

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHUI W. KWONG; GEORGE GRECO; GLENN
HERMAN; NICK LIDAKIS; TIMOTHY S.
FUREY; DANIELA GRECO; NUNZIO CALCE;
SECOND AMENDMENT FOUNDATION, INC.;
and THE NEW YORK STATE RIFLE & PISTOL
ASSOCIATION, INC.,

Plaintiffs,

-against-

MICHAEL BLOOMBERG, in his Official
Capacity as Mayor of the City of New York; and
CITY OF NEW YORK,

Defendants.

-and-

ATTORNEY GENERAL OF THE STATE OF
NEW YORK,

Intervenor.

No. 11 Civ. 2356 (JGK) (DCF)

ECF Case

**PLAINTIFFS' RESPONSE TO CITY
DEFENDANTS' COUNTER-STATEMENT
OF UNDISPUTED MATERIAL FACTS**

Plaintiffs respond to the Statement of Undisputed Facts submitted by Defendants Michael Bloomberg and City of New York (the "City") as follows:

1. All individually-named plaintiffs currently have valid New York City Police Department issued Premises Residence licenses. See Plaintiffs' Rule 56.1 Statement, ¶¶ 9-15.

RESPONSE: Admitted.

2. All individually-named plaintiffs have paid the \$340 license fee to obtain their Premises Residence handgun licenses. See Plaintiffs' Rule 56.1 Statement, ¶¶ 9-15.

RESPONSE: Admitted.

3. Defendant, Michael Bloomberg, sued in his official capacity as Mayor of the City of New York, is currently the mayor of the City of New York. See Complaint, ¶ 55.

RESPONSE: Admitted.

4. Defendant, the City of New York, is a domestic municipal corporation organized and existing under the laws of the State of New York. See New York City Charter § 1.

RESPONSE: Not disputed.

5. The New York City Police Department, License Division (“NYPD”) processes applications for Premises Residence firearms licenses in the City of New York. See Declaration of NYPD License Division Commanding Office Andrew Lunetta, dated July 28, 2011 (“Lunetta Dec.”), ¶¶ 2-3.

RESPONSE: Not disputed.

6. The License Division issues licenses for Premises Residence firearms in the City of New York. See Lunetta Dec., ¶¶ 2-3, 9, 16-17.

RESPONSE: Not disputed.

7. The License Division conducts an investigation of all applicants for firearms licenses in the City of New York. See Lunetta Dec., ¶¶ 11-15.

RESPONSE: Not disputed.

8. In New York City, the License Division of the New York City Police Department is responsible for processing handgun license applications, including those for premises residence handgun licenses. See Penal Law §§ 400.00; 265.00(10); Lunetta Dec., ¶¶ 2-3.

RESPONSE: Not disputed.

9. The different firearms licenses and permits issued by the License Division, along with a description of the license type are codified in title 38, chapter 5 of the Rules of the City of New York (“RCNY”) (types of handgun licenses) and title 38, chapter 1 of the RCNY (rifle, shotgun, and longarm permits). See 38 RCNY §§ 5-01; 1-02; http://www.nyc.gov/html/nypd/html/permits/handgun_licensing_information.shtml (last visited July 7, 2011).

RESPONSE: Not disputed.

10. Holders of Premises Residence handgun licenses are restricted to possessing the licensed weapon at the specific home address designated on the licensee. See 38 RCNY § 5-01(a).

RESPONSE: Not disputed.

11. Premises Residence licensees are also authorized to transport the licensed handgun directly to and from an authorized small arms range/shooting club, secured and unloaded in a locked container. See 38 RCNY §§ 5-01(a); 5-22(a)(14).

RESPONSE: Not disputed.

