wilbur retired on August 29, 2009, and Deputy Chief Tom Dorman became Acting Chief. Wilbur Dep. at 7; Dorman Dep. at 9.
61. On at least one occasion during this period, Trask had a conversation with Hassan in which he was upset and wanting to go home for the day, and he was being very loud, indicated he was being backed into a corner and was going to “come out swinging.” Trask tried to calm him down. Trask Dep. at 64-65. Plaintiff did not say he was going to go to HR, nor did he indicate that he was being subjected to harassment or that any particular individual was treating him badly or unfairly. *Id.* at 81.
62. Others on the shift, including firefighters Stilwell, Hathaway, Flynn and Smith, expressed concern about both Plaintiff’s wellbeing and the health and safety of the people who worked with Plaintiff. Trask Dep. at 180-181. Trask and Schnurle talked to Plaintiff about trying to help him through whatever problems he was having, and encouraged him to stay at work. *Id.* at 142, 190.
63. At the end of 2009, two senior firefighters on the B shift who were serving on the ladder truck asked to be transferred to outside stations effective 2010, indicating to AC Schnurle

that they wanted to get away from the tension created by Plaintiff being on the shift. Schnurle Dep. at 35; Trask Dep. at 155-156. Since the ladder truck assignment was then available, Schnurle consulted with Plaintiff about whether he might prefer to work on the ladder truck, which is not as busy, and does not respond to EMS calls. When Plaintiff agreed to this, Schnurle lobbied Acting Chief Dorman to relax the restriction on Plaintiff requiring him to serve on Engine 901, supervised directly by Lt. Trask, and would instead allow him to work on the ladder truck. Dorman agreed, and Plaintiff agreed to work on the ladder truck. If he had preferred not to work on the ladder truck, he was not required to do so. Schnurle Dep. at 35-37, 39-40, 145.

64. By February 2, 2010, Schnurle was starting to feel frustrated with the situation involving the Plaintiff, and prepared an email to Acting Chief Dorman. He made references in the email to Plaintiff being under stress, leaving work sick and being agitated. "I question how dependable Mark will be when the chips are down and I question his ability to function and interact with the shift. Mark distances himself from everybody and does not tend to be much of a team player. The shift feels like they have been placed in a bad position and nobody knows quite what to do or how to handle the very uncomfortable situation." H14. Ultimately, Schnurle decided not to send the email on this date, although he did discuss the matter with Dorman. Schnurle Dep. at 22, 86. Dorman asked if he wanted to make the complaint "official" and Schnurle said he did not want to give up on Plaintiff. He understood that if he put a complaint about Plaintiff in writing, further disciplinary action might occur, which is why he did not send the email he had prepared. *Id.* at 22, 26. Dorman did tell Schnurle to let Dorman know if needed to get out from underneath the situation. *Id.* at 52-53.

65. On March 16, 2010, Schnurle prepared another email describing how matters had eroded on the B shift. “The guys assigned to central are now not cooking or eating with each other. I receive second hand complaints from guys that Mark is not interested in participating in anything other than what he is told to do, directly related to performing his job. ... I have concerns about his un-kept [sic] appearance and his facial hair, but hesitate to bring the subject up and have him become upset and agitated or ‘*colorful and animated*’ as he puts it. ... To be frank, this kind of behavior with Mark is and has been common knowledge for a long time, thus the charges that are outstanding. This attitude to me reflects the person who is not dedicated to being a firefighter, but just an employee of the fire department, or just ‘*an average employee*’ as Mark puts it.” H15-16 (emphasis in original). Again, Schnurle elected not to send the email at this time, though he again discussed with Dorman the problems he was having with Plaintiff. Schnurle Dep. at 22, 86.

66. On one occasion, AC Schnurle asked Joe Bargher, Plaintiff’s partner on the ladder truck, how things were going on the ladder truck, and Bargher told him he didn’t feel safe. He recounted an incident in which they were returning from an alarm, and came to red light about 2:00 am. Plaintiff put his head on the steering wheel and appeared to go to sleep; Bargher had to wake him to continue when light turned green. Schnurle Dep. at 51-52.

