

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
KELVIN DANIELS; POSEIDON BASKIN; DJIBRIL
TOURE; HECTOR RIVERA; RAYMOND RAMIREZ;
KAHIL SHKYMBA; BRYAN STAIR; TIARA BONNER;
THERON McCONNEYHEAD; and HORACE ROGERS,
individually and on behalf of a class of all others similarly
situated,

99 Civ. 1695 (SAS)

Plaintiffs,

-against-

THE CITY OF NEW YORK; and MAYOR RUDOLPH
GIULIANI; NEW YORK CITY POLICE
COMMISSIONER HOWARD SAFIR; NEW YORK
CITY POLICE OFFICERS JOHN DOES ## 1-500; NEW
YORK CITY POLICE OFFICER ANTHONY CURTIN;
NEW YORK CITY POLICE SERGEANT PETER
MANTE; and NEW YORK CITY POLICE OFFICER
WALTER DOYLE, in their individual and official
capacities,

Defendants.

----- x

STIPULATION OF SETTLEMENT

WHEREAS, the plaintiffs commenced the above-captioned action with the filing of the Complaint in 1999 pursuant to 42 U.S.C. §1983, the Fourth and Fourteenth Amendments of the United States Constitution, Title VI of the Civil Rights Act of 1964, and the Constitution and laws of the State of New York; and

WHEREAS, the Third Amended Complaint, filed on April 12, 2000, alleges that defendants implement and enforce, encourage, and sanction a policy, practice and custom of unconstitutional stops and frisks of New York City residents by the Street Crime Unit ("SCU") of the New York City Police Department ("NYPD"), and further alleges that SCU officers

stopped individuals without the reasonable suspicion required by the Constitution and often used race and/or national origin as the determinative factors in deciding to stop and frisk individuals, in violation of the Equal Protection Clause of the United States Constitution; and

WHEREAS, on January 26, 2001, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, the Court certified a class consisting of:

All persons who have been or will be subjected by officers of the Street Crimes [sic] Unit (“SCU”) of the New York City Police Department (“NYPD”) to defendants’ policy, practice and/or custom of illegally stopping and/or frisking persons within the City of New York:

(a) in the absence of the reasonable articulable suspicion of criminal activity that is required by the Fourth Amendment to the United States Constitution and Article 1, Section 12, of the New York State Constitution, including, but not limited to, persons who have been stopped, or stopped and frisked,

(b) in a manner that discriminates on the basis of race and/or national origin in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article 1, Section 11, of the New York State Constitution, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000(d) *et seq.*

and

WHEREAS, the parties have engaged in extensive discovery relating to the stop, question, and frisk practices of the SCU and the NYPD, including the depositions of the commanding officers of the SCU during the relevant period, and production of more than 40,000 pages of documents; and

WHEREAS, the terms of this Stipulation of Settlement (the “Stipulation”) were vigorously negotiated over a period of several months; and

WHEREAS, the negotiation discussions have resulted in this Stipulation, which, subject to the approval of the Court, settles this action in the manner and upon the terms set forth below,

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

A. INTRODUCTION

1. The parties enter into this Stipulation for the purpose of avoiding the burdens of further litigation, and mutually to support vigorous, lawful, and nondiscriminatory enforcement of the law. Settlement of this action under the terms stated in this Stipulation is in the public interest because the Stipulation avoids diversion of private and City resources to adversarial action by the parties.

2. Municipal Defendants deny that they had or currently have a policy or engaged in or currently engage in a pattern or practice of conduct that deprived persons of rights, privileges, or immunities secured or protected by the Constitution and laws of the United States.

3. This Stipulation does not and shall not be deemed to constitute any admission by the defendants as to the validity or accuracy of any of the allegations, assertions, or claims made by plaintiffs. No determinations have been issued by the Court concerning the merit or lack of merit of the allegations made by plaintiffs in the Third Amended Complaint. This Stipulation does not constitute an admission, adjudication, or finding on the merits of the above-captioned action.

4. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343. Venue is proper in the United States District Court for the Southern District of New York pursuant to 28 U.S.C. §1391.

B. DEFINITIONS

1. The date upon which this Stipulation enters into effect (the “Effective Date”) is thirty (30) days after the Court dismisses this action with prejudice.

2. Notwithstanding the foregoing in paragraph B.1., in the event that any appeals or petitions are taken or filed regarding the Court's approval of the settlement or dismissal of this action with prejudice, any and all obligations required to be undertaken pursuant to this Stipulation by defendants are stayed pending the final determination of any such appeals or petitions. This Stipulation shall not become effective nor shall the defendants be required to undertake any obligations in the event that the final determination of any such appeals or petitions results in a rejection of the settlement as set forth in this Stipulation or a reversal of the order dismissing this action with prejudice.

3. “Class Members” shall mean all members of the class as defined by the Court, cited in the Preamble above.

4. “Class Representatives” shall mean all named plaintiffs in the above-captioned action.

5. “Class Counsel” shall mean the plaintiffs’ attorneys of record in the above-captioned action.

6. “Municipal Defendants” shall mean defendants the City of New York, the New York City Police Commissioner, and the Mayor of New York City.

7. “UF-250 Report” shall mean the form, designated UF-250 by the NYPD, used by NYPD officers to record stop, question, and frisk activity.

8. “Stop, Question and Frisk” shall mean:

Any incident in which a police officer temporarily detains a person for questioning and physically runs

his/her hands over the clothing of the person
detained, feeling for a weapon.

C. RACIAL PROFILING POLICY

1. The NYPD shall have a written policy regarding racial or ethnic/national origin profiling that complies with the United States Constitution and the New York State Constitution (the "Racial Profiling Policy"). The current Racial Profiling Policy is attached as Attachment A.

2. The NYPD may alter the Racial Profiling Policy at any time in compliance with paragraph C.1. without prior notice to plaintiffs. Neither Class Counsel nor plaintiffs are entitled to any form of consultation regarding the contents of the Racial Profiling Policy. The NYPD has no present intention to alter the Racial Profiling Policy.

3. The Municipal Defendants shall provide to Class Counsel a copy of any new or revised Racial Profiling Policy adopted by the NYPD, within thirty days of adoption.

4. No later than fourteen days following the Effective Date of this Stipulation, the Police Commissioner shall issue a FINEST message stating the current Racial Profiling Policy in effect. A copy of the FINEST message shall be distributed to all NYPD officers, and the FINEST message shall be read aloud at ten consecutive roll calls in all commands.

5. The NYPD shall supervise, monitor, and train officers regarding the Racial Profiling Policy as set forth below in this Stipulation.

D. SUPERVISION AND MONITORING

1. The NYPD Quality Assurance Division ("QAD") has developed protocols necessary to integrate review of stop, question and frisk practices into its existing audit cycle of

NYPD commands, including determinations as to what material shall be reviewed and what standards shall be applied. Municipal Defendants have provided Class Counsel with an audit outline that includes these protocols. QAD shall conduct audits that at a minimum address the following issues:

a. Whether, and to what extent, documents (i.e., UF250s, officer activity logs) that have been filled out by officers to record stop, question and frisk activity have been completed in accordance with NYPD regulations; and

b. Whether, and to what extent, the audited stop, question and frisk activity is based upon reasonable suspicion as reflected in the UF250 forms.

2. The QAD shall continue to audit training records maintained by the NYPD regarding stop, question and frisk practices in a manner consistent with its existing practice.

3. Within 120 days after the Effective Date, review of stop, question and frisk practices shall be fully integrated into existing regular Quality Assurance audit cycles.

4. Within 45 days after final review by the Police Commissioner of each Quality Assurance audit of stop, question and frisk practices, Municipal Defendants shall provide Class Counsel with a copy of the results of such audit.

5. Inquiry about stop, question and frisk activity shall continue to be integrated into the NYPD's existing Compstat review process.

E. TRAINING

1. The NYPD has conducted in service training regarding the Racial Profiling Policy, which has been presented to NYPD commands. The NYPD shall provide annual in service training regarding the Racial Profiling Policy.

2. The NYPD shall maintain that portion of the Police Academy curriculum that pertains to training regarding the Racial Profiling Policy.

3. The NYPD shall continue to train police officers about the legal and factual bases for conducting and documenting stop, question, and frisk activity; continue to implement the Police Academy curriculum for training police officer recruits about the legal and factual bases for conducting and documenting stop, question, and frisk activity; and continue to provide training for Police Academy instructors about the legal and factual bases for conducting and documenting stop, question, and frisk activity.

4. The NYPD shall continue to train all recruits and police officers in cultural diversity and integrity and ethics, including department policies regarding false statements, reporting misconduct by other police officers, professionalism, filing of civilian complaints and cooperating in department investigations.

5. The NYPD shall continue to provide recruit and in service training on the law of search and seizure.

6. The Police Academy will continue to consider informally factual incidents brought to its attention for use in training.

7. The NYPD is in the process of reviewing the recruit curriculum. As part of that process, the NYPD Deputy Commissioner of Training will conduct a review of the present training materials relating to stop and frisk activity and the racial profiling policy. The Deputy Commissioner of Training will complete the review of these materials within ninety (90) days of the Effective Date and will make whatever revisions, if any, that he believes will enhance their effectiveness.

8. The NYPD shall continue to provide all newly promoted Sergeants and Lieutenants with supervisory and leadership training which, in addition to addressing the matters stated in paragraphs E (3) and (4) above, address the Racial Profiling Policy and effective supervisory techniques to promote integrity and prevent misconduct.

9. The Municipal Defendants have provided to Class Counsel a copy of the training materials specified in paragraphs E.1 and E.2 of this Stipulation.

10. The NYPD shall continue to document training provided for in this Stipulation in the same manner and consistent with existing practices and procedures employed by the NYPD.

F. INCIDENT DOCUMENTATION

1. The NYPD shall continue its requirements that all NYPD officers document stop, question and frisk activity in UF-250 Reports. The UF-250 Report form shall conform in all significant respects to Attachment B.

2. The NYPD shall continue to maintain its requirements that NYPD officers and supervisors document stop, question, and frisk activity in additional documents, including but not limited to memo books, logs, and monthly activity reports.

3. The NYPD reserves the right to revise the UF-250 Report from time to time, subject to the condition that any revised version of the UF-250 Report shall contain each and every category of information included in the version of the UF-250 Report attached to this Stipulation.

4. The Municipal Defendants shall provide to Class Counsel a copy of any new or revised UF-250 Report form adopted by the NYPD within 45 days of its adoption.

5. The NYPD shall continue to compile a database consisting of all of the UF-250 Reports (the "UF-250 Database") prepared. A CD Rom of the UF-250 Database shall be

provided to Class Counsel on a quarterly basis and shall be redacted as to information identifying civilians and NYPD officers. A copy of the CD Rom of each quarterly UF-250 Database shall be provided to Class Counsel within six months of the end of the quarter to which the reports correspond.

6. The NYPD may change its stop, question and frisk policies, practices, guidelines, forms, records, and documentation of any kind to enhance or improve them, to comply with changes in the law, or to reflect future technological advances.

G. PUBLIC INFORMATION AND OUTREACH

1. The NYPD has made copies of the NYPD's Department Policy Regarding Racial Profiling, Operations Order 11, dated March 13, 2002, available to attendees of NYPD community meetings.

2. NYPD and plaintiffs agree to conduct joint public meetings to be known as "Joint Community Forums" and to conduct such forums in a cooperative and non-adversarial manner, with an agreed upon agenda and within the framework set forth below:

a. The Joint Community Forums will be held to inform and educate communities about the NYPD racial profiling policy and the rights of citizens who are stopped, questioned and frisked by the police. The forums will be held in a spirit of unity and commitment between NYPD, the class and the community to enhance effective police enforcement while safeguarding citizens' rights.

b. Plaintiffs will designate an individual to act as a coordinator and contact person ("Coordinator") for the Joint Community Forums.

c. Within a reasonable amount of time in advance of each Joint Community Forum, plaintiffs' Coordinator and a representative of NYPD will

meet to plan the agenda and agree on the details of the presentations to be made at the Joint Community Forums, including any materials that will be disseminated.

d. NYPD agrees to send a representative with appropriate knowledge and rank to each of the Joint Community Forums.

e. NYPD agrees to advertise the Joint Community Forums in a manner consistent with its current practices for advertising community affairs events.

f. During the first year of the term of the Stipulation, one Joint Community Forum will be held in each county. For the remainder of the term of the Stipulation, one or two Joint Community Forums will be held each year in rotating locations.

3. NYPD shall develop a program to present 40-50 workshops to select high schools about stop, question and frisk encounters between NYPD and the public, at which materials may be disseminated as noted below in paragraphs G.4. and G.5. At the end of each calendar year occurring during the term of the Stipulation, class counsel may request in writing from defendants the number of workshops presented during the calendar year and defendants will provide the number within sixty (60) days of the receipt of such request.

4. Within ninety days of the Effective Date, NYPD will revise its current pamphlet entitled "Understanding Your Rights," to include appropriate information regarding stop, question and frisk encounters between police and citizens. The pamphlet shall be made available for dissemination to the public when appropriate, as determined by NYPD, in connection with suitable Community Affairs events and programs, including but not limited to

Joint Community Forums, high school workshops described in paragraph G.3., Clergy Liaison Program, Community Council Meetings and special events such as parades and movies.

5. Within ninety days of the Effective Date, NYPD will design and create a palm card providing contact information and procedures, including the telephone number of the Civilian Complaint Review Board, for citizens who have concerns arising from a stop, question and frisk encounter with the police. The palm cards shall be made available for dissemination to the public when appropriate, as determined by NYPD, in connection with suitable Community Affairs events and programs, including but not limited to Joint Community Forums, high school workshops described in paragraph G.3., Clergy Liaison Program, Community Council Meetings and special events such as parades and movies.

H. CONFIDENTIALITY

1. Subject to paragraph H.3 below, Class Counsel shall preserve the confidentiality of all documents and information in any form provided to him or her by the Municipal Defendants unless and until the Municipal Defendants expressly authorize the disclosure of each specific document or piece of information.

2. Nothing in this Stipulation or undertaken pursuant to this Stipulation constitutes or is intended to constitute a waiver of any applicable privilege.

3. All documents and information provided to Class Counsel shall be subject to the January 31, 2000 protective order issued in this case, a copy of which is attached hereto as Attachment C, and all other orders of the Court regarding disclosure of documents and information in this case.

4. All confidential documents subject to the January 31, 2000 protective order, and copies made thereof, produced to plaintiffs by defendants prior to the Effective Date shall be returned to the Corporation Counsel's office upon the Effective Date, unless, prior to the

Effective Date, defendants have expressly authorized the retention of specific documents itemized in writing by plaintiffs until, at the latest, the termination of this Stipulation. All documents provided to plaintiffs in any form by defendants under the terms and during the course of this Stipulation shall be deemed confidential, and plaintiffs shall return to the Corporation Counsel's office all such documents, and any copies made thereof, upon the termination of this Stipulation.

I. DOCUMENT MAINTENANCE

1. The NYPD shall maintain all records that document its compliance with the terms of this Stipulation and all records required by or developed as a result of this Stipulation.

2. The NYPD shall maintain all files that contain any investigation of misconduct with regard to stop, question, and frisk practices of NYPD officers and supervisors, as well as disciplinary files maintained in conjunction therewith, as required by current City and department regulations.

J. CLASS NOTICE

1. The parties shall cause to be published a notice in the form attached hereto as Attachment D. Such notice shall be published in The New York Post, The Amsterdam News, and El Diario three times within the same two-week period, or as otherwise ordered by the Court.

2. Costs of publication of notice shall be borne by Municipal Defendants.

K. EFFECT OF THE SETTLEMENT STIPULATION ON THE PENDING ACTION

1. Plaintiffs will take all necessary and appropriate steps to obtain approval of this Stipulation and dismissal of the above-captioned action with prejudice. If the Court approves this Stipulation, and if there is an appeal from such decision, defendants will join the plaintiffs in defense of the Stipulation.

2. On the Effective Date, the above-captioned action will be dismissed, with prejudice, and without costs, expenses, or fees in excess of the amount authorized by the Court or agreed upon by the parties.

3. In no event shall this Stipulation become effective unless the Court dismisses the above-captioned action with prejudice.

4. The Court shall retain jurisdiction over this action for the purpose of enforcing compliance with the terms and provisions of this Stipulation. The terms of this Stipulation shall be a full, final and complete resolution of this action, with the exception of the individual damages claims of the class representatives and Class Counsel's fees and expenses. The parties reserve their right to appellate review of the Court's decisions concerning compliance under the Stipulation, as governed by applicable law.

5. Upon termination of this Stipulation on December 31, 2007, the Court shall retain no further jurisdiction over this action.

L. DISPUTE RESOLUTION

1. At any time prior to the expiration of this Stipulation, should the Class Representatives and/or class members determine that the Municipal Defendants have failed to comply with any term of the Stipulation, Class Counsel shall forward written notification of such non-compliance to the Deputy Commissioner for Legal Matters of the NYPD and to the Office of the Corporation Counsel.

2. a. Should the Municipal Defendants agree that they have not complied with the specified term(s), the Municipal Defendants shall specifically perform said term(s) within a reasonable period of time, to be mutually agreed upon through the good faith efforts of the parties and their counsel.

- b. Should the Municipal Defendants dispute the Class Representatives' and/or class members' determination of the Municipal Defendants' non-compliance, or if the parties cannot agree on a time frame within which the Municipal Defendants are to perform an obligation with which they agree they have not complied, or in the event the Municipal Defendants fail to perform an obligation they have agreed to perform in accordance with the provisions of paragraph 2(a) above, Class Representatives and or class members may apply to the Court for an order directing specific performance of that term or terms. Such application may not be made fewer than thirty days after the initial notification of non-compliance to the NYPD and Office of the Corporation Counsel.

- c. In no event shall any of the Municipal Defendants be held in contempt for proven non-compliance with any of the terms or provisions of this Stipulation unless and until the Municipal Defendants fail to comply with an order from the Court directing specific performance of such terms or provisions, obtained by the Class Representatives and/or class members in compliance with the provisions of this paragraph.

M. RELEASE

1. The Stipulation, as of the Effective Date, resolves in full any and all claims or rights of action against the defendants and their predecessors, successors, or assignees, together with past, present, and future officials, employees, representatives, and agents of the NYPD and the City of New York (the "Released Persons"), by any Plaintiffs and/or Class Members, including the Class Representatives, contained in and/or arising from the Complaint and Amended Complaints in this action, and any other claims or rights of action that Plaintiffs and/or Class Members, including the Class Representatives, may have based upon or arising from any alleged policy, pattern or practice of unconstitutionality in the stop, question, and frisk

practices of the NYPD that could have been raised at this time, with the exceptions of individual damage claims and Class Counsel's fees and expenses.

2. As of the Effective Date, Plaintiffs and/or Class Members, including the Class Representatives, hereby release and waive any and all claims and any and all rights to pursue, initiate, prosecute or commence any and all causes of action, claims, damages, awards, equitable, legal and administrative relief, interest, demands or rights, before any court, administrative agency or other tribunal, or to file any complaint with regard to acts of commission or omission by the Released Persons related to, connected with, arising out of, or based upon the allegations contained in or arising from the Complaint and Amended Complaints in this action and/or related to, connected with, arising out of or based upon any alleged policy, pattern, practice or custom of unconstitutionality in the stop, question, and frisk practices of the NYPD that could have been raised at this time with the sole exception of individual damage claims.

3. This Release will be, and may be, raised as, a complete defense to and will preclude any action or proceeding encompassed by the release of the Released Persons.

N. APPLICATION AND PARTIES BOUND

1. Each Plaintiff and/or Class Member, including the Class Representatives, shall be deemed to have submitted to the jurisdiction of this Court.

2. This Stipulation applies to and is binding upon the Plaintiffs and/or Class Members, including the Class Representatives, and Municipal Defendants and their officers, agents, employees, successors, and assigns. This Stipulation is enforceable only by the Plaintiffs and/or Class Members, including the Class Representatives, and Defendants. The undersigned representatives of the Plaintiffs and/or Class Members, including the Class Representatives, certify that they are authorized to enter into and consent to the terms and conditions of the

Stipulation and to execute and legally bind the Plaintiffs and/or Class Members, including the Class Representatives, to it.

3. The terms of this Stipulation shall be forever binding on the Plaintiffs and/or Class Members, including the Class Representatives, as well as their heirs, executors, and administrators, successors and assigns, and those terms shall have res judicata and all other preclusive effect in all pending or future claims, lawsuits or other proceedings maintained by or on behalf of any such persons, to the extent those claims, lawsuits, or other proceedings involve matters encompassed by the Release.

O. MODIFICATION AND TERMINATION OF THE SETTLEMENT STIPULATION

1. This Stipulation represents the entire agreement among the parties, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein, or to determine the meaning of any provisions herein. This Stipulation can be modified only on the written consent of all parties.

2. This Stipulation shall terminate on December 31, 2007.

P. ATTORNEYS' FEES AND COSTS

1. Pursuant to applicable law, Class Counsel will make application to the Court for approval of an award of reasonable attorneys' fees and disbursements.

2. To the extent that Class Counsel incurs reasonable attorneys' fees for necessary and appropriate legal services provided to the Class in direct connection with and during the term of the Stipulation, Class Counsel may submit quarterly written invoices to the Municipal Defendants requesting payment for such reasonable attorneys' fees. Class Counsel shall not seek fees or reimbursement of any kind for their retention, if any, of experts, consultants, or other individuals. Municipal Defendants will not pay attorneys' fees exceeding a total of \$25,000.00 for all Class Counsel attorneys' fees combined in any one year. This provision shall in no way prejudice any claim that Plaintiffs' may have for attorneys' fees incurred before the Effective Date of this Stipulation.

Q. NOTIFICATION OF PARTIES UNDER THE STIPULATION

All notices contemplated by this Stipulation (other than notice to the class pursuant to Section J) shall be delivered by hand and by telefax as follows:

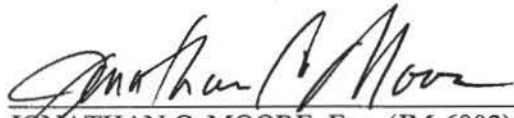
Jonathan Moore, Esq.
William H. Goodman, Esq.
Moore & Goodman, LLP
740 Broadway, Fifth Floor
New York, New York 10003
Fax: (212) 674-4614

Managing Attorney
Adam Gale, Esq.
Jennifer R. Cowan, Esq.
Debevoise & Plimpton
919 Third Avenue
New York, New York 10022
Fax: (212) 909-6836


Heidi Grossman, Esq.
Assistant Corporation Counsel
Special Federal Litigation
Corporation Counsel of the
City of New York
100 Church Street, Room 3-205
New York, New York 10007
Fax: (212) 788-0367

Deputy Commissioner of Legal Matters
New York City Police Department
One Police Plaza
New York, New York 10007
Fax: (646) 610-8428


Dated: New York, New York
September 24, 2003



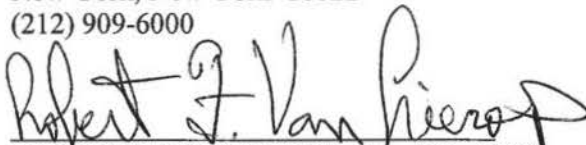
JONATHAN C. MOORE, Esq. (JM-6902)
WILLIAM H. GOODMAN, Esq. (WG-6499)
MOORE & GOODMAN, LLP
740 Broadway – Fifth Floor
New York, New York 10003
(212) 353-9587



JEFFREY FOGEL, Esq. (JF-3948)
NANCY CHANG, Esq. (NC-5331)
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, New York 10012
(212) 614-6420



ADAM GALE, Esq. (AG-8783)
JENNIFER R. COWAN, Esq. (JC-6090)
DEBEVOISE & PLIMPTON
919 Third Avenue
New York, New York 10022
(212) 909-6000




ROBERT F. VAN LIEROP, Esq. (VL-4659)
VAN LIEROP & BURNS, LLP
320 Convent Avenue
New York, New York 10031
(212) 491-8000

*Attorneys for the Plaintiff Class and Individual
Plaintiff Class Representatives*

IT IS SO ORDERED:

SHIRA A. SCHEINDLIN
UNITED STATES DISTRICT JUDGE

MICHAEL A. CARDOZO
CORPORATION COUNSEL OF THE
CITY OF NEW YORK
*Attorney for Defendants The City of New York,
Mayor Rudolph Giuliani, New York City Police
Commissioner Howard Safir, and New York
City Police Officer Anthony Curtin*
100 Church Street, Room 3-205
New York, New York 10007
(212) 788-0892



HEIDI GROSSMAN, Esq. (HG-0933)
Assistant Corporation Counsel

EXHIBIT A

NYC-036894



OPERATIONS ORDER

| | |
|--|----------------|
| SUBJECT: DEPARTMENT POLICY REGARDING RACIAL PROFILING | |
| DATE ISSUED: | NUMBER: |
| 03-13-02 | 11 |

1. The New York City Police Department is committed both to the impartial enforcement of law and the protection of Constitutional rights. Therefore, to emphasize these commitments and to ensure all members of the service engage only in constitutionally sound policing practices, the Department prohibits the use of racial profiling in law enforcement actions. Racial profiling is defined as the use of race, color, ethnicity or national origin as the determinative factor for initiating police action.

2. All police-initiated enforcement actions, including but not limited to arrest, stop and question, and motor vehicle stop, will be based on the standards required by the Fourth Amendment of the U.S. Constitution or other applicable law. Officers must be able to articulate the factors which led them to take enforcement action, in particular those factors leading to reasonable suspicion for a stop and question, or probable cause for an arrest. Officers are also reminded that the use of characteristics such as religion, age, gender, gender identity, or sexual orientation as the determinative factor for taking police action is prohibited.

3. While performing their duties, members are reminded that this policy in no way precludes them from taking into account the reported race, color, ethnicity, national origin, religion, age, gender, gender identity, or sexual orientation of a specific suspect in the same way the member would use pedigree information, e.g., height, weight, age, etc., about specific suspects.


4. Commanding Officers will establish a self-inspection protocol within their command to ensure that the contents of this order are complied with. The Quality Assurance Division will include compliance with this directive in all of its command inspections. Performance in this area will also be included in Compstat review.

5. Commanding Officers will ensure that the contents of this order are brought to the attention of members of their commands.

BY DIRECTION OF THE POLICE COMMISSIONER

DISTRIBUTION
All Commands

EXHIBIT B

| | | |
|---|--|--|
| (COMPLETE ALL CAPTIONS) | | |
|  | STOP, QUESTION AND FRISK REPORT WORKSHEET | |
| | PD344-151A (Rev. 11-02) | |
| Pct. Serial No. | | Date |
| Date | | Pct. Of Occ. |
| Time Of Stop | Period Of Observation Prior To Stop | Radio Run/Sprint # |
| Address/Intersection Or Cross Streets Of Stop | | |
| <input type="checkbox"/> Inside | <input type="checkbox"/> Transit | Type Of Location |
| <input type="checkbox"/> Outside | <input type="checkbox"/> Housing | Describe: |
| Specify Which Felony/P.L. Misdemeanor Suspected | | Duration Of Stop |
| What Were Circumstances Which Led To Stop? (MUST CHECK AT LEAST ONE BOX) | | |
| <input type="checkbox"/> Carrying Objects In Plain View Used In Commission Of Crime e.g., Slim Jim/Pry Bar, etc. | <input type="checkbox"/> Actions Indicative Of Engaging In Drug Transaction. | <input type="checkbox"/> Furtive Movements. |
| <input type="checkbox"/> Fits Description. | <input type="checkbox"/> Actions Indicative Of Engaging In Violent Crimes. | <input type="checkbox"/> Wearing Clothes/Disguises Commonly Used In Commission Of Crime. |
| <input type="checkbox"/> Actions Indicative Of "Casing" Victim Or Location. | <input type="checkbox"/> Actions Indicative of Acting As A Lookout. | |
| <input type="checkbox"/> Suspicious Bulge/Object (Describe) | <input type="checkbox"/> Other Reasonable Suspicion Of Criminal Activity (Specify) | |
| Name Of Person Stopped | Nickname/ Street Name | Date Of Birth |
| Address | | Apt. No. Tel. No. |
| Identification: <input type="checkbox"/> Verbal <input type="checkbox"/> Photo I.D. <input type="checkbox"/> Refused <input type="checkbox"/> Other (Specify) | | |
| Sex: <input type="checkbox"/> Male Race: <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> White Hispanic <input type="checkbox"/> Black Hispanic <input type="checkbox"/> Female <input type="checkbox"/> Asian/Pacific Islander <input type="checkbox"/> American Indian/Alaskan Native | | |
| Age | Height | Weight Hair Eyes Build |
| Other (Scars, Tattoos, Etc.) | | |
| Did Officer Explain Reason For Stop <input type="checkbox"/> Yes <input type="checkbox"/> No | If No, Explain: | |
| Were Other Persons Stopped/ Questioned/Frisked? | <input type="checkbox"/> Yes <input type="checkbox"/> No | If Yes, List Pct. Serial Nos. |
| If Physical Force Was Used, Indicate Type: | | |
| <input type="checkbox"/> Hands On Suspect | <input type="checkbox"/> Drawing Firearm | |
| <input type="checkbox"/> Suspect On Ground | <input type="checkbox"/> Baton | |
| <input type="checkbox"/> Pointing Firearm At Suspect | <input type="checkbox"/> Pepper Spray | |
| <input type="checkbox"/> Handcuffing Suspect | <input type="checkbox"/> Other (Describe) | |
| <input type="checkbox"/> Suspect Against Wall/Car | | |
| Was Suspect Arrested? <input type="checkbox"/> Yes <input type="checkbox"/> No | Offense | Arrest No. |
| Was Summons Issued? <input type="checkbox"/> Yes <input type="checkbox"/> No | Offense | Summons No. |
| Officer In Uniform? <input type="checkbox"/> Yes <input type="checkbox"/> No | If No, How Identified? <input type="checkbox"/> Shield <input type="checkbox"/> I.D. Card <input type="checkbox"/> Verbal | |

NYC 037521

Was Person Frisked? Yes No **IF YES, MUST CHECK AT LEAST ONE BOX**

| | | |
|---|---|--|
| <input type="checkbox"/> Inappropriate Attire - Possibly Concealing Weapon | <input type="checkbox"/> Furtive Movements | <input type="checkbox"/> Refusal To Comply With Officer's Direction(s) Leading To Reasonable Fear For Safety |
| <input type="checkbox"/> Verbal Threats Of Violence By Suspect | <input type="checkbox"/> Actions Indicative Of Engaging In Violent Crimes | <input type="checkbox"/> Violent Crime Suspected |
| <input type="checkbox"/> Knowledge Of Suspects Prior Criminal Violent Behavior/Use Of Force/Use Of Weapon | | <input type="checkbox"/> Suspicious Bulge/Object (Describe) |
| <input type="checkbox"/> Other Reasonable Suspicion of Weapons (Specify) | | |

Was Person Searched? Yes No **IF YES, MUST CHECK AT LEAST ONE BOX** Hard Object Admission Of Weapons Possession

Outline Of Weapon Other Reasonable Suspicion of Weapons (Specify)

Was Weapon Found? Yes No **If Yes, Describe:** Pistol/Revolver Rifle/Shotgun Assault Weapon Knife/Cutting Instrument

Machine Gun Other (Describe)

Was Other Contraband Found? Yes No **If Yes, Describe Contraband And Location** _____

Demeanor Of Person After Being Stopped _____

Remarks Made By Person Stopped _____

Additional Circumstances/Factors: (Check All That Apply)

- | | |
|---|--|
| <input type="checkbox"/> Report From Victim/Witness | <input type="checkbox"/> Evasive, False Or Inconsistent Response To Officer's Questions |
| <input type="checkbox"/> Area Has High Incidence Of Reported Offense Of Type Under Investigation | <input type="checkbox"/> Changing Direction At Sight Of Officer/Flight |
| <input type="checkbox"/> Time Of Day, Day Of Week, Season Corresponding To Reports Of Criminal Activity | <input type="checkbox"/> Ongoing Investigations, e.g., Robbery Pattern |
| <input type="checkbox"/> Suspect Is Associating With Persons Known For Their Criminal Activity | <input type="checkbox"/> Sights And Sounds Of Criminal Activity, e.g., Bloodstains, Ringing Alarms |
| <input type="checkbox"/> Proximity To Crime Location | |
| <input type="checkbox"/> Other (Describe) | |

Pct. Serial No. _____ Additional Reports Prepared: Complaint Rpt.No. _____ Juvenile Rpt. No. _____ Aided Rpt. No. _____ Other Rpt. (Specify) _____

REPORTED BY: Rank, Name (Last, First, M.I.)

Print: _____ Tax# _____
Signature _____ Command _____

REVIEWED BY: Rank, Name (Last, First, M.I.)

Print _____ Tax# _____
Signature _____ Command _____

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
NATIONAL CONGRESS FOR PUERTO RICAN RIGHTS, by Richiè Perez, National Coordinator; and KELVIN DANIELS; POSEIDON BASKIN; DJIBRIL TOURE; HECTOR RIVERA; RAYMOND RAMIREZ; KAHIL SHKYMBA; BRYAN STAIR; AND TIARA BONNER, individually and on behalf of a class of all others similarly situated,

Plaintiffs,

- against -

THE CITY OF NEW YORK; NEW YORK CITY POLICE OFFICERS JOHN DOES ## 1-500; and NEW YORK CITY POLICE OFFICER ANTHONY CURTIN; MAYOR RUDOLPH GIULIANI; and NEW YORK CITY POLICE COMMISSIONER HOWARD SAFIR, in their individual and official capacities,

Defendants.

PROTECTIVE ORDER

99 Civ. 1695
(SAS) (HBP)

-----X
WHEREAS, preparation for trial and trial of the above-captioned action (the "Action") may require the discovery, production and use of documents that contain information deemed confidential or otherwise deemed inappropriate for public disclosure; and

WHEREAS, good cause exists for the entry of an order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. As used herein, a "Party" or the "Parties," respectively, shall mean plaintiffs and defendants individually or together, and "Confidential Materials" shall mean (a) the database of stop and frisk reports (PD344-151, also referred to as "UF 250 reports") for 1998 and 1999, with certain redactions, (b) the weekly Tactical Deployment reports generated by the Street Crime Unit for 1998 and 1999, with certain redactions, (c) any documents that the Parties agree

are subject to this order; and (d) any documents that the Court directs to be produced subject to this order.

2. Confidential Materials shall not be disclosed to any person other than an attorney of record for a Party or any member of the staff of his or her law office, except under the following conditions:

- a. Disclosure may be made only if necessary to the preparation or presentation of the Party's case in the Action.
- b. Disclosure before trial may be made only to a Party or its employees, to an expert who has been retained or specially employed by a Party's attorney in anticipation of litigation or preparation for the Action, to a witness at deposition, or to the Court.
- c. Before any disclosure is made to a person listed in subparagraph (b) above (other than to the Court), the Party's attorney shall provide each such person with a copy of this Stipulation and Protective Order, and such person shall consent in writing, in the form annexed hereto as Exhibit A, not to use the Confidential Materials for any purpose other than in connection with the prosecution or defense of the Action and not to further disclose the Confidential Materials except in testimony taken in this case. The signed consent shall be retained by the Party's attorneys and a copy shall be furnished to the producing Party's attorney upon request. ✓

3. Documents that constitute Confidential Materials shall be marked by placing the word "CONFIDENTIAL" on each page of the document, where a physical copy is produced, or on the thing or container within which it is produced. Deposition testimony concerning any

Confidential Materials which reveals the contents of such materials shall be deemed confidential, and the transcript of such testimony, together with any exhibits referred to therein, shall be separately bound, with a cover page prominently marked "CONFIDENTIAL." Such portion of the transcript shall be deemed to be Confidential Materials within the meaning of this Stipulation and Protective Order.

✱ 4. If any paper which incorporates any Confidential Materials or reveals the contents thereof is filed in this Court, those portions of the papers shall be delivered to the Court enclosed in a sealed envelope bearing the caption of this action, an indication of the nature of the contents, and the following legend:

CONFIDENTIAL

This envelope contains documents or information designated confidential pursuant to an order entered by the United States District Court for the Southern District of New York in the above-captioned action. This envelope shall not be opened or unsealed without the express direction of a judge of this Court, and its contents shall not be displayed or revealed except as the Court may order. This envelope and its contents shall at all times be maintained separate and apart from the publicly available files of this case.

5. The provisions of this Stipulation and Protective Order shall not apply to documents produced by a Party as "Confidential Materials," to the extent that they (a) are obtained from sources other than the producing Party, or (b) are otherwise publicly available. Nothing in this Stipulation and Protective Order shall preclude a producing Party from disclosing or using for any purpose any documents it has produced as Confidential Materials.

6. Any Party intending to use Confidential Materials at trial or at any hearing shall give prior notice to the producing Party. Upon a showing that Confidential Materials may


be disclosed at a hearing or at trial and that the disclosure should be protected, the Court may impose appropriate safeguards for the presentation of such Confidential Materials.

7. Within 30 days after the termination of this case, including any appeals, the Confidential Materials, including all copies, notes, and other materials containing or referring to information derived therefrom, shall be returned to the producing Party's attorneys or, upon their consent, destroyed, and all persons who possessed such materials shall verify their return or destruction by affidavit furnished to the producing Party's attorneys.

8. The terms of this order may be modified by further order of the Court.

Dated: New York, New York
January 31, 2000

SO ORDERED:



U.S.D.J.

EXHIBIT A

The undersigned hereby acknowledges that he/she has read the Stipulation and Protective Order entered in the United States District Court for the Southern District of New York on _____, 2000 in the action entitled National Congress for Puerto Rican Rights v. City of New York, 99 Civ. 1695 (SAS), and understands the terms thereof. The undersigned agrees not to use the Confidential Materials defined therein for any purpose other than in connection with the prosecution or defense of this case, and will not further disclose the Confidential Materials except in testimony taken in this case.

Date

Signature

Print Name

Occupation

EXHIBIT D

Without Prejudice
For Settlement Purposes Only

LEGAL NOTICE

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
 KELVIN DANIELS, et al., :
 :
 Plaintiffs, : 99 Civ. 1695 (SAS)
 :
 -against- :
 :
 THE CITY OF NEW YORK, et al., :
 :
 Defendants. :
 ----- X

IF YOU HAVE BEEN STOPPED AND/OR FRISKED BY A MEMBER OF THE NEW YORK CITY POLICE DEPARTMENT (“NYPD”), YOU MAY HAVE THE RIGHT TO COMMENT ON OR OBJECT TO A PROPOSED LEGAL SETTLEMENT ABOUT THE NYPD’S POLICIES AND PROCEDURES CONCERNING STOPS AND FRISKS.

A settlement has been proposed in a class action lawsuit against New York City, the Commissioner of the NYPD, and other City officials, known as *Daniels v. City of New York*. The complaint in the lawsuit alleges that defendants implement and enforce, encourage, and sanction a policy, practice and custom of unconstitutional stops and frisks of New York City residents by the Street Crime Unit of the NYPD. Defendants deny these allegations. Plaintiffs’ counsel are: Center for Constitutional Rights; Moore & Goodman, LLP; Debevoise & Plimpton; and Van Lierop, Burns.

NOTICE IS HEREBY GIVEN, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Southern District of New York (the “Court”), dated _____, 2003, that a hearing (the “Fairness Hearing”) will be held before the Honorable Shira A. Scheindlin, in the United States Courthouse, 500 Pearl Street, Courtroom 12C, New York, New York, 10007 at 1:00 p.m., on November 25, 2003 to determine whether a proposed settlement of this action, on the terms and conditions set forth in the Stipulation of Settlement dated September 24, 2003 (the “Settlement”), should be approved as fair, reasonable and adequate.

If the Settlement is approved, Class Members will be bound by its terms and deemed to have released the defendants from liability of all claims raised in this class action lawsuit. Approval of the Settlement will not constitute a release of, and will not limit, Class Members' rights to sue for money damages if his or her rights have been violated. This Notice does not constitute a determination by the Court concerning the merit or lack of merit of the allegations made by plaintiffs in the complaint. Further, the Settlement and Notice are not to be construed as admissions of liability of any kind whatsoever by the defendants.

IF YOU ARE A MEMBER OF THE “CLASS” IN THIS CASE, YOUR RIGHTS MAY BE AFFECTED BY THIS SETTLEMENT. IF YOU ARE A MEMBER OF THE “CLASS,” YOU HAVE THE RIGHT TO COMMENT ON OR OBJECT TO THE PROPOSED SETTLEMENT.

ARE YOU A MEMBER OF THE CLASS?

A class was certified by the Court in this case consisting of:

All persons who have been or will be subjected by officers of the Street Crime Unit of the New York City Police Department to defendants' policy, practice and/or custom of illegally stopping and/or frisking persons within the City of New York:

(a) in the absence of the reasonable articulable suspicion of criminal activity that is required by the Fourth Amendment to the United States Constitution and Article 1, Section 12, of the New York State Constitution, including, but not limited to, persons who have been stopped, or stopped and frisked,

(b) in a manner that discriminates on the basis of race and/or national origin in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article 1, Section 11, of the New York State Constitution and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000(d) *et seq.*

WHAT BENEFITS WOULD THE PROPOSED SETTLEMENT PROVIDE?

This lawsuit did not ask for money for the Class, and the proposed Settlement does not involve the payment of any money to the Class.

Among other things, the proposed Settlement provides that the NYPD has agreed to:

- Maintain a written racial profiling policy that will comply with the Constitution of the United States and the State of New York (the "Racial Profiling Policy").
- Maintain its current requirement that all stop, question and frisk activity be documented on a special NYPD form, known as a UF-250 form.
- Audits by the Quality Assurance Division of the NYPD of NYPD documentation of stop, question and frisk activity to determine (1) whether, and to what extent, documentation of stop, question and frisk activity is being completed in accordance with NYPD regulations and (2) whether, and to what extent, the audited stop, question and frisk activity is based upon reasonable suspicion as reflected in UF-250 forms.
- Continue to compile a computerized database of all completed UF-250 forms, which reflect stop, question and frisk activity conducted by the NYPD. These databases will be provided to the lawyers for the class and class representatives on a quarterly basis, after the names of the officers and the civilians are deleted for privacy reasons.
- Continue to require its officers and supervisors to document stop, question and frisk activity on other written NYPD forms, including the police officers' memo books and monthly activity reports.
- Continue to provide training, and to document and record training, regarding: the Racial Profiling Policy, which will be provided on an annual in service basis; the proper factual and legal bases for conducting and documenting stop, question and frisk activity; cultural diversity and integrity and ethics, including department policies

regarding false statements, reporting misconduct by other police officers, professionalism, filing of civilian complaints and cooperating in department investigations.

- Conduct joint public meetings with the Class Members and/or Class representatives, with an agreed upon agenda. These meetings will address the Racial Profiling Policy and the rights of persons stopped, questioned and frisked by the police. Five meetings (one in each borough) will be held in the first year after the Settlement takes effect, and one to two meetings will be held in each of the three years thereafter.
- Revise its pamphlet "Understanding Your Rights" to include appropriate information regarding stop, question and frisk encounters between civilians and the police and make it available for dissemination at suitable public events and programs.
- Design and create a palm card which provides the telephone number of the Citizen Complaint Review Board for those who have concerns about stop, question and frisk encounters with the NYPD. This palm card will be made available for dissemination at suitable public events and programs.
- Develop a program of 40-50 workshops to be held at selected high schools in the City of New York about educating students as to their legal rights in stop, question and frisk encounters with the police. At these workshops, the pamphlet "Understanding Your Rights" and the palm card may be distributed.
- A method to resolve any disputes which may arise regarding compliance with this agreement.

The Court will have the power to enforce compliance with the terms of the Settlement. The Settlement will be in effect until December 31, 2007. During that time lawyers for the Class and the Class representatives will take steps to ensure that the NYPD complies with the terms of the Settlement.

HOW CAN YOU COMMENT ON (OR OBJECT TO) THE PROPOSED SETTLEMENT?

If you are a Class Member, you have the right to object to and/or comment on the proposed Settlement. Your comment may be in favor of the proposed settlement, or you may object to any aspect of the proposed Settlement.

You must file your comment or objection in writing with the Clerk of the Court, United States District Court, 500 Pearl Street, New York, New York, 10007. Your comment or objection must be received by the Court **no later than October 30, 2003**, which is 26 days before the Fairness Hearing. Comments or objections received after **October 30, 2003** will not be considered (by appeal or otherwise). Each comment or objection must include the name of this Action and the case number on the top of the first page of the comment or objection. In addition, for any such comment or objection to be considered, it must be served on each of the following counsel on the same date that it is provided to the Court:

Plaintiffs' Counsel: Managing Attorney and Jonathan Moore, Esq.
Debevoise & Plimpton William Goodman, Esq.
919 Third Avenue Moore & Goodman, LLP
New York, NY 10022 740 Broadway, 5th floor
New York, NY 10003

and

Defendants' Counsel: Heidi Grossman, Esq.
New York City Law Department
100 Church Street
New York, NY 10007

Any Class Member who files and serves a timely written comment or objection as described above may also appear at the Fairness Hearing either in person or through counsel retained at the Class Member's expense. Class Members or their counsel intending to appear at the Fairness Hearing must serve on the counsel listed above, and file with the Court at the address listed above, no later than October 30, 2003, a Notice of Intention to Appear, setting forth the name of the case, the case number, and the name and address of the Class Member (and if applicable, the name and address of the Class Member's counsel). Any Class Member who does not timely file and serve a Notice of Intention to Appear will not be permitted to appear at the Fairness Hearing except for good cause shown. Class Members do not need to appear at the Fairness Hearing or take any other action to indicate their approval of the proposed Settlement.

HOW CAN YOU LEARN MORE ABOUT THE PROPOSED SETTLEMENT?

This Notice contains only a summary of the terms of the proposed Settlement. You may inspect the proposed Settlement in full at the Office of the Clerk of the United States District Court for the Southern District of New York, United States Courthouse, 500 Pearl Street, New York, New York, 10007 during regular business hours.

PLEASE DO NOT CALL THE COURT OR THE CLERK OF THE COURT.

Dated: _____ 2003

By Order of the Court
Clerk of the Court

Exhibit B

QAD # 493-2, s.02

**POLICE DEPARTMENT
CITY OF NEW YORK**

December 23, 2002

From: Deputy Commissioner, Strategic Initiatives
To: Chief of Department
Subject: INTRODUCTION OF SELF INSPECTION WORKSHEETS #802 -"STOP, QUESTION AND FRISK REPORT WORKSHEET" AND #802A - "POLICE INITIATED ENFORCEMENT"

1. In order to evaluate compliance with Operations Order #11s. 02, a two (2) part procedure is being implemented immediately. The first part involves an examination, by the Quality Assurance Division, of information reported by commands on Stop, Question and Frisk Report Worksheets (PD344-151A). The second part involves the monitoring by command Integrity Control Officers of other police initiated enforcement and the Quality Assurance Division evaluating the documentation of that monitoring. The procedure is detailed below.

2. **Stop, Question and Frisk Report Worksheets:** In order to evaluate the quality of Stop, Question and Frisk Report Worksheets a new self-inspection(#802) (see attached)) has been created. The utilization of this worksheet will provide a means to evaluate if the Stop, Question and Frisk Report Worksheet has been properly prepared and reviewed in accordance with Patrol Guide Procedure 212-11. The self-inspection will examine the Stop, Question and Frisk Index Coversheet (PD344-152) and twenty-five (25) Stop, Question and Frisk Reports to determine the following:

- a) That a photocopy is maintained in a binder at the desk, attached to the Index Coversheet). Captions on the Index Coversheet will also be examined.
- b) That precinct serial numbers are properly entered and photocopies are forwarded to precinct detective squads.

Confidential

NYC 037890

PLAINTIFFS' EXHIBIT

89

c) That all applicable captions have been completed, with added emphasis placed on supervisor's review and captions documenting a Level III type of encounter ("Specify Felony/Misdemeanor Suspected" and "What Were Circumstances Which Lead To Stop")

d) That members of the service are making the required Activity Log entries, detailing the circumstances of the stop.

3. **Police Initiated Enforcement:** A second self-inspection (#802-A) (see attached) entitled "Police Initiated Enforcement" has been created. This self-inspection will be utilized in conjunction with the self-inspection entitled "Stop, Question and Frisk Report Worksheet," to evaluate compliance with the directives mandated in Operations Order 11s.02. This self-inspection must be performed by command Integrity Control Officers and/or Assistant Integrity Control Officers. It involves the reviewing of Arrest Reports resulting from self-initiated arrests where police initiated enforcement is likely, such as CPCS, CPW and those arrests where PSNY is the complainant. The Quality Assurance Division will evaluate the command's compliance with this procedure. Command Integrity Control Officers and/or Assistant Integrity Control Officers will be required to do the following:

- The last five (5) arrest reports for the month which result from self-initiated arrests where PSNY is the complainant, as stated above, will be reviewed and copies will be maintained in a folder for Q.A.D. evaluation. Any deficiencies noted, including but not limited to, no Stop, Question and Frisk Report prepared for a stop situation pursuant to a Level III type of encounter, will be documented on this worksheet.

4. In order to satisfy the requirements outlined in Operations Order 11s.02 commands are mandated to complete both self-inspections on a monthly basis. A Finest Message has been transmitted to inform commands of this new mandated procedure.

5. The attached worksheets should immediately be distributed to all affected commands to ensure compliance.

6. For your attention.


Michael J. Farrell
DEPUTY COMMISSIONER

MJF:PJC:JC:JPL:dr

(12/2002)

Page 1 of 3

COMMAND: _____

Worksheet # 802

SUBJECT: STOP, QUESTION AND FRISK REPORT WORKSHEET (PD 344-151A)

DATE(s) OF EVALUATION: _____ PERIOD EVALUATED _____

EVALUATED BY: _____
(Rank) Printed Name/SignatureCOMMAND REVIEWING OFFICER: _____
(Rank) Printed Name/Signature

COMMAND RATINGS: (Circle One) Superior Good Needs Improvement Inadequate

REFERENCE: P.G. 212-11, Street Encounters - Legal Issues (PD344-153)

The STOP, QUESTION AND FRISK REPORT WORKSHEET must be prepared in EVERY STOP situation pursuant to a LEVEL III Type of Encounter as described in activity log insert - Street Encounters - Legal Issues (PD344-153). However, the STOP, QUESTION and FRISK REPORT WORKSHEET is not prepared where the officer makes a summary arrest or issues a summons for an observed violation unless the suspect was initially stopped for investigation pursuant to a Level III Type of Encounter. Additionally, ACTIVITY LOG entries, detailing the circumstances of the stop, MUST also be prepared in all such encounters.

