UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID FLOYD, *et al*.,	:	
Plaintiffs,	:	08 Civ. 01034 (SAS)
-against-	:	ECF CASE
THE CITY OF NEW YORK, *et al.,*	:	
Defendants.	:	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' REQUESTED INJUNCTIVE RELIEF

CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, New York 10012
(212) 614-6439

BELDOCK LEVINE & HOFFMAN, LLP
99 Park Avenue, Suite 1600
New York, New York 10016
(212) 490-0900

COVINGTON & BURLING LLP
The New York Times Building
620 Eighth Avenue
New York, New York 10018-1405
(212) 841-1000

Attorneys for Plaintiffs

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INTRODUCTION

Pursuant to the Court's directive at the January 31, 2013 conference with the parties, Plaintiffs hereby submit this memorandum of law in support of their request for permanent injunctive relief in this case.

As this Court has stated on several previous occasions, "this case presents an issue of great public concern." *See* Op. & Order, at 2, Aug. 31, 2011, Dkt. 153 ("8/31/11 Op. & Order"); Op. & Order, at 4, May 16, 2012, Dkt. 206 ("5/16/12 Op. & Order"). The New York Police Department ("NYPD") has conducted over 4 million stops and frisks of pedestrians in New York City over the past nine years, more than 80% of whom have been Black or Latino. Plaintiffs, four African-American men who have each suffered one or more suspicionless and race-based stops at the hands of NYPD officers since 2006, have brought this action on behalf of not only themselves, but a class of persons who have been or are at risk of being subjected to similarly unconstitutional stops. *See* 5/16/12 Op. & Order, at 6. Given the sheer number of stops and the severe racial disparities, this class likely numbers in the hundreds of thousands if not millions of people, and, as this Court has already held, these overwhelming and disturbing stop-and-frisk patterns are the result of NYPD policies and practices that extend Citywide. *Id.* at 13-23.

In addition, the NYPD's stop-and-frisk policies and practices challenged by Plaintiffs are not only widespread; they are longstanding, and the NYPD has been acutely resistant to changing them. The upcoming trial in this matter in many ways represents the culmination of a fourteen-year legal fight over stop and frisk in New York City, which has included four class action lawsuits before this Court, beginning with *Daniels v. City of New York*, 99 Civ. 1695 (SAS) (S.D.N.Y.), in 1999, each challenging various aspects of the NYPD's stop-and-frisk policies and practices. Unfortunately, as demonstrated by its failure to fully implement the terms

of the *Daniels* settlement, the NYPD, when left to its own devices, has refused to make anything more than cosmetic changes to its stop-and-frisk policies and practices and instead doubled-down on them, increasing the number of stops by more than 500% in the last decade and continuing to target Black and Latino New Yorkers, even as published outside research studies revealed serious constitutional problems with the Department's stop-and-frisk activity and large numbers of New Yorkers have called for change.[1] This "deeply troubling apathy" on the part of the police department "towards New Yorkers' most fundamental constitutional rights[,]" 5/16/12 Op. & Order, at 54, has sparked intense public anger and distrust towards the NYPD, particularly in those communities most heavily impacted by the NYPD's current policies and practices. This deep-seated frustration has been expressed at numerous public hearings, marches, protests, and even in the halls of the New York City Council, where a bill was recently introduced calling for the creation of an Inspector General for the NYPD, a bill which the NYPD itself vehemently opposes.

This Court has previously held that "safeguarding" individuals' Fourth and Fourteenth Amendment rights "is quintessentially the role of the judicial branch," *id.* at 2-3, and federal courts' equitable powers to remedy a widespread pattern and practice of unconstitutional governmental conduct are broad. It is with these principles and the aforementioned history of the stop-and-frisk issue in New York City in mind that Plaintiffs submit their proposals for injunctive relief. In brief, the proposed injunctive remedies include: (i) specific changes to

[1] According to a Quinnipiac University poll released February 28, 2013, "[v]oters disapprove 55 - 39 percent of the police stop-and-frisk tactic[.]" For the Black and Hispanic community, disapproval of the tactic is 76 percent and 60 percent respectively. Quinnipiac Univ., "New Yorkers Back Ban On Take-Out Foam More Than 2-1, Quinnipiac University Poll Finds; Giuliani Ranked Best Mayor, With Koch, Bloomberg Tied" (Feb. 28, 2013) ("Quinnipiac Release"), *available at:* http://www.quinnipiac.edu/institutes-centers/polling-institute/new-york-city/release-detail?ReleaseID=1856.

certain NYPD policies and practices related to supervision, monitoring and evaluation of officer stop-and-frisk activity that can and should be implemented immediately; (ii) a process for obtaining community input into the development of additional reforms to the NYPD's stop-and-frisk policies and practices to bring them in line with constitutional standards; and (iii) a court-appointed monitor to assist with, evaluate and enforce compliance with the injunctive remedies order by the Court. As set forth below, each of these remedial measures is well within this Court's power to order, is supported by the evidence to be presented at trial, and, if implemented, provides the best opportunity to create a meaningful and lasting judicial remedy to what has proven to be a serious and persistent constitutional problem.

Accordingly, Plaintiffs respectfully request that the Court order all of the injunctive remedies set forth herein.

POINT I

THE COURT HAS THE POWER TO ORDER BROAD EQUITABLE RELIEF TO REMEDY THE WIDESPREAD AND LONGSTANDING PATTERN OF UNCONSTITUTIONAL CONDUCT CHALLENGED IN THIS CASE

A. Plaintiffs Will Satisfy the Four Requirements for Permanent Injunctive Relief

The standard for a permanent injunction is "essentially the same" as for a preliminary injunction, with the exception that the plaintiff must show actual success rather than likely success on the merits. *Bellamy v. Mt. Vernon Hosp.*, No. 07-CV-1801, 2009 WL 1835939, *5 (S.D.N.Y. June 26, 2009) (Scheindlin, J.) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 32 (2008)). Specifically, a plaintiff seeking a permanent injunction must demonstrate: "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the

public interest would not be disserved by a permanent injunction." *World Wide Polymers, Inc. v. Shinkong Synthetic Fibers Corp.*, 694 F.3d 155, 160-161 (2d Cir. 2012).

As this Court has already observed, the members of the Plaintiff class are likely to be subjected to the NYPD's stop-and-frisk practices in the future. *See* 5/16/12 Op. & Order , at 33 ("[T]he frequency of alleged injuries inflicted by the practices at issue here creates a likelihood of future injury sufficient to address any standing concerns.") (internal citation omitted). The Plaintiffs are therefore "likely to be deprived of [their] constitutional rights in the future by the acts [they] seek[] to have enjoined," a showing that satisfies the first and second requirements for a permanent injunction. *Local 32B-32J, Serv. Emps. Int'l Union, AFL-CIO v. Port Auth. of N. Y. and N.J.*, 3 F. Supp. 2d 413, 418-19 (S.D.N.Y. 1998) (Scheindlin, J.) (citing *N.Y.S. Nat'l Org. for Women v. Terry*, 886 F.2d 1339, 1362 (2d Cir. 1989)).