67. On April 14, 2010, Plaintiff had a confrontation with Schnurle in which he announced that he was going home sick due to “stress” when Pete Snell was Acting Lieutenant on the previous shift and there was a potential for interaction between Plaintiff and Snell. Schnurle asked him if Plaintiff wanted Schnurle to take the matter to the next level, and

Plaintiff said he didn't care, he was going home sick. His conduct toward AC Schnurle was disrespectful, angry and insubordinate. H22-24; Schnurle Dep. at 86-90.

68. After Schnurle informed him of this occurrence and also conveyed to him the February 2 and March 16 emails that he had not previously sent, Acting Chief Dorman placed Plaintiff on 30-day paid investigative suspension while the charges against him were investigated. H17.

69. After Dorman informed Schnurle that Plaintiff was being suspended, Schnurle met with some of his shift members off duty, and they informed him that Plaintiff had made some disturbing remarks in their presence. Firefighter Dean Hathaway reported to Schnurle that Plaintiff had said he had access to a 55-gallon drum, fertilizer and diesel fuel, and he knew how to make a bomb out of those materials. H11-12; Schnurle Dep. at 93-94. Those were the same ingredients used in the bombings of the Oklahoma City federal building and the basement of the World Trade Center. Schnurle Dep. at 94-95. Firefighter Greg Stilwell reported that Plaintiff had said while backing the ladder truck into the Central fire station, seeing that there were other shift members and officers (commonly referred to as "white shirts") standing in the apparatus room, that if he just floored it he could go right through the apparatus room and wipe everyone out. H11-12; Schnurle Dep. at 93. Schnurle immediately reported these remarks to Acting Chief Dorman. H11-12.

70. Notably, both of these firefighters had shown support for the Plaintiff by wearing his badge number on their helmets before he came onto the B shift. Shortly after he came on the shift, however, they took his number off their helmets. Schnurle Dep. at 131-132.

71. When the original 30-day leave expired, Plaintiff was put on indefinite paid administrative leave beginning May 14. H18. Dorman followed the May 14 notice with a Notice of Discipline on May 20 specifying misconduct including the remarks made in the presence of firefighters Hathaway and Stilwell, his behavior towards AC Schnurle on April 14, and his pattern of interpersonal conflicts with other firefighters throughout his career. Based on these facts and circumstances, the Notice of Discipline sought Plaintiff's termination from the IFD. H22-24.
72. On June 1, 2010, the Union demanded arbitration regarding the May 20 Notice of Discipline. H56.
73. On November 29, 2010, Plaintiff filed a charge with the EEOC, alleging for the first time ever that he suffered discrimination as a consequence of his being of Middle Eastern descent. H25-31. The complaint attached to the charge was prepared by his counsel, AJ Bosman. *Id.* He requested and received a notice of right to sue in April of 2011, a copy of which was received by the City on April 12, 2011. H61.
74. During the summer of 2010 and thereafter, the Union failed to take action on selecting an arbitrator and moving forward the arbitration it had demanded. This was apparently due to the Plaintiff's refusal to cooperate with the Union, as evidenced by letters from the Union requesting information from the Plaintiff and indicating that he was failing to respond or cooperate. *See, e.g.*, IPFFA letters 1/20/11 (Union disclosures part 3, HH), March 15, 2011 (Union disclosures part 3, II), undated Memorandum (Union disclosures part 3, LL).
75. On April 5, 2011, then-City Attorney Patricia O'Rourke informed Union counsel Lee Adler that, due to the Union's inability or unwillingness to move forward with the

arbitration, Plaintiff's employment was being officially terminated and he was being removed from the payroll effective immediately. H56. The Union grieved this action. H62-63.