1. Is a Stop, Question and Frisk Report Worksheet Binder, with photocopies of the reports, maintained at the Desk, as per P.G.212-11? Yes _____ No _____
2. Does the binder also include the required Stop, Question and Frisk Index Coversheet (PD344-152)? Yes _____ No _____
3. Select the last twenty-five (25) Stop, Question and Frisk Report Worksheets (PD 344-151A) from the binder maintained at the Desk.
4. Utilizing the Worksheet - page #3, ascertain the following information relative to these reports:
 - (A) Are all twenty-five (25) reports listed and applicable captions completed on the Stop, Question and Frisk Index Cover sheet including but not limited to a properly assigned Precinct Serial Number? Indicate: Yes or No on worksheet
 - (B) Are all twenty-five (25) of the reports filed in the binder and numerically correct according to the serial number? Indicate: Yes or No on worksheet
 - (B-1) Has a photocopy been forwarded to the Precinct Detective Squad? Indicate: Yes or No on worksheet
 - (C) Are all applicable captions completed on the Stop, Question and Frisk Report Worksheet (PD344-151A)? Indicate: Yes or No on worksheet

**When answering Question (C) do not include captions which are included in Questions (C-1), (C-2), (C-3), (C-4) and (D) indicated below.
 - (C-1) Is the crime indicated in the caption "Specify Felony/Misdemeanor Suspected?" Indicate on worksheet:
 - * Yes/Does Meet F/M Suspected
 - * Yes/Does Not Meet F/M Suspected
 - No - If left blank

Note on worksheet if the crime indicated in the "Specify Felony / Misdemeanor Suspected" caption (does meet) or (does not meet) the requirement for a Level III Type of Encounter, as described in Activity Log Insert Street Encounters - Legal Issues (PD344-153). That requirement mandates that the crime suspected must be a felony or Penal Law misdemeanor.

(12/2002)

Page 2 of 3

(con't) # 802 - STOP, QUESTION AND FRISK REPORT WORKSHEET (PD 344-151A)

(C-2) Is at least one box checked for Caption "What Were Circumstances Which Lead To Stop" Indicate: Yes or No on worksheet

(C-3) Is the caption "Was Person Frisked" accurately completed? Complete worksheet as follows:

Box "No" is checked - Since no additional boxes need to be checked, the caption is accurately completed, therefore - Indicate Yes on worksheet.

Box "Yes" is checked and no other boxes are checked - Since at least one additional box must be checked, the caption is not accurately completed, therefore - Indicate No on worksheet.

Neither "Yes" nor "No" boxes are checked - Indicate No on worksheet

(C-4) Is the caption "Was Person Searched" accurately completed? Complete worksheet as follows:

Box "No" is checked - Since no additional boxes need to be checked, the caption is accurately completed, therefore - Indicate Yes on worksheet.

Box "Yes" is checked and no other boxes are checked - Since at least one additional box must be checked, the caption is not accurately completed, therefore - Indicate No on worksheet.

Neither "Yes" nor "No" boxes are checked - Indicate No on worksheet

(D) Are all captions for the Reviewing Supervisor (Name, Tax #, Command and Signature) completed? Indicate: Yes or No on worksheet

5. Utilizing the Worksheet - page #3, select the last five (5) Stop, Question and Frisk Reports and indicate the Precinct Serial Numbers and the name of the reporting officer below:

| Precinct Serial Number | Reporting Officer |
|------------------------|-------------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

Examine Reporting Officer's Activity Log and indicate on worksheet if corresponding Activity Log Entries, detailing the circumstances of the stop, were made relating to the Stop Question and Frisk Report prepared?

Indicate: Yes or No on worksheet

Command - Comments/Recommendations for Improvement: (Use rear of this page if needed)

Worksheet # 802

Stop, Question and Frisk Report Worksheet

| "A" Listed on Cover sheet (PD344-152) (Serial # Assigned, and Applicable Captions completed) | "B" Photocopy in Binder? Serial # Correct, etc. | "B-1" Photocopy to Precinct Detective Squad | "C" Are All Applicable Captions Completed (Exclude Captions listed in Columns C-1, C-2, C-3, C-4, & D) | "C-1" Caption "Specify Which Felony/Misdemeanor Suspected" | "C-2" What were the Circumstances which lead to the Stop? | "C-3" Was person Frisked? | "C-4" Was person Searched? | "D" Reviewing Supervisor Captions (Name, Tax #, Command and Signature) | Check * Corresponding Activity Log entries (#21 through #25 only) |
|---|---|---|--|--|---|---------------------------------|----------------------------------|--|--|
| 1. | | | | | | | | | |
| 2. | | | | | | | | | |
| 3. | | | | | | | | | |
| 4. | | | | | | | | | |
| 5. | | | | | | | | | |
| 6. | | | | | | | | | |
| 7. | | | | | | | | | |
| 8. | | | | | | | | | |
| 9. | | | | | | | | | |
| 10. | | | | | | | | | |
| 11. | | | | | | | | | |
| 12. | | | | | | | | | |
| 13. | | | | | | | | | |
| 14. | | | | | | | | | |
| 15. | | | | | | | | | |
| 16. | | | | | | | | | |
| 17. | | | | | | | | | |
| 18. | | | | | | | | | |
| 19. | | | | | | | | | |
| 20. | | | | | | | | | |
| 21.* | | | | | | | | | |
| 22.* | | | | | | | | | |
| 23.* | | | | | | | | | |
| 24.* | | | | | | | | | |
| 25.* | | | | | | | | | |
| Totals | | | | | | | | | |

NYC 037894

Confidential

[Rev. 12/2002]

Page 1 of 2

COMMAND: _____ WORKSHEET #802- A

SUBJECT: POLICE INITIATED ENFORCEMENT

EVALUATED BY: _____ / _____
(Rank) (Printed Name / Signature)

DATE(S) OF EVALUATION: _____ PERIOD
EVALUATED: _____

COMMAND REVIEWING OFFICER: _____ / _____
(Rank) (Printed Name/Signature)

COMMAND RATINGS: (Circle One) Superior Good Needs Improvement Inadequate

REFERENCE: P.G. 212-11 and Operations Order 11s., 02.

As indicated in Operations Order #11, s. 02 - "All police-initiated enforcement actions, including but not limited to arrest, stop and question, and motor vehicle stop, will be based on the standards required by the Fourth Amendment of the U.S. Constitution or other applicable law. Officers must be able to articulate the factors which led them to take enforcement action, in particular those factors leading to reasonable suspicion for a stop and question, or probable cause for an arrest. Officers are also reminded that the use of characteristics such as religion, age, gender, gender identity, or sexual orientation as the determining factor for taking police action is prohibited." In conjunction with Worksheet #802 - "Stop, Question and Frisk Report," this worksheet will be prepared by COMMAND INTEGRITY CONTROL OFFICERS OR ASSISTANT INTEGRITY CONTROL OFFICERS, to monitor compliance with the directives mandated in the above Operations Order and Patrol Guide Procedure 212-11.

Section # 1 (MUST BE PERFORMED BY COMMAND ICO OR ASSISTANT ICO)

Reviewing of arrest reports from self-initiated arrests (e.g. CPCS, CPW and those arrests where PSNY is the complainant on the Complaint Report)

ICO and/or Assistant ICO will review the last five (5) different arrest incidents for the month. Copies of all OLBS reviewed will be kept in a folder labeled month/year, for review by QAD personnel. Indicate arrests reviewed below. Actions taken by the I.C.O./Assistant I.C.O. and any deficiencies noted, (including no Stop, Question and Frisk Report, when required), will also be documented below.

| Date of Arrest | Arrest Number | Arresting Officer | Top Charge | Deficiency Noted (Yes/No) |
|----------------|---------------|-------------------|------------|------------------------------|
| 1) _____ | _____ | _____ | _____ | _____ |
| 2) _____ | _____ | _____ | _____ | _____ |
| 3) _____ | _____ | _____ | _____ | _____ |
| 4) _____ | _____ | _____ | _____ | _____ |
| 5) _____ | _____ | _____ | _____ | _____ |

Indicate below actions taken by ICO or Assistant I.C.O. and any deficiencies noted - IF NONE STATE SO: (Use rear of form if needed)

Rev. 12/2002]

Page 2 of 2

(con't) 802-A POLICE INITIATED ENFORCEMENT

Section # 2 (TO BE COMPLETED BY Q.A.D. PERSONNEL DURING EVALUATION)

1) Is the ICO/Assistant ICO completing all parts of section #1 of this report? _____

a) List any missing information in section #1:

2) Is the ICO/Assistant ICO documenting the review of five (5) OLBS reports per month? _____

a) If no, list the number documented for the month: _____

3) Are copies of the OLBS reports reviewed, kept in a monthly folder? _____

a) List any missing OLBS reports: _____

4) Is a copy of section #1 included in the monthly folder? _____

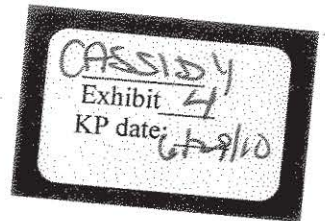
5) Are photocopies of Stop, Question and Frisk Reports, when applicable, kept in the monthly folder? _____

6) Are instances where it is indicated that deficiencies were noted, and/or disciplinary action taken, identified on the inspection? _____

List below any miscellaneous deficiencies noted during evaluation, not indicated above:

QAD # 493-2, s.02

POLICE DEPARTMENT
CITY OF NEW YORK



December 11, 2002

From: Commanding Officer, Quality Assurance Division
To: Deputy Commissioner, Strategic Initiatives
Subject: INTRODUCTION OF SELF INSPECTION WORKSHEETS #802 -"STOP, QUESTION AND FRISK REPORT WORKSHEET" AND #802A - "POLICE INITIATED ENFORCEMENT"

1. In order to evaluate compliance with Operations Order #11s. 02, a two (2) part procedure is proposed. The first part involves an examination, by the Quality Assurance Division, of information reported by commands on Stop, Question and Frisk Report Worksheets (PD344-151A). The second part involves the monitoring by command Integrity Control Officers of other police initiated enforcement and the Quality Assurance Division evaluating the documentation of that monitoring. The procedure is detailed below.

2. **Stop, Question and Frisk Report Worksheets:** In order to evaluate the quality of Stop, Question and Frisk Report Worksheets a new self-inspection(#802) (see attached)) has been created. The utilization of this worksheet will provide a means to evaluate if the Stop, Question and Frisk Report Worksheet has been properly prepared and reviewed in accordance with Patrol Guide Procedure 212-11. The self-inspection will examine the Stop, Question and Frisk Index Coversheet (PD344-152) and twenty-five (25) Stop, Question and Frisk Reports to determine the following:

- a) That a photocopy is maintained in a binder at the desk, attached to the Index Coversheet). Captions on the Index Coversheet will also be examined.
- b) That precinct serial numbers are properly entered and photocopies are forwarded to precinct detective squads.

Confidential

NYC 037897

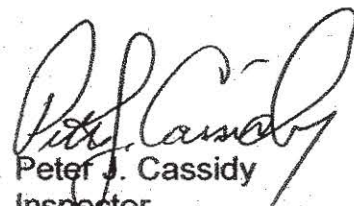
- c) That all applicable captions have been completed, with added emphasis placed on supervisor's review and captions documenting a Level III type of encounter ("Specify Felony/Misdemeanor Suspected" and "What Were Circumstances Which Lead To Stop")
- d) That members of the service are making the required Activity Log entries, detailing the circumstances of the stop.

3. **Police Initiated Enforcement:** A second self-inspection (#802-A) (see attached) entitled "Police Initiated Enforcement" has been created. This self-inspection will be utilized in conjunction with the self-inspection entitled "Stop, Question and Frisk Report Worksheet," to evaluate compliance with the directives mandated in Operations Order 11s, 02. This self-inspection must be performed by command Integrity Control Officers and/or Assistant Integrity Control Officers. It involves the reviewing of Arrest Reports resulting from self-initiated arrests where police initiated enforcement is likely, such as CPCS, CPW and those arrests where PSNY is the complainant. The Quality Assurance Division will evaluate the command's compliance with this procedure. Command Integrity Control Officers and/or Assistant Integrity Control Officers will be required to do the following:

- The last five (5) arrest reports for the month which results from self-initiated arrests where PSNY is the complainant, as stated above, will be reviewed and copies will be maintained in a folder for Q.A.D. evaluation. Any deficiencies noted, including but not limited to, no Stop, Question and Frisk Report prepared for a stop situation pursuant to a Level III type of encounter, will be documented on this worksheet.

4. In order to satisfy the requirements outlined in Operations Order 11s.02 it is recommended that commands be mandated to complete both self-inspections on a monthly basis. It is also recommended that the proposed Finest Message (attached) be transmitted to inform commands of this new mandated procedure.

5. For your consideration.


Peter J. Cassidy
Inspector

PJC:JC:JPL:dr

Exhibit C

OLD

005



STOP AND FRISK REPORT
PD 344-151 (8-84)-12

(Ref. P.G. 116-33)

| | | | | |
|---|------------------|-------------------------------|------|--------------|
| TIME | DATE OF STOPPING | PCT. | POST | PCT. SER. NO |
| PERIOD OF OBSERVATION PRIOR TO STOPPING | | LOCATION/KIND OF PUBLIC PLACE | | |

FACTORS WHICH CAUSED OFFICER TO REASONABLY SUSPECT PERSON STOPPED (include information from third persons and their identity, if known)

| | | | | | | | | | |
|---|---|--|-----|--------|--------|------|------|-------|------------------|
| CRIME SUSPECTED | How Long was Person Stopped | REMARKS BY PERSON STOPPED | | | | | | | |
| OFFICER IN UNIFORM <input type="checkbox"/> YES <input type="checkbox"/> NO | IF NO. <input type="checkbox"/> SHIELD <input type="checkbox"/> I.D. CARD | WAS FORCE USED <input type="checkbox"/> YES IF YES, DESCRIBE <input type="checkbox"/> NO | | | | | | | |
| WAS PERSON FRISKED <input type="checkbox"/> YES <input type="checkbox"/> NO | HOW IDENTIFIED <input type="checkbox"/> BOTH | IF YES, DESCRIBE WHERE MADE AND BASIS FOR INSIDE SEARCH | | | | | | | |
| Was Weapon Found <input type="checkbox"/> YES <input type="checkbox"/> NO | IF YES, DESCRIBE | Was Other Contraband Found <input type="checkbox"/> YES IF YES, DESCRIBE <input type="checkbox"/> NO | | | | | | | |
| NAME OF PERSON STOPPED (if given) and ADDRESS | | | | | | | | | |
| SEX | RACE | DATE OF BIRTH | AGE | HEIGHT | WEIGHT | HAIR | EYES | BUILD | OTHER (Describe) |

IF PERSON STOPPED IS SUBSEQUENTLY ARRESTED, INCLUDE ADDITIONAL FACTORS WHICH LED TO ARREST

| | | | | | | |
|---------------|--|-----------------------------|---------|------|----------------------------------|---------|
| CRIME CHARGED | CONTRABAND FOUND IN POST-ARREST SEARCH | COURT IN WHICH CASE PENDING | | | | |
| RANK | SIGNATURE OF REPORTING OFFICER | SHIELD | COMMAND | RANK | SIGNATURE OF SUPERVISORY OFFICER | COMMAND |

1st COPY - CENTRAL RECORDS DIVISION - CRIMINAL RECORDS SECTION — 2nd COPY - PRECINCT FILE — 3rd COPY - PRECINCT DETECTIVE UNIT

PLAINTIFFS' EXHIBIT
449

NYC 016341

Exhibit D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

DAVID FLOYD, LALIT CLARKSON, DEON DENNIS,
and DAVID OURLICHT, individually and on behalf of a
class of all others similarly situated;

Plaintiffs,

-against-

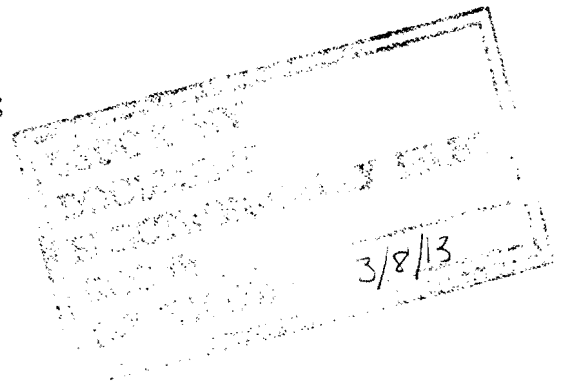
THE CITY OF NEW YORK; NEW YORK CITY POLICE
COMMISSIONER RAYMOND KELLY, in his individual
and official capacity; MAYOR MICHAEL BLOOMBERG,
in his individual and official capacity; NEW YORK CITY
POLICE OFFICER RODRIGUEZ, in his individual
capacity; NEW YORK CITY POLICE OFFICER
GOODMAN, in his individual capacity; NEW YORK
CITY POLICE OFFICER JANE DOE, in her individual
capacity; NEW YORK CITY POLICE OFFICER ERIC
HERNANDEZ, Shield # 15957, in his individual capacity;
NEW YORK CITY POLICE OFFICER CORMAC
JOYCE, Shield # 31274, in his individual capacity; NEW
YORK CITY POLICE SERGEANT JAMES KELLY,
Shield # 92145, in his individual capacity; NEW YORK
CITY POLICE OFFICER LUIS PICHARDO, Shield #
00794, in his individual capacity; NEW YORK CITY
POLICE OFFICER ANGELICA SALMERON, Shield #
7116, in her individual capacity; NEW YORK CITY
POLICE OFFICER MICHAEL COUSIN HAYES, Shield
3487, in his individual capacity; NEW YORK CITY
POLICE OFFICER CHRISTOPHER MORAN, in his
individual capacity; and NEW YORK CITY POLICE
OFFICERS JOHN DOES # 1 through #11, in their
individual capacities;

Defendants.

----- x

STIPULATION AND
[PROPOSED] ORDER OF
WITHDRAWAL OF
INDIVIDUAL DAMAGE
CLAIMS

08 Civ. 01034 (SAS)



WHEREAS, Plaintiffs David Floyd and Lalit Clarkson commenced this proceeding by filing a complaint on or about January 31, 2008 alleging violations of certain federal rights; and

WHEREAS, Plaintiffs David Floyd, Lalit Clarkson, and Deon Dennis filed a First Amended Complaint on or about April 15, 2008 on behalf of themselves and others similarly situated seeking declaratory and injunctive relief and individual damages; and

WHEREAS, Plaintiffs David Floyd, Lalit Clarkson, Deon Dennis, and David Ourlicht filed a Second Amended Complaint on October 20, 2008 on behalf of themselves and others similarly situated seeking declaratory and injunctive relief; and

WHEREAS, the Second Amended Complaint also sought compensatory and punitive damages on behalf of Plaintiffs Floyd, Clarkson, Dennis, and Ourlicht (the "Individual Damage Claims"); and

WHEREAS, Defendants have denied any and all liability arising out of Plaintiffs' allegations; and

WHEREAS, by Opinion and Order dated August 31, 2011 (Docket Entry No. 153), the Court dismissed defendants Raymond Kelly and Michael Bloomberg from the case;

WHEREAS, at the time of the filing of these complaints, Plaintiff were represented by the Center for Constitutional Rights and Beldock Levine & Hoffman LLP, and are now represented by those firms in addition to Covington & Burling LLP; and

WHEREAS, Plaintiffs Floyd, Clarkson, Dennis, and Ourlicht have authorized their counsel to withdraw their respective Individual Damage Claims in this action; and

WHEREAS, Plaintiffs Floyd, Clarkson, Dennis, and Ourlicht, through counsel, expressed their desire at the November 27, 2012 hearing in this action to withdraw their respective Individual Damage Claims and as a result the parties and the Court agreed at the November 27, 2012 hearing that this case must be tried to the Court.

NOW THEREFORE, IT IS HEREBY STIPULATED, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), by and between the parties through their respective counsel of record, that:

1. Plaintiffs agree to withdraw the Individual Damage Claims, with prejudice, against all defendants against whom such Claims were asserted or could have been asserted, including the individuals identified in the Second Amended Complaint as “JOHN DOES # 1 through #11,” and agree not to assert any other damages claim in this action.

2. Plaintiffs specifically withdraw the following paragraphs of their Second Amended Complaint

- a. Plaintiffs’ allegation “In addition, the named Plaintiffs seek compensatory and punitive damages for themselves” in paragraph 7 of the Second Amended Complaint is withdrawn;
- b. Plaintiffs’ allegation “The named Plaintiffs are seeking compensatory and punitive damages only on an individual basis” in paragraph 40 of the Second Amended Complaint is withdrawn;
- c. Plaintiffs’ allegation “and damages” in paragraph 144 of the Second Amended Complaint is withdrawn;
- d. Plaintiffs’ allegation “thus entitling Plaintiff Floyd to an award of punitive damages” in paragraph 149 of the Second Amended Complaint is withdrawn;
- e. Plaintiffs’ allegation “thus entitling Plaintiff Clarkson to an award of punitive damages” in paragraph 154 of the Second Amended Complaint is withdrawn;
- f. Plaintiffs’ allegation “thus entitling Plaintiff Dennis to an award of punitive damages” in paragraph 159 of the Second Amended Complaint is withdrawn;

- g. Plaintiffs' allegation "thus entitling Plaintiff Ourlicht to an award of punitive damages" in paragraph 164 of the Second Amended Complaint is withdrawn;
- h. Plaintiffs' allegation "thus entitling Plaintiffs to an award of punitive damages" in paragraph 168 of the Second Amended Complaint is withdrawn;
- i. Plaintiffs' allegation "and damage" in paragraph 173 of the Second Amended Complaint is withdrawn;
- j. The prayers for relief set forth in paragraphs (d) and (e) of the Second Amended Complaint are withdrawn.

3. This Stipulation shall not be construed to withdraw any request for injunctive relief asserted on behalf of Plaintiffs Floyd, Clarkson, Dennis and Ourlicht or on behalf of the class certified in this action, including without limitation injunctive relief that may require the expenditure of money by any Defendant.

4. The Plaintiffs agree to withdraw all claims, with prejudice, against the following Defendants and to dismiss the following Defendants from the case:

- a. NEW YORK CITY POLICE OFFICER RODRIGUEZ, in his individual capacity;
- b. NEW YORK CITY POLICE OFFICER GOODMAN, in his individual capacity;
- c. NEW YORK CITY POLICE OFFICER JANE DOE, in her individual capacity;
- d. NEW YORK CITY POLICE OFFICER ERIC HERNANDEZ, Shield # 15957, in his individual capacity;
- e. NEW YORK CITY POLICE OFFICER CORMAC JOYCE, Shield # 31274, in his individual capacity;
- f. NEW YORK CITY POLICE SERGEANT JAMES KELLY, Shield # 92145, in his individual capacity;

- g. NEW YORK CITY POLICE OFFICER LUIS PICHARDO, Shield # 00794, in his individual capacity;
- h. NEW YORK CITY POLICE OFFICER ANGELICA SALMERON, Shield # 7116, in her individual capacity;
- i. NEW YORK CITY POLICE OFFICER MICHAEL COUSIN HAYES, Shield # 3487, in his individual capacity;
- j. NEW YORK CITY POLICE OFFICER CHRISTOPHER MORAN, in his individual capacity; and
- k. The individuals identified in the Second Amended Complaint as “NEW YORK CITY POLICE OFFICERS JOHN DOES # 1 through #11,” in their individual capacities.

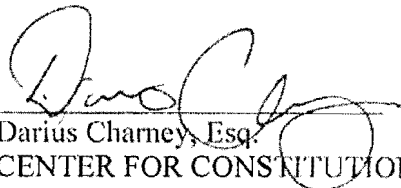
5. The parties also agree that the caption of the Second Amended Complaint shall be amended to omit any reference to the following defendants:

- a. NEW YORK CITY POLICE COMMISSIONER RAYMOND KELLY, in his individual and official capacity;
- b. MAYOR MICHAEL BLOOMBERG, in his individual and official capacity;
- c. NEW YORK CITY POLICE OFFICER RODRIGUEZ, in his individual capacity;
- d. NEW YORK CITY POLICE OFFICER GOODMAN, in his individual capacity;
- e. NEW YORK CITY POLICE OFFICER JANE DOE, in her individual capacity;
- f. NEW YORK CITY POLICE OFFICER ERIC HERNANDEZ, Shield # 15957, in his individual capacity;
- g. NEW YORK CITY POLICE OFFICER CORMAC JOYCE, Shield # 31274, in his individual capacity;

- h. NEW YORK CITY POLICE SERGEANT JAMES KELLY, Shield # 92145, in his individual capacity;
- i. NEW YORK CITY POLICE OFFICER LUIS PICHARDO, Shield # 00794, in his individual capacity;
- j. NEW YORK CITY POLICE OFFICER ANGELICA SALMERON, Shield # 7116, in her individual capacity;
- k. NEW YORK CITY POLICE OFFICER MICHAEL COUSIN HAYES, Shield # 3487, in his individual capacity;
- l. NEW YORK CITY POLICE OFFICER CHRISTOPHER MORAN, in his individual capacity; and
- m. NEW YORK CITY POLICE OFFICERS JOHN DOES # 1 through #11, in their individual capacities.

Dated: New York, New York
March 5, 2013

Counsel for Plaintiffs:



Darius Charney, Esq.
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, NY 10012
(212) 614-6475

Philip A. Irwin
Eric Hellerman
Gretchen Hoff Varner

Counsel for Defendants:



Heidi Grossman, Esq.
Assistant Corporation Counsel
100 Church Street
New York, NY 10007
(212) 788-0792

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

Jonathan C. Moore
Jenn Rolnick Borchetta
BELDOCK, LEVINE & HOFFMAN, LLP
99 Park Avenue, 16th Floor
New York, New York 10016
(212) 490-0400

SO ORDERED:

A handwritten signature in black ink, appearing to read "Shira A. Scheindlin", written over a horizontal line.

U.S.D.J. Shira A. Scheindlin

Exhibit E

08 CV 1034 (SAS)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID FLOYD, et al.,

Plaintiffs,

-against-

CITY OF NEW YORK,

Defendant.

**DEFENDANT'S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

MICHAEL A. CARDOZO

*Corporation Counsel of the City of New York
Attorney for Defendant
100 Church Street
New York, N.Y. 10007*

*Of Counsel: Heidi Grossman
Tel: (212) 356-3503*

TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| TABLE OF AUTHORITIES | iii |
| INTRODUCTION | 1 |
| FINDINGS OF FACT..... | 1 |
| Individual Incidents | 1 |
| The RAND Report | 13 |
| NYPD’s Policy Prohibiting Racial Profiling | 14 |
| Quality Assurance Division (“QAD”) Audits..... | 15 |
| Civilian Complaints | 16 |
| 1. CCRB and DAO | 17 |
| 2. OCD | 19 |
| 3. Civilian Complaints among the Individual Incidents | 19 |
| Performance Monitoring..... | 21 |
| Training..... | 23 |
| Supervision | 25 |
| SQF Documentation..... | 26 |
| "Top-Stoppers" | 27 |
| March 5, 2013 Memo..... | 28 |
| Alleged Quotas..... | 29 |
| Senator Adams | 37 |
| Eli Silverman | 37 |
| Expert Analysis..... | 38 |
| Remedy | 48 |
| CONCLUSIONS OF LAW | 49 |

CONCLUSION..... 50

TABLE OF AUTHORITIES

| <u>Cases</u> | <u>Pages</u> |
|--|---------------------|
| <u>City of Canton v. Harris</u> , 489 U.S. 378 (1989)..... | 50 |
| <u>Connick v. Thompson</u> , 131 S. Ct. 1350 (2011)..... | 50 |
| <u>Daniels v. City of New York</u> , 99 CV 1695 (SAS)..... | 15,16 |
| <u>Floyd v. City of New York</u> , 861 61 F. Supp. 2d 274, 296 (S.D.N.Y. 2012)..... | 50 |
| <u>U.S. v. Bold</u> , 19 F.3d 99, 104 (2d Cir. 1994)..... | 50 |
| <u>United States v. Jaramillo</u> , 25 F.3d 1146, 1152 (2d Cir. 1994)..... | 50 |
| <u>United States v. Nelson</u> , 08 Cr. 10264 (RWZ), 2009 U.S. Dist. LEXIS 22541, *12-13 (D. Mass. Mar. 6, 2009)..... | 50 |
| <u>Statutes</u> | |
| N.Y. Lab. Law § 215-a..... | 29 |
| NYC Admin. Code § 10-133(b)..... | 3 |
| NYC Admin. Code § 10-133(c)..... | 3 |

1. **Introduction** Plaintiffs have not met their heavy burden of proof in establishing that there is a widespread pattern of unconstitutional stop, question, and frisk (“SQF”) practices caused by any policy or practice of defendant City. The NYPD’s training, supervision and monitoring belies any claim of indifference on the NYPD’s part. Plaintiffs’ proof fails on every prong of the municipal liability claim and as such, no injunctive relief can issue.

FINDINGS OF FACT

2. **Individual Incidents** (¶2-¶19) **Dominique Sindayiganza.** On February 12, 2010, a Petco employee informed the NYPD that a woman in the store needed assistance. 3091:19-25. P.O. White entered the store, where a woman told him that she was walking with her child when a man began following her and asking her repeatedly for money, which caused her alarm. 3093:3-21. The woman gave White a detailed description, which Sindayiganza fit. 3093:22-25; 3143:1-3; 2587:20-22; 2606:7-16; 2587:23-24; 2605:22-2606:24. White left and immediately stopped and questioned Sindayiganza, because he was the only person in the area fitting the description. 3098:4-7; 3143:11-13; 3101:22-3102:1; 2609:19-2610:1. White believes he had reasonable suspicion to stop Sindayiganza for aggravated harassment based on the fact Sindayiganza matched a victim’s description and given his proximity to the crime location. 3103:3-3104:2. White brought the woman outside and she identified Sindayiganza as the man who had been harassing her. 2598:17-21; 3102:11-17; 3105:25-3106:2.¹ White asked the woman what she wanted him to do, and she indicated she wanted Sindayiganza to leave. 3106:19-25-3107:1. It is undisputed that White told Sindayiganza to leave and walk north, but Sindayiganza did not. 2599:18-21; 2615:18-23; 3107:21-3108:4; 2615:24-2616:2; 3145:18-24. Sindayiganza raised his voice and became extremely agitated. 3435:23-3436:4; 2610:21-2611:5. White

¹ Though plaintiffs argued that the woman could not have clearly seen Sindayiganza from 30 feet away at 6:30pm in February, White testified about the number and placement of streetlights in

returned to Petco, told the woman what happened, and the woman said she wanted Sindyiganza arrested. 3112:3-16. It was only after Sindyiganza refused to walk north that he was handcuffed, arrested, and searched. 2600:8-17; 2617:21-23; 2601:22-2602:4; 2620:12-20; 3115:2-9 (frisked as part of search incident to arrest); 3116:4-6 (frisk after woman wanted to press charges). White included this encounter in his memo book. PTE 161; 3128:19-3130:19; 3134:12-17.² No testimony was presented to indicate the stop of Sindyiganza was based on his race.

3. **David Floyd – April 2007.** Floyd claims he was stopped by police officers sometime in April 2007, but provided a changing account of when this stop occurred. 161:14-16; 196:4-199:21. He was never able to identify the officers, even after a photo array. 203:14–204:4; 5480:10-5509:16. The incident began as a voluntary police encounter during which a reasonable person would have felt free to leave. 213:6-22 (politely asked if willing to talk to police); 222:14-223:15 (standing in the middle of the sidewalk, not against a wall);223:16-224:11 (Floyd believed he was free not to give his ID to the police);224:12-226:9 (Floyd made decision to stay and not ask the officers why they were speaking to him);231:8-24 (officers never drew guns, threatened him, or physically forced him against wall). The frisk was reasonable and appropriate. 170:15-16 (pat-down), 170:17-171:4 (“bulge of [Floyd’s] cell phone” was visible);229:14-20 (officer asked if Floyd had a weapon; when officer felt phone, asked what it was);228:9-22 (officer verified phone was not a weapon, but did not take anything out of any pocket). Floyd has no reason to think the stop was based on his race. 230:21-231:2.

4. **Floyd – February 27, 2008.** P.O.s Joyce, Hernandez and Sgt. Kelly were aware on the date of incident of a pattern of residential burglaries occurring in the same area around 1359

the area, and the lights from the businesses in the area. DTE X10; 3144:6-3145:1.

² White did not complete a UF-250 form, but upon reflection recognized that he should have completed one. 3127:6-8. White retrieved the woman’s identifying information, but discarded it

Beach Ave. 1332:2-1334:12; 1335:4-23; 1359:24-1360:2; 1404:11-16; 1404:23-1412:16; DTE L4; DTE K13; 1459:23-1461:16; 1467:19-1476:3.³ The stop of Floyd was supported by reasonable suspicion of burglary. 181:8-14; 245:2-4 (officers told Floyd about burglary pattern); 235:17-19; 1363:7-11; 1459:8-22 (Floyd had bag that the officers thought may have contained burglary tools); 237:1-238:12; 1327:9-11; 1391:11-15; 1414:14-22; 1451:15-1452:25; 1497:13-16 (Floyd and neighbor fiddling/jostling/shaking door trying to gain entry for at least one minute), 1360:24-1362:9; 1414:23-1415:9 (Floyd and/or friend acting as a lookout). The frisk was reasonable and appropriate. 1363:19-21; 1417:11-15; 1496:11-25; 1330:2-1331:22, 1499:2-9; 179:6-20, 1417:18-21; 244:3-5; 179:16-20; 1364:12-13; 1417:1-8. Joyce completed the UF-250 for this stop. DTE X4, 1327:7-1328:24, 1361:21-1362:9, 1330:2-1332:4, 1334:6-12. There was no evidence that this stop was based on Floyd's race. 247:18-23.

5. **Ian Provost.** P.O. Rothenberg testified he stopped Provost because he believed he had probable cause to issue a summons for the crime of having a knife visible in public, in violation of NYC Admin. Code § 10-133(c). 3801:7-9; 3801:17-19(reason for stop); 3805:11-20 (observation of knife); 3805:21-3806:2; 3828:12-16(descriptions of knife). Provost does not deny having a knife in his back pocket when he was arrested. Provost Tr. at 38:24-25; 42:16-17; 43:18-21. After his stop, Provost began shouting at the top of his lungs and caused a crowd to gather, for which he was issued a disorderly conduct summons. Provost Tr. at 60:20-61:6; 3807:12-25; 3808:15-18; 3813:16-23; 3830:1-3; 3830:8-19; Houlahan Tr. at 48:24-49:9; 3814:6-13. Provost was also issued a summons for possession of a knife with a blade greater than four inches, in violation of NYC Admin. Code § 10-133(b). 3828:24-3829:3; 3814:6-13; 39:12-14;

as it was not needed for the summons that Sindayiganza received. 3123:9-3124:7; 3122:3-9.

³ The blocks of the pattern burglaries (DTE L4) are very similar to Beach Ave. 1493:17-22, N10 (Floyd's block), T13 (Elder Ave), R13 (Ward Ave). In January and February 2008, there were

44:5-10. Rothenberg testified that Provost was frisked after he was handcuffed, but before being placed in the patrol car, as part of a search incident to lawful arrest. 3829:17-25.⁴ No evidence was presented to indicate that Provost was stopped because of his race. 72:14-23.

6. **Nicholas Peart – August 5, 2006.** Det. White stopped Peart and his two friends after responding to radio runs⁵ of a crime in progress involving three men with a firearm. 6213:24-6314:7; 6215:18-6216:16; 6219:1-4. Peart and his friends all had suspicious bulges in their waist/pocket areas. 6222:13-19, 6223:2-15. Peart refused Det. White's orders to show his hands when Det. White first arrived at the scene, and then refused to get on the ground when ordered to do so. 6231:3-18. Peart admitted the officers told him why he was stopped and played back their radio which demonstrated that he fit the description. 324:25-325:5; 367:17-25; 368:7-13. White prepared three UF-250 forms, and testified at trial about why he checked off certain boxes. Z8, Z9; 6230:15-18; 6231:3-19-21 (suspected of violent crime); 6232:17-22 (proximity to crime location; report from victim/witness). Peart gave statements to the CCRB after this stop, in which he admittedly lied, and stated he split his lip during the stop, even though he sustained no such injury. 348:15-24; 349:3-20; Ex. I-7 (statements to CCRB); 326:6-9; 361:17-362:5 (admissions he lied); 362:11-13 (wanted CCRB to believe he was injured).

7. **Peart John Doe stops.** Peart claims he was stopped in **Spring 2008**, but doesn't know which month, or what day of the week, and no officers were identified. 370:14-23. Peart gave vague descriptions of the area of the stop, and inconsistent testimony on the direction he was walking. 327:7-12 (location); 372:4-5 (unable to provide cross street); 374:5-25 (testimony

62 reported burglaries within 1 mile of Floyd's house, and 28 within 1/2 mile. 6797:16 – 6805:6.

⁴ No UF-250 was completed for this stop because Rothenberg believed that he had probable cause to believe Provost was carrying a knife. 3816:22-3817:4.

⁵ White did not know whether the caller who provided the information was anonymous at the time he received the radio run. 6218:4-8; 6238:24- 6241:14. Though plaintiffs argued during

change over direction headed). Peart testified that after the stop, the officers explained he was stopped because of a series of burglaries in the neighborhood. 335:3-6; 377:9-14. Peart claims to have been stopped in **September 2010**, but has no idea on which date, or what day of the week, and no officers were identified. 378:22-379:5. Peart's testimony regarding that alleged stop is inconsistent. 337:19-338:2; 380:18-24 (saw officers briskly approaching him, even though they were behind him); 337:13-24; 383:3-8; 383:17-384:2 (heard officers order him to put his hands on wall even though he was wearing headphones and could not hear a thing). Peart claims he was stopped on **April 13, 2011** outside of the NYCHA building where he lived, even though in prior written declarations and under oath, he testified this stop occurred in May. 303:10-24; 303:25-304:2. The front door of his building was replaced the month before his stop, 391:7-10, and tenants had to go through a laborious process to obtain a new key. 391:18-393:7. Peart admitted the officers told him he was stopped because he fit the description of someone who had been ringing a doorbell at that apartment. 397:19-398:5; 400:5-17. No evidence was presented to indicate Peart was stopped because of his race. 368:20-25; 378:16-2; 387:6-8.⁶

8. **Clive Lino – February 5, 2008.** On the date of the incident P.O.s Arias and Kovall were briefed on a pattern of robberies at the intersection of E. 103rd Street and Lexington Ave. 3061:4-13; 3063:7-3066:1, 3482:2-3489:22; DTE H10K. The pattern consisted of one robbery at a check cashing location and two outside private residences. 3065:2-3066:1.⁷ Lino and his friend were standing on the corner of E. 103rd Street and Lexington Ave. 1729:3-1730:20, DTE M10,

summation that this was an “anonymous” call, no evidence was presented to that effect.

⁶ Peart's description of the officers in the “John Doe” stops changed over time. 376:11-25; 376:11-25; 395:15-22 (no or limited recall of Spring 2008 officers at deposition); 328:6-329:8 (descriptions of Spring 2008 officers at trial); 340:5-10; 381:20-382:6 (limited recall of September 2010 officers at deposition); 340:18-25; 343:3-7 (descriptions of April 2011 officers evolved at trial); 305:11-22 (descriptions of April 2011 officers at trial).

⁷ The check cashing location is visible from where Lino was stopped. 3483:7-3484:1, DTE M10.

NYC_2_00028764. Lino⁸ was wearing a beige jacket, and his friend had on a greenish olive jacket. 1731:2-15. There was reasonable suspicion to stop Lino on suspicion of robbery. 3045:5-12, 3046:15–3047:4, 3063:21–3064:5; 3469:2-5, 3484:8-16, 3487:25-3488:15. Arias recalled the descriptions of the suspects from three robberies as: black males, between 25 and 30, 5’6” to 6’, one wore a beige winter coat and the other wore a blue or black coat. 3063:13 – 3064:2, 3482:24-3483:6; 3066:21-3067:2, 3076:12-3077:5; 3486:9-3487:15, 3489:9-22.⁹ The officers told Lino he was stopped on suspicion of being involved in the robberies. 1733:11-15. The frisk of Lino was reasonable. 3048:25-3049:3, 3490:20-3491:2 (robbers reported to have handgun); 3049:4-25, 3069:9–3070:6 (furtive movements toward waist area); 1734:11-21; 3070:19-3071:5; 3491:3-9. Plaintiff claims he was frisked a second time when a Lieutenant arrived – which the officers deny. 1735:20-1736:6; 3072:17-24; 3492:5-10. Lino filed a complaint with CCRB, which investigated and found Lino’s allegations unsubstantiated. 1738:9-10, 3492:18-25. NYPD also investigated the OCD BCATS report indicates the officers were instructed. DTE N13 and PTE225. Kovall completed a UF-250 for this stop. PTE 211. No evidence was presented to indicate that Lino was stopped based on his race. 1774:15–1775:4.

9. **Lino - February 24, 2011 stop.** P.O.s Leek and Figueroa were given an information-wanted poster on the date of the incident. 2697:22–2698:11 (Leek); 2769:2–2770:4 (Figueroa); PTE 187 (poster). The poster related to a homicide on February 10, 2011, on E. 108th Street and Madison Ave., 8 blocks from where Lino was stopped. PTE 187, 2698:17– 2699:5. The jacket Lino wore that night closely matched the jacket from the poster. 1738:25–1739:3, 1744:1-6, 1777:11-22, DTE A9; 2722:24–2723:12; 2726:10-21; 2772:8-9, 2772:8 - 20. Beyond the jacket,

⁸ In February 2008, Lino was about 5’10” tall, and weighed about 175 pounds. 1762:7-15.

⁹ The first thing that caught Arias’s attention was the beige jacket, and he also thought Lino and his friend closely matched the descriptions of the robbers. 3077:7-18; The location where Lino

Lino matched the age, height and body build of the man in the poster. 2699:6-14, 2722:9–2723:17; 2726:22–2727:4; 2772:10-20. There was no one else in the area that night wearing a similar jacket. 1778:6-8; 2787:5-15. The frisk was justified. 2731:12-18 (suspected of being involved in a murder); 2731:19-23 (bulky jacket); 1742:9-18, 2756:17-21, 2757:5-2759:5 (refusal to put down bag); 2756:22-25 (on a subway platform); 2773:22-2774:10 (aggressive behavior).¹⁰ The officers explain the frisk was a limited pat-down of outermost clothing and neither officer went inside Lino’s pockets. 2730:23 – 2731:11 (Leek); 2756:11-16 (Figuroa).¹¹ Leek completed a UF-250 and a detailed memobook entry for this stop. PTE188, PTE 216, 2735:13 – 2738:2. CCRB investigated and substantiated allegations of abuse of authority for the stop of Lino. PTE 208,217;2706:24-2709:7. NYPD also investigated and unsubstantiated the allegations. 2740:23-2741:12; 2761:13-2766:11; 2786:8-2787:4.

10. **Lino – August 3, 2008.** One of the officers’ personal cell phones’ rang with a rap song ring tone and that the officer said to him “Here is a little rap for you, this should calm you down.” 1749:18 – 1751:5. The officers deny this allegation. 4018:2-4, 4021:10-12; 4018:8-10, 4025:8-18; 4018:17-19; 4021:13-16; 4025:19-22. No evidence was presented to indicate that Lino was stopped because of his race. 1786:24-25;1787:1-5.¹²

11. **Leroy Downs.** During trial and after detailed Court discussions held in Downs’s presence, Downs identified P.O.s Giacona and Mahoney as the officers who conducted the stop.

was stopped was experiencing a crime condition of robberies. 3482:24 – 3484:7.

¹⁰ Lino changed his story as to extent of the frisk/search. 1742:24-1743:4; 1780:10-1783:24.

¹¹ The officers deny Lino’s claim that the officers ran his name. 1746:20-25; 2775:5-6. In any event, the officers provided their names and shield numbers to Lino. 1747:12-1748:2.

¹² Lino’s testimony should not be credited. 1787:6-8 (Lino admits his memory of the incidents “is not very good”), 1787:9 – 1790:12 (Lino has many other police interactions, were he received a summonses, but he does not recall the details of those incidents), 1790:22 – 1792:23 (Lino has a bias against the police), 1793:5 – 1794:7, 1797:7-13 (Lino attempting to explain anyway the many changes in his testimony from his deposition in December 2012 to the trial in April 2013).

4338:9-17. In a photo array conducted by the CCRB on January 14, 2010 Downs was not able to identify either officer. PTE 166, 4145:14-24.¹³ The encounter began on suspicion Downs was smoking marijuana. 4101:1-3. Downs was holding a small object in his hand and holding his hand up to his mouth, 4146:21–4148:8, PTE 166, NYC_2_00025051, and Downs concedes it was legitimate for the officers to ask him if he was smoking marijuana. 4842:9.¹⁴ Before the officers searched him, Downs had a conversation with officers during which he was frustrated and upset. 4151:12–4152:6. Downs filed a complaint with CCRB. 4157:13-19.¹⁵ There was no evidence that the alleged stop was based on Downs’s race. 4163:23 – 4164:9.

12. **Devin Almonor.** Almonor was stopped by P.O. Dennis and Lt. Korabel on March 20, 2010. 1066:25-1067:1; 1145:16-18. The officers were in the vicinity of Hamilton Pl. in response to 911 calls that described a large fight including dozens of youths throwing garbage cans, setting off car alarms, with possible weapons involved. 1082:1-4; 1115:14-1116:2. Despite numerous 911 calls, which the officers confirmed, Almonor denies seeing any evidence of this disorderly group or its aftermath. PTE 22; 119:9-21; 139:6-14; 1116:23-1117:2.¹⁶ Almonor gave inconsistent statements at trial about where he was going to and coming from when he was stopped. 120:16-25; 121:3-4; 121:16-23; 139:23-140:3. When questioned by the Court, Almonor couldn’t recall whether he was jaywalking, and at his deposition Almonor admitted that he was *not* in the crosswalk. 141:11-12; 141:18-25. After observing Almonor jaywalk, the officers had

¹³ Giacona and Mahoney have no memory of interacting with Downs. 3849:25-3850:2; 3894:23-3895:12, 3895:20-3896:1. Downs says incident occurred around 6:45 pm., 4127:16-17; Giacona and Mahoney were 1 mile away, making an arrest at 6:40 pm. 3829:4-18, 3867:22-3868:12.

¹⁴ Downs admits that just blocks from his house there are major crime problems. 4123:15-21.

¹⁵ Mahoney and Giacona received B Command Disciplines and lost 5 vacations day each for improper memobook entries for the day. 3852:9-3853:1; 3895:13-19. Officer Moon also received a command discipline for not taking Downs’ complaint that night. PTE 170.

¹⁶ Plaintiffs argue that the officers never saw Almonor with a group of youths, Almonor testified that before his stop, he was with a group of men. 124:4-15; 134:23-135:2.

probable cause to arrest Mr. Almonor. 1151:22-24, 1152:10-19. When the officers attempted to frisk Almonor, he struggled. 147:10-13; 147:22-148:4; 1089:20-24, 1097:1-4; 1121:8-20. Almonor was handcuffed for the officers' safety and frisked immediately thereafter. 1121:24-1122:4; 1087:15-18; 1089:15-19 (manner of frisk); 1093:8-12; 1150:10-15; 1121:7-14; 1193:7-14; 1162:17-23 (reasons for frisk). The officers were only satisfied Almonor didn't have a weapon after they frisked him following his handcuffing. 1163:9-12. A UF-250 was prepared for this stop, and Dennis included a reference to this stop in his memo book. 1101:20-1102:7; PTE 19. Almonor admitted the officers made no reference to his race during the stop. 148:11-13.

13. **Cornelio McDonald.** On December 19, 2009, Det. French had reasonable suspicion to believe McDonald was in possession of a weapon based on the suspicious bulge in McDonald's left jacket pocket;¹⁷ the suspicious way McDonald was walking and shifting his body; and French's knowledge of patterns regarding a black male with a firearm robbing commercial establishments and a black male burglarizing residences.¹⁸ 3746:8-3749:14; 3687:21-23; 3743:4-17. After stopping McDonald, French frisked the jacket pocket containing the suspicious bulge based on his reasonable fear for his safety. 3750:7-351:4. French explained the basis for the stop, obtained McDonald's pedigree information, and completed a UF-250 and an activity log entry regarding the stop. 3751:5-25, 3735:4-21, 3725:13-20.¹⁹

14. **Deon Dennis.** On January 12, 2008, P.O.s Salmeron and Pichardo had probable cause to

¹⁷ Contrary to plaintiffs' argument at summation, McDonald's cell phone was, in fact, in his left jacket pocket. *Cf.* 7986:22-24 with 3683:1-4; 3696:13-15.

¹⁸ While French could not remember any further detail about the patterns at trial, he explained that such detail would have been provided at the meeting at the start of his tour. 3743:12-22.

¹⁹ McDonald claims he was stopped because of his race because the police "didn't bother with anybody coming from the bowling alley." 3688:25-3689:4. McDonald was not stopped coming out of the bowling alley but on the other side of the street. 3701:20-23; 3680:2-20; 3697:2-23; 3745:15-25; DTE L10. McDonald was not sure of the race of the alleged individuals coming out of the bowling alley; he testified they "could have been" Asian or white. 3689:5-7. In any event,

stop Dennis in front of 2034 7th Ave. in Harlem because Dennis was drinking alcohol from an open container with a bottle of Hennessy alcohol next to him. 852:23-853:23 (officer observations); 1296:3-15 (actions taken by Pichardo to determine the liquid was alcohol); 1295:5-24. The officers had been patrolling the area to address quality of life conditions, including complaints of excessive drinking. 852:20-22; 1294:10-16. To the extent Dennis was frisked, it was conducted pursuant to a lawful arrest. 854:9-22.²⁰ No testimony was presented that indicated that this stop was based on Dennis's race.