12. Pursuant to Penal Law § 400.00(1), “[n]o license shall be issued or renewed pursuant to this section except by the licensing officer, and then only after investigation and finding that all statements in a proper application for a license are true.” Article 400 of the Penal Law details the duties of the licensing officer which include, inter alia, determining whether the applicant meets the eligibility requirements set forth under Penal Law 400.00(1); inspecting mental hygiene records for previous or present mental illness; investigating the truthfulness of the statements in the application; and having the applicant’s fingerprints forwarded for review against the records of the New York State Division of Criminal Justice Services (“DCJS”) and the FBI “to ascertain any previous criminal record. See Penal Law § 400.00(1).

RESPONSE: Not disputed.

13. After an investigation, the licensing officer may not approve the application if, inter alia, “good cause exists for the denial of the license.” Penal Law § 400.00(1)(g).

RESPONSE: Not disputed.

14. In ensuring an applicant meets the requirements of Penal Law § 400.00, the License Division must conduct an investigation that requires an assessment of the applicant’s mental hygiene records for previous and present mental illness, an investigation of criminal records, and documentation of the applicant’s physical descriptive data. See Penal Law § 400.00(4).

RESPONSE: Not disputed that licensing officers must conduct an investigation, but Plaintiffs refer the Court to § 400.00(4) for the requirements of this investigation.

15. License Division staff review applications for completeness and accuracy, and investigate the information provided by the applicant License Division. See Lunetta Dec., ¶¶ 11-15. For example, investigators reach out to various federal, state, and city agencies for information about the applicant’s history, making requests for additional documentation to support statements made in the application, reviewing the DCJS fingerprint response, mental health checks, and requesting further information regarding any arrests or convictions reported therein, and interviewing the applicant. See id. The investigation often involves interviews of third parties to obtain relevant information. See Lunetta Dec., ¶¶ 12, 14

RESPONSE: Not disputed.

16. DCJS does not investigate applicants, the License Division does. DCJS runs a fingerprint report for all arrests in the State of New York and then sends the fingerprints to the FBI to check for out of state arrests and warrants. See Lunetta

Dec., ¶ 13, Exhibit “B,” http://criminaljustice.state.ny.us/pio/fp_services.htm; DCJS provides identifying information of arrestees, the date and location of all arrests, the arrest charges, and the Penal Law sections associated with the arrest. Lunetta Dec., ¶ 13.

RESPONSE: Not disputed that licensing officers must conduct an investigation, and that DCJS investigates background information, but Plaintiffs refer the Court to § 400.00(4) for the statutory requirements.

17. There are currently 36,077 active licenses that have been issued by the License Division for the possession of handguns in New York City; and 20,806 active permits for the possession of rifles and shotguns. Lunetta Dec., ¶ 2.

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

18. The License Division, currently processes an average of 2,612 new applications and 9,522 renewal applications each year for the issuance and renewal of the various types of handgun licenses issued by the License Division. In addition, the License Division processes 973 applications for rifle and shotgun permits. Lunetta Dec., ¶ 3.

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

19. Currently, the License Division has 79 employees. The License Division is divided into several different sections and units, and is overseen by a five member Executive Staff, that includes a director, deputy inspector (as commanding officer), a captain (as executive officer), and a lieutenant and sergeant (as Integrity Control Officer and Assistant). Lunetta Dec., ¶ 4.

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

20. The License Division has sections of staff established for various tasks. For example, there is an Intake Section, New Applications Section, Carry Guard Section, Retired Law Enforcement Section, Rifle/Shotgun Section, Issuing Section, Incident Section, Cancellation Section, Renewal Section, Special Operations Section, and Administrative Hearing Section. Lunetta Dec., ¶ 5.

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

21. A Premises Residence Unit was designated within the New Applications Section in 2009 so that the License Division could focus resources on investigating applications and recordkeeping with respect to Premises Residence licenses. Lunetta Dec., ¶ 6.