76. In a subsequent meeting with Union personnel in early May, Plaintiff indicated to the Union that he did not have any witnesses to support his position, that he would not attend the arbitration if the Union proceeded with it, and "also left us with the unmistakable impression that if we wished to defend or try and defend you, it would be without your involvement or needed cooperation." 5/12/11 letter (Union disclosures part 3, OO). Plaintiff responded to this letter with an assertion that he did not want the Union to accept the discipline that had been imposed on him, outlining his defense to the specifications against him, but indicating that he "hesitate[s] to participate [in the arbitration proceeding]. This action has taken a significant toll on me both emotionally and physically, consequently I am unable to deal with the situation in a suitable manner." (Union disclosures part 3, QQ). The Union responded with a letter on June 9, indicating that it had interviewed all the witnesses he identified that might testify on his behalf with respect to his two-month suspension from the 2009 Notice of Discipline, and stating, "Our view that this case is 'not winnable' remains our view," but that the Union's Executive Board had not yet decided what position to take on the discharge case. (Union disclosures part 3, TT).

77. Finally, on July 25, 2011, the Union sent the Plaintiff a letter stating as follows: "This is a reminder that your cases commence before Arbitrator LaManna at 10am Tuesday 27 July 2011, 2nd floor City Hall. Although all of your communications have clearly stated that you will not attend, we wanted to advise you again of the date and time of the

hearings. We will do our best to protect your interests while continuing to defend the Union and our Contract. The Article 72 case and 2 Month suspension case – the Union is not contesting. In the discharge case the Union is NOT CONTESTING THE FACTUAL CHARGES BUT CONTESTING THE DISCHARGE ITSELF BY asking for a vocational/psychological evaluation of you. If it is denied, we will still argue against discharge. We will continue to fight the City’s action in taking you off the payroll. Furthermore, if the evaluation is granted and should you not participate the arbitrator can use that against you. The Union Ex. Board believes you need a professional evaluation and medical advice and/or treatment.” (Union disclosures part 3, UU) (emphasis in original).

78. At his deposition, Plaintiff explained his refusal to attend the arbitration by saying, “I wasn’t allowed to be there.” Hassan Dep. at 25. “As I understood, I wasn’t allowed to be on City property.” *Id.* at 25-26. This testimony is obviously contradicted by the Union correspondence.

79. The arbitration of Plaintiff’s 2009 and 2010 Notices of Discipline was finally held and the Arbitrator agreed that Plaintiff should be examined by a psychologist to determine if it would be safe to return Plaintiff to work or whether his return would pose potential danger to others. H267-279.

80. Plaintiff attended an examination by clinical psychologist Gail Oswald on August 5, 2011. Dr. Oswald’s report reflects that Plaintiff reported “ a pattern of altercations with an assistant chief. He says the arguments were loud, that he used profanity, and that he gestures wildly when he is angry, but that he made no threats at anyone directly. He was upset about policies and used profanity in describing what he thought of the policies. He

admitted that his behavior was often intimidating and that he became increasingly confrontational with two firemen in particular because he felt targeted by them because he was not one of a group who routinely hunted and socialized together.” H1-2. Plaintiff also reported that he “drank heavily” until he stopped drinking 16 months previously (which would have been April 2010, when he was suspended for the final time from IFD). H2. He also told Dr. Oswald that he used cocaine on a regular basis¹ and that he had been taking OxyContin without a prescription steadily since 2004 for the pain resulting from his back injuries. “He did not undergo medical detoxification and he said that he endured the withdrawal from alcohol by increasing his use of OxyContin.” He also reported that he “drank heavily during his service years and was ordered to leave the state of Connecticut because of 4 court appearances for driving while intoxicated, but that he was never formally charged.” *Id.* “He admits that he was very stressed during his final years as a fireman. ... He stated that he does not believe that he could return to face the pressure he felt at work.” H3. “He said that up until now, he had responded to the proceedings following his dismissal with indifference and that he had been minimally cooperative with the process.” *Id.*

81. Dr. Oswald concluded that Plaintiff’s description of himself as “volatile, loud, abrasive and demanding” was accurate, and that “his drug use aggravated his already volatile nature and made it impossible for him to cope with job stress. ... It is my opinion that as long as Mr. Hassan continues to abuse drugs, he is psychologically unfit for duties as a firefighter. With abstinence, his ability to modulate his response to work stress could

¹ At his deposition, Plaintiff admitted that he used cocaine while he was employed by IFD, though he claims only when he was off-duty. Hassan Dep. at 109-110, 152.

improve. However, he did not appear motivated to return to work and he is not hopeful that he could handle relationships on the job any differently.” H4.