15. **Kristianna Acevedo.** On May 29, 2007, Dets. Vizcarrondo, Hawkins, and DeMarco were driving towards a buy-and-bust investigation when they observed Acevedo walking alone on 43rd Street in Queens, a desolate area in the vicinity of known drug transactions. 2660:20-25; 2683:1-16; 5196:22-25; 5454:24-5455:2. The officers did not reasonably suspect Acevedo of any crime, but approached her in an effort to request information and gain intelligence²¹ about drugs in the area. 2659:17-24; 2684:8-13; 5467:25-5468:6. Once the vehicle slowed down, DeMarco displayed his shield and said, in a calm and friendly tone of voice, "Hi. Police. How are you doing? Can I talk to you?" 2683:21-23; 2684:18-23; 5455:7-19; 2684:1-4. Acevedo proceeded to curse at the officers, yell "you're not a cop," and ran down the street. 2684:5-7; 5455:23-5456:7. As there had been media reports of individuals impersonating police officers at the time of the incident, the detectives put their vehicle in reverse to try to speak with Acevedo to explain that she was in no danger. 2685:14-15; 5199:4-11; 5456:8-16. The detectives again

McDonald was by himself at time of his stop. 3680:2-20; 3697:2-23; 3745:15-25; 3746:6-7.

²⁰ Dennis provided his identification to the officers. 873:12-16. Contrary to plaintiffs' argument at summation, Dennis did not testify about which hand he used to retrieve his identification from his wallet, and the officers did not testify as to whether Dennis's identification was even in his wallet. Cf. 8002:3-7 with 271:14-24; 1270:16-18.

²¹ The detectives often learned of drug activity by speaking with the public. 5191:23-5193:4.

identified themselves as police officers.²² 2685:20-24; 5199:17-5200:3. Acevedo remained free to leave. 2685:16-2686:7; 5457:24-5458:1.²³ Following an investigation by CCRB, the detectives were disciplined with respect to Acevedo's incident. 2672:14-22; 5201:11-5202:19; 5459:4-19. There was no evidence this encounter was based on Acevedo's race.

16. **Lalit Clarkson.** Clarkson claims he encountered the police sometime in January 2006. 2633:9-22; 2645:5-9. The encounter began when the officers asked Clarkson, "Hey, come over here, can I talk to you?" 2651:21 – 2653:7. Clarkson voluntarily walked over to the officers and spoke to them. 2653:8-15.²⁴ The officers did not display their guns, handcuffs, or nightsticks. 2649:7 – 2650:13. The officers asked Clarkson if he knew anything about drug activity in a nearby building. 2641:1-4. Clarkson claims the officers asked for permission to frisk and/or search him, and when he said no, the officers did not frisk, search, or touch him in any way. 2654:18-25. After Clarkson told the officers they could not search him, the officers left. 2655:3-6. There was no evidence this one-minute encounter was based on Clarkson's race. 2655:7-13.

17. **David Ourlicht – January 2008.** In January 2008, Sgt. (then P.O.) Moran had reasonable suspicion to stop Ourlicht because he observed a suspicious bulge in Ourlicht's right waist area and Ourlicht was walking in a manner consistent with hiding a weapon in that same area. 4051:25-4053:13, 4054:4-11; 4062:3-10, 4079:23-4080:4. Ourlicht conceded he was carrying at least one five-subject spiral notebook,²⁵ keys, wallet, phone, and a video iPod in his jacket pockets at the time of the stop. 4224:2-4225:18. Moran frisked Ourlicht because he

²² Det. Hawkins showed Acevedo her NYPD badge in one hand and her NYPD Police ID in the other hand. 5456:17-5457:6.

²³ No detective ever physically touched Acevedo, and Acevedo failed to mention any purported search or use of force allegation at her CCRB interview only months after the incident. 2657:12-22; 2686:18-2688:4; 5201:6-7; 5458:2-24.

²⁴ When he approached the officers, Clarkson positioned himself next to a wall. 2638:20-22. The officers were about three feet away from him when they were talking to him. 2654:8-17.

reasonably suspected his safety was in danger. 4080:18-25. Moran subsequently had probable cause to issue Ourlicht a summons for disorderly conduct because Ourlicht was threatening to fight Moran and his unreasonably loud behavior was causing a crowd to gather. 4081:1-4082:22. Moran completed a UF-250 and an activity log entry for this stop. 4065:8-22; 4082:23-25. No evidence was presented by plaintiffs that indicated this stop was based on Ourlicht's race.

18. **Ourlicht's June 2008 John Doe stop.** Ourlicht could not definitively identify the officers involved in this stop²⁶ or the month it occurred. 4263:17-4264:5; 4268:24-4269:9. Ourlicht claims officers approached him and three to four other men in the private, fenced-in, "enclosed area of his [friend's] building" and informed them there were emergency reports of a gun right around them. 4205:13-18; 4265:10-4266:18. Ourlicht and the other men were briefly stopped, patted down, but not searched. 4265:10-4266:18. Ourlicht admits the officers apologized at the end of the stop, and reiterated they were responding to a report of a gun in their area. 4266:24-4267:4. There was no evidence this stop was based on Ourlicht's race.

19. **Ourlicht's February 2008 John Doe stop.** Ourlicht was wearing a Black Marmot jacket with six pockets, which contained his keys, wallet, passport, phone, and Advil. 4234:4-4235:9; 4254:8-21. The jacket's pockets were large enough to fit a five-subject notebook in one of the pockets. 4254:15-17. Ourlicht conceded officers asked him, not Anthony, to come near their car, and Ourlicht freely decided to walk to the vehicle. 4257:21-25; 4261:15-4263:16. The officers asked Ourlicht for identification, which Ourlicht provided. 4258:11-15. As soon as Ourlicht handed the officers his identification, they simultaneously and immediately exited the vehicle. 4198:23-24. The officers patted Ourlicht down, and went into his pockets. 4259:4-8.

²⁵ Ourlicht previously testified that the notebook was in his right jacket pocket. 4225:3-18.

²⁶ Ourlicht claimed Police Van #9466 was at the incident. 4211:4-5. Contrary to plaintiffs' argument at closing, there was no evidence this van was at the incident. Det. Albino investigated

While Ourlicht was being searched, he observed his white friend Anthony “face-to-face” with another police officer. 4200:19-21. Ourlicht heard the officer ask Anthony for identification, which Anthony provided. 4200:22-4201:1. Ourlicht could not hear the entire conversation between the officer and Anthony. 4200:22-4201:1. Ourlicht, however, could hear the officer tell Anthony he “smell[ed] like weed” and observed the officer reach into Anthony’s pocket and pull out a little bag of marijuana. 4201:2-9. Upon learning Anthony had marijuana on him, the officer approached Ourlicht, who was searched more extensively. 4201:10-17. According to Ourlicht, Anthony was stopped, searched, and not free to leave. 4261:7-14. Ourlicht could not definitively identify any officer involved in this purported stop. 4261:15-4263:15.

20. **The RAND Report** (§§20-¶22) In 2007 RAND was retained by the New York Police Foundation to conduct a study on racial disparities in pedestrian stops and frisks (PTE K6; 4291: 2-6), because of an already-existing contract, and RAND’s expertise in police practices. 7093: 18-24; 7094: 5-15; 7095: 9-24. Commissioner McGuire testified that he provided data to RAND to use in its study, including arrest data on violent crime, weapons offenses, property crime and drug offenses, as well as crime suspect data on violent crimes. 4298:15-4299:1. The Rand study did not reveal any racial profiling on the part of the NYPD. 4307:14-25.

21. In conducting its study, RAND compared three benchmarks: one using residential census data; one using an arrest benchmark; and one using suspect description. 4305:18-4306: 7; 7096: 20-7097:10. The RAND Report made six recommendations to the NYPD, all of which were considered and five of which were implemented. 7103:17-21; 7104:12-7123:14. The recommendations were implemented in a variety of ways including two revisions to the NYPD Patrol Guide (including direction to officers to provide explanations for the basis of stops absent

and learned the officers working in the van were not present for the incident. 5474:15-5475:14.

exigent circumstances), a pilot program encouraging the distribution of street encounter information cards, and a citywide expansion of that pilot program. 2805:8-13; 2807:1-4; 7103:17-7115:18. PTE 282, PTE 320.²⁷

22. Plaintiffs' police practices expert Lou Reiter believes the NYPD should have done more to follow the RAND Report's conclusions, but was unaware of many efforts the NYPD made to address those recommendations. 4903:17-19. The first RAND Recommendation was that the NYPD should explain to pedestrians why they were stopped. 4903:23-25. Part of the recommendation included the suggestion that the NYPD should give out cards when they stop citizens. 4904:1-3. Reiter could not identify a single law enforcement agency in the country that did that, 4904:7-10, and there are no CALEA or IACP standards on that issue. 4904:11-15. Reiter was unaware of any testimony from class member witnesses regarding whether they were told why they were stopped. 4904:20-23. He was unaware that every class member witness who testified recounted at least one stop where officers told them why they were stopped. 4904:24-4905:3. Even though Reiter's central premise was that the NYPD refused to address RAND recommendations, Reiter stated that testimony from witnesses that the NYPD *had* implemented this recommendation would not change his opinion. 4905:15-17.²⁸

23. **NYPD's Policy Prohibiting Racial Profiling.** (¶23) The NYPD has a strong policy against racial profiling. PTE 183 (current policy); PTE 184 (prior policy). Officers and supervisors receive extensive training on racial profiling and policing in a multicultural society at the academy and in roll call training. 5061:6-5063:13; 5069:20-5085:10, 5098:3-5100:3 (Shea),

²⁷ The Rand report considered suspect description to be the superior description benchmark. 7188:3-10.

²⁸ Another RAND recommendation addressed by Reiter was that NYPD conduct additional training to ensure officers are fully conversant with SQF documentation. 4907:5-9. Reiter was unaware of any efforts the NYPD has undertaken since 2009, including the new Rodman's Neck

R3, P3, M5, T5, S11, V11. Officers and supervisors recall their training on this issue, are aware of the policy, and implement it in their work.²⁹ C.O.s talk to their supervisors and officers about the policy and work to ensure it is followed. 3508:10-3509:23(Ortiz); 1527:11-1528:12(Diaz); 5409:2-5410:1, 5435:5-22(Lehr); 6508:6-12 (Holmes), 6636:16-6637:20 (Morris). The NYPD has self inspections to ensure compliance with the policy. 4629:8-4629:24 (Cronin); 5694:2-5695:15 (Cirabisi). Civilian complaints related to SQF are about the manner in which stops are made or the lack of an explanation; not about racial profiling. 3024:3-8,3025:2-3027:13 (Esposito),7607:1-4(Hall);6508:6-6511:11 (Holmes); 5409:2-5414:1, 5427:19-5435:4, 7080:22-7081:6 (Lehr), P15; 6583:25-6584:4, 6632:14-6633:12(Morris); 6985:9 - 6986:16 (McCormack).

24. **Quality Assurance Division (“QAD”) Audits**³⁰ (¶24) The parties in *Daniels v. City of New York*, 99 CV 1695 (SAS), entered into a Stipulation of Settlement dated September 24, 2003. PTE 114. The NYPD’s Policy Regarding Racial Profiling, attached as Exhibit A to the settlement,³¹ required commands to establish self-inspections to ensure compliance with the policy. PTE 114; 184. QAD, a unit within NYPD responsible for monitoring compliance with Department procedures, was required to audit compliance with the self-inspection. 2815:10-17.

training on UF-250s and memo book entries, or any interim orders since 2009. 4907:10-4908:9.

²⁹ 649:8-650:1(Serrano); 861:2-11(Salmeron); 1003:7-1007:2, 1015:16-1016:13 (Agron); 1203:16-1204:16(Korabel); 1251:5-10(Rodriquez); 1300:10- 1301:1 (Pichardo); 1504:5-1505:7(Kelly); 1674:25-1675:19(Guimaraes); 2099:5-12 (Hegney); 2674:1-2677:6, 2689:6-2690:3(DeMarco); 2713:18-25, 2744:5-16 (Leek); 3454:4-19 (Gillespie); 3753:16-3754:2(French); 3818:18-3820:3(Rothenberg); 4030:21-4032:16, 4085:2-8(Moran); 4991:1-13(McCarthy); 5227:25-5228:13(Vizcarrondo); 5553:13-5554:18(Marino); 6306:25-6307:10 (Telford); 6348:3-7(Navaretta); 6376:21-6378:4(Dang).

³⁰ A third RAND recommendation discussed by Reiter was the suggestion that the NYPD look at radio transmissions where a stop was likely to occur and have QAD audit to find out whether a 250 was filled out. 4909:8-12. Even though Reiter claimed to have listened to Chief Cronin’s testimony, he was unaware that such a QAD audit is currently conducted. 4909:13-4910:10.

³¹ The Department Policy Regarding Racial Profiling (Operations Order Number 11 dated 03-13-02) was implemented prior to the settlement. PTE 184; 2-24-11 56.1 at ¶17.

QAD conducts audits³² that, at minimum, address the following issues:

- a. Whether, and to what extent documents (e.g., UF250s, officer activity logs) filled out by officers to record SQF activity have been completed in accordance with NYPD regulations; and
- b. Whether, and to what extent, the audited SQF activity is based upon reasonable suspicion as reflected in the UF250 forms.

PTE 114, ¶D1. Although the *Daniels* settlement ended around December 2007, the NYPD continues to conduct audits of SQF. 7141:13-19. These include the 802 (4762:16-4763:16) and 802-A (4763:22-4764:12), which began in 2003, the 803, which began in 2008, and their companion command self-inspections. 4629:15-24. There is the quarterly RAND audit of paperwork linked to 911 calls, which began in 2008. 4702:17-21. QAD continues to conduct an annual citywide audit of officer activity logs to determine, among other things, if an officer has completed a detailed narrative entry in his activity log when he conducts a SQF. 3256:3-12; 4625:8-14; DTE E14, DTE F14. QAD conducts a monthly self-inspection which does the same. 4625:15-23. As of 2011, QAD conducts a quarterly survey of three commands of the highest increase in UF-250s compared to the same period in the prior year. 4768:2-6; 4790:5-15. As of 2012, the 802 self-inspections are conducted by the executive officer of each precinct. 4787:6-14; DTE Z4. Further, the NYPD improved training related to activity logs through these audits. DTE L11; 4763:17-21; 4788:4-4789:20.³³

25. **Civilian Complaints** (¶25-¶35) Complaints of alleged misconduct against NYPD officers may be made by anyone through a variety of sources, such as the CCRB, 3-1-1, or the NYPD itself, and by any means of communication, including in-person, mail, or phone. 3309:1-14. All complaints, even those made anonymously, are referred for investigation. 2-24-11 56.1

³² As noted in the *Daniels* stipulation, “[m]unicipal defendants have provided Class Counsel with an audit outline that includes these protocols.” PTE 114, ¶D1.

³³ QAD alerts commands to deficiency notices, which are raised through the chain of command. 4770:2-4772:3; 5721:19-23.

¶306. IAB can open investigations into incidents based on media reports. 7344:7-11. The NYPD refers complaints alleging excessive force, abuse of authority,³⁴ discourtesy or offensive language (FADO) to CCRB;³⁵ allegations of corruption or serious misconduct are referred to IAB,³⁶ and the remainder of the complaints are referred to the Investigative Review Section of the Office of the Chief of the Department. 3308:6-25; 3961:18-3962:25; 3987:13-3988:9; 5067:5-16; 5348:5-5349:16; 7076:24-7079:3. The Command and Inspectors themselves are notified when civilian complaints are brought against police officers. 4563:4-10 (Schwartz); 5638:1-7 (Cirabisi); 5372:7-15 (Lehr); 6503:9-16 (Holmes).

26. **CCRB and DAO (¶26-¶30).** CCRB investigators interview complainants, witnesses, and officers and determine whether allegations are substantiated, unsubstantiated, exonerated, or unfounded. 3272:1-24. When the investigation is complete, a panel of three members of the CCRB will read the case, review all of the evidence, and vote on the disposition of every allegation raised by the complaint. 3272:1-24. When the CCRB substantiates a complaint, it forwards the case to the NYPD's Department Advocate's Office (DAO). 3275:23-25.³⁷

27. The NYPD engages in progressive discipline, using increasingly severe steps or measures to deal with substandard work or misconduct, where varying levels of disciplined can be imposed. 4590:7-12; 6335:3-16. When officers are disciplined, NYPD matches the misconduct with the necessary training, which may result in formal instructions given by a commanding

³⁴ Search and seizure allegations relating to stop, question, and frisk fall under the CCRB's abuse of authority jurisdiction. 3284:7-17.

³⁵ The CCRB became an all-civilian agency in 1993. See 2-24-11 56.1 ¶ 312.

³⁶ Approximately 1,000 officers are assigned to IAB and the disciplinary process. 2-24-11 56.1 ¶ 355. Dispositions of IAB investigations are generally noted on an individual officer's Central Personnel Index ("CPI"). 7339:1-3; 4589:1-4589:25.

³⁷ If the DAO disagrees with CCRB's findings of substantiation, they conduct further investigation. 3276:19-25. In the first half of 2012, that number of complaints that the CCRB actually substantiated was only 11%. DTE V13.

officer or a requirement that the officer attend additional training at the Legal Bureau, or even termination of employment. 4590:13-4594:22. With respect to improper memobook entries, the NYPD increased the discipline given to officers from an ‘A’ command discipline to a ‘B’ command discipline, which means officers could lose up to 10 vacation days and the discipline stays on the officer’s CPI. 4593:7-16. The DAO also looks at civil lawsuits in determining discipline on a case-by-case basis. 4568:1-6.

28. CCRB executive director Thompson indicated there is a strong dialogue between the DAO and the CCRB,³⁸ which has resulted in increased confidence in the quality of CCRB investigations. 3314:1-8. CCRB investigators receive training from CCRB attorneys and from the NYPD, including lectures, trips to the academy, a ride-along with a police officer, and a trip to the firing range. 3315:7-24. CCRB attorneys are now prosecuting cases that have been substantiated by the CCRB board in the NYPD trial room. 3312:14-17.

29. The CCRB is authorized to mediate claims by civilians. These mediations typically stem from complaints of verbal disputes and street stops, and these mediation sessions are a helpful tool for the community. 3322:10-19. The CCRB’s research shows that officers who participate in mediation are less likely to receive complaints in the future. 3322:4-12.

30. The rate at which NYPD disciplined officers for substantiated CCRB allegations increased every year from 2008 through 2011. DTE U-13. While the percentage of disciplined officers decreased in 2012 (largely because of delays in receiving CCRB cases, as well as CCRB’s office’s displacement following Hurricane Sandy), in absolute numbers, disciplinary actions were actually at their highest level in 2012. 4606:8-4607:19; DTE U-13.

³⁸ CCRB currently assigns 117 staff members to investigate complaints made by civilians of police misconduct. 3307:22-24.

31. **OCD (¶31-¶32).** When OCD receives a complaint, it logs the complaint in a central database, and then sends it out to the commanding officer of the bureau in which that officer currently works for investigation. 2-24-11 56.1 ¶ 373. Inspector Cirabisi of the 114th Precinct testified that his operations coordinator oversees the OCD investigations and noted that precinct supervisors may lead the investigations. 5644:14-17. Cirabisi indicated that when his precinct's supervisors are not directly involved in the disputed incident at issue, these supervisors may conduct the OCD investigation into officers under their supervision. 5644:18-5645:14. The supervisor would "know that officer by working directly with him [and] would know if there are prior incidents" involving that officer. 5645:3-15. Inspector Holmes testified that she personally reviewed 90% of the complaints at the 81st Precinct. 6496:10-6500:25. Inspector Lehr testified that he or his executive officer reviews OCD complaints. 5348:17-24.

32. Out of approximately 100 OCD³⁹ complaints made to the 67th Precinct from January 1, 2013 to April 29, 2013, only 6 complaints featured allegations related to SQF. 7076:14-23. Approximately 15 complaints sought *more* police presence in the area. 7079:5-18.

33. **Civilian Complaints among the Individual Incidents (¶33-¶35).** Almost three-quarters of witnesses (Sindayiganza, Provost, Peart, Dennis, Acevedo, Ourlicht, Downs, Lino) or their friends/family filed a complaint with CCRB through a variety of means regarding their purported stops. 91:22-25; 348:15-24; 1229:2-7; 1230:9-10; 2095:16-2096:9; 2620:12-20; 2672:14-22; 5201:11-5202:19; 5459:4-19; 3492:18-25; PTE 166. Reiter criticized Ourlicht's CCRB complaint, but Reiter never so much as read Ourlicht's deposition. 4941:23-4942:2.⁴⁰

³⁹ Though plaintiffs argued a sample of 100 complaints was insufficient to make a determination about the representativeness of complaints received by NYPD, Reiter only reviewed *two* OCD complaints to then issue an expert opinion about police department practices as a whole.

⁴⁰ Sgt. Hegney investigated a CCRB complaint made by Ourlicht and his mother regarding his January 30, 2008 stop, whereby he reviewed the UF-250, P.O. Moran's activity log, and spoke to

Reiter provided flawed criticisms of the Dennis complaint as well. 4884:21-4887:10.⁴¹

34. Reiter also stated he was not aware of who investigated the Dennis incident. 4943:6-11. However, plaintiffs were well aware of who investigated the Dennis incident, and deposed Sgt. Rodriguez, the investigator during discovery (and before Reiter's deposition).⁴² 4943:12-16. Reiter could not recall whether or not he ever read that deposition. 4943:15-16. Reiter also never read Dennis's deposition transcript and was unaware Dennis handed the phone to his girlfriend when investigators called Dennis to discuss his allegations. 4943:25-4944:8.

35. Reiter has conducted many audits of other agencies internal investigations wherein he reviews a random sampling of the agencies' investigations. 4950:19-22; 4950:23-25. For example, in Pittsburgh, where there were 800 administrative investigation files, Reiter reviewed every eighth one, reviewing a total of 100 case files. 4951:1-9. Here, on the other hand, Reiter reviewed two OCD cases, one CCRB case, and not a single IAB case, in contravention of the methodology that he uses when he is asked to audit the operation of the administrative investigation process. 4951:10-19; 4953:23-4954:11.⁴³

Moran and Ourlicht's mother. 2092:21-2093:2. Despite reaching out to Ourlicht twice, Ourlicht's mother refused to let Hegney speak to Ourlicht and would not provide Ourlicht's contact information. 2093:21-2094:7. As such, the complaint was unfounded. 2095:16-2096:4.

⁴¹ Reiter for example, testified that he found it interesting that the officer indicated that the liquor or the liquid he was drinking was Hennessy, because he believed that the officers had so identified the brand on the smell alone. 4884:21-4887:10. Reiter was not aware of trial testimony that the officers who observed Dennis drinking a cup of brown liquid actually observed a bottle next to Dennis that indicated the brand was Hennessy. 4943:17-21.

⁴² Sgt. Rodriguez testified that when he contacted Dennis on the phone and asked to speak about complainant Ms. Edward's allegations related to his incident, Dennis repeatedly stated, "I don't know" numerous times. 1247:2-18. As Sgt. Rodriguez testified, he understood Mr. Dennis's "I don't know" comments to mean that Dennis was not making any allegations about the stop itself, since Dennis would obviously "know" what happened during the stop, but would not know what transpired between officers and Ms. Edwards at the precinct. 1247:2-1248:7.

⁴³ Reiter testified it is his opinion that the NYPD should investigate withdrawn investigations. 4944:24-4945:1. However, Reiter accepted that the fact a complainant refuses to participate in an investigation can be used as a factor in the final adjudication of that investigation. 4945:15-18.

36. **Performance Monitoring** (§§36-¶42) The number of substantiated or unsubstantiated CCRB complaints received by an officer are tracked by the department and are one of the ways an officer can be placed on performance monitoring. There are three progressive levels of monitoring. On the first level, the Commanding Officer must interview the officer and develop and implement a plan to address the officer's performance issues. The officer is then evaluated after the 10th month of monitoring to determine whether monitoring needs to continue. At the second level, the commanding officer is responsible for preparing quarterly evaluations of the officer, which are to include both positive and negative conduct. At this level the commanding officer or the performance analysis section can recommend additional training for the officer. At the third and most serious level, commanding officers are responsible for reviewing the officer on a monthly basis. 5375: 3-5378: 23; 5638: 16-5644: 10; 6502: 24-6503: 8; 6505: 2-6506: 1.

37. Each officer's CPI contains a wide-range of information including whether the officer has ever been placed on monitoring of any kind, any civil lawsuits in which he was named as a defendant, IAB cases, any charges and specifications or discipline, certain types of training, his sick record, and any departmental vehicle accidents. 7317: 16-7321: 5.

38. Chief of Patrol Hall is made aware of any officer within Patrol who is eligible for monitoring through the Employee Management Division. Officers are automatically eligible for monitoring when they reach 20 points on their CPI. The EMD reviews CPIs daily and the CCRB database monthly to identify any officers who have qualified for monitoring. 7335: 12-7336: 16.

39. Commanding Officers have access to the CCRB database and officers' disciplinary and complaint history. 7321: 12-14; Inspector Lehr, Inspector Cirabisi and Inspector Holmes speak with their respective ICOs on a weekly basis to discuss CCRB complaints, and they receive monthly reports detailing the officers under their command who have received CCRB

complaints. 5372: 7-18; 5638: 1-7; 6503: 9-18.⁴⁴ CCRB complaints are also tracked at the borough level, as the borough will notify that officer's precinct's CO, who is required to provide a report including an analysis of the complaints against the officer, conduct a meeting with the officer, and include an assessment of the officer. The borough adjutant receives this report and conducts another interview with the officer. The report is then forwarded to the borough commander who will review it and have a meeting with the adjutant. 6584:20-6587:1.⁴⁵

40. The CCRB Profile and Assessment Committee meets quarterly, and is chaired by the first deputy commissioner and includes members of the highest ranks of the NYPD including Chief Hall. Officers will automatically be reviewed for possible remedial action in one of three criteria are met: (1) an officer has three or more CCRB complaints in the past 12 months; (2) an officer has six or more CCRB complaints in the past five years; or (3) an officer has two or more substantiated CCRB complaints in the past five years. 7311:5-15; 7313: 9-7314:15.

41. The Profile and Assessment Committee reviews the officer and his entire employment history to determine whether the officer needs training, targeted integrity testing, change in assignment, or transfer to a new command. 7315:3-7317:7 The Committee could recommend that the officer attend Tactical Communication, otherwise known as Tac-Com, which is a three-day course run by the police academy designed to teach officers with a high number of CCRB complaints to communicate better with the public. 7327: 19-24; 7328:19-7329:1. Other

⁴⁴ Lehr is aware of times when officers' promotions have been held up due to being on performance monitoring. When an officer is placed on monitoring, the CO will meet with the officer to discuss the reasons why the officer is being placed on monitoring, what the monitoring program entails, and what is expected of the officer. They will also discuss the officer's career goals and the way CCRB complaints can impede the officer's career. 5393: 4-5395:11.

⁴⁵Chief Morris testified that each borough has an investigations unit that investigates complaints referred to them through the Chief of Patrol, conducts patrol monitoring, and conduct self-initiated investigations. 6590:21-6592:21. Borough investigations investigators receive training by IAB and can adjudicate command disciplines against officers. 6595:2-10. These investigators

recommendations may include closer supervision, or transferring the officer from his current position. 7329:7-7331:8. The subject officer will also continue to be monitored by the Committee to determine if and when the identified issues have been remedied.⁴⁶

42. The NYPD's Career Advancement Review Board is composed of the deputy commissioner of personnel and two bureau chiefs. Officers who are eligible for a discretionary promotion or civil service promotion to the rank of sergeant or lieutenant are brought before CARB when the officer has had either a B level command discipline, charges and specifications that resulted in a penalty of ten or more days, or a history of CCRB complaints. CARB will request the officer go over his disciplinary history and explain how the incidents occurred and what he has done to change or prevent additional incidents from happening. 7331:9-7333:14.

43. **Training** (¶43-¶46) The NYPD employs an extensive training program. 5020:18-5118:2. The NYPD's written training materials are certified and in line with accepted police practices. 4908:10-21, 4914:3-10, 4914:11-15(Reiter). Recruits and Impact officers receive training on, *inter alia*: reasonable suspicion; when a person objectively may not feel free to leave a police encounter; the tone of voice to be used during different levels of street encounters; the nature and extent of permissible questioning; Penal laws (including trespass crimes) and Constitutional Law (both NYS and Federal); the Debour levels of street encounters; the NYPD Policy Prohibiting Racial Profiling; Policing in a Multicultural City (including a multi-day immersion course with participation of community leaders and citizens); tactics; suspicious bulges/firearms; and Activity logs/entries. See Q11/PTE 76 (Police Student Guide re: Street Encounters); L1 (Field

also interview complainants, witnesses, and the officers where appropriate. 6590:21-6592:21.

⁴⁶ The CCRB Profile and Assessment Committee and the NYPD's other performance monitoring programs are not mutually exclusive. Rather, there is a built-in redundancy in the NYPD so that officers who are eligible for the Committee will also be placed on performance monitoring if they meet those thresholds as well, so that the NYPD can catch all those officers who may be

Training Unit guide); S11 (Police Student Guide re: Policing in a Multicultural Society); R3(Lesson Plan re: Sergeants Leadership Course; P3 (Lesson Plan re: Multicultural Immersion Course); O3 (Lesson Plan re: Proper Preparation of SQF Reports); W3/C8 (Lesson Plan re: Armed Suspects); 3753:1-15; 5073:12-5080:3; 5129:6-21; 5130:25-5132:2; 5178:14-5189:24.

44. Officers are trained to complete a UF250 whenever they intend that an individual is not free to leave, regardless of what the individual may believe. Q11; 5185:5-5186:8.

45. The NYPD trains officers on SQF and related issues⁴⁷ at the academy, during roll calls, at annual in-service training, promotional training, refresher courses (such as courses at Rodman's Neck), special reinforcement training programs; through legal bulletins, and through informal on-the-job training.⁴⁸ Newly promoted officers receive training on how to supervise. 5220:23-5221:1 (Vizcarrondo); 5240:22-24 (Silva); 5264:17-19 (Monroe); 5390:25-5391:10, 5448:19-5449:22 (Lehr); 5542:12-24 (Marino); 6497:4-6 (Holmes); 6595:7-11 (Morris).

46. The NYPD has training sergeants in each precinct. 4981:2-22 (McCarthy). Officers are sent for retraining when problems are identified. 720:7-18 (Serrano); 959:21 – 961:18 (Mascol); 1547:20-23 (Diaz); 1667:16-1669:10, 1685:12-18 (Guimaraes); 3213:8-18, 3223:5-14, 3240:20 – 3241:9 (McHugh); 3343:6-15 (Thompson); 3531:11-20 (Ortiz); 4076:16-22 (Moran); 4788:4 – 4789:20 (Cronin); 5223:23 – 5224:7 (Vizcarrondo); 5396:14-21 (Lehr); 5630:5-15, 5637:2 – 16,

exhibiting early signs of trouble. 7337: 23-7338: 2.

⁴⁷ Related issues include, but are not limited to: reasonable suspicion, UF-250s, truthfully filing out reports, racial profiling,

⁴⁸ 648:13-649:7, 791:19-792:3 (Serrano); 856:24-859:9 (Salmeron); 1051:1-10 (Agron); 1043:23-1044:16 (Diaz); 1250:1-12 (Rodriquez); 1298:3-21 (Pichardo); 1940:25-1941:16, 2096:5-2097:3 (Hegney); 2679:16 – 2680:3, 2688:21 – 2689:5 (DeMarco); 2744:11-16 (Leek); 3073:13-3074:12 (Kovall); 3150:9-19 (White); 3452:14-3453:16 (Gillespie); 3752:11-3754:2 (French); 3817:13-3818:6 (Rothenberg); 4029:24-4032:23, 4032:6-23; 4083:1-12 (Moran); 4986:11-4988:17 (McCarthy); 5193:19-5194:7, 5214:14-5215:18(Vizcarrondo); 5547:20 – 5548:2 (Marino); 6305:7-15, 6312:10-6313:20 (Telford); 6346:15-18(Navaretta); 6372:18-25(Dang). Downs attended the citizens police academy, received training similar to what officers receive,

5655:6-13 (Cirabisi); 6487:21 – 6488:11 (Holmes); 6643:10-25 (Materasso); 7109:16 – 7110:10 (Farrell); 7328:11-18 (Hall). Retraining is given to officers as part of the NYPD’s progressive discipline strategy. 4558:17 – 4559:5, 4590:7 – 4591:10 (Schwartz); Training records are tracked. 7320:25 – 7321:11 (Hall)

47. **Supervision** (¶47-¶48) The NYPD relies on a chain of command of supervisors, namely, sergeants, lieutenants, and precinct commanding officers so that all police activity, including stop, question and frisk, is properly being conducted. 7356:10-7357:20, 7364:5-20 (Hall overview); 3572:4-25 (Ortiz); 53357:9-5339:16 (Lehr); 5617:16-5619:1 (Cirabisi); 6459:3-6460:1 (Holmes). Chief Hall and his staff review UF-250s prior to CompStat meetings and raise issues or concerns about the UF-250s with COs at the meetings. 7348-7-7351:2; 7351:8-7352:13. Borough commanders meet with platoon commanders regularly and CompStat meetings now include platoon commanders, as they are part of the precinct management team. 7369:17-7370:8. Borough commanders also hold CompStat meetings with COs. 6567:16-6568:19(Morris). Lieutenants “command the platoon” and supervise the sergeants, which includes annual evaluations and quarterly assessments. 7361:1-7362:3; 7364:5-20. Sergeants are entrusted to “hand[le] conditions that are going on within the area that they work.” 7359:21-7360:8. Sergeants testified that they routinely witness stops made by officers (3790:20-25; 3790:20-25); routinely monitor the radio (particularly for a person who fits suspect description)(1186:23-1187:8, 3790:6-19; 5267:5-7; 5294:21-5295:9); speak to officers during roll call about training and ongoing crime conditions for a given tour (117:12-23; 5621:8-17; 7355:17-7356:1(Chief Hall)); review their officers’ UF-250s and frequently discuss the underlying facts of stops with officers to determine whether an officer is able to articulate a

found it “very practical” and described it as “excellent” and “wonderful.” 4124:10 – 4127:6.

proper basis for the stop (5267:14-19; 4084:19-4085:8); and when they have an officer drive them during a tour, they use this assignment as an opportunity to train the officer (1187:9-17, 1011:7-20). For anticrime units, squads are very small and sergeants are usually present in the field – which allows for the sergeant to continually assess an officer’s understanding of the propriety of any enforcement, including any stops. 1351:16-1352:11; 1486:16-23; 3014:12-24; 1555:12-19; 3752:22-25; 5242:1-7. For Impact officers, officers will work in a small geographic area with their sergeants readily available. 1555:12-19; 6356:4-10; 6461:20-6462:20. Further, supervisors will verify arrests at the scene. 5628:21-25.⁴⁹

48. In addition to monitoring overtime usage, ICOs monitor officer behavior and performance by reviewing their memobooks, speaking with officers, responding to radio runs, visiting officers on foot posts and in the hospital, visiting corruption prone locations, and observing officers testifying in court. 3581: 8-25; 3626: 7-3627: 13; 3655: 17-3656: 21; DTE F5. Lt. Peters testified that part of the ICOs duties included debriefing prisoners, and if the prisoner had a complaint, such as about racial profiling, he would take a complaint for the prisoner. 3612: 19-3615: 22. ICOS attend biweekly meetings with the other ICOs assigned to their respective boroughs, and also attending meetings with their commanding officer. 3602: 11-13; 3604: 14-17; 3656: 22-3657: 8. Lt. Palmieri testified that incomplete memobook entries has come up at the borough ICO meetings, and as a result he has been inspecting supervisors’ memobooks to ensure they are reviewing their officers’ memobooks. 3674: 10-21.

49. **SQF Documentation** (¶49) Reiter could not identify a single police department that uses memo books. 4924:4-6. Reiter couldn’t recall the forms used by any agency other than

⁴⁹ Rothenberg believed he may also have had probable cause to arrest Provost because he thought that the knife was a gravity knife; however, at the precinct, Houlahan instructed Rothenberg that it was not a gravity knife. 3832:6-3833:1. White called the detail supervisor to explain what had

Pittsburgh to document SQF encounters. 4929:3-4930:19. Reiter could not testify to the percentage of police agencies that document SQF encounters. 4931:24-4932:3. One of Reiter's main complaints with the UF-250 form is that it requires officers to speak to the stopping officer in order to determine the exact facts of the stop; however, an investigator looking into the facts of a stop would have to speak to the stopping officer regardless of whether or not a UF-250 was completed or the quality of a completed UF-250. 4933:1-11. Proper supervisory review of stops requires a supervisor to either be present for a stop or to conduct a substantive review of the 250 form and memo book. 4935:14-18. However, Reiter admits he doesn't expect every supervisor to conduct an in-depth review of every single stop officers conduct. 4935:19-22. According to Reiter, sufficient supervision could simply be the presence of a supervisor at the scene of a stop-question-frisk encounter even if that supervisor does not conduct a substantive review of the paperwork. 4935:23-4936:2. One of Reiter's proposed remedies is quality control callbacks of individuals who have been stopped. 4948:19-21. However, Reiter could not identify a *single* police agency that conducts quality control call backs for stop and frisk. 4949:8-11.

50. **“Top-Stoppers”** (§50-§52) Police Officer Dang utilized a multitude of intelligence resources, including the ability to track known gang members⁵⁰ and convicted felons, crime maps, confidential informants, and information gathered from the 88th Precinct's Detective Squad, to conduct SQF.⁵¹ 6428: 21-6249:16.

happened during the stop and the detail supervisor authorized the arrest. 3138:24-3139:2.

⁵⁰ Dang monitored known gang members being released from prison and reestablishing their turf within the Ingersoll-Whitman Development, leading to violent crime. 6429:17-6430:9.

⁵¹ Dang marked “High Crime Area” and “Time of day, day of week, season corresponding to reports of criminal activity” for specific reasons. For example, Dang testified these boxes would be checked for stops occurring in/around Fort Greene Park, an area traditionally known for robberies, as well as stops related to a burglary pattern in another area of Brooklyn. 6434:4-13; 6434: 23-6436:7. Patterns are groups of crimes similar in nature, be it by the time of day, the dates the crimes are occurring, the type of victim, or the MO of the perpetrator. 6368:21-6369: 7.

51. Dang's familiarity with suspected gang members would help him to identify when those individuals were engaged in furtive movements.⁵²

52. As Dang's supervisor, Sgt. Marino often patrolled with Dang and had the opportunity to observe Dang conducting stops. 5610: 1-12. When Lt. Telford was a Sergeant supervising an anti-crime team, he would personally drive with each new officer assigned to his team to help train⁵³ them as they transitioned into their new assignment.

53. **March 5, 2013 Memo** (§53-§54) Chief Hall discussed the fact that the Patrol Services Bureau had been failing the QAD audit on memobook entries at numerous borough commander meetings and following CompStat meetings. 7382:20-7383:5. In January of 2013, Hall attended a meeting with all of his borough commanders, where he learned of a memo that Chief Pizutti had issued to the precincts under her command regarding memobook entries. 7384:15-7385:9. On March 5, 2013, Hall, using Pizutti's memo as a model, issued a citywide memo instructing that when an officer conducts a SQF, he must attach a photocopy his memobook entry to the copy of the UF-250 turned in to the desk officer at the precinct. The memo further instructed that officers should be including more detail in their memobooks, including descriptions of any furtive movements, as is required by the NYPD's Patrol Guide. 7382: 23-7383:15; 7386: 8-23.

54. Following the March 5, 2013 memo, borough commanders issued memos of their own, notifying all their respective commands of the new procedure. Assistant Chief Morris required his borough training officers to instruct the Commanding Officers of each precinct to train their

⁵² What constitutes "furtive movements" varies depending on the crime suspected. 6433: 8-14. For example, if the crime suspected is robbery, then the furtive movement contributing to reasonable suspicion could be walking up and down a small area of a street, looking left and right as if looking for something or someone to target. 6433:15-25.

⁵³ This training included enhancing officers' observation skills, discussing whether there was reasonable suspicion to conduct a stop, and how to approach people at the lower levels of suspicion. 6312: 10-6313: 20.

officers regarding compliance with the new procedures. 6576: 6-6577: 8; 6580: 16-22. Hall issued instructions to his borough commanders to follow up on the compliance with the March 5, 2013 memo. 7387: 19-7388:2 In performing this check, Morris learned that all of the 40 UF-250s he checked had a copy of the memobook attached, and that more than half had a proper entry with sufficient detail regarding the circumstances of the stop. 6578: 19- 6580: 14. Borough Commanders will perform additional spot checks in the future to ensure compliance. 7390: 1-7.

55. **Alleged Quotas** (§55-¶66) When the “Quota Law,” N.Y.S. Labor Law § 215-a, was changed in 2010 to prohibit additional enforcement activity, the NYPD Legal Bureau drafted a memorandum explicitly prohibiting quotas and explaining both the impact of the Quota Law and the appropriate use of performance goals. PTE 290. Chief Hall testified about how he received that memorandum and distributed it to all 76 commanding officers in the NYPD. 7642:12-23.⁵⁴

56. Plaintiffs and their experts have muddied the water by conflating the terms “quota” and “performance goal.” 4917:15-17. However, both legally and practically, there is a significant difference between the two concepts. As Deputy Commissioner John Beirne testified, a performance goal, even when expressed in a numerical value, is an acceptable means of motivating staff and providing expectations for their work. 3360:9-19; 3399:13-20. In contrast, a quota is a numerical goal that must be achieved in a specified period of time, which would lead to adverse employment action if not achieved. N.Y.S. Labor Law § 215-a.

57. Even Reiter opined that productivity goals can be both an acceptable police practice **and** consistent with generally accepted practices in the field, particularly when they are assessed against the performance of similarly situated officer peers. 4917:18-4918:6; 4923:2-8; 4923:14-

⁵⁴ While plaintiffs played roll call recordings from only three of the 76 NYPD precincts during this trial: the 40th, 41st, and 81st, plaintiffs have not produced a single recording of that nature that was made since the Quota Law was changed.

4924:2. Further, according to defendants' police practices expert, James K. Stewart, performance goals are an absolutely necessary part of monitoring and supervision because "in policing, there are disincentives to engaging in some activities because they are dangerous." 7756:3-6. Indeed, officers are frequently assigned to locations that are chaotic and rife with criminal activity. While Operations Order 52 expressly encourages the use of performance goals, plaintiffs have not presented credible evidence of the existence of a City-wide quota, or any evidence of causation between an alleged quota and the stop of a single individual.

58. In 7 of the 19 stops described by plaintiffs, stopping officers could not be identified. *See, generally* 5509-5541 (Albino), and 5485-5509 (Dengler). If these 7 stops actually occurred, and even if the Court finds they were unconstitutional, these stops logically could not have been motivated by a quota. Since the John Doe officer(s) involved in each of these 7 stops did not complete a UF-250, the officer was obviously not motivated by a quota, or else he would have completed a UF-250 form, and accepted "credit" for the stop.

59. For the other 12 stops where officers were identified, plaintiffs have not shown any evidence of a quota that in any way motivated the stops of those individuals. As an initial matter, if plaintiffs' theory is correct that quotas motivated any of those officers' stops, the monthly activity numbers for officers in the same command in the same assignments should be nearly identical. Plaintiffs, however, made no showing that officers conducted the same number of stops, summonses, or arrests on a monthly basis. Fifteen officers' monthly activity reports prove that the amount of activity officers performed on a daily and monthly basis was ever-changing and based on the crime conditions in the precincts of those officers.⁵⁵ For the officers involved

⁵⁵ B10 (Serrano); X11 (Polanco); Z10 (Moran); M12 (Dang); P13 (L. White); Q13 (Gillespie); PTE 15 (Dennis); PTE 123 (Salmeron); PTE 178 (Hernandez); PTE 215 (Arias); PTE 219 (Leek); PTE 222 (Figueroa); PTE 228 (Nacelewicz); PTE 229 (French); PTE 419 (Polanco);

in plaintiffs' individual incidents, no two partners had the same activity and they testified that they were never punished or rewarded based on their different activity levels. *Cf.* Q13; 3456:3-3463:9 (Gillespie); *with* P13; 3154:10-3158:13 (Luke White); *Cf.* PTE 229; 3741:3-3742:9 (French); *with* PTE 228 (Nacelewicz); *Cf.* PTE 219; 2709:24-2712:23 (Leek); *with* PTE 222; 2787:16-2789:8 (Figueroa). Even if that were not the case, none of the officers involved in any of the stops at issue testified that they ever felt pressure to perform *unlawful stops*.⁵⁶

60. Plaintiffs also attempted to argue that pressure for “numbers” comes from Compstat and works its way down. However, testimony at trial demonstrated that the focus at Compstat is on quality, not quantity. 925:1-15 (Marino); 2881:2-8 (Esposito). This focus on quality trickles down to supervisors and finally, to officers in the field. 1844:18-20 (Mauriello). In fact, high ranking officials at Compstat ensure that the focus is on quality and not quantity by checking to confirm that the UF-250s being issued by the Precinct presenting are being written for the ‘right time, right location[,] right individual.’ 7348:19-7349:7; 7353:10-25. For example, if the description provided by victims describe the perpetrator as a teenaged Hispanic male, Chief Hall would be concerned if the 250s indicated that middle-aged Hispanic men were the ones being

PTE 420 (Polanco); PTE 555 (Gonzalez); PTE 556 (Noboa). Also in evidence are months worth of Squad Supervisor Recapitulations and Monthly Activity Reports for officers in the Anti-Crime teams of Manhattan North (PTE 309) and Queens South (PTE 310). These recapitulations compare the activity for all officers on the Anti-Crime team for a specified month. A review of these records indicates that with minor exceptions, officers on the same assignment routinely conduct a different numbers of stops on a monthly basis, and that the number of individuals stopped by officers varies considerably on a monthly basis.

⁵⁶ Moreover, of the small amount of officers who testified that their experiences with performance goals included being given a target number of stops officers were expected to conduct, plaintiffs failed to prove that any officers were punished as a result of failure to reach those goals. For example, P.O. Pichardo testified that while he was given a numerical goal in years past, he was never punished for failing to meet these goals. 1298:22-1300:9. P.O. Figueroa explained he had performance goals, but these goals were very easy to meet and that nothing would happen if he came in below, or exceeded, said goals. 2766:20 – 2767:12, 2775:24 – 2776:17, 2788:5- 2789:8. Even plaintiffs' own witnesses, Serrano and Polanco, could not

stopped in that area, and would question the Commanding Officer about the discrepancy. 7624:19-7625:7. From the Chief of Patrol down to officers straight out of the Police Academy, the message is clear: address conditions, not “numbers for numbers sake”. 858:9-14 (Salmeron); 925:1-15, 881:12-18 (Chief Marino); 948:8-15 (Mascol); 1008:15-18, 1013:18-1014:5 (Agron); 1178:10-13 (Korabel); 1187:9-17 (Korabel); 1246:18-20 (Rodriguez); 2957:2-13 (Esposito); 3237:12-21 (McHugh); 3366:8-14 (Beirne); 3793:19-25 (Loria); 5235:2-9 (Mohan); 5275:2-16 (Monroe); 5627:24-5628:6 (Cirabisi); 6268:20-6269:2 (Barrett); 6653:4-6654:5, 6725:2-15 (Materasso); 6981:14-20 (McCormack); 7361:1-7362:3 (Hall); 3541:11-14 (Ortiz). The recordings made by P.O.s Polanco and Serrano support this sentiment.⁵⁷ 488:21-24; 709:11-21; 773:23-774:9; 775:3-24. Moreover, the officers who testified at trial, including Serrano, repeatedly stated that there are many ways to address crimes conditions in a precinct, beyond enforcement activity such as arrests, summonses, or even stops. 802:6-16(Serrano);881:19-882:5 (Marino); 948:24-949:17 (Mascol); 1201:2-8 (Korabel); 1665:25-1666:6 (Guimaraes); 3157:11-21,3158:3-13(L.White); 3446:24-3447:14 (Gillespie); 3456:3-23 (Gillespie); 3537:6-3539:11 (Ortiz); 3741:15-20 (French); 5243:312 (Silva); 5269:5270:20 (Monroe); 6533:11-20 (Holmes).

61. Further, officers at trial overwhelmingly testified that they had never been subject to a quota or numerical goal. 859:22-861:1 (Salmeron); 966:18-967:7 (Mascol); 1011:21:1013:12 (Agron); 1676:5-18 (Guimaraes); 3153:16-3154:6 (L.White); 3454:20-3455:5 (Gillespie); 3495:22-3496:5 (Arias); 3834:8-19 (Rothenberg); 6235:8-6 (B.White). Supervisors also

demonstrate that they had ever been punished for failing to meet a numerical goal.

⁵⁷ In the 81st Precinct, there was never a specific number of UF-250s that officers must conduct, beyond one statement in dozens of recordings that Lt. Delafuente “want[ed] a couple of 250’s out there, please” following the discovery of a gun hidden in a hole in a wall. PTE 289, PTE 289-T at 15JULY2008 81 4x12 Roll Call Lt.Delafuente Capt.Mauriello at .35-.50. In context, it is clear that Delafuente was asking officers to be alert for any individuals who went to that hole in the wall looking for the hidden gun. Importantly, this recording has no reference to any

repeatedly denied subjecting their officers to a quota. 967:8-968:10 (Mascol); 1011:21:1013:12 (Agron); 1503:14-24 (Kelly); 1676:19-1677:14 (Guimaraes); 1847:17-23 (Mauriello); 3578:4-8 (Ortiz); 3793:6-25 (Loria); 5268:13-15 (Monroe); 6480:11-12 (Holmes); 6657:16-6658:25 (Materasso); 6978:9-11 (McCormack); 6571:9-19 (Morris). Supervisors elaborated that they do not institute quotas not just because they are frowned upon publicly or because of the New York State “Quota Law,” but that “numbers for numbers sake” does nothing to address crime, and merely “fosters hostility” between the NYPD and the communities it serves. 3543:1-3544:2 (Ortiz); 6273:5-15 (Barrett); 926:24-928:7 (Marino).