Equity heavily favors ordering significant changes to Defendants' stop-and-frisk policies and practices. It is difficult to imagine a burden on the Defendants that could outweigh the "potentially dire and long-lasting consequences" of their unconstitutional stop-and-frisk practices on the individual victims and the community at large. *See* Op. & Ord., at 136-37, *Ligon v. City of New York*, 12 Civ. 2274 (S.D.N.Y. Jan. 8, 2013) Dkt. 96 (Scheindlin, J.) ("Ligon Op. & Order"); *Ass'n of Surrogates v. New York*, 966 F.2d 75, 79 (2d Cir. 1992) ("Of course, state budgetary processes may not trump court-ordered measures necessary to undo a federal constitutional violation, and federal courts have broad discretion in fashioning equitable remedies for such constitutional violations."). Although the remedies sought by Plaintiffs would impose some expense on the City, such financial burden is greatly outweighed by the public interest in protecting all New Yorkers' fundamental constitutional rights and by the savings to the City in future litigation costs which will result from the cessation of unconstitutional stops

and frisks. This is especially true in a case such as this where the victims of the unlawful policies and practices are so numerous.

This Court held that it was "'clear and plain' that the public interest in liberty and dignity under the Fourth Amendment trumps whatever modicum of added safety might theoretically be gained from the NYPD making unconstitutional trespass stops outside TAP buildings in the Bronx." Ligon Op. & Order, at 140 (quoting *Reynolds v. Giuliani*, 506 F.3d 183, 198 (2d Cir. 2007)). Moreover, Plaintiffs will establish, through the testimony of Professor Samuel Walker—a police practices and accountability scholar who has spent nearly four decades studying and helping to implement similar reforms in over thirty municipal, county and state law enforcement agencies around the country—that Plaintiffs' requested remedies will not interfere with the NYPD's public safety function.

B. Federal Courts have Broad Equitable Powers to Prevent a Widespread and Longstanding Practice of Unconstitutional Conduct by a Government Entity

This Court's equitable powers are broad: "breadth and flexibility are inherent in equitable remedies." *Brown v. Plata*, 131 S.Ct. 1910, 1944 (2011); *see also Swann v. Charlotte-Mecklenburg Bd. of Educ.,* 402 U.S. 1, 15 (1971) ("Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies."). When discharging their "quintessential[] role" of preventing constitutional violations, 5/16/12 Op. & Order, at 2-3, federal courts have required municipal agencies to alter or augment the administrative processes causing those violations. *United States v. Yonkers Bd. of Educ.*, 635 F.Supp. 1577, 1578 (S.D.N.Y. 1986) (issuing injunction in [school and housing desegregation] lawsuit that required, *inter alia*, the defendant-city to establish a "Fair Housing Office" that would "conduct educational programs" for the city's employees), *aff'd,* 837 F.2d 1181 (2d Cir. 1987); *N.Y.S.*

Ass'n for Retarded Children, Inc. v. Carey, 551 F. Supp. 1165, 1192-94 (E.D.N.Y. 1982) (issuing injunction in disability discrimination lawsuit that empowered a court-appointed monitor to, *inter alia*, hire assistants with experience in the relevant field, inspect defendants' records, and require defendants to submit necessary reports), *aff'd*, 706 F.2d 956 (2d Cir. 1983); *Inmates of the Attica Corr. Facility v. Rockefeller*, 453 F.2d 12, 25 (2d Cir. 1971) (holding that district court erred in not granting a preliminary injunction against guard brutality, and remanding to consider appointment of federal monitors).

In addition, principles of federalism do not preclude a federal court from ordering changes to a municipality's practices when those practices cause pervasive deprivations of constitutional rights. *See Todaro v. Ward*, 565 F.2d 48, 53 (2d Cir. 1977) ("[A] policy of judicial restraint cannot encompass any failure to take cognizance of valid constitutional claims whether arising in a federal or state institution.") (citations and internal quotation marks omitted). Federal courts hold a "wide range of discretion in framing an injunction in terms it deems reasonable to prevent wrongful conduct," *Forschner Grp., Inc. v. Arrow Trading Co., Inc.*, 124 F.3d 402, 406 (2d Cir. 1997), and therefore may "exert [ ] equitable power to prevent repetition of the violation . . . by commanding measures that safeguard against recurrence." *Ruiz v. Estelle*, 679 F.2d 1115, 1155-56 (5th Cir. 1982) (*cited in Lefford v. McCall*, 916 F. Supp. 150, 153 (N.D.N.Y. 1996)), *vacated in part on other grounds*, 688 F.2d 266; *Milliken v. Bradley*, 433 U.S. 267, 272-74 (1977) (holding that injunction ordering more than mere pupil reassignment—"training for teachers and administrators, guidance and counseling programs, and revised testing procedures"—did not exceed scope of violation because these components were necessary to "'minimize the possibility of resegregation'" in addition to remedying past segregation) (quoting district court opinion).

POINT II

THE REQUESTED INJUNCTIVE REMEDIES ARE SUPPORTED BY EXISTING CASE LAW AND THE FACTS OF THIS CASE[2]

Plaintiffs' request for remedies should be considered in the context of four guiding principles. *First*, the remedy must be comprehensive. As Plaintiffs will prove at trial, numerous formal and informal policies, practices, and/or procedures of the NYPD have contributed to the creation of a citywide pattern and practice of suspicionless and race-based stops and frisks. Ending this pattern and practice will require more than simply re-training officers on the law of stop and frisk or enacting a new NYPD operations order requiring stops to comply with the Fourth and Fourteenth Amendments. As Professor Walker will testify at trial, to effect meaningful and lasting reform of the NYPD's stop-and-frisk practices, the solutions will necessarily overlap in areas of responsibility within the department. *Second*, in light of widespread public outcry concerning the NYPD's use of the stop-and-frisk tactic, the remedies must reflect input from the most impacted communities, and those communities must participate in monitoring and evaluating the City's compliance with the remedies ordered. *Third*, implementation of the remedy must be transparent. *Fourth*, the Court must closely supervise the remedial process to ensure that the relief it orders is fully implemented.