82. The Arbitrator issued her opinion on September 22, 2011. She found that the N.O.D. of June 2009 was issued for just cause and that the Plaintiff had committed the acts charged (with the exception of specification 8, that Plaintiff “engaged in problematic behavior on multiple occasions”, which she ruled lacked specificity). She also found, “Given the repeated notice to Grievant of [IFD’s] organizational values, the penalty imposed by the City of a ‘paper suspension’ of two months and other limits was not excessive and was warranted.” H276. The Arbitrator also found that Plaintiff had made the threatening statements reported to AC Schnurle in April 2010 (about having a 55 gallon drum, diesel fuel and fertilizer, and that he could drive through the apparatus room and eliminate everyone in it), and that he engaged in a “rant and yell” session with AC Schnurle on April 14 and went home “sick” and that these were acts of disrespect and insubordination. *Id.*

83. The Arbitrator went on, “The City satisfied the just cause standards to terminate Grievant as of this May 20, 2010 NOD. Before taking disciplinary action, it undertook a §72 review to assure he did not have a medical or psychological reason for the behavior. At each juncture the City investigated the Grievant’s circumstances, gave Mr. Hassan direction to correct his behavior, and adjusted his objected-to supervision and assignment. There was no showing that Grievant was treated unequally. With all of this attention toward correction, Grievant’s behavior did not improve.” H277. “Grievant is not entitled to hide behind his repeated self-description that his personality is ‘colorful and animated’. He knew his behavior was received by others as threatening and

intimidating and that it was in direct violation of the [Workplace Violence] and [Standards of Conduct] policies. ... He could have addressed his presently claimed issues long ago but instead he denied any such behavioral causes to the first IME. ... The Union's request for time for Grievant to now attend to such issues on an unpaid suspension but with medical benefits is **denied.**" H278.

84. The Arbitrator summed up her conclusions as follows: "Grievant's behavior since before 2009 – proven to be disrespectful, insolent, indolent, uncooperative, insubordinate and threatening of others – is not to be tolerated in any employment setting, and particularly in light of the many notices and opportunities given to him to address and correct same. Such behavior is excessively out of place in a quasi-military operation such as a Fire Department." H278.

ALLEGED USE OF RACIAL, ETHNIC SLURS

85. Plaintiff never complained to any person in the Fire Department, or to the Union, about anybody making references to his ethnicity or that the use of racial or ethnic slurs in the workplace was bothering him. Hassan Dep. at 84-85, 95-98, 178; Trask Dep. at 101; Dorman Dep. at 20-21, 89; Wilbur Dep. at 174-175.

86. Most of the evidence regarding the use of ethnic slurs at IFD related to a long-deceased Assistant Chief named Ed Sharp, who occasionally called firefighter Tom Deis a "wetback", and "my little camel jockey", and may have used the term "dune coon." Sharp retired from IFD in 1993 and passed away in 2006. Trask Dep. at 46, 58, 193; Schnurle Dep. at 13. Deis occasionally referred to himself as a wetback. Trask Dep. at 194. Trask may have heard the "n-word" used before there were any African-Americans at IFD. Trask heard that firefighter Cook would yell "oven" when Brian Weinstein

walked into a room, and made a joke about Auschwitz on another occasion, but believes that Weinstein was not offended and even made some joke in response. Trask Dep. at 170, 174-176. Weinstein jokingly referred to himself as the “token Jew” and made references to “my people.” Schnurle Dep. at 44-45. Weinstein was also the Union president during this period of time, so he was capable of taking action if he felt that the remarks were inappropriate or offensive. *Id.* Shawn Flynn and others observed this banter, but believed it was not offensive either to Deis or Weinstein, who were well-liked in the IFD. Flynn Decl. at ¶ 5.