62. Additional proof of the lack of quotas in the NYPD is the aggregate numerical data, as there are approximately 19,000 uniformed officers working in patrol functions in the NYPD. 7306:17-18. In 2011, NYPD officers conducted approximately 685,000 stops. 2807:18-21. Officers therefore average three stops *per month*. Moreover, officers typically work 20-25 tours on patrol per month, each with an 8 hour and 35 minute shift. 584:24-585:3; 533:24-25. Using simple math, officers average one stop every sixth to seventh day on patrol. As noted by PO Herran, “[y]ou have to show something, you’re a police officer. You mean to tell me for 30 . . . days you haven’t seen any violations on parking, any . . . moving violation, and any kind of arrest? If you have 25-26 days on patrol. It’s impossible.” PTE 284(1:38-1:55).

63. Serrano testified that “quotas” existed, which included having his supervisors ask him to conduct vertical patrols in housing developments. 735:19-738:14.⁵⁸ Serrano did not receive any punishment deriving from his perceived quotas. 5225:18-21; 5226:15-23 (Mohan); 5248:1-5

punishment or retaliation if officers do not conduct the requested stops.

⁵⁸ Serrano felt that the NYPD punished him by asking him to help others in the Rockaways in the aftermath of Superstorm Sandy, even though he concedes that other officers from his precinct and every other precinct in the City were also assigned to this detail. 788:2-789:3; 849:2-23 (Officer Salmeron testimony regarding same detail). He even felt it was punishment to be

(Silva); 5269:6-5270:20 (Monroe); 6272:12-6273:14 (Barrett); 6678:13-24 (Materasso). Serrano testified he was not a “hero” and was not a “zero,” but was somewhere in the middle; and indeed, he received the satisfactory score of 3 (on a scale of 1 to 5) on his performance evaluations in 2011 and 2012. 734:13-735:1; 5271:8-5272:17 (“mediocre” officer). Serrano’s supervisor, Sgt. Monroe, considered Serrano’s decision-making ability to be poor and felt Serrano did not address crime conditions while on patrol. 5272:18-5273:23; 5284:12-5286:3; 5272:10-17. With respect to Serrano’s October 2012 monthly impact measurement report,⁵⁹ Monroe criticized Serrano for being ineffective in addressing his assigned conditions because, based on Monroe’s personal experience and his supervision of other officers, it was inconceivable that Serrano would be unable to conduct a single stop in the entire month, particularly as many of the radio runs to which Serrano allegedly responded contained detailed descriptions of suspects that should have yielded greater investigation. DTE B-10; 5277:14-22; 5286:4-5297:16.

64. Contrary to Serrano’s allegations, Captain Materasso did not illegally stop and search three black men while Serrano was present. 6659:10-14; 6727:13-16. Rather, Materasso was given information that undercover narcotics officers had purchased crack from two dealers as part of a large-scale federal investigation.⁶⁰ 6659:15-19. This stop only took place after the Captain Materasso received a detailed description of the two crack dealers, including what they were wearing and where precisely they were standing. 6661:19-6662:3; 6664:15-24.⁶¹

supervised in the completion of his work and his activity logs. 725:3-15; 767:2-9.

⁵⁹ Serrano had 161 radio runs and zero UF-250s in October 2012. 5293:19-5294:17. Serrano worked 13 days on patrol, which amounted to over 100 hours. 5286:4-5297:16.

⁶⁰ Materasso was aware of this year-long narcotics investigation through monthly strategy meetings with the narcotics investigation team. 6664: 8-14. She was asked to identify the crack dealers, so when the case “take-down” would occur, arrest warrants would be issued. 6662:4-17.

⁶¹ While Materasso frisked the two crack dealers out of fear for her safety, at the time they were frisked, Materasso had probable cause to arrest these men based on the drug sale to the undercover officer.⁶¹ 6663:2-6; 6666:19-23; 6667:21-6668:7.

65. Contrary to Serrano's allegations, Inspector McCormack never told Serrano he should stop all black and Hispanic people. 6966:8-14; 6971:3-5. On an audio secretly recorded by Serrano, McCormack explained he encouraged Serrano to lawfully stop the "right people" (namely, "the victims' descriptions of the perpetrators...committing" robberies, grand larcenies, and shootings during that time) at the "right place" and the "right location" (the sector where the condition needs to be addressed), particularly in light of the limited resources available at the 40th precinct. 6954:4-13. Although Inspector McCormack made a general comment on Officer Serrano's secretly-recorded audiotape regarding stopping "male blacks, 14 to 20, 21" during a 2012 roll call, Inspector McCormack explained that lawfully stopping the right people meant stopping individuals only if individualized reasonable suspicion exists, i.e. not merely stopping African-American males age 14-21. 7052:1-9. Moreover, Inspector McCormack was referring to conditions of "hundreds of robberies and grand larcenies that were occurring in and around Mott Haven and the Patterson housing developments." 6971:12-18. Inspector McCormack was made aware of the suspect descriptions for this crime condition from the victims of the perpetrators. 6971:19-22. Further, during roll calls, Inspector McCormack would provide sufficient detail regarding crime suspect description information to his officers, including clothing, height, weight, and any other information about the suspects available. 7051:1-5. Indeed, with respect to the Mott Haven robbery and grand larceny condition, Inspector McCormack provided such suspect descriptions to his officers at roll call. 7051:16-25.

66. Adhyl Polanco made recordings of roll calls from September to November 2009. 471:1-3. He alleged that the imposition of quotas only began in 2009, though he gave conflicting answers about in which month they began. 421:9-17; 423:17-24 (Summer 2009); 553:17-20 (February-March 2009). When that quota was allegedly first set, the number was 20 summonses and one

arrest.⁶² 424:24-425:7. Though Polanco also alleged he was told to conduct five SQFs in a month, 426:23-427:8, and at times to conduct one SQF per tour, 427:18-24, none of these alleged numbers are found on the recordings provided by Polanco. Polanco claimed that consequences for not meeting the quota would result in a tour change, low evaluations, and performance monitoring. 429:11-18. However, Polanco admitted he did not meet the alleged quota for certain months, but did not allege he was punished with low evaluations, a tour change,⁶³ or performance monitoring as a result. 429:19-22; 500:16-22. The Squad Supervisor Recapitulations for Polanco's squad for an eight month period includes the summary activity for the other officers on the same squad as Polanco. PTE 491; DTE X11. For half of the months, not a **single** officer on Polanco's squad met the alleged 20 summonses per month quota. And nearly half of the officers failed to meet the alleged five 250s per month quota alleged by Polanco. Therefore, it's clear that even if a quota was in place in the 41st Precinct, officers did not feel any pressure to meet those numbers through unconstitutional stops or summonses, since more than half of the time, the officers never met those numbers.⁶⁴

⁶² Polanco admitted he never once heard Inspector McHugh give any numbers to officers. 519:24-520:15.

⁶³ While Polanco also claimed that he was denied days off because of his low numbers, he could not come up with a single date on which that happened. 431:12-25.

⁶⁴ Testimony during trial indicated that in other instances where numbers were heard on recordings, officers had set those numbers for themselves. PBA delegate Angel Herran testified that in his experience, officers set a target number of summonses and arrests they should reach on a monthly basis, without input from supervisors. 6764:11-22. Although officers no longer agree on numbers, Herran explained the rationale for officers setting their own numbers in the past was the desire to know what the average is, and to know how the officers rated compared to their peers. 6766:19-24; 6764:24-6765:5; 6768:19-6769:2. Herran stated that stops or UF-250s were never part of that calculus, and Polanco never recorded any evidence to the contrary. 6768:10-15. Chief Marino, when he was the Commanding Officer of the 75th Precinct, noticed this same behavior when he saw that the approximately 400 officers assigned to patrol all issued exactly 5 summonses per month. 918:21-919:4. Marino testified supervisors had not instituted any sort of summons, and that the 5 summons per month number appeared to have been a quota set by the officers themselves. 919:3-4. It is telling that such evidence of a quota, whether

67. **Senator Adams.** (¶67) Plaintiffs’ witness, State Senator Adams, provided utterly implausible, false, baseless, and wholly uncorroborated testimony alleging that Police Commissioner Kelly told Adams, Governor David Paterson, Senator Martin Golden, and Assemblyman Hakeem Jeffries that Kelly “targeted” black and Hispanic young people because he “wanted to instill fear in them,” so that “every time they leave their home, they could be stopped by the police.” 1588:25-1589:6. Adams even claimed at trial that Kelly repeated these comments while at a round-table discussion at Medgar Evers College in August 2010, which included 50 African-American officials and the Central Brooklyn Black Legislative Coalition. 1615:8-18; 1617:1-3. Adams’s testimony was unequivocally rebutted by the testimony of Inspector Holmes, who was present at this discussion and who totally rejected the implication that it was the NYPD’s policy to target black and Hispanic young people in order to instill fear in them. 6511:12-25; 6512:10-6513:10; 6515:13-6516:7. Further, Chief Esposito explicitly rejected Sen. Adams’s preposterous claim, and made it clear that he has never communicated any such practice to police personnel or down the NYPD chain of command. 3021:19-3023:3.

68. **Eli Silverman.** (¶68) The 2008 survey is not reliable or representative. 2522:16-21 (2008 survey was limited to managerial retirees); 2525:5-15 (included only retirees who opted to join union mailing list), 2525:16-21 (no idea what percentage of retired managerial were surveyed); 2526:12-2529:3 (questions were worded in confusing way); PTE 300 (survey asked for pressure to increase stop and frisk reports, not stop and frisks themselves); 2533:1-10 (survey is subjective); 2533:11-24 (survey had no option for a respondent to indicate feeling no pressure); 2534:5 – 2535:13 (survey asked only about limited categories of police activities); 2537:12 – 2539:19 (professor did consider the possible bias of survey respondents). The 2012

officer-imposed or supervisor-imposed, in any precinct has not been presented by plaintiffs.

survey is likewise not reliable or representative. 2540:2-13 (2012 survey limited to only retired members who opted into volunteer system); 2540:15 – 2542:13 (survey went out to very small percentage of actual retirees); 2544:16-18 (survey was not random); 2544:19 – 2548:22, 2556:18 – 2558:22 (survey was not representative of all retirees and professor doesn't know if the survey is representative of active retirees, but professor thinks his “generally parallels” and that “no survey is perfect”). Very little can be drawn from the results of either survey. 2534:5-8 (survey says nothing about the quality of the police activity); 2559:20-2561:3 (survey was limited to two snap shots in time, and do not show changing opinions over time); 2561:4-2564:23, 2568:8-2569:6 (large numbers of people left questions blank, and depending on their intent, the results would be very different). In any event, for the 2008 survey, by far the greatest increase in pressure was to decrease index crimes. 2569:7-2570:20, PTE 291. The 2012 survey likewise shows that the increase in pressure reported in the survey was to address index crime. PTE 292.

69. **Expert Analysis.** (§§69-§91) There is no prevailing benchmark for racial disparity regression analysis (2140:15-24; 2366:1-25; 2369:1-2370:2; 4305:18-4306:7; 6075:1-24; 7096:20-7097:10; PTE K6), but the evidence supports defendants' position that crime suspect data is the better, more appropriate benchmark. 4305:18-4306:7; 5790:19-5791:12; 6065:18-6069:6-11; 6070:13-6074:25; 6078:4-6079:2; 6131:9-20; 6151:5-6151:11; 7096:20-7097:10; 7260:7-7263:13; PTE K6. Professor Fagan agrees.⁶⁵ 2372:6-14.

70. Crime suspect description data estimates the available pool of persons exhibiting suspicious behavior that could be observed by the police (6065:25-6066:9) – while population

⁶⁵ Fagan's stated concern with using crime suspect description data in his analysis in this case is the fact that some percentage of suspect descriptions are unknown (2148:11-23; 2372:22-2373:2), but was unable to identify the percentage of known data that would be required to allay that concern. 2459:17-2460:11. Regardless, Fagan does not offer any evidence that the description of a suspect's race supplied by the victim of a crime is unreliable.

merely estimates the potential number of persons in a given area. 2138:19-2139:1; 5799:17-23; 6083:35-6087:7. Suspect description is also much more closely correlated with stops by race and ethnicity than is population. See DTE H13, Figs. 7-10; Y8 and B14; 6088:8-6091:19. In 2011 and 2012, approximately 83% of all *known* crime suspects and approximately 90% of all *violent* crime suspects were Black and Hispanic, and Blacks and Hispanics represented 87% of persons stopped. See DTE Y8 (NYC_2_00024916) and B14 (NYC_2_00028891).

71. Fagan has previously used arrestee race data in racial disparity regression analysis (2192:19-22; 2370:15-2372:10; 2374:21-2375:5), acknowledging that the “more relevant comparison is the number of crimes committed by each ethnic group.” (2372:6-10), however, he did not do so in this case. 2372:11-14. Despite the fact that Professors Dennis Smith and Robert Purtell ran several alternate regressions which included suspect race data and the results revealed that the evidence of racial discrimination either disappeared or the size of the impact was reduced (DTE O8, Ex. I and DTE H13, Tables 8-10; 2363:20-2364:18; 5782:16-25; 5787:9-23; 5788:9-5790:17; 6086:11-6088:6), Fagan did not even test the effect of the inclusion of suspect race data in his model. 2377:23-2378:4. Fagan’s only argument in opposition was that in defendants’ alternate regression (DTE H13, Table 10), looking at the Z scores, the magnitude of the statistical significance of percent black and percent Hispanic population are greater than the magnitude of the statistical significance for black and Hispanic suspect coefficients. 6840:8-6841:10; PTE 574. However, as Purtell testified and illustrated in DTE N15, notwithstanding Fagan’s claim of statistical significance and strength of association for the Z scores Fagan added to defendants Table 10 alternate regression (PTE 574; 6840:8-6841:10), there was no practical significance to Fagan’s racial disparity analysis. 6855:17-6857:19; DTE N15.

72. When confronted with his prior use of suspect (arrestee) data in disparate impact analyses, Fagan failed to offer any convincing justification for his departure in this case. 2377:23-2380:12. Fagan's claim that because the race of suspects is only known in 63% of all crimes, too much data was missing to be reliable (2148:11-23; 2372:22-2373:2), is without merit (6084:6-10) and undermined by Fagan's own prior work which relied on arrest data where there was also a significant percentage of known race missing, yet he was able to reach what he believed were valid, reliable conclusions.⁶⁶ 6188:2-5. Second, the impact of any missing data is not equally problematic for all crimes because suspect race is known for a **very high percentage of most crimes**. See PTE 417, Appx. B, Table 2. Fagan ran regression analysis by crime category. See *id.* at Table 5 (p. 18). Therefore, Fagan could have incorporated into his analysis known suspect description data for the 7 of 9 non-property crime categories, for which the percentages known are very high (73-98%, depending on the category). See *id.* at Table 5 (p. 18); Appx. B, Table 2; 2379:12-2380:12; 5814:6-5815:10. Doing so would have revealed what impact that suspect description data had on the regression analysis results. 2380:5-12.

73. Fagan's claim that of confidence issues with the crime suspect data in "merged data files" provided by the NYPD is meritless since the only way the 37% unknown could threaten the reliability of the 63% known would be if the unknowns were dramatically different, but as Assistant Commissioner McGuire testified the proportions seen in that data are very consistent year to year, across the city and across precincts, so there is additional confidence that there is not some unknown population out there committing crimes. 4314:19-4315-2; DTE Y8 and B14. For example, in the 73rd Precinct in 2012 there were 11,679 crime complaints. DTE B14, at

⁶⁶ Fagan's missing data concern is undermined by the fact that his socioeconomic factors, population data and race measures in his regression analyses were all frozen in time from the year in which they were drawn, and therefore significant percentages of actual data was missing.

NYC_2_00029840. Therefore, for approximately 4300 crimes (37% of 11,679) suspect race is unknown. *Id.* Blacks and Hispanics comprise nearly 98% of the residential population in the 73rd Precinct and 98% of all known crime suspects. *Id.* Asians/whites comprise 1.7% (1480 persons) of the 73rd Precinct's residential population and 2% of all known crime suspects. *Id.* To believe the 63% of known suspects is unreliable measure of the 37% unknown suspects, you would have to believe that the unknown suspects are overwhelmingly made up of the Asian/white suspects – a result that requires the unreasonable conclusion that the approximately 4300 crimes with unidentified suspects were committed either by the 1480 Asian/white residents, or by an influx of Asian/white visitors to the 73rd Precinct.

74. The results of Fagan's regression analyses are only reliable if the model reflects the scenario he is trying to test, which in this case is the existence of racial bias in NYPD stop activity. 5780:20-25. Fagan's model does not reflect reality because he omitted key variables and the variables he included are improperly specified, operationalized, and estimated. 5742:20-5473:17; 5790:19-5791:12; 5794:22-5795:23; 5819:2-5820; 5821:7-.5827:11. Due to the flawed manner in which Fagan structured his racial disparity regression analyses he cannot separate the effects of race from other components of crime patterns. 5810:4-14; 5821:7-5822:12.

75. Data was fixed at a point in time and not trended over the period under review, which means Fagan's model ignores the reality that population, racial composition, gender, education level, unemployment, and other relevant socioeconomic factors can all vary across time in a census tract – i.e., hour to hour, day to day, month to month, season to season, year to year. 2389:22-2396:13; 5799:17-5805:11. Fagan's static approach is **inconsistent** with the practices of most criminologists to use trended variables for demographic factors. 6070:13-6071:11.

76. Census tracts are used as the geographical unit of measurement, despite the fact that they are not used by the NYPD as a unit of management including to report or track crime, to deploy resources, or to define patrol sectors. 3246:22-3247:8; 6108:22-6109:2; 6460:11-6462:12; DTE T14. Fagan is aware of this reality. 2401:10-21.

77. Crime data is logged to smooth or “iron out” the “noise” of the ups and downs of daily crime data (2411:8-2412:4; 2427:5-2428:1), but that process eviscerates from the regression model the reality of how the NYPD uses crime data to make policing decisions. 6093:18-6096:18. The observation of a spike in crime matters to the NYPD. 1646:21-1648:8; 3244:1-10; 3479:19-3480:5; 3567:10-16; 5235:2-5; 5545:18-5546:3; 6096:19-6097:16.. The “noise” drives deployment decisions and stop activity. *Id.* and 6082:25-6083:19. Fagan admitted that he could have used crime rates in his analysis, which would obviate the need for logging, but he did not. 2428:2-8.

78. Crime data is lagged by calendar month, which can result in the use of data up to 7 weeks old while ignoring the 3 most current weeks of crime data. 2428:12-2429:6; 5819:2-19; DTE O14. The record is replete with testimony from NYPD witnesses of all ranks and assignment supporting the fact that the NYPD uses real crime in real time. 5338:23-5340:7; 6572:18-6573:3.

79. Crime is aggregated into crime categories, which falsely assumes that the police response - in terms of stops conducted - is the same regardless of the specific crime. 2412:8-14; 2413:14-21; 2421:1-15; 5811:6-24; 6082:25-6086:10; 6182:25-6183:16.

80. Fagan neither excluded nor controlled for the 78% and 88% of the stops that he found were apparently justified by reasonable suspicion in the data set for his 14th Amendment regression analysis. 2407:5-2408:9; 2408:21-2409:9; 5815:11-15.

81. Fagan's patrol strength measure – intended to control for the probability of an officer encountering someone exhibiting behavior justifying a stop – was fatally flawed. 5791:13-5792:24; 6109:7-6113:25. In his First Report Fagan used quarterly precinct staffing numbers (2400:14-18), and in his Second Supplemental Report he created his own calculation of patrol strength based on whether an officer made a single stop in a census tract in a calendar month, not accounting in any way for the potential presence of partners, supervisors, or specialty unit teams.⁶⁷ 2396:14-2397:22; 2400:22-25; 5792:3-24; 6110:22-6113:25; and PTE 412 and 417; DTE O8 and H13. A police officer walking a beat or driving through a patrol sector is likely to see hundreds of people each day, and over a twenty-day work month may see thousands. DTE H13, p. 9. Yet a typical officer chooses to stop an average of 2 to 3 people per month, so there are many more observed individuals who do not exhibit behavior that warrants a stop. 5896:23-5897:5; 6165:1-13; DTE H13, p. 9. Therefore, defendants' experts argued that since there was strong evidence that the processes were different, that difference – termed “zero counts” needed to be addressed in the regression models. DTE H13, pp. 66-70; 5787:14-5788:7. Purtell explained that the “zero counts” defendants removed in order to test their hypothesis (represented in DTE H13, Table 8) included census tracts which had zero stops in a calendar month as well as tracts which had only one or two observations, and cases in which there were large gaps in the data set. 6047:14:6047. Defendants experts found that not controlling for “zero counts” was likely to inflate the impact coefficients for all of the variable in Fagan's regression

⁶⁷ Fagan's claim of confidence in his calculation of patrol strength because of a “high correlation” between the two measures used in each report (2399:1-7; 6041:3-10) is unsupported (5888:2-9; 5891:2-14) and meaningless, because as Purtell testified, while there may be a correlation between two sets of numbers, it does not establish that either are accurate measurements. 5796:3-5797:5, 5797:22-5798:6; 5888:10-5889:6. Fagan also conceded that defendants were correct in their criticism of Fagan's patrol strength measure as endogenous. 6007:11-17.

analyses. DTE H13, pp. 66-70; 5825:5-15; 5934:2-5935:15. Defendants' experts never suggested or opined that zero counts should be permanently removed or dropped from the analysis – only that they should be controlled for in the model, which is a standard accepted statistical practice. 5824:19-5826:5; 5918:17-5919:2; 6844:14-24; DTE H13, pp. 66-70.

82. Fagan agreed that regression coefficients can be affected by “zero counts” (2381:23-2382:7), and acknowledged his awareness of statistical methods to control for zeros in a regression model. 2385:24-2386:8. In fact, Fagan conducted a test to determine whether there was a need to model the “zero process” and the results of that test strongly supported defendants' hypothesis that there was a need to control for the zero process. 6843:15-23; 6844:8-13; 6859:19-6860:13. Nevertheless, Fagan failed to control for “zero counts” in his regression analysis.

83. There is no practical significance to Fagan's claims that after controlling for effects of crime complaint rates on the volume of stops, he observes a statistically significant contribution of the racial contribution of the police precinct to the overall stop rates. *See* DTE H13 at Table 12, and N14; PTE 412 and 417, at Tables 5 and 7; 5776:14-5777:3; 5929:20-5932:17; 6873:22-6874:3. Fagan's attempt to deny the lack of the practical significance of his regression analysis as reported by defendants is meritless because the odds ratio listed in the third line of DTE N14 is 1.00887 and Fagan agreed that with respect to the values in the third line a number equal to 1.0 would be “even odds.” 6040:3-11). As Purtell testified, the practical significance of Fagan's regression analysis is that the odds of an increase in stops given a 1% increase in the proportion of the black population versus a 1% increase in the white population is 50.22% -- **a virtual coin toss**. *See* DTE H13 at Table 12, N14; 5762:24-5764:25; 5903:16-5906:5; 5908:17-5909:3;

5950:11-14.⁶⁸ Therefore, no meaningful inferences regarding racial disparate impact can be drawn from the results Fagan reports. 5827:3-11.

84. The population average results from Fagan's regression analysis cannot be used to predict the number of stops that would occur in a specific census tract. 5821:7-5822:12; 5906:6-5907:7; 5907:11-5908:9; 5909:4-18; 6045:9-6047:3. Fagan's use of population average regression results in this manner abandoned all standards of statistical practice and he provided no proof of an exception that justified his behavior. 6870:24-6873:21. Fagan admitted it would be important to know the actual values when considering his projected values (6883:10-6884:11) and conceded that he was aware of, but failed to report, those actual values to the Court with his predictions. 6884:12-6885:6. Further, Fagan's newly claimed stop predictions were not consistent with the actual stop numbers. 6874:13-20; 6885:9-6887:6. Fagan's claim that the predicted stops and the actual number of stops followed roughly the same shape and distribution except for a small number of "outliers" at 80% and above was demonstrably false. 6848:17-6849:2; 6874:13-20; 6886:11-6887:6. A review of PTE 566 – which reflects in graduated colors the census tracts and their relative percentage black, with the darkest color representing the 80% black and higher census tracts – makes clear that there are not a "small number of cases" for which Fagan's predictions were meaningfully disconnected from the actual numbers of stops, as Fagan claimed.⁶⁹ 6886:23-6887:6.

⁶⁸ Fagan agrees that Purtell accurately stated how to interpret a regression coefficient in DTE N14 (6001:14-17), and that the legend on the last line of N14 accurately stated what Fagan was measuring in his Table 5 regression analyses. 6009:14-25; 6039:18-24.

⁶⁹ No exhibit similar to PTE 566 was offered by plaintiffs that mapped, by color-shaded census tracts, the distribution of percentage Hispanic census tracts in the City, nor is there any evidence to support Fagan's claim that there are only a small number of tracts with a demographic of 85% Hispanic or greater. 6824:25-6825:4; PTE 572. Regardless of whether Fagan is addressing stops of blacks or Hispanics, defendants' maintain that Fagan's "predictions" of stops in census tracts

85. Fagan's 4th Amendment analysis and opinions reflect that NYPD officers had apparent reasonable suspicion to make stops between January 2010 and June 2012 almost 90% of the time. 2023:19:23; PTE 417, Table 12C; PTE 417B; and PTE 417C. A figure which, between January 2004 and June 2012, has **steadily increased** while the number of stops which are apparently unjustified by reasonable suspicion has **steadily decreased**. See DTE H13, Table 4 and Figure 5, (page 50); PTE 411, Table 12; PTE 417, Table 12C; PTE 417B and PTE 417C; 2295:17- 2298:5; 2435:1-2436:17; 6103:8-6105:2; 6120:3-20. Fagan did not provide any evidence about the appropriateness of any inference that the stops that are either "unable to be generalized" or "apparently unjustified" under his analysis support plaintiffs' claim of widespread unconstitutional conduct by the NYPD. In fact, Fagan acknowledged that under his analysis the apparently unjustified stops are not evenly distributed across New York City at the borough, precinct, neighborhood or even census tract level. 2431:9-2436:17

86. Fagan has admittedly conducted his 4th Amendment analysis without speaking to any NYPD officers to find out what they intend when they fill out the form and without considering any information *outside* of the UF250. 2320:18-2321:24. Fagan's "High Crime Area" and Furtive Movement checkbox criticism and "census tract quintile analysis" (PTE 411, Fig. 13 and 417, Fig. 13) lack merit. First, Fagan admitted that the "High Crime Area" checkbox can be referring to a geographic area smaller than a census tract area. 2359:15-2361:2; 6434:4-6435:6; 6467:1-8; PTE 42. Second, of the 2.8 million stops between 2004-2009, only 62,437 had only Furtive Movement checked. See DTE O8. Therefore, even if the checking of 'furtive movement' alone were a cause for concern, the form alone cannot establish that a stop is illegal.

(PTE 570, 571, 572) using a population average regression model is inappropriate and unsupported by accepted statistical practices. 6870:24-6873:21.

87. Fagan admitted that analysis of handwritten narratives under “Other” on the UF250 “would invite a host of potential biases and errors,” and would render any conclusions statistically meaningless.” 2322:8-17; 2323:4-2324:8; PTE 415, ¶¶9-13. Fagan’s analysis of the “Other” text strings is statistically unreliable because Fagan failed to utilize accepted sampling methodology when conducting his analysis to ensure his sample was representative in all material aspects of the population of UF250s from which it was drawn, nor did Fagan compare his sample to the overall pool of data to demonstrate it had the same characteristics such that it closely represented the pool of data from which it was drawn. 2334:23-2337:6; 5828:14-5836:24; 5837:17-5838:2.

88. Out of 4.43 million stops, 51.5% (2.28 million) were frisked and only 8.3% (approximately 367,000) were searched. *See* DTE V14 (A-D); 2308:12-2310:16. Of those approximately 367,000 searched, weapons were recovered 9.2% of the time and contraband was recovered 14% of the time. *Id.* Arrests were made approximately 6% of the time and summonses were issued approximately 6% of the time. 2316:1-23. The fact a gun or weapon or contraband is not found does not vitiate reasonable suspicion for the stop, nor does it determine the legality of the stop. In fact, Fagan previously acknowledged that a hit rate of 1 arrest for 9 stops would not raise concerns because the basis for a stop - reasonable suspicion - is lower than probable cause required for an arrest. *See* Pl. Ex. 333 at page 111. Various witnesses testified, including former Chief of Department Joseph Esposito, that many stops interrupt a crime from occurring, for example an individual casing a location or stalking an individual late at night. 2883:1-2884:13; 2915:21-25; 2983:17-2984:11.

89. Fagan has not conducted empirical research to support his opinion that the NYPD's "hit rate" suggests stops are lacking in reasonable suspicion (*see, e.g.*, PTE 417), and plaintiffs' police practices expert raised no concerns about the 1 and 10 hit rate.

90. Multiple stops can easily occur in connection with a single event, which can explain the 1 and 10 hit rate. 6426:20-6427:22; 6446:11-6447:11. Inspector Juanita Holmes testified that multiple people could be stopped in connection with the description provided in a single radio run, and further, that complaints involving descriptions of multiple suspects can also generate stops of multiple people. 6474:10-6476:19. A complaint concerning disorderly groups of people can also generate multiple stops. 6477:10-25.

91. Numerous Commanding Officers and high level officials testified that a hit rate of about 10-12 % does not raise concerns about whether the stops are based on reasonable suspicion. 2983:17-2984:11; 6473:5-16; 6601:10-6602:5; 7092:4-7093:9; 7678:9-15; PTE 333. Only one Inspector voiced any concern whatsoever and that was assuming that the arrests and summonses together were 4% of the stops (5472:1-18), but that concern was in relation to a single 3-month period of stops in 2012 in that Inspector's precinct, in which the hit rate was significantly less than the citywide average. 5426:14-21.

92. **Remedy** (§§92-§94) The remedies described by Plaintiffs' expert are generic descriptions of policing systems and are not specific to the NYPD. 7548:12 – 7549:13 (generic); 7550:4 -16 (largely generic); 7434:17 - 7435:20 (general outline of a "comprehensive system"); 7529:7 – 7533:4; 7560:2-5 (not specific to NYPD). Walker's chief opinion is that a different expert determine what changes, if any, are needed. 7542:2-6; 7496:16 – 7497:13; 7546:22-25 (Performance Reviews); 7510:18 – 7511:10 (Early Intervention System); 7542:18 – 7543:13 (Supervisory Review). But, the NYPD already has in place all the elements of the

comprehensive approach. 7551:3-7552:10 (written policies); 7552:11-7554:5 (performance assessment system); 7554:6-7558:10 (training program); 7558:11-7560:1 (close supervision); 7560:8 – 7561:23; 7712:5 – 7715:23 (early intervention system); 7561:2-7563:1 (investigation and discipline); 7563:6-20 (citizen complaint process). The NYPD's current system comports with accepted practices. 7576:14-7582:23 (Quest for Excellence is qualitative); 7582:24-7586:10 (yearly evals are qualitative); 7589:12-7591:19 (monitoring officer activity important); 7586:11-7588:1 (quantitative measures needed); 7752:3-7754:24 (current monthly conditions impact reports are quantitative and qualitative); 7741:12-7749:14 (current yearly evaluation are qualitative); 7588:2-7589:10; 7755:1-7757:1 (goal setting is an accepted police practice).

93. A monitor is not needed. 7567:22 – 7570:25 (not resistant to change); 7571:2 – 7572:14 (not resistant outside oversight); 7572:15 – 7576:13 (not resistant to community input); 7763:11 – 7763:25 (monitors have downsides); 7770:10 – 7775:15 (experiences of other cities counsels against a monitor); 7777:2 – 7778:25 (court monitor is premature); 7779:2-22 (monitors should be the last resort, they are very slow and not sustainable, and internal changes are better). Cities with monitors were very different than NYC and the needed remedies were much broader. 7592:14 – 7594:23 (specific remedial changes vary); 7593:3 – 7594:23 (size of department matters); 7783:5 – 7786:12 (Las Vegas shows that inside is better and faster).

94. A narrative section on the UF 250 is not needed. 7757:2 – 7761:15; 7804:7-19 (a narrative section is not needed); 7805:5 – 7807:4 (narratives are often rote). 7822:21 – 18 (it is important that supervisors review their officers stops for constitutionality, but not needed for every stop). The Court should consider the possible de-policing. 7787:14-18.

CONCLUSIONS OF LAW

95. The nineteen individual incidents at issue were lawful encounters consistent with the

Fourth and Fourteenth Amendment.⁷⁰

96. “[A] city’s failure to train its subordinates satisfies the policy or custom requirement only where the need to act is so obvious, and the inadequacy of current practices so likely to result in a deprivation of federal rights, that the municipality or official can be found deliberately indifferent to the need.” *City of Canton v. Harris*, 489 U.S. 378, 390 (1989)). No evidence was adduced to establish an unconstitutional policy or practice by the City, nor did the evidence establish a pattern of misconduct or acquiescence or tacit authorization of subordinates’ alleged unlawful conduct by the City. *Connick v. Thompson*, 131 S. Ct. 1350, 1360 (2011).

97. **Conclusion** For the foregoing reasons, the Court should render a verdict in favor of defendant City.

⁷⁰ For ¶18, given that there was an emergency report of a loose gun between four-to-five men in a small private, fenced-in location, officers had reasonable suspicion to stop these men proximate to that limited area. *U.S. v. Bold*, 19 F.3d 99, 104 (2d Cir. 1994) (“Where the tip concerns an individual with a gun, the totality-of-the-circumstances test for determining reasonable suspicion should include consideration of the possibility of the possession of a gun, and the government’s need for prompt investigation.”). In *United States v. Jaramillo*, 25 F.3d 1146, 1152 (2d Cir. 1994), the Second Circuit held that “a Terry-type patdown is permissible with respect to persons who are believed, on the basis of specific and articulable facts, to have behaved suspiciously or with respect to persons who own, occupy, or enter upon *private premises* on which the officers have the right to conduct a search or make a security check.”(emphasis added). Here, it is reasonable that officers, acting on a report that a gun was in a private area of a building, believed that the four-to-five men present in this private area had a connection and therefore, that these men may have been carrying the gun. *See Jaramillo*, 25 F.3d at 1152. For ¶19, Anthony’s search was justified at least in part because he smelled like marijuana. *See, e.g., Floyd v. City of New York*, 861 F. Supp. 2d 274, 296 (S.D.N.Y. 2012)(“[T]he narrative ‘smoking cigarette strong smell of marijuana’ would be strong evidence of reasonable suspicion”). The fact that Ourlicht’s friend – in close proximity to Ourlicht at this point – was found to have drugs on his person led the officers to reasonably suspect that Ourlicht may also be carrying drugs, which would thereby necessitate a continued search of Ourlicht. Indeed, the Second Circuit, in *Jaramillo*, “suggests that an individual’s proximity to another whom the police suspect of criminal activity can be a relevant consideration when there is a connection between the two individuals.” *United States v. Nelson*, 08 Cr. 10264 (RWZ), 2009 U.S. Dist. LEXIS 22541, *12-13 (D. Mass. Mar. 6, 2009). Regardless, the second search of Ourlicht was precipitated by the officer’s discovery of the drugs on Anthony; it was no longer proximately connected to the initial stages of the encounter and whatever safety reason caused the initial search.

Dated: New York, New York
June 12, 2013

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendant City
100 Church Street, Room 3-158
New York, New York 10007
(212) 356-3503

By: 

Heidi Grossman
Brenda Cooke
Linda Donahue
Morgan Kunz
Joseph Marutollo
Suzanna Publicker
Lisa Richardson
Judson Vickers

Exhibit F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|---------------------------------------|---|---------------------|
| ----- | X | |
| | : | |
| DAVID FLOYD, <i>et al.</i> , | : | |
| | : | |
| Plaintiffs, | : | 08 Civ. 01034 (SAS) |
| | : | |
| -against- | : | ECF CASE |
| | : | |
| THE CITY OF NEW YORK, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| ----- | X | |

SHIRA A. SCHEINDLIN, U.S.D.J.:

PLAINTIFFS’ PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

TABLE OF CONTENTS

I. Widespread Pattern and Practice of Suspicionless and Race-Based Stops 1

 a. Statistical Evidence: Fourth Amendment..... 1

 i. Hit Rates 1

 ii. Fagan’s Classification Analysis..... 1

 iii. Ineffectiveness of UF250s to Monitor Compliance with the
 Constitution 2

 iv. Statistical Patterns in Operation with Individual Officers 3

 1. Use of UF250 Scripts..... 3

 2. Improper Use of the “High Crime Area” Stop Factor 3

 b. Statistical Evidence: Fourteenth Amendment..... 5

 i. Minority Population Predicts Stop Rates..... 5

 ii. Blacks and Hispanics Are Stopped More Frequently, Are More Likely
 to be Stopped and Are More Likely to be Stopped for Questionable
 Reasons than Are Whites 5

 iii. Blacks Are Treated More Harshly than Whites during Stops 6

 c. The City’s Meritless Critiques of Fagan 6

 i. Benchmark 7

 ii. Practical Significance 8

 iii. Zero Counts 9

 iv. Remaining Criticisms 9

 d. 19 Unconstitutional Stops of Plaintiffs and Class Members 10

 e. John Doe Officers were members of the NYPD 11

II. The NYPD Targets and Stereotypes Blacks and Latinos in its Stop Activity 13

 a. Commissioner Kelly’s Unrebutted Admissions..... 13

 b. Policy and Practice of Targeting the “Right People” for Stops 14

III. Pressure to Conduct Enforcement Activity..... 16

 a. CompStat..... 16

 b. Quotas and Performance or Productivity “Goals” or “Standards”..... 16

 c. High-level Officials’ Notice of and Acquiescence to the Use of Quotas 19

 d. Pressure Experienced by NYPD Officers During CompStat Era 20

 e. Performance Reviews Based Almost Exclusively on Numbers 21

IV. Supervision 22

 a. Failure to Supervise the Constitutionality of Stop-and-Frisk Activity 23

 b. Failure to Meaningfully Review Stop-and-Frisk Paperwork..... 25

 c. Failure of Integrity Control Officers to Monitor Officer SQF Conduct 27

 d. Failure to Meaningfully Audit Stop-and-Frisk Activity 28

V. Training..... 30

 a. Police Academy Training on Reasonable Suspicion Is Inadequate 30

 b. Training on Racial Profiling Is Inadequate..... 31

 c. Sergeant Training Is Inadequate..... 32

 d. Rodman’s Neck Training Materials Are Constitutionally Deficient 32

 e. Training on Armed Suspects Is Overly Broad and Racially Stereotypical..... 32

VI. Investigations, Discipline, and Monitoring 33

 a. NYPD Response to CCRB Stop-and-Frisk Complaints 33

 b. Office of Chief of Department Stop and Racial Profiling Complaints..... 35

 c. The Department Advocate 36

VII. Notice and Deliberate Indifference 38

 a. Notice of Racial Bias in Street Encounters Since 1999 38

 b. Indifference to Complaints About Stop and Frisk and Racial Profiling..... 39

 c. The RAND Report 41

| | |
|---|----|
| d. Failure to Internally Discuss Racial Profiling..... | 44 |
| e. Belief that Presence of Reasonable Suspicion Negates Racial Profiling..... | 45 |
| f. Failure to Implement the <i>Daniels</i> Settlement..... | 45 |
| g. Years of Effectively Ignoring Results of Stop-and-Frisk Audits..... | 46 |
| VIII. Remedy | 47 |

FLOYD v. CITY OF NEW YORK: TABLE OF WITNESSES

| NAME OF TESTIFYING WITNESS: | DESCRIPTION (For NYPD personnel, rank and assignment): | RELATION TO STOP (if applicable): | DATE TESTIFIED: |
|-----------------------------|--|--|---------------------------------|
| Acevedo, Kristianna | CLASS MEMBER | Stopped on May 27, 2007 | 4/1/2013 |
| Adams, Eric | WITNESS FOR PLAINTIFFS | | 4/1/2013 |
| Agron, Julio | Sergeant in the 28th Precinct from Fall of 2002 - present. (Tr. 977:25-978:7) | January 12, 2008 stop of Plaintiff Deon Dennis | 3/22/2013 |
| Albino, Santos | Detective | John Doe officers involved in the February 21, 2008 and June 6 or 9, 2008 stops of Plaintiff David Ourlicht; the January 2006 stop of Plaintiff Lalit Clarkson | 4/30/2013 |
| Almonor, Devin | CLASS MEMBER | Stopped on March 20, 2010 | 3/18/2013 |
| Arias, Edward | Officer, 23rd Precinct, 2007 - 2012. (Tr. 3478:25-3479:7) | February 5, 2008 stop of Class Member Clive Lino | 4/16/2013 |
| Barrelli, Carlo | Lieutenant, Integrity Control Officer of the 107th Precinct from April 2004 - January 2012. (Tr. 3629:21-24) | January 30, 2008 stop of Plaintiff David Ourlicht | 4/16/2013 |
| Barrett, Stacy | Lieutenant, 40th Precinct, from November 2009 - August 2011. (Tr. 6264: 24-6265:7) Integrity Control Officer | | 5/7/2013 |
| Beirne, John | Deputy Commissioner of Labor Relations since 2001. (Tr. 3354:19-23) | | 4/15/2013 |
| Cassidy, Peter | Deputy Chief. Commanding Officer of Quality Assurance Division, January 2001 - August 30, 2006 (retired). (PTE 154, 12:20-18:22) | | PTE 154 (DESIGNATED DEPOSITION) |
| Cirabisi, Stephen | Deputy Inspector, Commanding Officer of the 107th Precinct from November 2006 - August 2010. Currently Commanding Officer of 114th Precinct since August 2010. (Tr. 5614:8-5615:4) | January 30, 2008 stop of Plaintiff David Ourlicht | 5/1/13 - 5/2/13 |
| Clarkson, Lalit | NAMED PLAINTIFF | Stopped in January 2006 | 4/8/2013 |
| Colon, Jose | Officer, Manhattan IRT Housing Bureau in 2008 (Tr. 4024:12-14) | August 3, 2008 stop of Class Member Clive Lino | 4/18/2013 |
| Cronin, Mary | Inspector, Executive Officer of the Quality Assurance Division (QAD) from March 2001 - May 2006; Commanding Officer of QAD from May 2006 - current. (Tr. 4623:18-4624:3) | | 4/23/13 - 4/24/13 |
| Dale, Thomas | Assistant Chief. As of November 2009 deposition, Commanding Officer, Patrol Borough Queens South, since 2003. (PTE 155, 5:12-6:6) | | PTE 155 (DESIGNATED DEPOSITION) |
| Dang, Kha | Officer, Anti-Crime Unit in 88th Precinct from Spring of 2008 until August 2012. (Tr. 6368:2-5). | | 5/7/13, 5/9/13 |
| DeMarco, Louis | Detective, Narcotics Borough of Queens from 2007 - current. (Tr. 2677:21-2678:1) | May 27, 2007 stop of Class Member Kristianna Acevedo | 4/8/2013 |
| Dengler, Justin | Detective | John Doe officers involved in the April 20, 2007 Stop of David Floyd | 4/30/2013 |
| Dennis, Brian | Officer, 30th precinct, from 1994 - current. (Tr. 1067:11-18) | March 20, 2010 stop of Class Member Devon Almonor | 3/27/2013 |
| Dennis, Deon | NAMED PLAINTIFF | Stopped on January 12, 2008 | 3/19/2013 |
| Diaz, Raymond | Assistant Chief, Former Commander of Patrol Borough Manhattan North from 2002 - June 2009. (Tr. 1023:13-1024:1) | January 12, 2008 stop of Plaintiff Deon Dennis | 3/22/13 and 3/29/13 |
| Downs, Leroy | CLASS MEMBER | Stopped August 20, 2008 | 4/19/2013, 4/22/2013 |
| Eddy, Dennis | Officer, 107th Precinct (PTE 129, 71:9-14) | January 30, 2008 stop of Plaintiff David Ourlicht | PTE 129 (DESIGNATED DEPOSITION) |
| Esposito, Joseph | Chief of Department from August 2000 - March 2013 (Tr. 2793:22-2794:22) | | 4/9/13 - 4/10/13 |
| Fagan, Jeffrey | WITNESS FOR PLAINTIFFS | | 4/3/13-4/5/13, 5/6/13, 5/13/13 |
| Farrell, Michael | Deputy Commissioner of Strategic Initiatives since January 2002. Oversees OMAP and QAD. (Tr. 7082:1-12) | | 5/14/13 - 5/15/13 |

| | | | |
|---------------------|---|--|---------------------------------|
| Figueroa, Edgar | Officer, 23rd Precinct in February 2011 (Tr. 2755:5-6) | February 24, 2011 stop of Class Member Clive Lino | 4/8/2013 |
| Floyd, David | NAMED PLAINTIFF | Stopped on April 20, 2007 and February 27, 2008 | 3/18/13 - 3/19/13 |
| French, Edward | Officer, Police Service Area (PSA) 9, from January 2005 - August 2011. (Tr. 3740:6-9) | December 19, 2009 stop of Class Member Cornelio McDonald | 4/17/2013 |
| Giacona, Scott | Officer, Brooklyn South Gang Squad as of August 2008. | August 20, 2008 stop of Class Member Leroy Downs | 4/17/13 - 4/18/13, 4/22/13 |
| Giannelli, Robert | Retired. From February 2002 - June of 2007 was Executive Officer of Detective Bureau. In June of 2007 was promoted to Chief of Patrol. (PTE 157, 37:3-15) | | PTE 157 (DESIGNATED DEPOSITION) |
| Gillespie, Sean | Officer, Midtown South Operation Impact Squad, January 2009 - August 2010. (Tr. 3420:1-16) | February 12, 2010 stop of Class Member Dominique Sindyanza | 4/15/13 - 4/16/13 |
| Gonzalez, Edgar | Officer, 88th Precinct, Target Unit and Anti-Crime Unit since 2007 (PTE 130, 21:14-25) | | PTE 130 (DESIGNATED DEPOSITION) |
| Guimaraes, Fernando | Special Operations Lieutenant, 43rd Precinct from August 2007 - July 2010. (Tr. 1639:1-7) | February 27, 2008 stop of Plaintiff David Floyd | 4/1/2013 |
| Hall, James | Chief of Patrol from March 2010 - current. Succeeded Robert Giannelli. (Tr. 7304:6-11) | | 5/15/13 - 5/16/13 |
| Hassan, Mohamed | Officer, Manhattan IRT Housing Bureau in 2008 (Tr. 4017:13-4018:7) | August 3, 2008 stop of Class Member Clive Lino | 4/18/2013 |
| Hawkins, Michele | Detective, Narcotics Borough Queens, from 2001 - current. (Tr. 5452:9-12) | May 27, 2007 stop of Class Member Kristianna Acevedo | 4/30/2013 |
| Hegney, Richard | Sergeant, 107th Precinct from January 2001 - Fall 2008 (Tr. 1939:10-1940:2) | January 30, 2008 stop of Plaintiff David Ourlicht | 4/2/13 - 4/3/13 |
| Hernandez, Eric | Officer, 43rd Precinct. Assigned to anti-crime unit on February 27, 2008. (Tr. 1381:1-3) | February 27, 2008 stop of Plaintiff David Floyd | 3/28/2013 |
| Herran, Angel | Officer, 41st Precinct for the past 18 years. (Tr. 6754:1-4) | | 5/10/2013 |
| Holmes, Juanita | Inspector, Commanding Officer of 81st Precinct (6454:5-7) from July 2010 - current. (6458:13-15). Previously was Commanding Officer at PSA-2 in Brooklyn from June 2008 - July 2010. (6457:24-6458:12) | | 5/9/2013 |
| Houlahan, Daniel | Sergeant, PSA-2 since beginning of 2008. (DTE Q14, 11:5-20) | November 24, 2009 stop of Class Member Ian Provost | DTE Q14 (DESIGNATED DEPOSITION) |
| Hu, Donghai | Officer, PSA-5, from 2006 - current. (PTE 131, 12:15-13:18) | | PTE 131 (DESIGNATED DEPOSITION) |
| Joyce, Cormac | Officer, 43rd Precinct. Assigned to anti-crime unit on February 27, 2008. (Tr. 1312:13-15) | February 27, 2008 stop of Plaintiff David Floyd | 3/28/2013 |
| Kelly, James | Sergeant, 43rd Precinct from August 2005 - current. (Tr. 1427:14-21) | February 27, 2008 stop of Plaintiff David Floyd | 3/29/2013 |
| Korabel, Jonathan | Sergeant, 30th Precinct from July 2007 - June 2012. (Tr. 1145:9-1146:4). Currently Lieutenant in the 48th precinct. (Tr. 1184:12-15) | March 20, 2010 stop of Class Member Devon Almonor | 3/27/2013 |
| Kovall, Brian | Officer, 23rd Precinct in February 2008 - current. (Tr. 3043:15-18) | February 5, 2008 Stop of Class Member Clive Lino | 4/10/2013 |
| Leek, Daniel | Officer, 23rd Precinct in February 2011 - current (Tr. 2695:1-4) | February 24, 2011 Stop of Class Member Clive Lino | 4/8/2013 |
| Lehr, Kenneth | Inspector, Commanding Officer of 67th Precinct from January 2012 - current. (Tr. 5335:9-17). Previously was Commanding Officer of 9th Precinct from January 2010 - January 2012 (Tr. 5335:21-24) and Commanding Officer of Transit District 33 from May 2006 - January 2010. (Tr. 5336:3-6) | | 4/29/13 - 4/30/13, 5/17/13 |
| Lino, Clive | CLASS MEMBER | Stopped February 5, 2008, August 3, 2008 and February 24, 2011 | 4/1/2013 |
| Loria, Michael | Sergeant, PSA 9 from 2000 - 2012. (Tr. 3755:21-3756:5) | December 19, 2009 stop of Class Member Cornelio McDonald | 4/17/2013 |