Plaintiffs' proposed injunctive remedy is designed to end not only Defendants' long-standing practice of unconstitutional stops and frisks, but also to develop consensus on how best to do so among those impacted by the practice: Plaintiffs, Defendants, and their counsel, community organizations concerned about public safety and police reform, and New York City police officers who are charged with understanding and complying with the complicated legal

[2] Plaintiffs request that the Court permit the parties to supplement their remedy briefs at the close of trial to address the remedy-related evidence presented at trial.

contours of the Fourth Amendment. Plaintiffs seek in the first instance to enjoin the City from engaging in its policy and/or widespread custom or practice of stopping, or stopping and frisking persons on the basis of their race and/or without reasonable suspicion ("General Injunctive Relief"). This brief provides several specific provisions for the Court's remedial order and additional remedial proposals to effectuate the requested General Injunctive Relief, including:

- An order that the parties engage in a facilitated process to jointly develop remedial measures designed to ensure the NYPD's compliance with the General Injunctive Relief sought by Plaintiffs and ordered by this Court ("Joint-Remedial Process" or "Process");[3]

- Specific requested injunctive remedies to be implemented immediately, including but not limited to changes to the UF-250 form used by NYPD officers to document stop-and-frisk encounters; and repeal of NYPD Operations Order No. 52 and the elimination of all other formal and informal policies and practices which encourage and/or pressure NYPD officers to engage in suspicionless and/or race-based stops and frisks; and

- The appointment of a monitor, special master, referee, or other agent of the Court to monitor the City's compliance with any and all injunctive relief ordered by the Court ("Court Monitor").

Below, Plaintiffs will set forth for each of these requested remedies (1) the relief requested, (2) the legal basis for the requested relief, and (3) the factual basis for the requested relief.

A. Joint-Remedial Process

(1) Specific Remedial Relief Requested

The Joint-Remedial Process that Plaintiffs seek will afford Defendants themselves input into developing the measures necessary to remedy the pattern and practice of unconstitutional stops and frisks to be proven at trial, and it will be overseen by a facilitator, appointed by the

[3] When the Plaintiffs in this case, *Ligon*, 12 Civ. 2274, and *Davis v. City of New York*, 10 Civ. 699 (SAS), jointly made a similar request in January 2013, the Court agreed that "it sound[s] beneficial and interesting to all participants" and acknowledged that after a liability finding, it may be willing to compel Defendants to participate in such a process. (Conf. Tr. 101:8-10, Jan. 31. 2013 ("1/31/13 Hr'g Tr.")).

Court Monitor, with the experience and skill to manage such a Process ("Facilitator"). The long-standing and well documented community mistrust of the NYPD, coupled with the public outcry from all sectors,[4] in response to the NYPD's unconstitutional stop-and-frisk practices illustrates the great need for the Court to ensure its remedial order is developed with some form of community input. Community trust and public confidence in the NYPD may be restored by allowing additional voices to participate in any remedial process. Thus, most importantly, the process should include a mechanism for obtaining input from the aforementioned stakeholders in the joint development of the Court's injunctive remedies; Plaintiffs propose the use of a process overseen by the Facilitator, in consultation with the parties.

Although not a comprehensive list, the Court should establish a Joint-Remedial Process that includes the following components:[5]

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[4] In 1999, the New York Times reported, that "[i]n the aftermath of the shooting death of Amadou Diallo, fewer than a quarter of all New Yorkers believe that the police treat blacks and whites evenly, with blacks in particular viewing the police with fear and distrust….nearly 9 out of 10 black residents questioned in the survey said they thought the police often engaged in brutality against blacks, and almost two-thirds said police brutality against members of minority groups is widespread." *See* Dan Barry and Marjorie Connelly, "Poll in New York Finds Many Think Police are Biased," N.Y. Times (March 16, 1999) *available at* http://www.nytimes.com/1999/03/16/nyregion/poll-in-new-york-finds-many-think-police-are-biased.html?pagewanted=all&src=pm. In 2007, the Gothamist reported, "as the City Council continues to look at police-supplied data showing blacks are stopped 55% of the time during stop-and-frisk searches, the community has startled to rumble. The Reverend Al Sharpton said that he would start collecting names to file a class action lawsuit against the city. He said, 'It's an outrage. It's enough.'" *See* Jen Chung, "Sharpton Threatens to Sue City Over Stop-and-Frisks," Gothamist (February 5, 2007) *available at* http://gothamist.com/2007/02/05/suits.php. According to a Quinnipiac University poll released February 28, 2013, "[v]oters disapprove 55 - 39 percent of the police stop-and-frisk tactic." For the Black and Hispanic community, disapproval of the tactic is 76 percent and 60 percent respectively. *See* Quinnipiac Release.

[5] As a general matter, Plaintiffs envision that the Joint-Remedial Process will be similar to the process they proposed to the Defendants and described in Plaintiffs' January 28, 2013 letter to the Court. Plaintiffs envision that this process will include a "big discussion around the table with lots of players and a good mediated discussion[,]" as the Court observed at the January 31, 2013 status conference. *See* 1/31/13 Hr'g Tr. at 102:7-8.

1. The goal of the Joint-Remedial Process is for the parties to develop a set of agreed-upon proposed remedial measures, which, along with the initial specific injunctive remedial measures requested below, *see infra*, Point II.B, are designed to achieve the General Injunctive Relief, which the parties shall jointly submit to the Court for approval ("Joint Proposed Remedies");
2. If the Court approves the parties' Joint Proposed Remedies, it shall so-order and incorporate them into its remedial order in this action;
3. A Facilitator, appointed by and reporting to the Court Monitor, *see infra* Point II.C, with expertise in civil rights, racial profiling, policing, and/or conflict resolution, will manage this Process. The Facilitator will work with the parties to develop a timeline, ground rules and objectives for the Process;
4. The Process will include a plan to conduct an independent analysis, performed by experts retained by the Court Monitor, *see, infra*, Point II.C (empowering Court Monitor to hire policing and statistical experts to assist her in performance of her duties), of the current policies, practices and procedures of the NYPD related to stop and frisk, which will include findings and recommendations to inform the parties' negotiations during the Process;
5. The NYPD shall appoint a representative or representatives from the Office of the NYPD Commissioner to serve as both a liaison to the Facilitator and a member of Defendants' negotiating team during Process;
6. The Process will, to the extent possible, include a protocol, developed by the Facilitator in consultation with the parties, for obtaining input on appropriate remedial measures from a wide array of stakeholders on the stop-question-

frisk issue in New York City, such as, *inter alia*, police officers; academic and other experts in police practices; and religious, advocacy and grassroots organizations that work with and represent the communities in New York City most heavily impacted by the current NYPD policies and practices at issue in this case;