87. When he was a student “bunker”, living in the fire station in Collegetown, Rob Covert heard firefighters who were older than he use racial slurs occasionally. These firefighters retired before Covert joined the IFD in 1992. He has not heard racial slurs used in the IFD since that time. Covert Dep. at 17-18.

88. When Plaintiff was asked at his deposition to identify slurs used at the IFD, he said only that he had heard the n-word, and that he heard alleged slurs against Tom Deis. Hassan Dep. at 89-90. He also admitted that he uses ethnic slurs against himself when he gets angry at himself, possibly in the presence of other firefighters. *Id.* at 94-95.

89. More than one firefighter reported to Chief Wilbur that Plaintiff himself had used ethnic slurs against others, particularly Tom Deis. Wilbur Dep. at 145-148.

90. Sometime after the tragic incidents of September 11, 2001, a group of firefighters, including Plaintiff and Defendants Schnurle and Trask, was watching a documentary about troops in Afghanistan. Schnurle was concerned about the welfare of Tom Deis, who was serving in Afghanistan at the time. He directed the term, “towel heads” toward the Taliban, who were being referenced in the documentary. He did not direct the term

toward the Plaintiff, not did Plaintiff ever comment at that time or at any other time on Schnurle's use of the term. Schnurle Dep. at 14-15; Trask Dep. at 49-50, 120-121.

91. Trask never heard Schnurle refer to Plaintiff as a "towel head." Trask Dep. at 51. In fact, he never heard anyone "make reference to Mr. Hassan's ethnicity in any way, shape or form." *Id.* He never heard anyone in the IFD reference another firefighter's ethnicity. *Id.* at 44-45.

92. At his deposition, Plaintiff stated that on the occasion in the ready room on which the documentary was being viewed, Schnurle looked straight at Plaintiff and called him a "fucking sand nigger." Hassan Dep. at 19-20. This testimony contradicts Plaintiff's own Complaints. *See* Complaint ¶ 18; Amended Complaint ¶ 17. Plaintiff also did not identify the term, "sand nigger", in his responses to Interrogatories as derogatory terms of which he was complaining, though he identified both "towel head" and "dune coon". *See* Plaintiff's Response to Interrogatories. Plaintiff's testimony also, as noted above, contradicts the recollections of both Schnurle and Trask. Schnurle Dep. at 14-15; Trask Dep. at 49-50, 120-121.

93. The only time Trask used a term derogatory of Arabs was in response to a question from the Plaintiff, purportedly seeking a name for a vehicle Hassan was building. In response to a question from Plaintiff, Trask said, "What, Mark, dune coon?" Trask Dep. 52-54, 197; Hassan Dep. at 98-99. Far from seeming offended by the comment, Plaintiff appeared to be laughing about it. Trask Dep. at 52-54.

94. Covert used the phrase, "Hassan Chop" growing up, based on a Warner Brothers cartoon in which a character (apparently of Middle Eastern origin) used that phrase. Covert would use the term when cutting something, like a piece of cake and would say aloud,

“Hassan Chop.” The Plaintiff was the first person he ever met who actually had the name Hassan, and he repeated the phrase. He did not intend to give Plaintiff a nickname. Some people at IFD seemed to think Plaintiff’s nickname derived from his riding a motorcycle or working in a body shop, also known as a “chop shop”. Covert didn’t have the image of the actual cartoon character in his head when he used the phrase, “Hassan Chop”. He was simply thinking of the fact that it was a phrase he used growing up. Covert Dep. at 13-14, 16.

