UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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DAVID FLOYD, et al.,

Plaintiffs,

-against-

DECLARATION OF HEIDI GROSSMAN

CITY OF NEW YORK, et al.,

08 Civ. 1034 (SAS)

Defendants.

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HEIDI GROSSMAN declares, pursuant to 28 U.S.C. 1746, under penalty of perjury, that the following is true and correct:

1. I am an Assistant Corporation Counsel in the office of the Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for defendants in the above action. As such, I am familiar with the facts stated below.

2. This declaration is submitted in support of defendant's motion to exclude plaintiffs' proposed expert reports, opinions, and testimony of Jeffrey Fagan, Ph.D, ("Fagan") dated December 19, 2011.

3. Annexed hereto as Exhibit A is a Chart which includes: (1) representative cases in which courts determined that officers stopped a defendant with reasonable articulable suspicion ("RAS") based on (A) one or more "Conditionally Justified" circumstances listed on Page One of NYPD UF-250, (B) one or more "Conditionally Justified" circumstances listed on Page One of NYPD UF-250 and "High Crime", or (C) one or more "Additional Circumstances" Listed on Page Two of NYPD UF-250; and (2) cases relied on by Fagan for his analysis of the

constitutional sufficiency of Stops, Questions and Frisks that have been either inaccurately interpreted or are subject to an alternative interpretation.

4. Annexed hereto as Exhibit B are relevant excerpts from the deposition transcript of Fagan, dated February 9, 2011;

5. The NYPD uses the UF-250 Stop, Question and Frisk Report Worksheet ("UF-250 form") to document investigatory stops and record the details regarding the stop. The front and back of the UF-250 form contain checkboxes that summarily describe the reasonable suspicion circumstances giving rise to a stop. Fagan classified certain boxes on the UF-250 form, which were checked off either alone or in combination with others into one of three categories (1) 'Legally Justified' (labeled by Fagan as "Justified"), (2) 'Indeterminate Legality' (labeled by Fagan as "Indeterminate") and (3) 'Insufficient Legality' (labeled by Fagan as "Unjustified").

6. Annexed hereto as Exhibit C is a copy of the UF-250 form which has been annotated to reflect Fagan's classification scheme, described in paragraphs 7-10, below.

7. According to Fagan's classification scheme, a stop is designated as legally "Justified" when one or more of the following boxes on side 1 of the UF-250 form are checked: Actions Indicative of Casing Victim or Location ("Casing"), Actions indicative of Engaging in Drug Transaction ("Drugs") and Actions Indicative of Engaging in Violent Crimes ("Violent"). Justified checkboxes are designated as "J" on Exhibit C, the annotated UF-250 form.

8. According to Fagan's classification scheme, a stop is also designated as legally "Justified" when one or multiples of the following six boxes on side 1 of the UF-250 form (defined by Fagan as "Conditionally Justified" boxes) are checked: Carrying Objects in Plain View Used in Commission of Crime, e.g. Slim Jim/Pry Bar, etc. ("Objects"), Fits

Description ("Description"), Actions Indicative of Acting As a Lookout, ("Lookout"), Suspicious Bulge/Object (Describe), Furtive Movements ("Furtive") and Wearing Clothes/Disguises Commonly Used in Commission of Crime ("Clothing") (designated as "CJ" on Exhibit C), in combination with any one of the boxes on side 2 of the UF-250 form under the heading "Additional Circumstances/Factors (Check All that Apply)" (Designated as "AC/AF" on Exhibit C).

9. According to Fagan's classification scheme, a stop is designated as "Indeterminate" when one or multiples of the "Conditionally Justified" boxes on side 1 are checked off alone, without a box checked off on side 2 (Designated as "I" on Exhibit C). In addition, any time the box on side 1 "Other Reasonable Suspicion of Criminal Activity (Specify)" is checked off, the stop is also designated "Indeterminate."

10. According to Fagan's classification scheme, a stop is designated as "Unjustified" when no boxes are checked off on side 1, even if a box is checked off on side 2.

11. Defendants' Request for Production of Documents (Experts) dated December 22, 2010, called for production of: "All documents on which Jeffrey Fagan relied in preparing his two reports submitted in this case, including but not limited to . . . (b) all coding instructions used in statistical analyses" (1(b)). Per plaintiffs' request the parties executed a Stipulation on January 26, 2010 pursuant to which plaintiffs agreed to produce all coding instructions subject to the October 29, 2008 Stipulation and Protective Order entered in this case (Dkt # 52). However, the plaintiffs failed to produce the coding instructions employed by Fagan in his legal classification of stops in the UF-250 database until September 26, 2011.

12. Annexed hereto as Exhibit D are relevant excerpts from the deposition transcript of Mary C. Cronin, dated March 22, 2010.

13. Annexed hereto as Exhibit E is the IX Chart of Impact Zones as of July 9, 2007 (Bates No. NYC-00005511).

14. Annexed hereto as Exhibit F are relevant excerpts from the deposition transcript of Robert Giannelli, dated August 6, 2009.

15. Annexed hereto as Exhibit G are relevant excerpts from JEFFREY A. FAGAN, ET AL., *Street Stops and Broken Windows Revisited: The Demography and Logic of Proactive Policing in a Safe and Changing City, in* RACE, ETHNICITY AND POLICING: NEW AND ESSENTIAL READINGS (S.K. Rice and M.D. White, eds. 2010).

16. Annexed hereto as Exhibit H is GREG RIDGEWAY & JOHN MACDONALD, *Methods for Assessing Racially Biased Policing, in* RACE, ETHNICITY AND POLICING: NEW AND ESSENTIAL READINGS (S.K. Rice and M.D. White, eds. 2010).

17. Annexed hereto as Exhibit I are relevant excerpts from LORIE A. FRIDELL, BY THE NUMBERS: A GUIDE FOR ANALYZING DATA FROM VEHICLE STOPS (Washington, D.C.: Police Executive Research Forum 2004).

18. Annexed hereto as Exhibit J is Andrew Gelman, et al., *An Analysis of the New York City Police Department's "Stop-and-Frisk" Policy in the Context of Claims of Racial Bias*, 102 Journal of the American Statistical Association 813 (2007).

19. Annexed hereto as Exhibit K is DANIEL L. RUBENFELD, *Reference Guide on Multiple Regression, in* REFERENCE MANUAL ON SCIENTIFIC EVIDENCE (3d ed. 2011).

Dated: New York, New York
December 19, 2011

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