| | | | |
|------------------------|--|--|---------------------------------|
| Mahoney, James | Officer, Brooklyn South Gang Squad, June 2007 - August 2012. (Tr. 3865:21-23) | August 20, 2008 stop of Class Member Leroy Downs | 4/17/2013, 4/22/2013 |
| Marino, Joseph | Sergeant, 88th Precinct from September 2005 - June 2012. (Tr. 5542:2-10) | | 4/30/2013 - 5/1/13 |
| Marino, Michael | Deputy Chief. Commanding Officer of 75th Precinct September 2002-September 2005 (Tr. 876:8-12, 887:19-20) Promoted to Executive Officer of Patrol Borough Brooklyn North in December 2004 (Tr. 888:3-11, 899:6-9) until December 2010, when he became Executive Officer of the borough of Staten Island. | | 3/22/2013 |
| Marrero, Victor | Officer, 41st Precinct from July 2008 - current. (Tr. 592:15-593:4) | | 3/20/2013 |
| Mascol, Rafael | Special Operations Lieutenant, 81st Precinct from 2007 - August of 2012. (Tr. 946:9-12) | | 3/22/2013 |
| Materasso, Martine | Captain, 40th precinct, since January 2012. (Tr. 6640:23-6641:8) Executive Officer and Impact Captain. | | 5/10/2013 |
| Mauriello, Steven | Deputy Inspector. Commanding Officer of the 81st Precinct from December 2007 - July 2010. (Tr. 1829:3-1830:21) | | 4/2/2013 |
| McAleer, Helen | Inspector, Office of Chief of Department from 1995 - current. (Tr. 3961:3-8) | | 4/18/2013 |
| McCarthy, James | Lieutenant, 107th Precinct in October 2007 - early 2010 (4980:19-25) | | 4/25/2013 |
| McCormack, Christopher | Deputy Inspector, Commanding Officer of 40th Precinct since September 27, 2011. Formerly CO of 20th Precinct, from May 5, 2010 - September 2011. (Tr. 6905:8-10; 6906:14-17) | | 5/13/2013 - 5/14/13 |
| McDonald, Cornelio | CLASS MEMBER | Stopped December 19, 2009 | 4/17/2013 |
| McGuire, Philip | Assistant Commissioner, in charge of the Crime Analysis and Planning (CAPPS) in the Office of Management, Analysis and Planning (OMAP) from 1994 until current (Tr. 4280:3-4) | | 4/22/2013, 5/3/13 |
| McHugh, Donald | Inspector, Commanding Officer of 41st Precinct, February 2008 - Fall 2010. (Tr. 3163:17-22) | | 4/14/13 - 4/15/13 |
| Mohan, Dewkoemar | Lieutenant, Patrol Supervisor of 40th Precinct from 2005 - 2012. (Tr. 5230:20-22) | | 4/29/2013 |
| Monroe, Stephen | Sergeant, 40th Precinct from October 2010 - current. (Tr. 5264:12-23) | | 4/29/2013 |
| Montgomery, Dwayne | Inspector, Commanding Officer of 28th Precinct June 2005 - March 2009 (Tr. 1561:6-14) | January 12, 2008 stop of Plaintiff Deon Dennis | 3/29/2013 and PTE 158 |
| Moran, Christopher | Officer, in the 107th Precinct in January 2008. (Tr. 4076:10-12) | January 30, 2008 stop of Plaintiff David Ourlicht | 4/18/2013 |
| Morris, Williams | Chief, Borough Commander, Patrol Borough Manhattan North. (6558:13-15) From July 2010 - current (Tr. 6599:5-6) | | 5/9/2013 - 5/10/13 |
| Mulet, Tracy | Lieutenant, Supervisor of Geospatial Information and Analysis Group within the Crime Analysis and Program Planning section of the Office of Management Analysis and Planning ("OMAP"). (Dkt. 161, Para. 1) | February 27, 2008 stop of Plaintiff David Floyd | STIPULATION |
| Mulligan, Daniel | Captain, Executive Officer of the Resource Management Section, Patrol Services Bureau, 2005 - time of deposition. Previously a Lieutenant at PSB and the Executive Officer of 123rd Precinct. (DTE R14, 25:23-28:-1) | | DTE R14 (DESIGNATED DEPOSITION) |
| Navaretta, Anthony | Officer, 28th Precinct starting in January 2006. (Tr. 6343:25-6344:12) | | 5/7/2013 |
| Ortiz, Charles | Deputy Inspector, Commanding Officer of 43rd Precinct from February 2008 - August 2012. (Tr. 3499:5-16) | February 27, 2008 stop of Plaintiff David Floyd | 4/16/2013 |
| Ourlicht, David | NAMED PLAINTIFF | Stopped January 30, 2008, February 21, 2008 and June 6 or 9, 2008 | 4/19/2013 |
| Palmieri, Cosmo | Lieutenant, Integrity Control Officer of 43rd Precinct from September 2008 - current. (Tr. 3651:2-6) | February 27, 2008 stop of Plaintiff David Floyd | 4/17/2013 |
| Peart, Nicholas | CLASS MEMBER | Stopped August 5, 2006, Spring 2008, September 2010 and April 2011 | 3/19/2013 |
| Peters, Enno | Lieutenant, Integrity Control Officer of 28th Precinct from October 1998 - February 2012. (Tr. 3580:25-3581:3) | January 12, 2008 stop of Plaintiff Deon Dennis | 4/16/2013 |

| | | | |
|-------------------------|--|---|---------------------------------|
| Pichardo, Luis | Officer, 28th Precinct from January 2006 - current (Tr. 1255:13 - 1256:11) | January 12, 2008 stop of Plaintiff Deon Dennis | 3/27/13 - 3/28/13 |
| Polanco, Adhyl | WITNESS FOR PLAINTIFFS | | 3/19/13 - 3/20/13 |
| Provost, Ian | CLASS MEMBER | Stopped November 24, 2009 | PTE 584 (DESIGNATED DEPOSITION) |
| Purtell, Robert | DEFENDANTS EXPERT | | 5/2/13 - 5/3/13, 5/6/13 |
| Reiter, Lou | WITNESS FOR PLAINTIFFS | | 4/24/2013 |
| Riley, Terrence | Inspector, Office of Management Analysis and Planning (OMAP) from 2005 - August 2010 (Tr. 3898:6-11; 3905:15-17). Currently assigned as Commanding Officer of Resource Analysis Section. | | 4/18/2013 |
| Rodriguez, Flavio | Sergeant, 28th Precinct from 2007 - present. (Tr. 1215:4-16) | January 12, 2008 stop of Plaintiff Deon Dennis | 3/27/2013 |
| Rothenberg, Jonathan | Officer, Operation Impact in PSA-2 on November 24, 2009. (Tr. 3799:18-3800:5) | November 24, 2009 stop of Class Member Ian Provost | 4/17/2013 |
| Ruggiero, Thomas | Officer, 107th Precinct (PTE 135, 21:21-25) | January 30, 2008 stop of Plaintiff David Ourlicht | PTE 135 (DESIGNATED DEPOSITION) |
| Salmeron, Angelica | Officer, 28th Precinct, from May 2007 - 2011. (Tr. 831:25-832:8) | January 12, 2008 stop of Plaintiff Deon Dennis | 3/22/2013 |
| Schwartz, Julie | Deputy Commissioner, Department Advocate's Office (DAO) from 2005 - current. (Tr. 4454:11-18) | | 4/22/2013 - 4/23/13 |
| Serrano, Pedro | WITNESS FOR PLAINTIFFS | | 3/20/13 - 3/21/13 |
| Shea, James | Commanding Officer of the Police Academy from June 2011 - October 2012 (Tr. 5118:15-25). Currently Deputy Chief of Anti-Crew/Gang Initiative. (Tr. 5017:10-14). | | 4/25/13 - 4/29/13 |
| Silva, Eduardo | Sergeant, 40th Precinct from July 2008 - current. (Tr. 5240:21-5241:3) | | 4/29/2013 |
| Silverman, Eli | WITNESS FOR PLAINTIFFS | | 4/5/13 - 4/8/13 |
| Sindayiganza, Dominique | CLASS MEMBER | Stopped on February 12, 2010 | 4/8/2013 |
| Smith, Dennis C. | WITNESS FOR DEFENDANTS | | 5/6/2013 |
| Stewart, James | WITNESS FOR DEFENDANTS | | 5/16/13 - 5/17/2013 |
| Telford, Charlton | Lieutenant, 88th Precinct, from July 2004 - April 2011 (Tr. 6304:7-10) | | 5/7/2013 |
| Thompson, Joan | Executive Director of Civilian Complaint Review Board (CCRB) from late 2007 - current. (Tr. 3266:15-21) | | 4/15/2013 |
| Trunzo, Sabrina | Officer, 120th Precinct, worked in Operation Impact, Borough Anti-Crime Unit, Street Narcotics Enforcement Unit, Staten Island Gang Squad, from 2004 - current. (PTE 136 Depo. 7:25-15:22) | | PTE 136 (DESIGNATED DEPOSITION) |
| Tzimirotas, Christopher | Officer, worked Anti-Crime and Conditions Units, 107th Precinct. (PTE 137, Depo. 25:13-19) | Concerning February 21, 2008 stop of David Ourlicht by John Doe officers. | PTE 137 (DESIGNATED DEPOSITION) |
| Velazquez, Edward | Officer, 41st Precinct (Tr. 618:1-8) | | 3/20/2013 |
| Vizcarrondo, Damian | Detective, Narcotics Borough Queens from 2005 - 2013 (Tr. 5191:5-16) | May 27, 2007 stop of Class Member Kristianna Acevedo | 4/29/2013 |
| Walker, Samuel | WITNESS FOR PLAINTIFFS | | 5/15/13 - 5/16/13 |
| White, Benjamin | Officer, 24th Precinct from approximately 2005 - 2008 (Tr. 6211:1-14) | August 5, 2006 stop of Class Member Nicholas Peart | 5/7/2013 |
| White, Luke | Officer, Midtown South Operation Impact Squad, January 2009 - Summer 2010. (Tr. 3087:5-12, 3088:22-24) | February 12, 2010 stop of Class Member Dominique Sindayiganza | 4/10/2013 |

PROPOSED FINDINGS OF FACT¹

I. Widespread Pattern and Practice of Suspicionless and Race-Based Stops

a. Statistical Evidence: Fourth Amendment

i. Hit Rates

1. Only 12% of the 4.43 million stops recorded between 2004 and the second quarter of 2012 resulted in any sanctions (i.e., arrest or summons); over 88% percent of the people stopped were just let go. Tr. (Fagan) 2013:3-2014:14, 2035:4-2039:3, 2316:1-2317:1; PTE 411 at 63 & Tables 14 and 16; PTE 417 at 34-35 & Table 14. These facts are unrebutted.

2. Only 0.12% (2004-09) and 0.15% (2010-June 2012) of all stops resulted in the seizure of a gun. The seizure rates for all weapons were 0.94% and 1.18%, and for any other contraband 1.75% and 1.8%. Tr. (Fagan) 2014:17-2015:6, 2039:7-2040:11; PTE 411 at 63-64 & Table 15; PTE 417 at 35 & Table 15. A weapon was found in approximately 1.5% of all frisks. DTE V14-A, C. These facts are unrebutted.

3. These hit rates are far lower than random chance. The arrest rate resulting from random stops at checkpoints reported in *City of Indianapolis v. Edmonds*, 531 U.S. 32, 35 (2000), was about 9%, versus about 6% for NYPD stops. The random stop contraband seizure rate was about 5%, but only 1.75-1.8% in NYPD stops. Tr. (Fagan) 2016:1-2018:6, 2316:9-13; PTE 411 at 63-65 & Table 14; PTE 415 ¶4i; PTE 417 at 34 & Table 14. These facts are unrebutted.

ii. Fagan's Classification Analysis

¹ This post-trial submission is limited to 50 pages. Tr. 8096:2-3. Pursuant to the Court's directive, we exclude specific evidence related to individual stops (Tr. 8093:5-14), and, given the page limit compared to the magnitude of evidence at trial, we necessarily exclude some evidence supporting liability and remedy. The proposed findings of fact are therefore not comprehensive.

4. Relying on the side 1 and side 2 stop circumstances recorded by NYPD officers on the 4.43 million UF250 forms analyzed, and applying adequately explored legal criteria as to which stop factors alone or in combination constitute a basis for reasonable suspicion, Fagan determined that at least 268,481, or about 6%, of the 4.43 million stops were apparently unjustified, and 518,772 stops, or about 12%, were ungeneralizable. Tr. 2018:7-2025:17, 2042:13-2047:16, 2054:5; PTE 411 at 48-51, 55-58 & Table 12; PTE 415 ¶¶4e-f; PTE 417 21-32 & Table 12c; PTE 417-B, PTE 417-C, PTE 417-D. The City mischaracterizes the percentage of stops Fagan's method assigned to the apparently justified category (which is about 82%, PTE 417-D, not 88 or 90%), but does not dispute any of these figures.

5. Fagan did not opine and does not believe that the stops he categorized as apparently justified were actually made with reasonable suspicion. Rather, he opined that because hit rates for sanctions and seizures are so low, and for the reasons he stated in support of his opinion that UF250s are ineffective to monitor compliance with the Constitution, *see infra* ¶6, many of the stops his method assigned to the apparently justified category were made without reasonable suspicion and the number of apparently justified stops would decrease substantially if more facts about them were known. Tr. 2040:12-2041:22, 2457:7-2459:9; PTE 411 at 53-55 & Table 11; PTE 412 at 39-48 & Figs. S1-S6, Table S6; PTE 415 ¶4g; PTE 417 at 32-34 & Fig. 13.

iii. **Ineffectiveness of UF250s to Monitor Compliance with the Constitution**

6. As Fagan opined, UF250s do not accurately reflect whether an officer had reasonable suspicion and are ineffective for assessing whether stops are based on reasonable suspicion or otherwise monitoring the constitutionality of stops. Tr. 2040:12-2041:23. He based this opinion on: (A) the low hit rates, *see supra* ¶¶1-3; (B) the increase over time of the number of boxes checked off by officers on UF250s; Tr. 2116:11-2117:5; PTE 412 at 40 Table S6; (C) officers' indiscriminate and increased use in discretionary (non-radio-run) stops of highly

subjective UF250 stop circumstances such as Furtive Movements (checked in 54% of discretionary stops), particularly in high minority population areas, and High Crime Area (checked in 61% of discretionary stops), checked roughly the same percentage of times even in areas with average and below average crime rates, Tr. 2068:13-2071:9, 2103:11-2115:13; PTE 411 at 51-55 & Table 11, Fig. 13; PTE 412 at 39-48 & Figs. S2, S5; , PTE 415 ¶¶4h, 19 & Ex. C; PTE 417 at 21-24 & Tables 11, D1, 32-34 & Fig. 13; and (D) the emergence of a script for filling out UF250s. Tr. 2115:8-2118:13; PTE 412 at 39-48 & Figs. S1-S6, Fig. 13 & Table S6. These facts are unrebutted.

iv. **Statistical Patterns in Operation with Individual Officers**

1. **Use of UF250 Scripts**

7. Officer Gonzalez, among the highest stoppers in the third quarter of 2009 (Dkt. # 272 ¶14), checked off the same four boxes on 98.51% of the UF250 forms for that period: fits description, actions indicative of casing, high crime area, and time of day, day of week, season corresponding to reports of criminal activity. PTE 557, 557-D.

8. Officer Dang, among the highest stoppers in the third quarter of 2009 (Dkt. # 272, ¶14), checked high crime area” in 82.68% of the stops he made, even though the stop locations were widely dispersed throughout a very racially and socioeconomically heterogeneous precinct. *See* DTE L12; Y8 at NYC_2_24974. He checked “time of day, day of week, season corresponding to reports of criminal activity” in 98 of 127 stops made at different times of the day. *See* DTE L12; PTE 565 at n.2. *Compare* DTE L12 at NYC_2_00015715-16 *with* 15721-22; *compare* 15781-82 *with* 15769-70; *compare* 15775-76 *with* 15771-72. Ninety-five percent of the stops Dang made in that racially diverse precinct were of Blacks. PTE 565; DTE Y8 at NYC_2_24974.

2. **Improper Use of the “High Crime Area” Stop Factor**

9. The NYPD officer who stopped Cornelio McDonald and the supervisor of the officers who stopped David Floyd have an unreasonably broad understanding of what constitutes a “high crime area.” Tr. (Guimaraes) 1687:9-13; (French) 3717:8-13, 3719:10-3720:25; 3726:4-3727:11; PTE 226; PTE 466.

10. The burglary pattern sheet that is the purported basis of Floyd’s February 27, 2008 stop shows no burglaries in the three weeks preceding the stop, and the burglaries that are listed on the sheet were almost one mile away, lacked a suspect description, and did not occur at a particular time or in a manner consistent with Floyd’s actions at the time of his stop. DTE L4; DTE K13; Tr. (Kelly) 1471:4-8, 1472:3-1476:3, 1507:22-1508:24; *Compare* Tr. (Joyce) 1333:5-1334:12, 1335:4-24, 1368:10-1369:3; (Stip.) 6798:4-10.

11. The NYPD analyzes and responds to crime trends by focusing on small geographic units similar in size and demography to census tracts and relying on crime data that is updated daily, weekly, or at minimum monthly. DTE T8 at 5, 17, 37-38, 58-59; *Compare* DTE S14 (census tract map in the Bronx) to DTE T14 (map of sectors and impact zone in 81P); Dkt. # 171 at 26-27; Tr. (McGuire) 4358:24-4359:13; (Smith) 6169:11-6170:3; (Holmes) 6466:7-6469:4, 6470:21-6471:15, 6518:2-24; (Hall) 7354:19-7355:11.

12. The NYPD’s crime complaint report data indicates that in the month preceding the Floyd stop there were no reported burglaries in either Floyd’s census tract or the neighboring census tract, i.e., a 32 square block area, and in the two months prior there was only one. PTE 413 ¶14, Ex. D; DTE S14; Tr. (Fagan) 2035:1-15, 2273:18-2278:9; Tr. (Stip.) 6803:19-6804:17. Defendant’s evidence is entirely consistent with these numbers. DTE S14 (crimes reported across a much larger geographic area around Mr. Floyd’s home); DTE Y14 (crimes that were reported across a much larger geographic area and over a much longer time period).

b. **Statistical Evidence: Fourteenth Amendment**

i. **Minority Population Predicts Stop Rates**

13. The NYPD's explanation for the undisputedly large racial disparities in stop-and-frisk rates is that most stops occur in high crime areas of the City, where a disproportionately large share of the Black and Hispanic population lives. DTE T8 at 5-6; Tr. (Esposito) 3027:14-3030:20; (Smith) 6144:12-19.

14. As Fagan determined from his negative binomial regression analyses, the racial composition of a precinct, neighborhood, or census tract predicts the stop rate *above and beyond* the crime rate, *even after* controlling for local crime rates, patrol strength, and other local social and economic characteristics associated with crime. The results were the same whether Fagan used calendar quarters or months and regardless of the spatial unit of analysis. These findings are robust. Tr. 2029:11-2030:4, 2131:15-2135:18, 2204:10-2237:14, 2248:23-25, 2279:6-11, 2281:7-2282:7, 6004:7-6005:19; PTE 411 at 3-4 30-39 & Tables 5 and 6; PTE 412 at 15-20 & Tables S1-S3; PTE 415 ¶4a; PTE 417 at 16-21 & Table 5; PTE 411B. The City does not contest that Fagan's Table 5s show these results.

ii. **Blacks and Hispanics Are Stopped More Frequently, Are More Likely to be Stopped and Are More Likely to be Stopped for Questionable Reasons than Are Whites**

15. As Fagan determined from his hierarchical Poisson regression analyses, Blacks and Hispanics are more likely to be stopped and are stopped more frequently than whites, after controlling for the racial composition, local crime rate, patrol strength, and other local social and economic characteristics of the precinct or census tracts associated with crime, and this is the case even in areas where there are low crime rates and where the populations are racially heterogeneous or predominantly white. These findings are robust. Tr. 2030:5-18, 2127:16-2128:15; 2131:15-2135:18, 2239:17-2248:18-2248:25, 2279:12-2282:7, 2409:23-2410:21; PTE

411 at 4, 40-45 & Tables 7-10; PTE 415 ¶¶4b, 4c; PTE 417 at 19-21 & Table 7. These findings are unrebutted.

iii. **Blacks Are Treated More Harshly than Whites during Stops**

16. As Fagan determined from his multilevel logistic regression analysis, in stops that resulted in any sanction (arrest or summons), Black suspects were 31.4%, and Hispanics about 6%, more likely than whites to be arrested, as opposed to merely receiving a summons, for the same offense. He also found and opined that the likelihood of a stop resulting in any sanction decreases significantly as the percent Black population in an area increases, suggesting that Blacks are targeted for suspicionless stops. Tr. 2030:19-2033:4, 2118:14-2126:11; PTE 411 at 4, 62-69 & Tables 14, 16 and Fig. 14; PTE 415 ¶ 4d; PTE 417 at 34-35 & Table 14. These facts are unrebutted.

17. As Fagan also concluded, after controlling for the suspected crime, Blacks who were stopped were about 14%, and Hispanics about 9.3%, more likely than whites who were stopped to be subjected to use of force, and the use of force during a stop is significantly higher as the percentage of the Black population in an area increases. Tr. 2019:2-2127:15, 2032:1-5, 2129:25-2032:1; PTE 411 at 4, 66-69 & Tables 14 and 16; PTE 417 at 35 & Table 14. These facts are unrebutted.

c. **The City's Meritless Critiques of Fagan**

18. Before their work in this case and *Davis v. City of New York*, neither Smith nor Purtell had ever conducted a statistical study that assessed the constitutionality of stop-and-frisk or any other police practice or analyzed racial disparities in stops, other policing practices, or in any other context. Tr. (Purtell) 5842:9-12; (Smith) 6121:8-16, 6123:9-16.

i. **Benchmark**

19. Fagan's decision to use local population and crime rate, and not crime suspect race, as a benchmark has no bearing on the outcome of his analysis because when Smith and Purtell's regression model that used crime suspect race as a variable was run with the standard errors, it did not change the results Fagan obtained, and in fact showed that the associations between minority population of an area and the local stop rate are actually stronger than those between crime suspect race and the stop rate. DTE H-13 at 70 (Table 10); Tr. (Smith) 6172:25-6174:10; Tr. (Fagan) 6837:25-6841:14; PTE 574. The results of Smith's "alternative" regression analysis, DTE O8 at Ex. I, are entitled to no weight because that analysis omitted critical variables, failed to specify a reference group, and used a biased data set. Tr. (Smith) 6087:8-10; (Fagan) 2251:13-2253:10.

20. Fagan chose not to use NYPD crime suspect race data, including the Merge File, as a benchmark in part because the suspect's race was missing or unknown in nearly 70% of crime complaints reported to the NYPD in 2005-06, and almost 40% in 2010-2011. Tr. 2148:7-2150:18, 2157:10--2189:1; PTE 411 75-77 & Table 18; PTE 417, App. B at 1-3 & App. Tables 1-3; DTE H13 at 34. Extrapolating or imputing the suspect race information from the cases where it was known to such a large number of cases where it is unknown would result in sample selection bias. Tr. (Fagan) 2150:21-2152:17; PTE 411 at 17-18, 75-77 & n.112; PTE 415 ¶27; PTE 417 at 7.

21. Smith testified that he did not know of a single statistical study on racial disparities that used a benchmark in which nearly 40% of the data were missing and did not cite to any support in the social science literature for doing so. Tr. 6160:9-6162:16.

22. Defendant and its experts believe that the crime suspect population is the best "surrogate" or "proxy" for the people most likely to be stopped-and-frisked by NYPD officers.

Tr. (McGuire) 4310:3-7; (Smith) 6151:5-11; DTE O8 ¶¶12, 20; PTE 583 at 3. However, given that almost 90% of persons stopped by the NYPD are not engaged in criminal activity when stopped, the NYPD has no reasonable basis to assume that there is much if any overlap between the pool of stopped pedestrians and the crime suspect population, without which crime suspects cannot be a good proxy. Tr. (McGuire) 4310:17-4312:12, 4313:23-4314:7.

ii. **Practical Significance**

23. The practical significance of Fagan’s finding that the level of stop activity in a precinct or census tract is a function of the racial composition of that precinct or census tract is demonstrated by the descriptive statistics contained in both his original and second supplemental expert reports, which show that the rate of stops per crime complaint in the quartile of precincts and census tracts with the highest percent Black population was 30-200% higher than in the quartile with the lowest percent Black population. Tr. (Fagan) 2196:11-2200:4; PTE 411 at 25-27 & Figs. 1-8; PTE 417 at 12-16 & Figs. 2-9. Fagan’s Table 5 regression analysis confirms these disparities.

24. Fagan refuted Purtell’s “practical significance” opinion by showing, using the same data that Purtell used, that there would be a 43% increase in the rate of stops between a tract with 15% Black population and a tract with 55% Black population Tr. (Fagan) 6014:13-6016:9, 6021:22-6026:10; PTE 566.

25. Fagan’s marginal effects analysis, which takes into account the uniqueness of each tract and controls for differing crime and SES factors between tracts with different percentages of minority population, showed that the difference between the predicted number of stops in a tract whose Black population is 15% and one that is 55% Black is 42.3%. Tr. (Fagan) 6814:24-6825:12, 6827:26828:12; (Purtell) 6900:9-19; PTE 570, PTE 571, PTE 572. In addition, the predicted stop numbers from Fagan’s marginal effects analysis were very close to actual stop

counts in the City's census tracts, other than with respect to a small number of outliers at the extreme end of the spectrum. Tr. (Fagan) 6847:16-6849:2, 6883:5-6887:6.

26. Purtell misunderstood the outcome that Fagan's Table 5 analysis tested: First he testified that it measured odds of a Black person being stopped and then changed his mind, explaining that he was thinking of Fagan's Table 7 which, unlike Table 5, addresses likelihood of a Black person being stopped. *Compare* Tr. (Purtell) 5764:2-5765:7 with Tr. (Purtell) 5903:3-9.

27. The City did not challenge the practical significance of the results of the regression analyses reported in Fagan's Tables 7-10, nor could they, in light of the following facts, which are undisputed: Blacks and Hispanics together made up 53.11% of the City's population during in 2004-09, but 81.52% of the persons stopped in 2004-2009 and 83.96% of persons stopped in 2010-June 2012. PTE 411 at 22 & Table 3; PTE 414 Table 4; PTE 417 at 11, Table 3.

iii. **Zero Counts**

28. After initially claiming to have run Fagan's Table 5 regression model without the zero count census tract-months, Tr. 5784:12-13, 5911:15-16, 5916:4-8; DTE H13 at 68 & Table 8, Purtell finally admitted in sur-rebuttal testimony that his model also excluded tract-months with one or two stops as well as several thousand others because of a "technical problem with ... the methodology." Tr. 6047:9-6048:12.

29. In response to Smith and Purtell's critique, Fagan ran a zero-inflated regression model and found that the racial composition of a census tract remained a highly statistically significant predictor of the stop rate. DTE H13 at 67-70;Tr. (Fagan) 6865:18-6869:3.

iv. **Remaining Criticisms**

30. The City's critique that Fagan should have accounted for changes in population and SES-related variables over time are mere conjecture because its experts did not actually test what effect, if any, controlling for such changes may have had on the results of Fagan's analyses. DTE H13. The critique is further undermined by Purtell's testimony that the City's population changed by only 0.6 to 1% from 2004 through 2012, his inability to quantify changes in the racial distribution of the City's population or unemployment rates, his highly impractical suggestion that Fagan account for such changes by re-running his models monthly, and the fact that Fagan's regression models did include an autoregressive control. Tr. (Purtell) 5801:19-5803:20, 5860:13-5861:6, 5879:1-24; PTE 411 at 13-14.

31. Smith and Purtell's claim that census data does not accurately measure the population available to be stopped is undermined by Smith's testimony that the people stopped in the high stop census tracts are most likely the people who live there, the racial demographics of these tracts do not change much throughout the day, and that most stops occur in the evening or early morning hours. Tr. (Smith) 6140:6-6143:24; 6147:8-6150:19.

d. **19 Unconstitutional Stops of Plaintiffs and Class Members**

32. The 12 named plaintiffs and testifying class members were stopped, frisked, and in some instances searched, without reasonable suspicion or probable cause and on the basis of race in 19 encounters with NYPD officers in all five boroughs of New York City over a 5 year period. Tr., *inter alia*, (Acevedo) 1694:4-9, 1697:23-1700:21, 1701:22-25; (Almonor) 115:16-17, 20, 125:16-131:15; (Clarkson) 2640:24-25, 2643:2-10, 2637:23-2640:25, 2642:21-2643:10, 2653:5-6, 2656:16-24; (Dennis) 268:5-6; 270:13-21, 272:15-274:2, 287:18-21; (Downs) 4093:4093:16-17, 4095:2-4106:25, 4116:6-17, 4335:8-4338:17, 4166:6-19, 3874:12-3877:15; (Floyd (4/20/2007 stop)) 161:14-174:6, 251:6-12, 252:15-256:20, 259:10-14, 261:6-19; DTE I10; (Floyd (2/27/2008 stop)) 174:7-182:9, 248:5-251:5; (Lino (2/24/2011 stop)) 1739:18-1742:

23, 1745:13-1746:2; (Lino (2/5/2008 stop)) 1729:3-13, 1732:14-22, 1733:6-10; 1734:11-21, 1736:4-8; (McDonald) 3679:23-3680:6, 3683:14-3684:4, 3688:16-3689:7; (Ourlicht (1/30/2008 stop)) 4131:22, 4174:22-4176:20, 4178:8-9, 4180:10-4185:19, 4186:7- 4187:10, 4191:3-23, 4192:1-18, 4224:22-4225:14; (Ourlicht (2/21/08 stop)) 4193:1-13, 4195:2-4198:1, 4199:4-4200:12, 4201:2-4202:44203:7-21, 4257:15-17, 4272:18-4275:2; (Ourlicht (6/2008 stop)) 4204:3-4, 4205:15-4206:24, 4207:5-4209:9, 4267:2-4; (Peart (4/13/2011 stop)) 303:10-318:25, 388:23-390:3, 408:5-409:1; (Peart (9/2010 stop)) 336:24-344:13; (Peart (Spring 2008 stop)) 327:4-336:23; (Peart (8/5/2006 stop)) 319:2-327:3; (Sindayiganza) 2587:10-2604:13, 2628:15-2630:8; PTE 584 (Provost Dep.) 41:24-42:12; 45:6-46:7; 46:14-50:1, 57:13-58:16, 72:14-20.

33. The stopping officers were not credible. *E.g.*, Tr., *inter alia*, (Joyce) 1363:22-1364:13, 1369:4-1370:25, 1373:11-16, 1376:23-1377:20; (Stip.) 1466:3-8; (Kelly) 1478:4-18, (Hernandez) 1384:16-1385:8; (White, L.) 3094:15-3097:22, 3103:3-3105:9, 3113:7-3119:25, 3123:3-3125:24, 3127:9-3128:1, 3135:9-21, 3136:12-3138:6; (Gillespie) 3423:6-15, 3431:9-3432:5, 3435:14-22, 3447:12-3449:16; DTE T7; PTE 161; (DeMarco) 2666:4-2668:25; (Hawkins) 5462:2-5464:13; (Vizcarrondo) 5209:2-8, 5205:14-5206:4, 5210:7-5212:7; (Rothenberg) 3803:8-16, 3805:20-3806:15, 3807:4-7; (Leek) 2703:17-2706:14; 2722:24-2723:5 (White, B.) 6245:18-6252:3; PTE 569, at 6; PTE 569 at 3, 5; Z8-T (1:6-9); (Salmeron) 865:5:22-873:20. *Compare* Tr. (White, B.) 6222:20-24 *with* PTE 569, at 6.

e. **John Doe Officers were members of the NYPD**

34. Photo arrays created for Ourlicht and Clarkson used hundreds of (primarily filler) photographs. Plainclothes officers assigned to borough wide commands were excluded from Clarkson's arrays and investigation. "Latino" in Clarkson's description led the NYPD's search and photo arrays to exclude officers of another race but appearing Latino. *See e.g.* Tr. (Stip) 5476:9-5477:13; (Dengler) 5501:14-5502:8; (Albino) 5510:18-5517:6, 5530:5-10; DTE F3, D3.

35. Floyd's photo-arrays contained photographs of officers who were assigned to precincts outside the area of Floyd's stop and not on duty at the time of his stop. DTE C3; *e.g.*, Tr. (Dengler) 5494:16-6497:15. Dengler did not search or investigate the whereabouts of dark colored marked or unmarked NYPD vans assigned to the area of Floyd's stop. PTE 551; Tr. (Dengler) 5487:16-5488:6. Based on the limited known documentation, at least one officer was within blocks of Floyd's stopping area around the time of Floyd's stop. Tr. (Dengler) 5497:16-5501:6; PTE 550, 519.

36. Three officers with the surname "Rodriguez" were not included in the photo array for Floyd's April 20, 2007 stop. The UF250 database search conducted for this stop was limited to the potentially false names and shield numbers the Doe officers provided to Floyd. No UF250 search was conducted generally for this stop date and location. Memobooks for several officers Floyd recognized in the photo array were not produced in discovery. Tr. (Stip) 5480:10-5484:16.

37. Ourlicht identified one officer multiple times in photo arrays for his June 2008 stop. Defendant presented no evidence of any further investigation into this officer's activity (i.e. vehicle assignment, command log entries). DTE F3, D3. Tr. (Stip) 5473:7-5474:14; PTE 497, 498; Tr. (Albino) 5517:7-5529:23.

38. Two vehicles meeting Ourlicht's descriptions were assigned to Queens commands on February 21, 2008, around the time of his stop. Tr. (Stip) 5470:17-22; DTE F3, D3.

39. Ourlicht identified van 9466 as on the scene of his June 2008 stop. It was assigned to officers patrolling close to the stop location. Tr. (Stip) 5474:15-5475:12; PTE 553, 500, 501.

40. Clarkson provided detailed, consistent descriptions of the dates, location and two officers who stopped him; he described badges, and indicated that the officers identified themselves as police. Tr. 2633:16-2640:18, 2647:8-2650:5, 2652:15-2653:7.

41. Ourlicht provided consistent, detailed descriptions of the four officers who stopped him on February 21, 2008, including descriptions of clothing, hair, hats, ages and builds, vehicle, and police badges. Tr. 4195:13-4198:1.

42. Ourlicht provided consistent, detailed descriptions of the officers who stopped him on June 6 or 9, 2008, including their uniforms, skin color, hair color, size, guns, and the vehicle that back-up officers drove. Tr. 4206:11-24, 4207:5-25, 4211:4-8, 4267:24-4268:3.

43. Floyd provided consistent, detailed descriptions of the officers who stopped him on April 20, 2007, including descriptions of police uniforms, guns, and a police radio. Tr. (Floyd) 165:25-166:18, 167:19-174:6, 258:9-259:9.

44. Peart provided consistent, detailed descriptions of the actions, uniforms, weapons, and police equipment of the officers who stopped him during his April 13, 2011 stop. Tr. (Peart) 305:7-318:15, 328:15-329:8, 337:19-344:13, 381:2-382:6, 394:2-395:22, 407:11-25.

45. The search for officers stopping Peart was limited to searching and reviewing UF250s for only one of the potential officers. No search was conducted for the date April 13, 2011 once the date of that stop was discovered. Tr. (Stip) 5477:22-5480:9.

46. Memobooks of officers in photo arrays, including officers the plaintiffs recognized, were not located, and included redacted and/or illegible entries. Tr. (Stip) 5473:7-5477:21; Tr. (Dengler) Tr. 5501:14-5502:8; (Albino) Tr. 5519:1-24, 5530:11-15.

47. Clarkson identified officers for whom the City never located memobooks. DTE F3, D3; Tr. (Stip) 5476:9-5477:13; (Dengler) 5501:14-5502:8, (Albino) 5530:5-10.

II. The NYPD Targets and Stereotypes Blacks and Latinos in its Stop Activity

a. Commissioner Kelly's Unrebutted Admissions

48. In July 2010, NY State Senator Eric Adams expressed to Commissioner Kelly his belief that the NYPD's stop and frisk practice disproportionately and unlawfully targets young

Blacks and Latinos. Tr. (Adams) 1585:20-1586:25, 1588:12-24. In response, Kelly said that the NYPD targeted or focused its stop and frisk practice on young Blacks and Latinos to instill fear in them that every time they leave their homes they could be stopped in order to deter them from carrying weapons. Tr. (Adams) 1588:12-1589:9. These facts are unrebutted. Kelly reiterated these statements at a meeting at Medgar Evers College later that year. Tr. (Adams) 1615:8-23. This was challenged by only one City witness. The Court should infer from Commissioner Kelly's failure to appear at trial that he made these statements.

b. **Policy and Practice of Targeting the "Right People" for Stops**

49. The NYPD command structure exerts pressure on officers to produce numbers that show stops of the right people at the right time and place: they do not want just any numbers; they want numbers reflecting activity directed at certain people in certain geographic areas. Tr. (Marino) 925:1-15; (Esposito) 2867:22-2868:18, 3006:2-12, 3034:9-18; Tr. (Cirabisi) 5696:22-5697:3; (Diaz) 1511:4-1513:22; PTE 157 (Giannelli Dep.) at 268:5-269:12. *See also* Tr. (Hall) 7354:19-7355:11, 7623:3-7626:13.

50. Officers are expected to conduct stops of "the people that are committing crimes," *e.g.*, "young men of color in their late teens, early 20s." Tr. (Esposito) 3028:3-3030:8, 3034:9-18; (Diaz Dep.) 1518:14-1519:15. The NYPD wants "to see if [] we're stopping the right people." (Diaz Dep.) 1514:25-1515:20. This view was publicly endorsed by Mayor Bloomberg in a speech to NYPD leadership during the course of this trial. PTE 583 at 3.

51. Inspector Christopher McCormack, commanding officer of the 40th Precinct, told Officer Pedro Serrano in February 2013 that "we summons people and we 250 people, the right people the right time, the right place" and that officers should be stopping "male blacks 14 to 20, 21." PTE 332 (PTE 332-T 20:20-22, 23:20-24:6); Tr. (McCormack) 7014:17-25, 7015:6-

7016:25. When Officer Serrano appealed his low performance evaluation, Inspector McCormack told him he had to get his activity up in the right places. Tr. (McCormack) 7011:18-7012:3.

52. In class member stops that were, according to the stopping officers, motivated by suspect descriptions, the description was either merely “Black male” or a description of a Black male so general and vague as to amount to merely “Black male.” *E.g.*, Tr. (Dennis) 1084:1-121085:2-4 (Almonor stop: 911 description in which the only suspect description related to a man was “male Black”); (French) 3743:4-7 (McDonald stop: descriptions of supposed robber and burglar merely “male Black.”); *see also* (Arias) 3484:12-3486:8 (Lino stop: Black males roughly between 5’6 and 6’0).²

53. During a stop in 2008, an officer made a racially stereotypical comment to Lino; the officer’s denial is not credible. Tr. (Lino) 1749:18-1751:5; (Hassan) 4021:5-4022:7.

54. Lt. Delafuente instructed officers in the 81st Precinct that they weren’t “working in Midtown Manhattan You’re in Bed-Stuy where everyone’s probably got a warrant.” PTE 289T, Track 1NOVEMBER2008 81 4x12 RollCall at 2:12-3:50. Bed-Stuy is a predominately Black neighborhood. Tr. (Holmes) 6458:23-6459:2; DTE B14 at NYC_2_28946.

55. Officer Gonzalez, a 2009 high-stopper (Dkt. # 272, ¶ 14), checked “fits description” in 132 of 134 of UF250s, 128 of the 134 people stopped in a very racially diverse precinct were Black or Latino, and the descriptions were male Hispanic, 5’8-5’9 in his 30s; 4-5 male Blacks 14-19; and male Black in his 20s. Tr. (Telford) 6327:7-13; 6328:22-25; 6340:14-6341:19; PTE 557, 557D; DTE Y8 at NYC_2_24974.

² Though Arias claimed Lino’s jacket fit the description, Arias and Kovall offered contradictory testimony regarding this point and it is not credible. Tr. (Arias) 3487:1-2; (Kovall) 3045:3-8.

III. Pressure to Conduct Enforcement Activity

a. CompStat

56. The purpose of CompStat meetings is to address crime trends and spikes and determine whether officers are conducting activity at locations and times that match them. Tr. (Mauriello) 1834:22-1836:15; (Hall) 7623:3-7626:13; (Diaz Dep.) 1511:4-1512:23.

57. At CompStat meetings, NYPD chiefs discuss the number of C-summons, arrests, and 250s conducted by officers to evaluate the command's performance. Tr. (Esposito) 2868:20-23; 2883:11-21; (Ortiz) 3541:4-17; (Mauriello) 1837:2-1838:16; (Diaz Dep.) 1030:1-1031:13; PTE 158 (Montgomery Dep.) 201:23-202:8; PTE 281, 283.

58. At CompStat, a decrease in UF250 numbers generally raises concerns whereas an increase in numbers is viewed positively. Tr. (Diaz Dep.) 1553:23-1555:11; PTE 157 (Giannelli Dep.) 268:5-269:12; PTE 281, 283.

59. CompStat does not examine whether stops were based on reasonable suspicion. Tr. (Esposito) 2894:6-9; (Ortiz) 3544:3-13; (Mauriello) 1838:17-22; (Hall) 7623:3-7626:13; (Diaz Dep.) 1518:14-16; PTE 155 (Dale Dep.) 139:14-140:24; PTE 281.

60. The dramatic increase in stops from approximately 97,000 in 2002 to 685,000 in 2011 was all during Chief Esposito's tenure as the highest ranking uniformed member of the NYPD. Tr. (Esposito) 2807:13-2808:12, 2793:22-2794:22.

b. Quotas and Performance or Productivity "Goals" or "Standards"

61. *De facto* quotas have been imposed in the 28th, 40th, 41st, 75th, 81st and 115th Precincts, including requirements that officers issue, make or fill out a certain number summons, arrests, and 250s within specified time periods, as a result of directives and pressure from NYPD brass. Tr. (Serrano) 652:21-655:21, 656:9-23, 665:17-666:4, 667:20-668:7; (Polanco) 420:14-19, 421:9-17, 423:17-425:22, 466:8-25, 471:11-474:12; (Silva) 5255:11-5256:13, 5259:11-20;

(Mohan) 5235:2-251; (McHugh) 3193:19-3195:10; (Marino) 876:14-877:18, 883:18-884:8; (Marrero) 597:21-599:9; (Mauriello) 1847:24-1848:24; PTE 158 (Montgomery Dep.) at 32:5-33:8, 202:9-203:17; Tr. (Agron) 1021:2-4; (Pichardo) 1261:17-20; (Figueroa) 2766:17-2767:12; (Herran) 6764:11-22, 6782:13-25, 6785:19-6787:21, 6791:20-6794:2; (Barrett) 6272:1-7, 6278:2-5, 6290:8-15, 6302:4-11; PTE 131 (Hu) 93:8-13, 94:21-95:2. *See also* (White) 6236:7-9; (Arias) 3477:1-21; (Leek) 2709:11-23, 2748: 6-16. PTE 296, 297; PTE 284 Track 1 at 3:03-8:01, 9:47-11:31, 11:31-13:1 (PTE 284-T at 1, 4-7); PTE 289, 12June2008 81 4x12 RollCall Sgt.Stukes Lt.Delafuente at 12:10-13; 12June2008 81 4x12 RollCall at 7:13-8:10; 15July2008 81 4x12 RollCall at 00:35-00:50; 8December2008_81_4x12_RollCall at 5:45-6:39, at 1:20-1:38, at 7:07-7:42; 12December2008_81_4x12_RollCall at 2:20-4:30; 24October2009_RollCall at 4:41-5:30; 12October2009_RollCall_Sgt.Huffman at 5:57-7:00; 29January2009 RollCall at 6:20-6:48, at 6:56-9:03; 31October2008-81-4x12-RollCall at 6:35-7:26, 9:05-9:50; 8November2008_81_4x12_RollCall at 15:34-15:45; 23November2008_81_4x12_RollCall at 5:46-6:28; 13March2009_Friday_RollCall at 4:32-5:20; 27February2009_RollCall at 2:35-6:21; 30October2008 81 4x12 RollCall at 4:20-6:30; 1JULY2008 81 4x12 RollCall at 6:58-8:00; 16December2008 81 4x12 RollCall at 9:33-9:54; 13 January 2009_Sgt. Reid at 3:02-4:26; 28January2009_81_4x12_RollCall at 20:25-21:50, at 24:29-25:50.

62. Officers are warned that failure to comply with numerical activity standards will result in adverse employment actions. Tr. (Polanco) 428:20-429:18, 431:14-20, 467:12-471:5, 491:2-493:18; (McHugh) 3197:7-12; (Marrero) 602:23-603:25; (Velazquez) 623:8-625:9; (Serrano) 679:22-680:9, 688:1-8, 723:15-725:15; (Marino) 934:3-935:17; (Mauriello) 1847:24-1848:24; PTE 284 (284-T pp. 1-3, 23); PTE 284, Track 1 at 3:03-8:01, 6 at 1:21-2:29; PTE 289, Track 28October2008_81_4x12_RollCall at 4:07-5:05; 8DECEMBER2008_81_4X12_RollCall

at 12:20-15:00; 12December2008_81_4x12_RollCall at 2:20-4:30; 28January2009_81_4x12_RollCall at 23:24-24:10, at 24:29-25:50; 1NOVEMBER 2008 81 4x12 RollCall at 2:12-3:50; 12June2008 81 4x12 RollCall at 7:13-8:10; 12JUNE2008 4x12 RollCall at 14:58-16:40; 4FEBRUARY2009_81_4X12_RollCall at 2:33-3:02.

63. Officers who fail to meet performance requirements are sometimes required to patrol with sergeants or conduct checkpoints to generate activity, and their discretion to conduct UF250s is removed. Tr. (Polanco) 432:6-433:13, 448:3-19, 459:3-5, 449:4-7; (Mascol) 962:2-10, 965:9-17; PTE 137 (Tzimiratas Dep.) 125:15-126:23.

64. According to the NYPD, requiring a certain number of enforcement activities such as arrests, summons, and 250s under threat of adverse consequences is a “performance goal.” Tr. (Marino) 877:5-878:13; (Silva) 5256:2-17, 5258:12-19; Tr. (Herran) 6765:24-6766:2, 6795:12-6796:12; (Barrett) 6281:2-4, 6293:10-15.

65. According to the NYPD, “productivity standards” are levels of summons, arrest, and 250 activity that officers are expected to meet or they will face adverse employment consequences. Tr. (Mauriello) 1847:24-1848:24; (Silva) 5256:2-17, 5258:12-19, 5258:12-19; (Marino) 884:24-885:4. It is common for commanding officers to ascribe numerical requirements to productivity standards. Tr. (Marino) 907:18-908:2, 909:23-910:2, 911:6-12; PTE 158 (Montgomery Dep.) at 32:5-33:8, 202:9-203:17.

66. The NYPD requires officer to be proactive, and an officer demonstrates that he is being proactive by issuing summons, conducting arrests, and engaging pedestrians in stops. Tr. (Mascol) 975:12-977:16; (Monroe) 5307:1-9; (Korabel) 1180:9-24, 1183:18-1184:4; PTE 136 (Trunzo Dep.) 86:19-95:24. *See also* Tr. (Mauriello) 1866:24-1868:8. The NYPD wants quantity

of activities without regard to the constitutionality of those activities. Tr. (Polanco) 423:1-16; (Serrano) 726:15-24; (Agron) 984:5-985:2.

67. Officers Pichardo and Salmeron were attempting to achieve a goal of five quality of life summonses per Impact Overtime tour in the 28th precinct when they illegally stopped Deon Dennis to issue him a quality of life summons. Tr. (Pichardo) 1216:25-1269:9.

68. It is required and appropriate under current NYPD policy, including Operations Order No. 52/Quest for Excellence, issued in October 2011, for supervisors to set performance goals for enforcement activity, including arrests, summonses, and stops-and-frisks, and such goals can be numerical. Tr. (Barrett) 6293:16-19, 6295:14-22; (Hall) 7638:25-7640:11; (Marino) 880:8-12; (Esposito) 2957:14-16; (Korabel) 1181:7-1182:17; (Beirne) 3399:13-20; PTE 285 ¶ 3.

69. Under Op. Order 52, officers are subject to adverse employment actions if they fail to meet performance goals. PTE 285; Tr. (Marino) 881:12-18; (Korabel) 1207:20-1208:10.

70. Both quotas and numerical performance goals without respect to quality are inconsistent with generally accepted police practices and could lead to unlawful police activity to get numbers. Tr. (Reiter) 4956:23-4957:17.

c. High-level Officials' Notice of and Acquiescence to the Use of Quotas

71. High-ranking NYPD officials have had notice of the use or enforcement of quotas in commands throughout the City since at least 2004, but have consistently failed to take steps to discipline the supervisors and commanders involved. Tr. (Esposito) 2954:9-16, 2960:10-25; (Marino) 886:6-18, 889:5-9, 911:23-912:2, 912:10-913:9, 939:18-943:14; (Mauriello) 1829:25-1831:11, 1849:22-1851:10; (McHugh) 3200:13-17, 3201:20-22, 3201:23-3203:19; (Polanco) 451:23-452:25; 460:19-461:6; PTE 298, 299.