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

22. The Premises Residence Unit is currently comprised of three staff members that are dedicated to investigating Premises Residence applications only. It is comprised of a sergeant who oversees the unit, and two full-time investigators. Other investigators assigned in the New Applications Section are assigned to investigate Premises Residence applications in addition to other applications for various business and carry licenses. Other License Division employees are also involved in the issuance and processing of Premises Residence handgun licenses, including the License Division Executive Staff, Police Administrative Aides and secretaries who are involved in assisting with specific investigative steps, maintaining records and statistics, and issuing the licenses. There is also intake administrative staff, and records room staff, among others. Lunetta Dec., ¶ 7.

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

23. When the License Division and the New York City Office of Management and Budget (“OMB”) performed a User Cost Analysis in 2010, based on information provided by the License Division, the percentages of time spent for the various uniformed and civilian NYPD License Division staff directly involved in the issuance of Premises Residence Licenses totaled the FTE or “full-time equivalent” of 7.80 staff members. Lunetta Dec., ¶¶ 8, 39, Exhibit “F” (User Cost Analysis Fiscal Year 2010 for Premises Residence Licenses).

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

24. In accordance with New York State Penal Law (“Penal Law”) § 400.00(14), the New York City Council is authorized to set the fees for the issuance and renewals of all pistol licenses issued in the City of New York. See Penal Law § 400.00(14).

RESPONSE: Admitted.

25. Penal Law § 400.00(14) provides, in relevant part, as follows:

Fees. In the city of New York and the county of Nassau, the annual license fee shall be twenty-five dollars for gunsmiths and fifty dollars for dealers in firearms. In such city, the city council and in the county of Nassau the Board of Supervisors

shall fix the fee to be charged for a license to carry or possess a pistol or revolver and provide for the disposition of such fees. (Emphases added).

RESPONSE: Not disputed, but the quotation is selective and incomplete. Plaintiffs respectfully refer the Court to Penal Law § 400.00(14) for the full language.

26. Penal Law § 400.00(14) has provided the City of New York with the authority and discretion to set its own fees for the issuance and renewal of licenses to possess or carry a pistol through the City Council since 1947. See Penal Law § 400.00(14).

RESPONSE: Denied. The predecessor to Penal Law § 400.00(14) has provided *all* New York State licensing authorities, including New York City, with the authority and discretion to set their own handgun license fees since 1938. See 1938 N.Y. Laws ch. 374; Plaintiffs' Rule 56.1 Statement ¶ 33 & ex. 15. The 1947 amendment referenced by the City operated to exempt the City of New York from the operation of the permissible fee range that the legislature had also enacted in 1938. See 1947 N.Y. Laws ch. 147; Plaintiffs' Rule 56.1 Statement ¶ 37 & ex. 18.

27. In 1947, the New York State Legislature noted that the then-\$ 1.50 state-imposed fee was "inadequate to compensate for the administrative expense entailed in the issuance" of licenses to possess and carry handguns, particularly with respect to the need for the New York City Police Commissioner to conduct a thorough investigation into the "safety and welfare of the community." See Declaration of Michelle Goldberg-Calm, dated July 28, 2011 ("Goldberg-Cahn Dec."), Exhibit 'A,' at 2-3.

RESPONSE: Denied. The cited portion of the "Bill Jacket" is a letter from the Mayor of New York City, but is not a statement by the "Legislature" or even by a State legislator. Plaintiffs do not dispute the authenticity of the document.

28. The New York State legislature found that the City of New York was spending significantly more on its investigation than the costs received from the fees. See Goldberg-Calm Dec., Exhibit "A."

RESPONSE: Denied. The cited portion of the "Bill Jacket" is a letter from the Mayor of New York City, but is not a statement by the "Legislature" or even by a State legislator. Plaintiffs do not dispute the authenticity of the document.

29. Since 1948, the City Council has enacted legislation establishing the fees for licenses to possess and carry handguns in the City of New York. See New York City Admin. Code § 10-131 (which amended Admin. Code § 436-5.0).

RESPONSE: Denied. The predecessor to § 400.00(14) has vested this authority in the City since 1938. See Response to ¶ 26, above.