95. Many people called Plaintiff “Hassan Chop” or “Choppy”, including many of his friends. Trask Dep. at 114-115, 119; Declaration of James Wheal, ¶ 5; Declaration of Scott Eaton, ¶ 8; Declaration of Pete Snell ¶ 2. One of his helmets bore the legend, “Choppy,” though Plaintiff now claims that it was not he but a friend, George Apgar, who put it there. Trask Dep. at 192; Hassan Dep. at 184-185. Eaton, for one, thought the nickname arose from the fact that Plaintiff rode a motorcycle, also called a “chopper”. Eaton Decl. at ¶ 8. When he first started to work at IFD, Snell heard the nickname used by Plaintiff’s friends, among others, and asked Plaintiff’s permission to use the nickname, which Plaintiff gave. Snell Decl. ¶ 2.

96. Tom Dorman never heard anyone make reference to Plaintiff using an ethnic slur like “sand nigger” or “dune coon”, nor did Plaintiff ever tell him that anyone had done so. Dorman Dep. at 20-21, 89.

97. Firefighter Shawn Flynn reported to Mike Schnurle after Plaintiff was suspended that he had witnessed an occasion on which the employees were undergoing some training by an African-American woman, and she was invited to join them for lunch. When Flynn asked Plaintiff if he wanted to join them for lunch, he said, “There’s no way I’m going to

eat lunch with a nigger.” Flynn Decl. at ¶ 4; Schnurle Dep. at 118. This appears to be a different incident from the one witnessed by Pete Snell in 2008. *Cf.* Snell Decl. at ¶ 13.

98. A firefighter reported to Mike Schnurle sometime in February or March of 2010 that Chris Wilbur, Chief Wilbur’s wife, had said hi to people in the ready room, prompting Plaintiff to go off on a rant saying something like, “What’s that f-ing bitch doing here.” Schnurle Dep. at 55-58. Schnurle did not confront Plaintiff with the report of this incident because he did not want Plaintiff to retaliate, verbally or otherwise, against the firefighter who told him of the incident. *Id.* at 54-55. Ray Wheaton also heard Plaintiff refer derogatorily to two female civilians who worked on the same floor as the Fire Prevention Bureau. Decl. of Wheaton at ¶ 8.

TESTIMONY OF THE PLAINTIFF

99. The Plaintiff does not want to be reinstated to the IFD. Hassan Dep. at 8.

100. Plaintiff admits that his own conduct played a role in his termination from IFD. *Id.* at 10.

101. Plaintiff agrees that he is “loud and abrasive” and that these are not traits that are helpful in a working environment that demands teamwork. *Id.* at 22.

102. Plaintiff admits to the truth of the statement in Dr. Oswald’s report that his behavior was “often intimidating and became increasingly confrontational with two firefighters, specifically Carl Smith and Brian Pendell. *Id.* at 29-30.

103. Plaintiff admits that pain from his injury could have made him more than usually irritable, but denies that the use of OxyContin affected his mood at all. *Id.* at 276-277. By contrast, Dr. Oswald’s report states, “OxyContin is a time released pain medication that he crushed and either snorted or added to liquids. When taken in this manner, the

OxyContin is highly addictive and results in a rapid high where poor judgment, impulsivity and erratic behavior are likely.” H1-4 at p. 4.

104. Plaintiff told Dr. Oswald that he realized sometime in 2009 that alcohol was causing him problems and that he needed to quit. Hassan Dep. at 120. His counsel advised him to seek therapy to help him detoxify, so he started seeing Dr. George Zurenda after he was suspended for the last time from IFD. *Id.* at 122-125. Dr. Zurenda’s notes reflect that there was no discussion of any kind about alleged discrimination by the IFD against the Plaintiff. [Zurenda notes].

105. Plaintiff admits that he denied a history of substance misuse to Dr. Bezirgianian, because he did not regard his “partying” in the 1980s as misuse. He didn’t abstain from “partying” himself until his daughter was born and he “actually had to touch the diaper.” Hassan Dep. at 164-165.

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