7. The Facilitator and/or Court Monitor may receive anonymous information from NYPD officers or officials; and

8. The Process will be transparent and findings will be presented to the public, the Court and City Council.

(2) Legal Basis for the Requested Relief

i. Broad Participation in Crafting Remedies to Unconstitutional Governmental Conduct is Accepted by Federal Courts

It is a widely held belief among both federal courts and legal scholars that community participation is essential to develop lasting solutions to the problem of governmental discrimination. *See e.g.*, Stipulation and Order of Settlement and Dismissal ¶ 33 (a), *United States ex rel. Anti-Discrimination Ctr. of Metro N.Y., Inc. v. Westchester Cnty.*, No. 06 Civ. 02860 (DLC) (S.D.N.Y. Aug. 10, 2009) Dkt. 320 (requiring the County of Westchester to solicit "[Community Development Block Grant] proposals that would [affirmatively further fair housing] from community leaders, public interest groups, and others" in housing discrimination case), attached hereto as Ex. B to the Declaration of Sunita Patel dated March 4, 2013 ("Patel Dec."); Consent Decree at ¶¶ 30-34, *Antoine v. Winner Sch. Dist. 59-2*, Civ. 06-3007 (D.S.D. Dec. 10, 2007) Dkt. 64 (ordering the creation of a committee composed of Native American community members and school officials to review disciplinary incidents every quarter for racial disparities and report the results of its review in writing to the school board, monitor and

plaintiffs' counsel in discrimination case alleging, *inter alia*, disparate impact of school disciplinary policies on Native American youth), Patel Dec., Ex. A; *United States v. Parma*, 661 F.2d 562, 577 (6th Cir. 1981) (affirming and "strongly endorsing" the district court's requirement that a fair housing committee composed of citizens with expertise in housing be established with the task of, *inter alia*, drafting fair housing resolutions to remedy housing discrimination); *United States v. Yonkers Bd. of Educ.*, 635 F. Supp. 1538, 1545 (S.D.N.Y. 1986) (providing for "community meetings with minority groups and organizations to solicit support and assistance in the dissemination of magnet program availability"); *Berry v. Sch. Dist.*, 515 F. Supp. 344, 379-80 (W.D. Mich. 1981) (requiring the appointment of a twenty-one person committee composed of administrators, teachers, parents, and students to create a new code of student discipline for districts undergoing desegregation to prevent arbitrary enforcement during school desegregation); *Kelley v. Metro. Cnty. Bd. Of Educ.*, 479 F. Supp. 120, 123 (M.D. Tenn. 1979) (inviting input from the "many well-motivated, thoughtful citizens of the community" to resolve the problem of school desegregation); Maurice R. Dyson, *A Covenant Broken: The Crisis of Educational Remedy for New York City's Failing Schools*, 44 HOW. L.J. 107, 113-114 (Fall 2000) (proposed remedies in school desegregation should be reviewed by a community review panel consisting of affected litigants and local stakeholders); Brandon Garret, *Remedying Racial Profiling*, 33 COLUM. HUMAN RIGHTS L. REV. 41, 106-107 (Fall 2001) ("[a]ny approach attempting to redress discriminatory policing should employ outside expertise and permit key outside actors to play a role in defining the remedy"); Andrew E. Taslitz, *Respect and the Fourth Amendment,* 94 J. CRIM. L. & CRIMINOLOGY 15, 98 (Fall 2003) (noting that community values should be identified and utilized when evaluating police practices); *see also Carson Harbor Vill., Ltd. v. Unocal Corp*., No. CV 96-3281 MMM, 2003 U.S. Dist. LEXIS 14482, *131 (C.D. Cal

Aug. 8, 2003) (citation omitted) (noting that CERCLA specifically requires community input precisely because the "citizen perspective is distinctly different from the regulatory view of the state agency that scrutinizes cleanup").

Community members can play an important role in developing proposed remedies as well as helping this Court monitor the implementation of the General Injunctive Relief and evaluate compliance with the remedial order. In *Berry*, a school desegregation case, the court ordered the formation of a Community Education Council (CEC) composed of members representing communities reflecting "the urban and suburban, racial and socioeconomic makeup of the [school] districts." *Berry*, 515 F. Supp. at 382. Members of the CEC were to be selected from "[e]stablished community resources and institutions" such as churches, law enforcement officials, and labor, and include parents and students. *Id.* In establishing the CEC, the court recognized that community involvement was critical to "assure the effectiveness of this or any other desegregation effort." *Id.* The role of the CEC was therefore to articulate "community consensus on appropriate methods and actions," to solve problems that might arise during the desegregations process, and to "monitor" and report to the court on the school district's compliance with the court's order. *Id.* at 383; *see also Morgan v. Kerrigan*, 401 F. Supp. 216, 249 (D. Mass. 1975) ("Numerous cases provide support for the establishment of biracial and multiracial groups to act as advisory and monitoring bodies during the desegregation process.") (citation omitted).

ii. Community Participation is a Necessary and Accepted Component in Judicially-Ordered Police Reform Measures

The participation of community members and organizations in the reform of police practices has come to be recognized as a necessary part of a successful remedial effort to overcome widespread constitutional violations. Additionally, community participation is not

only vital to the design and implementation of a court remedy, but also to restoring (or creating) the sense of trust that is critical for effective policing. Indeed, a number of other police departments faced with a similar onslaught of criticism and public pressure reformed their practices with the participation of community members or organizations in the remedial phase of litigation:

- Plaintiffs' expert Professor Walker will testify that community input is an accepted practice in police departments engaged in reform through court oversight and provide examples of methods other police departments have utilized to inform the remedial process as well as evaluate systems set up through judicial processes. He will further testify that the inclusion of community input in the remedial process can increase public trust, is useful to the Court and permits greater community oriented policing strategies.

- Following widespread civil unrest in response to shootings, excessive force, racial profiling, and other abusive treatment of Black residents of Cincinnati, Ohio by the Cincinnati Police Department, plaintiffs in a federal class action lawsuit challenging such practices, the City of Cincinnati, and the Cincinnati police officers' union participated in a court-ordered collaborative process to develop a joint-remedial plan. The Court ordered that the process should "include an opportunity to receive the viewpoints of all the Cincinnati community regarding their goals for police-community relations," specifically, the community would "state their goals for police-community relations; why these goals [were] important; and how they would achieve these goals." *See* Order Establishing Collaborative Procedure ¶ 3(a), *In re Cincinnati Policing*, No. C-1-99-317 (S.D. Ohio May 3, 2001). This process, which Professor Walker will testify about, resulted in the landmark Collaborative Agreement, signed by the federal court in 2002, which is widely recognized as the most successful and far-reaching judicial remedy ever implemented in a federal civil rights action brought in the policing context.