30. Local Law 32 of 1948 increased the annual fee for a handgun license from \$1 to \$10 for the initial license, and \$5 for each renewal license in the City of New York. See Goldberg-Cahn Dec., Exhibit "B," at 2 (Local Law 32/1948).

RESPONSE: Admitted.

31. In 1948, the New York City Police Commissioner submitted a memorandum to the Mayor in support of the increase fees. See Letter from Police Commissioner Wallander to Mayor O'Dwyer, dated February 16, 1948, Goldberg-Cahn Dec., Exhibit "B," at 7-9. The Police Commissioner's letter states, in relevant part, as follows:

I reiterate my statements made at the public hearing of the Committee on General Welfare of the council that the cost to the City of New York of investigation, processing, issuance of licenses, supervision, and maintenance of records exceeds by a large amount the present fees, and that because of the fact that the applicant for, and recipient of a pistol license is receiving a special service, distinguished from the service which the City and Police Department are bound by law to perform for all the citizens, a licensee should be required to defray a reasonable portion of the cost of this special service.

* * *

All of the taxpayers of the City should not be required to pay a majority of the cost for special services rendered to a certain class or group of people.

Goldberg-Calm Dec., Exhibit "B," at 7-8.

RESPONSE: Not disputed.

32. The Police Commissioner explained that the investigation is necessary to ensure firearms be kept out of the hands of unqualified persons. Goldberg-Cahn Dec., Exhibit "B," at 8. The Police Commissioner further stated that "[w]e are unwilling to sacrifice our present efficient method of issuing pistol licenses in the interest of decreasing the cost of licensing fees." Id.

RESPONSE: Not disputed.

33. In response to a request from the mayor for a memorandum from the police commissioner to ensure that the proposed fees were not in excess of costs, the NYPD Police Commissioner submitted a letter to the Mayor, dated May 13, 1948, which contained a detailed memorandum prepared by the NYPD explaining how license applications are processed in accordance with the NYPD regulations. See Goldberg-Cahn Dec., Exhibit "B," at 24-29. The memorandum details the application, interview, fingerprinting, and investigation process that was in effect at that time. See Goldberg-Cahn Dec. Exhibit "B," at 25-29.

RESPONSE: Not disputed.

34. The NYPD stated that, on average, NYPD personnel spent a total of 13 hours per application and that noted that even at wages of \$1.00 per hour, the cost would exceed the \$10 licensing fee. See Goldberg-Calm Dec., Exhibit "B," at 29.

RESPONSE: Not disputed.

35. In 1962, the City Council passed legislation, Local Law 47 of 1962, which increased pistol license application fees to \$20 for the issuance of the initial license and \$10 for each annual renewal license. See Goldberg-Cahn Dec., Exhibit “C” (Local Law 47 of 1962).

RESPONSE: Not disputed.

36. The legislative history for Local Law 47 of 1962 contains copies of a letter from Police Commissioner Murphy to Mayor Wagner, dated June 7, 1962, stating that the fees in effect prior to that time were insufficient because costs of labor, services, and supplies had increased each year. Goldberg-Cahn Dec., Exhibit “D,” at 7-8.

RESPONSE: Not disputed.

37. The Police Commissioner noted that the increased costs were, in part, due to new procedures adopted in 1957 that require an “extensive and thorough” investigation of all applicants for the issuance or renewal of a license to possess or carry firearms. Goldberg-Cahn Dec., Exhibit “D,” at 7-8.

RESPONSE: Not disputed.

38. The NYPD prepared a cost analysis in support of Local Law 47 of 1962 that demonstrated that the cost of an original application was \$19.67 and the cost of a renewal application was \$10.89. See Goldberg-Calm Dec., Exhibit “D,” at 7-8.

RESPONSE: Not disputed.

39. The City Council next amended the fees for pistol licenses in 1973. See Goldberg-Cahn Dec., Exhibit “E” (Local Law 78 of 1973). Local Law 78 of 1973 increased the fee to \$30 for the initial application and \$20 for renewal applications for up to two years. Renewal licenses for a period of one year or less would remain at \$10. Renewal licenses would now be valid for longer than one year. See Goldberg-Cahn Dec., Exhibit “E.”