72. It is known to high-ranking NYPD officials, including the architects of Op. Order 52 and Quest for Excellence, that NYPD officers sometimes believe that numerical standards

associated with enforcement directives are quotas. Tr. (Marino) 927:5-6; (Materasso) 6725:23-6726:11; (Hall) 7637:12-7638:10; (Beirne) 3358:4-3359:24, 3361:1-3363:6; PTE 290.

73. Nevertheless, the high-ranking official responsible for establishing Quest for Excellence is not concerned with the establishment of numerical performance goals or that officers will interpret numerical goals for stops as a quota. Tr. (Beirne) 3359:25-3360:19; 3367:12-3369:13; 3379:15-3381:4.

74. Since 2010, nine grievances have been filed against the NYPD by the police officer union alleging negative employment action as a result of failure to meet quotas. Tr. (Beirne) 3399:21-3402:17; Tr. (Herran) 6790:25-6791:3.

d. **Pressure Experienced by NYPD Officers During CompStat Era**

75. In 2008, Professors Eli Silverman and John Eterno sent a pre-tested and Institutional Review Board-approved survey instrument to 1,197 members of the Captain's Endowment Association (retired NYPD officers with the rank of Captain or above) to measure whether and to what extent the implementation of CompStat in and since 1994 caused since-retired police officers to feel an increase in pressure, to increase summonses, arrests and stop and frisks. Tr. 2470:16-2471:12, 2473:12-17, 2478:10-23; PTE 300. 491 individuals responded, which is a 41% response rate. Tr. 2481:8-12.

76. The mean response (on a Likert scale of 1 to 10) of individuals who felt pressure to stop and frisk increased 2.25 points across the pre- and post-CompStat eras, which is a highly statistically significant number. Tr. 2493:6-2495:7; PTE 291 (Table 1).

77. Silverman tabulated the results of the survey in three demonstrative exhibits, charting feelings of low, medium and high pressure across the pre- and post-CompStat era. PTE 441-443. Feelings of high pressure to increase stop and frisks activity increased nearly six fold across periods, from 5.1% to 28.3%, at the same time that low pressure to increase stop and

frisks decreased from 54.7% to 22.5% across the periods. Tr. 2500:23-2501-20; PTE 443. Similar results were obtained regarding feelings of pressure to increase summonses, Tr. 2496:14-2498:20 & PTE 441, and arrests, Tr. 2499:1-2500-22; PTE. 442.

78. In 2012, Professors Silverman and Eterno constructed another pre-tested and IRB approved survey measuring respondents' feelings of pressure to increase summonses, arrests, and stop and frisks as well as pressure to obey constitutional rules, Tr. 2504:4-2504-14, 2504:15-2504-22; the survey divided the post-CompStat era into those who served (1) between 1994 and 2002, and (2) after 2002, i.e. the Bloomberg/Kelly era. Tr. 2503:1-2504-3.

79. The survey was sent anonymously to 4,069 individuals, Tr. 2506:2-25, who were "active" retired members of the NYPD, Tr. 2505:1-13. The 1,962 individuals who responded were from all ranks of the NYPD. Tr. (Silverman) 2507:8-21, 2508:19-2509:2.

80. Respondents who felt high pressure to increase stop and frisks increased nearly four-fold over time: 9.1% pre-CompStat, to 19.1% in the 1994-2002 era, to 35.1% in the Bloomberg/Kelly era, *id.*; those feeling low pressure to increase stop and frisks decreased significantly: 57.8% pre-CompStat, to 36.7% in the 1994-2002 era, to 24.4% in the Bloomberg/Kelly era. Tr. 2517:24:2518-13; PTE 446. Similar results were recorded relating to feelings of high pressure to increase summonses and arrests over time. PTE 444, 445.

81. While pressure to increase summonses, arrests, and stop and frisks increased significantly over time, feelings of high pressure to obey constitutional rules *decreased*: 44.6% in the pre-CompStat era to 35.7% in the Bloomberg/Kelly era. Tr. 2518:14-2519:15; PTE 447.

e. **Performance Reviews Based Almost Exclusively on Numbers**

82. Officers complete on a monthly basis, and are evaluated on a monthly and quarterly basis using, police officer monthly performance reports, now known as police officer monthly conditions impact measurement reports. Tr. (McHugh) 3173:5-3175:8, 3251:18-3252:2,

3258:1-3259:6; (Beirne) 3372:23-16, 3383:7-3385:23; (Serrano) 651:12-652:3; (Agron) 984:5-985:2; PTE 205; PTE 285 ¶8; PTE 315; DTE X11.

83. These monthly activity reports show only the numbers of various enforcement activities performed and, in the case of the monthly conditions impact measurement reports, whether such activities addressed crime conditions; they do not include substantive information about whether officer enforcement activity complies with the constitution. Tr. (Mascol) 977:1-12; (Polanco) 446:20-447:2; (Serrano) 652:14-20; (Materasso) 6716:19-23, 6719:20-6721:4, 6722:25-6724:2, 6748:23-6749:3; (Dennis) 1098:10-18; PTE 15; (Korabel) 1177:11-1178:23; (Leek) 2710:6-2711-3, 2713:11-14; (Beirne) 3374:2-3370:25; 3385:24-3386:25; PTE 178, 219, 205, 234, 236, 315. Supervisors thus evaluate officers strictly on the basis of the numerical levels of enforcement activity. PTE 234, 236.

84. Commanding officers are required to track compliance with performance goals by reviewing officers' monthly activity reports, and officers who fall below the performance goal according to their monthly activity reports are told to get their numbers up, Tr. (Marino) 892:10-893:10; (Mascol) 947:25-951:1, 965:18-966:5, and even receive negative performance evaluations. PTE 158 (Montgomery Dep.) 32:5-33:8, 202:9-203:17.

85. An officer's failure to engage in enforcement activity will reflect negatively in his or her monthly and quarterly reviews, which are themselves a significant part of the annual performance evaluation. Tr. (Beirne) 3369:25-3372:22, 3410:5-12; PTE 285 ¶¶ 13,15; PTE 240.

IV. Supervision

86. The NYPD relies mainly on supervision within the chain of command to ensure constitutional stops and frisks. Tr. (Esposito) 2845:20-25, 2914:6-9, 2919:13-18, 2929:25-2930:10; (Morris) 6604:17-22; (Hall) 7356:11-7357:3; (Hegney) 1942:1-9; (Diaz Dep.) 1044:17-

1046:6; PTE 155 (Dale Dep.) 68:24-69:15, 90:12-16; PTE 157 (Giannelli Dep.) 181:24-182:12, 208:11-23.

87. The NYPD's only mechanism for identifying questionable stop patterns by officers is supervisory review. Tr. (Esposito) 2841:3-2842:13. *See also* Tr. (Ortiz) 3504:21-3505:7; (Diaz Dep.) 1528:6-12. In practice, supervisors do not do this. Tr. (McCarthy) 4972:6-9; (Telford) 6314:13-20, 6314:24-6315:3; (J. Marino) 5556:1-6; (Agron) 989:4-991:24; (Diaz Dep.) 1534:20-1535:19.

88. When the first level supervisor fails to ensure officers are engaging in constitutional policing consistent with department policies, and when supervisors are not held accountable for implementation of those requirements, an operational policy markedly different from the official policy develops. Tr. (Reiter) 4834:5-4836:1, 4845:23-4846:1.

a. **Failure to Supervise the Constitutionality of Stop-and-Frisk Activity**

89. High-level managers fail to determine whether sergeants are ensuring subordinate officers' stops are constitutional and not based on race. *E.g.*, Tr. (Ortiz) 3554:19-5; (Mauriello) 1839:2-1840:9; (Cirabisi) 5662:1-11; PTE 157 (Giannelli Dep.) 203:17-205:7.

90. The NYPD's written guidelines do not require supervisors to evaluate the constitutionality of stops and frisks; mid-level supervisors are directed to merely review stop paperwork. Tr. (Beirne) 3385:24-3390:6; 3396:10-19; PTE 315, 205. *See also* PTE 157 (Giannelli Dep.) 165:6-168:13.

91. The legal requirements applicable to stop and frisk, and whether stops and frisks are being constitutionally conducted, is not meaningfully discussed, if at all, in the chain of command. Tr. (Ortiz) 3505:22-3507:16; (Mauriello) 1839:2-1840:9; (Lehr) 5423:13-5424:23; (Loria) 3785:16-20, 3781:23-3782:8, 3782:13-20; (Dennis) 1105:15-19; (Rothenberg) 3817:13-16, 20, 3818:9-14, 3820:4-7; (Palmieri) 3659:25-3660:3, 3666:23-3667:1, 3669:18-3670:6,

3672:10-21; PTE 581 (Barrelli Dep.) 81:14-81:25, 101:14-101:20, 107:11-108:5; (DeMarco) 2674:3-14; (French) 3738:16-3739:2 (McDonald stop); (Agron) 1000:18-1002:4; (Pichardo) 1266:2-1267:2; (Moran) 4036:17-4037:11, 4084:19-25 (Ourlicht stop); (Guimaraes) 1653:17-1655:22; (Hegney) 1940:18-1941:24; (Joyce) 1342:16-1343:2; PTE 137 (Tzimoratas) 14-19; (McCarthy) 4972:6-9; PTE 134 (Navaretta Dep.) 17:4-16, 18:10-19, 22:21-23:12, 21:20-22:11, 29:6-11; PTE 136 (Trunzo Dep.) 19:16-19, 21:16-19, 23:17-20, 26:19-21, 29:9-12, 30:7-10, 31:15-25, 35:19-36:2, 40:18-20; *see also* DTE Q14 (Houlahan Dep.) at 54:14-56:4; 58:7-59:4; 60:9-16; 61:6-15. 69:24-70:18, 84:6-9, 81:15-83:6, 85:20-24 (Op. Impact Sgt. failed to meaningfully ask about circumstances of Provost stop despite memobook entry undermining the supposed basis for the stop).

92. For example, Sgt. Michael Loria,³ who reviewed and signed the UF250 for McDonald's stop and was not present for that stop, did not believe reasonable suspicion could be gleaned from the 250, and yet did not ask French, the stopping officer, about the stop. PTE 226; Tr. (Loria) 3766:23-3767:11, 3771:12-22. In 21 years as a sergeant, he never discussed a 250 he reviewed with the officer who completed it, Tr. (Loria) 3777:14-25; never told an officer under his supervision in sum or substance that he should not have conducted a stop that he observed or reviewed, Tr. (Loria) 3778:18-22; does not recall ever giving an officer under his supervision instructions about stop and frisk, Tr. (Loria) 3780:10-19; and does not recall ever discussing with an officer a concern about whether reasonable suspicion existed after reviewing a UF250. Tr. (Loria) 3780:4-8.

³ After consultation with counsel, after Plaintiffs made a proffer in court, and when he knew that he would be called as a witness, Sgt. Loria submitted an Errata reversing answers to clear questions about his supervision practice on the basis that his memory was different than at the time of his deposition *one month prior*. Tr. (Loria) 3772:4-14, 3773:12-16, 3774:4-6, 3774:18-25; 3775:24-3776, 3778:1-16, 3787:8-15. To the extent Sgt. Loria's trial testimony differed from his deposition testimony, this Court should credit his deposition testimony only.

93. Several of the NYPD supervisors who were out in the field with the officers who stopped plaintiffs and class members themselves participated in or failed to prevent these unconstitutional stops. *See, e.g.*, Tr. (Kelly) 1433:5-8 (Floyd stop); (Korabel) 1145:16-18, 1147:7-15 (Almonor Stop); (Leek) 2704:16-2706:11 (Lino Stop).

b. **Failure to Meaningfully Review Stop-and-Frisk Paperwork**

94. Supervisors in practice do not review UF250s to determine whether reasonable suspicion for the stop existed, but instead check only whether the form is filled out. Tr. (Loria) 3763:2-19, 3767:16-3768:2; (Korabel) 1169:4-17; (Velazquez) 634:3-23; (Agron) 986:12-987:7, 989:18-22; (Hegney) 1948:19-25, 1949:25-1950:18; (Moran) 4038:2-21; (Guimaraes) 1653:17-1655:22; (Kelly) 1429:4-1430:14; (Giacona) 3869:9-13; PTE 129 (Eddy Dep.) 262:14-2-263:22; PTE 136 (Trunzo Dep.) 32:2-8; (Diaz Dep.) 1526:19-1527:10; (Rodriguez) 1244:12-14; *see also* Tr. (Telford) 6320:13-6322:9; PTE 557-D, 557; Tr. (Navaretta) 6319:2-5, 6320:8-12, 6363:10-6365:8; DTE 012.

95. Supervisors in practice either do not discuss at all, or do not meaningfully discuss, completed UF250s with their subordinate officers. Tr. (Korabel) 1169:18-20, 1170:9-17, 1171:14-15; PTE 581 (Barrelli Dep.) 79:2-79:5; (Marrero) 606:15-607:7, 610:18-22; (Velazquez) 634:3-23; (DeMarco) 2674:3-10; (McCarthy) 4972:1-5; (Kelly) 1489:1-8; PTE 134 (Navaretta Dep.) 33:24-34:4, 30:17-24, 38:7-20; PTE 137 (Tzimoratas Dep.) 59:3-9, 15-21; PTE 135 (Ruggiero Dep.) 21, 161:4-23; DTE Q14 (Houlahan Dep.) 38:14-22, 81:8-14. For example, one of Gonzalez's 250 indicated that a Black person stopped said "Why don't you/ why can't you stop other people," yet this did not raise a concern for his supervisor about racial profiling. PTE 557 at NYC_2_15999-16000; Tr. (Telford) 6332:1-6333:18.

96. Supervisors accept furtive movements as a basis for reasonable suspicion when it is checked on the UF250 form and without further information on what constituted the furtive

movement. Tr. (Ortiz) 3519:16-3520:25; (Hegney) 1956:3-12; (Dang) 6445:18-6445:19; (Kelly) 1485:23-1486:5; (Diaz Dep.) 1531:14-1534:12; PTE 155 (Dale Dep.) 85:14-17.

97. In practice, officers do not include in their activity logs the circumstances leading to stops, supervisors do not discuss activity log entries or deficiencies in those entries with officers, and officers are not disciplined for deficient entries. Tr. (Rothenberg) 3815:18-3186:1; (Loria) 3795:13-3797:12; (Dennis) 1100:12-16-1101:6, 1102:24-1103:13, 1141:21-1142:4; (Arias) 3475:5-3476:5; (Korabel) 1175:22-1176: 7; (Palmieri) 3657:20-3658:8; 3669:1-13; (Salmeron) 842:20-22, 862:24-863:3; (Agron) 1019:20-23, 989:4-991:24; (Pichardo) 1283:14-1284:17, 1286:2-4, 1286:22-1287:24; (Joyce) 1346:5-7; (Hegney) 1956:3-12, 2089:15-17; (Guimaraes) 1645:5-1646:6; (Hernandez) 1388:21-23; (Kelly) 1440:25-1442:7; (White) 3129:5-3136:9, 3139:12-14; (Gillespie) 3436:24-3439:6; PTE 581 (Barrelli Dep.) 63:14-63:25; PTE 134 (Navaretta Dep.) 17:4-16, 18:10-19, 22:21-23:12, 53:11-14; PTE 137 (Tzimoratas Dep.) 108:4-10; PTE 157 (Montgomery Dep.) 143:14-21; PTE 136 (Trunzo Dep.) 69:16-23; DTE Q14 (Houlahan Dep.) 80:4-16, 88:2-14. *E.g.* PTE 19, 161, 214, 581. *See also* Tr. (Diaz Dep.) 1522:25-1523:20; (Kelly) 1433:17-1440:16, 1467:7-1486:5; (Joyce) 1337:25-1342:13; DTE X4, G6; PTE 98, 179-181.

98. On March 5, 2013, on the eve of trial, Chief of Patrol Hall issued a memo requiring certain commands to provide narrative details about stops in the UF250 form and memobook. Tr. (Hall) 7656:3-7661:6; DTEJ13. This is an admission that narrative details are necessary to ensure the constitutionality of stop and frisk.

99. Until this memo issued, which is most of the class period, the NYPD in practice did not require officers to include in their activity logs pertinent details about the circumstances leading to stops. Tr. (Esposito) 2912:5-21; (McHugh) 3209:22-3210:5; (Navaretta) 6360:5-6361-

22; (Hegney) 1957:14-1960:12, 2100:15-18; (Diaz Dep.) 1059:25-1060:2; PTE 157 (Giannelli Dep.) 197:23-199:13; 209:21-210:13; PTE 134 (Navaretta Dep.) 59:4-10, 55:11-15; PTE 158 (Montgomery Dep.) 107:6-108:7; DTE R14 (Mulligan Dep.) 106:24-107:7; DTE N12.

100. Supervisors are not required to review activity logs concurrent with their review of UF250s. *E.g.*, Tr. (Ortiz) 3522:6-20; (McHugh) 3210:19-22; (McCarthy) 4976:20-4977:12.

c. Failure of Integrity Control Officers to Monitor Officer SQF Conduct

101. Integrity control officers (“ICOs”) are supposed to serve as the “eyes and ears” of the precinct commander and conduct inspections and checks to identify any possible misconduct by officers in the precinct. PTE 157 (Giannelli Dep.) at 47:11-19.

102. One of the inspections ICOs are expected to do regularly is an inspection of officers’ completed UF250 forms to determine if stops are based on reasonable suspicion. PTE 157 (Giannelli Dep.) 48:23-49:12, 50:9-18, 106:3-17; 170:23-171:10. This inspection instead simply looks at whether the forms are filled out. Tr. (Cirabisi) 5692:24-5693:3.

103. In practice, ICOs do not do anything to address sub-standard scores on the portion of the audit related to recording stops in memobooks. Tr. (Palmieri) 3658:9-3659:19; (Barrelli) 3631:5-15; PTE 463.

104. In practice, ICOs do not discuss 802-A (*see infra* ¶109) with the NYPD’s Quality Assurance Division (“QAD”) personnel and never discuss reports on stops, questions, and frisks with anyone. PTE 581 (Barrelli Dep.) 80:16-80:19; 85:14-85:21.

105. In practice, stop, question, and frisk, 250s, and racial profiling are not discussed at regular ICO meetings. Tr. (Palmieri) 3656:23-3657:4; (Peters) 3605:10-3606:5; PTE 581 (Barrelli Dep.) 32:25-33:5, 36:19-36:21, 37:2-37:24.

106. In practice, ICOs do not discuss with commanding officers stop, question, and frisk, UF250s, and racial profiling. Tr. (Palmieri) 3657:5-19; (Peters) 3606:6-3608:4; PTE 581 (Barrelli Dep.) 36:11-36:14, 37:5-37:24.

107. Patrol Guide Section 202-15 requires ICOs to make integrity control recommendations, DTE F5, yet in practice ICOs do not make recommendations regarding stop, question, and frisk, activity logs, or UF250s. Tr. (Palmieri) 3667:22-3668:24; (Peters) 3609:14-3611:13; PTE 581 (Barrelli Dep.) 56:2-56:16.

d. **Failure to Meaningfully Audit Stop-and-Frisk Activity**

108. QAD is responsible for evaluating officer compliance with various NYPD policies and procedures, including the Patrol Guide section on stop, question, and frisk and the NYPD's racial profiling policy. Tr. (Cronin) at 4624:10-4626:15.

109. The only two audit and command-level self-inspection processes developed by QAD to evaluate whether NYPD officer stop-and-frisk activity is based upon reasonable suspicion and complies with the NYPD's racial profiling policy are reflected on the Worksheet 802 and Worksheet 802-A. Tr. (Cronin) at 4629:4-4630:15, 4727:19-4728:6, (Farrell) 7278:5-13; PTE 89, PTE 154 (Cassidy 6/29/10 Dep.) at 92:2-93:20; PTE 350.

110. Protocols for Worksheet 802 & 802-A were issued in Dec. 2002, and the NYPD has followed these protocols since the 1st quarter of 2003. PTE 89, 350; PTE 154 (Cassidy 6/29/10 Dep.) 52:12-54:3; Tr. (Farrell) 7133:9-16, 7139:20-7141:12.

111. As set forth in these protocols, both the Worksheet 802 and Worksheet 802-A audits and self-inspections involve only a review of stop-and-frisk and arrest paperwork completed by officers, namely U250 forms and activity log entries for the Worksheet 802, and arrest reports and any corresponding UF250 forms for the Worksheet 802-A. PTE 58, 71, 89; Tr. (Cronin) 4637:6-16, 4650:1-23, 4660:8-4662:8; (Farrell) 7278:10-18.

112. Worksheet 802 and 802-A do not involve any meetings with or interviews of stopping officers or stopped pedestrians or field observations of officers conducting stops. Tr. (Cronin) 4637:17-4638:9, 4664:19-4665:1, 4675:14-4676:2, (Farrell) 7278:19-7279:2.

113. High-level NYPD policymakers have been aware since 1999 that it is not possible to determine from a purely paperwork audit like Worksheet 802 & 802-A whether stops and frisks are based on reasonable suspicion and comply with the NYPD's racial profiling policy. PTE 46 (testimony of former NYPD Commissioner Safir) at 48; 154 (Cassidy 10/25/05 Dep.) 103:20-105:24, (Cassidy 6/29/10 Dep.) 69:14-71:7; Tr. (Diaz Dep.) 1053:16-1054:10.

114. Chief Peter Cassidy—CO of QAD when the Worksheet 802 and 802-A protocols were first developed and implemented—acknowledged that Worksheet 802 does not assess whether stops are based on reasonable suspicion and that he does not know how the Worksheet 802 or 802-A audits assess whether stop activity complies with the NYPD's racial profiling policy. PTE 154 (Cassidy 10/25/05 Dep.) 103:20-105:24, (Cassidy 6/29/10 Dep.) 15:7-10; 52:12-54:13, 69:14-71:7.

115. QAD conducts audits in other areas that involve speaking to civilians who have interacted with police officers and observing officer-civilian interactions. Tr. (Cronin) 4792:1-8, 4796:1-22; (Farrell) 7291:25-7293:6.

116. The November 2002 draft of the Worksheet 802-A protocols included a field observation component, but Deputy Commissioner Farrell decided to remove that component from the final version of the protocols. PTE 73; Tr. (Farrell) 7297:14-7298:9.

117. When conducting the Worksheet 802 audits and reviews of commands' 802-A self-inspections, QAD reviewers attempt to determine whether officers' stops and frisks are

based on reasonable suspicion solely on the basis of information recorded on the UF250 forms. Tr. (Cronin) at 4639:18-4642:11.

118. NYPD supervisors testified at trial that they cannot determine if a stop was based on reasonable suspicion solely from the information contained on a completed UF250 form. Tr. (McHugh) 3207:9-3208:19; (Lehr) 5440:24-5441:2; (Loria) 3767:16-3768:2.

119. QAD's substantive review of completed UF250s is so superficial that QAD reviewers often fail to flag stops and frisks that facially appear to lack reasonable suspicion. DTE B11; Tr. (Cronin) 4640:8-4642:11, 4720:6-4723:6, 4725:15-4727:5.

120. The activity log portion of the Worksheet 802 audit and self-inspection requires that an officer's entry concerning a stop and frisk include only the same level of detail regarding the reasons for a stop that is contained on the UF250 form itself. Tr. (Cronin) 4644:24-4646:2.

121. The stop and frisk portion of the QAD Worksheet 803 audit and self-inspection uses the same standards for assessing the sufficiency of activity log entries as are used in the Worksheet 802. Tr. (Cronin) 4688:23-4689:13.

V. **Training**

a. **Police Academy Training on Reasonable Suspicion Is Inadequate**

122. The Police Student's Guide does not provide detailed or objective standards on most of the UF250 factors included in an officer's assessment of reasonable suspicion, including suspicious bulge or high crime area. Tr. (Shea) 5155:16-19; DTE Q11.

123. The NYPD does not provide adequate training on reasonable suspicion and training on reasonable suspicion is so overly broad as to encompass any form of behavior. Tr. (Moran) 4042:6-9, 4044:21-4046:3; (Velazquez Dep.) 633:4-11; PTE 129 (Eddy Dep.) 229:18-231:25. For example, Dennis, who stopped Almonor, recognizes that a stop is defined as "temporarily detain a person for questioning," but believes he can stop a pedestrian at any level,

for any reason. Tr. 1104:13-22, 1105:11-13. Members of the NYPD assess whether a pedestrian encounter rises to the level of a *Terry* stop based on their level of suspicion, e.g., Tr. (Vizcarrondo) 5212:16-19; (McCarthy) 4971:20-25, rather than on whether a reasonable person would feel free to leave. *See* PTE 332 (PTE 332-T at 15:8-16 (McCormack instructing Serrano that “hey come here, I gotta talk to you” is a stop that should result in 250)).

124. NYPD officers, including those that stopped plaintiffs and class members, do not know when a frisk is permitted. Tr. (Mahoney) 3867:4-7. For example, the officers who frisked Floyd on February 27, 2008 did so despite not even being in fear for their safety. Tr. (Kelly) 1428:14-18; 1508:25-1509:13; (Joyce) 1363:19-23; *see also* (White, L.) 3117:1-3119:25

125. Officers are not given sufficient training in the Police Academy on how to complete a UF250: the sum total of the training on the form’s “circumstances which led to the stop” field is contained on just one page (page 26) of Exhibit Q11. DTE Q11.

126. The NYPD relies on scenarios and role plays to instruct officers about reasonable suspicion and stop and frisk, but none of the scenarios and role plays are based on self-initiated stops, Tr. (Shea) 5161:24-5162:2; DTE N3, Q11, Q3; PTE 387, despite the fact that the overwhelming majority of stops (77.9%) by the NYPD are self-initiated. PTE 417D.

b. Training on Racial Profiling Is Inadequate

127. The City provides inadequate training on racial profiling and does not train officers on what they should do if someone makes an accusation of racial profiling, does not train officers on how to recognize racial profiling in their own actions, and does not instruct officers on what to do if they see racial profiling in the actions of others. DTE S11; Tr. (Moran) 4030:25-4031:24; (Hegney) 1960: 22-1962:4; PTE 129 (Eddy Dep.) 195:11-19; (Leek) 2714:1-2715:1.

128. NYPD training materials instruct officers to not take racial profiling accusations personally. DTE S11 at 31. Instead of training officers on how to recognize racial profiling, the NYPD trains officers that they need to explain their actions, presuming that the stop is legal and characterizing accusations of racial profiling as “a myth.” DTE P3, V11.

c. **Sergeant Training Is Inadequate**

129. The lesson plan covering stops and frisks for the sergeant promotional training does not instruct sergeants to review UF250s or otherwise review street stops to determine if there was reasonable suspicion for the stop. DTE R3; Tr. (Shea) 5168:19-5170:22; (Hegney) 1939:7-10, 1951:24-1953:23.

d. **Rodman’s Neck Training Materials Are Constitutionally Deficient**

130. 6000 members of the service have already been trained on stop and frisk using the Rodman’s Neck training materials. Tr. (Shea) 5129:1-3. This Court has already identified substantial constitutional problems with the Rodman’s Neck training materials, DTE C4, O3, and with Training Video #5, PTE 368-69. *See Ligon v. City of New York*, No. 12 Civ. 2274 (SAS), Feb. 11, 2013 (SDNY).

131. The Rodman’s Neck training was specifically designed to correct the so-called problem of the UF250 form being “overused,” despite the fact that almost no research or data supported the conclusion that it was being overused. Tr. (Shea) 5153:16-5154:1; (Moran) 4039:19-24, 4040:4-25. Accordingly, the fact that the number of UF250s dropped in 2012 is not, in any way, probative of a lower number of forcible stops.

e. **Training on Armed Suspects Is Overly Broad and Racially Stereotypical**

132. The NYPD training on the characteristics of armed suspects is so overly broad that it trains NYPD officers that common, ordinary objects can be weapons and that ordinary factors like wearing a hooded sweatshirt can be characteristics of armed suspects. DTE C8, W3,

D4. The NYPD training on furtive movements is also so overly broad as to encompass any form of behavior. Tr. (Moran) 4047:1-4049:15; (Pichardo) 1260:1-2; (Dang) 6431:24-6433:5.

133. Despite the fact that unusual firearms (e.g., mobile cell phone guns) are rare, the NYPD trains officers that they should always be alert to these devices, thus resulting in stops and frisks without constitutional basis. Tr. (Shea) 5040:24-5046:20, 5176:9-5178:6; DTE C8; W3; D4. Officer French, who attended this training, unreasonably believed that McDonald's hands and cellphone in his coat pocket on a winter night looked like a weapon. Tr. (French) 3729:1-20; 3746:19-3747:20; 3753:1-15.

134. The NYPD trains officers that Hispanics and Blacks might have distrust or fear of the police and that these groups might avoid interacting with police officers, avoid eye contact, or get nervous at the sight of an officer. DTE S11. The NYPD also trains officers that these are characteristics of armed suspects. DTE D4.

VI. **Investigations, Discipline, and Monitoring**

135. NYPD investigations of civilian complaints regarding stop-and-frisk are perfunctory. Tr. (Reiter) 4878:12-4880:8.

136. In practice, commanding officers do not issue command discipline for improper stops or racial profiling. Tr. (Morris) 6595:2-6, 6600:18-25; PTE 155 (Dale Dep.) 34:21-35:8. *See also* PTE 135 (Ruggiero Dep.) 161:4-23.

a. **NYPD Response to CCRB Stop-and-Frisk Complaints**

137. The CCRB profile and assessment committee monitors officers with a certain number of CCRB complaints, but only a fraction of officers who qualify for monitoring are brought before the committee. Tr. (Schwartz) 4558:14-24, 4559:17-21, 4561:20-4562:3, 4562:13-15, 4569:24-4570:22. *See, e.g.*, DTE D15, C15.

138. The NYPD may recommend instructions for an officer who is the subject of repeated substantiated CCRB complaints, and does not routinely track whether an officer who has had a substantiated CCRB complaint later has an unsubstantiated CCRB complaint. Tr. (Schwartz) 4544:22-25, 4564:11-21. Only those substantiated CCRB complaints that result in penalties are in the CPI, and the CPI includes no substantive information. Tr. (Hall) 7440:8-14, 7604:3-23. There is no requirement that supervisors monitor officers who have been the subject of one CCRB complaint. Tr. (Lehr)⁴ 5445:4-19. *See also* Tr. (Lehr) 5447:22-5448:5. Even when monitoring is required, it can be meaningless. *E.g.* Tr. (Figueroa) 2761:16-21, 2761:19-2764:1.

139. CCRB substantiated Lino's complaint and recommended charges against Figueroa and Leek, PTE 208, 217, but neither officer received any discipline as a result. Tr. (Figueroa) 2764:2-2766:3-11, 2790:14-19 (Leek) 2707:5-2709:13.

140. CCRB substantiated as abuse of authority Acevedo's complaint against the detectives for stopping her (PTE 5), yet none were told that they did anything wrong in conducting the stop. Tr. (DeMarco) 2669:23-2673:19; (Hawkins) 5459:4-19, 5465:18-5467:19; (Vizcarrando) 5203:16-23, 5213:23-13. Hawkins was thereafter the subject of an OCD stop complaint, yet no one discussed it with her or interviewed her regarding it. PTE 433; Tr. 5468:10-5469:5.

141. Salmeron was never spoken to or disciplined for a substantiated CCRB complaint for an improper stop two years before she stopped Dennis. Tr. 845:9-846:1, 846:10-20; PTE 104. There are numerous concerns about the investigation and treatment of that complaint based on best practices. Tr. (Reiter) 4889:24-4891:14.

⁴ Inspector Lehr's testimony regarding performance monitoring and investigation of civilian complaints is limited to his personal experience in the 66P and 67P. Tr. (Lehr) 5364:17-5365:10, 5373:5-17, 5436:5-5437:4, 5441:16-5442:9.

b. Office of Chief of Department Stop and Racial Profiling Complaints

142. The NYPD fails to adequately investigate complaints about stop and frisk that come through OCD. Tr. (Reiter) 4881:2-4882:18; 4884:21-4888:14; (Hegney) 2076:13-15, 2082:8-2085:5, 2086:19-8, 2088:20-2089:10; PTE 135 (Ruggiero Dep.) 128:19-130:18; PTE 129 (Eddy Dep.) 130:13-18; 177:11-178:2; *see also* PTE 168, 251, 432.

143. Complaints alleging racial profiling go to OCD, yet OCD does not track racial profiling or stop complaints. Tr. (McAleer) 3926:23-25, 3964:11-3965:7, 3966:13-16, 3968:10-13, 3980:13-19, 3981:11-19, 4013:6-10; (Thompson) 3271:12-14; Def. Ex. Z12.

144. Investigations should go beyond the complaint's four corners, Tr. (Reiter) 4884:21-4889:23, but this does not happen. *E.g.* Tr. (Dennis) 277:8-17; (Rodriguez) 1222:21-1226:10; (Pichardo) 1260:13-16, 1288:14-20; PTE 421.

145. Sergeants are commonly responsible for investigating allegations against subordinate officers that come through OCD, even if they signed off on the UF250 at issue. Tr. (Mauriello) 1832:20-1834:6, (Lehr) 5359:21-5360:3, 5360:16; (Cirabisi) 5645:3-7, 5710:22-24; (Rodriguez) 1216:5-7; (Hegney) 1962:12-17, 1970:6-1971:7, 2073:19-25. *See also* Tr. (Reiter) 4882:10-18; PTE 250. For example, Ourlicht's OCD complaint was investigated by Sergeant Hegney, who signed off on the related UF250. Tr. (Cirabisi) 5712:1-24, 5715:1-7.

146. OCD staff does not receive training on how to handle racial profiling or stop-and-frisk allegations. Tr. (McAleer) 3970:12-18. OCD refers allegations to other units but does not send instructions on conducting the investigation, and it does not conduct a review of the sufficiency of the investigation after a disposition has been received. Tr. (McAleer) 3971:21-3973:16, 3976:4-16. Many of the people who will be investigating OCD complaints have no training or guidelines on conducting the investigation. Tr. (Lehr) 5442:10-5443:6; 5449:9-5450:20; (Rodriguez) 1231:15-1238:18. This is problematic. Tr. (Reiter) 4882:19-4883:6.

147. Rothenberg was the subject of an OCD allegation that he stopped someone based on race the year prior to his stop of Provost. PTE 279; Tr. (Rothenberg) 3822:20-23. He was never questioned about it and no one informed him of a concern that he engaged in racial profiling. Tr. (Rothenberg) 3825:4-6, 3820:8-15. The NYPD is unable to determine whether this was even investigated. Tr. (Stip.) 5385:12-15.

c. **The Department Advocate**

148. The Department Advocate is indifferent to the large percentage of CCRB complaints alleging improper stops each year. Tr. (Schwartz) 4548:12-25, 4481:17-23.

149. Despite that CCRB investigations are subject to four levels of review including by an attorney, the NYPD declined to pursue punishment at a rate of 16-34 percent since 2007. Tr. (Thompson) 3272:16-3274:2, 3275:14-15, 3350:17-21, 4483-4484:9; DTE P12 at 17.

150. The Department Advocate knows that race could be a motivating factor in a stop where racial profiling is not mentioned, and that complainants simply allege baseless stops. Tr. (Schwartz) 4550:19-23, 4553:1-20. Yet she believes that this and the fact that Black people have been a majority of victims in CCRB complaints and a large majority of complainants in stop-and-frisk cases has “nothing to do” with a concern about racial profiling. Tr. (Schwartz) 4550:19-23, 4553:1-20, 4554:5-9, 4555:8-16. *See also* Tr. (Hall) 7620:23-7621:4.

151. The Department Advocate does not believe the law of search and seizure is clearly established; has a narrow view of what constitutes a stop; and sometimes recommends no discipline in substantiated CCRB cases because she believes CCRB misapplied law. Tr. (Schwartz) 4514:13-17, 4516:18-4517:2, 4522:16-4528:5; DTE W13 at NYC_2_000736.

152. The Department Advocate discredits civilians over members of the NYPD. Tr. (Schwartz) 4484:16-4487:10, 4508:2-12, 4512:2-9. Though the Department Advocate is supposed to apply the same preponderance of the evidence standard as the CCRB, Tr. (Schwartz)

4484:10-15, in fact, the NYPD does not pursue discipline unless there is evidence to corroborate a civilian's account beyond the civilian's testimony. Tr. (Schwartz) 4484:16-4487:10. The Department Advocate has heard criticism that the NYPD is biased in favor of officers and the criticism is not a concern for her. Tr. (Schwartz) 4512:23-24, 4513:2-5.

153. Since at least 2007, when the CCRB finds misconduct, the NYPD averts discipline by declining to pursue discipline and issuing instructions, the least serious form of discipline, in the majority of cases. Tr. (Thompson) 3289:13-21, 3294:11-20; (Schwartz) 4468:10-13, 4496:18-21; DTE P12 at 17, 18. The rate at which the NYPD declines to pursue punishment excludes cases in which the statute of limitations had expired. *See* DTE P12 at 17.

154. The NYPD downgrades the level of punishment recommended by the CCRB. DTE P12 at Table 30 & 18; Tr. (Schwartz) 4503:10-13. From 2007 to 2011, CCRB recommended charges and specifications most often and instructions least often. Tr. (Schwartz) 4501:1-7; DTE P12 at Table 30. In that same period, the NYPD did the reverse. DTE P12 at 18.

155. The Department Advocate averts discipline despite being aware since 2007 of a concern, voiced both by CCRB and others, that doing so would undermine civilian confidence in the CCRB, and she is indifferent to the possibility that averting punishment sends a message that CCRB complaints will not be taken seriously. Tr. (Thompson) 3295:7-3297-6; (Schwartz) 4491:19-4493:18, 4504:9-15; PTE 111 at NYC-7676; PTE 112. The NYPD dismissed CCRB's concerns. Tr. (Thompson) 3296:2-6. The NYPD has since almost doubled the number of cases in which it issued instructions, and 2010 and 2011 *increased* the number. Tr. (Thompson) 3297:7-14, 3296:22-25; (Schwartz) 4499:21-4500:1. *See also* Tr. (Reiter) 4878:12-4880:8.

156. The NYPD's agreement permitting CCRB attorneys to prosecute cases is meaningless. The CCRB can only prosecute charges and specifications—a fraction of CCRB cases—with Commissioner Kelly's authorization. Tr. (Thompson) 3345:6-3345:22; PTE 458.

VII. Notice and Deliberate Indifference

a. Notice of Racial Bias in Street Encounters Since 1999

157. In 1999, McGuire and Farrell reviewed the report from the Office of the NY State Attorney General on the NYPD's stop, question, and frisk practices ("AG report"). Tr. (McGuire) 4279:13-4280:17, 4281:6-4282:1, 4284:3-12; (Farrell) 7082:8-12, 7090:24-7091:5. The AG reported its statistical analyses of 15 months of NYPD stop data, covering about 175,000 stops recorded between January 1, 1998 and March 31, 1999. PTE 333 at v-vi.

158. The results revealed that, after controlling for differing crime rates between racial groups and police precincts, as measured by 1997 New York City arrests for violent, property, drug, and weapons crimes: (i) Blacks were stopped 23% more often than whites; (ii) Hispanics were stopped 39% more often than whites, (iii) precincts with high percentages of minority populations had much higher stop rates, and majority white precincts had much lower stop rates, than would be predicted by their crime rates; and (iv) these racial disparities were statistically significant. PTE 333 at ix-xii, 119-135; Tr. (McGuire) 4284:14-22.

159. The AG analyzed the factual bases for stops written on a sample of about 15,000 UF250s, and found about 1 of every 7 lacked reasonable suspicion. PTE 333 at xiii-xiv, 160-64.

160. The AG report recommended that the NYPD engage in a dialogue about what if any changes to the NYPD's stop practices might be appropriate. PTE 333 at xv-xvi, 175-177.

161. Despite the obvious import of the AG report, Chief Esposito never read it. Tr. (Esposito) 2804:6-7.

162. NYPD officials testified that they disagreed with the AG report's findings primarily because (1) the report used arrestee rather than crime suspect data as a benchmark, and (2) the arrestee data was from the year prior. Tr. (Farrell) 7091:10-12, 7258:13-23; (McGuire) 4299:14-19, 4320:12-19. However, the concern with the arrestee benchmark was that it could potentially *hide*, rather than exaggerate, racial bias by police officers, Tr. (Farrell) 7259:7-14, and the NYPD's arrest and crime suspect data shows that the racial demographics of the arrestee and crime suspect populations do not change much from one year to the next. PTE 321; PTE 411 at 76 Table 18; Tr. (McGuire) 4314:12-21, 4317:15-4318:3.

b. Indifference to Complaints About Stop and Frisk and Racial Profiling

163. The NYPD is aware of complaints by community and legal groups, from officers and class members, and in the media about baseless and racially motivated stops and frisks, which would provide any reasonable police department notice of a concern. Tr. (Esposito) 3023:20-3024:5, 3026:7-14, 3027:10-13; (Farrell) 7174:17-20, 7276:4-7277:11; (Marino) 931:13-23; (Lehr) 5410:2-10, 5412:25-5413:19; 5429:20-5430:5, 5434:8-5435:4; (Morris) 6633:23-6634:9; (Holmes) 6510:1-6512:24, 6538:14-6540:8; 5081:1-5082:12; (Shea) 5081:1-5082:12; (Cirabisi) 5697:24-5698:5; (Polanco) 449:18-19, 450:5-13; 450:24-451:22; 452:18-23; (Hernandez) 1390:6-25, 1396:3-10, 1397:3-4, 1398:1-10, 1397:17-21, 1423:11-1425:6; (Sindayiganza) 2606:18-22; (Acevedo) 1704:18-19; (Peart) 326:2-23, 344:14-345:1; (Downs) 4108:4-9, 4114:1-21, 4116:18-4119:1; (Reiter) 4877:16-4878:6; (Diaz Dep.) 1054:24-1055:10; PTE 5, 166, 171, 172, 451-455. *See also* Tr. (Esposito) 2794:21-2796:1, 2800:8-2801:6 (notice of complaints of bias in street encounters since Diallo shooting).

164. Prior to their stop of Floyd, civilian complaints arising from stops and frisks were filed against Kelly and Hernandez. Tr. (Kelly) 1440:25-1442:7; (Hernandez) 1397:3-1398:10, 1423:11-1425:6; PTE 451-454.

165. Prior to his stop of Downs, several civilian complaints were filed against Mahoney for illegal stops, frisks and/or searches. PTE 432; PTE 168.

166. Prior to his stop of Downs, civilian complaints were filed against Giacona. Tr. (Giacona) 3879:2-3881:22; PTE 168, 453. He was found incredible by the CCRB. PTE 166.

167. Prior to his stop of Floyd, Joyce was the subject of a CCRB investigation during which CCRB reported that Joyce said, “that’s half the Bronx” when shown a photograph of a Latino person who filed a civilian complaint against him for an improper stop, frisk and use of force. Tr. (Joyce) 1348:12-1349:24. The CCRB interviewer made an adverse credibility determination against Joyce. PTE 455.

168. Quality control callbacks should be used when there is public criticism of a police practice, but there is no evidence the NYPD does this. Tr. (Reiter) 4963:19-4964:12.

169. The NYPD receives stop complaints primarily through CCRB. Tr. (Schwartz) 4456:15-20, 4460:4-12. The NYPD is aware that every year a majority of CCRB cases are truncated, *i.e.* closed without full investigation. Tr. (Thompson) 3276:25-3280:10, 3281:2-4. Truncated cases likely include a large number of stop complaints due to witness unwillingness to give sworn statements during the pendency of criminal proceedings. Tr. (Thompson) 3283:3-25. Despite knowing this, the City relies on civilian complaints to alert it to racial and unlawful stops. Tr. (Esposito) 3025:6-8; (Diaz Dep.) 1047:22-1048:3, 1054:13-1056:10.

170. The NYPD knows that since at least 2005 a large percentage of CCRB complaints allege improper stop and frisk and that Black people have made up a large majority of the complainants. Tr. (Thompson) 3284:1-23, 3285:14-18, 3286:12-3287:8, 3288:2-3289:2; PTE 111 at NYC-7679-80; PTE113 at 15; DTE P12 at 8. Despite this, the NYPD has never approached the CCRB to discuss retraining. Tr. (Thompson) 3352:11-15.

171. Chief Esposito says he never heard a complaint of racial profiling, Tr. (Esposito) 3025:6-3026:21, yet his office received at least 30 such complaints in 2012 alone, Tr. (McAler) 4007:14-22, and on average received two per month each year, Tr. (McAler) 4012:1-3. The actual numbers could be larger given that OCD does not track racial profiling complaints, *supra* ¶143.

172. The OCD's failure to track racial profiling complaints, *supra* ¶143, evidences indifference: the NYPD relies on civilian complaints to alert it to a problem, Tr. (Esposito) 3025:6-8; (Diaz Dep.) 1047:22-1048:3, 1054:13-1056:10, yet does not pay attention when it receives those complaints.

173. Chief Esposito's disregard of racial profiling complaints is especially egregious because the NYPD primarily receives claims of racial profiling through his office. Tr. (Thompson) 3268:7-9, 3271:12-14 (racial profiling generally not within CCRB's authority); Tr. (McAler) 3926:23-25 (racial profiling complaints generally go to OCD).

c. **The RAND Report**

174. The data the NYPD provided to RAND to conduct its external benchmarking analysis only included data on suspects in reported violent crimes. PTE 321; Tr. (McGuire) 4298:24-4299:1, 4301:2-25; Tr. (Riley) 3914:3-10. The NYPD is aware that less than one quarter of all stops conducted each year by NYPD officers are on suspicion of violent crimes. PTE 411, App. C5-C6; PTE 417, App. B, Table 2; Tr. (McGuire) 4302:3-6. The RAND study author has himself criticized the violent crime suspect benchmark as too narrow because so many stops are based on suspicion of non-violent crimes. Tr. (Smith) 6182:20-24.

175. The 2006 violent crime suspect data that the NYPD provided to RAND was disaggregated at the precinct level. PTE 321; Tr. (McGuire) 4358:16-19; (Riley) 3916:16-19. The City has contended for several years that using precinct as the spatial unit of analysis to

measure racial disparities in stop patterns is methodologically unreliable. DTE T8 at 5, 17, 37-38, 58-59; Tr. (McGuire) 4358:24-4359:13. The RAND report itself noted that “the racial mix of the population and law enforcement practices can vary substantially within a precinct.” DTE K6 at 22; Tr. (Riley) 3917:13-20. The 2006 violent crime suspect data which the NYPD provided to RAND was missing the data on all reported violent crimes where the suspect race was unknown. PTE 321; Tr. (McGuire) 4317:13-14, 4348:16-4352:19, 5952:8-5954:2, 5957:24-25; DTE S15. Suspect race was in fact unknown in almost 50% of all violent crimes reported to the NYPD in 2006. PTE 411 at 76, Table 18; Tr. (McGuire) 4305:8-17. Fagan opined that a reasonable NYPD policy analyst familiar with the NYPD crime complaint data would have known about the large amount of missing violent crime suspect race information and realized that one could not reliably impute anything from the known violent crime suspect race data to the large percentage of violent crimes where suspect race was unknown. Tr. 2266:3-2268:10; PTE 411 at 75-77.

176. In the 2006 violent crime suspect data provided to RAND by the NYPD, which excluded all the violent crimes where suspect race was unknown, Blacks comprised over 69% of the violent crime suspects, which is the figure that is reported in the RAND Report. PTE 321, DTE K6 at 18-19; Tr. (McGuire) 5968:5-5970:1. When the large number of violent crimes where suspect race is unknown are included in the violent crime suspect data, Blacks comprise only 38% of all violent crime suspects in 2006. PTE 411 at 76 & Table 18. According to RAND, Blacks comprised approximately 53% of all pedestrians stopped by the NYPD in 2006. DTE K6 at 18-19.

177. RAND’s external benchmarking analysis found that (i) Hispanic pedestrians were stopped at rates 5-10% higher than their representation in the violent crime suspect population would predict; (ii) Black pedestrians were stopped for weapons possession at a rate 8% higher

than their representation in the weapons arrestee population would predict, and (iii) White pedestrians were stopped for weapons possession at a rate 11% lower than their representation in the weapons arrestee population would predict. DTE K6 at xii, 17-19.

178. RAND's external benchmarking results did not raise concerns for NYPD policymakers about racial profiling. Tr. (Farrell) 7265:10-7267:2. From 2007 to the present, NYPD has continued to claim that the results of the RAND Report show that the NYPD does not engage in racial profiling with respect to stop, question, and frisk. Tr. (McGuire) 5970:2-6.

179. RAND's internal benchmarking analysis found that there were 15 NYPD officers who appeared to have overstopped minority pedestrians in 2006 at an outlier probability level of above 50%, and when the NYPD ran RAND's internal benchmarking software on the 2007 UF250 data, it found 23 officers had overstopped minorities at a 50% or higher outlier probability level. DTE K6 at xiii, 28-30; Tr. (McGuire) 4377:7-9; (Farrell) 7233:23-7235:14.

180. RAND indicated that using the 50% probability level was preferable to using the 80% probability level because using 80% "undervalues the cost of failing to identify a potential problem officer." DTE K6. at 26.

181. RAND recommended that the NYPD identify and review the 15 officers who overstopped minorities in 2006 and incorporate a component into its early warning system that flags officers whose racial distribution of stops deviate sharply from their fellow officers. DTE K6 at 46.

182. The NYPD has never identified the 15 officers who overstopped minority pedestrians in 2006 or the 23 officers who overstopped minorities in 2007, nor has it incorporated into its early warning system a method for identifying officers who overstop minorities. Tr. (McGuire) 4376:17-23, 4377:2-15; (Farrell) 7233:3-7, 7235:15-18, 7248:2-5.

183. RAND's post-stop outcome analysis found significant racial disparities in frisks and searches in Patrol Borough Staten Island and in use of force in Patrol Borough Brooklyn South. DTE K6 xiii-xiv, 37-38, 42.