- In a Department of Justice pattern and practice lawsuit against the Los Angeles Police Department for, *inter alia*, unconstitutional and racially discriminatory stops, searches and seizures, the Ninth Circuit remanded to the district court for a hearing on permissive intervention of community groups and individual "people of color" in consent decree process and held that "'streamlining' the litigation….should not be accomplished at the risk of marginalizing those [interveners] who have some of the strongest interests in the outcome." *United States v. City of Los Angeles*, 288 F.3d 391, 397, 404 (9th Cir. 2002). Thereafter, the district court granted the community groups motion for permissive intervention. *See United States v. City of Los Angeles*, No, 2:00-cv-11769-GAF-RC (C.D. Cal. Oct. 3, 2002), Dkt. 193, Patel Dec., Ex. E.

- Recent Department of Justice Consent Decrees and Letters of Intent with municipal police departments around the country have recognized the importance of community input to ensure sustainable reform designed to remedy a pattern and practice of unconstitutional conduct. *See* Consent Decree, *U.S. v. City of New Orleans*, 12-1924 (E.D. La. July 24, 2012) Dkt. 159-1[6]; Statement of Intent between United States and City of Portland (Sept. 12, 2012)[7]; Settlement Agreement and Stipulated [Proposed] Order of Resolution, *U.S. v. City of Seattle*, 12-CV-1282 (W.D. Wa. Jul. 7, 2012) Dkt. 3-1[8]; Mem. of Understanding between the United States and the City of Seattle, *U.S. v. City of Seattle*, 12-CV-1282 ¶3-18 (W.D. Wa. Jul. 27, 2012).[9]

(3) Factual Basis for the Requested Relief

Plaintiffs will show at trial that the NYPD disregards community concerns that police profile Black and Latino community members, or that the NYPD should reform its policies and practices related to stop and frisk. For example, Plaintiffs will show:

- Over the past few years, there has been a ground swell of community activity around the negative impact of the NYPD's improper use of stop, question and frisk on members of the community. For example, in July 2010, residents gathered at a town hall meeting in Bed Stuy, to express their frustration at police misconduct and their distrust of the police generally. One speaker testified that "she would never call the police for any reason[,]" even if she had been assaulted. The sentiment of distrust for the police was echoed by others at the meeting.[10]

[6] *Available at* http://www.justice.gov/crt/about/spl/documents/nopd_agreement_1-11-13.pdf.

[7] *Available at* http://www.justice.gov/usao/or/documents/20120913_ppb_intent.pdf.

[8] *Available at* http://www.justice.gov/crt/about/spl/documents/spd_consentdecree_7-27-12.pdf.

[9] Available at http://www.justice.gov/crt/about/spl/documents/spd_mou_7-27-12.pdf.

[10] Lauren Raheja, "Bed-Stuy Sounds Off at Town Hall Meeting, Paterson Signs Bill," The Brooklyn Bureau (July 14, 2010), *available at* http://www.bkbureau.org/bed-stuy-sounds-town-hall-meeting-paterson-signs-bill.

- On June 17, 2012, thousands silently marched down Fifth Ave to demonstrate their disapproval of the NYPD's use of stop and frisk.[11]

- In October 2012, hundreds gathered during town hall meetings organized by the City Council Civil Rights Committee in crowded meeting rooms in Brooklyn, Queens, and Manhattan to express their views of the NYPD's use of stop and frisk. Councilmember Deborah Rose remarked at one of the meetings that "[a]fter [hearing] some of the testimonies, I feel anxious and I feel traumatized and that is a part of the collateral damage to stop question and frisk."[12]

- At a hearing in Queens, where hundreds of residents gathered at York College, Rev. James Quincy, who works with young adults at a church in Queens stated that the effect of police stops on youth in his neighborhood "is to change the way they respond to police in the future." "The problem," he said, "is that the relationship between the police department and our young people is so bad and so poor that it makes [the youth] feel like they are unimportant."[13]

- In response to the New York Civil Liberties Union's 2007 report citing failures in civilian oversight of the NYPD, Police Commissioner Ray Kelly dismissively stated, "They are going to bash us every chance they get," instead of investigating the allegations.[14]

For these reasons, the Court should order the Parties to engage in the Joint-Remedial Process Plaintiffs outline above.

B. <u>Requested Specific Initial Injunctive Remedies</u>

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[11] Max Rivlin-Nadler and Andrea Jones, "Father's Day March Unites Thousands Against NYPD's Stop-and-Frisk Policy," The Nation (June 19, 2012), *available at* http://www.thenation.com/article/168488/fathers-day-march-unites-thousands-against-nypds-stop-and-frisk-policy; *see also* Jim Dwyer, "Protesting Police Tactic, in Silence," N.Y. Times (June 12, 2012), *available at* http://www.nytimes.com/2012/06/13/nyregion/silently-a-fathers-day-parade-may-turn-into-a-protest.

[12] Amanda Moses, "Brooklyn Stop-and-frisk hearing turns rancorous," Dominion of New York (Oct. 24, 2012), *available at* http://www.dominionofnewyork.com/2012/10/24/brooklyn-stop-and-frisk-hearing-turns-rancorous/.

[13] Paul DeBenedetto, "Hundreds Attend Stop-and-Frisk Hearing to Support New Law", DNAInfo.com (Oct. 25, 2012), *available at* http://www.dnainfo.com/new-york/20121025/jamaica/hundreds-attend-stop-and-frisk-hearing-support-new-law.

[14] *See* Thomas J. Lueck, "Civil Rights Group Faults How Police are Policed," N.Y. Times (Sept. 6, 2007), *available at* http://www.nytimes.com/2007/09/06/nyregion/06ccrb.html?_r=0.

As set forth above, the contours of a remedial scheme in this case should be largely defined through a Joint-Remedial Process. However, Plaintiffs request several specific provisions be included in the Court's initial remedial order. Deficiencies in the areas addressed by these provisions will be developed at trial, and case law supports the implementation of specific measures to correct such glaring problems.

(1) Specific Remedial Relief Requested

Plaintiffs specifically request that the UF-250 form should be modified to: (i) include a narrative portion for police officers to justify the basis for stops, frisks and searches; (ii) require documentation of other police officer or civilian witnesses; and (iii) include a tear-off carbon copy of the form to be provided to each and every individual stopped.