RESPONSE: Not disputed.

40. Local Law 42 of 1979 amended Admin. Code § 436-5.0(a) to increase the license application fee for handgun licenses to \$50 for the initial application, and \$25 for renewals. Licenses were valid for a two year period. See Goldberg-Cahn Dec., Exhibit “F” (Local Law 42 of 1979).

RESPONSE: Not disputed.

41. The Report of the City Council Committee of Finance for Local Law 42 of 1979 noted that the “cost per service unit” was \$63.78. See Goldberg-Cahn Dec; Exhibit “F,” at 1822 (Comm. Rpt.).

RESPONSE: Not disputed.

42. The City Council enacted Local Law 37 of 1985, amending Admin. Code § 436-5.0 to increase the fee to \$100 for both the initial issuance and renewal applications for pistol licenses for a two year period. See Goldberg-Cahn Dec., Exhibit “G” (Local Law 37 of 1985).

RESPONSE: Not disputed.

43. The City Council Report of the Committee of Finance in support of Local Law 37 of 1985 stated that the average cost for processing handgun license applications and renewals to the City was \$102. See Goldberg-Cahn Dec., Exhibit “G,” at 31 (second page of exhibit).

RESPONSE: Not disputed.

44. In 1989, the City Council passed Local Law 51 of 1989 amending what had previously been renumbered as Admin. Code § 10-131(a)(2) to increase the fee for initial and renewal pistol license applications to \$135. The fees were for two year licenses. See Goldberg-Calm Dec., Exhibit “H” (Local Law 51 of 1989).

RESPONSE: Not disputed.

45. The Report of the City Council Committee of Finance for Local Law 51 of 1989 stated that the average cost of each application to the City of New York was \$134.88. Goldberg-Cahn Dec., Exhibit “I-I,” at 51 (third page of exhibit) (Report of the Committee of Finance for Local Law 51 of 1989).

RESPONSE: Not disputed.

46. In 1992, the City Council amended the fees for issuance and renewal of handgun licenses with Local Law 42. The City Council increased the fee from \$135 to \$170. See Goldberg-Cahn Dec., Exhibit “I” (Local Law 42 of 1992).

RESPONSE: Not disputed.

47. The City Council most recently amended the fees and the duration of firearms licenses in 2004 with Local Law 37. Local Law 37 extended the length of a handgun license from two to three years. In addition, the legislation increased the fees from \$170 for a two-year license, to \$340 for a three year license. See Goldberg-Cahn Dec., Exhibit “J” (Local Law 37 of 2004).

RESPONSE: Not disputed.

48. The Report of the Committee on Finance of the City Council in support of Local Law 37 of 2004, detailed the costs of the License Division of the NYPD. At the time of the report, the License Division had 40,400 total handgun licensees, 23,300 total rifle

and shotgun permit holders, and 4,173 Special Patrolmen. See Goldberg-Cahn Dec., Exhibit “K” (Committee Report for Local Law 37 of 2004).

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

49. The Council Report found that the License Division incurred over \$6 million in personnel costs per year. See Goldberg-Cahn Dec., Exhibit “K,” at 2700. In 2004 alone, the License Division processed 3,900 handgun applications, 1200 rifle/shotgun permit applications, and 900 Special Patrolmen applications for that year. Id. The report set forth the Committee’s findings that the revenue collected by the License Division was \$3,350,000 annually for fees associated with processing applications and renewals of handgun licenses and rifle and shotgun permits, which was far less than the actual costs of licensing (including personnel costs, equipment, modernization costs, and costs to monitor compliance with the laws and rules of the City and State pertaining to guns). Id.

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

50. The Committee on Finance in 2004 concluded that the license fee collected “does not reflect the actual costs of licensing, including the expenses for equipment and other resources necessary to process applications, handle investigations, address incidents, and monitor compliance with the laws and rules associated with city and state gun laws.” Goldberg-Calm Dec., Exhibit “K,” at 2700.

