

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DAVID FLOYD, et al.,

Plaintiffs,

-against-

**REPLY DECLARATION
OF HEIDI GROSSMAN**

08 Civ. 1034 (SAS)

CITY OF NEW YORK, et al.,

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 reply declaration is submitted in further support of defendant's motion to exclude plaintiffs' proposed expert reports, opinions and testimony of Jeffrey Fagan, Ph.D, ("Fagan") dated December 19, 2011, including any and all supplements and revisions thereto.

Plaintiffs' Production of Fagan's Coding Instructions

3. Annexed hereto as Exhibit A is the parties' stipulation, dated January 2011, governing the production of coding instructions used by Fagan in preparing his statistical analyses ("Coding Stipulation"). Defendants did not receive an executed copy of the stipulation.

Rather, plaintiffs subsequently produced coding instructions on January 26, April 13, and September 23, 2011. *See* Exhibit C hereto.

4. Annexed hereto as Exhibit B is defendants' letter to the Court, dated February 6, 2012, requesting five additional pages to respond to Fagan's revised statistical calculations and conclusions. The Court granted this request on February 7, 2012. In that letter, defendants note that "plaintiffs only now clarify that Fagan's opinion is based on his coding scheme, which defendants received belatedly in this litigation, long after first requesting it".

5. Annexed hereto as Exhibit C is defendants' e-mail, dated February 10, 2012 to plaintiffs requesting:

a. immediate production of all coding instructions used by Fagan to re-run his "Classification of Stops Recorded on UF250 Forms" described in the Declaration of Fagan, dated February 2, 2012 ("Fagan 2/2/12 Declaration"), at ¶¶ 14-18; and

b. confirmation by February 13, 2012 that there are no additional sets of coding instructions responsive to defendants' document requests that have not been produced to defendants.

6. Annexed hereto as Exhibit D, E and F are, respectively, defendants' follow-up e-mail, dated February 13, 2012, asking whether plaintiffs would be responding to defendants' February 10, 2012 e-mail, plaintiffs' February 13, 2012 e-mailed response stating they would endeavor to respond by noon the following day, and defendants' February 13, 2012 e-mail confirming the substance of defendants' February 10, 2012 requests.

7. Annexed hereto as Exhibit G is plaintiffs' e-mail transmittal of Fagan's revised coding instructions referenced in Fagan 2/2/12 Declaration ¶ 17. Because the coding

instructions are confidential pursuant to the Coding Stipulation, they are not attached. Defendants will provide such instructions to the Court upon request.

8. To date, plaintiffs have not provided confirmation that there are no additional coding instructions responsive to defendants' document request other than those that have been produced. *See* ¶ 5(b), *supra*.

Defendants' Timely Production of 2009-10 Arrest and Complaint Data

9. Arrest and complaint data for 2009 was produced to plaintiffs well before the close of expert discovery.

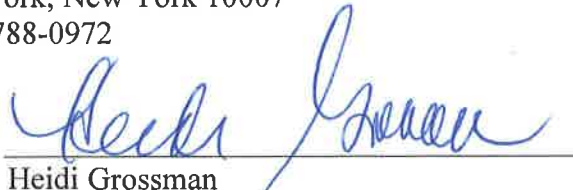
10. Arrest and complaint data for 2010 post-dated the August 2010 close of fact discovery in this case. Such data was produced to plaintiffs pursuant to their request when it became available to defendants.

11. Defendants also produced the arrest and complaint data for 2009 and 2010 in a merged format as soon as it became available to counsel in or about November 2011. Upon information and belief, the original arrest and complaint data contained most of the same information contained in the merged arrest and complaint data, including suspect description.

Dated: New York, New York
February 16, 2012

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By:


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