Plaintiffs further request the Court order the NYPD to eliminate informal and formal policies to meet quotas, performance goals or any other measures that create an incentive to stop individuals without reasonable suspicion. The history and top-down encouragement of quotas and performance goals require a comprehensive approach to eliminate their use and harmful impact on the culture within the NYPD. To address the pervasive problem, the Court should consider several measures. As an initial matter, the NYPD should repeal Operations Order 52 and issue an operations order prohibiting the use of quotas, performance goals or any other measures that create an incentive to stop individuals without the requisite reasonable suspicion. The NYPD shall make clear to its staff that quotas, performance goals or any similar practices are improper and cannot be used to create a pressure to perform police activity. Policies on paper will not be enough, given the alleged entrenched informal use of quotas and performance goals by precinct commanders and other mid-level NYPD supervisors. Officers who feel pressure to perform improper stops should have the right to file a complaint with the Court

Monitor provided for in Point II.C. *infra*, who shall have the authority during her term of service to investigate such allegations and issue reports of her findings which shall be provided to the parties and filed under seal with the Court.

During the pendency of this Court's jurisdiction over this case, Defendants shall provide on a quarterly basis to Plaintiffs all NYPD UF-250 stop, question, and frisk, crime complaint, and arrest report data and all other data provided to the Court Monitor so that Plaintiffs can conduct their own analyses to assess Defendants' efforts to comply with all Court-ordered injunctive relief. All such data, other than those portions of the UF-250 data previously produced to Plaintiffs in this action which are not currently subject to any confidentiality restrictions, shall be subject to a confidentiality order to be agreed to by the parties and entered by the Court.

(2) Legal Basis for the Requested Relief

In order to eradicate the Defendants' unconstitutional practices, this Court is empowered to order each of the specific remedial measures set forth in Point II.C, *infra*—namely: ordering Defendants to repeal the policies and practices that lead to the constitutional violations, and empowering an intermediary—aided by persons with the required expertise—to investigate and evaluate relevant NYPD processes impacting stop and frisk. *See LeBlanc-Sternberg v. Fletcher*, 104 F.3d 355 (2d Cir. 1996) (ordering mandatory forward-looking injunction against "likely" constitutional violations as well as ordering revision to ordinance to prevent future constitutional violation); *United States v. Yonkers Bd. of Educ.*, 635 F.Supp. 1577 (S.D.N.Y. 1986) (issuing injunction that required, *inter alia*, the defendant-city to adopt a resolution against discrimination and establish a "Fair Housing Office" that would review the activities of the City and make recommendations for compliance with the policy), *aff'd,* 837 F.2d 1181 (2d Cir. 1987); *N.Y.S.*

Ass'n for Retarded Children, 551 F. Supp. at 1192-94 (issuing injunction that empowered a court-appointed monitor to, *inter alia*, hire assistants with experience in the relevant field, inspect defendants' records, and require defendants to submit necessary reports), *aff'd*, 706 F.2d 956 (2d Cir. 1983); *Clark v. California*, 739 F. Supp. 2d 1168, 1234 (N.D. Cal. 2010) ("Defendants object that this Court has no power to order any kind of training regimen. They are incorrect."); *id.* at 1212-13, 1235 (requiring internal audits following showing that defendants lacked an understanding that prison did not comply with internal policies or federal law).

Moreover, the United States Department of Justice has recognized tear-off stop forms as a promising strategy for monitoring potential inaccuracies in the recording of stop data by police officers which can often mask racially-biased or other unconstitutional stops, and such forms have been used by municipal police departments in Great Britain for more than a decade. *See* Deborah Ramirez, Jack McDevitt, & Amy Farrell, *A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned*, 38 (United States Department of Justice 2000).

(3) Factual Basis for the Requested Relief

Plaintiffs will present evidence to support the specific relief requested, including but not limited to:

- The current UF-250 form does not provide adequate information to determine if a stop was based on reasonable suspicion.
- The UF-250 form does not permit a supervisor to determine whether an officer actually had the requisite reasonable suspicion necessary to stop a pedestrian, and it is generally accepted practice for an officer backing up another officer to document such activity.
- Supervisors place pressure on officers to meet a minimum numerical level of stop-and-frisk and other enforcement activity.

- There is a widespread inaccurate use of the "high crime area" stop factor on UF-250 forms completed by NYPD officers.

- Supervisors pressure officers to conduct a certain number of stops and frisks or applying pressure to arrest or issue summons.

C. Court Oversight through a Court Appointed Monitor.

As this Court has already recognized, "[w]hile it is generally accepted that racial profiling is wrong and prohibited by the United States Constitution, how to end the practice is a more difficult and delicate question." 8/31/11 Op. & Order, at 3. Due to the difficult and complex nature of rooting out an entrenched and department-wide practice of unconstitutional and racially-discriminatory stops and frisks—coupled with the NYPD's long history of failure to voluntarily implement meaningful reforms designed to end such practices—Plaintiffs seek on-going and close Court oversight of remedial implementation in addition to the Joint-Remedial Process.

(1) Specific Remedial Relief Requested

More specifically, Plaintiffs request that the Court appoint a Court Monitor with experience in oversight of systemic police reform, to oversee the City's implementation of and compliance with the General Injunctive Relief, the specific proposed remedies, *see* Point II. B, and any additional remedies identified through the Joint-Remedy Process or otherwise ordered by the Court. The Court Monitor, at a minimum shall:

1. Hire a Facilitator with skills and experience in mediation, conflict-resolution, discrimination, civil rights, and/or policing to mediate and manage the Joint-Remedial Process;

2. Monitor and evaluate compliance with all remedies ordered by this Court.

3. In consultation with the parties and Facilitator, engage a panel of policing and statistical experts to do the following:

    a. Conduct an independent evaluation of the NYPD's current policies and practices in the following areas as they relate to stop and frisk: (i) supervision, training and disciplinary systems; (ii) internal auditing practices; (iii) performance evaluations; (iv) civilian complaint investigations; (v) early warning policies; and (vi) other areas the Court, Court Monitor, Facilitator or parties find necessary to assist the Joint-Remedial Process;

    b. Based on their evaluations, issue findings and recommendations to inform the Parties' discussions during the Joint-Remedial Process and the Court Monitor as set forth in paragraph 7 below;

    c. Assist the Court Monitor in evaluating and monitoring Defendants' compliance with the remedial measures ordered by this Court.

4. The Court Monitor shall further receive and analyze on a quarterly basis UF-250 stop-and-frisk data, crime complaint data and any other categories of NYPD data which the Monitor, in consultation with his or her retained policing expert(s) and the parties, determines is necessary to analyze in order to be able to assess Defendants' efforts to comply with the Court's remedial orders in this case.

5. The Court Monitor will issue periodic reports to the Court (which will be available for viewing by the public) on the City's implementation of the Court-ordered remedies.

6. The Court Monitor will develop a protocol to obtain feedback from individuals subjected to stops and frisks (i.e. call backs, focus groups), and incorporate such feedback into his or her reports to the Court on Defendants' compliance with the Court-ordered remedies.