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

51. Prior to the introduction of what became Local Law 37 of 2004, NYPD, with the oversight of the New York City Office of Management and Budget (“OMB”), prepared a detailed cost analysis of the cost of processing license applications processed by the NYPD License Division. See Lunetta Dec., ¶¶ 20-23, Exhibit “D,” annexed thereto (2004 User Cost Analysis); Declaration of Andy Shiwnarain, dated July 28, 2001 (“Shiwnarain Dec.”), ¶ 3.

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

52. The OMB User Cost Analysis stated that the cost per service unit for each application processed by the NYPD License Division was \$343.49. See Lunetta Dec., ¶¶ 24, 31, Exhibit “D,” at 3 (fourth page).

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

53. As a result, OMB suggested to the City Council that the proposed permit fee should be increased to \$340.00 to cover the costs of processing the license. See Lunetta Dec., ¶¶ 32-34, Exhibit “D.”

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

54. Admin. Code § 10-131(a)(2), as amended by Local Law 37 provides:

2. Every license to carry or possess a pistol or revolver in the city may be issued for a term of no less than one or more than three years. Every applicant for a license to carry or possess a pistol or revolver in the city shall pay therefor, a fee of three hundred forty dollars for each original or renewal application for a three year license period or part thereof, a fee of ten dollars for each replacement application of a lost license.

Admin. Code § 10-131 (a)(2) (emphasis added).

RESPONSE: Not disputed.

55. The Laws of 1995, Chapter 503 amended Admin. Code § 10-131(a)(6) to provide for all fees collected by the NYPD for license applications to go to the NYPD “general fund,” instead of the NYPD “pension fund.” See Goldberg-Cahn Dec., Exhibit “L” (L. 1995. ch. 503).

RESPONSE: Not disputed.

56. Chapter 503 of New York Laws of 1995 shifted payments of fines and fees to go into the City of New York General Fund, rather than the Police Pension Fund. See Goldberg-Cahn Dec., Exhibit “L.”

RESPONSE: Not disputed.

57. The legislation substituted an obligation for the City to fund the NYPD pension fund. See Goldberg-Cahn Dec., Exhibit “L.”

RESPONSE: Not disputed.

58. Admin. Code § 13-203(11) refers to Admin. Code § 13-213.1(3)(c), which makes all monies received for fees payable to the general fund. See Admin. Code § 13-203(11).

RESPONSE: Not disputed.

59. Admin. Code § 13-213.1(3)(c) provides: “...on and after July first, nineteen hundred ninety-five, all moneys which otherwise would be paid to pension fund, subchapter one pursuant to the provisions of section 13-203 of this subchapter or any other provision of law, or from any other source whatsoever, shall instead be paid to the general fund of the city established pursuant to section one hundred nine of the New York city charter.” Admin. Code § 13-213.1(13).

RESPONSE: Not disputed.

60. In the summer of 2010, the NYPD, working together with OMB, analyzed the costs to the License Division for processing handgun license applications. NYPD and OMB analyzed the cost to the License Division by the various license types, NYPD prepared a User Cost Analysis for each of the different handgun licenses that it processes. See Lunetta Dec., ¶¶ 35-42. Exhibits “D” “E,” and “F,” annexed thereto; Shiwnarain Dec., ¶ 4-5.

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

61. The 2010 User Cost Analysis calculated the total cost to the License Division for each Premises Residence pistol license initial application as \$977.16. Lunetta Dec., ¶ 38, Exhibit “F.”

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

62. The 2010 User Cost Analysis calculated the total cost to the License Division for renewals of each Premises Residence license as \$346.92. Lunetta Dec., ¶ 38, Exhibit “G.”

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

63. In September, 2010, the New York City Council introduced legislation to change the current application fee structure for pistol licenses to charge different fees for each type of handgun license types issued by NYPD. See Goldberg-Cahn Dec., Exhibit “N,” annexed thereto; Lunetta Dec., ¶ 35.