184. RAND recommended that the NYPD take a closer look at those boroughs to determine if changes in training, policies or practices may be necessary. DTE K6 at 44-45. NYPD failed to follow this recommendation and instead concluded that the racial disparities were not large enough to require action. Tr. (Esposito) 2830:14-25; (Farrell) 7115:11-18, 7120:13-7121:25, 7220:6-7223:19, 7235:19-7240:8, 7256:12-7258:12. Fagan opined that a reasonable NYPD policy analyst, when presented with the results of RAND's post-stop outcome analysis, would not have reached the opposite conclusion. Tr. at 2270:15-2273:9.

185. The NYPD's own analyses of its stop-and-frisk and crime data in 2012 indicated Black pedestrians comprised over 59% of the persons stopped but only about 51% of all known crime suspects in the 120th Precinct in Staten Island, and Hispanic pedestrians comprised over 76% of the persons stopped but just under 61% of all known crime suspects in the 72nd Precinct in Patrol Borough Brooklyn South. DTE B14 at NYC_2_28939, 28970; Tr. (Farrell) 7251:9-23.

d. Failure to Internally Discuss Racial Profiling

186. Chief Esposito never discussed with Commissioner Kelly the toll that stop and frisk was taking on Black and Latino youth. Tr. (Esposito) 2965:3-7.

187. After 4 years as Department Advocate, Schwartz never discussed with anyone in the NYPD racial profiling or how to combat it. Tr. 4557:22-25, 4558:1-8.

188. Though the NYPD's paper policy on racial profiling required CompStat to address racial profiling (PTE 184), in fact racial profiling is not discussed at CompStat. Tr. (Esposito) 2871:19-2872:5, 2873:22-2874:10; (Ortiz) 3511:17-21; (McHugh) 3220:23-25; (Guimaraes) 1655:23-1656:4; PTE 156 (Diaz Dep.) 112:11-14.

189. Though the NYPD's paper policy on racial profiling required commanders to ensure that its contents were brought to the attention of officers within their commands (PTE 184), this was often not done. Tr. (McHugh) 3220:1-17; (Mulligan Dep.) 107:21-108:6; PTE 158 (Montgomery Dep.) 124:9-25, 125:14-24, 126:7-128:3, 130:14-16, 136:12-138:5.

190. In practice, supervisors do not discuss racial profiling with their subordinates. (Palmieri) 3666:23-3667:1, 3669:18-3670:6; (Marrero) 611:23-613:18; (DeMarco) 2675:20-22, 2677:4-6; (McCarthy) 4979:18-20; (Guimaraes) 1639:1-1645:1; (Agron) 999:21-1000:17; (Hegney) 1941:17-24; (Kelly) 1487:9-1488:18, 1504:5-24; PTE 581 (Barrelli Dep.) 107:11-108:5; PTE 158 (Montgomery Dep.) 124:9-25, 125:14-24, 126:7-128:3, 130:14-16, 136:12-138:5; PTE 136 (Trunzo Dep.) 73:19-23; DTE Q14 (Houlahan Dep.) 111:8-19; DTE R14 (Mulligan Dep.) 41:1-7, 44:7-45:6; (Leek) 2714:1-2715:1.

e. **Belief that Presence of Reasonable Suspicion Negates Racial Profiling**

191. The NYPD believes that whether reasonable suspicion for a stop existed can be determined solely by looking at a completed 250, and that there is no racial profiling if 250s are properly completed. Tr. (Esposito) 2824:20-2853:14; (Ortiz) 3513:8-17; (Hall) 7625:24-7623:2.

f. **Failure to Implement the Daniels Settlement**

192. The Parties executed the Stipulation of Settlement in *Daniels v. the City of New York*, 99 Civ. 1695 (SAS) ("Settlement"), on September 24, 2003. PTE 114.

193. Section D.1 of the Settlement required QAD to conduct audits of NYPD officer stop activity which addressed whether, and to what extent, the audited stop activity is based on reasonable suspicion as reflected in UF250 forms. PTE 114 at 6.

194. The Settlement also required the NYPD to train and supervise officers on, and monitor their compliance with, the written racial profiling policy. PTE 114 at 5-6.

195. The only two audits which the NYPD developed to assess whether officer stop activity is based on reasonable suspicion and complies with the NYPD's written racial profiling policy are the Worksheet 802 and 802-A, *see supra* ¶109, which the NYPD designed and implemented prior to the execution of the Settlement. PTE 154 (Cassidy 6/29/10 Dep.) 52:12-54:3, (Farrell) 7133:9-16, 7139:20-7141:12 PTE 89, 350. As set forth in paragraphs 113-114 *supra*, high-level NYPD policymakers have long been aware that these audits do not assess whether stops are based on reasonable suspicion or comply with the racial profiling policy.

196. As set forth in paragraphs 127-128 and 186-190 *supra*, the NYPD does not adequately train officers on or supervise their compliance with its written racial profiling policy.

g. **Years of Effectively Ignoring Results of Stop-and-Frisk Audits**

197. The NYPD is aware that documenting stops is important to establish the legality of stops, PTE 155 (Dale Dep.) 72:11-73:6, yet for a decade, every patrol borough has failed that portion of the annual QAD audit that looks at whether officers are adequately documenting stops in their activity logs. PTE 450; DTE G6; Tr. (Reiter) 4845:8-4846:1.

198. Chief Dale admitted that if officers are not adequately completing memobook entries related to stops for an extended period of time, "it's a serious problem," yet he was aware that his patrol borough, Queens South, failed the annual QAD audit on memobook documentation three consecutive years and took no corrective steps. PTE 155 (Dale Dep.) 93:19-94:4, 118:10-120:4. Commanding officers in the 28P, 41P, 43P, 81P, and 107P and Patrol Borough Manhattan North similarly failed to correct audit failures despite knowing of persistent failures for years. Tr. (McHugh) 3213:12-3214:5; 3216:16-3218:17; (Ortiz) 3527:3-3531:2, 3548:16-3553:1; (Cirabisi) 5665:17-5668:2, 5680:13-22; (Morris) 6597:12-2, 6629:14-6630:22; PTE 158 (Montgomery Dep.) 120:20-121:18, 122:22-123:9; PTE 450; DTE G6 at NYC_2_770, NYC_2_21741, 21746, 22183, 22188, 27856, 27861, NYC 60031, NYC 4289, NYC 4307.

VIII. Remedy

199. A comprehensive approach to the remedy is required to cure the constitutional problems with the NYPD's stop-and-frisk practices. Tr. (Walker) 7434:17-7435:11, 7440:3-20.

200. Change to stop documentation alone is insufficient; sergeants need to critically review documentation to determine whether the officer had grounds for reasonable suspicion. Tr. (Walker) 7748:15-7449:5; 7456:17-7457:6, 7458:21-7749:18, 7486:16-18, 7459:9-7468:2; PTE 577 ¶ 123; PTE 576 ¶¶61-62; PTE 575 ¶¶46, 64, 66; PTE 583. Supervisors who find that a stop lacked reasonable suspicion should take corrective measures. Tr. (Walker) 7455:17-7456:6. Recent consent decrees include separate provisions for documentation of stops for purposes of data collection and for purposes of supervisory review. *Compare id.* with PTE 577 ¶¶149-154; PTE 576 ¶¶60, 64-70; PTE 575 ¶¶64-65; PTE 582 at 3-4.

201. The UF250 form should include space for a narrative with clear direction to officers that they must explain the facts or behavior that led to a stop, frisk and/or search. Tr. (Walker) 7747:1-7748:8, 7457:12-7458:16. *See also* Tr. (Hall) 7391:9-22. Defendant's expert materially agrees. Tr. (Stewart) 7804:24-7809:13-17, 7725:22-7726:5, 7803:6-23. The NYPD previously used a UF250 form with a narrative section. Tr. (Esposito) 2906:15-17; PTE 449.

202. The Quest for Excellence monthly and quarterly officer evaluation is inadequate: the supervisor's comment language is repetitive and rote and the emphasis is on high activity numbers. Tr. (Walker) 7483:9-7483:23, 7491:9-7501:17; DTE H6, E11; PTE 437, 308-310. A modified evaluation system should track unjustified stops, utilize more robust evaluative indicators, and should be based on an audit of the current process for monthly and quarterly performance evaluations. Tr. (Walker) 7496:16-7497:13, 7502:9-7503:12; PTE 577 ¶¶295-301, PTE 576 ¶¶145-46. Defendant's expert materially agrees. Tr. (Stewart) 7747:4-23, 7753:13-7754:4, 7793:9-12; DTE C10.

203. The NYPD must develop a department-wide command level review system, a.k.a. Early Intervention System (“EIS”), based on an expert evaluation that incorporates existing data. Tr. (Walker) 7504:11-21, 7511:24-7513:13. The EIS should include a centralized database that tracks officer performance based on at least 15 indicators to allow supervisors at all levels to assess officer performance and spot problematic patterns; the current CPI is inadequate. Tr. (Hall) 7318:1-7321:7, 7340:4-7, 7341:11-7432:14, 7440:8-14; (Walker) 7504:11-7508:15, 7509:1-19; DTE C15. Similar large police departments use such EIS systems. Tr. (Walker) 7509:20-7510:16; *e.g.*, PTE 576 ¶¶147-153, PTE 577 ¶316-326.

204. A court appointed monitor is necessary as a remedy in this case because: (a) the case involves a systemic unconstitutional practice; (b) the remedies needed are complex; (c) the Department is resistant to change in the face of public controversy and official reports about the alleged misconduct. Tr. (Walker) 7435:19-23, 7517:1-7519:4. This monitor should provide at least the following: technical assistance to the Department to facilitate implementation of the remedies; soliciting and incorporating community input, reporting to the public and the Court on the state of implementation; and developing and implementing an EIS. Tr. (Walker) 7435:24-25; 7437:9-12 (training); 7437:6-9 (auditing) 7436:3-12, 7437:1-6, 7438:1-24; 7513:14-23, 7520:14-7523:5; PTE 577 ¶¶444-461; PTE 576 ¶¶225-229; PTE 575 ¶¶186-200; PTE 582 at 5-6. Defendant’s expert materially agrees. Tr. (Stewart) 7779:6-12; 7775:22-7776:12.

205. Community input into the remedies process is essential to any remedy and should occur at the initial stages in developing the remedy and as the remedies are implemented. Tr. (Walker) 7520:14-7523:5; *see e.g.*, PTE 577 ¶¶432-439; PTE 575 ¶¶179-185. Defendant’s expert materially agrees. Tr. (Stewart) 7762:4-7763:9, 7818:2-17, 7783:5-7786:12.

206. Recent changes to documentation and officer evaluations are inadequate and do not obviate the need for remedial measures. DTE J13; Tr. (Walker) 7469:5-7479:16, 7481:11-7482:6, 7520:6-13.

207. Hall's March 5, 2013 memorandum regarding documenting stops did not include directives about supervising or training officers on compliance; it applies only to personnel in the Patrol Services Bureau, thereby excluding more than 6,700 officers from other bureaus who conduct stops. Tr. (Morris) 6609:1-16, 6613:20-6614:16; (Hall) 7649:25-7652:25. There is no accountability attached to the memorandum. Tr. (Hall) 7666:3-7672:22; DTE J13, M13.

208. The process for documenting stops outlined in the Hall memorandum is cumbersome for officers and inefficient. Tr. (Stewart) 7802:25-7804:6.

209. Hall's memorandum is not consistently being followed. Tr. (Hall) 7626:21-7628:7, 7649:14-7651:18. A recently conducted review of 40 UF250s and corresponding activity log entries completed in four different precincts in Manhattan North since March 5, 2013 found that 40% failed to comply. Tr. (Morris) 6578:13-6580:5, 6623:10-6624:5; *see also* Tr. (McCarthy) 4992:3-19; PTE 249. A 40% error rate on the annual QAD stop-and-frisk audit would result in that precinct failing the activity log entry item on the audit. PTE 62.

210. The force of Hall's memo is questionable because the NYPD had memos dating back to 2008 directing officers to include details about circumstances leading to stops in activity logs (*e.g.* PTE 96, 348), but in practice this was not done and was not mandatory despite those directives. Tr. (Esposito) 2912:25-2913:24, 2915:1-9; PTE 155 (Dale Dep.) 27:23-28:17; (Korabel) 1175:22-1176:7. In addition, the memorandum is not an operations or interim order approved by the police commissioner or an amendment to the NYPD Patrol Guide, Tr. (Hall) 7649:14-24, which means procedures contained therein can be changed at any time.

PROPOSED CONCLUSIONS OF LAW

1. The nineteen stops and frisks of the named plaintiffs and testifying class member witnesses were made without reasonable articulable suspicion in violation of the Fourth Amendment.

2. The nineteen stops and frisks of the named plaintiffs and class member witnesses were made on the basis of race in violation of the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964.

3. The searches of Plaintiffs David Floyd, David Ourlicht, and Cornelio McDonald were made without probable cause in violation of the Fourth Amendment.

4. The searches of Plaintiffs David Floyd, David Ourlicht, and Cornelio McDonald were made on the basis of race in violation of the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964.

5. The NYPD has a de facto policy and a widespread custom, pattern and practice of suspicionless stops and frisks in violation of the Fourth Amendment.

6. The NYPD has a de facto policy and a widespread custom, pattern and practice of race-based stops and frisks in violation of the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964.

7. Plaintiffs are entitled to classwide permanent injunctive relief to remedy the constitutional and statutory violations set forth in the preceding six paragraphs.

8. The Court shall order a Joint-Remedy Process and appoint a monitor to assist with implementation and monitoring of the permanent injunctive relief ordered by the Court.

Dated: New York, New York
June 12, 2013

By: _____ s/ Darius Charney
DARIUS CHARNEY (consent obtained)

Darius Charney
Sunita Patel
Baher Azmy
Rachel Lopez
Ghita Schwarz
Chauniqua Young
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, New York 10012
(212) 614-6439
DCharney@ccrjustice.org

By: _____ s/ Kasey Martini
KASEY MARTINI

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
kmartini@cov.com

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

Attorneys for Plaintiffs

Exhibit G

2901

D498FLO3 Esposito - direct

1 Q. There is no other procedure set forth in the patrol guide,
2 other than the one before you 212-11, which sets forth the
3 responsibilities of a patrol supervisor to review a 250 form,
4 correct?

5 A. Correct. But, in practicality, it is the supervisor --

6 Q. You answered the question.

7 A. I thought you were looking for the truth here. The truth
8 is it's not always the desk officer.

9 Q. When you said yes, that wasn't the truth?

10 A. Yeah. But it's more than that. It's the desk officer will
11 do it. But when you get down to the street, and what really
12 happens on the street, is that there are a number of
13 supervisors that will review that work. For instance, an
14 anticrime supervisor may be the one who reviews his or her
15 anticrime officers.

16 MR. MOORE: Judge, with all due respect, I don't think
17 that's responsive to the question.

18 Q. The question was, is there any other procedures set forth
19 in the patrol guide, other than set forth in PG 212-11, which
20 sets forth the responsibilities of a supervisor to review a
21 completed 250 form? And the answer was no, right?

22 A. That's correct. The answer is no.

23 Q. With respect to the review that is done, for the most part,
24 that's simply making sure that the form is filled out
25 accurately, correct?

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

2902

D498FLO3 Esposito - direct

1 A. Yes. For the most part, and put a serial number on it,
2 yes.

3 Q. With respect to whoever is reviewing it, whether it's the
4 person's squad supervisor or the desk officer or somebody else,
5 am I accurate in saying that, for the most part, that review is
6 simply to see if the boxes are properly filled out, a serial
7 number is on it, and beyond that there is not much of a review?

8 A. I don't agree.

9 Q. Well, it's not typical that the desk officer or the patrol
10 supervisor would review the underlying facts of the actual
11 stop, correct? That doesn't happen?

12 A. That's why I make reference to the other supervisors.

13 Q. I am asking you whether the person who signs the 250, it's
14 not typical that that person would review the underlying facts
15 that make up --

16 A. I don't agree.

17 THE COURT: You think they are going to go behind the
18 250 and investigate the facts of the stop?

19 THE WITNESS: It's very possible. He said the person.
20 Now, that person could be the anticrime sergeant. So if the
21 anticrime sergeant is looking at his or her anticrime officers,
22 they will look at the report, they will look and say, OK, where
23 was this stop conducted? Well, Sergeant Jones, I told you I
24 need you in Sector Adam because there is a daytime burglary
25 problem. Why are you stopping these people in Sector George

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

2903

D498FLO3 Esposito - direct

1 because you think they are breaking into a car? I need you
2 here. Why are you not where I told you to be?

3 THE COURT: It is possible to do it, but in the
4 millions of these, if there are, how many times do you think
5 people go behind the form to actually investigate the stop?

6 THE WITNESS: I think many times. I just said, it's
7 only less than three an officer per month. They really can do
8 an analysis.

9 THE COURT: OK.

10 Q. Less than three officers --

11 THE COURT: Three 250s.

12 A. Three stops per month per officer.

13 Q. Three per patrol supervisor -- per patrol service bureau or
14 all officers in the police department?

15 A. Operational bureaus.

16 Q. There is nothing in writing, that you know of, that
17 instructs a supervisor to review the underlying facts of a stop
18 as the basis for information put on a UF-250 form, right, there
19 is nothing in writing that says that?

20 A. I don't agree. If you look again at the duties and
21 responsibilities of the supervisor, wasn't it to check the work
22 of the officer? Didn't we read that earlier in one of the
23 earlier exhibits?

24 Q. There is nothing that specifically talks about using the
25 term stop and frisk, stop or 250, there is nothing in writing

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

2904

D498FLO3 Esposito - direct

1 that sets forth the duties of a supervisor to do that, that you
2 are aware of, right?

3 A. If we wrote down every single piece of paper we expected
4 the sergeant to look at, we would need volumes of paper to
5 write it down.

6 Q. So the answer to that is no?

7 A. The answer is not no. The answer is, if you look at that
8 line under duties and responsibilities -- and if you could put
9 it up again, I will mention it -- it says to review the work of
10 their officer. And it lists a few different categories. And
11 one of them I would interpret as being paperwork, paperwork in
12 the stop, question and frisk. What is the reason behind it?
13 We examine arrests. We examine summonses. We look at all of
14 the work the officers do. Our sergeants are the best in the
15 nation, the best in the country, the best in the world rather,
16 and we expect them to supervise their officers in an effective
17 way, and they do it. And part of what they do is to look at
18 all the work that that officer produces, whether writing,
19 operation or whatever it is. And part of that is the stop,
20 question and frisk report.

21 Q. Let's talk then about the supervisor with respect
22 to -- actually, let's talk about the officer. The officer
23 fills out a 250, right?

24 A. Yes.

25 Q. Are they supposed to fill out the information in their memo

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

2905

D498FLO3 Esposito - direct

1 book?

2 A. Yes.

3 Q. But you know that that doesn't happen, correct?

4 A. A good part of the time it doesn't happen.

5 Q. Absent a situation where there is an arrest or a summons,
6 an officer is instructed that they prepare a 250 and also put
7 their entry in a memo book, correct?

8 A. Yes.

9 Q. I will show you what has already been marked Plaintiffs'
10 Exhibit 85. That's a UF-250 form, correct?

11 A. Yes.

12 Q. Previously in the police department, there was a 250 form
13 that was different than this, right?

14 A. Yes.

15 MR. MOORE: Judge, I am going to mark this. This is
16 an exhibit that I provided to the city yesterday as one that I
17 was going to use. I will mark it as Plaintiffs' Exhibit 449.

18 Q. Do you recognize this document?

19 A. Yes.

20 Q. That's the old 250, right?

21 A. That's correct.

22 MR. MOORE: I move the admission of 449 into evidence.

23 MS. GROSSMAN: No objection, your Honor.

24 THE COURT: 449 is received.

25 (Plaintiffs' Exhibit 449 received in evidence)

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

3008

D4A9FL01 Esposito - cross

1 the ranks.

2 Q. Moving on to UF 250s, the old and narrative -- the old
3 narrative UF 250 versus the new UF 250 with the check-off
4 boxes.

5 Yesterday you testified about that old narrative
6 UF 250, right?

7 A. Yes.

8 Q. And you testified that one of the problems with the form
9 was that the form was filled out -- wasn't filled out as
10 accurate as they could have been, right?

11 A. At times.

12 Q. Now was there also a concern that the forms were also not
13 being filled out at all?

14 A. Sure.

15 Q. And so now as a result of the stipulation of settlement in
16 Daniels do you have an understanding that one of the purposes
17 of the Daniels settlement was so that officers would actually
18 fill out the forms?

19 MR. MOORE: I'm going to object to the form of that
20 question; suggests a knowledge on his part that I don't think
21 he's testified to as yet.

22 THE COURT: Are you familiar with the details of the
23 Daniels settlement?

24 THE WITNESS: Some of them, sure.

25 THE COURT: Well can you answer the question she just

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

3012

D4A9FL01 Esposito - cross

1 700 percent increase in stops from -- during your tenure as
2 chief of department, would you say that the 700 -- 700 percent
3 increase is only attributed to the number of stops that
4 occurred or because officers are actually filling out the
5 paperwork?

6 MR. MOORE: Just objection to the form.

7 THE COURT: Overruled.

8 Do you understand the question?

9 THE WITNESS: Yeah, sure.

10 THE COURT: Okay.

11 THE WITNESS: I think it's a combination of both.

12 I think they're filling out -- I think they are --
13 because of the new form, I think it accomplished its mission.
14 I think it's an easier form to do. And I think they're filling
15 it out.

16 THE COURT: That wasn't the question. She asked
17 whether the reason that the number of stops rose so
18 dramatically.

19 THE WITNESS: In part.

20 THE COURT: In part, okay.

21 Q. Now, the old form which required narrative, do you have an
22 opinion from your own personal experience about looking at
23 those forms whether the narrative content was legible enough to
24 put into a database?

25 MR. MOORE: Same objection, Judge.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

3013

D4A9FLO1 Esposito - cross

1 THE COURT: I'll allow it. He's seen them. Is that
2 an issue, legibility?

3 THE WITNESS: Sure. There was a number of issues with
4 the old form.

5 THE COURT: Was that one of them?

6 THE WITNESS: Yes.

7 Q. Are you aware that the police department must report
8 quarterly information about its stop, question and frisks to
9 the city council?

10 A. Yes.

11 Q. Do you know where that information comes from the
12 reports -- comes from for the reports?

13 A. A database that's produced.

14 Q. And do you have an opinion about whether the check-box
15 nature of the 250 allows for easier and more accurate reporting
16 on stops than a narrative form would?

17 A. Much easier.

18 Q. Now yesterday you were asked a series of questions about
19 supervision. Can you please explain in your own words what you
20 believe occurs with supervision and 250s.

21 A. (No response).

22 Q. Meaning --

23 THE COURT: You want to know what's supposed to occur,
24 or what he thinks actually takes place.

25 MS. GROSSMAN: What he believe actually occurs.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

5121

D4P8FLO5 Shea - cross

1 Q. Let's look at Exhibit C4. This was admitted in evidence
2 with Ms. Cooke. These are the PowerPoint presentation slides
3 for a presentation that you testified was given at Rodman's
4 Neck entitled, "Properly preparing stop, question and frisk
5 report."

6 Do you recognize this document?

7 A. Yes.

8 Q. This was the PowerPoint -- as you testified earlier -- this
9 was the PowerPoint that was given to officers at that stop and
10 frisk refresher course at Rodman's Neck, correct?

11 A. That was displayed to them. I don't think they left with
12 it, but I think it was shown.

13 Q. So they were shown this presentation?

14 A. Yes.

15 Q. I think that you just testified that as of now, 6,000
16 officers had attended the training at Rodman's Neck on the stop
17 and frisk refresher course?

18 A. Yes.

19 Q. So let's go ahead and look at page 3 of the presentation.

20 This slide says that, "We should only be preparing a
21 UF-250 for encounters that achieve reasonable suspicion, or
22 lead up to probable cause."

23 Did I read that correctly?

24 A. Yes. That's correct.

25 Q. And isn't it true that this presentation instructs officers

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

7757

D5H8FLO1 Stewart - direct

1 addressing the conditions of crime and violence.

2 Q. Now, we spoke a little bit -- we started to speak about
3 this morning Professor Walker's opinion of the need for a
4 narrative section on the UF-250 form?

5 A. Yes.

6 Q. Are you familiar with the NYPD's UF-250 form?

7 A. I have reviewed it.

8 Q. What is your understanding of the purpose of the form?

9 A. The purpose of the form is to track officer activity
10 regarding pedestrian stops, vehicle stops and the activities
11 regarding to stop, question and frisk.

12 Q. Now, in discussing supervisory review, Mr. Walker has
13 recommended -- Professor Walker has recommended that the UF-250
14 form be changed to include a narrative portion. Do you agree?

15 A. I don't agree.

16 Q. Why not?

17 A. Narrative forms have a series of difficulties with them,
18 mainly that they can be illegible, that they suffer from having
19 rote language --

20 MR. CHARNEY: Objection. This is not in the report.
21 This is definitely not in his report.

22 THE COURT: Mr. Kunz, there was plenty of time to
23 address UF-250s in this report. Is it there or not?

24 MR. CHARNEY: There is something about a tear-off
25 form, but I didn't see anything about a narrative or the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

7758

D5H8FLO1 Stewart - direct

1 problems he sees with the narrative form.

2 MR. KUNZ: I believe that there are discussions about
3 his opinion of the narrative form.

4 THE COURT: Would you try to locate it, please?

5 MR. KUNZ: Yes, your Honor.

6 The other thing I would observe here is that Professor
7 Walker discussed this at length.

8 MR. CHARNEY: It was in his report.

9 THE COURT: Right. I understand Professor Walker
10 discussed this. I also understand that Director Stewart had
11 access to Professor Walker's report when he prepared his
12 report. So of course he understood that 250s were at issue.
13 If he wanted to give an opinion, that was the time to give it.

14 All sides understood that experts were limited to
15 their report. It's either there or it's not. If it's not, I
16 am not going to take his views on the 250 form.

17 MR. KUNZ: I believe in Professor Walker's report, he
18 does mention conclusorily that he believes a narrative form
19 should be included, but I don't think he went into nearly as
20 much detail --

21 THE COURT: He gave the opinion that a narrative
22 should be used in tracking stop and frisks. That is the
23 opinion. So he was allowed to explain the basis of his
24 opinion. But this opinion that narratives are inappropriate is
25 not in Director Stewart's report.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

7759

D5H8FLO1 Stewart - direct

1 MR. KUNZ: I will just need a second here. I believe
2 it is.

3 MS. PATEL: Paragraph 16 of Stewart's report, but it
4 just refers back to, the current form and the current system is
5 sufficient, which again is liability testimony consistent with
6 yesterday's ruling.

7 MR. KUNZ: Here it is. Director Stewart on page 9 of
8 his report does say, "Walker is also critical of the UF-250
9 form because he states the lack of room for a narrative
10 prevents officers' supervisors from fully and accurately
11 reviewing the officer's rationale for a stop."

12 Then he goes on to explain how in his view that
13 this --

14 MR. CHARNEY: We should read the first sentence.

15 THE COURT: Of course you should read it.

16 MR. KUNZ: "A holistic review of NYPD guidance and
17 policy and SQF documentation obviates his critique because,
18 whether or not there is adequate space on the UF-250 form
19 itself, officers have a separate requirement to describe the
20 circumstances leading to a stop in their activity logs."

21 THE COURT: That's fine. He can give that opinion.

22 MR. CHARNEY: He didn't say anything about the problem
23 with them.

24 THE COURT: I understand, Mr. Charney.

25 It's your opinion that there doesn't need to be a

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

7760

D5H8FLO1 Stewart - direct

1 fuller narrative on the 250 because that fuller narrative will
2 appear in the memo book if the officer is doing it
3 appropriately?

4 THE WITNESS: That's right.

5 MR. KUNZ: We will continue to look, your Honor,
6 because I do believe there are other references.

7 THE COURT: That's fine.

8 Q. Can you tell the Court generally what are some of the
9 strengths with a check box format?

10 A. Yes, I can. The check box format is concise, it's quick to
11 do, it lays out a format for the officers to follow to guide
12 them in terms of constitutional appropriateness of the action.
13 It can be quickly reviewed by the supervisor.

14 MR. CHARNEY: Objection. Move to strike.

15 THE COURT: Can I tell you something, Mr. Charney?
16 It's getting dragged out. There are certain things that the
17 Court knows from experience. I know the handwriting is
18 illegible for example. I suspect that if I had to read the
19 handwriting of all ten of you, seven of them would be illegible
20 for me where I would have to work very hard to figure out what
21 your hand wrote. I don't need an expert to tell me that
22 handwriting is often illegible. Nor do I need an expert to
23 tell me that it's easier to check boxes, it's fast. Common
24 sense tells me it's fast. So I just wouldn't be so excited
25 about testimony that's pretty commonsensical. It doesn't take

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

7761

D5H8FLO1 Stewart - direct

1 the designing of a rocket, a rocket scientist to know that a
2 check box could be completed quickly.

3 MR. CHARNEY: Understood. But in the interest of
4 time, if it's not assisting your Honor --

5 THE COURT: That's true too. But it's taking more
6 time to discuss the objection than to listen that check boxes
7 are easily completed. I understand that.

8 Also, common sense tells me, if you're going to make a
9 database, it's very easy to count check box answers. That's
10 common sense.

11 THE WITNESS: And that they are easy to code.

12 THE COURT: That's what I just said. I didn't say it
13 as well. I said it's easy to create a database from check
14 boxes. That's what I meant. It's easily coded.

15 BY MR. KUNZ:

16 Q. So one of Professor Walker's opinions in his report and in
17 his testimony was that community input is necessary for the
18 NYPD, a court monitor, and the court to develop an effective
19 plan for reforming the NYPD?

20 THE COURT: You put a lot into that. Did you mix up
21 two things, community input and a court monitor?

22 MR. KUNZ: I was quoting from Professor Walker.

23 THE COURT: Is that two or one?

24 MR. KUNZ: He said community input is necessary for
25 the NYPD, a court monitor, and the court to consider.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

7787

D5h9flo2 Stewart - direct

1 MR. KUNZ: In the interest of time then, we initially
2 objected to the admission of these expert reports because we
3 wanted to do it through live testimony but since we're in this
4 situation we would withdraw our objection to Mr. Walker's
5 report in exchange of putting in --

6 THE COURT: You can talk to the plaintiffs about that.
7 If you both agree --

8 MR. CHARNEY: No, we don't agree.

9 THE COURT: Well, you think about it.

10 Anyway, are we ready for the cross? It's only fair.
11 I mean I'm going to stop at 12:30.

12 MR. KUNZ: Yes, your Honor. One second.

13 (Pause)

14 MR. KUNZ: So my last area, your Honor, in fashioning
15 a remedy is the risk that changes could cause de-policing. Is
16 that something that the Court should consider in fashioning a
17 remedy?

18 THE WITNESS: Yes.

19 THE COURT: Thank you. Now, Mr. Charney.

20 I think we need to go on. I understand the list of
21 things I should consider. Okay.

22 CROSS-EXAMINATION

23 BY MR. CHARNEY:

24 Q. Good morning, Director.

25 A. Good morning.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

7804

D5h9flo2 Stewart - cross

1 out the memo book first.

2 THE COURT: Funny, I asked that questions twice. I
3 got two different answers on it.

4 THE WITNESS: I mean I'm a little bit unsure of that.
5 But I will say that I -- I think it's cumbersome to do it in
6 two places.

7 Q. Would you also agree that you at least have to have the
8 narrative detail in one place, right? You've got to have it
9 somewhere, right?

10 A. Not necessarily. Because a stop is a very fleeting
11 engagement. And the tracking of the stop was required because
12 of the ethnicity. And that's included. And they do establish
13 on the entire form a series of checkboxes which the officers
14 can check which describe the uniqueness of that particular
15 occurrence.

16 THE COURT: So you don't think there needs to be a
17 narrative at all?

18 THE WITNESS: That's right.

19 THE COURT: Okay.

20 THE WITNESS: For the use of the form. As a tracking
21 device for the ethnicity and of the officers, you know, the
22 stop, to get the memos. I mean that was the intent of the
23 form.

24 Q. Let me ask you this, Director. Separate and apart from
25 using it for data analysis purposes, don't you think it's also

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

7805

D5h9flo2 Stewart - cross

1 important to document the stop to make sure that the officer
2 acted constitutionally and appropriately?

3 A. I actually do think that's a good idea. I would encourage
4 that.

5 Q. Don't you need the narrative information to make that
6 assessment?

7 A. Have you seen officers' narratives? I have seen that
8 officers -- I've read lots of officers' narratives, a lot of
9 different departments. So it's not just New York department.
10 They can be confusing. They can lack the elements. They --

11 THE COURT: Well let me give you a very clear example
12 that I think came from Professor Walker but it may have come
13 from others. One of the most commonly checked boxes is furtive
14 movement.

15 THE WITNESS: I think that needs to be explained.

16 THE COURT: I believe Professor Walker said that we
17 don't know whether that means looking over your shoulder a lot,
18 fingering your waistband a lot, whatever else it might be,
19 moving rapidly away from the police officer. There are a lot
20 of different kinds of furtive movement.

21 Without some narrative, any reviewer is in the dark as
22 to what the furtive movement was. So the sergeant or the
23 lieutenant can't evaluate that stop without knowing what the
24 furtive movement was.

25 So either Professor Walker or maybe even Chief Hall

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

7806

D5h9flo2 Stewart - cross

1 testified --

2 THE WITNESS: Chief Hall did as well.

3 THE COURT: Testified as to why there should be a
4 narrative about what that furtive movement was.

5 Do you agree now that a narrative is needed or are you
6 still comfortable with checkboxes only?

7 THE WITNESS: I think that there was two checkboxes in
8 the UF 250 that have a small area for an additional.

9 THE COURT: That's true.

10 THE WITNESS: I think that you change the furtive
11 movement to do the same thing. I am not -- the quality of the
12 narratives, you tend to fall into rote language. This is what
13 the professor talked about. You tend to end up with avoidance,
14 and the compliance goes down. It takes more time. So the
15 officers quit doing it. And I saw a narrative, for instance,
16 from Philadelphia the other day. Had two words in it.

17 THE COURT: Let me interrupt. That may be so, but it
18 would be less if you only had the box. It's very easy to check
19 furtive movement, high crime area. Those are the two we see
20 the most. Talk about rote, that's easy to do too.

21 THE WITNESS: In the narrative, they can say, and this
22 happens to testimony all the time. High crime area. Gang
23 activity. Boom. That's it.

24 So, it's harder to code. And it's also harder on the
25 supervisor because the supervisor, instead of going through and

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

7807

D5h9flo2 Stewart - cross

1 quickly going through it, has to try to figure out what the
2 narrative is.

3 Now the supervisor's job ought to be to say: Can you
4 describe to me the furtive movement?

5 THE COURT: If you're sitting across the desk.

6 THE WITNESS: Or if I look at the 250 and I see you're
7 my supervisor you say, you know, Chip, I heard on the radio you
8 have a UF 250 today and you haven't had one in two weeks.
9 Let's review it.

10 THE COURT: And I think Professor Walker, again, said
11 if the reviewer has some questions or doubts about that stop he
12 should sit with the person and talk to them.

13 THE WITNESS: Right.

14 THE COURT: And you agree with that?

15 THE WITNESS: I do.

16 BY MR. CHARNEY:

17 Q. Now said that --

18 A. But I also think that the narrative does not mean that
19 you're going to be able to have enough details to form a
20 conclusion. I think -- it's not a panacea. It's not a magic
21 pill. I'm not opposed to narratives categorically.

22 Q. You're aware that Philadelphia, which we mentioned earlier,
23 is under a consent decree that went into place in 2011
24 currently uses a narrative form for stop and frisk, right?

25 A. Yes. I saw an example of one or two.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

Exhibit H



POLICE STUDENT'S GUIDE

Policing Legally: Street Encounters

STOP, QUESTION AND FRISK WORKSHEET (SIDE ONE)

(COMPLETE ALL CAPTIONS)

| | | | |
|---|---|--|---|
| STOP, QUESTION AND FRISK REPORT WORKSHEET PD 344-151A (Rev. 05-11) | | Pct. Serial No. | |
| | | Date | Pct. Of Occ. |
| Time Of Stop | Period Of Observation Prior To Stop | Radio Run/Sprint No. | |
| Address/Intersection Or Cross Streets Of Stop | | | |
| <input type="checkbox"/> Inside | <input type="checkbox"/> Transit | Type Of Location (Describe:) | |
| <input type="checkbox"/> Outside | <input type="checkbox"/> Housing | | |
| Specify Which Felony/P.L. Misdemeanor Suspected | | | Duration Of Stop |
| What Were Circumstances Which Led To Stop? (MUST CHECK AT LEAST ONE BOX) | | | |
| <input type="checkbox"/> Carrying Objects In Plain View Used In Commission Of Crime e.g., Slim Jim/Pry Bar, etc. | | <input type="checkbox"/> Actions Indicative Of Engaging In Drug Transaction. | |
| <input type="checkbox"/> Fits Description. | | <input type="checkbox"/> Furtive Movements. | |
| <input type="checkbox"/> Actions Indicative Of "Casing" Victim Or Location. | | <input type="checkbox"/> Actions Indicative Of Engaging In Violent Crimes. | |
| <input type="checkbox"/> Actions Indicative Of Acting As A Lookout. | | <input type="checkbox"/> Wearing Clothes/Disguises Commonly Used In Commission Of Crime. | |
| <input type="checkbox"/> Suspicious Bulge/Object (Describe) | | | |
| <input type="checkbox"/> Other Reasonable Suspicion Of Criminal Activity (Specify) | | | |
| Name Of Person Stopped | | Nickname/Street Name | Date Of Birth |
| Address | | Apt. No. | Tel. No. |
| Identification: <input type="checkbox"/> Verbal <input type="checkbox"/> Photo I.D. <input type="checkbox"/> Refused <input type="checkbox"/> Other (Specify) | | | |
| Sex: <input type="checkbox"/> Male | Race: <input type="checkbox"/> White | <input type="checkbox"/> Black | <input type="checkbox"/> White Hispanic |
| <input type="checkbox"/> Female | <input type="checkbox"/> Asian/Pacific Islander | <input type="checkbox"/> American Indian/Alaskan Native | <input type="checkbox"/> Black Hispanic |
| Age | Height | Weight | Hair |
| | | | Eyes |
| | | | Build |
| Other (Scars, Tattoos, Etc.) | | | |
| Did Officer Explain Reason For Stop | If No, Explain: | | |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | | | |
| Were Other Persons Stopped/ Questioned/Frisked? | <input type="checkbox"/> Yes <input type="checkbox"/> No | If Yes, List Pct. Serial Nos. | |
| If Physical Force Was Used, Indicate Type: <input type="checkbox"/> Handcuffing Suspect <input type="checkbox"/> Hands On Suspect <input type="checkbox"/> Baton <input type="checkbox"/> Suspect Against Wall/Car <input type="checkbox"/> Suspect On Ground <input type="checkbox"/> Pepper Spray <input type="checkbox"/> Drawing Firearm <input type="checkbox"/> Pointing Firearm At Suspect <input type="checkbox"/> Other | | | |
| Reason For Force Used: (Check One Box Only) <input type="checkbox"/> Suspect Reaching For Suspected Weapon | | | |
| <input type="checkbox"/> Defense Of Self <input type="checkbox"/> Overcome Resistance <input type="checkbox"/> Other (Specify) <input type="checkbox"/> Defense Of Other <input type="checkbox"/> Suspect Flight | | | |
| Was Suspect Arrested? | Offense | Arrest No. | |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | | | |
| Was Summons Issued? | Offense | Summons No. | |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | | | |
| Officer In Uniform? | If No, How Identified? <input type="checkbox"/> Shield <input type="checkbox"/> I.D. Card | | |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Verbal | | |

PLAINTIFFS' EXHIBIT

74



POLICE STUDENT'S GUIDE

Policing Legally: Street Encounters

STOP, QUESTION AND FRISK WORKSHEET (SIDE TWO)

Was Person Frisked? Yes No **IF YES, MUST CHECK AT LEAST ONE BOX**

| | | |
|---|---|--|
| <input type="checkbox"/> Inappropriate Attire - Possibly Concealing Weapon | <input type="checkbox"/> Furtive Movements | <input type="checkbox"/> Refusal To Comply With Officer's Direction(s) Leading To Reasonable Fear For Safety |
| <input type="checkbox"/> Verbal Threats Of Violence By Suspect | <input type="checkbox"/> Actions Indicative Of Engaging In Violent Crimes | <input type="checkbox"/> Violent Crime Suspected |
| <input type="checkbox"/> Knowledge Of Suspects Prior Criminal Violent Behavior/Use Of Force/Use Of Weapon | | <input type="checkbox"/> Suspicious Bulge/Object (Describe) |
| <input type="checkbox"/> Other Reasonable Suspicion of Weapons (Specify) | | |

Was Person Searched? Yes No **IF YES, MUST CHECK AT LEAST ONE BOX** Hard Object Admission Of Weapons Possession

Outline Of Weapon Other Reasonable Suspicion of Weapons (Specify)

Was Weapon Found? Yes No **If Yes, Describe:** Pistol/Revolver Rifle/Shotgun Assault Weapon Knife/Cutting Instrument

Machine Gun Other (Describe)

Was Other Contraband Found? Yes No **If Yes, Describe Contraband And Location** _____

Demeanor Of Person After Being Stopped _____

Remarks Made By Person Stopped _____

Additional Circumstances/Factors: (Check All That Apply)

| | |
|---|--|
| <input type="checkbox"/> Report From Victim/Witness | <input type="checkbox"/> Evasive, False Or Inconsistent Response To Officer's Questions |
| <input type="checkbox"/> Area Has High Incidence Of Reported Offense Of Type Under Investigation | <input type="checkbox"/> Changing Direction At Sight Of Officer/Flight |
| <input type="checkbox"/> Time Of Day, Day Of Week, Season Corresponding To Reports Of Criminal Activity | <input type="checkbox"/> Ongoing Investigations, e.g., Robbery Pattern |
| <input type="checkbox"/> Suspect Is Associating With Persons Known For Their Criminal Activity | <input type="checkbox"/> Sights And Sounds Of Criminal Activity, e.g., Bloodstains, Ringing Alarms |
| <input type="checkbox"/> Proximity To Crime Location | |
| <input type="checkbox"/> Other (Describe) | |

Pct. Serial No. _____ Additional Reports Prepared: Complaint Rpt. No. _____ Juvenile Rpt. No. _____ Aided Rpt. No. _____ Other Rpt. (Specify) _____

| | | | |
|--|---------------|--|---------------|
| REPORTED BY: Rank, Name (Last, First, M.I.) | | REVIEWED BY: Rank, Name (Last, First, M.I.) | |
| Print _____ | Tax# _____ | Print _____ | Tax# _____ |
| Signature _____ | Command _____ | Signature _____ | Command _____ |

SPRING/SUMMER 2011 POLICING LEGALLY: STREET ENCOUNTERS

REPORTED BY: Rank, Name (Last, First, M.I.) _____ Signature _____
 Tax# _____ Command _____
 REVIEWED BY: Rank, Name (Last, First, M.I.) _____ Signature _____
 Print _____ Tax# _____ Command _____

Pct. Serial No. _____
 Additional Reports Prepared: Complaint Rpt. No. _____ Juvenile Rpt. No. _____ Aided Rpt. No. _____ Other Rpt. (Specify) _____

Report From Victim/Witness
 Area Has High Incidence Of Reported Offense Or Type Under Investigation
 Time Of Day, Day Of Week, Season Corresponding To Reports Of Criminal Activity
 Suspect Is Associating With Persons Known For Their Criminal Activity
 Proximity To Crime Location
 Other (Describe) _____

Additional Circumstances/Factors: (Check All That Apply)

Evasive, False Or Inconsistent Response To Officer's Questions
 Changing Direction At Sight Of Officer/Fight
 Ongoing Investigations, e.g., Robbery, Pattern
 Sights And Sounds Of Criminal Activity, e.g., Bloodstains, Ringing Alarms

Was Person Frisked? Yes No **IF YES, MUST CHECK AT LEAST ONE BOX**

Inappropriate Attire - Possibly Concealing Weapon
 Furtive Movements
 Actions Indicative Of Engaging In Violent Crimes
 Knowledge Of Suspects Prior Criminal
 Violent Behavior/Use Of Force/Use Of Weapon
 Other Reasonable Suspicion Of Weapons (Specify) _____

Was Person Searched? Yes No **IF YES, MUST CHECK AT LEAST ONE BOX**

Outline Of Weapon
 Other Reasonable Suspicion Of Weapons (Specify) _____

Was Weapon Found? Yes No **IF YES, Describe:** Pistol/Revolver Rifle/Shotgun Assault Weapon Knife/Cutting Instrument
 Machine Gun Other (Describe) _____

Was Other Contraband Found? Yes No **IF YES, Describe Contraband And Location**

Demander Of Person After Being Stopped _____
 Remarks Made By Person Stopped _____

(COMPLETE ALL CAPTIONS)

STOP, QUESTION AND FRISK REPORT WORKSHEET
 PD344-151A (Rev. 11-02)

Pct. Serial No. _____
 Date _____ Pct. Of Occ. _____

Time Of Stop _____ Period Of Observation Prior To Stop _____ Radio Run/Sprint # _____
 Address/Intersection Or Cross Streets Of Stop _____

Inside Transit Type Of Location
 Outside Housing Describe: _____

Specify Which Felony/P.L. Misdemeanor Suspected _____ Duration Of Stop _____

What Were Circumstances Which Led To Stop?
(MUST CHECK AT LEAST ONE BOX)

Carrying Objects In Plain View Actions Indicative Of Engaging In Commission Of Crime
 e.g., Slim Jim/Pry Bar, etc.
 Fits Description Furtive Movements
 Actions Indicative Of "Casing" Actions Indicative Of Engaging In Violent Crimes
 Victim Or Location Wearing Clothes/Disguises Commonly Used In Commission Of Crime
 Lookout
 Suspicious Bulge/Object (Describe) _____
 Other Reasonable Suspicion Of Criminal Activity (Specify) _____

Name Of Person Stopped _____ Nickname/Street Name _____ Date Of Birth _____
 Address _____ Apt. No. _____ Tel. No. _____

Identification: Verbal Photo I.D. Refused
 Other (Specify) _____

Sex: Male White Black White Hispanic Black Hispanic
 Female Asian/Pacific Islander American Indian/Alaskan Native

Age _____ Height _____ Weight _____ Hair _____ Eyes _____ Build _____

Other (Scars, Tattoos, Etc.) _____

Did Officer Explain If No, Explain:
 Reason For Stop Yes No

Were Other Persons Stopped/ Questioned/Frisked? Yes No **IF YES, List Pct. Serial Nos.**

if Physical Force Was Used, Indicate Type:

Hands On Suspect Drawing Firearm
 Suspect On Ground Baton
 Pointing Firearm At Suspect Pepper Spray
 Handcuffing Suspect Other (Describe) _____
 Suspect Against Wall/Car

Was Suspect Arrested? Yes No **Offense** _____ Arrest No. _____
 Was Summons Issued? Yes No **Offense** _____ Summons No. _____
 Officer In Uniform? Yes No **IF No, How Identified?** Shield I.D. Card Verbal

Exhibit I



INTERIM ORDER

| | | |
|--|--------------------|-----------|
| SUBJECT: REVISION TO PATROL GUIDE 202-10, "EXECUTIVE OFFICER" | | |
| DATE ISSUED: | REFERENCE: | NUMBER: |
| 05-16-12 | P.G. 202-10 | 21 |

1. In order to ensure that members of the service are preparing a **STOP, QUESTION AND FRISK REPORT WORKSHEET (PD344-151A)** for an appropriate street encounter as defined in **STREET ENCOUNTERS – LEGAL ISSUES (PD344-153)**, the following patrol guide procedure is being revised.

2. Therefore, effective immediately, Patrol Guide 202-10, "Executive Officer" is amended as follows:

a. **ADD** new step "**21**", opposite actor "EXECUTIVE OFFICER", on page "**2**" to read:

EXECUTIVE OFFICER **21.** **Personally conduct, in conformance with the Quality Assurance Division self-inspection program, the command self-inspection of STOP, QUESTION AND FRISK REPORT WORKSHEETS (PD344-151A).**

3. Any provisions of the Department Manual or any other Department directive in conflict with the contents of this Order are suspended.

BY DIRECTION OF THE POLICE COMMISSIONER

DISTRIBUTION
All Commands



Exhibit J



Report Under
PSB# 3-36s.13
RMS# 89-1s.13

POLICE DEPARTMENT
CITY OF NEW YORK

March 5, 2013

From: Chief of Patrol
To: Commanding Officer, all Patrol Boroughs
Subject: **REQUIRED ACTIVITY LOG ENTRIES REGARDING UF250's**

1. Effective immediately, to ensure that all documentations regarding UF250's are standardized, all uniformed members will make the following required Activity Log entries whenever a "Stop, Question and Frisk Report" is prepared (see attached).

- Date/time of stop
- Location of stop
- Suspect's Last name, First name
- Suspect's pedigree
- Suspected crime or offense (*felony or penal law misdemeanor*)
- Explanation of suspicion (*looking into windows, pulling on doorknobs, etc*)
- Whether or not the suspect was frisked
- Sprint/Job number
- Disposition of stop (*96, 92C, 93Q, etc.*)

2. In addition, the circumstances or factors of suspicion **must be elaborated** on in the Additional Circumstances/Factors sections of the "Stop, Question and Frisk Report" and Activity Log. (i.e.; if the "Furtive Movements" caption is checked off, then a description of that movement must be specified).

3. Furthermore, a photocopy of Activity Log entries will be made and attached to the UF250 prior to submission to the Desk Officer/supervisor. This photocopy will be kept with the precinct copy of the Stop Question and Frisk Report.

4. Commanding Officers will ensure that members of their respective commands are apprised and comply accordingly.

5. For your **INFORMATION** and **IMMEDIATE COMPLIANCE**.

Chief James P. Hall
James P. Hall
CHIEF OF PATROL

JPH/DJM/lf

PATROL SERVICES BUREAU

FOR YOUR INFORMATION

SAMPLE ACTIVITY LOG ENTRY

Stop, Question and Frisk Activity Log Entry

The circumstances of the suspicion must be **elaborated** on, as show in this example.