7. In the event that the parties are unable to reach agreement upon a set of proposed remedies through the Joint-Remedy Process, the Court Monitor will issue a report and recommendation (based in part on the evaluations conducted by the panel of experts as described in paragraph 3(a) above) to the Court on proposed additional remedial measures to be incorporated into the Court's remedial order. The parties will have the opportunity to respond, or request amendments to, before the Court rules.

In addition, Plaintiffs request that the Court Monitor's term of service last the later of five years or until the Court determines that Defendants have fully complied with all of the provisions of the Court's remedial orders. Plaintiffs further request all costs associated with the Court Monitor be assessed to Defendants.

(2) Legal Basis for the Requested Relief

The Court is well within its power to grant the Plaintiffs' request for a Court Monitor, either as an inherent equitable power or under Rule 53. *See Ex Parte Peterson*, 253 U.S. 300, 312-13 (1920) ("Courts have . . . inherent power . . . to appoint persons unconnected with the court to aid judges in the performance of specific judicial duties," including "special masters, auditors, examiners, and commissioners."). Monitoring a defendant's remedial conduct through a court-appointed monitor, special master or other intermediary is common in cases requiring broad systemic reform to address widespread and longstanding unconstitutional policies or

practices. *See United States v. Yonkers Bd. of Educ.*, 29 F.3d 40, 44 (2d Cir. 1994) ("The power of the federal courts to appoint special masters to monitor compliance with their remedial orders is well-established."); *Alves v. Main*, No. 01-789 (DMC), 2012 WL 6043272 (D.N.J. Dec. 4, 2012) (ordering appointment of an three-year independent monitor and permanent treatment ombudsman to oversee implementation of settlement agreement guaranteeing increased access to mental health care for civilly committed persons).

Implementing the multifaceted and complex remedy that Plaintiffs seek will require the frequent attention of a single person or group of people. Federal courts have long acknowledged that this function is more properly delegated to an appointed third party than assumed by the court itself. *See N.Y.S. Ass'n for Retarded Children v. Carey*, 706 F.2d 956, 962-63 (2d Cir. 1983) (holding that "[t]he monitoring of a Consent Judgment that mandates individualized care for thousands of class members and that entails balancing of the interests of parties with third-party employees, [defendants], and community groups is just the sort of 'polycentric problem'" that warranted district court's appointment of monitor) (quoting *Hart v. Comty. Sch. Bd. of Brooklyn*, 383 F.Supp. 699, 766 (E.D.N.Y. 1974)), *aff'd*, 512 F.2d 37 (2d Cir. 1975)); *see also Nat'l Org. for the Reform of Marijuana Laws v. Mullen*, 828 F.2d 536, 543 (9th Cir. 1987); *Madrid v. Gomez*, 889 F. Supp. 1146, 1282 (N.D. Cal. 1995) (holding that the "assistance of a Special Master is clearly appropriate" because "[d]eveloping a comprehensive remedy in this case will be a complex undertaking involving issues of a technical and highly charged nature."). Courts have also acknowledged the importance of an intermediary with particular expertise in the subject matter of the case. *See Jamie S. v. Milwaukee Pub. Schs.*, No. 01-C-928, 2009 WL 1615520, at *27 (E.D. Wis. June 9, 2009) ("interests of the class members would be best served

if this monitoring is completed by a person with professional expertise in the field. . .”), *vacated on other grounds*, 668 F.3d 481 (7th Cir. 2012); *see also Madrid*, 889 F. Supp at 1282.

A Court Monitor is also necessary to ensure Defendants’ full compliance with a judgment of this Court, even if, as Plaintiffs envision, that judgment is developed through a Joint-Remedial Process. In cases such as this one, where the defendant has demonstrated a fundamental misunderstanding of what the law requires and a continued refusal to voluntarily remedy its own unconstitutional conduct, the appointment of an intermediary has been emphatically endorsed. *See Eldridge v. Carpenters 46*, 94 F.3d 1366 (9th Cir. 1996) (holding that district court’s failure to appoint a monitor was an abuse of discretion where defendant insisted on retaining a hiring practice already held to be unlawfully discriminatory).

Because a federal court’s equitable powers are inherently flexible, *Brown*, 131 S.Ct. at 1944, the role of a court-appointed intermediary, monitor or special master can take many forms. *See Juan F. v. Weicker*, 37 F.3d 874, 876 (2d Cir. 1994) (discussing a monitor in § 1983 class action who was “empowered to monitor implementation and compliance, to convene a meeting of the parties, establish a reporting structure that enables the monitor to effectively assess the progress of the implementation of the [consent decree], obtain information from [defendants], issue compliance reports, attempt to resolve disputes, and review requests by either party for modification . . . , and if necessary, to make a recommendation to the Trial Judge regarding the request for modification.”) (internal quotation marks omitted); *Jamie S. v. Milwaukee Public Schools*, No. 01-C-928, 2009 WL 1615520, *27 (the monitor’s function was to “fill in the details to the framework the court constructs. . . .”); *Turay v. Seling*, No. C91-0664 RSM, 2007 WL 983132 (D. Wash. 2007) (following finding of substantial compliance with court order,

dissolving role of appointed special master to investigate problems with civil commitment facility and issue recommendations for improving provision of mental health services).

(3) Factual Basis for the Requested Relief

At trial, Plaintiffs will present evidence of the importance of Court oversight to the successful implementation of complex judicial remedies, as well as the City's history of deliberate indifference towards and unwillingness to voluntarily address the problem of unconstitutional and race-based stops and frisks.

First, Plaintiffs will offer evidence at trial as to why Court oversight is necessary to ensure compliance with the Court's order:

- Plaintiffs' remedy expert Professor Samuel Walker, whose academic research and professional consulting work over the past 39 years has focused on the implementation of remedies in federal police pattern and practice lawsuits will testify that Court-appointed monitors are necessary to ensure compliance with such remedies.

- Professor Walker will show that his research and consulting work has led him to conclude that Court-appointed monitors can and should hire and engage experts in police practices to assist them in performing their monitoring duties.