RESPONSE: Not disputed.

64. This 2010 legislation was proposed at the same time as the NYPD had enacted other changes in the pistol license application process to make the licensing process more efficient and “customer friendly” — i.e., utilizing technology to speed up the application and review process, providing copies of license applications online, accepting credit card payment, extending the hours of the License Division, among

other things. See Lunetta Dec., ¶ 37; see also Goldberg-Cahn Dec., Exhibit “O” (City Council Committee on Public Safety Report in Support of Int. 313, dated September 15, 2010).

RESPONSE: Not disputed.

65. City Council Introduction No. 313 of 2010 proposed to charge applicants a smaller percentage of the total costs to the NYPD for firearms licenses, by specific license type. See Goldberg-Cahn Dec., Exhibit “N,” annexed thereto (Int. 313 of 2010); Shiwnarain Dec., Exhibit A.” annexed thereto.

RESPONSE: Not disputed that Introduction 313-2010 sought to lower the license fees and authenticity not disputed; characterization of “costs” is disputed.

66. Specifically, the proposal sought to amend the fee to be 7% of the total cost to the License Division for all handgun licenses (or a 93% discount), and 5% of the cost for rifles, shotguns, and theatrical permits. See Shwinarain Dec., ¶ 5, Exhibit “A,” annexed thereto. Ultimately, the City Council Committee on Finance declined to move forward with the proposed legislation. See Goldberg-Cahn Dec., Exhibits “P” (transcript of City Council Committee September 15, 2010 hearing) and “Q” (City Council Committee meeting details), annexed thereto.

RESPONSE: Not disputed that Introduction 313-2010 sought to lower the license fees and authenticity of the document not disputed; characterization of “costs” and “discounts” is disputed.

67. The current fee for the issuance and renewal of a Premises Residence handgun license is \$340. See Admin. Code § 10-131(a)(2).

RESPONSE: Admitted.

68. The \$340 license application fee has been in effect since 2004. See Local Law 37 of 2004. See Admin. Code § 10-131(a)(2); Goldberg-Cahn Dec., Exhibits “J” (Local Law 37 of 2004) and “O” (Council Comm. Hrg. Tr.).

RESPONSE: Not disputed.

69. In addition, for initial applications, the applicant must pay a \$94.25 fee that is used for DCJS fingerprinting. Lunetta Dec., ¶¶ 9, 13.

RESPONSE: Not disputed.

70. The fingerprint fee is a one time fee; it is not paid for renewal applications. Lunetta Dec., ¶ 9.

RESPONSE: Not disputed.

71. The \$340 fee represents only 34.79% of the costs incurred as of 2010; and a 65.21% discount to the applicant. See Lunetta Dec., ¶ 19.

RESPONSE: Admitted that the fee is \$340; characterization of “costs” and “discounts” is disputed.

72. The fees received by the License Division for licenses to possess handguns are deposited in the New York City General Fund. See Admin. Code § 10-131(a)(6), 13-213.1(3)(c); Goldberg-Cahn Dec., Exhibit “L” (L. 1995. ch. 503); Lunetta Dec. ¶¶ 44-45, Exhibit “I,” annexed thereto (New York Cit Comptroller’s Comprehensive Annual Finance Report), at 175.


RESPONSE: Not disputed that the 1995 local law directed this change.

73. License application fee monies have been deposited in the City’s General Fund since 1996. See Admin, Code § 10-131(a)(6), 13-213.1(3)(c); Goldherg-Cahn Dec., Exhibit “L.”

RESPONSE: Not disputed.

Dated: New York, New York
August 24, 2011

DAVID JENSEN PLLC

By: 
David D. Jensen, Esq.
708 Third Avenue, Sixth Floor
New York, New York 10017
Tel: 212.380.6615
Fax: 917.591.1318
david@djensenpllc.com
Attorney for Plaintiffs