2335 E.O.T. - Odometer. 34672
P.O. R. Petti #1810
Monday 1/31/2011 Tour: 1500x2335
1500 - Present for duty
1510 - Roll Call Lt. Bessler, C/D Green, rd2/24
Sector 48B, 1800 meal w/PO Byron # 10465
1530 Operator, RMP 1776, Vehicle Inspection,
No contraband; good cond.; 3/4 fuel; 35011 mi
1535 10-98
1610 car stop Re: Red light. 1111-D1
c/o Belmont & E. Fordham Rd. w/b
Mot. Clark, Melissa F/W, D.O.B. 8/10/74
5'11". Mot. ID# 274 755 687, '87 Nissan, Red
Plate: XYZ-781
1630 - 10-96 1X SUMM #4000002503,10-98
1715 - SQF. UF#250 susp. male randomly
looking into apt. windows @ 1781 Marmion
Ave. and changed directions at sight of PO's
Smith, Daniel; D.O.B. 9/17/73 M/A
1725 - I.D. positive, maintenance worker for
Development Corp. - Stopped not frisked; Sgt.
Doe not'f, sprint #M12345
1730 93Q, 98
1800 63 @48S/H
1900 10-98
1910 10-21 past burg 2115 southern blvd, 3c
1916 10-84 confirmed burg, comp. Zioli, Allen
on scene. Canvass apts 2c,4c,3b,3d,lobby and
courtyard neg. results Sgt. Fu, L. on scene
1940 10-98

(COMPLETE ALL CAPTIONS)

STOP, QUESTION AND FRISK REPORT WORKSHEET
 PD 344-151A (Rev. 05-11)

Pct. Serial No. _____ Date 1/31/11 Pct. Of Occ. 048

Time Of Stop 1715 Period Of Observation Prior To Stop 3 min Radio Num/Sprint No. M12345

Address/Intersection Or Cross Streets Of Stop
f/o 1781 Marmion Avenue, NY

Inside Transit Housing Outside Housing Type Of Location (Describe) street

Specify Which Felony/P.L. Misdemeanor Suspected Burglary Duration Of Stop 10 min

What Were Circumstances Which Led To Stop?
 (MUST CHECK AT LEAST ONE BOX)

Carrying Objects In Plain View Used In Commission Of Crime e.g., Slim Jim/Pry Bar, etc.
 Furtive Movements
 Actions Indicative Of Engaging In Violent Crimes
 Wearing Clothes/Disguises Commonly Used In Commission Of Crime.
 Fits Description.
 Actions Indicative Of "Casing" Victim Or Location.
 Actions Indicative Of Acting As A Lookout.
 Suspicious Bulge/Object (Describe)
 Other Reasonable Suspicion Of Criminal Activity (Specify)
Turned at the sight of the police and kept looking back

Name Of Person Stopped Smith, Daniel Nickname/Street Name Danny Date Of Birth 9/17/73

Address 123 Main Street, New York NY Apt. No. _____ Tel. No. 646-610-0000

Identification: Verbal Photo I.D. Refused
 Other (Specify) NYS DL #123456

Sex Male Female Race: White Black White Hispanic Black Hispanic Asian/Pacific Islander American Indian/Alaskan Native

Age M Height 6'4 Weight 240 Hair Black Eyes Br Build stocky

Other (Scars, Tattoos, Etc) _____

Did Officer Explain Reason For Stop? Yes No Explain: _____

Were Other Persons Stopped/Questioned/Frisked? Yes No If Yes, List Pct. Serial Nos. _____

If Physical Force Was Used, Indicate Type:
 Handcuffing Suspect Hears On Suspect Reason
 Suspect Against Wall/Car Suspect On Ground Pepper Spray
 Drawing Firearm Pointing Firearm At Suspect Other _____

Reason For Force Used (Check One Box Only) Suspect Reaching For Suspected Weapon
 Defense Of Self Overcome Resistance Other (Specify) _____
 Defense Of Other Suspect Flight

Was Suspect Arrested? Yes No Offense _____ Arrest No. _____

Was Summons Issued? Yes No Offense _____ Summons No. _____

Officer In Uniform? Yes No If No, How Identified? Shield I.D. Card Verbal

Stop, Question and Frisk Report

An explanation regarding the circumstances are included under the "Other reasonable suspicion of Criminal activity (specify)" caption.

Was Person Frisked? Yes No **IF YES, MUST CHECK AT LEAST ONE BOX**

Inappropriate Attire - Possibly Concealing Weapon Furtive Movements Refusal To Comply With Officer's Direction(s) Leading To Reasonable Fear For Safety
 Verbal Threats Of Violence By Suspect Actions Indicative Of Engaging In Violent Crimes Violent Crime Suspected
 Knowledge Of Suspects Prior Criminal Violent Behavior/Use Of Force/Use Of Weapon Suspicious Bulge/Object (Describe)
 Other Reasonable Suspicion Of Weapons (Specify) _____

Was Person Searched? Yes No **IF YES, MUST CHECK AT LEAST ONE BOX** Hard Object Admission Of Weapons Possession
 Outline Of Weapon Other Reasonable Suspicion Of Weapons (Specify) _____

Was Weapon Found? Yes No If Yes, Describe: Pistol/Revolver Rifle/Shotgun Assault Weapon Knife/Cutting Instrument
 Machine Gun Other (Describe) _____

Was Other Contraband Found? Yes No If Yes, Describe Contraband And Location _____

Demeanor Of Person After Being Stopped Agitated
 Remarks Made By Person Stopped I didn't do anything

Additional Circumstances/Factors: (Check All That Apply)

Report From Victim/Witness Evasive, False Or Inconsistent Response To Officer's Questions
 Area Has High Incidence Of Reported Offense Of Type Under Investigation Changing Direction At Sight Of Officer/Flight
 Time Of Day, Day Of Week, Season Corresponding To Reports Of Criminal Activity Ongoing Investigations e.g., Robbery Pattern
 Suspect Is Associating With Persons Known For Their Criminal Activity Sights And Sounds Of Criminal Activity, e.g., Bloodstains Ringing Alarms
 Proximity To Crime Location
 Other (Describe) Randomly looking through apt windows with a flashlight

Pct. Serial No. _____ Additional Reports Prepared: Complaint Rpt. No. _____ Juvenile Rpt. No. _____ Aided Rpt. No. _____ Other Rpt. (Specify) _____

REPORTED BY: Rank, Name (Last, First, M.I.) PO Petti 999999
 Print _____ Tax# _____ Signature _____ Command _____

REVIEWED BY: Rank, Name (Last, First, M.I.) _____
 Print _____ Tax# _____ Signature _____ Command _____

Exhibit K



**POLICE OFFICER'S MONTHLY CONDITIONS
IMPACT MEASUREMENT REPORT**

PD XXX-XXX (04-11)

| Last Name | | First | M.I. | Tax Reg. No. | | Command | | Squad | | Reporting Month - Year | | | | | | | | | | |
|---|----|-------|---------|-----------------|------------|-----------------|-----------------|------------|-----------------|------------------------|-------------|-----------|---------------------|--------------------|------------------|-----------------|-----------------|---------|----------------|-----------|
| ASSIGNMENTS / IDENTIFIED CONDITIONS | | | | TOURS ON PATROL | O.T. HOURS | DIRECTED PATROL | VERTICAL PATROL | RADIO RUNS | OTHER (EXPLAIN) | ARRESTS | | | SUMMONSES | | | REPORTS | | | | |
| List Daily Assignment (e.g., Sector, Patrol Post, Developments, Subway Patrol, T.S.) and two Identified Conditions. Circle Y or N to indicate if any activity addressed the Identified Condition. | | | | | | | | | | FELONY | MISDEMEANOR | VIOLATION | A-PARKING VIOLATION | B-MOVING VIOLATION | C-CRIMINAL COURT | EC:B/TAB/ OTHER | JUVENILE REPORT | TRUANTS | STOP AND FRISK | CONFERRAL |
| Assignment Date 1 | 1. | | Y N | | | | | | | | | | | | | | | | | |
| | 2. | | Y N | | | | | | | | | | | | | | | | | |
| Assignment 2 | 1. | | Y N | | | | | | | | | | | | | | | | | |
| | 2. | | Y N | | | | | | | | | | | | | | | | | |
| Assignment 3 | 1. | | Y N | | | | | | | | | | | | | | | | | |
| | 2. | | Y N | | | | | | | | | | | | | | | | | |
| Assignment 4 | 1. | | Y N | | | | | | | | | | | | | | | | | |
| | 2. | | Y N | | | | | | | | | | | | | | | | | |
| Assignment 5 | 1. | | Y N | | | | | | | | | | | | | | | | | |
| | 2. | | Y N | | | | | | | | | | | | | | | | | |
| Assignment 6 | 1. | | Y N | | | | | | | | | | | | | | | | | |
| | 2. | | Y N | | | | | | | | | | | | | | | | | |
| Assignment 7 | 1. | | Y N | | | | | | | | | | | | | | | | | |
| | 2. | | Y N | | | | | | | | | | | | | | | | | |
| Name of Reviewing Supervisor (Printed) | | | Tax No. | | Signature | | | | | Date | | | | | | | | | | |
| Assignment 8 | 1. | | Y N | | | | | | | | | | | | | | | | | |
| | 2. | | Y N | | | | | | | | | | | | | | | | | |
| Assignment 9 | 1. | | Y N | | | | | | | | | | | | | | | | | |
| | 2. | | Y N | | | | | | | | | | | | | | | | | |
| Assignment 10 | 1. | | Y N | | | | | | | | | | | | | | | | | |
| | 2. | | Y N | | | | | | | | | | | | | | | | | |
| Assignment 11 | 1. | | Y N | | | | | | | | | | | | | | | | | |
| | 2. | | Y N | | | | | | | | | | | | | | | | | |
| Assignment 12 | 1. | | Y N | | | | | | | | | | | | | | | | | |
| | 2. | | Y N | | | | | | | | | | | | | | | | | |
| Assignment 13 | 1. | | Y N | | | | | | | | | | | | | | | | | |
| | 2. | | Y N | | | | | | | | | | | | | | | | | |
| Assignment 14 | 1. | | Y N | | | | | | | | | | | | | | | | | |
| | 2. | | Y N | | | | | | | | | | | | | | | | | |
| Name of Reviewing Supervisor (Printed) | | | Tax No. | | Signature | | | | | Date | | | | | | | | | | |
| Assignment 15 | 1. | | Y N | | | | | | | | | | | | | | | | | |
| | 2. | | Y N | | | | | | | | | | | | | | | | | |
| Assignment 16 | 1. | | Y N | | | | | | | | | | | | | | | | | |
| | 2. | | Y N | | | | | | | | | | | | | | | | | |
| Assignment 17 | 1. | | Y N | | | | | | | | | | | | | | | | | |
| | 2. | | Y N | | | | | | | | | | | | | | | | | |
| Assignment 18 | 1. | | Y N | | | | | | | | | | | | | | | | | |
| | 2. | | Y N | | | | | | | | | | | | | | | | | |
| Assignment 19 | 1. | | Y N | | | | | | | | | | | | | | | | | |
| | 2. | | Y N | | | | | | | | | | | | | | | | | |
| Assignment 20 | 1. | | Y N | | | | | | | | | | | | | | | | | |
| | 2. | | Y N | | | | | | | | | | | | | | | | | |
| Assignment 21 | 1. | | Y N | | | | | | | | | | | | | | | | | |
| | 2. | | Y N | | | | | | | | | | | | | | | | | |
| Name of Reviewing Supervisor (Printed) | | | Tax No. | | Signature | | | | | Date | | | | | | | | | | |

PLAINTIFFS' EXHIBIT

205

| ASSIGNMENTS / IDENTIFIED CONDITIONS | | | TOURS ON PATROL | O.T. HOURS | DIRECTED PATROL | VERTICAL PATROL | RADIO RUNS | OTHER (EXPLAIN) | ARRESTS | | | SUMMONSES | | | | REPORTS | | | | | |
|-------------------------------------|----|-----|-----------------|------------|-----------------|-----------------|------------|-----------------|---------|-------------|-----------|---------------------|--------------------|------------------|-------------------|-----------------|---------|----------------|-----------|-------|-----------------------|
| Assignment | 1. | 2. | | | | | | | FELONY | MISDEMEANOR | VIOLATION | A—PARKING VIOLATION | B—MOVING VIOLATION | C—CRIMINAL COURT | E.C.B./TAB/ OTHER | JUVENILE REPORT | TRUANTS | STOP AND FRISK | CONFERRAL | AIDED | COMPLAINTS PD 313-152 |
| 22 | 1. | Y N | | | | | | | | | | | | | | | | | | | |
| | 2. | Y N | | | | | | | | | | | | | | | | | | | |
| 23 | 1. | Y N | | | | | | | | | | | | | | | | | | | |
| | 2. | Y N | | | | | | | | | | | | | | | | | | | |
| 24 | 1. | Y N | | | | | | | | | | | | | | | | | | | |
| | 2. | Y N | | | | | | | | | | | | | | | | | | | |
| 25 | 1. | Y N | | | | | | | | | | | | | | | | | | | |
| | 2. | Y N | | | | | | | | | | | | | | | | | | | |
| 26 | 1. | Y N | | | | | | | | | | | | | | | | | | | |
| | 2. | Y N | | | | | | | | | | | | | | | | | | | |
| 27 | 1. | Y N | | | | | | | | | | | | | | | | | | | |
| | 2. | Y N | | | | | | | | | | | | | | | | | | | |
| 28 | 1. | Y N | | | | | | | | | | | | | | | | | | | |
| | 2. | Y N | | | | | | | | | | | | | | | | | | | |
| 29 | 1. | Y N | | | | | | | | | | | | | | | | | | | |
| | 2. | Y N | | | | | | | | | | | | | | | | | | | |
| 30 | 1. | Y N | | | | | | | | | | | | | | | | | | | |
| | 2. | Y N | | | | | | | | | | | | | | | | | | | |
| 31 | 1. | Y N | | | | | | | | | | | | | | | | | | | |
| | 2. | Y N | | | | | | | | | | | | | | | | | | | |
| MONTHLY STRAIGHT TIME TOTALS | | | | | | | | | | | | | | | | | | | | | |
| MONTHLY OVERTIME TOTALS | | | | | | | | | | | | | | | | | | | | | |
| TOTALS | | | | | | | | | | | | | | | | | | | | | |

MOS additional comments pertaining to actions taken to impact declared conditions; explanation of "Other" from reverse side:

| | | | |
|-------------------------------|---------|-----------|------|
| Police Officer Name (Printed) | Tax No. | Signature | Date |
|-------------------------------|---------|-----------|------|

Officer's Impact on Declared Conditions Effective Ineffective
 Comments (Describe in detail why MOS was effective/ineffective):

| | | | | |
|---------------------------|---------|-----------|------|---|
| Sergeant Name (Printed) | Tax No. | Signature | Date | Discussed with MOS <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Lieutenant Name (Printed) | Tax No. | Signature | Date | |

Supervisor's Quarterly Performance Review—prepared March, June, September, December

| | | | | |
|--|---|---|------------------------------|--|
| 1. Officer took initiative in correcting conditions | 1 | 2 | 3 | Questions 1-5: 1=Below Standards 2=Competent 3=Above Standards Question 6: 1=No 2=Yes |
| 2. Officer's enforcement activity addressed declared conditions | 1 | 2 | 3 | |
| 3. Officer took appropriate follow-up steps to properly address conditions | 1 | 2 | 3 | |
| 4. Officer's administrative reports were accurate | 1 | 2 | 3 | |
| 5. Officer related well during community interactions | 1 | 2 | 3 | |
| 6. Officer presented an overall professional image | 1 | 2 | 3 | |
| 7. Additional Comments _____ | | | | |
| | | | Quarterly Points Total _____ | |
| | | | Year to Date Points _____ | |

Sgt. Signature _____ Date _____ P.O. Signature _____ Date _____

| | | | |
|---------------------------|---------|-----------|------|
| Lieutenant Name (Printed) | Tax No. | Signature | Date |
|---------------------------|---------|-----------|------|

Comments _____



OPERATIONS ORDER

| | |
|---|-----------|
| SUBJECT: POLICE OFFICER PERFORMANCE OBJECTIVES | |
| DATE ISSUED: | NUMBER: |
| 10-17-11 | 52 |

1. The mission of a New York City police officer is, through use of self-initiated and team-led efforts, to enhance quality of life in the City by preserving the public peace, preventing crime, detecting and arresting offenders, suppressing disorder and protecting the rights of persons and property. The success of these efforts requires consistent dialogue with the community, personal observations, and action in order to gather intelligence and impact on crimes, quality of life issues, and conditions threatening persons, property, or public order. Such crimes, quality of life issues and conditions threatening persons, property or public order are properly addressed and corrected through the use of *proactive enforcement activities*. Proactive enforcement activities are those areas of enforcement which are delegated to officers by virtue of their police powers, including, but not limited to, the issuance of summonses, the stopping and questioning of suspicious individuals, and the arrests of criminals.

2. Therefore, it is incumbent upon police officers performing vehicle patrol, foot patrol, vertical patrol within buildings, or patrol in the transit system, to gather intelligence either from the public or through personal observation and, through self-initiated or team-led effort, utilize proactive enforcement activities to address crimes, violations, and conditions endangering persons, property or public order.

3. To be effective in addressing the community's crime and quality of life conditions, daily activities of police officers must be designed and coordinated to impact on the identified issues. To provide guidance to police officers concerning their duties, Department managers can and must set performance goals. Officers should be expected to act within appropriate legal standards to perform the tasks cited in the above Mission Statement with particular attention to self-initiated arrests, issuing summonses, conducting stops, and engaging in other enforcement activities.

4. In order to assist police officers and supervisors in identifying the locations within the command where patrol enforcement activity may be most effective in addressing the community's crime and quality of life conditions, the Department implemented the use of a new intelligence document entitled, "**COMMAND CONDITIONS REPORT**" as outlined in *Operations Order 50, series 2011, "Quest For Excellence - Command Conditions Reports."* This report informs members of the service of current crime conditions, crime patterns and trends, quality of life and traffic conditions, in every sector of the command with an emphasis on specific platoons, time frames and locations. The **COMMAND CONDITIONS REPORT** is a road map designed to direct police officers and supervisors to command conditions. The **COMMAND CONDITIONS REPORT** represents a baseline of sector information and commanding officers are encouraged to attach any additional information they determine would be useful in addressing command conditions (e.g., wanted photographs, accurate criminal intelligence, specific condition details or any other relevant information).

5. Commanding officers, in consultation with the special operations lieutenant and command staff (e.g., crime analysis section, field intelligence officer, etc.), will prepare the **COMMAND CONDITIONS REPORT** for each sector/post within the command every Monday. The command's crime analysis section will input the **COMMAND CONDITIONS REPORT** via the "Quest for Excellence" computer application on the Department's intranet. The "Quest for Excellence" application will allow the **COMMAND CONDITIONS REPORT** to be entered and viewed as a power-point presentation on the command's video conferencing system displays. In addition, hard copies of the **COMMAND CONDITIONS REPORT** can be printed out upon request.

6. The commanding officer, in consultation with the special operations lieutenant and command staff (e.g., crime analysis section, field intelligence officer, etc.) will evaluate the current **COMMAND CONDITIONS REPORT** every Monday and amend the **REPORT** to show the most recent trends. The **REPORT** should also be updated during the week if emerging trends require. Commanding officers will instruct all lieutenants concerning the identified conditions. Lieutenants will then discuss the identified conditions on the **COMMAND CONDITIONS REPORT** with their squad/unit sergeants and police officers under their supervision. Precinct/housing/transit commanders are reminded that the implementation of the **COMMAND CONDITIONS REPORT** does not preclude the precinct/housing/transit commander from distributing any other type of criminal intelligence. Furthermore, a hard copy of the **COMMAND CONDITIONS REPORT** will be printed from the "Quest for Excellence" application and posted in the Crime Information Center. An additional hard copy will be immediately forwarded to the borough concerned on a weekly basis and at other times, as appropriate (e.g., emerging trends, etc.).

7. The **COMMAND CONDITIONS REPORT** will provide officers and supervisors on patrol with actionable intelligence that requires attention within the officers' specific area of responsibility, every day and on every tour. The **COMMAND CONDITIONS REPORT** and any additional reports will be distributed by the commanding officer, through supervisors, to police officers on a weekly basis. As noted, it will also be maintained in the command's Crime Information Center in order to assist police officers and supervisors in being aware of conditions throughout the command. At the start of tour, uniformed members of the service, in consultation with the patrol supervisor, will utilize the current **COMMAND CONDITIONS REPORT** in identifying the two primary conditions to be addressed within their assigned sector/post. These two identified primary conditions will be immediately noted daily on a newly created form as described below.

8. Effective 0001 hours, November 1, 2011, uniformed members of the service will be required to prepare and document their daily assignment, selected two primary conditions to be addressed, and daily activity noted (e.g., community interaction, arrests, summonses issued, reports prepared, etc.) on new Department form entitled, "**POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT (PD439-1424)**." The **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT** will be maintained and carried in the inside pocket of the uniformed member's regulation leather binder and will be presented to any supervisor upon request. The uniformed member of the service will ensure that the **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT** is folded neatly as to minimize any tears. Uniformed members will document the two primary identified conditions to be addressed during the tour on the **REPORT** prior to commencing patrol. In addition to other assignments given by supervisors or by the Communications Division, the officer will focus on addressing these two identified sector/post conditions. Other conditions requiring police attention, identified by civilians or through the member's own observation, must also be addressed. Officers will note on the **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT** *ALL* activities (e.g., arrests, field reports, etc.) engaged in during the tour. If an activity specifically impacts on either of the two identified conditions for the tour, then the 'Y' in the left hand box will be circled. Otherwise, the 'N' will be circled. On the back of the **REPORT**, officers may also write remarks regarding actions taken to impact on the two primary identified conditions and other significant conditions which were impacted on.

OPERATIONS ORDER NO. 52

Page 2 of 5

NYC_2_00020841

9. The **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT** will be submitted by the member to the squad/unit sergeant concerned for review and signature on the seventh, fourteenth, and twenty-first day of every month. Squad/unit sergeants will meet with each subordinate to review the member's current activity following the seventh, fourteenth, and twenty-first day of every month. As part of the weekly review, the squad/unit sergeant will compare the member's current monthly activity as it pertains to the member's daily assignment and the two identified conditions to be addressed within the sector(s)/post(s) assigned. The member's **ACTIVITY LOG (PD112-145)** may also be reviewed if the member has documented additional information ascertained from community interactions, summonses issued, arrests made or other actions taken. This review will provide the supervisor with a weekly opportunity to evaluate the uniformed member's performance in proactively addressing sector/post conditions. The supervisor must indicate to each uniformed member an assessment of the quality and caliber of the officer's efforts. In the absence of the squad/unit sergeant concerned (e.g., sick report, vacation, etc.), the weekly review of the **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT** will be conducted by the platoon commander/special operations lieutenant.

10. At the end of every month, uniformed members will complete the captions on the rear side of the **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT** indicating the total activity for the month and list any additional comments pertaining to actions taken to address declared conditions. The completed **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT** will be submitted to the squad/unit sergeant concerned by the second day of the following month. The squad/unit sergeant will then make his/her assessment of the officer's efforts and will enter his/her comments in the "Officer's Impact on Declared Conditions" section on the rear of the **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT**. The squad/unit sergeant will check off one of the following two boxes: Effective Ineffective and must provide a justification as to why the uniformed member of the service was given either an effective rating or ineffective rating. In addition, the failure to address identified conditions will also be documented. Platoon commanders/special operations lieutenants will then review and sign the **REPORT** for members under their direct supervision. Audits of the Online Booking Arrest System (O.L.B.S.) and the Electronic Summons Tracking System will be conducted by the integrity control officer to ensure the accuracy of entries of the **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT**.

11. Upon review and signature by the platoon commander/special operations lieutenant, the **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT** will be submitted to the operations coordinator for entry into the Quest for Excellence application. The **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT** will be scanned and filed for future reference utilizing the network scanner located at the desk.

12. Uniformed members of the service, who are normally assigned to perform administrative duties, will be required to complete and submit the **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT** to their designated supervisor, if they are assigned to any enforcement duties during the reporting month (e.g., "All Out" enforcement, etc.).

13. Uniformed members of the service must be made aware that when a supervisor conducts an evaluation, a high degree of review and consideration will be given to member's daily efforts to address the two primary identified conditions. When signing a uniformed member's **ACTIVITY LOG (PD112-145)**, supervisors will also regularly review the member's **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT**, which is carried by the member in the inside pocket of the regulation leather binder. Inquiries will be made concerning actions taken to address the two primary identified and other significant conditions. Instruction and direction will be given, as required. Supervisors will document any direction given in their **ACTIVITY LOGS**. Duty captains, as part of their daily patrol within a borough, will review platoon commanders and patrol sergeants **ACTIVITY LOGS** to ensure these actions are being taken, and entries are being made regarding them.

14. In cases where an officer's performance fails to address sector/post conditions, the squad/unit sergeant will notify their platoon commander/special operations lieutenant. The platoon commander/special operations lieutenant, in conjunction with the squad/unit supervisor, will take appropriate steps to improve the police officer's performance. These steps include, but are not limited to, assisting the police officer in identifying the conditions to be addressed, assigning the police officer to work with a supervisor and a squad/unit that effectively addresses sector conditions through community interaction, the issuance of summonses, and effecting arrests, etc. and referring the police officer to Performance Enhancement Training.

15. Uniformed members of the service who remain ineffective, who do not demonstrate activities impacting on identified crime and conditions, or who fail to engage in proactive activities, despite the existence of crime conditions and public safety concerns, will be evaluated accordingly and their assignments re-assessed. Continued failure to address sector/post conditions will be documented on an interim or annual **PERFORMANCE EVALUATION**. If after training, mentoring and hands-on instruction, the uniformed member continues to fail in addressing sector/post conditions, the member will be referred to the Employee Management Division's Performance Monitoring Unit for placement in the appropriate level of performance monitoring, transfer, reassignment or other appropriate disciplinary action. Quarterly, each precinct/PSA/transit district will notify their borough in writing, of uniformed members of the service who are under-performing. The boroughs will provide oversight and direction in monitoring and improving their performance.

16. In order to facilitate administrative efficiency and ensure appropriate supervisory oversight, Department form entitled, "**SQUAD SUPERVISOR'S RECAPITULATION (PD439-1418)**" has been revised and incorporated into the Quest for Excellence application. The **SQUAD SUPERVISOR'S RECAPITULATION** will be prepared electronically within the Quest for Excellence application by the squad/unit sergeant based on information contained on submitted **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORTS**. The squad/unit sergeant will be responsible to verify the activity of each member under his/her supervision a minimum of once each quarter. The squad/unit sergeant will note in the "Comments by Squad Supervisor" section of the **SQUAD SUPERVISOR'S RECAPITULATION**, the member(s) of service verified each month. Furthermore, a new Department form entitled, "**QUARTERLY ASSESSMENT OF SQUAD SERGEANT (PD439-1425)**" has been incorporated into the Quest for Excellence application to allow the platoon commander/special operations lieutenant to

OPERATIONS ORDER NO. 52

evaluate sergeants under their supervision and to ensure compliance in meeting performance objectives. Platoon commanders/special operations lieutenants will evaluate their squad sergeants each quarter in the seven categories listed on the **QUARTERLY ASSESSMENT OF SQUAD SERGEANT**. For each category listed, the platoon commander/special operations lieutenant will assess the squad sergeant and check off one of the following two boxes: Effective Ineffective. The platoon commander/special operations lieutenant must provide a justification as to why the squad sergeant was given either an effective rating or ineffective rating for the selected category. In addition, the platoon commander/special operations lieutenant will give an overall rating of either Effective Ineffective and must provide a justification as to why the squad sergeant was given an overall rating of effective or ineffective.

17. Precinct commanders will utilize their executive officers and integrity control officers to conduct observations at locations of identified conditions and monitor the performance of the uniformed members of the service thereat. Bureau/borough investigation units should also be utilized by higher commands to ensure quality efforts throughout the borough to impact on conditions.

18. Effective 0001 hours, November 1, 2011, commands will discontinue using Department form **POLICE OFFICER'S MONTHLY PERFORMANCE REPORT (PD439-1414)** and use the new Department form **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT (PD439-1424)** which is available for print through the Quest for Excellence application.

19. Effective 0001 hours, November 1, 2011, Department form **POLICE OFFICER'S MONTHLY PERFORMANCE REPORT (PD439-1414)** is hereby **REVOKED**.

20. Effective 0001 hours, November 1, 2011, wherever the form "**POLICE OFFICER'S MONTHLY PERFORMANCE REPORT (PD439-1414)**" appears in the Department Manual or other Department directives, **REPLACE** it with "**POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT (PD439-1424)**."

21. Effective 0001 hours, November 1, 2011, commands will discontinue using Department form **SQUAD SUPERVISOR'S RECAPITULATION (PD439-1418)** bearing a printing date of [Rev. 05-08] and begin using the revised **SQUAD SUPERVISOR'S RECAPITULATION (PD439-1418)** [Rev. 10-11] which has been incorporated into the Quest for Excellence application.

22. Commanding officers will ensure that the contents of this Order are brought to the attention of members of their commands.

BY DIRECTION OF THE POLICE COMMISSIONER

DISTRIBUTION
All Commands

OPERATIONS ORDER NO. 52



INTERIM ORDER

| | | |
|---|---------------------|-----------|
| SUBJECT: REVISION TO PATROL GUIDE 205-57 "POLICE OFFICER'S MONTHLY/QUARTERLY PERFORMANCE REVIEW AND RATING SYSTEM" | | |
| DATE ISSUED: | REFERENCE: | NUMBER: |
| 10-24-11 | *P.G. 205-57 | 49 |

1. In order to enhance the monthly and quarterly performance review and rating system for police officers/detective specialists, Patrol Guide 205-57, "Police Officer's Monthly/Quarterly Performance Review and Rating System" has been revised.

2. Therefore, effective 0001 hours, November 1, 2011, Patrol Guide 205-57, "Police Officer's Monthly/Quarterly Performance Review and Rating System" is **SUSPENDED** and the following new procedure will be complied with:

PURPOSE To evaluate the monthly/quarterly performance of police officers/detective specialists assigned to patrol duties, and to identify and reward uniformed members of the service involved in enforcement activity (as defined below) by providing them with up to four career path points on an annual basis.

SCOPE The Police Officer's Monthly/Quarterly Performance Review and Rating System, utilizing the **POLICE OFFICERS MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT (PD439-1424)**, measures the performance levels of uniformed members of the service and identifies those members who are performing above standards, competent, and below standards. This procedure also provides direction to address substandard performance.

Uniformed members assigned to an enforcement command (e.g., precinct, police service area (PSA), transit district, borough task force, etc.) will be assessed monthly utilizing the **POLICE OFFICERS MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT** and rated quarterly utilizing the "Supervisor's Quarterly Performance Review" located on the rear of the **POLICE OFFICERS MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT**. Uniformed members with the following assignments will utilize the **POLICE OFFICERS MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT**:

- a. Foot Patrol
- b. RMP/Sector
- c. Anti-Crime
- d. SNEU
- e. Community Policing Officer
- f. Conditions/Details
- g. Bicycle Patrol
- h. Youth Officer
- i. Train Patrol
- j. School Conditions
- k. Summons Officer
- l. Homeless Outreach
- m. Domestic Violence Prevention Officer
- n. Other assignment as determined by the Chief of Personnel

SCOPE
(continued) Uniformed members of the service whose duties do not involve enforcement activity will not prepare the **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT** unless those members have been temporarily assigned to perform enforcement duty (e.g., "All Out" enforcement, other enforcement/patrol duty, etc.). Such positions include:

- a. Community Affairs Officer
- b. Traffic Safety Officer
- c. Crime Prevention Coordinator
- d. Auxiliary Police Coordinator
- e. Planning Officer

PROCEDURE When preparing monthly/quarterly performance reviews of police officers and detective specialists utilizing the Police Officer's Monthly/Quarterly Performance Review and Rating System:

DESIGNATED SUPERVISOR

1. Access the Quest for Excellence application at the beginning of each month and print the corresponding **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT (PD439-1424)** for members assigned to squad/unit.
2. Distribute **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORTS** to members of squad/unit.

NOTE *The platoon commander/special operations lieutenant will ensure **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORTS** are printed and distributed to members if the designated supervisor is unavailable.*

UNIFORMED MEMBER OF THE SERVICE

3. Prepare daily and carry in regulation leather binder **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT**.
4. Document daily the following on **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT**:
 - a. Assignment (e.g., Sector, Patrol Post, Telephone Switchboard Operator, etc.)
 - b. Two identified conditions to be addressed within sector/post assigned

NOTE *Uniformed members of the service, in consultation with the patrol supervisor, will utilize the current **COMMAND CONDITIONS REPORT** in identifying the two primary conditions to be addressed within their assigned sector/post.*

- c. Activity performed.
5. Submit **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT** to designated supervisor for review and signature on the seventh, fourteenth, and twenty-first day of every month.

DESIGNATED SUPERVISOR

6. Review member's activity and sign **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT** following the seventh, fourteenth, and twenty-first day of every month.

NOTE

*As part of the weekly review, the designated supervisor will compare the member's current monthly activity as it pertains to the member's daily assignment and the two identified conditions to be addressed within the sector(s)/post(s) assigned. The member's **ACTIVITY LOG (PD112-145)** may also be reviewed if the member has documented additional information ascertained from community interactions, summonses issued, arrests made, reports prepared or other actions taken. This review will provide the supervisor with a weekly opportunity to evaluate the uniformed member's performance in proactively addressing sector conditions. The supervisor must indicate to each uniformed member an assessment of the quality and caliber of the officer's efforts. Weekly reviews of the **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT** will be conducted by the platoon commander/special operations lieutenant in the absence of the squad/unit sergeant.*

DESIGNATED SUPERVISOR (continued)

7. Return **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT** to uniformed member immediately upon review and signature.

UNIFORMED MEMBER OF THE SERVICE

8. Complete captions on the rear side of the **REPORT** indicating the total activity at the end of the month and list any additional comments pertaining to actions taken to address declared conditions.

9. Submit **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT** to designated sergeant by the second day of the month for the previous month.

a. Submit **REPORT** prior to leave, or if not possible, without delay upon return to duty if scheduled for vacation or other leave.

DESIGNATED SUPERVISOR

10. Review completed **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT**.

11. Complete "Officer's Impact on Declared Conditions" section on rear of **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT**.

a. Check appropriate box to indicate uniformed member's impact on declared conditions (e.g., Effective, Ineffective).

b. Provided justification as to why uniformed member of the service received an effective rating or ineffective rating. In addition, document failure to address identified conditions by uniformed member.

12. Discuss **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT** with uniformed member of the service.

a. Make entry in "Discussed with MOS" caption.

NOTE

*Supervisors should promptly provide direction when a deficiency or the need for improvement is noted upon review of the **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT**. In cases where a uniformed member's performance fails to address sector conditions, the designated supervisor will notify their platoon commander/special operations lieutenant. The platoon commander/special operations lieutenant, in conjunction with the designated supervisor, will take appropriate steps to improve the police officer's performance. These steps include, but are not limited to, assisting the police officer in identifying the conditions to be addressed, referring the police officer to Performance Enhancement Training or assigning the*

INTERIM ORDER NO. 49

NOTE
(continued)

police officer to work with a supervisor or squad that effectively addresses sector conditions through community interaction, the issuance of summonses, effecting arrests, etc. Failure to utilize effective enforcement strategies will be documented.

*Supervisors will use available Department data collection resources to verify activity. In addition, arrests, summonses, and **STOP, QUESTION AND FRISK REPORTS (PD344-151A)**, etc., will be verified against Department records. Audits of the Online Booking Arrest System (O.L.B.S.) and the Electronic Summons Tracking System will be conducted by the integrity control officer to ensure the accuracy of entries of the **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT**. Discrepancies identified will be corrected and addressed in an appropriate manner.*

DESIGNATED SUPERVISOR
(continued)

- 13. Sign **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT**.
- 14. Prepare **SQUAD SUPERVISOR'S RECAPITULATION (PD439-1418)**, utilizing the Quest for Excellence application by the fifth day for the previous month.

NOTE

*Supervisors will be responsible to verify the **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT** of each member under their supervision a minimum of once each quarter. Supervisors will note in the "Comments by Squad Supervisor" section of **SQUAD SUPERVISOR'S RECAPITULATION**, the member(s) of the service verified each month. Lieutenants will monitor sergeants under their supervision to ensure compliance. **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT** will be submitted to and reviewed by the designated supervisor each month of the calendar year. The Quarterly Performance Review, which includes the supervisor's quarterly rating for the member, will be completed on a quarterly basis at the beginning of January, April, July and October. The time period covered will be the previous three months. Squad/detail sergeants will be similarly evaluated by platoon commanders/special operations lieutenants on a quarterly basis utilizing the **QUARTERLY ASSESSMENT OF SQUAD SERGEANT (PD439-1425)**.*

- 15. Deliver completed **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORTS** to platoon commander/special operations lieutenant by the fifth day for the previous month.

PLATOON COMMANDER/SPECIAL OPERATIONS LIEUTENANT

- 16. Review and sign **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT**.
- 17. Access the Quest for Excellence application.
 - a. Review and sign-off on **SQUAD SUPERVISOR'S RECAPITULATION** by the seventh day of the month.
- 18. Forward completed **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORTS** to operations coordinator by the seventh day following month for which submitted.

OPERATIONS COORDINATOR 19. Create a new **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT** folder for previous month within the Quest for Excellence application.
a. Ensure completed **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORTS** are scanned into the new folder utilizing appropriate command coversheet.

COMMANDING OFFICER 20. Log in to Quest for Excellence application and review completed **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORTS**.

EACH JANUARY, APRIL, JULY AND OCTOBER

DESIGNATED SUPERVISOR 21. Conduct Supervisor's Quarterly Performance Review on the rear of **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT** within seven days following the quarter for which the review is due (January-March, April-June, July-September and October-December).

- a. Interview member in a private setting and discuss specific activity and overall performance.
- b. Review activity for all three months of the quarter.
- c. Note any outstanding action or achievement in "ADDITIONAL COMMENTS" section of the Supervisor's Quarterly Performance Review. Examples of outstanding action or achievement include bribery arrests, pattern robbery arrest or other action, which significantly impacts on crime or issues of community concern.
- d. Note deficiencies and need for improvement along with direction provided or corrective action taken, if applicable, in the "Additional Comments" section. Include notation if member is designated chronic sick or is the subject of any disciplinary action during the quarter.

22. Complete all applicable sections on reverse side of report, including numerical rating of member's performance.

23. Discuss Supervisor's Quarterly Performance Review with uniformed member of the service.

24. Sign reverse side of **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT**.

UNIFORMED MEMBER OF THE SERVICE 25. Sign reverse side of **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT** acknowledging that the Supervisor's Quarterly Performance Review was discussed.

DESIGNATED SUPERVISOR 26. Sign and deliver completed Supervisor's Quarterly Performance Review to platoon commander/special operations lieutenant by the seventh day of the month following the reporting period.

INTERIM ORDER NO. 49

NOTE

*In cases where a uniformed member's performance fails to address sector conditions, the designated supervisor will notify their platoon commander/special operations lieutenant. The platoon commander/special operations lieutenant, in conjunction with the designated supervisor, will take appropriate steps to improve the police officer's performance as previously indicated. Police officers who are ineffective, who do not demonstrate activity impacting on identified crime and conditions, or who avoid engaging in proactive activity, despite the existence of crime and public safety violations, should be evaluated appropriately and their assignments re-assessed. Continued failure to address sector/post conditions will be documented on an Interim or Annual **PERFORMANCE EVALUATION**. If after training, mentoring and hands-on instruction, the uniformed member continues to fail in addressing sector/post conditions, the member will be referred to the Employee Management Division's Performance Monitoring Unit for placement in the appropriate level of performance monitoring, transfer, reassignment or other appropriate disciplinary action. Quarterly, each precinct will notify their borough in writing of uniformed members of the service who are under-performing. The boroughs will provide oversight and direction in monitoring and improving their performance.*

**PLATOON
COMMANDER/
SPECIAL
OPERATIONS
LIEUTENANT**

- 27. Review Supervisor's Quarterly Performance Review.
 - a. Concur with rater, sign and enter comments; or
 - b. If discrepancy noted between performance and rating, return to rater for re-evaluation and re-interview of ratee.

NOTE

Supervisor's Quarterly Performance Review rating points will not be awarded until platoon commander/special operations lieutenant reviews and concurs with rating.

Supervisor's Quarterly Performance Review may be appealed to the next higher-ranking supervisor. In all cases, the precinct commander will make the final determination.

- 28. Sign and deliver Supervisor's Quarterly Performance Review to the operations coordinator by the tenth day of the month following the reporting period.

**OPERATIONS
COORDINATOR**

- 29. Ensure Supervisor's Quarterly Performance Reviews are scanned into the Quest for Excellence application utilizing appropriate command coversheet.

**PLATOON
COMMANDER/
SPECIAL
OPERATIONS
LIEUTENANT**

- 30. Access the Quest for Excellence application and prepare **QUARTERLY ASSESSMENT OF SQUAD SERGEANT** by the tenth day following the quarter for which the review is due (January-March, April-June, July-September and October-December).
 - a. Note deficiencies and need for improvement along with direction provided or corrective action taken, if applicable, in the "Comments by Lieutenant/SOL/PLT Commander" section. Include notation if member is designated chronic sick or is the subject of any disciplinary action during the quarter.
- 31. Complete all applicable sections, including "Overall Rating" of squad supervisor's performance.
 - a. Provide justification as to why squad sergeant was given an effective or ineffective rating.

INTERIM ORDER NO. 49

- PLATOON COMMANDER/SPECIAL OPERATIONS LIEUTENANT (continued)**
32. Discuss **QUARTERLY ASSESSMENT OF SQUAD SERGEANT** with squad/detail supervisor.
33. Sign-off on **QUARTERLY ASSESSMENT OF SQUAD SERGEANT**.
- SQUAD/DETAIL SERGEANT**
34. Sign-off on **QUARTERLY ASSESSMENT OF SQUAD SERGEANT** acknowledging that the **QUARTERLY ASSESSMENT OF SQUAD SERGEANT** was discussed.
- COMMANDING OFFICER**
35. Access the Quest for Excellence application and review Supervisor's Quarterly Performance Reviews and **QUARTERLY ASSESSMENT OF SQUAD SERGEANTS**.
- a. Comment and sign-off on **QUARTERLY ASSESSMENT OF SQUAD SERGEANTS**.
36. Personally conduct Performance Interview for those members who receive a numerical rating below twelve points for any quarter.
- a. Provide direction and/or take necessary corrective action to improve member's performance
- b. Inform member that continued unsatisfactory performance will, absent mitigating circumstances, result in the imposition of sanctions by Borough Personnel Review Board
- c. Record and file results of interview.
37. Forward printed copy of **POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT**, including Supervisor's Quarterly Performance Review, **SQUAD SUPERVISOR'S RECAPITULATION, QUARTERLY ASSESSMENT OF SQUAD SERGEANT** and record of performance interview of those members who receive a numerical rating below twelve points in any two quarters within a one year period, to the Borough Commander.
- BOROUGH COMMANDER**
38. Direct Borough Personnel Review Board to review all cases of members who receive a rating below twelve points in any two quarters within a one year period.
- BOROUGH PERSONNEL REVIEW BOARD**
39. Review cases and recommend corrective action to be taken. Corrective action may include change of assignment within the command, intraborough or interborough transfer and/or disciplinary action.
- BOROUGH COMMANDER**
40. Review recommendations of Borough Personnel Review Board and make final determination and/or recommendation.
- a. Endorse recommendation concerning interborough transfer and/or disciplinary action, through channels, to the Chief of Personnel.

INTERIM ORDER NO. 49

**ADDITIONAL
DATA**

Only those uniformed members of the service who are assigned to a patrol precinct, PSA, transit district or borough task force command or other enforcement units as directed by the Chief of Personnel and primarily perform enforcement duties will be rated according to the Quarterly Performance Review and Rating System; accordingly, only those officers involved in enforcement activity will be eligible to receive up to four additional Career Program points.

Members assigned to non-enforcement duties may accrue Career Program Points based upon the guidelines contained in P.G. 205-15, "Police Officer's/Detective Specialist's Career Program."

Commanding officers will be responsible for determining performance standards within their respective commands and resolving all issues with their command relative to the Monthly/Quarterly Performance Review and Rating System. Precinct, PSA and transit district commanding officers will also review and direct the conditions to be addressed consistent with applicable crime control strategies and areas of community concern.

POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORTS and Quarterly Performance Review and Rating System should be the primary basis and documentation for members' annual evaluation.

POLICE OFFICER'S/DETECTIVE SPECIALIST QUARTERLY PERFORMANCE RATING GUIDELINES

1. *Officer Took Initiative In Correcting Conditions.*
Points:
3 Above Standards
2 Competent
1 Below Standards
2. *Officer's Enforcement Activity Addressing Declared Conditions.*
Points:
3 Above Standards
2 Competent
1 Below Standards
3. *Officer Took Appropriate Follow-Up Steps To Properly Address Conditions.*
Points:
3 Above Standards
2 Competent
1 Below Standards
4. *Officer's Administrative Reports Were Accurate.*
Points:
3 Above Standards
2 Competent
1 Below Standards
5. *Officer Related Well During Community Interactions.*
Points:
3 Above Standards
2 Competent
1 Below Standards

INTERIM ORDER NO. 49

**ADDITIONAL
DATA
(continued)**

- 6. Officer Presented An Overall Professional Image.
 - 2 Yes
 - 1 No

Supervisor must note achievement/outstanding action in "Additional Comments" section.

7. Additional Comments:

These are comments that supervisors must make on member's overall performance. When deficiencies are noted, comments will include directions provided and/or corrective actions taken to improve performance.

QUARTERLY PERFORMANCE RATING POINT SYSTEM

| <u>CATEGORIES IN PERFORMANCE</u> | <u>Quarter</u> | <u>Annual</u> |
|---|--------------------------|---------------|
| Officer Took Initiative In Correcting Conditions | 3 | 12 |
| Officer's Enforcement Activity Addressing Declared Conditions | 3 | 12 |
| Officer Took Appropriate Follow-Up Steps To Properly Address Conditions | 3 | 12 |
| Officer's Administrative Reports Were Accurate | 3 | 12 |
| Officer Related Well During Community Interactions | 3 | 12 |
| Officer Presented An Overall Professional Image | 2 | 8 |
| Total | 17 | 68 |
| <u>Annual Points</u> | <u>Career Points</u> | |
| 60-68 | 4 | |
| 55-59 | 3 | |
| 48-54 | 2 | |
| 40-47 | 0 | |
| Below 40 | Review | |

QUARTERLY REVIEW INTERVIEW - Process to include:

- Discussion of current performance
- Discussion of achievements and/or deficiencies
- Future Direction
- Awarding of Quarterly Rating Points

**RELATED
PROCEDURES**

- Police Officer's/Detective Specialist's Career Program (P.G. 205-15)
- Evaluations - General - Members of the Service (P.G. 205-48)
- Police Officer's Annual Evaluation Utilizing the Monthly/Quarterly Performance Review and Rating System (P.G. 205-56)

**FORMS AND
REPORTS**

- POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT (PD439-1424)**
- SQUAD SUPERVISOR'S RECAPITULATION (PD439-1418)**
- QUARTERLY ASSESSMENT OF SQUAD SERGEANT (PD439-1425)**
- COMMAND CONDITIONS REPORT**

**ADDITIONAL
DATA
(continued)**

- 6. Officer Presented An Overall Professional Image.
 - 2 Yes
 - 1 No

Supervisor must note achievement/outstanding action in "Additional Comments" section.

7. Additional Comments:

These are comments that supervisors must make on member's overall performance. When deficiencies are noted, comments will include directions provided and/or corrective actions taken to improve performance.

QUARTERLY PERFORMANCE RATING POINT SYSTEM

| <u>CATEGORIES IN PERFORMANCE</u> | <u>Quarter</u> | <u>Annual</u> |
|---|--------------------------|---------------|
| Officer Took Initiative In Correcting Conditions | 3 | 12 |
| Officer's Enforcement Activity Addressing Declared Conditions | 3 | 12 |
| Officer Took Appropriate Follow-Up Steps To Properly Address Conditions | 3 | 12 |
| Officer's Administrative Reports Were Accurate | 3 | 12 |
| Officer Related Well During Community Interactions | 3 | 12 |
| Officer Presented An Overall Professional Image | 2 | 8 |
| Total | 17 | 68 |
| <u>Annual Points</u> | <u>Career Points</u> | |
| 60-68 | 4 | |
| 55-59 | 3 | |
| 48-54 | 2 | |
| 40-47 | 0 | |
| Below 40 | Review | |

QUARTERLY REVIEW INTERVIEW - Process to include:

- Discussion of current performance
- Discussion of achievements and/or deficiencies
- Future Direction
- Awarding of Quarterly Rating Points

**RELATED
PROCEDURES**

- Police Officer's/Detective Specialist's Career Program (P.G. 205-15)
- Evaluations - General - Members of the Service (P.G. 205-48)
- Police Officer's Annual Evaluation Utilizing the Monthly/Quarterly Performance Review and Rating System (P.G. 205-56)

**FORMS AND
REPORTS**

- POLICE OFFICER'S MONTHLY CONDITIONS IMPACT MEASUREMENT REPORT (PD439-1424)**
- SQUAD SUPERVISOR'S RECAPITULATION (PD439-1418)**
- QUARTERLY ASSESSMENT OF SQUAD SERGEANT (PD439-1425)**
- COMMAND CONDITIONS REPORT**

3. Any provisions of the Department Manual or any other Department directive in conflict with the contents of this Order are suspended.

BY DIRECTION OF THE POLICE COMMISSIONER

DISTRIBUTION

All Commands

INTERIM ORDER NO. 49

10 of 10

NYC_2_00020937