

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

DAVID FLOYD, *et al.*,

08 Civ. 01034 (SAS)

Plaintiffs,

-against-

**DECLARATION OF
DARIUS CHARNEY**

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

Defendants.

DARIUS CHARNEY declares as follows pursuant to 28 U.S.C. § 1746:

1. I am as senior staff attorney at the Center for Constitutional Rights. I am counsel for Plaintiffs in the above-entitled action.
2. I submit this declaration in Opposition to Defendants' Motion to Exclude Plaintiffs' Proposed Expert Reports, Opinions and Testimony of Jeffrey Fagan.
3. On January 6, 2009, on behalf of Plaintiffs, I wrote to counsel for Defendants in this case to request that Defendants produce the NYPD's electronic criminal complaint report data for the years 2002 through the present. On January 26, 2009, Defendants indicated that they would be willing to produce such data for the years 2004 through 2008 under certain conditions, including that the data be produced under a protective order prohibiting its disclosure to non-parties and that Plaintiffs waived their rights to seek such data for additional years.
4. Thereafter, the parties negotiated for several months in an attempt to resolve their dispute over the terms of the data production, during which time Plaintiffs requested and Defendants agreed to also produce NYPD arrest data for the same years subject to the same

protective order.

5. On June 5, 2009 the parties executed, and on June 8, 2009, the Court so-ordered, a stipulated protective order under which Defendants produced the NYPD's arrest and criminal complaint report data for the years 2004-2008 but which did not in any way limit Plaintiffs' right to request, or Defendants' obligation to produce, arrest and crime complaint report data for additional years.

6. On August 13, 2009, pursuant to Court order, Defendants produced the NYPD arrest and crime complaint report data for the years 2004 through 2008.

7. Thereafter, on February 11, 2010, Plaintiffs served Defendants with their Tenth Request for the Production of Documents, in which they formally requested that Defendants produce the 2009 NYPD arrest and crime complaint report data. Defendants produced such data on March 16, 2010.

8. By order of the Court, fact discovery in this action closed on August 31, 2010.

9. On October 15, 2010, pursuant to the expert discovery schedule set by the Court, Plaintiffs served Defendants with a copy of the report of their statistical expert, Jeffrey Fagan.

10. On December 3, 2010, pursuant to the expert discovery schedule set by the Court, Plaintiffs served Defendants with a copy of the supplemental report of Professor Fagan.

11. Professor Fagan was deposed by Defendants on February 9, 2011.

12. By order of the Court, expert discovery in this action closed on March 4, 2011.

13. On August 31, 2011, Plaintiffs requested in writing that Defendants produce the 2010 NYPD arrest and crime complaint report data. Defendants, pursuant to their continuing discovery obligations under F.R.C.P. 26(a) and (e), produced such data on September 16, 2011.

14. On November 4, 2011, three days before the deadline for Plaintiffs to file and serve their motion for class certification in this case, Defendants produced the revised versions of the 2009 NYPD arrest and criminal complaint report data relied on by Defendants in the present motion. *See* Def. Mem. (Dkt # 179) at 13 n.25; Smith Decl. (Dkt # 181) ¶ 12.

15. On December 13, 2011, six days before they filed the instant motion, Defendants produced the revised versions of the 2010 NYPD arrest and criminal complaint report data relied on by Defendants in the present motion. *See* Def Mem. at 13 n.25; Smith Decl. ¶ 12.

16. Attached hereto as Exhibit A is a true and correct copy of a document marked with Bates Nos. NYC 5409-5420 and entitled *Police Department City of New York, Command Level Instructor's Guide: Stop, Question and Frisk, Police Academy, 06-2008*, which was previously produced by Defendants in this litigation.

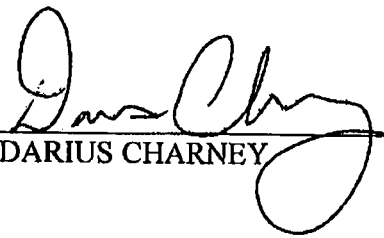
17. Attached hereto as Exhibit B are true and correct copies of documents marked with Bates Nos. NYC 5491-5492, 5509-5511, 5526-5528, 5548-5549, 5565-5567, and 5659-5651, which contain the lists of the Impact Zones for the NYPD Operation Impact program for the years 2006 through 2008, previously produced by Defendants in this litigation. These are the only three years for which Defendants have produced documents concerning Operation Impact.

18. Attached hereto as Exhibit C is a true and correct copy of excerpts from the transcript of the March 4, 2011 deposition of Dennis Smith.

19. Attached hereto as Exhibit D is a chart containing corrections to factual errors in several of the case law summaries contained in Exhibit A of the Declaration of Heidi Grossman (Dkt #180).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
February 2, 2012


DARIUS CHARNEY