Second, Plaintiffs will establish at trial that the NYPD has a demonstrated history deliberate indifference and recalcitrance regarding the problem of unconstitutional stops and frisks. The NYPD has for more than a decade disregarded clear indications of a widespread pattern of racial profiling and suspicionless stops on the part of its officers and failed or deliberately refused to implement remedial measures which were either recommended by other governmental and policing research bodies or nominally agreed to by the NYPD itself:

- The NYPD's notice in 1999 of a study by the New York State Attorney General's Office showing a pattern of racially-biased and suspicionless stops and frisks on the part of officers of the NYPD's Street Crimes Unit and containing several recommendations designed to address this pattern of unconstitutional conduct, which the NYPD failed to implement;

- The City's failure to implement several key provisions of the Stipulation of Settlement in *Daniels v. City of New York*, 99 Civ. 1695 (S.D.N.Y. Sept. 24, 2003) (which was not overseen by a Court-appointed monitor), including, but not limited to, a failure to implement quality assurance audits of officer stop-and-frisk activity designed to assess whether such activity was based on reasonable articulable suspicion, and a failure to fully implement the NYPD's policy against racial profiling, all while the NYPD's stop-and-frisk activity increased by over 500% and the disproportionately high numbers of stops of black and Latino pedestrians persisted;

- The NYPD's notice in 2007 of the results of the RAND Corporation's study of its stop, question, and frisk practices showing that several NYPD officers had over-stopped minority pedestrians and that large racial disparities in post-stop outcomes existed in several boroughs, and the NYPD's subsequent refusal to implement RAND's recommendations for addressing these problems;

- The NYPD's fierce resistance to a bill introduced in the New York City Council in the fall of 2011 which would create an Office of Inspector General for the NYPD;[15] and

- The City's continued "cavalier attitude" and "deeply troubling apathy" towards New Yorkers' constitutional rights, *see* 5/16/12 Op. & Order, at 54-55, as demonstrated by statements concerning stop and frisk made by the Mayor and NYPD Commissioner.

[15] David Seifman, "Don't Police the NYPD: Bloomberg," N.Y. Post, (Oct. 9, 2012), available at http://www.nypost.com/p/news/local/don_police_the_nypd_bloomberg_YGSgb2logHEmIeQqdAE1tL ("[a]ppointing an inspector general to oversee the NYPD is a recipe for disaster, Mayor Bloomberg warned yesterday. 'I think if you want to bring crime back, let's go politicize control of the Police Department,' the mayor said, responding to a reporter's question about a new City Council bill requiring an [inspector general] for cops getting a hearing tomorrow. 'The last thing we need is some politician or judge getting involved with setting policy, because you won't be safe anymore. But today, you are.'"); Christie Thompson, "Momentum Builds in the Fight Against Stop-and-Frisk," The Nation, (Oct. 31, 2012), available at http://www.thenation.com/article/170944/momentum-builds-fight-against-stop-and-frisk# ("The mayor's office and the police department have also been outspoken in their opposition to the four bills that comprise the Community Safety Act….Bill 881 of the act calls for the creation of an Inspector General's office to perform routine reviews of NYPD policies. 'The number of New Yorkers who believe the problem is a systemic lack of oversight leading to a culture with no accountability is growing,' said council member Brad Lander, a vocal supporter of the act. The FBI, CIA and police departments in Los Angeles, Chicago and DC all have independent oversight. The NYPD is one of the few city departments not subject to such review.").

Notably, the handful of changes made to the NYPD's training and auditing procedures around stop and frisk in the Spring of 2012, changes announced the same day as this Court's decision certifying the Plaintiff class in this action, will not remedy the pattern of unconstitutional stops conducted by NYPD officers, and only serve to demonstrate both the City's deliberate indifference and the likelihood of continued constitutional violations. These changes include:

- An interim order changing the rank of the person in each precinct charged with conducting the Quality Assurance Division audits of officer stop, question and frisk activity without in any way altering the way the audit is conducted or the information collected in the audit. *See* Interim Order "Revision to Patrol Guide 202-10, "Executive Officer" No. 21, NYC_2_21314, Patel Dec., Ex. C.

- The development of new stop-and-frisk training courses and materials that, as this Court has already held, confuse the law, and may have in worsened NYPD officers' misunderstanding of the legal standards for conducting a stop and frisk. *See* Ligon Op. & Ord. at 9, 79 n.259.[16]

- Without creating a system to test whether officers engaging in stops understand whether the requisite reasonable suspicion exists, the NYPD republished its racial profiling policy and began including it in their unit level training sessions in June 2012. *See* NYPD Interim Order No. 20 re Department Policy Prohibiting Racial Profiling, May 16, 2012, NYC_2_20857-20858, Patel Dec., Ex. D.

[16] Moreover, as a general matter, post-litigation alterations by a governmental defendant to its unconstitutional policies or practices do not obviate the need for injunctive relief or ongoing federal court oversight. *See, e.g.*, *See Santiago v. Miles*, 774 F. Supp. 775, 793 (W.D.N.Y. 1991) *citing United States v. Or. Med. Soc.*, 343 U.S. 326, 333 (1952) ("It is the duty of the courts to beware of efforts to defeat injunctive relief by protestations of repentance and reform, especially when abandonment seems timed to anticipate suit, and there is a probability of resumption."). *See also Etuk v. Slattery*, 936 F.2d 1433 (2d Cir. 1991) (INS policy "clarifications" enacted after commencement of lawsuit not sufficient to moot plaintiffs' claim for injunctive relief); *NAACP v. City of Evergreen, Ala.*, 693 F.2d 1367, 1370 (11th Cir. 1982) ("[R]eform timed to anticipate or blunt the force of a lawsuit offers insufficient assurance that the practice sought to be enjoined will not be repeated.") (internal quotations, brackets, and citations omitted).

CONCLUSION

After years of soaring and racially-skewed numbers of stops and frisks in New York City and the NYPD's continued inability and/or unwillingness to remedy the department-wide pattern and practice of unconstitutional stops and frisks on its own, this Court must act to prevent the on-going violation of fundamental constitutional rights. For the reasons provided above, this Court should order the parties to participate in a Joint-Remedial Process, with community input, to develop a set of joint-remedial proposals for eliminating once and for all the NYPD's longstanding and widespread use of suspicionless and race-based stops. In addition, this Court should order the specific relief requested by Plaintiffs—changing the UF-250 form and repeal of Operations Order No. 52. And perhaps most importantly, this Court must appoint a Court Monitor to oversee any and all remedial steps ordered by the Court.

Dated: New York, New York
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By: _____
SUNITA PATEL

Sunita Patel
Darius Charney
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, New York 10012
(212) 614-6439
dcharney@ccrjustice.org
spatel@ccrjustice.org

Jonathan Moore
Jennifer Borchetta
BELDOCK LEVINE & HOFFMAN, LLP
99 Park Avenue, Suite 1600
New York, New York 10016
(212) 490-0900

jmoore@BLHNY.com
jborchetta@BLHNY.com

Philip A. Irwin
Eric Hellerman
Gretchen Hoff Varner
Kasey Martini
Bruce Corey, Jr.
COVINGTON & BURLING LLP
The New York Time Building
620 Eighth Avenue
New York, New York 10018-1405
(212) 841-1000
pirwin@cov.com
ehellerman@cov.com
ghoffvarner@cov.com
kmartini@cov.com
bcorey@cov.com

Attorneys for Plaintiffs